THE HISTORY OF HINDU LAW
IN
THE VEDIC AGE AND IN POST-VEDIC TIMES
DOWN TO THE INSTITUTES OF MANU

BY
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PREFACE.

These lectures were delivered in 1932. By the terms of the bequest founding the Professorship, the lectures are required to be printed "within six months after the delivery thereof". Under the scheme for the lectures, adopted by the University, the copy of the lectures delivered shall have to be sent to the Press by the Registrar "as soon as practicable after delivery thereof". The University press, however, could not take up the matter till the end of 1933 and could not complete the printing till July, 1938.

In spite of this delay in publication and notwithstanding the events which have happened since the delivery of these lectures, their importance as a study cannot be denied. The history of Hindu Law in the Vedic Age really marks the dawn of law itself on this planet.

In fixing any point of beginning for anything the thing itself must, first of all, be definitely known. The question is whether by 'law' we mean the 'legal provisions' or the 'social order'. The modern practical jurist understands by the word 'law' generally only legal provisions because these constitute that part of law which interests him primarily in his everyday practice. He would understand by 'law' nothing other than legal provisions which mostly are different in different places, among different peoples. On the other hand, those who centre their attention, not on legal provisions, but on the social order, would be sure to observe and emphasize the common element in the midst of this variety. This social order is among civilized states and peoples similar in its main outlines.

The social order rests on the fundamental social institutions like marriage, family, possession, contract, and succession. A social institution may not be a physical, tangible thing. Yet it is perceptible to the senses in that persons who stand in social relations to each other act in their dealings according to established rules. In a strange country we may encounter some deviations from the system we are accustomed to and may be inconvenienced as a result. But soon we become sufficiently instructed through what we see and hear around us and can manage to avoid collisions, even without acquiring a knowledge of the provisions of law.

Using 'law' in the sense of the legal order, the inner ordering of society is the historical starting point. A society is not an aggregate of isolated abstract individuals, but is the sum of human associations having relations with each other. The inner ordering of these associations is the historical starting point. This inner order of
associations is the original and is still the basic form. From it spring
the logically derivative forms, the body of legal precepts or guides to
decision, and the technique of the judicial process. The basic character
of this inner ordering is established by the continuity of society even in
breakdowns of a politically organized or kin-organized social order.

Order is the universal bond that holds the world together; order
assigns a place to all created things; it is directive and distributive
justice. Order is universally sought and esteemed. The so-called
opponents of order are not opposed to the principle; they renounce only
the existing order of things but not order itself.

Dr. Berolzheimer, of whose work Sir John Macdonnell observes
that it enables us to ascend to a height from which we can see law as an
ever present part of an ever flowing stream, says: "Closely connected
with the religious and philosophical views of the Vedic Aryans are
certain fundamental positions in regard to the philosophy of law, which
in turn became the antecedents of later legal and ethical developments
among the Greeks and Romans." Foremost among these philosophical
conceptions is 'rita' which is at once the organized principle of the
universe and the divine ordering of earthly life. As the latter, it is
affiliated with purpose and human benefit.

According to Dr. Berolzheimer, the Romans, through the Greeks,
derived from Vedic 'rita' their central conception 'ratum', 'ratio',
'naturalis ratio' and Augustine christianized 'rita' into 'pax'—
which is not peace, but that which brings peace, the blissful, sacred
order.

To the twentieth century, the problems seem to be:
(1) not what law is, but what law does. how it does it, what it
can be made to do, and how;
(2) the canon of valuing the conflicting and over-lapping interests
and claims which must be harmonized or adjusted by the legal
order;
(3) the limits of effective legal action and the means of securing
effectively the interests which the legal order recognizes and
delimits.

But these have not always been the problems of all ages. In
order to appreciate the legal thinking of any time we must take account
not only of the problems of that time to which the thinker's thought
is addressed, but, if possible, also the modes of thought of the immediate
past, which, according to him, are proving inadequate to those
problems.

We all know how the rise to paramountcy of the political
organization of society and the regime of absolute Government's, which
obtained in the seventeenth and eighteenth centuries, largely determined
the thinking about the nature of law in the nineteenth century. Law
was taken to be a body of laws prescribed by a political sovereign and
expressing his will as to human conduct.
Those who lived in a kin-organized society or observed the transition from a kin-organized to a politically organized society might not have taken the same view of the law. The phenomenon of legal order in transition is likely to provoke thought as to the nature of law and the basis of its binding force. There always has been a controversy as to whether men's disputes are adjusted and their claims and desires are harmonized in action by arbitrary precepts or arbitrary will, applied by those who wield the power, or rather by precepts of general application grounded on any principles of justice. This question has always occupied the minds of legal thinkers and it is really connected with the problem of a balance between the need of stability and the need of change which is a fundamental one in the legal order.

The legal order is necessarily both stable and flexible. The chief problem of the legal thinkers, therefore, has always been how to unify or reconcile stability and change, how to make the legal order appear something fixed and settled and beyond question, while at the same time capable of adaptation to the exigencies of infinite and variable human demands.

The social interest in the general security has led men to seek some fixed basis for an absolute ordering of human action whereby a firm and stable order might be assured. Yet, the continual change in the circumstances of social life demands continual adjustment to the pressure of other social interests, as well as to new modes of engendering security.

Different attempts at such reconciliation have been made at different times. Sometimes reconciliation has been sought for in terms of stability, and sometimes in terms of flexibility. Perhaps too much change directed the attention of legal thinkers to the element of stability and too much stagnation roused them to the element of flexibility.

The idea of authority occupies the mind of legal thinkers at a time when people think more of the need of stability than of change. This idea itself has made its appearance at different times in different forms. The earliest form in which it enters the arena is that of a belief in a divinely ordained or divinely dictated body of rules; whilst in its latest form it is a dogma that law is a body of commands of the sovereign power in a politically organised society, resting ultimately on whatever might be the basis of that sovereignty. In either of these forms it puts a single ultimate unchallengeable author behind the legal order, as the source of every legal precept.

There is little fundamental difference between the law viewed as the will of the dominant deity and the law viewed as the will of the dominant political or economic class. Both agree in viewing law as a manifestation of applied power. As we shall see, the Vedic view of the basis of law was not the divine will but the divine reason.
The deity comes in because of the unconscious and mysterious character of the ancient formation of law and social order. A new social interest develops but people cannot trace it to any conscious initiative or activity. The mysteriousness of a new social interest, the impossibility of explaining it upon the grounds of any previous circumstances of social co-existence, leads to its ascription to superhuman promptings. It is usual to ascribe the unconscious and the imperfectly understood to superhuman forces.

Perhaps this is why we find that the Vedic Aryans, who could supply the world with the fundamental conception regulating the philosophy of law, conceived of this fundamental as something divine.

We shall indeed be sorely disappointed if we search in those ages for 'law' as distinct from 'morals'. The development of the consciousness of social interest coupled with the fact that further organization was to a great extent the result of almost involuntary accommodation might have led these Vedic Aryans to conceive of an all-powerful, extended, single, indivisible force which could not be escaped by any means and which confined all the activities of man within certain limits and enforced certain modes of conduct.

Of the Vedic thinkers in this respect we shall mention the following seventeen Rishis:—(1) Aghanarsana (X, 190), (2) Madhucchanda (I), (3) Visvamitra (III), (4) Prajapati Paramesthin (X). (5) Vrihaspati, (6) Trita (X), (7) Kutsa (I, 96), (8) Parasara (I), (9) Dirghatamas (I), (10) Visvakarma (X), (11) Narayana (X), (12) Vamanadeva (IV), (13) Vinyasava (VII), (14) Vasistha (VII), (15) Gautama (I), (16) Manu (VIII), and (17) Gritsamad (II).

As we shall see in the following pages, no two of them give us identically the same philosophy. Yet there is one common element in their sayings: all of them deal with the conception of 'rita' and conceive of this 'rita' as the organizing principle of the universe, as also the divine ordering of earthly life. Indeed these Vedic Rishis scarcely ever consider man as 'a whole in himself'; whenever they speak of human society, they do not forget its relation to the whole universe.

This view of human society, however, did not ignore what we now call the material content of law,—law affiliated with human purpose and human benefit. Rita as the ordering principle of earthly life is imbued with human purpose and is for human benefit. According to these Vedic Rishis, even the primal cause of this universe, the creator, God, has a purposive existence. Indeed these Rishis, while viewing law as of divine origin, conceive of it as the product not of 'divine will' but of 'divine reason', divine essence. 'Divine will' might present itself as inscrutable, as arbitrary and beyond human understanding. 'Divine reason' is not so.

Law being the product of divine reason—divine nature and essence—is eternal and immutable and excludes all idea of arbitrariness.
Human reason being only a reflection of divine reason, the latter cannot be beyond human comprehension.

These Vedic Rishis conceived of law as a phenomenal reality, as a natural formation, seeking for its causes in the forces that precede all development. Formation of law could not yet be connected with any social ideality. According to them, before there could be any society, before there could be any social ideality, rita evolved: the ordering principle existed even before there was any diversity. Law is eternal and immutable: the conditions of life must harmonize with law, must fit in, in the natural sequence of the rise of the universe, with rita.

The legal thinking of this age was only an attempt at determining the nature of law—determining what law is. The thinkers of the age do not concern themselves much with what law is for—what is the end of law. No doubt any discussion on the nature of law involves the question of what law is for. But ‘end of law’ gradually gained in importance and the subsequent philosophy of law mainly occupied itself with this end. But for a long time even this ‘end of law’ was considered to be to ensure to society the existing social institutions. This conscious thinking about the end of law perhaps indicates a period of struggle and strife and a consequent disturbance of order and harmony in society.

Unlike the Rig-Vedic Rishis, the sages of the Upanisads conceive of law as originating after diversity and as being created with a certain end. Of course it is still of divine origin. According to these sages the creation became full of diversities but there was nothing to hold fast these diverse elements. Indeed the aim of creation, the end of all was to ensure security of the whole. When it was felt that the creation of ‘wisdom’, ‘might’, ‘the people’ and ‘the nourisher’ did not suffice to secure this end, then He created still further “the most excellent law”: तत्त्वायोरुपमः सुद्धेत धर्मेन (Tatsreyorupamatyasrjata dharmam). Law is the Ksatra of the Ksatras: therefore there is nothing higher than the law: this creation of law helped the complete realization of the end: यो अवलोकनः वलीयालमात्रांस्ते धर्मेष (Atho abaliyan baliansamsamsate dharmena), thenceforth even a weak man rules a stronger with the help of the law: Law, as yet, was not considered to be “for the strong too weak, for the weak too strong.”

I take this opportunity of expressing my indebtedness to the various authors whom I have quoted in course of my lectures. I also wish to record my appreciation of the help rendered by Sri Haricharan Banerjee, M.Sc., LL.B., Sri Radhashyam Sinha and Sri Amarnath Bhattacharyya in the preparation of the manuscript as also in reading the proofs and checking the references. In fact, the entire index has been prepared by Sri Radhashyam Sinha.

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CALCUTTA

RADHABINOD PAL
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THE HISTORY OF HINDU LAW

IN

THE VEDIC AGE AND IN POST-VEDIC TIMES
DOWN TO THE INSTITUTE OF MANU

LECTURE I

INTRODUCTORY

The history of the law of any society in any age is the history of the society itself that prevailed in that age. The centre of gravity of legal development really lies in the society itself: law is the sum of the conditions of social co-existence with regard to the activity of the community and of the individual.

J. H. Nelson of the Madras Civil Service in 1877 raised the question: "Has such a thing as Hindu Law at any time existed in the World? Or is it that Hindu Law is a mere phantom of the brain, imagined by Sanskritists without law and lawyers without Sanskrit?"

Nelson himself made it clear that in speaking of law in the above passage he desired "to be understood to speak simply and strictly of an aggregate of laws proper, set to men by political superiors, and which are commands that oblige persons generally to acts or forbearances." He said: "Of other laws, whether set by God or by men who are not political superiors, I shall have no occasion to speak nor will it be necessary for me to consider the theory that a people gradually evolves for itself suitable laws out of its general consciousness."

In this limited sense of the concept 'law' he raised the above question and said: "For myself, I have always been unable to bring myself to believe that the innumerable non-Muhammadan tribes and castes in India have at any time agreed to accept, or have been compelled to guide themselves by, an aggregate of positive laws or rules set to them by a Sovereign or other person having power over them. In other words: looking at 'law' from Austin's point of view, I have always been unable to bring myself to believe that law has at any time been known to the so-called Hindu Population of India."

If by the limitations Nelson merely wished to convey that in early India there never was anything resembling legislation, then,
as was pointed out by Mayne, he was simply asserting a fact which it would occur to no one to deny. What he really wanted to say was that there was no such thing as a Hindu Common Law by which every Hindu was presumptively bound until he had made out a special custom exempting from it. Mayne, in his article on 'Hindu Law in Madras' pointed out that this was not true.

For our present purposes it will not be necessary for us to reopen this controversy and examine whether or not the 'labours of the various Hindu Sages, commentators and Pundits, from the days of the Manu-Smriti to the establishment of the Judicial system of the East India Company were all a part of one gigantic practical joke which had lasted upwards of two thousand years', Nelson, according to Mayne, being the first person who could see into the humour of it. We are to trace the history of Hindu Law in the Vedic Age and in the Post-Vedic times down to the Institute of Manu. It would suffice for our purposes to take Hindu Law as it is now understood and to see if we can trace the origin of this law during the specified age; if we can trace any factual institutions that became the present legal relations in the course of legal development and find out the social processes, if any, through which this came about.

The modern jurist is accustomed to seeing a world ruled by law and legal coercion. To this world, which is his world, he owes his world-view, which assumes that law and legal coercion have been in existence from the beginning of time. He cannot conceive of human communal life without them. A family that is not held together by the constituted authorities, property that is not protected by the courts, a contract that cannot be sued upon, an inheritance that cannot be obtained by legal means are to him things that are altogether outside of the legal sphere—that are without legal significance. In this way, legal order, court and legal sanction become a unit in his mode of thinking, and he will unhesitatingly speak of law or legal relation only where he finds a court and legal coercion.

In this narrow world of ideas, the prevailing juristic science arrived at the well-known theory of two sources—a theory which derives all law from statute or custom. We are, however, not told why there can be no sources of law other than statute and customary law.

In the matter of the sources of law, it is not a question of how the rules of law which the judge must apply assume the form in which they are binding on him. The law does not consist of legal propositions, but of legal institutions. In order to be able to state the sources of law one must be able to tell how the state, the commune, the family, the contract, and the inheritance came into being, how they change and develop. The function of a theory of the sources of law is to discover the vital forces that bring about the development of legal institutions.

Law, which is the sum of the conditions of social co-existence with regard to the activity of the community and of the individual, did not
always, in its concrete form, present itself as the will of the State. Nelson’s conception of ‘Political Sovereignty’ as the ultimate source of law is itself a modern growth and is a growth only to meet a special exigency.

The politically relevant element in the concept of ‘sovereignty’ is that it rendered impersonal the relation of the King to his subjects. ‘Under Feudalism, the principle of the relation between the Lord (princeps) and the vassal was personal ‘mutuality’. Such personal relationship must needs be limited in extent, and was therefore ill-adapted to wide territorial realms. The hierarchy of the mutual relationships which feudal society had tried to evolve in the effort to bridge the gap had shown a dismal tendency towards disintegration and anarchy. This tendency had resulted from the growth of the complex intermediary authorities which opposed the prince’s rule. To escape from this confusion it was then asserted that no true government existed unless there was somewhere an authority for making laws binding upon all the inhabitants of a given territory.’

The true achievement which lay in this recognition of the need for a Central Government is the concept of sovereignty providing a symbol for national unification and for the monarchical governments which destroyed feudal localism. It is a symbol for concentrated power. The national unification which successful Kings accomplished at the beginning of the modern era was accompanied by that sanctification of power politics which is symbolized by the words ‘State’ and ‘Sovereignty’. They were invented by the apologists of absolute power, by men like Bodin, Hobbes, Grotius and Spinoza, the object being to provide a universal value and appeal for the prince’s efforts to extend and consolidate his realm.

Such conception of political sovereignty might not have originated in ancient India at all and there might not have been any occasion for such a conception there in ancient India.

In an attempt like this we must not ignore the difference between conditions in these ancient times and those which prevailed during historic times. We may apprehend that during these millenniums important changes must have taken place both in social and political organizations. We must not forget the great danger of a post hoc conclusions drawn from common or similar legal conditions in widely distant civilizations. However difficult, we must try to avoid being influenced by the currents of contemporary thought and by general intellectual tendencies in the external political evolution of Europe since the sixteenth century.

The idea of authority has not appeared in the same form at all times. The earliest form in which it enters the arena is that of a belief in a divinely ordained or divinely dictated body of rules; in its latest form it is a dogma that law is a body of commands of sovereign power in a politically organized society, resting ultimately on whatever might be the basis of that sovereignty. In either of these forms it puts a
single ultimate unchallengeable author behind the legal order as the source of every legal precept. Every manifestation of law may begin with a determination having reference to concrete cases: but perhaps the mysteriousness of the new social interest, with the impossibility of explaining it upon the grounds of the previous circumstances of social co-existence, is considered to be in consonance with superhuman promptings. It is, indeed, usual to ascribe the unconscious to superhuman forces.

The true source of the authority of the early compilations of the rules of law might have been the overpowering influence of genius which appeared in the light of Divine inspiration. It is, in truth, this element of overwhelming individuality, towering far above the average, which thus gains recognition, and which, although unable to assign reason to itself and to its surroundings for every one of its measures, yet, instinct with prophetic power of inspired lights, discovers the very order necessary for the consolidation of the prevailing society, and makes its enactments appear natural and indispensable to the members, as the same correspond to their instincts, to the capacities evoked by their surroundings and to the extent of their readiness for action.

The term ‘law’ has, indeed, been very variously defined and understood. Some would define ‘law’ as the sum of the conditions of social co-existence with regard to the activity of the community and of the individual. This is the definition suggested by Pulszky. According to him, in its concrete form law presents itself as the will of the State, whether openly declared in a command, a licence, or a prohibition, or tacitly recognized in custom. The will of the State may manifest itself in various ways. It is not always perfectly conscious and is often partly instinctive; nor can it always be discovered as proceeding directly or ultimately from the State, or as belonging to it.

Kelsen would have law as an order of human behaviour. According to him: ‘An order is a system of rules. Law is not, as it is sometimes said, a rule. It is a set of rules having the kind of unity we understand by a system.’

Kantian definition of law is that ‘law is the aggregate of the conditions under which arbitrary will of one individual may be combined with that of another under a general inclusive law of freedom.’

Ehrlich says that ‘the centre of gravity of legal development lies not in legislation nor in juristic science nor in judicial decision, but in society itself.’ As is pointed out by Dr. Friedmann, ‘the central point in Ehrlich’s approach is his minimization of the differences between law and other norms of social compulsion. The difference is relative and smaller than usually asserted because the essential compulsion behind legal no less than other social norms is social compulsion not state authority.’ According to this learned Professor ‘the law is something much wider than legal regulation’. Many legal norms
never find expression in legal provisions even in developed systems. The essential body of legal rules is always based upon the social 'facts of law'. Basically the legal norm is always derived from social facts anchored in the conviction of an association of people.

The Marxian view is that the totality of the relations of production constitutes the economic structure of society and this economic structure is the real foundation on which rise legal and political superstructures and to which correspond definite forms of social consciousness. The State is a later development than society and is an organ of the latter. The whole idea of law is linked with the State being a means by which those who control the means of production maintain their control over those which they have expropriated. According to this view the basis of society is precisely defined in terms of the mutual relations into which men enter in producing the material means of their subsistence: these relations are conditioned by the existing forces of production. These social relations are expressed in terms of the prevailing economic structure of a given society and the general attitude of men towards social problems of any kind is tentatively explained in terms of class as the fundamental division in social life.

The history of mankind, in Marxist view, is a history of class-struggles. According to Engels: 'the State is by no means a power imposed on society from without, just as little as it is 'the reality of the moral idea', 'the image and the reality of reason', as Hegel maintains. Rather, it is a product of society at a particular stage of development; it is the admission that this society has involved itself in insoluble self-contradictions and is cleft into irreconcilable antagonisms which it is powerless to exorcize. But in order that these antagonisms, classes with conflicting economic interests, shall not consume themselves and society in fruitless struggles, a power, apparently standing above society, has become necessary to moderate the conflict and keep it within the bounds of 'order'; and this power, arisen out of Society, but placing itself above it and increasingly alienating itself from it, is the State. . . . As the State arose from the need to keep class antagonisms in check, but also arose at the thick of the fight between the classes, it is normally the social of the most powerful, economically ruling class, which by its means becomes also the politically ruling class and so acquires new means of holding down and exploiting the oppressed class."

Indeed, if there always has been the desire and struggle of man for a law which is to be impartial and objective, there has, at the same time, been the desire of those who from time to time hold the power to free themselves from any restraint and use the law as an instrument of domination. In the actual history the latter tendency has been much more successful. Many controversies fought out under the name of such principles as state supremacy, the natural rights of individuals,
the rule of law have, in fact, been the outcome of these struggles; and copious literature on the subject has, to no inconsiderable extent, been caused by a desire to hide the essentially political character of the question behind legal argument.

There never has existed, and it is entirely safe to say that there never will exist, on this planet any organization of human society, any tribe or nation however rude, any aggregate of men however savage, that has not been more or less controlled by some recognized form of law. Whether we accept the theory of evolution that would develop civilization from barbarism, barbarism from savagery, and the evolution of savage men from a simian ancestry, or whether we adopt the theory that barbarism and savagery are merely lapses from primordial civilization, we find man, at all times and in all circumstances, so far as we are informed by extant records, living in society, regulating his conduct and transacting his affairs in subordination to some rules of law, more or less fixed, and recognized by him to be binding upon him, even though he has been at times in rebellion against some of their provisions.

The recognition of the existence of law outside of himself, and yet binding upon him is inherent in man’s nature and is a necessity of his being. This is indeed responsible for the feeling that the very existence of human society is dependent upon law imposed by some superior power. While from our present standpoint the ultimate finite existence is that of the individual, and all true philosophy recognizes that society exists for the individual, and not the individual for the society, yet it is also true that the individual is intended to exist in society, and that he must in many things subordinate his own will to that of society, and inasmuch as society cannot exist without law, it is a necessary deduction of reason that the existence of law is coeval with that of the human race.

However remote the Vedic Age might be and whatever might be the stage of its civilization; a search after the laws then existing shall not therefore be altogether unjustifiable. The Hindu Law is indeed generally recognized as having its origin in the Vedic Age, and to one who tries fully to understand the system of Hindu Law, it will really be pueriler to disregard the beginning and omit historical causes and take up the subject-matter to be expounded at once with unwashed hands. It is difficult to understand the real nature of anything unless we know when and how it was born. The true nature of things really lies in their genesis; “it is”, says Vico, “nothing but their birth in certain times and in certain forms.”

But to trace the history of the law to these early days is, indeed, a difficult task, if not an impossible one. The credibility of this early history of Hindu Law rests upon the character of its sources. No ancient writer has given us any historical account of the law prevailing amongst the Vedic Indians. The only sources from which any
information of these ancient days can be gathered are the Vedas; and it must not be forgotten that the chief ancient writers that supply the extant interpretations of these Vedic texts flourished several centuries after the recognised Vedic Age. It is almost impossible to believe that they had any contemporary evidence as to the correctness of their interpretations. The meaning which these ancient commentators ascribed to the Vedic texts might not have been exactly what the Vedic Rishis intended. Moreover, the Vedic texts themselves were never intended to give us the custom and usages of these ancient people. Information about them will only be incidental and indirect. Yet the difficulty here should not be greater than the one felt by those attempting at a reconstruction of the history of the Roman Law; and the difficulty has never deterred the historians of that system from their task. Our Vedic forefathers have left authentic records from which we may be able to reconstruct, to some extent at least, an outline of their social and economic life and to understand the principles regulating that portion of it which had to do with possessions, or the instruments by which life is maintained.

"Such is the unity of all history," said Prof. Maitland in a memorable epigram, "that any one who endeavours to tell a piece of it must feel that his first sentence tears a seamless web." Even Vedic India cannot indeed escape from the web. No doubt, in this seamless web of our ancient legal history, the history of European countries may not be entangled, inter-woven; yet its racial threads were but extensions of the same Aryan warp and woof that was making the law in various other countries where the early Aryans, the wiros, had migrated from their ancestral common home.

But what is the Vedic Age? The question is indeed a difficult one for solution. Hitherto the views of the best scholars have differed with regard to the age of the Veda not by centuries, but by millenniums. As has been pointed out by Winternitz, "some scholars lay down the year 1,000 B.C. as the lowest limit for the Rigvedic hymns, while others would go back to the period between 3,000 and 2,500 B.C." Western scholars seem to be generally anxious to make the hymns of the Rigveda and the civilization which is referred to in them as very much later than the Babylonian and Egyptian.

The first scholarly attempt at fixing the age of the Veda was made by Max Muller in his History of Ancient Sanskrit Literature, and while giving the date 1,200 to 1,000 B.C. as the beginning of Vedic Poetry, by a guess, he never wished to say more than this that the Rigvedic Samhita must have been completed at least about 1,000 years before Christ. That he meant no more by his tentative chronology than fixing a minimum date for the origin of the Vedic hymns, he states clearly in his Gifford lectures on Physical Religion where he says that he cannot hope to find when the earliest Vedic hymns began to be composed. Indeed Max Muller's calculation of the Vedic Age may
now be taken as based on a foundation purely hypothetical and arbitrary, and would not bear any careful scrutiny. Scholars like Bal Gangadhar Tilak and Jacobi starting from Astronomical calculations came to the conclusion that the beginning of the Vedic culture must be placed at about 6,000 B.C. ⁹ or 4,500 B.C. ¹⁰. It will indeed be beyond our purpose to enter upon the controversy as to the exact age of the Vedic culture. All that will be necessary for us to remember is that in spite of the various attempts, on the part of the Western scholars, at minimizing the Vedic civilization there is hardly any material for establishing the posteriority of the Vedic culture to those of Babylon and Egypt.

Weber in his History of Indian Literature, after refuting the reasons which have been thought by others sufficient to establish the high antiquity of the Vedic literature, gives his own reasons for regarding the literature of India as the most ancient one of which written records on an extensive scale have been handed down to us. "In the more ancient parts of the Rigveda Samhita," Weber says, "we find the Indian race settled on the North-Western borders of India in the Punjab and even beyond the Punjab, on the Kubbah in Kabul."¹¹ There are Riks that would indeed justify this inference. In the eighth mandal of the Rigveda a Rishi speaks of splendid presents of horses, cattle, camels yoked four together which, to the glory of the Yadavas, he received whilst residing with Tirindira and Parsu. "These names suggest Tiridates and Persians."¹² We hear from Rishi Vatsa of the family of Kanka:

\[
\begin{align*}
\text{शतमहं तिरिन्द्रे सहुमं पर्वावावे } \\
\text{रायसिसि याय्यान्स II} \\
\text{उदान्ते कक्कुसि विचयत्रांनतुरुप्ती दद्दु } \\
\text{अभसा याय्य जनम् II}
\end{align*}
\]

Rigveda, VIII. 6. 46, 48.

The gradual spread of the race from these seats towards the East, beyond the Sarasvati and over Hindusthan as far as the Ganges, can be traced in the later portion of the Vedic writings almost step by step. The writings of the following period, the epic, consist of accounts of the internal conflicts among the conquerors of Hindusthan themselves;¹³ or, of the further spread of Brahmanism towards the South.¹⁴ If we connect with this the first fairly accurate information about India which we have from a Greek source, viz., from Megasthenes, it becomes clear that at the time of this writer the brahmanising of Hindusthan was already completed, while at the time of Periplus the very southernmost point of the Deccan had already become a seat of the worship of Sakti. "What a series of years, of centuries, must necessarily have elapsed before this boundless tract of country,
inhabited by wild and vigorous tribes, could have been brought over to Brahmanism."

The beginnings of Vedic culture may indeed be traced back even to the time when the Indo-Aryans still dwelt together with Persa-Aryans. In the songs of the Rika, the robust spirit of the people gives expression to the feelings of its relation to Nature, with a spontaneous freshness and simplicity; the powers of Nature are worshipped as superior beings, and their kindly aid besought within their several spheres. According to Weber, for the origin of these songs themselves we must go back to a period far earlier than the one of their redaction. This is most clearly shown by the mythological and geographical data contained in them. The mythological relations, represented in the older hymns of the Rik in part, carry us back to the primitive Indo-Germanic times. Weber further points out how the hymns of the Rik contain sufficient evidence of their antiquity in the invaluable information which they furnish regarding the origin and gradual development of two cycles of epic legend, the Persian and the Indian. Indeed the songs of the Rik unfold to us many particulars as to the time, place and conditions of their origin and growth. In the more ancient of them the Indian people appear to us settled on the banks of the 'Sapta Sindhu' divided into a small number of tribes, in a state of mutual hostility, leading a patriarchal life as husbandmen and nomads; living separately or in small communities, and represented by their kings, in the eyes of each other by the wars they wage, and, in the presence of the Gods by the common sacrifice they perform.

The redaction of the Rik-Samhita, however, only took place at a period when the Brahmanical hierarchy was fully developed, and when the Kosal-Videhas and the Kuru-Panchalas, who are to be regarded as having been specially instrumental in effecting it, were in their prime. It is also certain that not a few of the songs were composed either at the time of the emigration into Hindusthan, or at the time of the compilation itself.

An account of the Vedic Law will indeed be an account of the Vedic civilization itself. But it must not be assumed that the living Hindu Society is the undisturbed continuation of the Vedic Society. There have been numerous alien intrusions upon India since the Vedic Age. It may only be possible to identify the older society 'apparently' to the present Hindu Society, and this will suffice for our present purposes. For our present purpose it will not be necessary for us, for example, to make out when the Hellenic intrusion upon India began and ended. It can hardly be denied that its beginning cannot be equated with Alexander's Indian Campaign. "For this raid, though justly celebrated in military history as a brilliant tour de force, had no effect which have made a mark in the history of culture."

For our present purpose the Hellenic intrusion in India did not really begin until Demetrius, the Greek King of Bactria, crossed the Hindu-
kush in order to annex Indian territories to his kingdom about the year 190 B.C. Our present enquiry is limited to a period earlier than this intrusion.

It is 'Hinduism' through which this early Indic Society came to be "apparented" to the Hindu Society of to-day. The germ of life in which this Hinduism originated was native to and not alien from the Society in whose history it played its part.

The Vedic Age itself covers an epoch measured not by centuries but by millenniums, and during this period at least three well-defined literary strata are discernible.

Of the three well-defined literary strata of the Vedic Age the first is that of the four Vedas, the outcome of a creative and poetic age. These Vedas themselves are really of varying age and significance. By far the most important and the oldest is the Rigveda. The Samaveda has practically no independent value, for it consists almost entirely of stanzas taken from the Rigveda. The Yajurveda differs in one essential respect from the Samaveda. It consists not only of stanzas mostly borrowed from the Rigveda, but also of original prose formulas. The fourth collection, the Atharvaveda, attained this position only after a long struggle. Judged both by its language and by that portion of its matter which is analogous to the contents of the Rigveda, the Atharvaveda came into existence considerably later than that Veda.

The creative period of the Vedas was followed by an epoch in which there no longer seemed any need to offer up new prayers to the Gods, but it appeared more meritorious to repeat those made by the holy seers of bygone generations, and handed down from father to son in various priestly families. The old hymns thus came to be successfully redacted in the Vedic collections, and in this form acquired an ever increasing sanctity.

Having ceased to produce poetry, the priesthood transferred their creative energies to the elaboration of the sacrificial ceremonial. The result was the transformation of the primitive worship of the powers of Nature into a highly artificial system of sacrificial ceremonies giving rise to a ritual system far surpassing in complexity of details anything the world has ever witnessed. The main importance of the old Vedic hymns and formulas now lay in their application to the innumerable details of the sacrifice. Around this combination of sacred verses and rites a new body of doctrines grew up in sacerdotal traditions, and finally assumed definite shapes in the guise of distinct theological treatises entitled Brahmanas. They evidently did not come into being till a time when the hymns were already deemed ancient and sacred revelations, the priestly custodians of which no longer fully understood their meaning owing to the change undergone by the language.

The period of the Brahmanas is a very important one in the history of Indian Society. For in it the system of the four castes
assumed definite shape, furnishing the frame within which the highly complex network of the castes of to-day has been developed. In that system the priesthood who even in the first Vedic period had occupied an influential position, secured for themselves the dominant power which they have maintained ever since. The devout belief in the efficacy of invocation and sacrificial offering which pervades most of the hymns of the Rigveda, and which may be assumed to reflect faithfully the religious sentiments of those amongst whom they were composed, could not but ensure to the priest endowed with the gift of the sacred utterance, a considerable amount of respect and reverence on the part of the people.\textsuperscript{24}

This is the period marked by the growth of hierarchic stratification of the social classes. A society certainly does not spring up perfect and all complete, nor does it remain always the same and unchanged. It is the result of development, and passes through several phases in its separate course of life, presenting successively the spectacle of growth, of stagnation, and of dissolution. Its transformations are the consequences of those relations which are formed between the individuals belonging to it, in conformity with the vital interest binding it together, as well as with the organization conditioned thereby, with reference to the conceptions and activity of the individuals.

It goes without saying that the consciousness of and devotion to the vital interest and consequently the participation in the public consciousness and public power of a society are, of necessity, unequally divided amongst its members. And the more the sphere of the society expands and stands in need of singleness in the direction of the forces at its disposal and of a consistent and uniform settlement of its law and order, the greater will be the difference in the parts assigned to the members of the society, and fewer in proportion to the mass of the members will be the number of those who possess power. This is bound to have its effect on the external structure of the society.

The most remarkable transformations in this respect can be expected when some particular society becomes dominant.

With the widening of the sphere of the society and with the consequent increase in the number of its members the consciousness of its principle and the ability of adaptation to its requirements would necessarily be limited. The society at that stage absorbs others by force and establishes the authority of its law over such persons as well, who, owing to their own conceptions and aims, are, from the nature of things, as yet unable to feel any attachment for it. The public consciousness would become confined proportionately to a smaller portion of the mass. In this way takes place the formation of aristocracies and of privileged classes, which, being better fitted for the performance of some essential social services, were also obliged to render these services in their own interest.
The expansion of a communal society by conquest may supply another occasion for the social stratification. Whenever the sphere of the power of the communal state widens, and its dominion extends to other spheres, which it can on no account receive into its own frame, and whenever the power over these is exercised exclusively in the interest of the conquering community, and not in that of the subjects, its object can only be extortion. This by degrees affects also the main organism and a constant exercise of such functions on the part of some of the citizens of the conquering community gradually makes it impossible for them to act their natural part even within their own communal sphere. Aspirations and sentiments once aroused within them by their conduct towards the conquered would be at war with the proper conception of conduct due to their own community. All these causes must have acted and reacted on each other in developing the hierarchical stratification at the advent of the Brahmanic period.

The Brahmanas in course of time themselves acquired a sacred character, and came in the following period to be classed along with the hymns as Sruti. Upanishads belong to the latest stage of the Brahmanas literature.

The Sutras represent the third and the last stage of the Vedic literature. The rise of this class of writings was due to the need of reducing the vast and growing mass of details in ritual and custom, preserved in the Brahmanas and in floating traditions, to a systematic shape, and of compressing them within a compass which did not impose too great a burden on the memory. The Sutras are essentially founded upon the Brahmanas and must be considered as their necessary supplement. Of these the Srautasutras are professedly based on Sruti. The others, viz., the Grihyasutras, treat of domestic ceremonies, those celebrated at birth and before it, at marriage, as well as at death and after it. These are also called Smartasutras and hence do not claim direct revelation as their basis. These Grihyasutras are of much importance to us inasmuch as it is in them that we have to look for the dawn of our legal literature, the subject-matter of which, indeed, in part corresponds exactly to theirs, the authors bearing for the most part the same names as those of the Grihyasutras.

Besides the Grihyasutras, we find some texts directly called Dharmasutras or Samayacharikasutras, which are specified portions of Srautasutras, but which are no doubt subsequently incorporated into these.

In these Grihyasutras, we do not, it is true, find more than a few points of connection with the strictly legal portions of the Dharmasutras. Probably these legal portions were not redacted at all until the pressure of actual imminent danger made it necessary to establish them on a secure foundation. The risk of their gradually being varied and dying out was not so great in those early days as in the case of domestic customs. But a far more real peril threatened
them in the fierce assaults directed against the Brahmanical polity by the gradually increasing power of Buddhism." The consignment of the principles of law to writing may thus have been called forth by the growth of Buddhism, with the view of rigidly and securely fixing the system of caste distinctions rejected by the new faith, and of shielding the Brahmanical polity generally from innovation or decay.31 "In the most ancient of these works—the law books of Manu—we encounter this Brahmanical constitution in the full perfection. The Brahmanas now completely attained the goal from which, in the Brahmanas, he is not very far distant, and stands as the born representative of Deity itself; while on the other hand, the condition of the Sudra is one of the utmost wretchedness and hardship."

The circumstance that the Vaidehas and the Lichhavis are in Manu numbered among the impure castes, is certainly a sign that this work is long posterior to the Satapatha-Brahmana where the Vaidehas appear as the leading representatives of Brahmanism. The position allotted to this tribe, as well as to the Lichhavis may, perhaps, further be connected with the fact that, according to Buddhist legends, the Vaidehas, and especially this Lichhavi family of them, exercised a material influence upon the growth of Buddhism.

The term Dharmasutra in its proper sense applies only to those works which still form a part of a greater collection of Sutra works 32: According to Prof. Max Muller the systematic cultivation of the sacred sciences of the Brahmanas began and for a long time had its centre in the ancient Sutracharanas, doctrines scattered in the older Vedic works, and arranged them for the convenience of oral instruction in sutras or strings of aphorism.32 To the subjects which these schools chiefly cultivated, belongs the sacred law also. The latter includes not only the precepts for the moral duties of all Aryas, but also the special rules regarding the conduct of kings and the administration of justice. The Sutra treatises on law thus cover the whole range of topics, contained in the metrical Smritis attributed to Manu, Yajnavalkya and other sages.

Though only one Dharmasutra, that of the Apastamba, actually remains connected with the aphorisms on the ritual and other sacred subjects, the existence of the Dharmasutras of Gautama, Vasistha and Vishnu, which are likewise composed in Sutras, proves that formerly they were more numerous. The perfectly credible tradition of the Mimamsa School, which declared that originally each Vedic School or Charana possessed a peculiar work on Dharma, confirms this assumption.

While the Dharmasutras possess a considerable antiquity dating between 600-200 B.C. the metrical Smritis cannot be equally ancient, because there is much in their form that is modern, and especially because the Anustup slokas, in which they are written, were not used for composition during the Sutra period. As the metrical Smritis are
later than Dharma Sutras, it is, in the circumstances stated, very probable that each of them is based on a particular Dharma Sutra. The Manava Dharma Sutra in particular may be considered as a recast and verification of the Dharma Sutra of the Manava Sutracharana, a sub-division of Maitrayaniya School, which adheres to a redaction of the Krishna-Yajurveda.¹²

These were mere assumptions on the part of Prof. Max Muller. Later discoveries, however, have fully established the truth of the assumption.¹⁵ The author of the Institutes of Manu is not the first legislator. His own statements would show that he had many predecessors in the line.¹⁸

\[ \text{विषयितबंधनं जीवतयात् गुरुस्त्रादेव कुञ्जवं} \]
\[ \text{बयोमि: बादयन्तन्वनिशेषुपागुरु} \]

Manu, III. 261.

Manu refers to views of others regarding the disposal of funeral cakes. Again, while discussing whether a son begotten by a stranger with the husband’s consent belongs to the natural parent or to the owner of the soil, Manu says:

\[ \text{र्: पुरुं विज्ञानमिति शुभतिक्षणु मनुरिः} \]
\[ \text{आइश्वरपदं केविचलनं क्षरिण विधु} \]

Manu, IX. 32

Discussions exactly similar to this are found in Dharma Sutras also. According to Vaisistha: क्षरिण: पुत्रो जनमितुः पुत्र हति विवदते।

\[ \text{तत्: योगार्द्धिः} \]

Vaisistha, XVII. 6-9.

Gautama says:—

\[ \text{जनमितुपरम्यं समयादयस्य गौतमं श्रोतं तत्स्तवमात् तस्य द्वियोम्यं रक्षणातु सत्रूपिन} \]

Gautama, II. 9. 9-14.

Again in Manu X, 70-72 we are told:

\[ \text{गौतमे: प्रशासनं क्षेत्रमयं मन्त्रिपिणं} \]
\[ \text{गौतमे: तत्तैवायं तत्तनि श्रव्यस्वास्तिस्वास्तिः} \]
\[ \text{अधूरे: गौतममुख्याद्भाव मित्याय} \]
\[ \text{अधूरे: गौतममुख्याद्भाव मित्याय} \]
\[ \text{पञ्चाश्च ज्ञानविश्ववेण निर्भयं वच्योविश्ववेण} \]
\[ \text{पुजितावय प्रश्नावयं ज्ञान्वर्जयं प्रश्नमित्रे} \]
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Herein he gives his decision of the question whether, as "some" assert, the seed be more important, or as "others" state, the soil; or as "again others" maintain the seed and soil have equal importance. Again we are told by Manu:

अज्ञात: कृते पापे प्रायश्चित्त विदुर्वृधि:।
कामकारकान्ते प्रायश्चित्तिभवन्ति विज्ञायते॥

Manu, XI. 45.

The same is discussed in the same manner by Gautama who says:

नद्र प्रायश्चित्त कुप्यात्म कुप्यात्विविद्धि कीमान्ते न कुप्यात्विविद्धि कम्यत्विविद्धि भवेत कुप्यात्विविद्धि दत्ते पुरुषस्मृत्तं हृद्यते नवनायात्मतिविज्ञायते॥

Gautama, III. 1. 3-7.

Vasishtha also discusses the matter and says:

अन्निवसिन्धुने प्रायश्चित्तमण्डले भक्तिविविधं विभिन्नसिन्धुमण्डले विज्ञायते॥

Vasishtha, XX. 1-2.

It is needless to multiply examples.

Throughout the Institute we find references to others’ opinions. Besides, as has been pointed out by George Buhler, there are verses in which the author of the Manu-Smriti confesses that he had knowledge of other pre-existing Dharmashastras.36

We shall not stop here to re-open the controversy as to whether or not the known Dharmasutras of Gautama, Vasishtha, Baudhayana and Apastamba are anterior to the Manu-Smriti. Suffice it would to say that so far as our present knowledge goes the matter seems to be well-settled; and it seems to have been established beyond doubt that Manu-Smriti is posterior to these Sutras.37 It is also the accepted view that the present redaction of the Institute is posterior to the Mahabharata.38 It has been said that the Manu-Smriti is based on a prior Manava Dharmasutra which probably was the exclusive property of the Maitrayani-Mânavâ School. But the question remains how could the locally authoritative Sutra develop into a law book claiming allegiance of all Aryans and generally acknowledged as authoritative by them. What circumstances led to the substitution of the manual of the Vedic Schools, by a universally binding Manava Dharmashastra, and why was so prominent a position allotted to the remodelled Smritis? How was the conversion effected and when did it probably take place?

Though in answering these questions, the absence of all historical information and even of a trustworthy tradition makes it impossible to give full and precise details, it is yet, as we shall see later, possible to recognise the general cause which led to the reproduction of that class of secondary Smritis to which the Manava Dharmashastra belongs.
But has Hindu Law any history at all? Is not Hindu Law a stagnant system, always standing still? In answering such questions we may only ask if there has been any change in the circumstances of social life of a Hindu. Such changes would certainly demand new adjustments to the pressure of developing social interests as well as to new modes of engendering security. The social interest in the security requires that law should be stable. The changes in the circumstances of social life, on the other hand, would demand that law should be flexible. There has been these conflicting demands ever since the changes in the circumstances have been felt, and it has been an arduous task of the legal thinkers of all ages to reconcile the conflicting demands of the need of stability and of change.

That Hindu Law has a history is best shown by the fact that there has been Hindu Philosophy of Law. Even in the early Vedic days we shall meet with Philosophers who gave their theories of law, and the need of such theories could have been felt only after a long past history. Law is, indeed, a plant that lives long before it throws out bulbs. It is rooted for millenniums before it gathers the food and develops the nucleus for a new life that inquires into the reason for its being and for the directions and character of its growth. An examination of the different theories of law given by the Hindu sages of different ages would indeed be of great assistance to us in our quest for the history of the system.

Legal thinking is much influenced by the circumstances of the age, and the legal Philosophers are but the products of their own age. When general security is in danger, philosophers who perceive it and who, therefore, desire that security should be restored, perhaps would think much of the stable element in law and their theories would bear this stamp. When the State interferes too much with individual affairs so as to endanger individual activity and initiative, Philosophers promptly put in their appearance drawing out that handy and convenient weapon of laissez faire from their armoury.

But what are the causes of the variation of jurid phenomena in general? Mostly they will be found in those facts themselves that give rise to jurid phenomena. The two main factors that give birth to law are economic pursuits and the family, and in course of social evolution new activities arise which react on the law, producing new variations.

It has been asserted by some that political phenomena and specially the formation of the State are the general causes of variations in law. But jurid facts are found existing in human society prior to the formation of any political institution and hence the earliest variations of jurid phenomena may not be fully explained by variations of political facts. Moreover, even when a political structure comes into existence, an important part of law continues to form and develop itself outside of any state influence in the form of practice and customary law. Furthermore, even when the political state
formulates its law by legislation, the question still remains why the State thus formulates a rule of one conduct rather than another, and imposes the duty of one sort of conduct and not of another. This inquiry takes us back to the motives and reasons for the State's recognition of specific rules of conduct.

A second theory asserts that economic facts, and particularly, facts of economic relations, form the sole cause of the variations on jural facts. This theory, no doubt, contains a very large part of the truth. Not only economic relations, but also the facts of production and exchange, exercise a profound causal influence on the variations of law.

That morals are universally at the base of law, and that the variations of moral facts are the causes of variations in jural facts, have been affirmed by some and denied by others. To produce minimum of jural facts, it is not necessary that moral facts should pre-exist, much less that they should act causally.

Nor can religion be deemed the general cause for jural variations. In the study of jural evolution, we do indeed find an early connection between religion and law. Here a relation of cause and effect is evident between law and religion. But it is religion that serves a jural purpose and not vice versa.

In a much later and more complex state of jural evolution it may happen that the sanctions of religion are added to those of law, and that the rule of law is looked upon as willed by the deities. But in no case has a religious change produced a fundamental jural change. The religion finds the legal system already formed and sanctions it, promising the favour of the gods to him who observes the rules of law, and supernatural penalties to him who violates them. Law thus remains the basis on which religion acts.

Still another connection is found when the priests become the depositaries of tradition for ancestral law and are chosen as its arbiters. But this alone produces no material change in the existing legal system.

The study of legal evolution with a view to discovering the general principles controlling it always discloses certain principal factors that stand out prominently and merit special inquiry. "These great motive forces—cosmic coefficients—differ in kind and intensity in the different periods and regions. Their effects may be cumulative or counter-active, according to circumstances." 44

Multiple are the factors which go to form and develop law. These motor-factors can never be all discovered and enumerated. In that intellectual evolution from which law emerges, as in social evolution at large, everything proceeds in obedience to the movements of the whole. The cogs of the machine exhibit a solidarity of motion. All is cause and effect, and each part is united directly or indirectly to all other parts. The evolution of law, being a part of Universal
been said to indicate that these Dharmasutras are not really legal treatises of general application, and are not free from sectarian influence. Each belongs to a special Vedic School and is influenced by the views of that school. The fact that such late offshoots of the Vedic tree, as the Apastambhiyas and the Hairanyakeshiyas, possess Dharmasutras, proves that this subject much longer formed part of the curriculum of the Vedic School.

Patanjali, one of the most ancient grammarians of the historical period of India, hints that in his times the Dharma was taught not only in the Vedic but also in special schools. He refers to the prevalent expression 'Dharmasutras' and also teaches the formation of a special word, Dharma-Vidya, the science of the sacred law. Possibly the word Dharmasastra, the institutes of the sacred law, which occurs occasionally in his Bhūṣya, may also point to manuals studied by the special schools which differed from the Dharmasutras.

If we go back to still earlier times, we find the existence of special law schools clearly indicated even in some of the Dharmasutras. The passages that are most explicit on this point are those which describe the constitution of a Parishad, or, an assembly of learned men, entitled to decide doubtful law cases. Vaisistha says:—

चालुक्यविधि विकल्पी च अज्ञविधर्मम् पाठकः।
अध्यासाहस्त्र्यो मुख्या; परिषद् स्याध्वारणा॥

Vaisistha, III. 20.

"Four students of the four Vedas, one who knows the Mimansa, one who knows the Angas, a teacher of the sacred law, and three eminent men who are in three different orders compose a Parishad at least of ten members."

"According to Gautama:

भन्नासारे दशावर्ते: विस्तृत्तक्षिप्जितविदर्भस्यः प्रशस्तस्य कार्यस्य।
वज्ञारस्तुतुल्यापर्या वेदान्ता
प्रागुपास्त्रयो अयोभिण: पूवधर्मिकविदत्वम् एतान्त दशावरान् परिषदिविक्रियायते।

Gautama, III. 10. 46-47.

"They declare, that a Parishad shall consist at least of the ten following members, viz., four men who have completely studied the four Vedas, three men belonging to the three orders enumerated first, and three men who know three different institutes of law."

Baudhāyana gives the same constitution of the Parishad as Vaisistha.

No doubt Gautama seems to refer to one Dharmavid of each Vedic sect. But both Vaisistha and Baudhāyana refer to a Dharmapāthaka as one who recites the sacred law. The name धर्मपाठकः—a reciter of Dharma in general, occurs side by side with one who knows the Angas. As both the works in which the verse occurs are Dharmasutras belonging to the Kalpa section of the Angas, it
seems evident that the teacher of the law must be a person who specially devotes himself to the study of that subject, and knows more than one Dharmasutra. It may be inferred from this that special law schools must have existed at the time when these two Dharmasutras were composed.

The significance of the passages quoted from Vasistha and Baudhāyana becomes still stronger if with them we compare Gautama’s rule quoted above which would indicate considerable difference. Gautama says nothing of men specially devoted to the study of the sacred law. He requires three persons, knowing three different Dharmasutras. He and Apastamba are perfectly aware of the fragmentary character of their rules, and particularly refer pupils in certain cases to the teaching of other schools, which, being comprised under the general term Smriti, have authority, provided the teachers were orthodox Sishtas.

Whatever that be, the existing Dharmasutras of Gautama, Vasistha, Baudhayana and Apastamba are not the manuals of these special law schools. These sutras belong to their own Vedic Schools as part of the Vedic study, and as such, would give us at best the laws which would be authoritive to those who are followers of the particular Vedic Schools.

This brings us to the question whether our ancient Hindu Law was lacking in unity and whether it was a disintegrated system. No doubt from the remotest time the Vedic Aryans were racially distinct from the non-Aryan inhabitants of India. Yet from the end of the Rigvedic period onwards they seem to have been characterized religiously by particularism, there being different Vedic Schools, and the whole body of the Aryans being divided into these different schools. The dismemberment of the law in such cases would be a necessary consequence in view of the fact that religion and law were intermixed and interdependent in those early days.

Hindu Law was no doubt a racial law in one sense. The laws of the individual Vedic branches had originated in and developed upon a basis of common habit and legal conviction, though they nevertheless may reveal many variations which under the influence of external circumstances might attain considerable importance. According to the old Hindu view this racial law was not only binding upon the members of the racial branch, but was also determinant of all legal relations that arose within the territory occupied by the branch. Men knew no law other than their own. Where they could not and would not apply that, there was no law at all. Law was determined solely by personal, not by territorial bonds of mutual dependence.

Yet the conception of territorial law is not altogether foreign to the Hindu system. We are told in the Yajnavalkya Samhitā that on
being asked by the sages, Yajnavalkya told them the law prevailing in the country where black deer is to be found:

मिथिलास्य: स योगीनः क्षणं ध्वात्वावृत्तमुसीनः

वर्तिन्द्र देशो मूर्तं कृष्णस्तिस्मनं धर्ममार्गिबोधतः

Vaj., I. 2.

Vasishta again instructed that the laws as well as the usages prevailing in the country which lies to the south of the Himalaya and to the north of the Vindhya range must be everywhere acknowledged:

“दक्षिणेण हिमाल उत्तरेण विभ्यस्य में धर्मां ये चाचाराते सर्वे प्रक्षेपिताः”

Vasishtha, I. 8-9.

Distinct provinces with variant legal systems seem to have been formed within the domain of Hindu Law, and perhaps in these provinces a man was no longer born into the law of his forefathers but into the law of his home.

But while this territorial law, at least in its beginnings, was a unitary law,—a law that prevailed uniformly in all parts of the region throughout which it had validity—we find very early that this could not prevent local legal growths. Even within such territories, bodies of special class and local laws were early recognized.

Even in those ancient days there seems to have gone on a process of division of the originally unitary racial or territorial law into various special legal systems for distinct legal classes and districts. The racial law had originally been supreme over all the members of the racial branch in all their legal relations and the territorial law had enjoyed a similarly unqualified authority within the region in which it prevailed. But this condition of things changed very early. Those unitary laws could not keep pace with the necessities of advancing economic development. Especially, where trade and handiwork called into existence wholly new legal institutes, man could not get along with a territorial law adjusted to a rural economic condition. There was thus a tendency of ancient Hindu Law to develop particular bodies of special and local laws. This tendency attained, as time went on, an ever more decided predominance, and, there were added to the general law, as new bodies of special laws, regulations of mines, dikes, the chase and similar matters, and independent bodies of law developed as well for specific social classes united by blood or by occupation. The early law-givers thus had to recognize these laws and announced:

“तत्सं च व्यवहारो बेदोधेमशास्त्राय पुष्पेदा: पुराणं देशाजातिकल्पमशिस्ताः सनाये-रविप्रशा: प्रमाणम् कर्मक्रिष्णस्यवस्तुतिविदिकारव: स्ये स्ये वगः”

Gautama, II. 2. 19-21.

“His administration of justice shall be regulated by the Veda, the Institutes of the Sacred Law, the Angas and the Purana. The laws of countries, castes, and families which are not opposed to the sacred records, have also authority. Cultivators, traders, herdsmen, money-
lenders and artizans have authority to lay down rules for their respective classes.'

"Manu has declared that the peculiar laws of countries, castes and families may be followed in the absence of rules of the Sruti."

"देशगर्मजातिगर्मकुलगर्मानि शृवभावादशब्रीष्नु: ॥" ।

Vasiṣṭha, I.

This development of the territoriality idea is of much significance to us. This shows that the life of wandering conquest had given place to a settled home life. Homes bred patriotism and sympathy for fellow-countrymen. The territorial idea would, of course, develop gradually, the first perceptible signs being certain vacillations and interchanges of rules between different personal systems. Starting timidly and increasing with the pressure of daily needs, this ends finally in the domination of one particular rule.

Enough has been said to prepare you for noticing the disunity of law in ancient India, and we must wait till we come to discuss the respective ages before we can examine in details the position of these special laws. We have seen that the extant Dharma-Sutras belong to different Vedic Schools or depict the special laws of those different schools. It becomes, therefore, necessary for us to examine the different schools to which the sutras that are anterior to Manu belong.

We shall begin with Gaṇatama Sutra. The materials regarding the origin and the history of this sutra are indeed scanty. "There are only two points which," says George Buhler, "can be proved satisfactorily, viz., the connection of the work with the Samaveda and a Gaṇatama Charana, and its priority to the other four Dharmasutras which we still possess. To go further appears for the present impossible." As regards its origin Prof. Max Muller says, "Another collection of Dharmasutra, which, however, is liable to critical doubts, belongs to the Gaṇatama, a charana of the Samaveda." This assertion agrees with Kumarila’s statement:

(The Dharmasutra of) Gaṇatama and (the Grihyasutra of) Gobhila were (originally) accepted as authoritative by the Chhandogas (or Samaveda) alone.

"तद्यथा गौतमायोगमिलिये छन्दोपरिएश पञ्चाटे"

Note by Govindaswami ṛṣina Baudhayanasutra, I. 125.

Gaṇatama’s work, though called Dharmasastra, in form and contents closely resembles Dharmasutras of Baudhayana, Apastamba, and Hiranyakeshin. Most of the Vedic schools possessed a pretty large number of Srauta, Grihya and Dharmasutras, which have been either lost or disintegrated, and it is quite possible that the aphoristic law book attributed to Rishi Gaṇatama is in reality a manual belonging to Gaṇatama Charana of the school of Samaveda. Dr. Burnell’s discovery of a Pitrimedha Sutra, usually ascribed to a Gaṇatama, a teacher of the Samaveda further bears this out.
THE HISTORY OF HINDU LAW

The Gautamas are mentioned as a sub-division of the school of Ranayaniyas belonging to the Samaveda and having their principal seat in Maharashtra and in Eastern Hyderabad.\(^1\)

George Buhler proves, by independent arguments, that Kumarila and Prof. Max Muller are right. George Buhler further adduces internal evidence to show that this sutra belongs to the Samaveda School.\(^2\)

It is now generally accepted that Gautama Sutra is prior to the other existing Dharmasutras.\(^3\) Both Baudhayana and Vasistha quote from Gautama, and other Dharmasutras are clearly posterior to these two.\(^4\) George Buhler has established that the Gautama-Dharma-sutra may be safely declared to be the oldest of the existing works on the Sacred Law. Regarding the distance in time between Gautama on the one hand, and Baudhayana and Vasistha on the other, so much only can be said that Gautama probably was less remote from Baudhayana than from Vasistha, and that between these two and Gautama, special law schools must have arisen. Though it is hazardous to conjecture the length of period that passed between these, this much seems to be certain that the time was considerable, and there must have been considerable change so far as the question of legal development is concerned.

The next Dharmasutra with which we shall concern ourselves is that of Baudhayana.\(^5\) This is the work of a teacher of the Krishna-Yajurveda who composed many manuals on all the various sub-divisions of the Kalpa, and founded a Sutra charana, which is said to exist to the present day. It is perfectly certain that Baudhayana, just like Apastamba, placed the Prāṇa on the sacred law after those on the domestic ceremonies and that the Dharmasutra was not a separate work, but a part of his Kalpasutra. Owing to a partial destruction of Baudhayana’s Kalpasutra, its detached portions have received considerable additions from later and, as it would seem, from several hands.

Among the teachers of Taittiriya or Krishna Yajurveda, Baudhayana occupies a high position and his school is older than that of Apastamba, being in fact the oldest of the Sutra schools connected with the text of the Taittiriya.\(^6\) Certainly he was more ancient than any other known teacher of the school,—than Apastamba and Hiranyakeshin at least.\(^7\)

Baudhayana Sutra, it has been said, belongs to the special Vedic School known as Krishna-Yajurveda or Taittiriya. As will be shown later, this school obtained its stronghold in Southern India.\(^8\)

The arguments which may be brought forward to show that Baudhayana’s home lay in Southern India are not as strong as those which permit us to determine the native country of Apastamba. The portion of the Sutras known to us contains no direct mention of the
South except in the Desanirnaya. Baudhayana in 1. 1, 2 to 5 tells us:

"There is a dispute regarding five practices both in the South and in the North. We will explain those peculiar to the South. They are, to eat in the company of an uninitiated person, to eat in the company of one’s wife, to eat stale food, to marry the daughter of a maternal uncle or of a paternal aunt. Now the custom peculiar to the North are, to deal in wool, to drink rum, to sell animals that have teeth in the upper and in the lower jaws, to follow the trade of arms, to go to sea. He who follows these practices in any other country than where they prevail commits sin."

Baudhayana then proceeds to examine if these are authoritative even in the countries where they prevail simply on the ground that they are generally practised by the people there. On the authority of Gautama he gives a negative answer and says that one should not take heed of either set of practices as they are opposed to the tradition of the Sishtas: (सिष्टानोः).

These utterances, however, only show an acquaintance with the South, but by no means prove that Baudhayana lived there.

Up till now Baudhayana does not disclose any partiality of his own to any of these practices. But later on, in Prasna II, Chapter I, Khand 2, while enumerating ‘Pataniyas’, he places the custom of seagoing prevailing among the northern Brahmans to be a serious offence causing loss of caste:

अथ वह पतनीयानि समुद्रसंयातानि

Baudhayana, II. 1. 2. 1-2.

"(1) Now (Follow the offences) causing loss of caste (Pataniyas), (2) (viz.) making voyages by sea."

It is indeed probable that by the latter rule he wanted to indicate his standpoint as a Southerner. At the same time it is quite possible that he is only accepting the views of Gautama in this respect to be the correct and authentic view. This seems more probable in view of Baudhayana’s own definition of the sources of law. According to him it is only the practice of the Shistas and not the mere practice of a people which is law:

उपविष्टो धर्मः प्रतिवेदः
तस्यानुसारं व्यास्यास्यामः
स्मातः दिक्तीयः
द्वीतियशिष्टान्मः

Baudhayana, I. 1. 1. 1-4.
The most conclusive argument in favour of the Southern origin of the Baudhayanis is that they, like the Apastambis and all other adherents of the Taṅtirīya School, are entirely confined to the Deccan, and are not found among the indigenous sub-divisions of the Brahmans in Central and Northern India. 19

This is the place where we should deal with the *Aptastamba* sūtra, another and a later sūtra belonging to the same branch of the Vedic School. The importance of this Dharmasūtra lies in the fact that here the whole of the Kalpasūtra is traceable and it can be proved beyond all doubt that these Dharmasūtras were only parts of the Kalpasūtras, and intended for a particular branch of the Vedic School and were not separate legal treatises having the force of law for the Hindu community in general. The discovery of Apastamba Dharmasūtra has enabled the Western Sanskritists to assert with some confidence that the sacred law of the Hindus has its source in the teaching of the Vedic Schools, and the so-called revealed law codes are in most cases improved metrical versions of older prose works, which were destined to teach the young Aryan their duties. 20

The Apastambīya Dharmasūtra forms part of an enormous Kalpasūtra or body of aphorisms, which digests the teachings of the Veda and of the ancient Rishis regarding the performance of sacrifices and the duties of twice-born men, being based on the Yaḍuvṛda in the Taṅtirīya recension, and is intended for the benefit of the Adhvaryu priests in whose families the study of the Yaḍuvṛda is hereditary.

The entire Kalpasūtra of Apastamba is divided into thirty sections, called Prasnas. The position of the Dharmasūtra in the middle of the collection at once raises the presumption that it originally formed an integral portion of the body of Sūtras and that it is not a later addition. 21

Professor Max Müller has pointed out that the founder of the Apastamba School did not even pretend to have received a revelation of the Vedic Mantras. He merely gave a new systematic arrangement of the precepts regarding sacrifices and the sacred law. Though a Brahmaṇa of the Apastamba is sometimes mentioned, the title Apastamba Brahmaṇa is nothing but another name of the Taṅtirīya Brahmaṇa. Apastamba himself never laid claim to the title of Rishi, or inspired seer of Vedic texts. He declares that the ages during which the great sages could see with their minds' eye the uncreated and eternal texts of the Veda are long past: "तस्मात् श्रेयोऽज्ञेषु ैं जायले नियमानित्रकात्" — On account of the prevalent transgression of the rules of studentship no Rishis are born amongst the men of later ages." 22 Apastamba repeatedly contrasts the weakness and sinfulness of the Avaras, the men of his own times, with the holiness of the ancient sages, who, owing to the greatness of their lustre, were able to commit various forbidden acts without diminishing their spiritual merit.
The fact that Apastamba confined his activity to the composition of Sutras is highly important for the determination of the period to which he belonged. It clearly shows that in his time the tertiary or Sutra period of the Yajurveda had begun.²³ It has further been established that Apastamba is posterior to Baudhayana. Three points have been discussed by George Bühler to establish this fact; viz., the identity of a number of sutras in the works of the two authors, Apastamba's puritanism and his advocacy on some points being more refined and advanced, and especially, the fact that he labours to controvert doctrines contained in Baudhayana's Sutra.

Though posterior to Baudhayana its high antiquity is indicated by internal evidence. The reference to Svetaketu, who appears as a Vedic teacher even in the Satapatha Brahmana and the Chhandogypnishadh, as of a modern avara in Apastamba is of particular importance in this respect.²⁴ It is, however, difficult to say how great the distance between the two really is. Only Bharadvaja, the author of another Sutra, has been placed between them by Mahadeva. But it is very unlikely that successive heads of the same school should have each composed a Sutra and thus formed a branch school. It is therefore more probable that Baudhayana, Bharadvaja and Apastamba are each separated from the other by several intervening generations.

Both the Brahmanical tradition and the internal evidence show that the Apastambiyas belonged to Southern India, and their founder probably was a native of or resided in the Andhra country.²⁵ This fact also has a most important bearing on the question of the antiquity of the school of Apastamba. For the South of India and the nations inhabiting it, such as, Kalingas, Dravidas, Andhras, Kolas and Pandyas did not play any important role either in the ancient Brahmanical traditions or in the earliest history of India, the centre of both of which lay in the North-West Provinces of India or, at least, North of the Vindhya ranges.

Hitherto it has not been shown that the South and the Southern nations are mentioned in any of the Vedic Samhitas. In the Brahmanas and in the Sutras they do occur, though they are named rarely, and certainly not in a complimentary manner. Thus the Aitareya-Brahmana gives the name of certain barbarous tribes, and among them that of the Andhras,²⁶ in whose country, as has been shown, the Apastambiyas probably originated. Again, Baudhayana in his Dharmasutra ²⁷ quotes some verses in which it is said that he who visits the Kalingas must purify himself by the performance of certain sacrifices in order to become fit for associating with Aryans again.

The mention of various Southern nations and a full description of the South occur first in the Mahabharata. While an acquaintance with the South can thus be proved only by a few books belonging to the later stages of the Vedic literature, several of the Southern kingdoms are named already in the oldest historical documents.²⁸
There can be no doubt that South India had been conquered by the Aryans and had been brought within the pale of Brahmanical civilization much later than India, North of the Vindhya range. During which century the conquest took place, cannot be determined for the present. But it would seem that it happened a considerable time before the Vedic period came to an end, and it certainly was an accomplished fact long before the authentic history of India begins, about 500 B.C., with the Persian conquest of the Punjab and Sindh. It may be added that a considerable period must have elapsed after the conquest of the South, and before the Aryan civilization had so far taken root in the conquered territory that, in its turn, it would become a centre of Brahmanical activity and could produce new Vedic Schools.

The Vasishtha Dharmasutra is also a remnant of the Sutras of a Vedic School. This Vedic School, as far as our present knowledge goes, has perished, together with the greater part of its writings. We owe the preservation of its Dharmasutra probably to the special law schools of India, which, attracted by its title and the legend connecting it with Vasistha, one of the most famous Rishis of the Rigveda and a redoubtable champion of Brahmanism, made it one of their standard authorities. The connection of the Dharmasutra with one of the Rishis of the Rigveda possesses a particular interest and importance, because it corroborates the statement of Govindasvamin, the commentator of Baudhayana, that the institutes of Vasistha were originally studied by and were authoritative for the Bahvrichas, the Rigvedics alone, and afterwards became an authority for all Brahmans.29

नतु विभागतः व्यक्तिः व वासिष्ठमये विनिर्वाचनाः कल्प्यते यथा हृदकारीति। यथा वा ब्रह्मचरिणिः धर्मशास्त्रं कैलिधेवं पदमां स्वाधिकारं सहवति।। तथा गौतमधौभीयो छन्दोपदेशं पदेते बालस्य तु श्रद्धा वैं।। लघु च निःस्वाधिकारणी। यथा वासिष्ठानार्थ शास्त्राणां यथा वा गृहशास्त्रानां स्वाधिकारणी, तद्वन्नामीति सहो भौजनार्थीयपि संभागु न्यायमान सहवति। तथो व्यक्तिः व्यक्तिः विनिर्वाचन तथा—“तत्र तत्र देवप्राणामयैः स्वाति।” एवं व्यक्तिः विनिर्वाचन युक्तस्य सहवति। तथाद् वर्तितविवेद्यपदार्थानां तदुपरिः च।। (Vide Baudhayana, I. I, 21,—commentary of Govindaswami. Also S. B. E., Part II, Introduction XIII, Footnote 1.)

The following points bear on the question as to the locality of the original home of the Vedic School which produced this Dharmasutra. First, the author declares India, North of the Vindhyas and those portions now included in the North-Western Provinces, to be the country where holy men and pure customs are to be found.30

Secondly, he shows a predilection for these redactions of the Veda and those sutras which belong to the northern half of India, viz., for the Kathaka; the Vajasaneyi-sakha, and the Sutras of Manu and Harita. Vasistha tells us:—

“प्रत्येकसन्ततिः रत्नार्थ विनिर्वाचन विनिर्वाचनाः क्रियाधि ज्ञाति। नायने प्रत्येकसनांस्यां। एतवाच्यावैविवेकाशिवाय। गंगायुमान्योरलेदायः।
"The laws and customs which are approved of in the country sun rises,—as far as the black antelope wanders between these two range, must be everywhere acknowledged as authoritative. This country is known as Aryavarta. Some declare the country of the Aryas to be situated between the river Ganga and Yamuna. Others state, as an alternative, that spiritual pre-eminence is found as far as the black antelope grazes. Now the Bhallavius quote also the following verse in the Nidana":

"In the west the boundary-river, in the east the region where the sun rises,—as far as the black antelope wanders between these two limits, so far spiritual eminence is found. Those religious acts which men deeply versed in the knowledge of the three Vedas and acquainted with the sacred law, declare to be lawful, are efficient for purifying oneself and others."

Faint as these indications are, they permit us to conclude that the sutras belong to the charana settled in the North.

One more Dharmasutra remains to be mentioned here in this introductory lecture. I mean the Vishnusmriti or Vishnusutra. Dr. Jolly has shown that this Sutra, though much enlarged and changed by subsequent interpolations, is an old Dharmasutra of the Rigvedic School, and is the Sutra of a Shakha which appears to have sprung up near the primitive home of Aryan civilization in India, which was probably the original home of the Kathas. Sutras of this branch must be far older than those of the Krishna-Yajurveda, which have sprung up, like the Apastamba School, in South India. 31 "The size of the Vishnusutra, and the great variety of the subjects treated in it, would suffice to entitle it to a conspicuous place among the five or six existing Dharmasutras; but it possesses a peculiar claim to interest, which is founded on its close connection with one of the oldest Vedic Schools, the Kathas, on the one hand, and with the famous Code of Manu and some other ancient law codes, on the other hand." Dr. Jolly by examining the various quotations from the Vedic works which it contains concurs in the view advanced by Dr. Bühler, that the bulk of the so-called Vishnusmriti is really the ancient Dharmasutra of the Kathaka School whose original home was in the Punjab and Kashmir. 32 It ranks like other Dharmasutras with the Grihya and Srauta Sutras of its School.
As regards its connection with the later Dharmasutras, the Vishnusutra has much in common with the Yajnavalkya Smriti, and it seems clear that Vishnu, instead of having borrowed from other works of the same class, has been directly or indirectly the source from which they drew. There is, however, no other law-book with which it agrees so closely as with the Code of Manu.

In order to test the relative position of these two Dharmasmitis it is important to note that the Vishnusutra does not only contain a number of verses in the ancient Trishtubh metre, whereas Manu has none, but it shows those identical three Trishtubhs of Vasistha and Yaska, which Dr. Bühler has proved to have been converted into Anushtubh slokas by Manu; and Manu seems to have taken the substance of his three slokas from this work more immediately because both he and Vishnu have the reading *avrinoti* for *atrinati*, which form is employed both by Vasistha and Yaska. There is indeed ample evidence regarding the original connection between the Kathas and Manavas, and it would indeed be surprising if no traces of resemblance between their respective Dharmasutras were found.

The Vedic Age itself is thus measured in millennium. Even the so-called creative period is long enough for material changes in the social and political conditions of the people. Nay, even the period of the Rigveda is a vast period having its own history. It is the opinion of all Vedic scholars that the period runs from Pastoral Age of the Vedic Aryans to the intensive agricultural age, giving an account of their life at the common Aryan abode in Central Asia as also of their migration to and settlement in India.

If it is difficult for us to fix the upper limit of the period under review, it will be still more difficult to determine its lower limit. We are to investigate the history down to the Institutes of Manu. But what is the age of this Institute of Manu? This again has been a fertile source of controversy, and it will serve no useful purpose to enter into it over again. The transition from the Sutra form to the Sloka form was connected and coeval with the transition of the sacred law from the Vedic Charanas to special Schools of Dharma. This is only a hypothesis though it gains a great amount of probability from reasons of various kinds.²³

It will, however, be necessary for us to see if this Institute of Manu was or was not anterior to the Mahabharata and to Kautilya’s *Arthashastra*. Of the extant Smritis, Manusmriti is accepted as the oldest. The Yajnavalkya-Smriti and others have been proved by eminent scholars as posterior to Manu and we need not re-agitate the question.²⁴ It is generally believed that the time of origin of the Manusmriti and of the Mahabharata in their present form is approximately the same.²⁵ Dr. Jolly characterises the Mahabharata as a colossal Smriti and shows that the epic represents an older state of things.
As to the relative position of Kautilya’s Arthashastra Dr. Shama Sastri is of opinion that Manu is posterior to Kautilya. The reason given by the learned scholar, however, is not convincing. According to him the use of the word Prakriti to denote elements of sovereignty is Kautilya’s own. "A few of the words are evidently peculiar to works on political science, and the author has himself stated in the last chapter of the work that the use of the word 'Prakriti' in the sense of an element of sovereignty has been his own; and has also said in Book VI. 1, that each sovereign state must contain seven members (anga); such as king, the minister, the country, the fort, the treasury, the army and the friend; and eight elements (Prakritis) with these and the enemy. Amarsinha calls (II. 8. 17-18) them seven members (rajyangani) or elements (Prakritis) and to designate the enemy or enemies, he has not used the word Prakriti. So Kautilya may be credited with having coined the word Prakriti to designate an element of sovereignty and to have extended the denotation of it so as to cover enemies also."

It is difficult to see how from this it follows that Kautilya coined the word himself. We find the same word in the same sense used in Manu, and why not credit Manu with the introduction of this word? Dr. Shama Sastri says, "In the Manusamhita now extant, the word Prakriti is used (vii. 156) in the general sense, as in Kautilya, and it can therefore be taken to be posterior to Kautilya." May we ask why? This can be inferred only if we assume that Kautilya for the first time used the word. Dr. Shama Sastri refers to—

पररासंसिद्ध शब्द: स्वप्रकृतिस्य भूम्यात्मक शब्दिनिमया भूम्याकार्ये तृतीयं

हैति। पररासुष्मित’ हैति पाठानुवर्त्तम् and says that in it Kautilya asserts that the word Prakriti has been his own use. The passage means "words which are not used by others in the special sense in which they are used by the author are his own technical terms": for example: "He who is close to the conqueror’s territory is the first member; next to him comes the second member; and next to the second comes the third." It is difficult to say that the special word referred to here is ‘Prakriti’. It may refer to ‘सूक्ष्मात्मक’
or ‘भूम्याकार्ये’. In fact, the word ‘Prakriti’ seems to be Vedic Prakriti which is the name of one of the victims at the Purushamedha in the Yajurveda (Vaj. Sam. XXX, 12. See also Tait. Br., III. 4. 8. 1), where we find the recommendation ‘पन्नप्यलोकाय प्रकरिताय’. The Vedic sense of the word seems to be the ‘divider of dear ones by producing enmity’. (See Vedic Index—Macdonell & Keith.) The other reasons assigned by Dr. Shama Sastri for holding that Manu is posterior to Kautilya are equally untenable. "What still more strikingly proves," says the learned scholar, "the priority of the Arthashastra to the Smritis of Manu and Yajnavalkya, as now extant, is the marked difference between the
states of societies presented in them. The state of society portrayed in
the Arthashastra is in the main pre-Buddhistic, though Kautilya wrote
long after the time of Buddha, while the Smritis depict the ideal of the
Hindu Society as reconstructed and reformed consequent on its struggle
for existence against the all-victorious, but just then decadent
Buddhism." "The Smritis allude to the previous existence of the state
of society described by Kautilya, either by condemning some of its
political, social and religious practices, or by discrediting the Arthashastra
and other Smritis which authorised the practices characteristic of it.
Owing partly to the influence of the highly moral and philanthropic
teachings of the Buddhists, and partly to the precepts of the Dharma-
shastras and of the Vedantas of the reviving or reformed Brahmanism,
a number of practices and customs previously existent seem to have
gradually disappeared between the birth of Buddha and the close of the
third or fourth century of Christian era." Admittedly Kautilya is not
giving an account of a society existing in his days. His is an account of
a society long past. That being so, it is difficult to say from this
difference that Manu is posterior to Kautilya. It is indeed difficult to
settle their relative position from this fact.

It would indeed be arguing in a circle if we, from this fact alone,
conclude that Manu is posterior to Kautilya. This matter is at present
still controversial and is likely to remain so for some time to come.

It cannot, however, be doubted that the states depicted in Manu
and Kautilya differ a good deal. It is indeed difficult to settle the
relative positions of the two. All that we can say with certainty is
that in Kautilya we have an account of a state of society anterior to
that of Manu. This, however, will be sufficient for our present purpose
and we cannot, therefore, omit this Arthashastra from our consideration.
Dr. Winternitz says, "the oldest and the most important, I might
almost say, the only real Arthasastra that has come down to us is the
Kautilya Arthashastra. This is one of the most remarkable books in the
whole of Sanskrit literature."

The broad divisions of the period under review would then stand
as follows:

1. First the period of the Rigveda or the period of which our
chief sources of information will be the Rigveda and which we may
call the creative period. (2) Then the other Vedas give us materials for
the next period. (3) After that we shall have the Brahmanic age.
(4) Then comes the early sutra period, i.e., the period prior to the
establishment of the special Scientific Schools. (5) The next will be
the sutra period after the establishment of special law schools. During
this period we shall also have special treatise like that of Kautilya." (6)
Then comes the age of Samhitas of which the first in point of time
seems to be the Institute of Manu. Of these again the first period
itself is covered by millennium and should be further subdivided at least
into two sub-periods. The first is the pre-historic age during which
many of the songs of the Rik must have been first sung. The next will be the age of the redaction of the Rik Samhita.

It has already been noticed that the origin of the songs of the Rik dates from the primitive days when the Aryans were still at their common home. The redaction of the Rik Samhita, however, only took place, as we observed, at a period when the Brahmanical hierarchy was fully developed, and when the Kosala-Vidchas and the Kuru-Panchalas who are to be regarded as having been specially instrumental in reflecting it, were in their prime. It is also certain that not a few of the songs were composed either at the time of emigration into Hindustan, or at the time of the compilation itself. Such songs are to be found in the last book, especially, a comparatively large portion of which recurs in the Atharvaveda Samhita.

It is believed that Mandals II to VII formed the nucleus of the Rigveda, to which the remaining books were successively added, and the tenth Mandal represents a definitely later stratum of composition in the Rigveda. Some hundreds of years must have been needed for all the hymns found in the Rigveda to come into being. There was also, doubtless after the separation of the Indians from the Iranians, an intermediate period. In this transitional age must have been composed the ancient poems which are lost, and, in which the style of the earliest preserved hymns, already composed with such skill, was developed. The poets of the older part of the Rigveda themselves mention predecessors, in whose wise they sing, and whose songs they desire to renew.
LECTURE III

VEDIC SOCIETY

A General Survey of the Economic and Social Foundations of the Vedic Civilization

"The largest portion," says Dixon,¹ "of the unwritten law of every nation is the exact product and the measure of the national character and temper—a reflex of its life and progress."

The study of the history of law in the Vedic age is indeed the study of the Vedic civilization itself and the study of every civilization must begin with an examination of the potentialities of its natural environment, since these form, as it were, the basis of its development.

Law is not a thing detached and isolated. It is not disposed of by pronouncing a humanly conceived formula. It has an inherent relation to various other facts, and must therefore be studied in connection with and as a part of the combined reality of the world.

Controversial matters will confront us at every stage of our enquiry and though it will be beyond our purpose to re-open these controversies, we cannot avoid noticing at least some of them incidentally.

In an examination of the potentialities of the natural environment of the Vedic civilization, the very first question that confronts us is one relating to the whereabouts of the cradle or the primitive habitation of the ancient Aryans.

The theory of the original habitation of the Aryans has changed from generation to generation and during the last one hundred years it has been shifted from one country to another, from Kashmir and Bactria to Central Asia, from Central Asia to Mesopotamia, from Mesopotamia to the Arctic regions, from the Arctic regions to Northern Europe, from Northern Europe to Central Europe and from there to a region said to have been lost in the Mediterranean Sea; and we have not the last word yet, though Modern Archeological, Geological and Anthropological researches claim to throw some new light upon it. It is quite natural that there can be nothing like finality in views that are mainly based on mere intelligent guesses, surmises and probabilities rather than on positive historical proofs.

Applying the process of elimination, the Western scholars now favour the Central Europe theory, discarding others as hopeless. While Dr. Das,² unlike them all, has pronounced the theory that the original cradle of the Aryan race was in ancient ' Sapta Sindhavah'
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or the Punjab. This he does upon what he considers to be the internal evidence of the Rigveda itself.

Another controversial matter is whether the Indo-Aryans were immigrants to India or were indigenous to the Punjab. All the Western scholars are agreed that they came from outside India as immigrants and conquerors and brought with them the culture and civilization of their mother country, whilst Dr. Das maintains that they were autochthonous to the soil and developed a unique civilization which is now the wonder of the world.

Western Scholars like Keith and Macdonnell openly declare that they fail to appreciate the arguments advanced by Dr. Das in support of his theories.

A theory has recently been propounded by Dr. F. R. Hoerule that there were two invasions, or, perhaps more exactly, two series of invasions of India by the Aryans. According to this theory the first invasions took place at a time when the regions stretching from the heart of Persia to the western marches of India were still fairly well watered and fertile. "Some early Aryan tribes, parting from their Eranian Kinsmen, slowly moved on foot and in wagons with their women, flocks, and herds over these districts, entered India on the north-western border, perhaps by the Kabul Valley, and established themselves in the Punjab, where most of the Rigveda took shape. As they brought their own women with them and generally avoided union with the native races, at any rate among their upper classes, they were able to keep their blood comparatively pure."

After these Aryans had passed into the Punjab, the rivers and streams slowly dried up, and the desert laid a dead hand upon the once fertile lands. The road was now closed for ever to slow migrations of families.

Henceforth the successive waves of foreign invasion, though for a time they might overwhelm Hindusthan, could not leave any deep and lasting change in the racial characteristics of the Indian peoples; for the desert forbade the invaders to bring with them enough women to make a colony of their own race, and hence their blood was soon swallowed up in the vast ocean of Indian life.

According to Dr. Hoerule, in one of the earliest of these later irruptions an Aryan tribe or group of tribes, akin in blood and language to the first invaders, climbed over the wild mountains of the Hindu-kush through Gilgit and Chitral, on the north of the Punjab, and at length gained a footing on the plains of the upper Ganges and Jamna. Probably they came as a series of hordes, one following another. They, according to Dr. Hoernle, brought few or no women of their own stock, and were therefore forced to take wives of Dravidian blood. Hence the region where they established themselves, the Madhyadesa or Midland, which corresponds roughly to the modern United Provinces of Agra and Oudh, came in course of time to be inhabited by a popu-
lition whose blood was mixed in varying degrees, while its religion and traditions were still to a large extent Aryan.

These invaders made little impression upon the Aryans of the Punjab; but further to the east they caused a general dislocation of which the result was that the Aryan tribes began to move on further towards the east, south, and west, mixing their blood in various degrees with the women of the races whom they conquered and establishing the Brahmanic religion and polity to a greater or less degree over India down to the Vindhya.

This theory of Dr. Hoerule is supported by Grierson in his 'Indian Empire'. Professors Macdonell and Keith, however, do not assent to it and say that 'it is quite impossible to find any support for this theory in Vedic literature. To say that the Vedic hymns contain no reference to the route by which the Aryans entered India or to their earlier settlements on the Indus and that this is explained by the theory of the advent of the Vedic Indians via Chitrā, is to assert absurdities'. "The theory", according to Professors Macdonell and Keith, "is based on the later dialects and their affinities; it can probably not be regarded as at all valid for any period; at any rate, it is not cogent for the eighth century B. C."

For our present purposes we are not much concerned with how and when the Aryans appeared in the Punjab. The fact is that we find them there and the Rigveda records their gradual evolution.

There is no controversy that the country which these Aryans originally occupied in India was the tract watered by the seven rivers (वात्सल्य वृष: ) viz., the Indus and its five tributaries and the Saraswati. It is also admitted on all hands that the Rigveda was composed by these Aryans on the banks of these rivers and that they were the forefathers of the men who established Aryan dominion and Brahmanic civilization in Northern India.

As we have noticed above, modern archeological research claims to throw some light upon the history of the Aryans in Western Asia. These archeological data are said to be responsible for the theory that the Aryans, when first known to history, were semi-barbaric tribes who borrowed their civilization from the more cultured races they conquered in India. This theory, however, seems to be founded upon a wrong judgment of the archeological evidence. The Vedas, the bedrock of Indo-Aryan civilization, are not the literature of uncultured people, and these can hardly be said to be borrowed from Dravidian or other sources. The Vedas indeed represent the culture of a race of warrior poets and philosophers who despised the arts and commerce and lived mostly by agriculture, with one hand on the sword and the other on the plough." These Aryans "built no temples, but worshipped nature spirits with simple sacrificial rites which would leave little traces behind them for archeological explorers to analyse." "The Aegaean, Babylonian and Dravidian cultures which they
added to their own stock and re-inspired with their own genius were
essentially mercantile civilizations, with a less spiritual outlook than
the Aryan, though in the nature of things they would leave more
material evidence of their existence for posterity; for, they were more
concerned with the happiness which lies in material possessions than
in spiritual thoughts in the endeavour to realize the high destiny of
the human race." 10

Havell in his History of Aryan Rule in India observes 11 that "in
the second millennium B. C. or when the Aryans were pushing their
way into Northern India, the Mitannians, an Aryan people worship-
ning spirits of the Vedas—Surya, Varuna and Indra—had founded a
powerful kingdom between the Tigris and Euphrates, and the old
vedic tradition of the conflicts between the Devas and the Asuras can
perhaps be referred to the struggles between the Aryan worshippers
of Surya and the Semites of Assyria, who became subject to the kings
of Mitanni." According to him, 12 about 1746 B. C., the Kassites,
another branch of the Aryans, made themselves masters of Babylon, and
thus an Aryan dynasty ruled over Babylonia for the following six
hundred years.

During these centuries it is more than probable that the Aryans
of Mesopotamia assisted in the colonisation of the Punjab, making use
of the sea-route between India and the Euphrates valley by which the
Summerians, the ancient Dravidian inhabitants of the sea-board to
the south of Babylon, must have come from India.

"A great impulse to Aryan immigration into the Punjab," according
to Havell, "came about 1367 B. C. when after the death of King Dush-
ratta, a name familiar in ancient Indian literature by the story of
Ramayana, Mitanni was thrown into a state of anarchy, being bound-
ed on the east by the Assyrians and on the west by the Hittites, so that
the only way of escape for the vanquished Aryan warriors would have
been down the river to the sea." Others think that several families
of the Aryans migrated into India from Central Asia, the earliest point
of ethnic movement, the common abode of those races which have
hitherto guided the van of civilization. Here they met with people
whom they began to hate because they robbed them of their cattle,
because they injured their children, their family, their cattle.

We have already noticed that the controversy as to the vedic age
differs not by centuries but by millenniums. It is indeed painful to
admit that each scholar proceeds to examine the matter not with open
mind but upon preconceived ideas and pet theories. Some lay down
the year 1000 B.C. as the earliest limit for the Rigvedic hymns: others
consider them to have originated between 3000 B. C. and 2500 B. C.;
and still others put it between 6000 and 4500 B. C. Dr. Das pushes
it back to 25000 years before the birth of Christ. From this conflict
of opinion it is prudent to keep clear of any fixed date and to guard
against the extremes of a stupendously ancient period or a ludicrously modern epoch.

It is, however, agreed by all that the Rigveda is the most ancient literature extant and that it is the earliest record of the Aryan culture and civilization in India. The culture and civilization of the Rigvedic Aryans, as depicted in the Rigveda, is admittedly far in advance of the culture and civilization of the same period of the people of the countries from which it is said they migrated to India.

It has truly been said by Dr. Barnett that in India there is no twilight before dawn. In the darkness the eastern sky suddenly flushes and the ruddy edge of morning sun swiftly leaps upon the horizon. The great people which has led the van of Indian culture have left no record of slow and painful struggle onwards through lessening darkness of barbarism towards the light of civilization.

The earliest record that they have left is their Rigveda and the culture which is testified by it is already strong, rich in potentiality and typically Indian. It is indeed difficult to assert that India was not the original home of these Aryans. Their speech, however, as presented in the Rigveda is near of kin to the 'Indo-Germanic' tongues spoken by most of the European nations—nearest indeed to the old Persian and Avestan, but very close also to the Greek and Slavonic,—and their culture and their social and religious traditions have enough likeness to those of ancient Europe to make us think that at some very early time the forefathers of the Aryans in India, of the Eranians of Persia, and of some at least of the Indo-Germanic peoples of Europe must have been in contact. It must, at the same time, be remembered that language and culture may pass from one community to another without much admixture of blood. The results of anthropometry also do not enable us to trace with certainty any common blood between European and Indian veins.

Whether the Punjab was or was not the original home of the Vedic Aryans it is generally believed that the Aryas in the Punjab composed the Hymns of the Rigveda and were the forefathers of the men who established Aryan dominion and Brahmanic civilization in Northern India.

It is also admitted by both Western and Eastern Scholars that the Rigveda Samhita is a collection of hymns composed not in any particular periods of time. One group separated from another by probably hundreds of years and handed down to posterity from generation to generation.

The Rigveda itself seems to support the view that the hymns were composed in three different ages, which we may name as the earlier, the medieval and the later. The ancient or earlier hymns are claimed to show that the people were nomadic herdsmen having no fixed habitation, wandering about from place to place with their cattle—cattle being their only property.
Next we come to the stage of agricultural development of its evolution. The people by slow degrees took to agriculture and gradually became confirmed agriculturists and settled down to permanent habitation. It is significant that the expressions for ploughing occur mainly in the first and tenth books of the Rigveda, and only rarely in the so-called family books.

उतो स महाभिन्नभिः पद्मुक्तो अनुःसेवितस्।
गोरितंवं न च चढ़ेतः।

Rigveda, I. 23. 15.

तस्मानवेव गिरो य एकसचर्चणीनाम्।
अनुःस्वायमुप्यते यवं न च चढ़ेतः।

Rigveda, I. 176. 2.

अल्लानी दीष्य: कृष्णितु त्वस्य विले रमस्य बहु मन्यमानः।
तत्र गावः कितव तत्र जाया तन्मेव विचक्ते सवितायमः।।

Rigveda, X. 34. 13.

कृष्णितु फाल आशित कृषोति यस्यवानसपि बृजैते चरिते।
बननु बहुवाक्तात वनीयानु पूण्यापिरपृणतमिभावसः।।

Rigveda, X. 117. 7.

उष्टेत्यां सहमनामभित्वाय शस्यसा।
मामनु प्र ते मनो बहुसं गोरिव धातुत्व पथा नारिव धातुतु।।

Rigveda, X. 146. 6.

In the Atharvaveda Prithi Vairuja is credited with the origination of ploughing and even in the Rigveda the Asvins are spoken of as concerned with the sowing of grains by means of the plough. In the later Samhitas and in the Brahmanas, however, ploughing is repeatedly referred to. Even in the Rigveda there is clear proof of the importance attached to agriculture. Nay, the word 'kristi,' which is derived from the same root, denotes people in general from the Rigveda onwards. Its common and regular use in this sense seems to show that the Aryans when they invaded India, were already agriculturists though all of them might not have devoted themselves equally to that occupation. 14

While these Aryans invaded India, large tracts of the country they first visited here were covered with forests. It soon became their business to clear these forests and bring the lands under cultivation. To be sure, the earliest agriculturist may not have been a strictly permanent resident of any particular district. He might migrate with the season and change his abode utterly from year to year, but he must have remained in one place for several months together, from sowing to harvest time at least. To a people of nomadic habit this might at first have been irksome; but once the advantage of producing a vegetable food supply, according to a preconceived plan, was fully understood and appreciated, they would naturally grow more and more attached to such a thing. The nomadic people would thus grow more and more
attached to a particular place—would thus, by and by, give up wandering habit. Henceforth they became more and more fond of their land. They learnt to think of their land as one affording the greatest enjoyment; they learnt to attach greater value to land than to their cattle. They reached a stage at which land became an important economic factor in their further development.

Their fields, it appears, were watered by canals and wells. They lived in well-built houses made of stone and wood; rode chariots drawn by horses; wove and wore woollen and cotton clothes; used weapons like swords, javelins, spears and arms made of iron, wore ornaments of gold, silver, pearls and precious stones. They lived in self-contained villages governed by leaders (प्रामणी:) and had towns tenanted by kings and nobles. They had thus developed a unique civilization which is now the wonder of the world.

From the Rigveda itself we find the Aryans well settled in the Punjab and having a well developed and flourishing civilization. They began to extend themselves towards the east driving away the original aboriginal inhabitants. The portion thus occupied is known as Madhyadesa or midland which corresponds roughly to the modern United Provinces of Agra and Oudh.

It will be pertinent at this stage to notice that there is nothing definite to indicate why this extension became necessary. Normally, a pressure of population upon means of subsistence in the home of the Vedic people in the Punjab would be an event responsible for such an expansion. The Vedic hymns nowhere indicate that the Aryans had the feeling of being hemmed in, hampered and hard pressed. It may be that the possibility of its geographical expansion eliminated from the Vedic society any such economic problem. With the comparatively easy access to new lands the problem as to how to obtain an increasing amount of subsistence for a still growing population did not face these Aryans. They had never to solve the problem of obtaining any increasing subsistence out of a geographical area which had become stationary instead of continuing to expand.

In Greek history we find the Greeks faced such a problem at certain stage of their civilization. There "this problem was solved by a successful change-over from a merely extensive to a more or less intensive economic system: From mixed farming for mere local subsistence to specialized farming for export." Prof. Toynbee points out how this revolution in agriculture produced a general revolution in Greek economic life. The new specialized agriculture called for complementary developments in commerce and manufacture. But the solution of economic problem raised in its turn a political problem which the Greek civilization failed to solve; and this political failure was the cause of its break-down.

The new political problem that may arise out of such a situation may easily be guessed. "So long as the economic life of each city-
state remained parochial, they could all still afford to be parochial in their political life as well. But the new economic system was based on a local production for international exchange. It could only work successfully if on the economic plane, the city-states gave up their parochialism and became interdependent. And a system of international economic interdependence could only be made to work if it could be brought within the framework of a system of international political interdependence—some international system of political law and order which would place a restraint upon the anarchic parochial sovereignty of the local city states.'"

Whatever be the theory of the Aryan settlement in Madhyadesa, it seems, however, clear that it was there that the religious and social ideas of the Vedic Aryans developed into the classic form of Brahmanic culture. It was here that the Brahmans and Upanishads were composed and a great impetus to spiritual culture and development was given in preference to material welfare. Here was founded various forms of faith, Vaishnavism, Saktatism, etc., and the system of caste by which Indo-Aryan society has ever since been dominated; and here it was that the classic Sanskrit language developed differing much from the Vedic dialect. Here perhaps were composed the later hymns of the Rigveda; here the manifold and fluctuating cults of the Rigveda crystallized into the systematic ritualism of the Brahmanas; here arose, as an offshoot of the latter, the gnosos of the Upanishads which shew us how Brahmans, passing beyond the thought of material welfare and its encompassment by works of formal sacrifice, sought eternal liberation from the cycle of transmigrating births by mystic absorption of the spirit into transcendent absolute; here were founded the forms of faith and the system of caste by which Indo-Aryan society ever since has been dominated.

The term Madhyadesa, however, is not to be found in the Vedas. In the Aitareya Brahmana we find the expression "Madhyama pratistha dis" to represent this tract. According to that Brahmana, the said tract was inhabited by the Kuru, the Panchalas, the Vasas and the Usinaras. Later on we do not hear of the Vasas and Usinaras and the Madhyadesa becomes the country of the Kuru-Panchalas, a combined nation, bounded on the east by the Kosala-Videhas and on the west by the desert. The western tribes are mentioned with disapproval both in the Satapatha Brahmana and the Aitareya Brahmana, and the former preserves a tradition of the Brahminisation of the Kosalas and the Videhas from the Kuru-Panchalas.

The Rigveda reveals to us a picture of a society moulded by foreign invasion. It is monarchical and tribal in type and is divided into loosely-knit clans roughly grouped into tribes ruled by nobles and kings who dwell in strong castles. Public feeling finds utterance in assemblies of the folk. The unit of society is the patriarchal
household of freemen. The lower orders of freemen are largely farmers and graziers; below them however is a great mass of serfs, traders, and non-descript population, relics of partially submerged native civilizations.

From the time when these Aryans settled down to permanent habitations, land became among them the seat of economic power. Another incentive was thus given one tribe to prey upon another and consequently another motive for strengthening the bonds of tribal unity. This is indeed true of every ancient people.

At the very moment when the people became enemy to each other, when they became natura hostes, they felt also the necessity for friendly combination. The struggle for existence of individuals became intense. They did covenant themselves out of this state by erecting "a common power as may be able to defend them from the invasion of outsiders and the injuries of one another: and for this purpose they conferred all their power and strength upon one man or upon one assembly of men, appointed one man or one assembly of men to bear their person."

The above conception of covenant is no doubt a fiction; but it is a fiction which occurs to people at a very early age almost in every political society. It has been dwelt on at length even by modern philosophers like Hobbes, Spinoza and Rousseau.

The same theory of political organisation is found in our Vedic literature also. In the Aitareya Brahmana, Chap. IV. Kh. VII, we are told that the Devas feared that taking advantage of their mutual discord the Asuras would grow stronger. Apprehending this they formed themselves into a body and made Varuna their king and conferred all their powers on him. They also made this covenant irrevocable.

Aitareya Br., IV. 8.

Again in Satapatha Brahmana we are told that "When the Devas performed the guest-offering, discord befell them. They separated into four different parties unwilling to yield to each other's excellence. When they were separated the Asura Rakshasas came after them and
entered between them. 'They became aware of it.' Forsooth, we are in an evil plight. The Asura Rakshasas have come in between us: we shall fall a prey to our enemies. Let us come to an agreement and yield to the excellence of one of us.'" (S.B.E., XXVI. p. 93)

Each individual finds that war of all against all is weakness for all. Consequently the desire on the part of each to strengthen himself, which is a form of the universal effort, Suum esse conservare, leads to combination, it being discovered that 'homini nihil homine utilius.'

Prompted by similar desire the gods conferred all their powers on one of them and contrived means to render this their concord ever imperishable, never revocable. Rebellion is thus clearly condemned and can on no ground be justified.

It will not be out of place to mention here that according to these Rishis, will, not force, is the basis of the State. The ground of obligation to the sovereign authority is will. Sovereignty is founded upon "volente generale" and not upon force. One must, because it is for the common good which also is his good. And after the compact, after the sovereignty is established, he must obey though he does not like it. Thus through social pact he becomes moral agent. "For the slavery to appetite is substituted the freedom of subjection to a self imposed law." Thus by mutual compact the gods did combine themselves into a political body and became able to overthrow the Asuras.

But here on earth kingship arose in a different way:

Athyarveda, XIX. 41.

"Desiring bliss at first, light-finding Rishis began religious rite and holy fervour. Thence energy was born and might and kingship. So to this man let gathered gods incline them."—(Griffith).

People here on earth could not follow the gods in contracting themselves out of the state of warfare: such a contract might not have the binding-force, might not have produced the desired-for result. So they prayed to their gods and it was their gods who helped them to emerge out of the state of mutual discord by giving them the institution
of kingship, an institution which had already been a success with the
gods themselves.

But who was to be the king on earth?

Brahman "Created still further the most excellent ksattrar. . . .
There is nothing beyond the ksattrar."

"After the gods had emerged out of the state of warfare, after
they had united themselves in one person by covenant of every one with
every one," after they contrived to render this concord of theirs ever
imperishable. "He should be scattered to the winds, whosoever
would transgress this covenant, whosoever would disobey the central
power, the sovereign."

But this was a mere digression here. We shall have occasion to
examine these very ancient political theories more in detail later on.

The chief tribes of the Aryas seem to have been the Anus,
Druhyus, Purus, Turvasus and Yadus, besides which we find mention
of the Tristus, Krivis, Bharatas and others. They were not always
peaceful neighbours and one of the great events of Vedic history is a
victory won by Sudas, king of the Tristus, over a confederacy of other
tribes led by ten kings on the banks of the river Parushni. We,
however, do not find any political consolidation following this struggle.

The races who were dwelling in India in the far away times when
the Aryas streamed into it were probably as various in blood and
civilization then as they are now. Some of them, probably the more
advanced tribes of Dravidian blood, might have been quite as civilized
as the Aryans, even if less warlike; others were probably much more
degraded.

The Aryan society in which the hymns of the Rigveda took their
present form may have contained several of these elements. Its head
was a foreign race of fairer skin and Indo-Germanic speech, warriors
and priests, proud and jealous of their blood and traditions; its feet was
a mixed populace, of which the more civilized elements had learned
something of the arts of peace from the Dravidians whom they had
incorporated, and perhaps even borrowed some words of their language,
while the lower strata were wallowing in savagery. Outside the
territory possessed by this complex Aryan society the same diversity
seems to have prevailed. The vedic poets speak of Dasyas or Dasas,
the native races still holding out against the Aryas, in language
suggesting that some at least of them had a respectable civilization,
though one and all of them were abhorrent to the Aryas on account of
their blacker blood and unorthodox religion.

The Rigvedic society, however, differed vastly from Dravidian
civilization, and, still more, from the unmixed barbarism of the other
races of India, in its conceptions of religion and morality.
Vedantic society was patriarchal and masculine; the household was ruled by a house-lord, who wielded almost absolute control over all the other members of the family, and to him his wife, or wives, were bound by a strict tie of lifelong duty and obedience.

Dravidian society was to some extent matriarchal; matrimonial relations were rather loose and easily dissoluble, and hence succession could only be traced through the female line.

The same opposition is visible in religion. Both the Vedic and the Dravidian religions acknowledged deities of both sexes; but in the former the masculine members of the pantheon chiefly engrossed the worshipper's regard, while in the latter the position is reversed. Vedic religion was a fairly right and respectable system; Dravidian religion was dark and repulsive, obscene and bloody. The Vedic religion has many gods and many phases which only indicates that the hymns of the Rigveda are a growth of many centuries, and the deities worshipped in them are the deities of many tribes.

It is difficult to give an exact account of the division of the Vedic people. Zimmer notices a passage in the Rigveda which runs as follows:

स इन्जनेन स विना स जन्मना स पुजावांजं भरते बना नूरि:
देवानां यः पितरमातिविनासतिः भ्रतानां हृदिषा भ्रह्माणस्तिः

Rigveda, II. 26. 3.

"He with his folk, his house, his family, his sons, booty for himself, and, with the heroes, wealth.

"Who with oblation and a true believing heart serves Brahmanaspati, the Father of the Gods."

He argues from this that a people was divided into cantons (vis), cantons into joint families or clans, or village communities (grama, vrijana), and these again into single families. He thinks that the four divisions are reflected in the passage in question by jana, vis, janman, and putrah and argues that each village community was originally founded on relationship.

Professors Macdonell and Keith express doubt as to this division. According to them "the division of the jana into several vis may be regarded as probable, for, it is supported by the evidence of another passage of the Rigveda." This passage says:

एको वृत्तान्तस्य मधुबीत्तिः विशालविश्वे पुष्यये संविवाधि।
अकुलस्यस्य मुखा वयं शुभम्तं शोभ विजयाय कृष्णस्य॥

Rigveda, X. 84. 4.

"Alone of Many thou art worshipped, Manyu:

"Sharpen the spirit of each clan for battle.

With thee to aid, O thou of perfect splendour,

We will uplift the glorious shout for conquest."

It mentions the vis as a unit of the fighting men.
According to these Professors the subdivision of vis into several gramas is very doubtful. They say: "Zimmer admits that neither grama nor vijana has the special sense of a sub-division of the vis when used for war, for, both words only denote generally an armed host. He finds other designations of the village host in Vra and in Vraja, but it is sufficient to say that the former passage is of extremely doubtful import, and that the latter has no reference to war at all.

The passages referred to above are to be found in Rigveda, I. 126. 5 and X. 179. 2. They stand thus:

पूर्वामनु प्रवतिमा देद वस्त्रीयः कल्ल श्रद्धाविराधायसो गाँ।
मुखोद्वाये विषया हवा जाता अनम्बल: अव अप्यत्त भजः।।
भात्स हृदिरेष्विन्द्र प्र याहि जगाम सूरो अध्यनो विवर्धयः।
परिवासले निधिन्मि: सशाह: कुलप न ब्राह्मणपित चरंते॥

Dr. Das,²³ however, says that these Aryans were divided in Rigvedic times into janah or tribes, and the janah into visah, i.e., cantons or districts, the visah into gramas, the gramas into gosthis or (vrajas), the gosthis into gotras, and the gotras into kulas or families." The Rigveda mentions Kulapa as inferior to and attendant on the vrajapati in war. In the tenth mandal we find

भात्स हृदिरेष्विन्द्र प्र याहि जगाम सूरो अध्यनो विवर्धयः।
परिवासले निधिन्मि: सशाह: कुलप न ब्राह्मणपित चरंते॥

Rigveda, X. 179. 2.

"Oblation is prepared: Come to us Indra; the Sun
Hath travelled over half his journey
Friends with their stores are sitting round thee
Waiting like Kulapa for the wandering Vrajapati.

Kulapa means the chief of the family and the use of the term points clearly to a system of individual families consisting no doubt of several members under the headship of the father or eldest brother. The term gotra seems to indicate a group of such families. Etymologically it means "a place for the protection of cows." Dr. Das thinks that those families that possessed a common place for the protection of cows, i.e., had a common cowstall, belonged to the same gotra. Both interpret the word as cowstall while Geldner thinks that herd is meant by the word. In the later literature it denotes 'clan'. The word vraja denotes in the Rigveda the place to which the cattle resort. Secondary it denotes the herd itself. Clearly it is wider than gotra. In the Rigveda the jana, besides meaning 'man' as an individual, commonly denotes a 'people' or 'tribe'. We are frequently told of Pancha Janah or Janasah and in the Rigveda, VIII. 6. 48 we find the hymn: उजालनं कुद्धरिव विसमन्दितुम्बुरुपेशं बदत्। भवसा याहि जनं॥ The words याहि जनं in this hymn are synonymous with याहाऽ in Rik 46 of the
same Sukta. Similarly, we find that a king is described as protector of
jana, गोपाजनक. We have also bharata jana to mean the people of
Bharatas. There is ample indication in the Rigveda that vis was a
sub-division of the whole people, jana, though it may be difficult to
decide whether the vis as a sub-division of the jana is to be considered
as being a local sub-division or a blood kinship equivalent to a clan in
the large sense of the word.

There is another word vrikjana which according to Roth denotes
the settlement’ or ‘village’,—the German ‘Mark’ and its inhabit-
tants. Several passages of the Rigveda use this word. Zimmer
accepting the views of Roth sees in it the ‘secure abode’ where the
clan lives; the clan itself is a village community, and the clan in war.

या नो अजाता बुजना दु:राध्यो मातिवाचो अव समु:।
स्वयं वर्ष प्रवित्: शंक्तिरत्रोपिति पूरे तरामसि।

Rigveda, VII. 32. 27.

The word grama frequently occurs in the Rigveda to have the mean-
ing of ‘village’. Vedic literature tells us very little about the social
constitution of the village. It is also difficult to ascertain with precision
the relations of the villagers. In some of the passages of the Rigveda
the word occurs in the sense of ‘body of men’. Thus we have:

स प्रामाम: सवनिता स रघुविद्वि विश्वाभि: इवितिन्भिच।
स पौभोधिरभृह्नानक्षिरमस्त्राद भवचित्र उत्ती।

Rigveda, I. 100. 10.

‘With hosts on foot (प्रामाम:) and cars he winneth treasures;
Well is he known this day by all the people. With manly might
he conquereth those who hate him;
May Indra, girt by Maruts, be our Succour.’

वद्धं वा भर्ता: संतरेष्युत्प्राम इवित इव्रज्ञुत।
अर्थविद्महते: सर्वत्र कत्व आ वो बुधुं वुसिति यश्चितानां।

Rigveda, III. 33. 11.

‘Soon as the Bharatas have fared across thee, the warriors band,
(प्राम:) urged on and sped by Indra. Then let your streams flow on in
rapid motion.
I crave your favour who deserve our worship.’

नि प्रामासो श्रवश्चित नि पत्रो नि पश्चिन:।
नि धेरनासविष्ठितस्वित।।

Rigveda, X. 128. 5.

‘The villagers have sought their homes, and all that walks
and all that flies,
Even the falcons fain for prey.’

Zimmer tends to regard the grama as a clan, and as standing midway
between the family and the tribe.
It must be noticed that there is nothing in the Rigveda to indicate that grama was a village community. There is nothing to show that grama as such held any land. What little evidence there is indicates that individual tenure of land was known, or rather tenure of land held by a family was known. In this respect family seems to have been the lowest unit. The expression 'grama kama', 'desirous of a village', which occurs frequently in the later Samhitás seems to point to the later practice of the king's granting to his favourites his royal prerogatives over villages so far as fiscal matters were concerned. The village in the Rigvedic age does not appear to have been a unit for legal purposes. As has already been pointed out it seems to have been a division of people for military purposes. It is evident that as yet this division was not based on any feudal principle. At the head of the village was the gramani who is often referred to in the Rigveda. Thus we have: सहस्र ग्रामणियाँ रिख्यन्तु सूर्येशाय यत्माने देविणा।

'Blest be the gramani (ग्रामणी) most liberal Manu, and may his bounty rival that of Suryya.'

Rigveda, X. 62. 11.

"He who brings guerdon comes as first invited; Chief of the hamlet (ग्रामणी) comes the Guerdon bearer."

The exact meaning of the title is not certain. Zimmer regards it as having had military functions only.

It has been noticed above that the word vis in the Rigveda meant the people. Indeed the words kṣatra or vis did not in the Rigveda mean any particular class as opposed to another. Kṣatra in the general sense of 'dominion', 'rule', 'power' occurs frequently in the Rigveda. The word is also found in the concrete sense of 'rulers' in the Rigveda itself. We are, for example, told:

"विष्णुजाये वृक्षंविश्वाना रथं चूर्णे न हि रघुना लक्षमुक्तानि।"

When, Asvins, ye equip your very mighty car, bedew, ye twins, our ruling power with honey and with oil.

Rigveda, I. 137. 2.

κश्च जित्यतमूल जित्यतं नूत विरतं सेवतमिवा।॥

Rigveda, VIII. 35. 17.

Strengthen the ruling power, strengthen the men of war;
Slay ye the Rakshasas and drive away disease.
But in no case does it in the Rigveda mean a ruling class as opposed to the Priests, the Vaisyas or the Servile class.

There is one word often used in the Rigveda of which the meaning is not beyond controversy. The word 'Pancha Janaḥ' frequently occurs in the Vedic literature. Aitareya Brahmana explains the five to be gods, men, Gandharvas and Apsarasas, saตกas and the fathers. Aupamansavya held that the four castes and the Nisadas made up the
five and Sayana accepted this opinion. Yaska took the five to mean Gandharvas, fathers, gods, Asuras and Rakshasas. Roth and Geldner 22 think that all the peoples of the earth are meant, there being four peoples in the four quarters with the Aryans in the centre.

In the Rigveda we find the word in the following passages:

य आजिकिन्तु हुलस्य ये मध्ये पत्तालोऽ। ये वा जनेषु पंचस्तु ||

"Those pressed among Arjikas, pressed among the active in men’s homes. Or pressed among the Races Five."

अभिकृत्य: पामान: पांचजन्य: पुरोहित: ||
तमीमदे महायय ||

Rigveda, IX. 66. 20.

"Agni is Pamahana, sage, chief priest of all the races five."

विषयवध्या सदान्तानु: पांचांशा वशःवती ||
बाजे बाजे हवायमातू ||

Rigveda, VI. 61. 12.

"Seven sistered, sprung from threefold source,
the Five Tribes’ prosperer, must be . . . .
Invoked in every deed of might."

एकौ नु त्वा सदान्ति पांचजन्य जात शुभोमिति यवसं जनेषु।
ते मे जगुरुभ आश्वो नविष्ठ दोषा वस्तोहवामानस हं ||

Rigveda, V. 32. 11.

"I hear that thou wast born sole Lord of heroes of the Five races
Famed among the people.
As such my wishes have most lately grasped him, invoking Indra both
at eve and morning."

ऋषि नरसंहस्त: पांचजन्यमुनात्सारि मुच्योगणै ||
मिन्ता नयोर्सिवश्य माया अनुपूर्व्व वृषणा चोरिस्यता ||

Rigveda, I. 117. 3.

"Ye freed sage Atri, whom the Five tribes honoured, from the
strait (अहस:) ye Heroes, with his people,
Baffling the guiles of the malignant Dasyu, repelling them ye Mighty,
in succession."

From these and several other passages Zimmer opposes the view
referred to above. It is indeed difficult to accept the view that this
term was used to include even the Dasas when we find how the
Aryans and Dasas were sharply distinguished. Neither Janasah
(Rigveda, II. 12. 12) nor Manusah (Rigveda, VIII. 9. 2; I. 52. 9; VIII.
70. 11; X. 28. 8) could be used of the non-Aryans by the Vedic Rishis.
Besides, the above passages will show that ‘Soma’ is referred to as
being among the Five tribes; these Five tribes are referred to as being
on the Sarasvati and Indra is said to belong to them. All these will

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be inconsistent with the inclusion of non-Aryans in the expression ‘Pancha Janah’. Zimmer concludes that Aryans alone were meant and it meant the five tribes of Anus, Druhyus, Yadus, Turvasas and Purus.

The Rigveda sometimes refers to these five tribes though not expressly calling them as ‘Pancha Janah’. Thus we have

बन्द्रागती यदुधु तुसेशु यदुध्वष्णवृः पुरूश स्थः।
अत: परिवृत्तावर्ण हि यात्मवा सोमस्य पिबतं सुलध्य॥

Rigveda, I. 108. 8.

"If with the Yadus, Turvasas, ye sojourn, with Druhyus, Anus, Purus, Indra, Agni.

Even from thence, ye mighty Lords, come hither, and drink libations of the flowing Soma."

In the Satapathana Brahmana and Aitareya Brahmana the five people are opposed to Bharatas and we have there reference to seven people also. All these strengthen Zimmer’s view.

Recently Dr. Kedar, in Chapter IV of his book entitled The Vedasthan, gives highly thought-provoking account of "The tribes of the Rigveda".

According to him the five principal Tribes of the Aryan stock mentioned in the Rigveda are the Yadus (रत्र) the Turvasas (तत्रू), the Anus (अनु), the Druhyus (द्रुष्ट्र) and the Purus (पुरु) हूः. "These tribes on account of their long sojourn in the tracts occupied by them gave their names to those tracts,—names which can be detected even to-day, after the lapse of thousands of years."

According to Dr. Kedar Asia Minor was divided into three portions, the Western, the Eastern and the Central. The Western tract was occupied by the tribe of the Druhyus and the Eastern by the Purus. The Purus were the most important of these tribes and their territory included a large portion of Armenia. Syria was occupied by the Yadus and the Anus were the occupants of Kurghan, a trans-Caspian tract.

The learned author proceeds to say that the Yadus occupied Syria which included Palestine and this region thus obtained the name Judah which remained in vogue till it was changed into Judea by the Greeks and the Romans.

The Turvasas according to Dr. Kedar, gave their name to the region covered by Mt. Taurus.

The Purus were living on both the banks of the river Sarasvati:

उत्ते यते महिना गुणे अंधसी अधिकाविदि पूरवः।
सा नो बौध्यविन्य सह्तस्या चोद रायो मयोऽ॥

Rigveda, VII. 96. 2.

"Oh Sarasvati, with white waters since the Purus have resorted to both of your banks as on account of your glory, you the protectress instruct us and in alliance with the Maruts, give wealth to us who are prepared to perform Sacrifices."
The Purus in course of time became sub-divided into the Kuru and the Purus. The Northern portion of Armenia was occupied by the Kuru and the Southern by the Purus.

The tribe of the Druhyus, according to Dr. Kedar, gave its name to the province of Trovia which included in later times the ancient city of Troy.

The Druhyus were closely associated with the Turvasus and another group named Bhrigus.

\[
\text{पुरोर्व इतरे संग वन्याणी तथा निशिवा अधिवे।}
\text{श्रृवेद चन्द्रवन गर्वे द्रृव्यवस्त्र सकी सख्यवतानंस्यो।}
\]

Rigveda, VII. 18. 6.

The king of the Turvasas, a performer of sacrifices, was the leader in the war.

The Bhrigus and the Druhyus though subjugated and brought under control for acquiring wealth like the people of the Matsya country, quickly joined the Turvasa.

Between the two contending parties the friend (Indra) saved his friend (Sudasa).

According to the learned Doctor the Bhrigus were the later Phrygians and were the occupants of Phrygia which is situated to the East of the region of Troy.

Dr. Kedar then gives us a number of minor Aryan tribes named in the Rigveda. These are Prithus and Parsus, Kavashas, Bharatas and Tritus. Those several tribes are referred to in the following texts of the Rigveda:—

\[
\text{युवां तत्र पत्यमानास आपण आता गन्वत्: पृथ्वीपर्वं यमु।}
\text{दासा च वृना हतमायशिः च मुदासमिद्धावस्त्रा वसावल।}
\]

Rigveda, VII. 83. 1.

"Oh you Indra and Varuna, the warriors Prithus and Parsus, seeing you friendly towards them and desirous of obtaining wealth, have proceeded to the East. Destroy the Dasas, the mitras and the unfriendly Aryans and protect Sudas."

Rigveda, VIII. 9. 10.

"Oh Ashvins, as Kakshivan Rishi pleased you, as Vyashva also pleased you; as Dirghatama Rishi also pleased you: as in Sacrificial houses Prithn, the son of Vaina pleased you, so know you that this hymn of mine is meant for your pleasure."

Rigveda, X. 33. 2.
The Parsus troubled me on all sides as co-wives trouble their husband. My stupidity (due to poverty) afflicts me. My nakedness (due to want of clothes) afflicts me. Starvation afflicts me. My mind trembles (at the sight of enemy) just as a bird trembles at the sight of a hunter.''

"Oh, Indra, the Mushas and Shismas torture me in a way in which even the evils of life do not torture me. I am singer of your praise. Make me happy once at least. Be to us like father.''

Rigveda, X. 33. 3.

"Oh you master-dancer in battle, you have destroyed ninety forts with your Vajra for the sake of Puru Divodasa the great giver of gifts."

Rigveda, I. 130. 7.

"Bharata sang your praises with the materials for oblations with the twofold object of obtaining bliss and avoiding evil. He then after praising you performed a sacrifice to you.''

Rigveda, VI. 16. 4.

"This Agni (fire), who is of the proprietorship of Bharata is very famous. He shines brilliantly like the sun. The heavenly guest, who has defeated the Purus, has shone with full glory.''

Rigveda, VII. 9. 4.

"Oh Indra and Varuna, When at the time of the war of ten kings, Sudas was surrounded by his enemies, you gave him your support and strength. In that region, the Tritus worshipped you (and thereby propitiated you) with oblations and hymns. These Tritus who were experts in rituals wore clean white garments and had plaited hair on their heads.''

Rigveda, VII. 83. 8.
"Oh Indra and Varuna, You who have destroyed Bheda who could not be overcome by weapons. You have protected Sudas. You have heard the hymns sung by the Tritsus and consequently my priesthood among the Tritsus has become fruitful."

"The Bharatas were like sticks which had been stripped bare of the leaves and were in fact children. When Vashistha became their leader, the tribe of the Tritsus increased and spread itself all over the land."

"In this war Indra destroyed the Bhedas (who were the enemies of Sudas). The Yamuna and the Tritsus were greatly gratified and gave Indra an ovation. The tribes of Ajas, Shrigrus and Yakshus offered presents of heads of horses to Indra."

"The Pakhtas, Bhalanas, the Alinas, the Vishanin, and the Shivas, came shouting war-cries. Indra maddened with Soma juice took the cows of the Aryans with the Tritsus in his safe custody and then destroyed the enemies."

"The evil-intentioned, stupid, enemies of Sudas broke the banks of the proud Parushni whose water had risen to the banks. Sudas covered the earth with his glory. Kavi, the son of Chayamana who was caught while running away was killed like a beast."

"The enemies, however, could not reach the lower stream of the Parushni. They were caught and (probably drowned in the stream
while fording the river. The horse (cavalry) of Sudas managed to reach its destination. Indra destroyed the prattling enemy youths for the sake of Sudas."

"In this way Sudas crossed the river Sindh. With the help of Vashishtha. Similarly with their help, Sudas killed the Bhedas; so also when the war of ten kings was going on. Indra protected Sudas, pleased as he was with your hymns."

"Oh Ganges, Yamuna, Sarasvati, Suturdu; Oh, Parshni with Asikni. Oh, Marudvridha with Vitasta; Oh, Arjikni with Sushoma; hear this my hymn."

"When I heard about the news of the war in which Parnaya and Karanga were killed, I, for protecting the people of the country of the Gungus, invited for my help Atithigya who is the slayer of enemies just as people requisition food for their support."

"Oh Sarasvati kill the calumniators of Gods. So also kill the son of Brisaya who has dominated the world with his wiles. You recover the lands from the Asuras, Oh you producer of food, make poison flow for them" (through your waters).
"The Sindhu (by which is meant the Euphrates) has made your horses wet by the spray of the ripples of the Rasa. Your horses shining with lustre are moving about. Your conveyance by which you became the husband of Surya, is called swift."

Rigveda, X. 75. 6.

"Oh Sindhu you first unite with the Trishtama on your onward march (after descending on the plains from the highlands) and then meeting Susartu, Rasa, Shweti, Kubha, Gomati, Krumu and Mehatnu. You proceed further in a joint chariot."

Rigveda, VI. 20. 8.

"Indra who gives attractive pleasures, reduced to submission, for king Dyotana, the crafty Vetasus, the swift Dashonis and the multitudinous Tugra as mother does her children."

Rigveda, VI. 26. 4.

"Oh Indra, you brought a great fighting chariot for Vrishabha who was battling against the Dashadyu. You killed the Tugras who had been joined by the Vetasus. You protected Tuji who was singing your praises."

Rigveda, X. 49. 4.

"As a father provides for his son, I have for the sake of Kutsa reduced to submission Vetasus with Tugra with his followers. I am efficient for doing great things for the prosperity of those who make sacrifices to me. I have made Tuji strong for overcoming his enemies."

Rigveda, VIII. 1. 11.

"When Surya attacked Etasha, Indra carried Kutsa son of Arjuni with his horses moving with the speed of wind (for saving Etasha) and fought against the unconquered Surya."

Rigveda, VIII. 1. 12.
"Indra who has abundant resources, closed the wound on the neck of Etasha without ligature before making an incision. Indra makes whole, a mutilated part or an injured part again."

The Rigveda also mentions several non-Aryan tribes or clans. The chief among these are Ajas, Yakshu, Shimyus and shigrus. These are mentioned in the following texts:

अष्टिः स्तिटिप्रभानां सुदास हंसो गाधान्यक्षेपास्तुपारा।
शर्वते निन्यमुचवस्तः नवं शार्वं सिघुनामक्षेपादस्तः।

Rigveda, VII. 18. 5.

"The praiseworthy Indra made the rivers shallow and fordable for the sake of Sudas. But the enthusiastic Shimyus were made to curse the fury of the waters."

dस्युतिंद्रमुद्यूतं पुजुहि एवेऽद्वा पृथिव्यां शर्वं निवर्तित।
सन्ततेषां सिन्धियं: सिन्धियं सन्तदम: सुवर्य:।

Rigveda, I. 100. 18.

"The much praised Indra struck the Dasyus and Shimyus with his weapons. He armed with his Vajra occupied their territory with his shining associates and also occupied the Surya country and the region of waters."

The tribe of Panis figures prominently in the Rigveda. These Panis seem to be regarded as of non-Aryan race:

अग्रीणोमा चेति जहीरवं वं
दरमुस्तितिन्मवं पाणि गा।।
अवातिरं वृतस्य संवेदन्तसं
ज्योतिरंकं बहुमं।।

Rigveda, I. 98. 4.

"Oh, Agni and Soma, you have by your prowess deprived the Panis of their cows by which they carried on their livelihood; you have killed the remaining scion of the family of Brisaya. Both of you are it appears in many forms."

किमिच्छन्ति सरसा प्रेरमानां दूरे हाथ्या जगुरिः पराजेः।।
कामेश्विन्ति: का परितक्ष्मासीत्वकं रसायं अतर: पवासिः।।

Rigveda, X. 108. 1.

"With what object has Sarama come to this place? What long distance she has traversed? What is your work with us? What places you have journeyed through? Have you crossed the river Rasa?"

अनूनोदत हस्तवितो अन्नरामप्रेम दशमासो नवम्याः।।
शुरू यती सरस्ता गा अविद्विश्वानि सत्यांगिराश्चकार॥

Rigveda, V. 45. 7.

"The press-stone when handled in this land caused a resounding noise. With the help of this (press-stone) the Navagvas invoked you for the ten months. Sarama went by the path of the moral laws and
recovered the cows; The Angirasas enunciated and established the universal truth."

\[\text{Rigveda, V. 45. 6.}\]

"Oh associates, come and join in prayers by which the mother (Sarama) opened out the pen of cows. By these prayers Manu conquered the barbarians (Vishishtra) and the merchant Vanku obtained the land called Pureesh."

\[\text{Rigveda, V. 45. 9.}\]

"Let Saptashva, the king of Surya country, come to us on the long journey, we have to traverse his very extensive country. While the young sage was moving, shining with lustre, among the cows, the swift eagle (Shyena) swooped directly upon the oblations."

\[\text{Rigveda, V. 45. 8.}\]

"All the Angirasas, on the triumph of the great messenger, met the cows and then the milk and other products of the milk of the cows became serviceable for the performance of a great sacrifice. Sarama recovered the cows by the path of the moral laws."

\[\text{Rigveda, V. 45. 10.}\]

"When the king of Syria yoked the horses with shining backs to the chariots, he crossed the bright Arna. The courageous or wise men (Syrians) carried the cows through Arna as they would do by boats. Even the waters prompted by a sense of obedience, flowed under the surface with face downward."

\[\text{Rigveda, V. 45. 11.}\]

"Oh Gods, while crossing the waters or passing through the rains I offer or have offered you my prayer which confers every boon. It was by this prayer that the Nawagavas completed their sojourn of ten months; it is by this prayer that we become the proteges of Gods. It is by this prayer that we shall pass safely beyond affliction."

Dr. Das points out that the people living in ancient Sapta Sindhu in Rigvedic times were divided into many tribes, five of whom deve-
lopped a homogeneous civilization, worshipping the same gods, and performing the same religious rites and ceremonies, though occasionally quarrelling and warring among themselves. In his opinion the Bharatas who lived on the banks of Saraswati, Apaya and Drisadvati and were a powerful and famous tribe in Rigvedic times were also included in the list, the Yadus and Turvasas being regarded as one tribe. It seems, however, that Yadus and Turvasas were two distinct tribes in the early Rigvedic period. It may be that the Bharatas became powerful only later on.

According to Dr. Das, Purus lived on the banks of the Upper Indus on the border of Gandhara. According to Zimmer the Tritsus occupied the country to the east of the Parusni. The Yadus, Turvasas and the Anus and Druhyus probably lived on the lower valleys of the then Sarasvati.

The Kurus are one of the most ancient and prominent of the Vedic Aryan tribes. In the Rigveda itself they are not very prominently mentioned as a people. There is evidence to connect these Kurus with the Purus of the earlier period. In Rigveda IV. 38. 1 and VII. 19. 3 we are told of Trasadasyu as a King of the Purus. Kuru Sravana, a prince of the Kuru family is also called Trasadasyata or a descendant of Trasadasyu in Rigveda, X. 33. 4. The Purus were settled on the Sarasvati, and it seems that the Purus and the Kurus were a united people going by the name of Kurus during the present period inhabiting the country above named. Oldenberg conjectures that the Kuru people, as known later, included some of the tribes referred to by other names in the Rigveda. According to him it is likely that the Tritsu-Bharatas who appeared in the Rigveda as enemies of the Purus, later coalesced with them to form the Kuru people. There is evidence that the Bharatas occupied the territory in which the Kurus were found later. Professor Keith is also of the same opinion. Later on in the Brahmana literature these Kurus are given the greatest prominence and there they are named as connected with the Panchalas, the \textit{Kuru-Panchalas} forming a sort of federation.

The Panchalas, with the Kurus are most intimately connected with the Vedic civilization of the later period. In the Rigveda they appear to have been known by a different name. The federation \textit{Kuru-Panchala} might have been the result of the great war of Kurukshtera. The Satapathia Brahmana tells us that the Panchalas were called Krivis in ancient times: \textit{Kriwi} was a tribal name in the Rigveda. Zimmer thinks that these \textit{Krivis} resided in the region near the Sindhu and the Asikni in the Punjab.

The name \textit{Panchala} again has given rise to much speculation, it being supposed that the name indicates coalescence of five different tribes into a united one. The suggestion however is not very probable. At any rate no such coalescence is traceable during the Rigvedic period.
The plain of the Kurus, the country of the Matsyas, Panchalas and Surasenakas form, according to Manu the country of the Brahmans and is immediately after the Brahmavarta. The great kingdom of Panchala extended from the Himalayas to the Chambal river and was divided into two kingdoms, viz., (1) the North Panchala, the district of the United Provinces lying east of the Ganges and north-west of Oudh and (2) South Panchala, the country between the Jumna and the Ganges to the east and south-east of the Kurus and Surasenas.

These Aryan tribes frequently quarrelled with each other. There was ultimately a great war at Parushni between king Sudas of the Tritsus on the one side and ten different kings of the different tribes on the other. These ten kings formed a temporary confederacy. They were however defeated by king Sudasa.

It is difficult to conceive what was the ultimate effect of this victory of Sudasa. Dr. Das says that as a result of this war all the important Aryan tribes of Sapta Sindhu were brought under one rule, if only for a time, and the Tritsus and the Bharatas probably amalgamated as one people. No doubt we are told that as a result of the victory Sudas "quickly demolished their strongholds and their seven cities," annexed the territory of the Anus and humbled the Turvasas, the Druhyus and the Bharatas. The turbulent bheda was brought under subjugation and the ajas, the sigrus and the yaksus were also subjugated. Whether these were really anything beyond the immediate and temporary effect of the war, it is difficult to conjecture.

It thus appears probable that the Vedic Aryans were divided into different tribes. No doubt from the remotest time the Vedic Aryans were racially distinct from the non-Aryan inhabitants of India. As amongst themselves also there seems to have been no tribal unity in these early days. Yet these early invaders, though split up into many tribes seem always to have been conscious of a unity of race and religion. From the end of the Rigvedic period onwards they seem to have been characterized religiously by particularism, there being different Vedic schools, and the whole body of the Aryans being divided into these different schools. The dismemberment of law in such cases would be a necessary consequence and there seems to have been no unity in this respect till a later period.
LECTURE IV

VEDIC SOCIETY

Before proceeding further it will be pertinent to give an account of the internal arrangement of the Rigveda. As has been pointed out by Weber,¹ the Rigveda Samhita presents a two-fold subdivision: the one, purely external and evidently the more recent; the other, more ancient and based on internal grounds. The first distribution is into eight astakas nearly equal in length, each being subdivided into as many adhyayas and each of these again into about 33 vargas, usually consisting of five verses. The latter form of subdivision is into ten mandalas resting on the variety of authors to whom the hymns are ascribed. The first and the tenth mandalas contain songs by Rishis of different families; but the mandalas from the second to the ninth contain songs of Rishis belonging to particular families. Thus the second mandala contains songs belonging to Gritsamad; the third belongs to Visvamitra; the fourth to Vamadeva; the fifth to Atri; the sixth to Bharadvaja; the seventh to Vasistha; the eighth and the ninth mandalas mainly contain songs belonging to Kanva and to Angiras respectively. By the names of these Rishis we must understand not merely individuals but also their families.

The hymns in each separate mandala are arranged in the order of deities addressed. Those addressed to Agni occupy the first place; next come those addressed to Indra and thereafter those to other gods. The arrangement of the ninth book seems due to all its hymns being addressed to the single deity, Soma.

Prof. Max Müller² suggests that mandalas II-VII formed a series of collections which formed the nucleus of the Rigveda to which the remaining mandalas were successively added. A comparison of the first and the eighth mandalas seems to strengthen this view. These seem respectively to have been added at the beginning and the end of a previously existing collection. With regard to the tenth mandala it is now generally asserted that its hymns came into being at a time when the first nine already existed. Their composers grew up in the knowledge of the older books with which they betray their familiarity at every turn.

The above survey seems to indicate that, while the origin of the songs of the Rik, at least of the family books, dates from almost the primitive time, the redaction of the Rik Samhita took place only at a period when the Brahmanical hierarchy was almost fully developed. The tenth mandala of the Rigveda seems to be the product of this age.
It is generally believed that the Kosala-Videhas and Kuru-Panchalas were specially instrumental in effecting this redaction.

It will be profitable to remember in this connection that the vedic hymns did not in those ancient days have the same significance to their readers or chanters as to us. These were revered as the revealed words of God: a sacred object, in which every jot and tittle uttered had a magical potency and therefore an immeasurable importance.

Prof. Toynbee writing on "The Graeco-Roman Civilization" says:—

"Our Jewish Rabbinical way of studying a book has merits which are so obvious that one need not dwell on them. When once one has been drilled into this discipline, one continues, for the rest of one's life, to read everything with a closeness and thoroughness which is, most certainly, much better than the way in which one reads a newspaper en route to one's office. This is a lesson which is never to be forgotten, but it is not the last lesson to be learnt from a study of the Graeco-Roman civilization. We cannot resign ourselves to that drastic and misleading limitation of outlook which is the defect of the virtue of the microscopic, intensive Rabbinical study of a sacred book or a classic. The Rabbinical outlook has two vices: It inclines one to think of a book as a thing in itself—something static and dead—instead of seeing it, for what it is, as the material track or echo or debris of human action (for intellectual acts are as authentic a form of action as exertions of will-power or of physical energy).

"The second vice is really the same thing stated in more general or philosophic terms. The Rabbinical method of study makes one inclined to think of life in terms of books instead of vice versa. The opposite method—which is the Greek line of approach—is to study books not just for their own sake, but also because they are the key to the life of the people who wrote them."

These observations will apply equally to the study of the vedic hymns as also to what importance is to be attached to the redaction of the Vedas. It is now beyond our capacity even to guess whether this effort at redaction of the Vedas psychologically took the form of any sort of 'homesickness' for what now looked like a golden age in the past, an age in which the vedic Aryan life had apparently been a happier and more splendid thing than it was when this redaction was attempted. It may be that the people who felt like this in that later age "sought salvation in archaism: in a deliberate attempt at an artificial resurrection of past happiness and beauty and greatness." Beyond what was salvaged through this redaction nothing of the earlier age remained.

The significance of the fact of redaction of the Vedas has been guessed to be that the vedic Aryans of this age being conscious of their common origin felt that all these sayings were authentic records by
whichever Rishi of whichever tribe these might have been pronounced. In spite of their difference they felt this unity.

The idea of bringing together the different family collections would seem first to have suggested itself to the priests at a time when the hitherto divided Aryan tribes had moved from the Punjab to the eastern plains and became consolidated into larger communities.

To the same period also we may refer the first attempts at a systematic arrangement of the entire ceremonial of worship, and the definite distribution of the sacrificial duties among four classes of priests, *viz.*, the Adhvaryu (अध्वर्य) or the performer of the material part of the sacrifice; the Udgatri (उद्गात्र) or chanter of hymns; the Hotri (होट्र) or the performer of solemn sacrificial function; and the Brahman (ब्रह्मन) or superintendent of the entire performance.

We need not stop here to discuss the value of rites and symbolic ceremonials. No doubt there have been historical founders of religion who looked down upon ritualism as one of the fetters which bind men to illusion and prevent them from attaining enlightenment. But attainment of enlightenment might not have been the sole object of religion and might not have been the universal aim. So long as there would remain different psychological types and degrees of mental development, attachment to traditional ceremonials and belief in the magical efficacy of rituals would not be without social significance. Such attachment may be a fetter to the attainment of enlightenments. But these traditional ceremonials and rituals may help such individuals as have neither the desire nor the capacity for enlightenment to behave a little better than they otherwise would have done.

If religion is to be "a system of education by means of which human beings may train themselves, first, to make desirable changes in their own personalities and, at one remove, in society, and, in the second place, to heighten consciousness and so establish more adequate relations between themselves and the universe of which they are parts," this possible effect on mass behaviour of rituals and ceremonials can hardly be neglected.

Tradition ascribes this task of redaction of the Vedas to Vyasa Parasarya (व्यास पारासर्य), the putative father of *Pandu* and *Dhritarashtra*. Dr. Pradhan has shown that the Rigvedic hymns were composed even up to the time when the forest of Khandabaprastra was burnt down by Arjuna Pandava. From this we may extend the lower limit of the Rigvedic period up to some of the incidents described in the *Mahabharata*. The Rigvedic age may thus conveniently be divided into two sub-periods: The earlier one is really very obscure and we have scanty materials for attempting any history of that period. The later Rigvedic period may be taken to range between the time of Rigvedic king Atithigva Divodasa (अतिथिधिवदोदस) and the events of the *Mahabharata*. 
As has been pointed out by Dr. Pradhan, it may indeed be wrong to confine ourselves only to the Vedic texts while exploring the history of this period. The Puranas and the epics may certainly throw much light on the subject. It will however be assuming too much if we take these Puranas and the epics as giving the correct history of the period. These materials, if utilized at all, must be done so cautiously. Indeed, for our purpose, it will be unsafe to rely on them in order to find out the customs and usages of a time which was admittedly much earlier than when these were composed. The safest materials for our purpose will be found in the Vedas.

It will be pertinent to notice here that the other Vedas must have been of later origin. The Rigveda does nowhere mention any of the provinces to the east of the Punjab, except casually mentioning the name of the Ganges and the Yamuna. The Veda does not mention any river, mountain or province of southern India. This shows that the Vedic Aryans did not penetrate into the Southern India even then.

The Yajurveda, however, introduces us not only to a geographical area different from that of the Rigveda but also to a new epoch of religious or social life in India. The centre of Vedic civilization is now found to lie farther to the east. We hear not much of the Indus and its tributaries. What is now prominent is the territory in the middle of Northern India occupied by the neighbouring peoples of the Kurus and Panchalas. The country of the former, called Kurukshetra, is specially the holy land of the Yajurvedas and of the Brahmanas attached to them. It lay in the plain between the Sutlej and the Jumna, beginning with the track bounded by the two small rivers Drishadvatī (दृशद्वती) and Sarasvati (सरस्वती) and extending south-eastward to the Jumna. It corresponds to the modern district of Sirhind. Closely connected with, and eastward of this region, was situated the land of the Panchalas which running south-east from the Meerut district to Allahabad, embraces the territory between the Jumna and the Ganges called the Doab.

The Yajurveda further gives us materials from which the existence of caste system seems to be clearly established. Not only do we find the four castes firmly established as the main division of Indian society in the Yajurveda, even most of the mixed castes known in later times are already found to exist. The social as well as the religious condition of the Indian people, therefore, now bear an aspect essentially different from those revealed to us in the Rigveda.

The Samaveda is of little importance to us historically. It contains hardly any independent matter, all its verses except a few being taken directly from the Rigveda. Its contents are derived directly from the eighth and specially the ninth mandala, the ‘Soma’ book. The only significance of this Veda for our present purpose is that its necessity must have been felt when the rituals very much occupied the attention of the Aryans.
The Atharvaveda seems to be the latest in origin. At any rate it seems probable that its hymns were not edited till after the Brahmanas of the Rigveda were composed. The geographical data contained in the Atharvaveda are but few, and furnish no certain evidence as to the region in which these were composed. We find mention of Gandharis, Mujavats Mahavrishas, and Balhikas in the north-west and the Magadhas and Angas in the east. From this it appears that the Aryan culture spread further towards east during its age.

It should be remembered that the name Anga occurs only once in the Atharvaveda in connection with the Gandharis, Mujavats and Magadhas as distinct peoples. The Veda says:—

गान्धारिश्चो मूजवे ज्योजेन्द्रश्च मगझेश्चः।
श्रीमन् जनमिव श्रेर्विं तस्मानं परिवधसि॥ (V. 22. 14)

"We to Gandharis, Mujavats, to Angas and to Magadhas
Hand over Fever as it were a servant and a thing of Price".

These Angas seem to have been settled on the Sone and the Ganges. Pargiter inclines to regard them as a non-Aryan people that came over by sea to eastern India. It seems Aryan knowledge did not extend further east. The Vedic literature does not mention Vanga prior to the Baudhayana Dharmasutra.

Dr. Pradhan is inclined to believe that these Rigvedic Aryans were settled in the Deccan as well. He says "Even the Southern Kosala, Chedi, Dasarna, Nisadha, Vidarbha, etc., situated at the foot of the Vindhyas were Aryan settlement during the Rigvedic period."

As the Southern Kosala and Vidarbha were just to the south of the Vindhyas he concludes that a portion of the Deccan was also occupied.

Inspite of what Dr. Pradhan has said, the southward migration of the Aryan people does not appear to have entered beyond the Vindhya hills as yet. "Parvata" in the Rigveda and the Atharvaveda is conjoined with giri in the sense of hill or mountain. In the Kausitaki Upanisad we are told of southern and northern mountains, the allusion evidently being to the Himalayas and the Vindhya ranges. Before this we find no allusion to the Vindhyas.

The geographical and ethnical allusions contained in the Brahmana literature point to the regions along the Ganges and Jumna as the centre of Brahmanic culture. The Satapatha Brahmana, with the exception of those in Kandas 6-10 point almost exclusively to this region. In the legend about Videgha Mathava and his Purohita, Gotama Rahugana, tradition seems to have preserved a reminiscence of the eastward spread of Brahmanical civilization.
The Satapatha Brahmana in 1 Kanda, 4 Adhyaya, 3 Brahmaṇa 10 Sl. says—

निदेशत्र हि मात्रौत्तप्ति ैवस्वार्तं मुख्यबोधार्तं तस्य गोतमो राहुकण च्छवि: पुरोहित आस तस्मै
हृ मात्राभासानो न प्रतिपुण्योति नेमेद्रिविवेकानां मुख्याविन्यासानां

"Now Mathava, the (king of) Videgha carried Agni Vaisvanara in his mouth. The Rishi Gotama Rahugana was his family priest. When addressed (by the latter), he made no answer to him, fearing lest Agni might fall from his mouth."

It was pointed out by Weber that this legend distinguishes three successive stages of the eastward migration of the Brahmanical Hindus. In the first place the settlements of the Aryans had already been extended from the Punjab as far as the Saraswati. They then pushed forward, led by the Videgha Mathava and his priest, as far east as the river Sadanira which, according to Sayana, is another name for the Karatoya, (the modern Kuratee, on which Bogra lies) which formed the eastern boundary of the Videhas; or more probably the Gandaki (the modern Gunduck near Patna) which formed the boundary between the Kosalas and the Videhas. It would appear that for sometime the Aryans did not venture to cross this river. Sayana takes the hero of the legend to be Videgha. The Madhava is more probably intended here for the name of that people and country. The Agni Vaisvanara of this legend is considered by Prof. Weber as a personification of Brahminical worship and civilization and the destructive effects of their extension. Among the peoples that occupied those regions, a prominent position is assigned to the closely allied Kuru-Panchalas. The Kuras occupied the districts between the Jumna and the Ganges, the so-called Madhyadesa or middle country and the Panchalas bordered on them towards the southeast.

The names of the principal teachers of the Satapatha mark them as belonging to the land of the Kuru-Panchalas. This view seems to be confirmed by the fact that preference is given to a certain sacrificial practice on the ground that it is the one obtaining among these peoples.

In the east of the Madhyadesa, we meet with another confederacy of kindred peoples, of hardly less importance at the time of the redaction of the Brahmana, viz., the Kosala-Videhas. In the legend above referred to they are said to be the descendants of Videgha Mathava, and to be separated from each other by the river Sadanira. The country of the Videhas, the eastern branch of this allied people, corresponding to modern Tihut or Purniya, formed in those days, the extreme east of the land of the Aryas. In the later books of the Satapatha, King Janaka of Videha appears as one of the principal promoters of the Brahminical religion, and especially as the patron of Yajnavalkya.

We have already noticed that even during the earlier period there were different Aryan tribes in India and that there were inter-tribal
conflicts amongst them. As a result of these inter-tribal conflicts we find that at different times different tribes rose in ascendancy. We mention here the name of the Kurus who appear as by far the most important people in the Brahmana literature.

There is clear evidence that it was in the country of the Kurus or the allied Kuru-Panchalas that the great Brahmanas were composed. The Brahmanas were ritualistic and theological in character. They dealt with the diversified symbolism of the rituals and were exceedingly imaginative in character.

The Kurus are comparatively seldom mentioned alone, their name being usually coupled with that of the Panchalas on account of the intimate connection of the two peoples. The Kuru-Panchalas are often expressly referred to as a united nation. This united nation, however, comes into prominence during the period of the Brahmanas.

Weber and Grierson have sought to find traces in Vedic literature of a breach between the two tribes, the latter scholar seeing therein a confirmation of the theory that the Kurus belonged to the later stream of immigrants into India, who were specially Brahmical as opposed to the Panchalas who were anti-Brahmanical. In support of this view, Weber 7 refers to the story in the Kathaka Samhita of a dispute between Vakadalbhya and Dhiritrastra Vaicitravirya, the former being held to be by origin a Panchala, while the latter is held to be a Kuru. In the Rigveda the Kurus do not appear under that name as a people. We are, however, told of a prince Kurusravana and of a Pakasthaman Kaurayana (Rigveda. X. 33. 4; VIII. 3. 21). In the Atharvaveda there occurs as a king of the Kurus ‘Pariksit’, whose son, Janmejaya, is mentioned in the Satapatha Brahmana as one of the great performers of the horse sacrifice (Atharvaveda. XX. 127. 7).

Oldenberg 4 conjectures that the Kuru people as known later, included some of the tribes referred to by other names in the Rigveda. Kurusravana is in the Rigveda called Trasadasyava, descendant of Trasadasya who is well known as a King of the Purus. It is likely that the Tritsu Bharatas who appear in the Rigveda as enemies of the Purus, later coalesced with them to form the Kuru people. There is evidence that the Bharatas occupied the territory in which the Kurus were later found. Two of these Bharatas are spoken of in the Rigveda as having kindled fire on the Drisadvati, the Apaya and the Sarasvati. We are told:

निर्मिषित: सुधित आ समस्ये युष्मा कौरिरभरस्य प्रणेता।
जृयियो स्वभिन्नजरे वनेष्वर्ता वचे अमृतं जालवेदः।।
Rigveda, III. 20. 1.

अमृण्यां भारता रेववत्तिनं देवविना देववतः सुमदवम्।
अवने वि पवमृत्तिवाय राज्यं नो नेता भवताद्व चूनः।।
Rigveda, III. 20. 2.

नि ल्ला वचे वर आ पृथिव्या हड़यायथे सुदिनत्वे अह्रः।
दूष्णवयो मानुष आप्यायां सरस्वत्यां रेववते विद्विकहृ।।
Rigveda, III. 20. 4.
Both Bharatas, Devasravas, Devavata, have strongly rubbed to life effectual Agni.
He set thee in the earths' most loosely station,
in Ilas' place, the days of fair bright weather.
On man, on Apaya, Agni, on the rivers Drishadvati,
Sarasvati, shine richly.''

The territory of the Kuru-Panchalas is declared in the Aitareya Brahmana to be the middle country, Madhyadesa. A group of Kuru people still remained beyond the Himalayas as appears from the name Uttara Kuru.
The geographical position of the Kuru-Panchalas renders it probable that they were later immigrants into India than the Kosala-Videhas or the Kāsis, who seem to have been pushed into more eastward territories by a new wave of Aryan settlers from the west. It is suspected that the Vedic Kritvan had some connection with the Kurus or Krivis. The Rigveda names Kritvan in the plural with the Arjikas and the five peoples in Mandal IX. S. 65, Sl. 23:

व आर्जिकिषु कृत्व ये मध्ये पत्यानां। ये वा जनमय पुंचु॥

Rigveda, IX. 65. 23.

The Arjikas seem to have settled in Kasmir even in these ancient days. Kribi is asserted in the Satapatha Brahmana to have been the older name of the Panchalas:

अपमेयायितांत्रक्ष्तं हृतं कौश्य इंजे पान्त्वालो राजा क्रिब्य इति हूँ वे पुरा पान्त्वाला-
नागक्षते तदेतुष्यायायापितमूः। अश्वं मेंध्यमालख्तत क्रिब्यापायामितः पान्त्वालः परिवकायः:

Satapatha Br., XIII. 5. 4. 7.

These Kribis appear in the Rigveda as settled on the Sindhu and the Asikni:

याब्धि: निविशेषम् याब्धिस्वरूपः याब्धिस्वरूपं क्रिब्यः।
सयो नो मूलतितिधिमध्यं: शिष्यामिति चतुष्प्रकारः।

Rigveda, VIII. 20. 24.

यतुस्सिद्धाय यस्यस्सिद्धाय यतुस्सिद्धाय यस्यस्सिद्धाय मस्तः सुवाहः।

Rigveda, VIII. 20. 25.

ताभिराव यातः वृष्णापम ये हृम् विश्वपुरसु विश्वायः।

Rigveda, VIII. 22. 12.

Zimmer conjectures that with the Kurus they made up the Vaikarna people.

We have noticed above the character of the Brahmanas. Their object is to connect the sacrificial songs and formulas with the sacrificial rite, by pointing out, on the one hand, their direct mutual relations; and, on the other, their symbolic connection with each
other. In these Brahmanas we find the oldest rituals, the oldest linguistic explanations, the oldest traditional narratives, and the oldest philosophical speculations.

These Brahmanas date from the period of the transition from Vedic civilization and culture to the Brahmanic mode of thought and social order. In fact, these helped to bring about this transition. Some of them belong to the time of the commencement of this transition and others to that of its termination.

The Brahmanas originated from the opinions of individual sages, imparted by oral traditions, and preserved as well as supplemented in their families and by their disciples. The more numerous these separate traditions became, the more urgent became the necessity for bringing them into harmony with each other. A comparatively large number of Brahmanas is still extant. In the case of each Veda such works at least as had come to be considered the highest authority have been preserved although the practical significance of the Brahmanas was gradually more and more lost and passed over to the Sutras.

One important fact in connection with the Brahmanas must not be lost sight of. Each Veda, we have noticed, had its own Brahmanas. But there is one feature in them which indicates that these are the products of an era of unification. The difference between the Brahmanas of the several Vedas as to subject-matter is essentially this: The Brahmanas of the Rik, in their exposition of the ritual, generally specify those duties only which fell to the Hotri priest. The Brahmanas of the Saman confine themselves to the duties of the Udgatri. The Brahmanas of the Yajus, to the duties of the Adhvaryu. All these priestly offices were necessary for the completion of the ritual. So these were meant for a united Aryan nation, not yet formed into different Vedic Schools.

Of the Brahmanas of the Rik we have the Aitareya Brahmana and the Sankhayana (or Kaushitaki) Brahmana. They are closely connected with one another, treat essentially of the same matter, not unfrequently, however, taking opposite views of the same question.

From the last book of the Aitareya Brahmana it seems that the scene of this Brahmana is the country of Kuru-Panchalas and Vasa-Usinaras.

Of the Brahmanas of the Saman the first and most important is the Tandya Brahmana also called Panchavinsa. This work, however dry and uninteresting in other respects, contains a mark of highly interesting legends as well as of information generally. Of special significance for the time of the composition of this Brahmana are, on the one hand, the very minute descriptions of the sacrifices on the Sarasvati and Drishadvati, and on the other, the Vratyastomas, or sacrifices by which Indians of Aryan origin, but not living according to the Brahmanical system, obtained admission to
the Brahman community. The accounts of these latter sacrifices are preceded by a description of the dress and mode of life of those who are to offer them.

From the absence of any mention of the Kuru-Panchalas or of Janaka, Weber supposes that the Brahmana came into being in a different locality. The Brahmana names the kings of Kosalas and Videhas.

Another Brahmana of this Veda is Chhandogya Brahmana. The first two adhyayas of this Brahmana are still missing; the remaining eight are preserved having the special title of Chhandogyopanishad. This is particularly distinguished by its rich store of legends regarding the gradual development of Brahmanical theology, and stands on much the same level as the Vrihad Aranyakas of the Sukla Yajus with respect to opinions, as well as date, place and the individuals mentioned. The Chhandogyopanishad seems to have a somewhat more western origin than the Vrihad Aranyakas which may be located at the eastern part of Hindusthan.

The Yajurveda is distinguished from the other Vedas by the great number of different schools which belong to it. This is at once a consequence and a proof of the fact that it became pre-eminently the subject of study, inasmuch as it contains the formulas for the entire sacrificial ceremonies and indeed forms their proper foundation. The Yajurveda divides itself into two parts: the Krishna and the Sukla Yajus. These indeed have their matter in common, but differ in arrangement.

The geographical and historical data found in these Vedas seem to point to the flourishing epoch of the kingdom of the Kuru-Panchalas. The Taittiriya Aranyaka belonging to the Apastamba School, however, discloses its connection with the Dravidas and the Andhras.

We may notice here in passing that the Aranyakas are highly meditative in character, meditative in a naturalistic setting. These are the products of a meditation and a philosophical speculation arising in connection with an immediate apprehension and contemplation of nature when one is immersed in an overwhelming tropical forest of ancient India. These forest meditations caused a revival of the original basic intuition of the Rigveda and succeeded in bringing into being the philosophy and religion of the Upanishads.

The Upanishads indeed offer the noblest evidence showing how man is capable of creating his own world by drawing the elements from within himself, how he can present an absolutely new intellectual construction in which material reality is only a pretext.

The upanishadkars indeed create a magic of ideas and by attributing a greater reality to the new universe, they create a strictly human realm, as distinct from animal one, the realm of pure ideas, of morals, of spiritual ideas, of aesthetic ideas. They point out what a noble and wonderful destiny is man's!
The Satapatha Brahmana belongs to the Sukla Yajus. As Buddhism first obtained firm footing in Kosala and Videha, it is interesting to inquire in what relation the Satapatha Brahmana stands to the beginnings of that doctrine. The words *Arihat, Sramana, and Pratibuddha,* occur in this Brahmana for the first time, but as yet without the technical sense which they have in Buddhistic literature. Again, in the lists of teachers given in the Brahmana mention is made frequently of the Gautamas, a family name used by the Sakyas of Kapilavastu among whom Buddha was born. It contains also allusions suggestive of the beginnings of the Sankhya doctrine.

In the Rigveda, with the single exception of the Purusha Sukta, there is no clear indication of the existence of caste in the proper Brahmanical sense of the word. This caste system was only introduced after the Brahmans had finally established their claims to the highest rank in the body politic; when they sought to perpetuate their social ascendancy by strictly defining the privileges and duties of the several classes, and assigning to them their respective places in the graduated scale of the Brahmanical community.

We have already noticed that the period, during which the main body of the Vedic hymns was composed in the land of the Seven rivers, was followed by a time of wars and conquests. From the literary products of the succeeding period we have seen that the centre of the Aryan civilization had in the meantime shifted from the region of the Sindhu to that of the Yamuna and Ganga. As the conquered districts were no doubt mainly occupied by the aboriginal tribes, which had either to retire before their Aryan conquerors or else to submit to them as Sudras, it seems not unnatural to suppose that it was from a sense of the danger with which the purity of the Brahmanical faith was threatened from the idolatrous practices of the aboriginal subjects, that the necessity of raising an insurmountable barrier between the Aryan freeman and the man of servile class first suggested itself to the Brahmans. As religious interests would be largely involved in this kind of class legislation, it would naturally call into play the ingenuity of the priestly order, and would create among them that tendency towards regulating the mutual relations of all classes of the community which ultimately found its legal expression, towards the close of this period, in the Dharma Sutras.

From what has been said above it will be amply clear that as yet the Vedic Aryans did not penetrate the southern India. Towards the east they extended up to the Angas at the most. Inter-tribal conflicts were still going on with occasional coalescence of different tribes. Law was far from uniform even amongst these Aryans. There has been an important change in the religion. Caste system is already developing, there already having been a hierarchical stratification in the society.
VEDIC SOCIETY

It will be a great mistake on our part if we think that law was the same for all the Aryan tribes that settled in different parts of India. There may be similarity in the customs and usages prevailing amongst them as these people originally belonged to a common stock. But here in India, as they lived politically cut off from each other for a long time, to expect unity of the law prevailing amongst them would be a great mistake.

Though there was no caste during the early Vedic age, a hierarchic stratification seems already to have been developing. As has been pointed out by Professor Macdonell and Keith, the use of the term *Varna* is not conclusive for the question whether caste existed in the Rigveda. The Purusa-sukta in the tenth Mandala clearly contemplates the division of mankind into four classes—the Brahma, Rajanya, Vaisya and Sudra. This hymn, however, marks almost the last days of this period. Zimmer connects the change from the casteless system of the early Rigveda to the elaborate system of the Yajurveda with the advance of the Vedic Indians to the east, comparing the Germanic invasions that transformed the German tribes into monarchies closely allied with the church. The needs of a conquering people evoke the monarchy in which the lesser princes sink to the position of nobles. For repelling the attacks of aborigines or of other Aryan tribes, and for quelling the revolts of the subdued population, the State requires a standing army in the shape of the armed retainers of the king, and beside the nobility of the lesser princes arises that of the king’s chief retainers. At the same time people in general cease to take part in military matters, and under climatic influences leaves the conduct of war to the nobility and their retainers devoting themselves to agriculture, pastoral pursuits and trade. The advantage thus won by the nobles over the people, however, had to be shared by them with the priesthood.

This brings us to one characteristic feature of the Rigvedic life. The Vedic hymns abound in accounts indicating the existence of priestly clans and their important position in the social system. We are told that the various Vedic kings had their respective high priests whose function it was to secure for the king the alliance of the gods both in times of war and of peace. His high priests performed the sacrifices to invoke the aid of the gods and were handsomely paid for the same.

One such high priest of very great importance is Rishi Agastya who with Vasistha seems to have played a very important role in the Rigvedic times. A number of the hymns of the first Mandal of the Rigveda is ascribed to Rishi Agastya. This Rishi has also been described as Manya or Mandarya:

एष व: स्तूम्व मस्त इयं गीमादायर्यस्य मान्यस्य कारी: ।
एष्य याशीष्ट तन्वे क्यां विद्वानमायं वृजनं जीरदानु ॥

Rigveda, I. 166. 15.
‘Oh Marut, let this hymns delight you, let this speech of praise be for your delight. Do come on praises of the Manya Mandarya, in order that we may obtain (materials) strength and gifts.’
In another place we have the term Manya only:

• ओ शुच्यत्सं हंद्र याह्यवाइः। श्रद्धार्थि वान्यवस्था कारोऽ।।
  विबाध वस्त्रोसरसा गृहाणो विवाध्येष्य गृहाणं जीवदाति।।

Rigveda, I. 177. 5.

In Rigveda Agastya is described as the high priest of the king of the Khelas for whom he invoked the aid of the Aswins.

It seems that a battle took place between the king of the Khelas and his enemies wherein Vispala, the wife of the king lost her leg. The Aswins who were the divine physicians gave her a leg of iron and thus cured her of the wounds:

• सुनोमनिनास्यन्तु गुणानं वाजं विमानं भुयरणं रूखता।
  अगस्यं श्रद्धार्थि वातृवान्तं सं विस्पलं नात्त्यवर्णिते।।

Rigveda, I. 177. 11.

‘Oh supporters, Aswins as your praises were sung by Mana with the affection of a son, you gave food to the sage. You were delighted by the hymns of Agastya and you cured Vispala.’

• चरितं हि वरिष्ठो वर्णावर्त मेतेत्सं परित्याग्यायं।
  सत्यो जीघामायसी विस्पलयं घने हिले सत्यं प्रायत्नं।।

Rigveda, I. 116. 15.

In the first Mandal of the Rigveda twentysix hymns beginning from hymn 165 are ascribed to Rishi Agastya. The main deity prayed is Indra though Maruts are also lauded as helpers of Indra.

The 7th Mandal of the Rigveda has been ascribed to Rishi Vasistha. Agastya and Vasistha are said to be the sons of Mitra and Varuna:

• विबाध्यो ज्योति परि संज्ञायं मित्रावस्था यदपस्यतां त्वा।
  तते ज्योतिर्तं वस्त्रोसरसं यत्सं विश्र आजमार।।
  सति हृ जाताविवितं नमोभः कुंभे रेतः सिवचुतः समानं।
  ततो हृ मान उदियायं मध्यामाति जातमृत्विमार्वसिद्धं।।

Rigveda, VII. 83. 10 and 13.

Sudas, the famous Rigvedic king, installed Vasistha as his high priest. Vasistha describes the gifts he received from king Sudas thus:

• चतवार्तो मापैशवलस्य गाना: स्माहिष्ट्वया: कुद्यनिनो निरवेके।
  श्रद्धाः मापूर्वविवेधं सुदासस्तों ततोकाय अवसे बहुतं।।

Rigveda, VII. 18. 23.

‘The four horses of Sudas, the son of Pijavan bedecked with costly ornaments, trained to move straight in difficult places, famed throughout the world and gifted to me, convey me who am like a child, for the good of my son.’
"The Rishi Vasistha invokes the Marutas to protect Sudas, as they protected Divodas, his father:

\[
\text{रितीि मयारत्थि सच्चतानु नित्योऽसि सुदार्ः।}
\text{अभिवर्तना उपजस्तय केतु युगां अकम्पिर्युः।}
\]

Rigveda, VII. 18. 25.

\[
\text{लं धृष्टो धृष्टो वीतवर्यं प्राणों विवामिष्ठेतिभि: सुदाः।}
\text{प्र पीलुकस्य सदस्यमभवः क्षीरसाता बृहत्स्युः पूर्व॥}
\]

Rigveda, VII. 19. 3.

"Oh bold one: you have protected with manifold favours and weapons, Sudas who gave oblation to you. You protected Trasadasyu the son of Purukutsa; you protected Puru in the battle with Vritra for the division of land."

The whole clan of Vasistha has been described as Vasisthas and they could be marked out by their costume and other signs:

\[
\text{विख्याति: मा विज्ञानस्वर्णि विधियङ्गून्यो अभि हि प्रमुँ।}
\text{उत्तथ्यथे पिर बहिंसः नृष में विराजिते विविष्ठा॥}
\]

Rigveda, VII. 83. 1.

"The Vasisthas, clad in white with the hair on the head, tied in a knot on the right side, expert in completing their tasks, please me by the strength of their education. Raising from the sacrifice, I say to the leaders of the sacrifice, my people do not deserve to go far away from me."

The greatest achievement of Vasistha and his clan was to secure success for Sudas in the war of ten kings.

The enmity between Vasistha and Vishvamitra has become proverbial in later Sanskrit literature. It appears that Vishvamitra has once been the high priest of Sudas:

\[
\text{महृं शिरस्वते दैवजोज्ज्वलयात् मृगिः नूत्त्वा॥}
\text{विवामिष्ठो यदवहेनुसादसमप्रयायत मुनिकेिभिः॥}
\]

Rigveda, III. 53. 9.

"The great Sage Vishvamitra who is the generator of spiritual power and who is invested with the radiance of these powers and who is the prince among the expert performers of sacrifices, stopped the current of Sindhu moving with a torrential flow—when Vishvamitra got Sudas to perform sacrifices, Indra became very much pleased with the clan of the Kushikas."

Vishvamitra is known as the son of Kusika.

Similar matters relating to Rishis Kanva, Atri, Bharadwaja, Angirasas are to be found in the various hymns of the Rigveda.

But this is not indicative of any caste system in the Rigvedic age in the modern sense of the term.

Indeed the caste system is one that has progressively developed and it is not legitimate to see in the Rigveda the full caste system even
of the type of the Yajurveda. At the same time it is difficult to doubt that the system was already well on its way to general acceptance. The argument from the non-brahminical character of the Vrtyas of the Indus and Punjab loses its force when it is remembered that there is much evidence in favour of placing the composition of the bulk of the Rigveda, especially the books in which Sudas appears with Vasis-tha and Vishvanitra, in the east, the later Madhyadesa, a view supported by Pischel, Geldner, Hopkins and Macdonell.

That caste is only developing during this period is evident also from the fact that even in the Atharvaveda we find all people taking part equally in war. Atharvaveda equally classes the folk with the bala, power, representing the vis as associated with the sabha, samiti, scna. The characteristics of the several castes in formation may be briefly summed up as follows:—

The Vis forms the basis of the state on which the Brahmans and the Kshatras rest. The Brahmans and Kshatras are superior to the Vis, while all three classes are superior to the Sudras. The real power of the state rested with the king and his nobles, with their retainers who may be deemed to be the Kshatriya element, engaged in war as also in peace-time administration. The nobles subsisted, no doubt, on the revenues in kind taken from the people, the king granting them villages for their maintenance. Some of the nobles no doubt had lands of their own.

It must be admitted that this relation as delineated above was not yet fully defined in the Rigvedic age. Later on, however, the relations and functions of the castes are completely determined as is well summed up in the Brahmana literature.

It seems quite clear that the normal, though not universal, form of Government, in early India was that by kings, as might be expected in view of the fact that the Aryan Indians were invaders in a hostile territory. Zimmer is of opinion that while the Vedic monarchy was sometimes hereditary yet in others it was elective. The vedic term Rajan meaning king repeatedly occurs in the Rigveda and in the later Vedas. It seems that the vedic king had the function of a judge. The vedic material of this age is not clear on this point. Later literature points more clearly to his function as dispenser of criminal justice. In civil justice it may be that the king played a much less prominent part, save as a court of final appeal. The Madhyamasi of the Rigveda was probably not a royal, but a private judge or arbitrator. A wide criminal jurisdiction is, however, supported by the frequent mention of Varunas, being the divine counterpart of the human king.

There is no direct reference as yet in the Vedic literature to the exercise of legislative activity by the king, though later it became an essential part of his duties.

We have already noticed how Zimmer connects the change from casteless system of the Rigveda to the elaborate system of the Yajurveda; with the advance of the Vedic Indians to the east. The relation
between the later and earlier periods of the Vedic history of caste will probably be regarded in the main as the hardening of a system already formed by the time of Rigveda. The most regular names are Brahmana, Rajanya, Vaisya and Sudra as given in the Purushasukta. The Taittiriya Samhita (vii. 1, 1. 4, 5), the Aitareya Brahmana (vii. 19, 1), the Satapatha Brahmana (i, 1, 4, 12; iii, 1, 1, 10: v. 5, 4, 9) as also the Panchavimsa Brahmana (vi, 1, 6—11) give these names. That this system was in course of formation during this period is evident from the fact that many variants are used in the place of these names.

The ritual literature is full of minute differences respecting the castes. Thus, for example, different modes of address are laid down for the four castes differing in degrees of politeness. Even different fires of funeral mounds are prescribed for the different castes. The representatives of the four castes are dedicated to different deities at the Purusamedha.

The three upper castes however differ markedly from the fourth, the Sudras. The Satapatha Brahmana sometimes declared the Sudras as not fit to be addressed by a consecrated person", and according to some authority no Sudra is to milk the cow whose milk is to be used for the Agnihotra. In certain passages however he is given a place in the same sacrifice.

The priests may be divided into two classes—the Purohitas of the kings, who guided their employers by their counsel and were in a position to acquire great influence in the state, and the ordinary priests.

The relations and functions of the castes are well summed up in a passage of the Aitareya Brahmana which treats of them as opposed to the Kshatriya. The Brahmana is a receiver of gifts (अदाकार), a drinker of Soma (अपानी), a seeker of food (आवसारी) and liable to removal at will (यथाकामप्रयाप्त). The words यथाकामप्रयाप्त are taken by Weber in the active sense meaning "moving at will". But, as has been pointed out by Professors Macdonell and Keith, both the parallelism of the passage and the formation of the word require a passive causative sense. The reference seems to be to the general political control of the king over the priest.

The same passage of the Aitareya describes the Vaisya as tributary to another (अन्यस्य वस्तुकृत), to be lived on by another (अन्यवाचः) and to be oppressed at will (यथाकामप्रजाय). The Sudra is the servant of another (अन्य्रूप प्रेम्य:), to be expelled at will (कामेऽप्रेम्यः) and to be slain at pleasure (यथाकामप्राप्तः). This description seems calculated to show the relation of each of the castes to the rajanya. He can control even a Brahmana. The Vaisya is inferior to him whom he can remove from his land without any cause. Yet the Vaisya is free and cannot
be slain without due process. The Sudra, however, has no rights of property or life against the noble, especially the king.

Although clear distinctions were thus made between the different castes, there is little trace in Vedic literature of one of the leading characteristics of the later system, the impurity communicated by the touch or contact of the inferior castes. Caste is, however, already hereditary, pursuit of a common occupation and restriction on inter-marriage being its characteristics.

Arrian, probably on the authority of Megasthenes, makes the prohibition of marriage between castes a characteristic of Indian life. This prohibition, however, was not absolute even during the later period. Even Manu recognizes the possibility of marriage with the lower castes, though condemning the marriage of an Aryan with a woman of lower caste. The Grihyasutras also allow inter-marriage, though the authorities condemn marriage with a Sudra wife. The earlier literature bears out the impression that much stress was laid on purity of descent. For this purpose we may refer to Taittiriya Samhita vi, 6, 1, 4; and Satapatha Brahmana iv, 3, 4, 19; xii, 4, 4, 6. There is however other evidence to show that even a Brahmana need not be of pure lineage. Kavasa Ailusa was the son of a Dasi, as will appear from Aitareya Brahmana ii, 19, 1. Vatsa was also accused of being a Sudra's son, though he established his purity by walking unhurt through the flames of a fire ordeal as narrated in Panchavimsha Brahmana (xiv, 6, 6). The story of Satyakama as given in Chhandogya Upanishad (vi, 4, 4) also indicates the same possibility. All these, however, may only indicate that there was a measure of laxity in the hereditary character of caste, not that it was not based on heredity. The possibility of legal marriage between Aryan and Sudra seems to be recognized by the Panchavimsha Brahman (xiv, 11, 17) in the story of Dirghatamas. In a hymn of the Atharvaveda extreme claims are put forward for the Brahmana who alone is asserted to be a true husband even if a woman has had others, a Rajanya or a Vaisya. The hymns say:

ैँ यज्ञो पतंगो दशरिष्या: पूव्रेयं ब्राह्मणम्।

ब्रह्मा चंदवस्त्रपारः स एव पतिरेकां द। ॥ ८ ॥

ब्राह्मण एव पतिः राजाः न वैश्यः।

ततु सुव्रम्भ: प्रजापतिः पञ्चमां गानवेयः॥ ९ ॥

"Even if ten former husbands none a Brahman—had espoused a dame:

And then a Brahmana took her hand, he is her husband, only he.

Not Vaisya, not Rajanya, no, the Brahman is indeed her Lord:

This Surya in his course proclaims to the Five Races of mankind."

Ath. Veda, V. 17. 8 and 9.
The sense of these as well the other verses of the Veda is obscure. The meaning seems to be that a woman though married to a Rajanya or a Vaisya shall not be validly married. She may be validly taken in marriage by a Brahmana even after such so-called marriages.

We need not stop here to trace the development, if any, of the caste system during the intervening period. It is now generally admitted that whether or not there was any caste in Rigvedic India, the institution is found completely established during the Brahmanic period. The whole people is divided into the four castes of Brahmana, Kshatriya, Vaisya and Sudra; and these castes are already modelled on the castes in heaven. The period no doubt is marked by the intellectual activity of the Sacerdotal caste, the Brahmana; but the supremacy of the Brahmana over the warrior caste is not yet established. Indeed the Upanishads seem rather to point to the other directions. We almost invariably find the Brahmanas seeking the help of the Kshatriyas for the solution of philosophical problems. Whatever might have been the position of the Brahmana as a caste, it must not, however, be ignored that even during the preceding period priests, though not as yet forming a distinct caste, were looked upon with considerable amount of respect and reverence. If this was so even when the primitive worship of the power of nature was not yet transformed into a highly artificial ceremonies of this age, it is but natural to expect that their position could not at least be impaired in an age when the religious service has been of a sufficiently advanced and complicated nature to require some kind of special training for the priestly office.

Though of no consequence to us, we might notice here that the charge against the Brahmana that it was they "who with the intention of deepening and extending their hold on the mind of the people, brought about the transformation in the religious belief" is indeed unjust. This charge is brought by those who want to interpret old customs only as a human device, as a device abounding in treachery and cunning.

Indeed the ceremonial restraints might have been the natural consequences of the desire to follow the less understood worship of the powers of nature instituted by the ancestors. It is indeed almost a general phenomenon in human history that as time goes on, the simple ceremonials of the ancestors become less and less intelligible and consequently more and more formal and complicated, necessitating a distribution of the sacerdotal functions among priests. These priests thus gradually forming a distinct class became the Brahmans in India. Equally with the people they too believed in the ceremonies and in their artificial rules of performance. The exclusive and selfless devotion of these priests to culture, their learning and nobility of character, together with the devout faith of the people, including these Brahma-
manas themselves, in the efficacy of the sacrificial offerings gradually raised them to a position of supremacy over the people, over the Kshatriyas as well. Their superior culture and habitual communion with divine rulers over the destinies of man would naturally entitle them to a place of honour at least by the side of the chiefs of the clans or the rulers of the kingdom.

The question as to how the Brahmans ultimately succeeded in gaining supremacy over the ruling class receives but little light from the contemporaneous records. That they gained such supremacy is amply shown by the records of the later period; and if from the legendary accounts of sanguinary struggles between the two classes and the final overthrow, even annihilation, of the Kshatriyas, anything of a historical nature can be inferred, then, this much at least can be said that the whole course might not have been altogether smooth and peaceful. Some sort of struggle must have gone on and a disturbance of order and harmony in the society must have been felt. Hence might have originated the conscious thought about the end of law.

It will be of some importance to notice here the great changes in the religion of the people since the Vedic days. Popular religion became more and more artificial and complicated.

We may with profit notice in this connection the relation between religion and civilization. In the last chapter of Gibbon's History of the Decline and Fall of the Roman Empire the learned historian sums up by saying "I have described the triumph of barbarism and religion," meaning thereby to say "that it was Christianity as well as barbarism which overthrew the civilization for which the Antonines stood." Professor Toynbee believes that there is a fallacy in this view. "Gibbon assumes that the Graeco-Roman civilization stood at its height in the age of the Antonines and that in tracing its decline from that moment he is tracing that decline from the beginning. Evidently, if you take that view, Christianity rises as the empire sinks, and the rise of Christianity is the fall of civilization. I think Gibbon's initial error lies in supposing that the ancient civilization of the Graeco-Roman world began to decline in the second century after Christ and that the age of the Antonines was that civilization's highest point. I think it really began to decline in the fifth century before Christ. It died not by murder, but by suicide; and that act of suicide was committed before the fifth century B. C. was out. It was not even the philosophies which preceded Christianity that were responsible for the death of the ancient Graeco-Roman civilization. The philosophies arose because the civic life of that civilization had already destroyed itself by turning itself into an idol to which men paid an exorbitant worship. And the rise of the philosophies and the subsequent rise of the religions out of which Christianity emerged as the final successor of them all, was something that happened after the Graeco-Roman civilization had already put itself to
The rise of the philosophies and *ad hoc* that of the religions, was not a cause; it was a consequence.

Professor Toynbee then quotes from Frazer’s ‘Golden Bough,’ Part IV, where the learned author says: ‘Greek and Roman society was built on the conception of the subordination of the individual to the community, of the citizen to the state; it set the safety of the commonwealth, as the supreme aim of conduct, above the safety of the individual whether in this world or in a world to come. Trained from infancy in this unselfish ideal, the citizens devoted their lives to the public service and were ready to lay them down for the common good; or, if they shrank from the supreme sacrifice, it never occurred to them that they acted otherwise than basely in preferring their personal existence to the interests of their country. All this was changed by the spread of Oriental religions which inculcated the communion of the soul with God and its eternal salvation as the only objects worth living for, objects in comparison with which the prosperity and even the existence of the state sank into insignificance. The inevitable result of this selfish and immoral doctrine was to withdraw the devotee more and more from the public service, to concentrate his thoughts on his own spiritual emotions, and to breed in him a contempt for the present life, which he regarded merely as a probation for a better and an eternal one. The saint and the recluse, disdainful of earth and rapt in ecstatic contemplation of heaven, became in popular opinion the highest ideal of humanity, displacing the old ideal of the patriot and hero who, forgetful of self, lives and is ready to die for the good of his country. The earthly city seemed poor and contemptible to men whose eyes beheld the City of God coming in the clouds of heaven. Thus the centre of gravity, so to say, was shifted from the present to a future life, and, however much the other world may have gained, there can be little doubt that this one lost heavily by the change. A general disintegration of the body-politic set in. The ties of the state and the family were loosened: the structure of society tended to resolve itself into its individual elements and thereby to relapse into barbarism; for civilization is only possible through the active cooperation of the citizens and their willingness to subordinate their private interests to the common good. Men refused to defend their country and even to continue their kind. In their anxiety to save their own souls and the souls of others, they were content to leave the material world, which they identified with the principle of evil, to perish around them. This obsession lasted for a thousand years. The revival of Roman law, of the Aristotelian philosophy, of ancient art and literature at the close of the Middle Ages, marked the return of Europe to native ideals of life and conduct, to saner, manlier views of the world. The long halt in the march of civilization was over. The tide of Oriental invasion had turned at last. It is ebbing still.’
Professor Toynbee then points out a second possible view of the relation between religion and civilization, namely, the view in which religion appears in the role of civilization’s humble servant.

After, however, reviewing several cases Prof. Toynbee takes the view that instead of religion being subsidiary to the reproduction of secular civilizations, the successive rises and falls of civilizations may be subsidiary to the growth of religion. “The breakdowns and disintegrations of civilizations might be stepping stones to higher things on the religious plane.” “It is through suffering that learning comes.” “If religion is a chariot, it looks as if the wheels on which it mounts towards Heaven may be the periodic downfalls of civilization on Earth.” According to Prof. Toynbee the movement of civilization is cyclic and recurrent, while the movement of religion may be on a single continuous upward line.

Religion is, indeed, an important factor in our legal system. Our later Law bases almost the whole law of the Hindus on religious theory. The whole law of inheritance in Bengal is based on the pindas theory. The law of adoption has its religious basis and the females’ right to property is much discussed on the same theory.

In this connection I should refer to Maine’s early Law and Customs (Chapter II). There it will be seen how religion influenced law in almost every primitive society.

I would like to say a word of warning and ask you to remember that the theory of the transmigration of the soul as given by Maine is of later origin; I mean later than the period just under our consideration. During the period of the Rigveda the passage of the spirit through a series of purgatories was not yet invented. It was of later growth, grown under the influence of the Brahmans.

According to these Vedic Rishis the whole universe originated from Aja, the Birthless. There was only one God from whom emanated everything else, even the other Gods.

रिग्वेद, अ. १२९. १ to ३।

"There was not non-existent nor existent; there was no realm of air, no sky beyond it. What covered in, and where; and what gave shelter? Was water there, unfathomed depth of water?"

"Death was not then nor was there aught immortal, no sign was there, the day’s and night’s divider. That One Thing,
Breathless, breathed by its own nature, apart from it was nothing whatsoever."

"Darkness there was at first concealed in darkness, this all was indiscriminated chaos. All that existed then was void and formless; by the great power of wormth was born that unit: (Girifith)"

At first these vedic Aryans beheld the wonderful natural phenomena with amazement and ascribed these incidents to Gods. Every isolated natural Phenomenon observed by them had a presiding Deity. Gradually, however, the most intelligent amongst them could notice uniformity underlying all these phenomenal incidents; gradually did they grow conscious of one Supreme Being, one Supreme Deity who presides over everything, 15 who creates and guides all, even the Gods. It was this one God who rules over the Sun, sends all the rivers to the ocean, and enables this ocean to hold them all without overflowing. 16

Such is the vedic notion of the creation of this Universe. According to the vedic philosophers the Creator lives beyond this Earth, beyond the Sky, beyond all the Asuras and the Gods; परो विवा पर एना पृथिव्या परो देवभिगमारुणयंति (Rigveda, X. 82. 5.) and it was the aim of every life to reach that region. The most ancient generations, long before there were philosophers, believed in a second existence after the present. They looked upon death, not as a dissolution of our being, but simply as a change of life.

Indeed this is considered to be the dawn of human thought, manifesting itself by a kind of revolt against death. "The fact that the dead live in the memory of those who loved them, who admired them, leads in man, and in man alone, to an idea which expands beyond the sentimental realm of the individual: he projects this idea outside of himself and creates a new objective existence for the departed." Professor Leconte du Nouy says: "This is something entirely unforeseen. He knows that he will never see the loved ones again on this earth, but he refuses to believe that they cannot live somewhere else. So he invents another life, he creates another world in which, someday, they will meet again. Thus, without too great effort of imagination, we can conceive that the care of the dead, the combination in man of one of the oldest characteristics of living beings, memory, and of a sentiment widespread in all superior animals, love, gave birth to the specifically human notion of a beyond."

But in what place and in what manner was this second existence passed? We may become equal to the Gods, we may reach this abode of the Gods, and enjoy their friendship if we behave well in this life. ये देवासो अभिवता मुक्त्या द्वन्द्वसि द्वितिः निवेद (Rigveda, IV. 35. 8.) also, —रत्नविवि: सबीये इद्रं चक्रये मुक्त्या (Rigveda, IV. 35. 7.)

11–1858 B.
We go to heaven if we perform yajna: if we perform स्वर्ग or that which takes men to heaven:

न्य: स्वर्ग नर यज्ञानं नवतीति स्वर्गरो यजः।

Sayana's Commentary on Rigveda, V. 18. 4.

Mitra and Varuna may lead us to heaven even if we are sinners.

मित्रो अंहोशिवदारु क्षयाय गात्य वनते

Rigveda, V. 65. 4.

Agni also takes men to heaven;

When any human being dies, his eyes go to the sun, his breath to air and he himself to the sky and earth. His limbs to the vegetables.

सूर्य चसुर्पण्यतु बालमात्रा दया च गच्छ पृथिवीं च धर्मणा।
अपो वा गच्छ यदि तत्र ते प्रियमात्रायुप प्रति तिष्ठा तरीरः।

Rigveda, X. 16. 3.

When the dead body is burnt to ashes he (the spirit) goes to the pitris, goes to a region, where the spirits of the virtuous reside.

एन्न प्रहस्तितिस्थितं अ (Ibid., X. 16. 1), एन्न निरदास्तितिस्थितं।

(Ibid., X. 16. 2),

यास्ते शिवास्तन्योक्ते वेदतात्मां चुक्तामु लोक।

(Ibid., X. 16. 4).

The Aryans believe that though the body is mortal (अनित्य) the soul is not so, it is ever existent.

अन्तन्ये तुर्गां जीवमेंद्रं मध्यमय आ नस्सानाः।
ञीवो मृत्येऽरति स्वसंभविनस्मयं मध्येनाः सयोिनि।
अपादु प्राङ्क्रि वृहद्यायो नुभिन्दोत्मतां मध्येनाः सयोिन्रः।
तस्मा चास्तत्ता तिष्ठुर्ना वियतं न नयं चिदम्बरं चिदम्बरं।

Rigveda, I. 164. 30 and 38.

These spirits reside in regions whose nature depends on the quality of the work done by them while living on earth. Their sufferings, if any, cannot be minimised by the doings of their children or their friends. Every one must reap the consequence of his own work, good or bad. True, we meet with hymns wherein these pitris are invoked; but they are invoked because they protect us from dangers, because they remove our sins. They come to our yajna along with the Gods, and partake of the homa articles with them. They come to these yajnas from their respective abodes which have been allotted to them according to the nature of the work done by themselves during their earthly existence. They must stay where they are till the end of the creation. But who knows when this end will come; whether this end will come at all?
The heaven has been created only once; only once this earth has been created. Prisni has been milked only once; except this nothing like it was ever created.

But in one thing these Pitris are somewhat dependent upon us. The Pitris are not so completely free from human frailties as not to have any need of food; and this food they get from us.

"Go Agni; bring our Pitris here if they feel hungry. They are to satisfy their hunger with the homa articles and it is our duty to perform the yajnas." This belief very soon gave rise to a certain rule of conduct. Since the dead had need of food and drink, it appeared to be the duty of the living to satisfy this need. Gradually the care of supplying the dead with sustenance was not left to the caprice or to the variable sentiment of men: it was obligatory; it became Dharma or obligatory rule of conduct, a law with them. Ancestor worship thus became domestic religion of the people at a very early age. This ancestor worship is the prototype of the later Brahmanic pinda theory.

Besides this ancestor worship, these Aryans had another form of domestic religion common with almost every primitive folk. I mean the worship of fire. Every family had an altar of its own, round which the members of the family would assemble to say their prayers. Nothing sacred, nothing important, nothing touching the family can be done without worshipping this fire. A girl shall have to be given away in marriage; she must be conducted to her father's family altar and there, in the presence of the fire, given to her suitor. A wife shall have to be brought into the family of the suitor and must be presented before the family altar there in order to be recognised as a member of that family.

We shall have to examine the question whether the laws of these early Aryans were in any way dependent upon their religion, upon their theory of after life. Here I would briefly notice what the term law signifies with these early Aryans.

With the Hindus law is Dharma or the supporter of the social fabric of the universe. It emanates from the Brahman himself who creates it to give a finishing touch to his creation, to bring His creation to a perfection. श्रद्धा वा इदमप्र आसीदेवभूत (Brihadaranyaka Upanishad,
Gradually He created the Kshatra, the Vis and the Sudra; and necessarily diversity pervaded this creation. There were weak and strong, high and low, great and small in this creation. There would thus no doubt be discordant elements in the creation, and to instil uniformity in such diversity to establish order in the probable disorder he looked to the law.

He (Brahman) created still further the most excellent law. Law is the kshatra of the kshatra; there is nothing bigger than the law. Even a weak man rules a stronger with the help of the law, as with the help of a king. Thus the law is what is called true. And if a man declares what is true, they say he declares the law; and if he declares the law they say he declares what is true. Both are the same.

According to these Aryans their law is all that it ought to be; it comprises the whole truth. They cannot conceive of law that may be pernicious. Law is just, is beneficial also, because it is another name for truth itself; because it has been so made by the Supreme Deity who Himself has created it. Nay, who Himself is the law.

He from whom the sun rises, and into whom it sets,——

Him the Devas made the law—He only is today and he tomorrow also. He is unchangeable; so is the law.

They look upon law as the order (rita) pervading the whole universe. Law with them embodies that ordered control of the life of a people which is necessary for the preservation of them and which for this reason also, is binding on the individual.

By the holy law they have supported the supporting order, near the powerful performer of sacrifice, in the highest heaven, the men who sit on the supporting support of the sky, and who with born attained to the unborn.

This law is the sum of rules which regulate the life of the people from the beginning of the creation. Let no man swerve from it, let no man transgress it. For the old did not transgress it, and those who did transgress, became lost.
We have already seen that with these Aryans, law was of divine origin. Not only was their law created by God,²² the perfect knowledge of it was also reserved to Himself. Of course the members of the celestial society, the gods, had also a true knowledge of it ²³ and it was one of their functions to see that laws were observed by the people ²⁴ and to punish those who would dare violate them. They would perhaps watch simply the outward actions of the people and punish all violations of law even if the breach originated in mere inadvertence. When through want of thought we violate the laws, punish us not O God, for that iniquity.²⁵

अविस्ती यत्व थमां युयोषिं मा नस्तस्माद्वेतो देव रीरिप:

Rigveda, VII. 89. 5.

Of course everyone would not be favoured with such knowledge of law. Gods would not confide the knowledge to all. They would select their special favourites for the purpose; they would naturally select the priests, later on the Brahmins whom to favour with such precious knowledge because it was they who had direct communion with the gods and the people.

Similar conception of law as derived from the gods pervades all the primitive societies. When Hammurabi declared his code of law he declared it as one revealed unto him by God Shamash; and people accepted it as law because it was their gods who gave it to them through Hammurabi who simply acted as God’s agent in announcing his wish to the people.

The law no doubt regulated the relations of power within people in accordance with their idea of justice, the ultimate source of which was the belief in divine justice. These early Aryans made no distinction between moral and juristic laws. All their laws were equally binding on them; they equally derived their authority from the gods. They failed to recognize any difference between the two. The point of view of a *jus quod populus sibi ipse constituit* was quite foreign to the law of these Aryans: their laws were closely interwoven with their religion and their moral code; they were bound up with the belief that the gods shield what is right and punish what is wrong.²⁶ Law with the Hindus ever remained associated with their gods, with their morals, with their religion. It was never supposed to derive its authority from any human source, be he a sovereign or a priest. It never became the mere command of a sovereign. The only hand which any human agency ever had over law was to declare the law that had been revealed to him by the gods, the keepers of all laws.
LECTURE V

A FEW POLITICAL INSTITUTIONS OF THE AGE

The Marquess of Zetland once said that "the effect of English political tradition as a force moulding the mind of modern India had been profound." "Purity and efficiency of administration, the equality of all men in the eyes of the law; these together with ideas of liberty and of the sovereignty of the people expressing itself through representative institutions have been sown by Englishmen upon Indian soil." Lord Zetland asked, "What will come of them? Will they prove to be purely exotic plants which when no longer tended by those who sowed the seed will wither and die? Or has the genius of the Indo-Aryan race that in it which will enable them to draw new life from the soil in which they have been planted?"

Lord Zetland himself answers the question by pointing out that the plant has not been sown in a soil altogether foreign to it; it is not altogether an exotic plant in Indian soil. "And it may come as a surprise," says his Lordship, "to many to learn that in the Assemblies of the Buddhists in India two thousand years and more ago are to be found the rudiments of our own Parliamentary practice of the present day. The dignity of the Assembly was preserved by the appointment of a special officer—the embryo of 'Mr. Speaker' in our House of Commons. A second officer was appointed whose duty it was to see that when necessary a quorum was secured—the prototype of the Parliamentary Chief Whip in our own system. A member initiating business did so in the form of motion which was then open to discussion. In some cases this was done once only, in others three times, thus anticipating the practice of Parliament in requiring that a Bill be read a third time before it becomes law. If discussion disclosed a difference of opinion the matter was decided by the vote of the majority, the voting being by ballot."

Indeed it is likely to come as a still greater surprise to many to learn that similar institutions were not foreign to the needs of life and the practical organizing ability as well perhaps as the scientific theoretical capacity evolved under the circumstances even of much earlier times,—even of the Vedic age. There is ample evidence that the Indic culture does contain enough nourishment for the seed sown.

I believe no one will deny the greatness of the achievement of India in the things of the mind and spirit, in the things most important to human culture,—in those activities that raise man to his noblest potentialities. "In all these matters the cavillings of the critics break
down before the height and largeness and profundity revealed when we look at the whole and all its parts in the light of a true understanding of the spirit and intention and a close discerning regard on the actual achievement of the culture."

There are, however, critics who would say that India has failed in life. These critics would say that her culture has not resulted in a strong, successful or progressive organization of life and that the highest part of her mind turned away from life to an inactive world-shunning pursuit.

The meaning of life has indeed puzzled man's mind ever since the appearance of the puzzle we call the mind of man. Is life only a dictionary,—each word meaning other words, all the words together meaning nothing?

Once we attempt to realize the scheme of space and time in this universe, life in general and human life in particular, as ordinarily understood by us, seem no more than a tiny glow, flickering uncertainly in the vast immensity of geological time and astronomical space. Unless there is a more abundant life than we ordinarily take to be so, "this scheme of space and time indeed becomes a bad joke beyond our understanding." The destiny of man must be something nobler, something more abundant than what we have yet realized.

Leaving aside this meaning of 'life' and coming back to the 'life' in the sense in which these critics prefer to view it, can it be said that the European culture has really resulted in any "strong, successful and progressive organization" of the same?

Perhaps the civilized world is no longer living in the delicious intoxication induced by the early success of science. It has already become apparent that what triumphant science has hitherto done it has done only to improve the means for achieving unimproved or actually deteriorated ends. Or, in fairness, it must be said that science by itself has not been a force for all the evil brought on the earth. It is indeed the so-called civilized man with mind fully turned towards life who has shown a capacity for putting science to evil use: daily we are being told of grim, gruesome discoveries. Civilized man today no doubt has acquired immense, scientific and mechanical resources but seems hopelessly to lack the wisdom to apply them to the best advantage. This is why we witness the paradox of want in the midst of plenty, why we witness a growing sense of frustration seizing every mind almost everywhere. The "so-called successful organization of life" has only succeeded in bringing the civilized world today in an age of spiritual chaos, intellectual doubt and political decadence. The whole world seems to be suffering from an epidemic of hysteria, from the growing apprehension as regards safety. The most dangerous symptom of this malady lies in the fact that instead of decreasing, the alarm is seen to increase with the increased acquisition of the so-called strength:
—it is not allayed even with the acquisition of atom bomb, the strongest weapon which a power could ever possess.

It cannot be denied that the value of a culture lies not only in its power to "raise and enlarge the internal man, the mind, the soul, the spirit," but also to shape his external existence and make of it a "rhythm of advance towards high and great ideals". This shaping of man's external existence must mean a sound political, economic and social life enabling a people to survive, to grow and to move securely towards a collective perfection.

"The ideals that governed the spirit and body of Indian society were of the higher kind, its social order secured an inextinguishable basic stability, the strong life-force that worked in it was creative of an extraordinary energy, richness and interest, and the life organized remarkable in its opulence, variety in unity, beauty, productiveness, movement." The critics who read into Indian life only an incompetence for any free and sound political organization and view her as constantly a divided and subject nation really read the feature of her decadence backward into her past history.

"The legend of India's political incompetence has indeed arisen from a false view of her historical development and from an insufficient knowledge of the ancient past of the country." This false view again is largely due to an exaggerated uncritical estimate of success of western democracy and industrialism. Thanks, however, to West's "strong, successful and progressive organization of life," Western man in the middle of the twentieth century is tense, uncertain, adrift." The very grounds of Western civilization, of their constitutude, are breaking up under their feet. Frustration has increasingly been the hallmark of this century—"the frustration of triumphant science and rampant technology, the frustration of the most generous hopes and of the most splendid dreams". The so-called successful organization has succeeded in having dehumanized the worker, fettered the lower classes and destroyed personal and political liberty. It is indeed impossible to think reasonably about the state in which the world has been led by this 'progressive' organization of life. Every 'reasonable' approach soon halts before a stone wall of unreasonable fact. "It is difficult to wander anywhere on the face of the earth without being assailed by a sense of being in a madhouse where delusions govern amid hopeless and needless suffering, where myopia and fear have obscured the most elementary demands of true self-interest. It is as though we had an object in life—say, freedom, peace, security—and actually devoted our most intense energies to the business of placing obstacles in our path." Asia's billion people are made to keep on struggling against backwardness and starvation. Their struggle started more than a century and a half ago when these civilized lords of the West reached out aggressively for the wealth of the East.
It is true that "India never evolved either the scrambling and burdensome industrialism or the Parliamentary organization of freedom and self-styled democracy characteristic of the bourgeois or Vaishya period of the cycle of European progress." 

But leaving aside this "successful, progressive" organization of modern Western life, and turning once again to life in ancient India, it is now amply established that institutions resembling those prevailing in modern democracy did arise in ancient Indian Society. Only we must not readily read in them the modern ideas and techniques. "There was a strong democratic element, if we must use the Western terms, in Indian polity and even institutions that present a certain analogy to the parliamentary form, but in reality these features were of India's own kind and not at all the same thing as modern parliaments and modern democracy." "So considered they are a much more remarkable evidence of the political capacity of the Indian people in their living adaptation in the ensemble of the social mind and body of the nation than when we judge them by the very different standard of Western society, and peculiar needs of its cultural cycle."

In order fully to realize the true nature of our Indian polity and evaluate its efficiency one must look at it not "as a separate thing, a machinery independent of the rest of the mind and life of the people, but as a part of and in its relation to the organic totality of the social existence." We are indeed to enquire not only whether it could satisfy the mass craving for a stable standard of living, but also whether it could make the people feel that they are useful and important members of the Community with a right to understand the meaning of their work and of the society in which they lived.

Our Vedic literature speaks of at least four assemblies in which rudiments of the present-day parliamentary practice are discernible. These are Samagra, Vidatha, Saniti and Sabha. Of these, Samagra is not spoken of by the Rigveda. The term, however, seems to denote later an assembly either in peace or in war. The Atharvaveda in a hymn in praise of Prithvi or deified Earth after naming 'truth, high and potent law, the consecrating rite, Fervour, Brahma and Sacrifice' as the upholders of this Earth assures her:

सतयं बृहद्वन्दामुः दीक्षा तपो ब्रह्मया यजोऽपि पृथ्वियोऽधारणति।
सा नैौ पृथ्वी भव्यस्य पत्त्वुः लोकः पृथ्वीस्य नः कुर्णोत्॥
येः ग्राममेऽ निरुपया याौ समा अधिमुख्यामू॥
येः संग्राममः समितयस्ते चाहै वरीमेऽ ते॥

Atharvaveda, XII. 1. 1 and 56.

"In hamlets and in woodland and in all assemblages on earth,
In gatherings, meetings of the folk, we will speak of glorious things of thee."

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Then again in a hymn in praise of Indra we are told:

\[ \text{व: संग्रामान् नयति सं युधे बली \ घुटानि संग्राजति क्रयानि।}
\[ \text{स्त्रीलीन्ना नापिती जोह्रोमि स नो मुल्लन्तव्हस्।} \]

Atharvaveda, IV. 24. 7.

"Strong Lord, who leadeth hosts to meet for battle,
who sendeth riches both of earth and heaven
I, suppliant, praise and ever call on Indra. May he
deliver us from grief and trouble."

The term, however, acquired the sense of War even in the Atharvaveda. In a hymn addressed to personified War-drum the same Veda sings:

\[ \text{पराभिन्नां हुल्लुमिना हृदिण्यांजने च।}
\[ \text{सब्रे देवा अविननस्न् ये संग्रामस्येशते।} \]

Atharvaveda, V. 21. 7.

"May all the deities whose might controls the fortune
of the Fray
Frighten away our enemies with drum and skin of
antelope."

In an incantation for the defeat and destruction of the hostile army a deity Arbudi is invoked with the prayer:

\[ \text{तेषां सब्रेरामिना उत्तिस्तं सं न्याय्यं भिस्व देवजना यूम्।}
\[ \text{इसं संग्रामं सत्त्वत्य यमालोकं वि तिष्ठव्यम्।} \]


"With full dominion over these: rise, stand, ye up,
prepare yourselves,
Ye are our friends, celestial hosts. When ye have won
this battle, go, each to his several sphere apart."

Professors Macdonell and Keith point out that the term denotes primarily 'assembly'. Whether there was a strict tribal organization of the host, such as is once alluded to in the Homeric Poems, and is also recognized in Germany by Tacitus, is uncertain. Rishi Shyabashuca while addressing the Marutas sings:

\[ \text{शर्या शर्यो च एवं ब्राह्म जातं गणं गणं मुक्तस्तिभि:।}
\[ \text{अनु क्रमेष भीतिभि:।} \]

Rigveda, V. 53. 11.

"With eulogies and hymns we may follow your army, Shardha
by Shardha, Vrata by Vrata, and Gana by Gana."

Here we find that the troops of the Maruts are referred to by
two different terms—Sardha, Vrata and Gana. Zimmer concludes
from this that a Vedic host fought according to the clan, village and family. Though Prof. Macdonell and Keith do not feel inclined to attach any importance to this text, Zimmer seems to be correct in thinking that the passage suggests a distinct series of divisions.

Professor Jayaswal takes Samgrama to indicate that "those who were assembled were the 'village together'—each village as a collective unit, and that the village formed the basis of the constitution of the Samiti." Whatever that be, it is significant that the Rigveda does not mention Samgrama as an assembly and that when later the term is used to denote an assembly it also acquires the sense of 'War'. The Rigvedic Folkmoots,—Samiti, Sabha, or Vidatha, might have been assemblies of warriors as well like all other primitive folkmoots. The necessity for separate war assembly might have been felt later and these were called Samgramas.

Vedic Vidatha is a word of obscure sense, confined mainly to the Rigveda. We are told:

त्वमचे वृजनवर्तनि नर समानिपपिष्टे विदधेय विचर्यणे।
यः शूरसाता परितक्ष्ये धने दशोमिष्टित्वतत्सृता हृसि भूयसः॥

Rigveda, I. 31. 6.

"Agni, thou savest in the Vidatha when purchased e'en him, far-seeing One who walks in evil ways
Thou, when the heroes fight for spoil which men rush round,
slayest in War the many by the hand of few."

एतानि वामगित्वता धीरोणि प्र शूर्विन्यायबोज्योचन्।
ब्रह्म कृपातो वृष्णो गृहवं मुख्याः सुवीरासो विदयता वदेम॥

Rigveda, I. 117. 25.

"These your heroic exploits. O Ye Aswins, done in the days of old, have men related,
May we, addressing prayer to you, Ye mighty, speak with brave sons about us to 'the Vidatha.'"

नि दूरोणे अमूतो सत्यां राजा ससाद विदद्यानि साधन।
पृति प्रती जोिया व्यधोदवनविवित्फानि काम्यानि विद्वान्॥

Rigveda, III. 1. 18.

"Within the house hath sate the king, Inmortal of mortals, filling full their sacred Vidatha.
Bedewed with holy oil he shineth widely, Agni, the Knower of all secret Wisdom."

होता देवो अमूत्यः शूरसत्वदेवि मायति।
विदद्यानि प्रचोदयत।॥

Rigveda, III. 27. 7.
"Immortal Sacrificer, God, with wondrous power he leads the way
Urging the great assembly on."

र्वमणे रा ज वरणे धूतत्वत्वं मिनो भवसि दस्म ईडः।
तवमषुमा सत्यतिर्यस्मि संभुम तवमषों विवेधे देव माजयुः॥

Rigveda, II. 1. 4.

"Agni, thou art king Varuna whose laws stand fast;
as Mitra, wonder worker, thou must be implored.
Aryaman, hero's lord, art thou, enriching all,
and liberal Ansa in Vidatha O thou."

असृत दुर्यो दुर्यो ज्यायानिमा अस्य शुभः संति पुर्वः।
दिवो नपाल विदधस्य धीरोः क्षत्र राजाना प्रविदेयो दधाये॥

Rigveda, III. 38. 5.

"First the more ancient Bull engendered offspring;
these are his many draughts that lent him vigor.
From days of old ye kings, two sons of Heaven,
by hymns of Sacrifice have won dominion."

श्रीणि राजाना विवेधे पुरुणि परि विद्वानि भूषयः सदांसि।
अपश्रमत मनसा जगन्नानन्ते गंगवानी अष्ट बायुक्तेषां॥

Rigveda, III. 38. 6.

"Three seats Ye Soverains, in the holy Vidatha, many,
Yea, all, ye honour with your presence.
There saw I, going thither in the spirit,
Gandarvas in their course with wind blown tresses."

बहवः सुरच्छसोबिजनिष्ठा छतावधः।
श्रीणि ये येमुविद्वानि धीरितिभिविश्वानि परमौभिषिमि॥

Rigveda, VII. 66. 10.

"Many are they who strengthen Law, Sun-eyed,
with Agni for their tongue,
They who direct the three great gatherings,
with their thought, yea, all things, with surpassing might."

अभिममत्सृष्ट्वर्मिनिश्वाय यधैः।
अभिमद्वै अनसुतु न उभे हि विझे कविरं तत्स्वरति
दृष्यं नमतामय्ये समे॥

Rigveda, VIII. 89. 1.
"The glorious Agni have I praised, and worshipped with the sacred food,
May Agni deck the Gods for us. Between both gathering places he goes on his embassy, the Sage.
May all others die away."

Rigveda, X. 12. 7.

"They in the Vidatha where the Gods rejoice them where they are seated in Vivasvan's dwelling Have given the Moon his beams, the Sun his splendour, the two unweariedly maintain their brightness."

Rigveda, I. 166. 2.

"Bringing the pleasant mead as 'twere their own dear son, they sport in sportivewise gay at their gatherings. The Rudras come with succour to the worshippers self-strong they fail not him who offers sacrifice."

Rigveda, I. 167. 6.

"Upon their car the youngmen set the Maiden wedded to glory, mighty in assemblies."

Rigveda, IV. 38. 4.

"Who gaineth precious booty in the combats, and moveth, winning spoil, among the cattle; Shown in bright colour, looking in the assemblies, beyond the churl, 'to worship of the living.'"

Rigveda, VI. 8. 1.

"At Jatavedas holy gathering I will tell aloud the conquering might of the swift red-hued steer. A pure and fresher hymn flows to Vaisvanara, even as for Agni lovely Soma is made pure."
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पूषाद्वैते नयतु हस्तगृहिष्ठिना त्वा प्र वहतं रथेन।
सुहास्वद्गृहाल्पी यथासौ वसिनी त्वं विद्यमा वदसि॥

Rigveda, X. 85. 25.

"Let Pushan take thy hand and hence conduct thee:
may the two Aswins on their chariot transport thee.
Go to the house to be household's mistress
and speak as lady to the Vidatha."

Rigveda, X. 92. 2.

"Him, Agni, Gods and men have made their chief support,
who drinks the fatness and completes the sacrifice,
With kisses they caress the grandson of the Red, like the
swift ray of light, the Household Priest of Dawn."

Rigveda, II. 27. 12.

"He who bears gifts unto the kings, true Leaders, he
who their everlastings blessings proper,
Moves with his chariot first in rank and wealth
munificent and landed in assemblies."

There are passages in the Atharvaveda also that refer to
Vidatha. We are told:

वायोऽविद्वाहानि मम्म्ये यावात्म्यानूि विस्थयो वषि व रक्षि:।
ष्ठ विवस्त्य परिपू बधूवेज्जुि नो मुहूव्यतंधस्॥

Atharvaveda, IV. 25. 1.

"I think on Vaya's and Savitri's Vidahas,
Ye twain who penetrate and guard the living world;
Ye who have come to be this Alls' pervaders,
deliver us, ye two, from grief and trouble."

अख्य्युत्युऽि समदी गमित्तो मृद्धो चेति पुरुषार्धोइँः।
िङ्क गृहो विद्या निविन्युह्द्रतनो डिग्दतं याहि वीमम्॥

Atharvaveda, V. 20. 12.

"Shaker of things unshaken, readiest corner to battles;
conquering foes, resistless leader,
Guarded by Indra, watching our assemblies,
go quickly, breaker of their hearts who hate us."
"Oh Tree, give back again this man who is deposited on thee,
That he may dwell in Yama’s home addressing the assemblies here."

Atharvaveda, XVII. 1. 15.

"Round Trita, round the spring with thousand current thou goest, round the light-finding assembly.
Manifold are thy great deeds, thine. O Vishnu."

Atharvaveda, XX. 128. 1.

"The worshipper who pours the juice for gathering and assembly fit,
And yonder foes-destroying Sun, these have the Gods designed of old."

Atharvaveda, VII. 99. 4.

Roth suggestions that the primary sense of Vidatha is ‘order’ and thence it is taken to mean the concrete body which gives orders. We have seen how the term is taken to mean assembly for secular or religious ends or for war. Oldenberg thinks that the main idea is ordinance and thence sacrifice. According to Ludwig the root idea is an assembly especially for the Maghaans and the Brahmanas. Geldner, however, considers that the word primarily means knowledge, wisdom, priestly lore, then sacrifice and spiritual authority. Bloomfield insists that the term refers to the house in the first place and then to the sacrifice as connected with the house. Professors Macdonell and Keith feel inclined to accept Bloomfield’s views. They say “the term Vidatha once applied to the king might seem to be against this view; but it
may refer to his being ‘rich in homestead’; and the connection of the women with the Vidatha, as opposed to the Sabha tells in favour of Bloomfield’s explanation.” The text which applies Vidathya to a king runs as follows:

ʻसोमो धेनु सोमो ब्रतमाणु सोमो बैर कर्मयथ ददाति।
सादन्य विदध्यम सभेयम पितृभवण यो ददाशदमे॥

Rigveda, I. 91. 20.

ʻTo him who worships Soma gives the milch cow, a fleet steed and a man of active knowledge,
And makes him सादन्यम् विदध्यम् सभेयम् and पितृभवणम्.”

The text, however, hardly justifies Bloomfield’s construction of Vidathya. It is clear that the term refers to qualities that make one fit for Vidatha. Zimmer suggests that Vidatha means an assembly, smaller than a Samiti or a Sabha. Undoubtedly, the texts mention Vidatha as assembly both for religious and secular purposes. It seems abundantly clear that its activities were not confined to matters secular. But it must not be forgotten that in these early days, specially with the Vedic Indians, religion was seldom separated from matters purely political or secular.

Professor Jayaswal 12 is of opinion that this Vidatha was the parent Folk-assembly from which Sabha, Samiti and Sena differentiated.

It is indeed difficult to say anything about the constitution and function of these folk-assemblies. Yet it is not hard to surmise that in these archaic assemblies we have the framework of a popular legislature. The term ‘legislative’ as applied to the functions of the early folk-moot must not be misunderstood. Even the assembly of the early warriors did really exercise the power of a modern legislature when it determined the question of peace or war. “In the infancy of society,” observes Sir Henry Maine,13 “many conceptions are found blended together which are now distinct, and many associations which are now inseparable from particular processes or institutions are not found coupled with them.” There is abundant proof that legislative and judicial powers are not distinguished in primitive thought.

These assemblies were in their nature sovereign. These were the gathering together of the whole nation, or of the whole ruling part of the nation. The whole power of the nation is, therefore, vested in them. It is only gradually and by slow steps that there arises that distinction between legislative, executive, and judicial powers on which so much stress is laid in the refined political theories of modern times.

It will be pertinent to remember here the observations of Freemen made while speaking of primary assemblies in general.
"The Primary Assembly," says Freeman, "is the natural form of free government for the wandering band, for the group of households settled in their mark, for the tribe gathered within the walls of a city. It begins to break down even when it is applied to a gan or Canton of a larger size; it utterly breaks down when it is applied to a nation. The representative Assembly is as much the natural form of free government for the greater Society as the primary Assembly is for the smaller."

In spite of indications of its having once been open to the whole people including the females, access to it might have been restricted gradually and it lost its original functions and constitution through the growth of the aristocratic and monarchical tendencies.

Rousseau has an explanation which, if not altogether historical, is at least suggestive and deserving of thoughtful consideration. "So soon as the service of the State ceases to be the principal business of the citizens, and they prefer to render aid with their purses rather than their person, the State is already on the brink of ruin. If it is necessary to march to battle, they pay troops and remain at home; if it is necessary to go to the council, they elect deputies and remain at home. As a result of indolence and wealth they at length have soldiers to enslave their country and representatives to sell their freedom. The decline of patriotism, and active pursuit of private interest, the vast size of States, conquest and abuses of Government, have suggested the plan of deputies or representatives of the people in the assemblies of the nation."

Kemble speaking of the Saxons in England, gives his reason of the development of the representative system which would equally apply to Vedic India. In a country overrun with forests, intersected with deep streams, and but ill-provided with the means of internal communication, attendance at a place other than his own village must have been a hardship to the cultivator, such attendance often vexatiously interfering with agricultural processes on which the hopes of the year might depend. Much more keenly would this have been felt, if he were called upon to attend beyond a limited area. Besides, he would not perhaps care very much for general rules affecting many districts beside the one in which he lived. To the rich and powerful neighbour whose absence from his farms was immaterial while his men remained on the spot to look after his cultivation; to the Maghavan familiar with the public business, and perhaps having influence and interest with the king; to the Brahmans or priests, distinguished for their wisdom as well as for their station; to any or all of these, he would be ready to commit the defence of his small, private interests, satisfied to be virtually represented, if only he were not compelled to leave the business and the enjoyments of his daily life. But of this we shall have to say more hereafter.

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Two more institutions must be named here and we shall see later how these helped the development of law. The Sabhā and Samiti were the two other Vedic assemblies which have recently attracted the attention of the Vedic Scholars. We are told in the Rigveda:

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यूनः ग्राहो मेदयमः क्षणं चिदबीरं चित्कणुष अयुपंतसि।
समवे यूनः क्षणः भरवलो वृहद्दो कव उच्चते समाणु॥
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*Rigveda, VI. 38. 6.*

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"O Cows, Ye fatten e'en the worn and wasted
and make the unlovely beautiful to look on,
Prosper my house, Ye with auspicious voices. Your
power is glorified in our assemblies."
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अश्वी रथी सुरूय इतिगराम् इविद्ध ते संहा।
द्यात्माका वनसा सच्चसे सदा चंद्रे साति समामुप॥
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*Rigveda, VIII. 4. 9.*

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"Indra, thy friend is firm of form and rich
in horses, cars and kine.
He evermore hath food accompanied by wealth,
and radiant joins the company."
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समवेति चित्रः: पृथ्वमानो जेयवातीति तत्वा शुङ्गान:।
अश्वास्वस अयुष च तिरंति काम। प्रतिदिव्ये प्रदहत आ कुटविन इ।
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*Rigveda, X. 34. 6.*

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"The gambler seeks the Sabha and wonders,
his body all afire, shall I be lucky?
Still do the dice extend his eager longing, taking
his gains against his adversary."
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गोमा अमेविवा अश्वी यज्ञो नृवितस्वा सदविद्यमृष्यः।
इवावा एयो अभु申诉 प्रजावान्दीरोर रवियः पुषुभन्नः: सभावानु॥
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*Rigveda, IV. 2. 5.*

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"Agni, be this our sacrifice eternal, with brave friends,
rich in kine and sheep and horses.
Rich, Agni! in sacred food and children, in full
assembly, wealth broad based and lasting."
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सवं नवंति यथासात्तेत समथात्तेत सर्वा सत्सात्।
किंतुस्पुष्टिसुपरम्भणिकोमर निवी भवति वाधिनाय॥
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*Rigveda, X. 71. 10.*

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"All friends are joyful in the friend who cometh in triumph,
having conquered in assembly.
He is their blame averter, food provider: prepared is he and
fit for deed of vigour."
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This noteworthy constitutional organism सभा grew much in importance during the post-Vedic age. The Atharvaveda refers to it frequently. Professor Jayaswal points out that ‘probably it was the standing and stationary body of selected men working under the authority of the Samiti. Sabbhā means literally ‘a body of men shining together! those entitled to a seat therein were invested, so to say, with lustre.’ The Sabbhā seems to have acted as national judicature even during the Rigvedic age. Professors Macdonell and Keith point out the difficulty in ascertaining its exact character. ‘The hall also served, like the Homeric meeting-place, for social intercourse and general conversation about cows and so forth, possibly for debates and verbal contests. According to Ludwig Sabbhā was an assembly, not of all the people, but of the Brahmanas and Maghavans. This view can be supported by the expressions like ‘Sabhya’, ‘worthy of Sabbhā’; and ‘rayth Sahavanan’, ‘wealth fitting for the assembly’. According to Zimmer the Sabbhā was the meeting-place of the village council presided over by the Grāmani. Hillenbrandt seeks to maintain that Sabbhā and Samiti cannot be distinguished, and that the reference to ‘Sujata’ being there in session is to the Aryan as opposed to the other.

The difficulty in accepting any of these views lies in the fact that none of them takes into account the possible history of the institution. Sabbhā as a special standing committee seems to be of later growth. Its constitution and function during the Rigvedic age is really obscure. That Sabbhā became a sort of law-court later is amply evident from the subsequent Vedic literature. In the Yajurveda, for example, we find Sabbhāchara as one of the victims at the Purushamedha. As he is dedicated to Dharma, it is difficult not to see in him a member of the Sabbhā as a law-court, perhaps as one of those who sit to decide cases: there is nothing to show whether the whole assembly did so, or only a chosen body. The special use of Sabbhāchara suggests the latter alternative. Professors Macdonell and Keith seem to think rightly that Sabbhāsad—Sitter in the assembly—is probably a technical description of the assessors who decided legal cases in the assembly. These terms, however, are not found in the Rigveda.

The most important assembly of the Vedic age seems to be the Samiti, which Jayaswal has named as the sovereign assembly of the Vedic times. He has dealt with its functions, constitution and historical career, and we can do no better than refer to his Hindu Polity for the purpose. Ludwig considers that the Samiti included all the people, primarily the Visak, but also the Maghavans and Brahmanas if they desired to attend it, though the Sabbhā was their special assembly. Professors Macdonell and Keith intimate that ‘the business of this assembly was general deliberation on policy of all kind, legislation, so far as the Vedic Indian cared to legislate, and judicial work.’
The functions of the Samiti may be gathered from different references. The most important business during this age seems to have been the election of the Rajan. The king attended the Samiti, and it was thought necessary that he should do so. So says the Rigveda: 'like a true king going to the Samiti':

राजा न सत्यः समितीरथियानः।

Rigveda, IX. 92. 6.

The Rik in question seems to suggest that it was the function of the king to convene the Samiti. The Rik says:—

परि संयथें पशुमाति होता राजा न सत्यः समितीरथियानः।

"As the priest seeks the station rich in cattle, like a true king who goes to great assemblies."

Commenting on this Sayana says:

होता देवानां आर्कार्थाक्षकः पशुमाति पशुपति: संयथेय यस्मृहिष्ठ्रृष्टोपगल्लित बिल्मा राजा

न यथा राजा सत्यः सत्यकम्य सनू समिती:। संप्राणाःस्मेतस्मा सम्यक्क प्राप्तते योद्धभिर्मनिः।

If the king is behaving truly he is there just as a hota is in the Yajurveda whose function there is to call in the gods. Incidentally we have the meaning of Sayana of the word Samiti:

संप्राणांस्मेतस्मा सम्यक्क प्राप्तते योद्धभिर्मनिः।

In another place the same Veda tells us:

यशीषविष: समग्रमुतराजान: समितानिण:।

बिप्र: स उच्चते भिष्मश्रोहामेवचतानः।

Rigveda, X. 97. 6.

"He who hath store of Herbs at hand like kings

amid a crowd of men,—

Physician is that sage's name, fiend-slayer, chaser of disease."

The king in a Samiti is likened here to a physician in a place with a good collection of herbs wherewith he protects us by destroying the diseases. Sayana comments on this Rik by saying:

तासां नानाविधानांमोगकोर्तो संक्षमं यस्मिन् देवोस्तितं तत् बिप्र: प्राङ्ग्राह्यो

भिष्मच्छले रक्षोहा रक्षोहता। अभीचतान:। अभीवं व्याधि:। तस्य चातन्तिवल्लिता

नाशाविता च अभवति तदनि।।

It is significant that we have reference to Samiti only during the post-Rigvedic period. The so-called family books of the Rigveda contain no reference to this. The institution seems to have been fully developed during the post-Rigvedic age. But even in this age it is regarded as eternal and is called a daughter of Prajāpati, the creator:

समाच्छा मा समितिस्वाल्कां प्रजापतेऽपुरुषः संविदाने।

येन संगम्य उप मा त जिक्षाल्लाभ वदनि पितरं संगते॥

Atharva-veda, VII. 12. 1.
According to Sayana:

रघुवाय प्रविष्टिः सम्बंधः। संवैश्च संवैश्चस्त्रव्यः।

Quoting Yaska, Sayana notices a secondary import already acquired by the term:

यथा संग्रामानामध्यः यज्ञानामानि भवत्तिः यास्के नोक्तत्तत्व भवत्तिः श्रवणेन यज्ञ उच्चते।

The Vedic assemblies underwent much change by the Brahmanic Age. During this age, we no longer hear of Vidatha. Indeed this assembly seems to have merged into some other since the days of the Rigveda. We do not hear any longer of this body during the present period. Its functions must have been taken up by some other body.

Similarly, the Samiti of the Rigvedic age seems also to have lost its separate existence. The Parasara Grihyasutra treats this institution evidently as a reminiscence only.

Sabhā is still in existence. In fact, this seems to be the only Vedic assembly still retained during this age. It did not disappear even during the royal and imperial centralization but preserved traces of its popular origin and retained some important popular features in its administration of justice. This institution is often named in the Brahmana literature. We may refer to Taittiiriya Samhita, I, 7, 6, 7, Taittiiriya Brahmana, I, 1, 10, 6; Satapatha Brahmana, II, 3, 2, 3, 1, 10; Kausitaki Brahmana, VII, 9; and Maitrayani Samhita, IV, 7, 4 for this purpose.

There is no direct notice of the work done by the Sabha. Whatever might have been its functions in the earlier days, during this period it seems to have retained only its judicial functions. Sabhāchāra is one of the victims at the Purushamedha in the Yajurveda. The terms Sabhapati, Sahapala, Sabhasad are often used in the Brahmana literature.

Women did not go to Sabha as will appear from Maitrayani Samhita (IV, 7, 4). These women, it seems, were early excluded from political activity.

We have seen elsewhere that the normal, though not universal, form of government, in early India, was that by kings, as might be expected in view of the fact that the Aryan Indians were invaders in a hostile territory. Up till the age under consideration, kingly form of government alone seems to have prevailed. There are, however, ample indications in the literature of this period that people were already thinking of other possible forms of government. The Brahmana literature very often engages itself in justifying the kingly form of government. The Aitareya Brahmana tells us:

“अन्तः ध्रवायं सम्यक्यां प्रतिष्ठाप्यं विष्णुः येष क जग्याभास्तः राजां सर्वोत्तोषः
नराणां राज्यायुष्यं तेजस्विविभव्यः। राजेयसयानमितिप्रविष्ठायास्मात्।”

Aitareya Brahmana, XXXVIII. 9, 14.
"Then the divine Sadhyas and Aptyas inaugurated Indra, during thirty-one days, in the middle region, which is a firmly established footing (unmoveable centre) to the Kingship (rajya). Hence the kings of the Kurupancalas, with the Vasas and Usinars, are inaugurated to Kingship, and called kings (raja)."

These Brahmanas also gave various theories of the origin of kingship in justification of the institution. All these theories, however, in a way contemplated kingship to be elective in its origin.

The election in the Vedic age was real and fairly simple and business-like. The king was elected by the people; he was expected to fulfil certain duties, and was invested with certain privileges. He accepted his office from the people, the king-makers. He was in agreement with his electors. He could be removed from his office and could be brought back from exile. The office of the king was the creation of the people and was held conditionally.

In the age of the Brahmana literature, coronation becomes elaborate, ritualistic and very technical. It is no longer elective in the real sense. The king is presented to the people who is to ratify his appointment. Through the details given about the coronation ceremony we have an idea of king’s functions. One important feature should not escape our notice. Originally, Vedic kingship was tribal. It has now grown territorial. It seems that kingship has become hereditary during this age.

The position of the king with regard to the land is somewhat obscure. Hopkins is strongly of opinion that the payments of revenue, etc. were only for protection and consequently only as tax. He, however, is also of opinion that the king was the owner of all land. Baden Powell asserted that the idea of the king being the owner of all land is of later origin. The evidence, up to this age at least, is inadequate to prove his ownership. It is not deemed improbable that gradually the king came to be vaguely conceived as lord of all the land in a proprietorial sense; such an idea was only a gradual development. The evidence, so far as it goes of other Aryan peoples, does not support the theory of original kingly ownership. There are, however, some texts in the Brahmana literature which indicate kingly ownership of land.

Prof. Jayaswal points out that the Republican forms of government arose in the latter part of this age. According to him the Republics are named in the Aitareya Brahmana as also in the Taittiriya. He refers to Aitareya Brahmana (XXXVIII. 3, 14) where we find:

दक्षिणयो दिशि ये च सत्तां राजानो मौज्यार्व तेजप्रभिषिष्यति। भोजेत्येनानन्धिशि-
क्षताचार्यते।

Aitareya Brahmana, XXXVIII. 3, 14.
A FEW POLITICAL INSTITUTIONS OF THE AGE

"Then the Rudras inaugurated Indra in the Southern region, during thirty-one days, with the three Rik verses, the Yajnas and the great words (just mentioned), for obtaining enjoyment (of pleasures). Hence all kings of living creatures (chiefly beasts) in the Southern region are inaugurated for the enjoyment (of pleasures) and called Bhoja i.e., enjoyer."

The word 'Bhauja' denotes the rank of a ruler bearing the title of Bhoja. Prof. Macdonell and Keith 31 take these words as indicating a king's title. Prof. Jayaswal points out how these words denoted heads of a class of republics. 32 The same Brahmana also uses the terms 'Svarajya' and 'Vairajya' to denote certain peculiar constitutions prevailing in the west and north respectively. In the Svarajya the ruler or president was called "Svarat".

According to Aitareya Brahmana this form of Government prevailed amongst the Nichyas and the Apachyas of Western India bordering near the mouths of the Indus and the regions immediately above. The 'Vairajya' occurred in the north by the side of the Himalayas. According to the Aitareya Brahmana in this form of Government the whole country or nation took the consecration of rulership. This was a real democratic constitution. The uttara Madras and the uttara Kurus are named as observing this form.

It has been stated above that political facts are one of the causes of legal development, and it is needless to tell you that early Indian History is not altogether blank in its chapter on political changes. It is now admitted on all hands that Monarchy was the earliest form of organised Government in India. Prof. Jayaswal has shown that this is supported by the Rigveda where Monarchy is the normal and the only form of Government known. 33 As the Aitareya Brahmana puts it, it was in the firmly established midland where it held its own:

"एतस्यं छुसायान्त मध्यमायं प्रतिष्ठायां दिशि ये के च कुटसन्नालाञ्च राजान: सवशोभी 
नराणं राज्यार्थ तेंदभिषिष्यते। राजेत्येनानाभिवेश्वतानाचूः।"


This midland was the land from Kurukshetra to Prayag—the Valleys of the Jumna and the Ganges, which became the seat of the Aryan conquerors and Aryan Monarchy.

The passage above-quoted implies that forms of Government other than the monarchy were also known at the time. Indeed eminent scholars like Prof. Jayaswal and Prof. Sarkar, have now established that republican form of Government was known even in the early Vedic India. Prof. Sarkar 34 has spoken of the three periods of Hindu Republics. According to him the first period dates from 600 B.C. to 450 B.C. He names eleven republics for the period and says, "This cluster of republics represented evidently the survival of a type of polity that had been more or less uniformly distributed throughout the
Hindu world, at least in the Indo-Gangetic plains. An older link in the chain of India's Political evolution is furnished by the Commonwealths of the fifth and sixth centuries B.C. And it is to the eastern regions of Northern India, roughly speaking the modern province of Bihar, that we have to turn our eyes for these oldest historical specimens of Hindu republics."

It will indeed be beyond our purpose to enumerate these republics and to estimate the valuation of India's democratic attainments. Nor would it be necessary for us to mention the other two republican periods here. All that we should remember here is that "the hymns of the Rīk and Atharvan, the view of the Mahabharata and the tradition which Megasthenes heard in India in the Fourth Century, B.C., all point to the fact that republican form of Government in India came long after monarchy and after the early Vedic age. It appears in the later Vedic literature: in the Rig-Vedic Brahmaṇa, the Aitareya, and in the Yajurveda and its Brahmaṇa,—the Taittiriya."35 The technical name for Hindu Republics was 'Gana'.

Prof. Jayaswal shows that such republics were known as far back as 1000 B.C.36 "According to the Aitareya, the greater portion of Aryan India, North, West and South, was covered with republican constitutions. Only in the middle, in the Midland, monarchy prevailed. Further east in the Prachi (with its centre in or about Magadha), there was according to this Brahmaṇa the constitution called Samrajya which literally means 'a combination of Monarchies,' i.e., a Federal imperialism around one dominant member."37

I feel tempted to tell you here how a master mind viewed the Spirit and Form of our Indian polity. I am just thinking of Sri Aurobindo, the superman, the seer, the sage, who was one of the few rare individuals, amongst the millions of citizens of the land, whom we would unhesitatingly choose if and when we would be called upon to describe the cultural capital of our nation, if and when the world would feel the need of evoking the part our nation can play in it—who was one of the rare few who have contributed something to universal progress, who have risen by their talent and genius above their fellow countrymen, above their fellowmen of the world and have thus gained a place for themselves at the head of humanity, at the extreme spearhead of civilization.

Sri Aurobindo could not see eye to eye with those scholars who attempted to read modern ideas and types of democracy and parliametary system into the past of India. According to him the democratic element discernible in Indian polity and the institutions presenting a certain analogy to the present-day parliamentary form were in reality "India's own kind and not at all the same thing as modern parliaments and modern democracy".
The Indian System', says Sri Aurobindo, 'began with a variation of the type generally associated with the early history of the Aryan peoples; but certain features have a more general character and belong to a still earlier stage in the social development of the human race'. 'It was a clan or tribal system, Kula founded upon the equality of all the freemen of the clan or race; this was not at first firmly founded upon the territorial basis, the migratory tendency was still in evidence or recurred under pressure and the land was known by the name of the people who occupied it, the Kuru country or simply the Kurus, the Malava country or the Malavas. After the fixed settlement within determined boundaries the system of the clan or tribe continued, but found a basic unit or constituent atom in the settled village community. The meeting of the people, visah, assembling for communal deliberation, for sacrifice and worship or as the host for war, remained for a long time the power-sign of the mass body and the agent of the active common life with the king as the head and representative, but long depending, even after his position became hereditary, on the assent of the people for his formal election or confirmation. The religious institution of the sacrifice developed in time a class of priests and inspired singers, men trained in the ritual or in possession of the mystic knowledge which lay behind the symbols of the sacrifice, the seed of the great Brahminic institution. These were not at first hereditary, but exercised other professions and belonged in their ordinary life to the general body of the people. This free and simple natural constitution of the society seems to have been general at first throughout Aryan India.'

Sri Aurobindo then pointed out how 'the later development out of this primitive form followed up to a certain point the ordinary line of evolution' but how at the same time it 'threw up certain very striking peculiarities that owing to the unique mentality of the race fixed themselves, became prominent characteristics and gave a different stamp to the political, economic and social factors of Indian civilisation.'

In delineating this peculiarity Sri Aurobindo says: 'The hereditary principle emerged at an early stage and increased constantly its power and hold on the society until it became everywhere the basis of the whole organization of its activities. A hereditary kingship was established, a powerful princely and warrior class appeared, the rest of the people were marked off as the caste of traders, artisans and agriculturalists and a subject or menial caste was added, perhaps sometimes as the result of conquest but more probably or more commonly from economic necessity, of servants and labourers. The predominance from early times of the religious and spiritual tendency in the mind of the Indian people brought about at the top of the social system the growth of the Brahmin order, priests, scholars, legislators, repositories of the sacred lore of the Vedas, a development paralleled elsewhere but
here given an unequalled permanence and definiteness and supreme importance. In other countries with a less complex mentality this predominance might have resulted in a theocracy: but the Brahmans in spite of their ever-increasing and finally predominant authority did not and could not usurp in India the political power. As sacrosanct priests and legists and spiritual preceptors of the monarch and the people they exercised a very considerable influence, but the real or active political power remained with the king, the Kshatriya aristocracy and the commons."

Need I remind you how very striking this peculiarity is: Power is of its very essence indefinitely expansive: it can hardly be checked except by colliding with another power.

Of all social, moral and spiritual problems that of power is the most chronically urgent and the most difficult of solution. "Craving for power is not a vice of the body, consequently knows none of the limitations imposed by a tired or satiated physiology upon gluttony, intemperance and lust." "Growing with every successful satisfaction, the appetite for power can manifest itself indefinitely, without interruption by bodily fatigue or sickness." "Moreover, the nature of society is such that the higher a man climbs in the political, economic or religious hierarchy, the greater are his opportunities and resources for exercising power." 41

No infallible method for controlling the political manifestations of the lust for power has yet been devised.

In ancient Indian body politic "a peculiar figure was the Rishi, the men of a higher spiritual experience and knowledge, born in any of the classes, but exercising an authority by his spiritual personality over all, revered and consulted by the king of whom he was sometimes the religious preceptor and, in the then fluid state of social evolution, able alone to exercise an important role in evolving new basic ideas and effecting direct and immediate changes of the socio-religious ideas and customs of the people." 42 They can, however, be hardly accused of pursuing a policy to gratify any power-lust of their own.

Sri Aurobindo says 42: "It was a marked feature of the Indian mind that it sought to attach a spiritual meaning and a religious sanction to all, even to the most external social and political circumstances of its life, imposing on all classes and functions an ideal, not, except incidentally, of rights and powers, but of duties, a rule of their action and an ideal way and temperament, character, spirit in the action, a dharma with a spiritual significance. It was the work of the Rishi to put this stamp endurably on the national mind, to prolong and perpetuate it, to discover and interpret the ideal law and its practical meaning, to cast the life of the people into the well-shaped ideals and significant forms of a civilization founded on the spiritual and religious sense. And in later ages we find the Brahminic schools of legists attributing their codes, though in themselves only formulations of
existing rule and custom, to the ancient Rishis. Whatever the development of the Indian socio-political body in later days, this original character still exercised its influence, even when all tended at last to become traditionalised and conventionalised instead of moving forward constantly in the steps of a free and living practice.

"The political evolution of this early system varied in different parts of India. The ordinary development, as in most other countries, was in the direction of an increasing emphasis on the control of the king as the centre, head and unifying factor of a more and more complex system of rule and administration and this prevailed eventually and became the universal type. But for a long time it was combated and held in check by a contrary tendency that resulted in the appearance and the strong and enduring vitality of city or regional or confederated republics. The king became either a hereditary or elected executive head of the republic or an archon, administering for a brief and fixed period or else he altogether disappeared from the polity of the state. This turn must have come about in many cases by a natural evolution of the power of the assemblies, but in others it seems to have been secured by some kind of revolution and there appear to have been vicissitudes, alterations between periods of monarchical and periods of republican government. Among a certain number of the Indian peoples the republican form finally asserted its hold and proved itself capable of a strong and settled organization and for a long duration lasting over many centuries. In some cases they were governed by a democratic assembly, in more by an oligarchical senate. It is unfortunate that we know little of the details of the constitution and nothing of the inner history of these Indian republics, but the evidence is clear of the high reputation they enjoyed throughout India for the excellence of their civil and the formidable efficiency of their military organization."

It is needless to remind you that a close connection subsists between the degree of development of Societies and their circumstances and form of Government. At its origin a society invariably contains all the three elements from the seeds of which monarchy, aristocracy and democracy spring. The initiative of the individual, imparting its first impulse to the formation of every society, leaves behind it memories of a monarchical character, and furnishes the principal argument in justification of monarchies arising at subsequent periods. The champions, heroes and martyrs of the early periods of a society are the germs from which its future aristocracy sprouts: for, although privilege is at first conferred on personal merit only, yet, in the course of centuries of struggles, the traditions of leadership create a compact class, which frequently grows to be exclusive. Finally, the mass of believers and followers, who by their accession constantly enlarge the sphere of the society, form its democratic element: an element which, during its most primitive phases, manifests voluntary devotion to individuals who become conspicuous in the common ranks, and
which only subsequently, and by slow degrees, awakes to the consciousness of its rights and obligations when more complicated situations arise, consequent upon the contentions between different societies. This element can only attain power when the relations and the structure of a society have become quite clear and translucent, and when no difficulty is experienced in generally recognising, and adopting its general conditions of existence. Hence, the government of every society is, in its course of transition, at first of a monarchical character; it is aristocratic during the periods of the struggles of development, especially in the case of greater vehemence and obstinacy of these struggles. The moment, however, an aristocratic society becomes dominant, it changes again imperceptibly into a monarchical society. It needs a uniform leadership as long as the question of reconciling the new and old conditions of its existence is not yet determined, and its principle requires an individual representation and expression in confronting those new members who have been unwillingly forced into its sphere. The habit of, and the taste for, strict discipline, which has been acquired during protracted struggles have prepared the minds for obedience and feelings of loyalty towards a person embodying the sovereignty. Again, the government of a society that has been dominant for a long time becomes democratic, but it degenerates into despotism whenever its existence is threatened by the springing up of a new society. At all events, by dangers of an unknown character, and amidst circumstances of difficulty, a tendency is produced to resort to extreme measures in order to avert peril; thereby mistrust of all the modes hitherto practised in the direction of the affairs of the society is engendered, and the ground prepared for the absolute rule of some single individual.

There seems to be ample indication that the Vedic societies were conquering ones. It is this conquering society which is the first to exhibit cosmopolitan features. Within its boundaries the interest of consanguinity and of local contiguity cease to be dividing barriers, whilst they still do service as the bonds of subordinate social spheres. The family appears, for the first time, as a strictly civil institution, and the first instance of dissociation of the communal affairs from those of the state are here to be met with.

I need not dwell upon how gradually a society may be driven to a state of widespread discontent driving every element of the society which still possesses energy, and in which the last spark of capacity for initiative has not yet died out, to look about for new objects to satisfy the higher claims of the human spirit. Gradually this may give rise to indifference to the cares of the world and disregard of material profit and advantages in the highest strata of the society as well as in the lowest. It may indeed be said that from the very moment of the formation of the society of conquest, the assertion of the independence of the intimate world of inward individual sentiment over the
social ties becomes a characteristic phenomenon. These aspirations, among persons of a higher position who are troubled by no worldly care, assume the shape of philosophy, and among the oppressed classes, that of religion. But since every ideal pertaining to philosophy is unavoidably aristocratic, and since there are necessarily but few philosophers, and since to soar above the world and to remain indifferent to worldly goods on mere theoretical grounds and without any ulterior hope, can, from the nature of things, be but the privilege of the cultured, philosophy could never extend beyond certain limits. It could never furnish a principle for the formation of an independent society. If, therefore, Philosophy, the refuge of the enlightened and prominent classes of the conquering and predatory society, proved but ill-adopted for the diffusion of a new life, and if, in consequence of soaring above the level of the conceptions of the people and above the circumstances of its life, it could not become the central interest and bond of organization of a new society it was natural that men should look about for a substitute for furthering a fresh development.

Thus, that other and twin view of life, the roots of which had struck much more deeply into the various layers of the people, and reached down into the soil from which its remotest traditions and most unalterable sentiments had sprung, presented itself in order to take the place of philosophy. This was religion with faith in a world beyond, with trust clinging to the superhuman, with hope founded upon future life.

Dr. Berolzheimer, whose work it has been said, "enables us to ascend to a height from which we can see law as an everpresent part of an overflowing stream," says, while writing on the origin of oriental civilization, "that closely connected with the religious and philosophical views of the Vedic Aryans are certain fundamental positions in regard to the Philosophy of Law, which, in turn, became the antecedents of later legal and ethical developments among the Greeks and Romans. Later, while dealing with the "Bondage of of Mediaevalism," the same author declares that the concept of Pax, the immortal contribution of Augustine to Mediaeval Philosophy, was derived from the Vedic Rita. "What Augustine sets forth as Pax appears to have been a possession of all cultures. We may recall, that to the Vedic Aryans, the central philosophic conception of organized nature was 'rites', which included the natural and human order. A closely related conception was dharma. The Greeks emphasizing the creative energy made of 'Rita' φύσις and of 'Dhama' θεμίς.

The Romans, through the Greeks, derived from rata, their central conception ratum, ratio, 'naturalis ratio' and Augustine christianized rita into Pax ".
According to Dr. Berolzheimer the Vedic conception of law has gone far in the making of the world's legal philosophies; and these Vedic conceptions must have influenced much the formation of our law, the Vedas always being looked upon as its sources, by Manu, by Gautama, by everyone of our Hindu law-givers.
LECTURE VI

THE RIGVEDIC PHILOSOPHERS OF LAW

In pointing out how the ancient civilization of the Graeco-Roman world began to decline in the Fifth Century before Christ instead of in the Second Century after Christ as assumed by Gibbon, and how it died not by murder but by suicide and how that act of suicide was committed before the Fifth Century B.C. was out, Prof. Toynbee observed:

"It was not even the philosophies which preceded Christianity that were responsible for the death of the ancient Graeco-Roman civilization. The philosophies arose because the civil life of that civilization had already destroyed itself by turning itself into an idol to which men paid an exorbitant worship. And the rise of the philosophies, and the subsequent rise of the religions . . . . was something that happened after the Graeco-Roman civilization had already put itself to death. The rise of the philosophies, and a fortiori that of the religions was not a cause; it was a consequence."

Dr. Pulszky in his "Theory of Law and Civil Society" says that when a community reaches a stage in which life as afforded by it precludes all high hopes and the mere bettering of the individual lot presents itself as an object of a subordinate and precarious nature, men's minds revert to their inward aspiration, and the striving after individual perfection and the ordering of life according to ideal considerations are left as the only worthy and appropriate tasks. Hence, indifference to the cares of the world and disregard of material profits and advantages more and more gain ground in the highest strata of the society as well as in the lowest; and it may, indeed, be said that from the very moment of the formation of the society of conquest, the assertion of the independence of the intimate world of inward individual sentiment over the social ties becomes a characteristic phenomenon. These aspirations among persons of a higher position who are troubled by no worldly care assume the shape of philosophy, and, among the oppressed classes, that of religion.

According to Dr. Pulszky, philosophy is the result of methodical ways of thinking already developed in the communal society. Its appointed task, whilst the society is flourishing, is, in the first place . . . . normal perfection in individuals.

We have seen how Sri Aurobindo speaks of the Vedic Rishi as 'a peculiar figure', "the man of a higher spiritual experience and
knowledge, born in any of the classes, but exercising an authority by his spiritual personality over all, revered and consulted by the king of whom he was sometimes the religious preceptor and in the then fluid state of social evolution able alone to exercise an important role in evolving new basic ideas and effecting direct and immediate changes of the socio-religious ideas and custom of the people.” It was indeed “a marked feature of the Indian mind that it sought to attach a spiritual meaning and a religious sanction to all, even to the most external social and political circumstances of its life, imposing on all classes and functions an ideal, not, except incidentally, of rights and powers, but of duty, a rule of their action and an ideal way and temperament, character, spirit in the action, a dharma with a spiritual significance.” It was the function of the Rishi “to put this stamp enduringly on the mind of the people, to prolong and perpetuate it, to discover and interpret the ideal law and its practical meaning, to cast the life of the people into well-shaped ideals and significant forms of a civilization founded on the spiritual and religious sense.”

It is yet to be found out why the Vedic Indians turned to philosophy. We know that “when a rising class is inconvenienced by existing law or custom it appeals from custom to reason and from law to nature—just as conflicting desires in the individual sparkle into thought.” Philosophy is to history as reason is to desire: in either case an unconscious process determines from below the conscious thought above.

We do not now know why? But this much is certain that we have Vedic philosophers of law and Vedic philosophy of law. At least our Vedic literature seems not to be destitute of anticipations of legal Philosophy. It has been truly said that such Philosophy should be, not an appendix to the law, but rather a prospectus.

We have seen how Dr. Berolzheimer says “that closely connected with the religious and philosophical views of the Vedic Aryans are certain fundamental positions in regard to the philosophy of law, which in turn became the antecedents of later legal and ethical developments among the Greeks and Romans.”

We are to find out these Vedic philosophers, Rishis, who thus supplied these fundamentals to the world.

We start with Aghamarshana, the great Vedic Rishi, to whom has been ascribed the authorship of the three Riks in the 190th Sukta of the 10th Mandal of the Rigveda, giving in a nutshell his theory of creation of the universe, and pointing out in what relation law stands to the rest of it. Aghamarshana selects ‘Creation’ itself as the god to whom he addresses his Riks and says:—

\[ मृत्त च सर्वं चारीदातपत्रोक्ष्यजायत \]
\[ तली राष्ट्रयजायत ततः समुद्रों अर्पवः \]

\[ Rigveda, X. 190. 1 \]
"From Fervour kindled to its highest, Eternal
Law and Truth were born:
Thence was the Night produced, and thence
the billowy flood of sea arose."

समुद्राद्भवति संबतुरस्रो अजुमयत।
अष्ट्रोत्राणि विदधितस्य मिष्टो कवी॥

Rigveda, X. 190. 2.

"From that same billowy flood of sea the Year
was afterwards produced
"Ordainer of the days and nights, Lord over
all who close the eye."

मूर्यचंत्रमसी धाता वषापूवर्तस्यलय्यत्।
दिवं च पृथिवीं चालिकायमयो स्वः॥

Rigveda, X. 190. 3.

"Dhata, the great Creator, then formed in
due order Sun and Moon
He formed in order Heaven and Earth, the
regions of the air, and light."

This is all that Aghamarsana has to say and it is indeed difficult
to elicit anything from this as to his exact philosophical position
though it is not possible to deny it at least the character of an attempt
to think things out to their ultimate significance, to find their substantial
essence in the scheme of reality and thereby to unify all truth and reach
that highest of all generalizations which constitutes philosophy. He,
however, seems to think that the fundamental principle of things and of
knowledge is to be found always outside the mind, and in the object. He
seems to contemplate an objective order of things outside man, a subs-
stance beyond and behind a mode. A mode is any individual thing or
event, any particular form or shape, which reality transiently assumes;
it is only a form of some eternal and invariable reality lying behind and
beneath it. Of course substance does not mean the constituent material
of anything: it is that which eternally and unchangeably is, and of
which everything else must be a transient form or mode. According
to him fervour is the first creative principle from which eternal order,
harmony and truth, श्रुतिः and सत्यं were born. श्रुतिः existed, in the
opinion of Aghamarsana, even prior to diversity, even as the whole
exists prior to the parts. From these again originated the night which
in its turn produced water and from water originated Samvatasara or
the Time principle. This Samvatsara produced in due order the Sun,
the Moon, the heaven, the earth, the firmament and light and
originated the days and nights. This samvatsara is the lord of life
and death.
Two points in this theory are worthy of special note: a naturalistic conception of the universe and the emphasis laid on the eternal existence of law and order in the same. Rita is conceived of as eternal, not a history, not in any servitude to historic fact. The universe is a succession of events, but its ground is the timeless ‘now’ of the divine ‘rita’. Rishi Aghamarshana recognizes a reality beyond time and change and this reality is ‘rita’. Rita existed before ‘time’.

Nothing is known of the life history of this Aghamarshana except that Sayana describes him as son of Madhuchhanda and grandson of Viswanittra. It is rather difficult to discover Sayana’s authority for thus fixing the parentage of this Rishi. Whether or not Sayanacharya was correct in tracing the parentage of this philosopher, it will indeed be interesting to notice here the philosophy of Madhuchhanda, as may be gathered from his contributions in the Vedas. Madhuchhanda does not give us any theory of creations. But we hear him saying

ऋतेन मित्रावस्था दृष्टावृहत्सृष्टा।
ऋतु दृष्टमातार्य॥

Rigveda, I. 2. 8.

‘‘ Mitra and Varuna, through Law, lovers and cherishers
of Law,
Have ye obtained your mighty power.’’

From this we almost fancy we get an idea of his philosophical view on the point. However powerful these Mitra and Varuna might have been, even prior to them and more powerful than they must have been ऋतं the order, the harmony. Even the gods, powerful as they were, were subject to this eternal order, ऋतं. ऋतं as the ordering principle of universal life is imbued with human purpose conducing to human benefit; and consequently Madhuchhanda’s gods, who are born of this ऋतं have a purposive birth. Each god is born with his nature, स्वभा, and this, his nature, is to do good to us human beings.⁶⁸

आदेश स्वभामनु पुत्रंमंत्रभेरिणे।
दश्या नाम जनिष्य॥

Rigveda, I. 6. 4.

‘‘ Thereafter they, as is their wont, through off the state of babes unborn,
Assuming sacrificial names.’’

These gods are तुविज्ञाता उष्क्य—

cācā tā मित्रावस्था तुविज्ञाता उष्क्या।
दर्शन दशाते अपस॥

Rigveda, I. 2. 9.

‘‘ Our sages, Mitra-Varuna, of wide dominion, strong by birth,
Vouchsafe us strength that worketh well.’’
Madhuchhanda seems to have approached the conception of one 
God in India. His Indra is the god of all gods and while the smaller 
deities have duties assigned to them, Indra alone rules over this universe—

य एकस्वर्षणिनां वसुनामिरजयिति।
इन्द्रः पंच विनितानां॥

"Indra who rules with single sway men, riches
and the five-fold race
Of those who dwell upon the earth"
It was this Indra who placed the sun in its proper sphere with a
purpose—"Indra hath raised the Sun of high in heaven that he may
see afar."

इंद्रो दीर्घो चक्षस वा सूर्य रोहयद्विति।

Rigveda, I. 7. 3.

If the sun gives us light it is because it was so ordained by Indra.
Any one desirous of any manner of success in life must please Indra by
prayer; because it is Indra "which aideth those to win them sons, who
come as heroes to the fight, Or Singers loving holy thoughts."

समोहे वा य आश्वत नरस्तोत्रत्व शनिता।
विप्रासो वा वियायवः॥

Rigveda, I. 8. 6.

Nay, even this Indra it is who determines our action and engages us
to do this or that for our good.

अस्मान्तु तत्र चोद्येण्य राये रमस्वतः॥
तुविन्धुम्य यशस्वतः॥

Rigveda, I. 9. 6.

"O Indra stimulate therto us emulously fain for wealth
And glorious, O most splendid one."
Indra. who is as vast as the ocean is the most powerful of all:

इंद्र विष्णा अवीच्छ्वतस्मुद्भव्यचतं गिरः॥
रघीतम रघीनां वाजानां सत्पति पति॥

Rigveda, I. 11. 1.

"All sacred songs have magnified Indra expansive
as the sea,
The best of Warriors borne on cars, the Lord.
the very lord of strength"

But even this Indra was born, and born with his nature: and if
he indeed does anything for human benefit, it is because that is his
nature, because he has done so all along, because his nature ordains
him thus."
'Crusher of forts, the young, the wise, of strength unmeasured, was he born.
Sustainer of each sacred rite, Indra, the Thunderer much extolled.'

Unlike the Semitic God, the god or gods of Madhuchhanda are not whimsical and despotic. According to both the father and son, अदृश्य, the organised principle of the universe and the divine ordering of earthly life, seems to be the primordial principle. The appearance of sun and moon, of day and night, is strictly regulated; and this harmony, this ordering of everything in the universe is what they name as अदृश्य. Even their gods are subject to this universal ordering principle and as such the legal provisions ordained by such gods cannot bear the stamp of the purposeless command of a wilful despot, but must be the product of some fixed principle, the principle impregnated, according to Madhuchhanda, with purpose for human benefit.

It must have been noticed that, besides अदृश्य Madhuchhanda speaks of स्वभाव to mean nature or conformity to nature. This is indeed a philosophical conception having an important bearing upon the philosophy of law. स्वभाव is conceived of as the quality or derivative of its genesis and growth. स्वभाव is the order or constitution of nature —nearly as a generating or creative force, developing spontaneously from the energy inherent in material objects, without the intervention of wilful extraneous agencies. Madhuchhanda indeed seems to lay special stress on this element in the universe. Even the conduct of his gods must be in conformity with their स्वभाव.

Herein, one might seek for the germ of the later doctrine, which enjoined everyone to remain in the position appropriated to him by the society, without a desire to have it changed. This might have formed the strongest buttress in the great edifice of caste, serving the basis of all the arguments for the same, the propounders conceiving of justice in terms of the concord created by caste. To this might also be traced the germ of the doctrine expounded by Manu, the great law giver, where he says:

सर्वस्यायं तु सर्गेयं गुर्जरष्मि स महाभूति।
मुखवाहुप्रम्प्रजानां पृथक् कर्मोद्धमक्कल्यत्॥

"For the sake of preserving this universe, the Being supremely glorious allotted separate duties to those, who sprang respectively from his mouth, his arm, his thigh, and his foot."
“Through the fear of that genius all sentient beings, whether fixed or locomotive, are fitted for natural enjoyments and swerve not from duty.”

We have seen how short has been the contribution of Aghamarshana relating to the matter under discussion. It is indeed too short to enable us to follow his views with any degree of clarity. But even this meagre contribution secured for him a place in the Hindu legal philosophy so much so that every law-giver of a later age, enjoined on sinners the recitation of these three Riks of Aghamarshana as an expiatory measure.

“Or, he shall be released from all deadly sins, if he fast three days, with his members mortified, and thrice a day plunge into water, thrice repeating the text aghamarshana.”

There is nothing to be wondered at in this insistence of the Hindu law-givers on the acquisition of a knowledge of Aghamarshana Sukta by every citizen. For, to them, ignorance was at the root of every sin, the light of knowledge dispelling the darkness in the mind, which, thus clarified, always turned towards the pole of virtue. The Aghamarshana Sukta, by giving us the genesis of the universe imparted a knowledge of an idea of a supreme legal ordering reigning all over, and impelled man to tune himself to that ordered infinite, making him thus follow, of himself, the right and true path of virtue.

For these early Vedic Rishis, the cardinal problem seems to have been how to conform the soul to the reality : the solution suggested was knowledge, self-discipline and virtue. As yet they are not awakened to the realization that evil is inherent in human nature. As yet they did not turn their mind to subduing reality to the wishes of man.

There are indeed two primary methods of working at life which stand somewhat in contradiction to each other. The one is the method of regarding the system of nature as the final reality to which man must adjust himself. The other regards nature from the human perspective as either chaos or a meaningless order from which man will be freed either by his reason or by some unity and power within him higher than reason.

The evil in the human situations arises, rather, from the fact that men seek to deny or to escape prematurely from the uncertainties
of history and to claim a freedom, a transcendence, and an eternal and universal perspective which is not possible for finite creatures.

We might notice here a few of the hymns of which the authorship is attributed to Rishi Vishvamitra, the grandfather of Aghamardhana. Rishi Vishvamitra questions:

को अः वेदे कर्ष प्र कोष्ठेऽद्बाँ अछ्या पया का समेति।
दरुश्च एषामव्वरमा नवासि परेषु या गुंधोषु नवेषु॥

Rigveda, III. 54. 5.

"What pathway leadeth to the gods.  
Who knoweth this of a truth, and  
who will now declare it?  
'Seen are the lowest dwelling places only,  
but they are in remote and secret regions.""

We shall presently see how another philosopher uses almost the same expression with perhaps a similar sceptic mentality. He conceives of law as inviolable; "Not men of magic skill, not men of wisdom impair the god's first steadfast ordinances."

न ता मिन्नति मातिनो न धीरा व्रता  
देवानां प्रयया प्रमाणा।

Rigveda, III. 56. 1.

And if his god is one for whom "the heavens, the growing plants, the living water, the forest trees preserve their wealth," he is also one who makes a gift of all these to the mortals:

पूर्वार्थ निश्चितो मत्येषु पुरूषु वशुरी वृक्षवी निर्भवति।

इद्राय बाह्य अन्धकृच्छायो राय रक्षति जीर्यो वनन।

Rigveda, III. 51. 5.

"Abundant are the gifts he gives to mortals:  
for him the earth bears a rich store of treasures.  
The heavens, the growing plants, the living waters,  
the forest trees preserve their wealth for Indra."

Rishi Vishvamitra's gods seem to have missions in their divine life and they all work for human benefit. One of these gods, Mitra, "when speaking stirreth men to labour", Mitra "sustaineth both the earth and heaven" and this Mitra "beholdeth men with eyes that close not.  
To Mitra bring with holy oil, oblation."

मनो जनाम्यवतति कृष्ण्यो मनो दानारापूर्विनीत वातू।

निच: क्रृष्णिनिग्रिबोणं चतु प्रमाणाम हृद्य वृत्तिमिर्युहूहो॥

Rigveda, III. 59. 1.

And because Mitra is so useful for human purpose it is ruled: मिन्नति  
हृद्य वृत्तिमिर्युहूहो।

It may be observed here in passing that Vishvamitra is a name round which a tradition has gathered that in revolt to existing world order he created his own universe. Man is, indeed, capable of creating
a world of his own by drawing the elements from within himself and
no longer from his surroundings or from his experience. "It is not a
question of utilitarian adaptation, but of an absolutely new intellectual
construction in which material reality is only a pretext. Behind the
facts perceptible to his senses, behind his discernible universe, man
invents another conceptual universe which becomes indispensable to
enable him to think, to interpret his experience, and eventually to
dominate the first. Just as he has created redoubtable, living entities
behind fire, thunder, lightning; just as he has created a 'magic' of
the hunt, so he creates a magic of ideas and he ends by attributing a
greater reality to this universe born of his brain than to that in which
his animal ancestors evolved. This is the strictly human realm, the
realm of pure ideas, of morals, of spiritual ideas, of aesthetic ideas.
Man willed by God, invested by Him, through the gift of conscience
and of liberty, with a part of responsibility in the progress of evolution
has, within the limits of his means, the power to emulate his Creator
by himself creating an immaterial world, forbidden to animals, and
which, in the future, must absorb his interests and his efforts." 9

The next Rishi, whose philosophy we shall have occasion to refer
to, is Prajapati Parameshthi, the great Vedic Philosopher who has
been so much admired by Max Muller, and whose expression the great
Orientalist declares to be "one of the happiest attempts at making
language reflex the colourless abstractions of the mind'"—"expressions
at which language blushes, but her blush being a blush of triumph." 10 This Vedic Philosopher gives us his theory of creation
at some greater length and says:

नानवदसिशे सहसिनवदानी नातीशे नौ व्योमा परो यत्।
किमाभ्रीवि कुषकस्य शर्मस्थ: फिमासीद्यहु गम्रियमसु।

Rigveda, X. 129. 1.

"There was not non-existent nor existent;
there was no realm of air, no sky
beyond it.
What covered in, and where; and what gave
shelter? Was water there, unfathomed
depth of water?"

न मृगुराषीवभें न ताहिः न रात्रिा बाहु फाशीत्यात्तेषिः।
आनीवषातन स्वयमा तदकें तत्स्माद्यायन्वयन परः किं चनाट्सु।

Rigveda, X. 129. 2.

"Death was not then, nor was there aught
immortal: no sign was there, the days
and night's divider,
That One Thing, breathless, breathed by its
own nature: apart from it was nothing
whatsoever."
Rigveda, X. 129. 3.

"Darkness there was: at first concealed in darkness this All was indiscriminately chaos,
All that existed then was void and formless:
by the great power of warmth was born the unit."

Rigveda, X. 129. 4.

"Thereafter rose Desire in the beginning,
Desire, the primal seed and germ of spirit,
Sages who searched with their hearts' thought
discovered the existent's kinship in the non-existent."

Rigveda, X. 129. 5.

"Transversely was their severing line extended:
what was above it then, and what below it?
There were begetters, there were mighty forces,
free action here and energy up yonder."

Rigveda, X. 129. 6.

"Who verily knows and who can here declare it,
whence it was born and whence comes this creation?
The Gods are later than this world's production.
Who knows then whence it first came into being?"

Rigveda, X. 129. 7.

"He, the first origin of this creation, whether
he formed it all or did not form it,
Whose eye controls this world in highest heaven, he verily knows it or perhaps he knows not."

So there was nothing in the beginning; neither सत् nor असत्,
neither the existent nor the non-existent, neither the ens nor the non-ens, nothing beyond the great एक:, the pure abstract immovable
being having no beginning nor end, but always one, indivisible and perfect. *Parameshthin* not only differs from Aghanmarshana but even goes a step further.—He does not rest content with describing merely the process of creation, but sings of the force impelling towards the same. काम: was the impulse behind, कामस्तद्य समवर्तत, काम: was the final cause, अविष्कृतो रेतः प्रथम वदासीत्. The difference between the two sages is indeed fundamental. They disagreed as to where to seek for the root principles of the things and of knowledge: Aghanmarshana sought for it in the object, something extraneous; while *Parameshthin* found it in the mind, in the world of thought, and said:

सतो बौद्धसति निरविद्यद्वि प्रतीथ्या कवयो ननीया।

*Rigveda*, X. 199. 4.

It is, however, beyond our purpose to discuss the entire philosophical position of this Vedic sage. The sage seems at times to be given to scepticism, and yet we find him already conscious of the need of faith and as such tending to mysticism. The position assumed by him is indeed that of a naturalist, and his conception of nature was entirely dynamic. To him the principle of movement for development is inherent in matter itself. However that be, one thing having important bearing on our subject must be noticed in his philosophy, and this is that even his great *Eka* was attended with स्वाधा, with nature and was not a whimsical wilful being. The world evolves from this immanent energy of nature, स्वाधा, and the movement as a whole is self-determined.

In the philosophy of this *Rishi* again we can trace the Vedic conception of evolution. Progress in the universal evolution of entities is the divergence from the simple to the complex, from formless homogeneity to varied heterogeneity, accompanied by the greatest similarity and profoundest correlation of parts. The philosopher expresses this by saying that from the one, the complete whole, before the existence of any sub-divisions of the great unit, there came a division and separation of parts, which tend to develop into distinct and concrete units or wholes developed to their fulness. The philosophy of this *Rishi* indeed evinces that noble illumination of human soul which brought into religion a perception of the unity of God and of the consequent brotherhood of mankind.

*Parameshtthin* preaches the doctrine of relativity of human knowledge, and admits the existence of the unknown hinting at the same time a possibility of the unknowable. "‘Who verily knows,’” he questions, "‘and who can here declare it, whence it was born and whence comes this creation?’" Nay, even "‘the gods are later than this world’s creation. Who knows then whence it first came into being?’" The problem must, therefore, remain unsolved: the origin must remain unknown. But is it knowable at all?

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May be, the supreme deity who controls this world knows it. But it is also possible that even he does not know: यदि वा न वेद. It is unknown and unknowable.

This principle of the relativity of our knowledge had a limiting effect on action as well as on thought; and we shall see later how it supplied the metaphysical basis of duty and ultimate guarantee of right. It must, however, be remembered that Parameshtkin was not alone in preaching this doctrine of relativity. We have already seen how Rishi Vishvanuitra cherished the same view: it will be observed later how some of these Vedic philosophers even went further and declared न वि जानामि यदिवेदसिद्धम्. The consciousness does not comprehend itself. To the consciousness of the unknown and of the unknowable is thus added something which for consciousness is intellectually obscure.

Indeed every theory of the origin of the universe drives us into 'inconceivabilities'. All ultimate religious ideas are logically inconceivable. All ultimate scientific ideas are equally beyond rational conception. When we try to comprehend what is matter we reduce it to atoms, then find ourselves forced to divide also these atoms and ultimately come to the dilemma of two inconceivables: either matter is infinitely divisible or there is a limit to its divisibility. At last we find in matter nothing but force—a force impressed upon our organs of sense, or a force resisting our organs of action; and we are driven to enquire what force is. Turn from Physics to Psychology—from the matter to mind and consciousness—and we come to face greater puzzles.

"Ultimate scientific ideas are all representations of realities that cannot be comprehended." The common sense of these obscurities is the relativity of all knowledge.

Man, it is said, is capable of creating an unreal world by drawing the elements from within himself and no longer from his surroundings or from his experience. "It is not a question of utilitarian adaptation, but of an absolutely new intellectual construction in which material reality is only a pretext. Behind the facts perceptible to his senses, behind his discernible universe, man invents another conceptual universe which becomes indispensable to enable him to think, to interpret his experience, and eventually to dominate the first."

It will be illuminating here to listen to the expressions of similar doubts of a modern mind and similar creative efforts.

Dr. Cyril E. M. Joad, a great thinker and philosopher of our age, while giving us an illuminating account of his sojourn from the illusory freedom to the Christian imperative, says:

"Man's attitude to the universe seems to have passed roughly through three stages. First, there is the attitude of the savage set in a world that he is unable to understand, living his life at the mercy
of natural forces whose genesis escapes detection and whose workings evade control. His universe is not only mysterious, but forbidding, and to lessen the mystery, to diminish the menace, he peoples it with semi-human figures of his own imagining, gods and goddesses, spirits good and bad, demons and devils. These, too, for the most part, are fearful, but, unlike the impersonal forces of nature, they are also accessible. They can be propitiated, for example, and bribed.

"Secondly, there are the triumphant advance of science and the apparently limitless possibilities of explanation opened up by the scientific method. The first effect of the discoveries of the sciences was to reduce the importance of man by enlarging the scale of the known universe, so that life in general and human life in particular seemed no more than a tiny glow, flickering uncertainly in the vast immensities of geological time and astronomical space. The discoveries of science further exhibited—or were thought some fifty years ago to exhibit—the universe as essentially material and human life as a sort of outside passenger travelling across a fundamentally alien environment. Point and purpose, design and intention were eliminated so effectively that even such a doughty champion of science as H. G. Wells declared in consternation: 'Unless there is a more abundant life before mankind, this scheme of space and time is a bad joke beyond our understanding, a flare of vulgarity, an empty laugh braying across the mysteries.'

"But though they made man small and the universe large, the scientists, during their period of explanatory triumph which reached its climax some seventy years ago, did make it comprehensible; so much so that Professor Tyndall, in his presidential address to the British Association in 1874, could look forward to a day when science would be able to envisage and explain all that has happened and all that will happen in terms of ‘the ultimately purely natural and inevitable march of evolution from the atoms of the primeval nebula to the proceedings of the British Association for the Advancement of Science.’ As for life and mind, T. H. Huxley, lecturing to the British Association, did not hesitate to assert that ‘the thoughts to which I am now giving utterance and your thoughts regarding them are expressions of the molecular changes in the matter of life.’

"Today that phase has passed and we know too much about the universe to think that we know anything for certain. We have, indeed, entered upon a third phase in which mystery has returned with a vengeance and the physical universe shows itself to be not only queerer than we understand but, it may be, queerer than we can understand. Each fresh advance in human knowledge reveals a greater unknown. Nor, on reflection, is this surprising. If you think of knowledge as a little glowing patch, a circle of light, set in an area of environing darkness, the darkness of the unknown, then
the more you enlarge the circle of the known, the more also you enlarge its area of contact with the unknown.'"

Dr. Joad then takes up the picture of the physical world as offered by the astronomers and points out that in Mr. Hoyle's picture of the universe particularly striking are the conceptions of the receding galaxies and the continuous creation of matter. "As new galaxies condense out of what Mr. Hoyle calls 'inter-stellar gas,' they begin to recede. While the nearest are moving at the rate of several million miles an hour, the further they recede the faster they move, so that the most distant observable through our biggest telescope are travelling at the rate of over two hundred million miles an hour. This consideration leads to the concept of the limits of the observable universe. At a sufficient distance from us the galaxies will be moving at the speed of light itself. This means that 'the further a galaxy is away from us the more its distance will increase during the time required by its light to reach us,' so that, if it is far enough away, its light will never reach us at all. The limiting distance is, in fact, about two thousand million light years. The largest of our telescopes, which is on Mount Palomar, can penetrate to about half that distance; that is to say, about half the theoretically observable universe is already under our observation. Double that area, and the limit of what the human eye can or could observe is reached. Beyond that limit lies what?" 12

Dr. Joad 13 suggests that "So far as the word of astronomy goes, the answer can only be 'much the same as lies on this side'. 'Theory,' says Mr. Hoyle, 'requires the galaxies to go on for ever, even though we cannot see them. That is to say, the galaxies are expanding out into an infinite space.' It seems likely enough. It would be an odd and very arbitrary coincidence if the limits of the universe coincided with the limits of our possible observation. The universe, then, is not finite as the theory of relativity was at one time thought to suggest, but infinite.'"

The recent development of the radio-astronomy again brings in the delusion of explanatory triumph. The scientists are again hoping to 'see the end of all things' with the help of the radio-telescope. As Dr. Martin Ryle of the Cavendish Laboratory, Cambridge University, gave out recently, this radio-telescope 'will probably be able to penetrate space a billion or more light years in every direction beyond the greatest range of the world's largest optical telescopes. The potentialities of the radio waves may indeed be infinite. "Head-on collisions between two galaxies three to four milliard light years away may be picked up by their radio-radiations" as explained by Dr. Ryle. This is certainly something which the orthodox telescope cannot achieve. These collisions are catastrophic events which have been occurring perhaps since the creation of the Universe. The Swan galaxy which has been in a recent collision, had already been, we are told, through
500 such collisions in the past. Radio-astronomy may give the world a chance to know of future catastrophes in space whether or not we want to know of such cosmic disasters which lie ahead and thus to add to our panic. But with all these prospects of extending our knowledge, we are sure to be led to more extensive unknown, to more limitless beyond.

According to Dr. Joad the astronomy may not be entitled to have the last word in this matter.

"For at this point the philosophers put a question: can we think of space that extends for ever? I doubt if we can. The concept is not, as it seems to me, one that the mind can grasp. Can we, on the other hand, think of it as coming to an end, as in fact bounded? Again we cannot. For if it is bounded it must be bounded by something; it must, so to say, have an edge. And beyond that edge lies what? Either something or nothing".

Rigveda, X. 123. 1.

Dr. Joad points out that "the something, if it is a physical something—and it is difficult to see what else could be a boundary to space—must itself be in space; and 'nothing' is equivalent to empty space. Here, then, is a contradiction." 

The learned philosopher then observes that in this situation philosophers have traditionally made two inferences. Either they have said space is not wholly real since it will not in the last resort bear thinking about but leads the mind into contradictions and reality cannot be self-contradictory, or, our minds are not capable of fully grasping it."

Coming then to the conception of 'Time,' Dr. Joad says: "Similarly with time. Twenty years ago Sir James Jeans presented us with a graphic picture of a universe which was gradually running down in accordance with the second law of thermo-dynamics. Throughout the universe processes of energy diffusion due to the breaking down of the radio-active atoms were everywhere observable. Nowhere was any instance of the contrary process observed. When all the energy originally stored in the radio-active atoms had been equally diffused, there would be no more happenings of any kind in the universe which would come to rest in a universal stagnation. The process of ubiquitous energy diffusion seemed to entail an act or process of energy concentration. If the contents of a parcel are being continuously and uniformly scattered, somebody must have done the parcel up. Hence Jeans was led to postulate an act or series of acts of creation. 'Everything,' he wrote, 'points with overwhelming force to a definite event or series of events of creation at some time or times not infinitely remote.'
"But this picture, too, has changed. A series of ingenious arguments leads Mr. Hoyle to conclude—and the view is apparently widely shared—that what is apparently empty space is not, in fact, empty but contains inter-stellar gas which simply appears. The inter-stellar gas is extremely thinly spread—the average rate of appearance amounts to no more than the creation of one atom in the course of about a year in a volume equal to St. Paul's Cathedral. Nevertheless, the total rate of appearance for 'the observable universe alone is about a hundred million million million million tons per second.' The inter-stellar gas condenses to form galaxies, the galaxies, stars, and from the explosions of the stars are born planets. Thus it is the creation of inter-stellar gas that drives the universe forward. It also invalidates Sir James Jeans's picture. The inter-stellar gas consists of hydrogen atoms. 'Hydrogen is being steadily converted into helium and the other elements throughout the universe and this conversion is a one-way process.' Unless new hydrogen were being continuously created, it would all have been used up long ago. Nevertheless, the matter of the universe today still consists almost entirely of hydrogen. If, Mr. Hoyle notes, 'matter were infinitely old, this would be quite impossible.' (Yet it doesn't seem incompatible with Jeans's notion of the creation of the universe at a time not infinitely remote.)

"Also if matter were infinitely old, and new matter were not constantly being created, all the galaxies would long ago have receded beyond the limits of our possible observation. Hence Mr. Hoyle's conclusion that 'material simply appears—it is created.' This creation, he thinks, has been going on and will go on endlessly. For this reason, if we were to make a film of the universe from any position in space, and the film were run indefinitely, a spectator, however long he watched, would notice a 'general sameness' about it. The universe would also look the same, if the film were run backwards. For whether we run the film backwards or forwards, the large-scale features of the universe remain unchanged.' The conclusion is that time, like space, is endless in both directions. And the philosopher's comment is the same: can you, he asks, conceive of endless time? For my part, I do not think that I can. Can you, then, he asks again, think of time coming to an end? Again my answer is that I cannot. For at or after the end of time there would assuredly be either something or nothing. The something would require to be in time and there is no such thing as nothing. Also the ending would itself presumably have to occur at a time so that the end of time is also in time which means, presumably, that it is not, after all, the end. Time, in fact, will bear thinking about even less than space."

Dr. Joad asks: "What are we to make of Mr. Hoyle's conception of the continuous creation of inter-stellar gas?" "The universe, it seems, is being continually furnished with fresh raw material in the
shape of hydrogen atoms. Where does this material come from? Apparently from nowhere. It just appears. But if it comes from nowhere it is created and, if created, uncaused. For creation means the appearance of something where there was nothing, or, alternatively, the occurrence of events for which there can be assigned no causes of which the occurring events can be regarded as the effects. It contradicts, therefore, the assumption upon which physical science, as we have known it, has been built, the assumption, namely, that nature is an orderly scheme in which each event is the determined result of the set of conditions that produced it. If uncaused events can occur, if, indeed, they are occurring all the time, what becomes of the claim of science to enable us to calculate and predict, a claim which, one would suppose, can be sustained only in so far as there are no uncaused events, since these must, from the very nature of the case, evade calculation and prediction?" 17

This is where the claim of science to explain the universe stands. Science does not bring us nearer to any bedrock. The Vedic doubts and difficulties remain where they were and as they were.

Parameshtin’s conception of initial ‘nothing’ and of the existence of ‘mind’ before ‘material’ seems to have been the basis of Manu’s theory of the universe. I shall discuss this more in detail while dealing with the theory of Manu.

It must have been noticed that this Rishi refers to at least one more philosophical view of the creation prevalent in his time when he says सतो मृत्युमसति निरविद्वैद्वैद प्रतीयम कवयो मनीषा। Indeed this theory of being originating from non-being is actually found to be the philosophy of Rishi Vrihaspati who declares that देवानां युगे प्रथमेष्टत: सद्यायतं और देवानां पूर्वेऽ युगेष्टत: सद्यायतं। (Rigveda, X. 72. 3 and 2.)

Vrihaspati begins with the promise that he would give us the particulars of the origin of gods—gods who are so much praised in hymns:

देवानां ने वयं जान्म प्र बोधाम किपयथा।
उक्ष्ये तु शरमानेष्य: ये: परस्पारं ते युगे।।

Rigveda, X. 72. 1.

"Let us with tuneful skill proclaim these generations of the gods,
That one may see them when these hymns are chanted in a future age."
and then proceeds with his theory saying:—

ब्रह्मस्मि सं कर्म इववभमत।
देवानां पूर्वेऽ युगेष्टत: सद्यायत॥

Rigveda, X. 72. 2.

"These, Brahmanspati produced with blast
and smelting like a smith,
"Existence, in an earlier age of Gods, from
Non-existence sprang."
"Existence in the earliest age of Gods, from
Non-existence sprang,
Thereafter were the regions born. This sprang
from the Productive Power."

\textit{Rigveda, X. 72. 3.}

"Earth sprang from the Productive Power:
the regions from the earth, were born
Daksha was born of Aditi and Aditi was
Daksha's Child."

\textit{Rigveda, X. 72. 4.}

"For Aditi, O Daksha, she who is thy
Daughter was brought forth
After her were the blessed gods born sharers
of immortal life."

\textit{Rigveda, X. 72. 5.}

"When ye, O Gods, in yonder deep close—
clasping one another stood,
Thence, as of dancers, from your feet a
thickening cloud of dust arose."

\textit{Rigveda, X. 72. 6.}

"When, O ye Gods, like Yatis ye caused all existing
things to grow.
Then ye brought Sûrya forward who was
lying hidden in the sea."

\textit{Rigveda, X. 72. 7.}

"Eight are the Sons of Aditi who from her
body sprang to life
With seven she went to meet the Gods: She
cast, Mârtânda far away."
"So with her Seven Sons Aditi went forth to
meet the earlier age,
She brought Mārtāṇḍa thitherward to spring
to life and die again."

It is indeed difficult to understand the theory of Vrihaspati,
specially his theory as to the birth of सत् from असत्. Sayana, while
commenting on the Second Rik, says :

**Vide Sayana's Commentary of Rigveda, X. 72. 2.**

and distinguishes सत् from असत् by the former’s having नाम and
रूप. According to Sayana Vrihaspati’s असत् is identical with
ब्रह्म, with Aditi,

**Vide Sayana’s Commentary of Rigveda, X. 72. 2.**

and is the अविष्टरां, the generating cause of the gods. With Vrihaspati
then, non-ens was the very world ground, the primal and permanent
foundation of all ens, of all that is existent, and of all that is possible
and yet non-existent. His ‘non-ens’ was the genetrix of even law
and order in the universe.

It is not possible to say with certainty what really was
Vrihaspati’s Aditi. There is a great deal of controversy over the real
meaning of this term and it must be confessed, it is difficult to ascertain
the import which Vrihaspati wanted to assign to it. Prof. Max
Muller is of opinion that ‘Aditi is in reality the earliest name invented
to express the Infinite; not the Infinite as the result of a long process
of abstract reasoning, but the visible Infinite, the endless expanse
beyond the earth, beyond the clouds, beyond the sky.’

Vrihaspati’s hymns seem to presuppose several others and it may
not be quite out of place to mention here a few other theories that
seem to have been current at the time when Vrihaspati composed his
hymns. For this purpose we shall first refer to a Sukta ascribed to a
Rishi, Trita by name, who constructed nature wholly and entirely
out of a material principle believing that this first element was found
in Fire, which animates and destroys everything and which generates
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movement and variety in the universe, and into which everything merges in the end. According to Trita:

असेच सच्च परमेव योगमदक्ष्य सत्तरकितेतपस्ये।
असल्हेन न: प्रथमजा कृतस्य पूर्वेः आयुनि बृहभवधं खेतुः॥

Rigveda, X. 5. 7.

“Not Being, Being in the highest heaven, in Aditi’s bosom and in Daksha’s birth place,
Is Agni, our first-born of Holy Order, the Milch-cow and the Bull in life’s beginning.”

Fire, according to Trita, was thus the primal cause, being, of course, born of and being indeed its first born.

कृतस्य हि वर्तनय: सुजातामिठो वाजय प्रदिव: सचंते।
अधीवससे रोदसी वातसाने पूर्तेः उबूवृवृवधापने मधूः॥

Rigveda, X. 5. 4.

“For tracks of Order and refreshing viands attend from ancient times the goodly Infant
Wearing him as a mantle, Earth and Heaven grow strong by food of pleasant drink and fatness.”

सत नमोः: कवयस्तन्सस्तातामामहामिदमयंह्युरे गतुः।
आयोंस्कतं उपमस्य नींदे पथों विवाक घरण्यु तस्थौ॥

Rigveda, X. 5. 6.

“Seven are the pathways which the wise have fashioned; to one of these may come the troubled mortal,
He standeth in the dwelling of the Highest, a Pillar, on sure ground where paths are parted.”

Similarly Rishi Kutsa looks upon Fire as the generating cause of everything:

तूच्च परा च सदन रूढीचं जातस्य च जायमानस्य च कां।
सतवस गोपं भवतस्च भूरेवेधा अर्नि धारयन्द्रबिन्दोः॥

Rigveda, I. 96. 7.

“Now and the old home of wealth, the mansion of what is born and what was born aforetime,
Guard of what is and what will be hereafter,—the Gods possessed the wealth bestowing Agni.”

Parasara, another sage of the early age, declares Fire to be the Primal cause, prior even to कृतं and quickener of it. He declares that “Strong is the thought of law, the law’s behest; all works have they performed; he quickens all”;
All men are joyful in thy power, O God,
that living from the dry wood thou art born.

The one common feature in the Philosophy of these Rishis is
that everyone of them traces the evolution of this universe to some
primal substance, to a substance, active, self-causal and not
determined by anything but itself. This substance is the *natura
naturans* and the universe is the *natura naturata*.

But in Treta we first light upon a new idea, which was then just
dawning, but which later on developed into a recognised principle in
Hindu Law. The idea of law as the recorded wisdom of the sages of
old, who had discovered the divinely approved course of conduct by a
process of philosophical divination is first conveyed by Treta in his
saying:

`sat māyāḥ: kavyasatāḥ:`

Rigveda, X. 5. 6.

This theory we shall have occasion to discuss more particularly
at a later stage of this work; but it will not be out of place to
mention here, that even with the earlier Sages we find, in a somewhat
nebulous state, the theory that it is at least discoverable by the Sages
and the search properly lies m one’s own heart.

`satayo bhumisaat nirvibudhādhi pratiṣṭhāya kavyayo mānīṣa:`

Rigveda, X. 129. 4.

If the object of philosophy is to present a regular system with
regard to the essential conditions of knowledge and of the existence of
things, then what we have already said of some of the Vedic Rishis
would amply demonstrate the fact that these Vedic Aryans were
philosophical thinkers. Here we might name another ancient Rishi,
Dirghatamas by name, who contributed much to the philosophy of the
universe; and the trend of whose thought also, like that of Prajapati
and other Vedic sages, is towards the idea of a single absolute and self-
subsistent principle which is infinite in the sense of being inexhaustible
power; and in his opinion all finite things are products of the
self-evolution of correlated factors of one universal system and plan and
the world, therefore, is a unity.
The single, absolute, self-subsistent principle according to Dirghatamnas is Fire. Dirghatamnas recognizes three forms of Fire, the Sun, the lightning and the fire, and says:

'अयो वामस्य पवित्रस्य होतुतस्तस्य भात्ता मध्यमो अस्त्यस्तः।
तृतीयो भात्ता शुद्धो अस्वात्मापन्य विशेषति सत्तुषः॥

Rigveda, I. 161. 1.

"Of this benignant Priest, the brother
midmost is air, all-pervading
The third is he whose back with oil is sprinkled.
Here I behold the chief with seven male children."

He is of opinion that the Sun is the oldest of the three and is the first
cause. This Sun, held up and propelled by its inherent force, by its
स्वभा goes backward; and clad in gathered and diffusive splendour
travels without stoppage within the worlds.

अनश्चये तुरातूर जीवमेंजुद्धुबं मध्य आ पर्वधानां।
जीवो मृत्युं चरति स्वभामिरमत्यों मय्यं नायोऽनि:॥

Rigveda, I. 161. 30

"That which hath breath and speed and life and motion
lies firmly established in the midst of the houses.
Living, by offerings to the dead he moveth, Immortal
One the brother of the mortal."

It is Agni, as ordained by Fire, that Varuna, Mitra, Aryaman and
the other minor deities perform their assigned functions:

अष्टं गोपामितिष्णमानसा च पराच परिपर्वतततः।
स सहारवी: स विषुवीववास आ वरीवति वृत्तेऽस:॥

Rigveda, I. 161. 31

"I saw the Herdsman, him who never stumbles, approaching
by his pathways and departing.
He, clothed with gathered and diffusive splendour, within
the worlds continually travels."

स्वभा हुमे वर्णो घुटनशो मिन्न: शाश्वम्य अर्थम्य तुदावः।
तस्मान्नु, कन्तु विश्वश्व विभुराम्य नेम: पारगृहायहः॥

Rigveda, I. 111. 3.

"By thee, O Agni, Varuna who guards the
law, Mitra and Aryaman, the
Bounteous, are made strong;
For, as the felly holds the spokes, thou
with thy might pervading has been born
encompassing them round."

And the Sun it is who impregnated everything with human
purpose for human benefit:

तथा: समुद्रा अधि वि कर्तवित तेन जीवित्ति प्रियवर्षतसः।
तः: अस्त्यस्तः तत्रित्वमुप जीविति॥

Rigveda, I. 164. 42.
"From her descend in streams the seas of water; thereby the world’s four regions have their being. Thence flows the imperishable flood, and thence the universe hath life."

रिग्वेद, I. 164. 41.

"Forming the water-floods, the buffalo hath lowed, one footed or two footed, or four footed, she, Who hath become eight footed or hath got nine feet, the thousand syllabled in sublimest heaven."

Besides what has already been said of him it must be noticed how this sage propounds the theory of the unity of the universe and declares the close family relationship of the मल्या: and अमल्या:—अमल्यें मत्वना सयोनि:

The most important contribution of this sage is contained in the hymn:

रिग्वेद, I. 164. 37.

"What thing I truly am I know not clearly:
Mysterious, fettered in my mind I wander.
When the first born of holy law approached
me, then of this speech I first obtain a portion."

There is, indeed, no point in human history in which human spirit is freed of natural necessity. But there is also no point at which the mind cannot transcend the given circumstances to imagine a more ultimate possibility. If, on the one hand, all human actions are conditioned by nature’s necessities and limitations, on the other hand, these are determined by an explicit or implicit loyalty to man’s conception of the changeless principles which underlie the change. "His loyalty to these principles prompts him to seek the elimination of contingent, irrelevant and contradictory elements in flux, for the sake of realizing the real essence of his life as defined by the unchanging and eternal power which governs it."

The difference in the attitude of various cultures towards history is determined by contradictory estimates of man’s transcendence over historical process including his final transcendence over himself.

The Rishi seems to lay much store by self-knowledge which, according to him, is the primal basis of all cognition. The sage indeed
discards the evidence of senses pointing out that they are not always true witnesses:

‘अपाध् प्राङ्गंति स्वदया गृहितांतोमल्यं भर्त्ते समीैः।
ता शाश्वता विपूरीता वियता न्यन्यं चिकृतुः। न च चित्त्वरस्यं॥

Rigveda, I. 161. 38.

"Back, forward goes he, grasped by the strength inherent,
the Immortal born the brother of the mortal.
Ceaseless they move in opposite directions! men mark
the one and fail to mark the other."

We shall here mention one more hymn of the sage which will
also go to substantiate what has already been said of him. The Rishi
tells us:

सन्तर्थगमि भुतान्य रेतो विष्णोत्तरं तत्रा विश्रमिणी।
ते धीर्मिति भर्तुः निपरिब्रह्म: परि भवति विश्रवः॥

Rigveda, I. 161. 36

"Seven germ s unripened yet are heaven’s prolific seed;
their functions they maintain by Vishnu’s ordinances.
Endued with wisdom through intelligence and thought,
they compass us about present on every side."

Rishi Dirghatamas is indeed a real philosopher. His problems begin
where popular certainty becomes certain. Where common opinion based
on immediate evidence or undisgressed tradition stops, there the methodic
doubt of the philosopher arises and begins its great and subtle
work. This doubt is all the more acute and pointed where the corresponding popular belief seems clear and obvious. It would scarcely
occur to a layman that ‘be-ing’ by itself might be an object of study,
that there could be any scope for doubt as regards ones ownself. But to a
philosopher doubt arises just about himself and he ponders “न वि जानामि
यद्वस्तममपि।” We shall discuss later how this doubt, how this ‘what
do I know’ idea may supply the genuine guarantee of right and furnish
the true basis for justice. Here we shall only note that from this confession of Dirghatamas that the subject is not completely comprehensive
by itself follows self-denial in which the agent in his action desires
nothing for himself but for another. This would give rise to the concept of duty.

Another important point that should be noticed in connection
with this Rishi is that he, like many other Vedic Rishis, speaks of Mitra
and Varuna as the two deities having special functions in connection
with law and order and says addressing them:

आ वं भूषस्तित्वयो जन्म रोहद्योऽऽण्डवः प्रवाच्यं ब्रुणः दक्षसे महे।
यदैवूमत्य भर्त्तयो यदवते प्र हृतया निम्या बीयथे अध्वरः॥

Rigveda, I. 161. 3.
"The Folk have glorified your birth, from Earth and Heaven to be extolled, ye strong ones for your mighty power.
Ye, when ye bring to singer and the rite, enjoy the sacrifice performed with holy praise and strength."

प्र सा विनिलिमुर या महि प्रिय स्वतःवानावृतमा भापयो बुधुन्तः
युवं दिवो बुधस्ते दक्खमांसु गानं न युवयुप युजनथे अपः इ

Rigveda, I. 151. 4.

"The people prospers, Asuras! whom ye dearly love:
ye Righteous ones, proclaim aloud the Holy law
That efficacious power that comes from lofty heaven,
ye bind unto the work as to the pole an ox."

आ वामुहाय केशिनीरन्मुत सित्र यत्र वशण गातुमवथः
अव तमाना सूजतं पिन्वलं धियो युवं विव्रस्य मममनानिरंगयः

Rigveda, I. 151. 6.

"The flames with curling tresses serve your sacrifice, whe re to
ye sing the song, Mitra and Varuna.
Send down your free will, prosper our holy songs: ye are sole Masters of the singer's hymn of praise."

युवरं यशः प्रथम गात्सरंजल स्वतावान मनसा न प्रयुक्तमु
भरति वां ममना संवता विरीक्षपता ममता वेसवाला

Rigveda, I. 151. 8.

"With sacrifices and with milk they deck you first, ye Righteous Ones, as if through stirrings of the mind.
To you they bring their hymns with their collected thought
while ye with earnest soul come to us gloriously."

युवं वस्त्राणि पीवसा वगाये युवोरहिण्ड्राम मनसा हृ सम्मः
अवातिरत्नम्नान्ति विवश स्वतेन मिन्तावरण वचेये

Rigveda, I. 152. 1.

"The robes which ye put on abound in fatness: uninterrupted courses are your counsels.
All falsehood, Mitra-Varuna! ye conquer and closely cleave into the Law Eternal"

अपादेतिः प्रथम च पदलोनं कस्तो मिन्तावरण विचेत
गर्मीं मारं भरस्य विवश ऋतुं पितस्यंहृ तिन तारीतः

Rigveda, I. 152. 3.

"The Footless Maid precedeth footed creatures. Who marketh, Mitra-Varuna, this your doing?
The Babe unborn supporteth this world's burthen,
fulfilleth law and overcometh Falsehood."

Whoever these Mitra and Varuna might be they are looked upon as divine administrators of law and justice; and it is important to note that however powerful they be they profess their own subordination to the law. Law is indeed that efficient power that comes from
lofty heaven as proclaimed by these twin deities and is supreme, being obeyed by even its promulgators. Dirghatamas is not alone to place law above the gods subordinating the gods themselves to it. These early sages always appreciated the truth that where the law is supreme, there alone the national well-being develops, commerce and industry flourish, and innate force, spiritual and moral, unfolds itself attaining full strength. Thus alone Law becomes the intelligent policy of power.

Rules and principles of justice ideally conceived transcends the more dubious and ambiguous social realities of living societies. This twofold character of ideal and real is even more dubious and apparent in the structures and systems, the organizations and mechanisms, of society in which these principles and rules are imperfectly embodied and made historically concrete.

A society certainly is not merely the order of a humanly designed legal system. The harmony of communities is not attained simply by the authority of humanly designed law. Law can hardly coerce the required vitality of life into order.

The social harmony of living communities is achieved by an interaction between the normative conceptions of law and morality and the existing and developing forces and vitality of the community. Usually the norms of law are compromises between the rational-moral ideas of what ought to be, and the possibilities of the situation as determined by given equilibria of vital forces. The specific legal rules are the instruments of the conscience of the community, seeking to subdue the potential anarchy of forces and interests into a tolerable harmony. They are merely explicit formulations of given tensions and equilibria of life and power as worked out by the unconscious interactions of social life.

All communities are more or less stable or precarious harmonies of human vital capacities. They are governed by power. But the power which determines the quality of the order and harmony is not merely the coercive and organizing power of government, but also the balance of vitality and forces in any given social situation.

The perennial importance of power in social organizations is based upon two characteristics of human nature. The one is the unity of vitality and reason, of body and soul. The other is the force of human sin, the persistent tendency to regard ourselves as more important than any one else and to view even a common problem from the standpoint of our own interest. This second characteristic is too stubborn to be checked with mere moral or rational suasion. The first guarantees that egoistic purposes will be pursued everywhere by everybody with all vital resources which an individual or a collective will may control. These Vedic Rishis sought to arm the social restraints upon these anti-social purposes with such resources as would not admit of much prospect of successful resistance.
We have already seen how, according to Prajapati, the varied heterogeneity evolved from formless homogeneity; and how again, according to Vrihaspati these parts were held together in the great primal element. Rishi Vishvakarman contributes to a similar conception of evolution when he says:—

चतुष्य: पिता मनसा हि धीरो धृतमने अजनसम्बन्धे।
वदेतता अबद्धतं पूर्व आचित्वादयथबिः अस्मेतं॥

Rigveda, X. 82. 1.

"The Father of the eye, the Wise in spirit, created both these worlds submerged in fatness.
Then when the eastern ends were firmly fastened, the heavens and the earth were far extended."

परो देवा परो यन्त्र वकित्वम् परो देवेनिरुस्त्रेण देवा।
क्रियद्वरम् प्रथम दधा आपो यज्ञ देवा: समस्यवतु विश्वे॥

Rigveda, X. 82. 5

"That which is earlier than this earth and heaven,
before the Asuras and the Gods had being.—
What was the germ primeval which the waters received
where all the Gods were seen together?"

तमिद्वरम् प्रथम दधा आपो यज्ञ देवा: समस्यवतु विश्वे।
अजस्य नाभावयेकम्पविः गतमिविस्मानि भूवनानि तथ।

Rigveda, X. 82. 6

"The waters, they received that germ primeval
wherein the Gods were gathered all together
It rested set upon the Unborn’s navel, that
One wherein abide all things existing."

Visvakarman completes Prajapati’s tenets by carrying the inquiry further than the so-called primal matter and giving us an abstract or metaphysical conception of god. He was not satisfied with the theory which traced the evolution of the universe to the first material substance endowed with an inherent power of movement. If water be the primal substance having inherent principle of change, we have yet to account for the source from which this water derived its being and by which it was supplied with the motive power, the generating principle. It did not satisfy his mind simply to learn तम आसीतमसा गृहं अभिति
प्रकेत सङ्केत सर्वमा द्रष्टा।
He enquired को अद्वित सदाय द्रष्टात द्रष्टात हि द्रष्टात।
Such scepticism is possible, says Visvakarman, only because
n तं विदाय स द्रष्टात जगत्यास्माय जगत्य चामुप उक्ष्याय अस्वरूपः चर्चित।

Rigveda, X. 82. 7.
Ye will not find him who produced these creatures!
another thing hath risen up among you.
Enwreapt in misty cloud, with lips that stammer,
hymn-chanters wonder and are discontented."

only because you cannot understand Him who has created this universe, because your mind has not acquired the capacity to understand him. And if we hear of various theories it is because नीःहरण प्रावता जल्या चायुधप उपफ्यासासवर्यति। (ibid.) because people through ignorance are given to various idle speculations, because they do and say just as they please. The idea of God is in reality innate in the human soul. Truly there must have been a creator of this universe; and He it was who created even that water of Prajapati Paramesthin.

This creator was विश्वकर्मा विमना आदिवाय वाहा विवाहो चरमों संदूक् (Rigveda, X. 82, 2) and the really learned sages can tell us where He is. According to this sage God is the primal cause of everything and is earlier than this perceptible universe. He must be conceived as existent, existing prior to all the cosmic forces; and the conception of Him again is the only possible solution to the great problem.

कि स्विन्यन क उ स वृक्ष आस वती धारापृथ्वी निष्टतकः।
मनोपिणी मनसा पृथ्वीदेव सत्वास्नातन्त्रञ्ज नानाष भारयन्।।

Rigveda, X. 81. 4.

"What was the tree, what wood in sooth produced it,
from which they fashioned out the earth and heaven?"

Ye thoughtful men enquire within your spirit
whereon he stood when he established all things."

He it is who is the creator of this universe and it is He who has ordained it. All questions, all queries as to the origin of this universe are indeed directed to Him.

यो न: पिता जनिता यो विधाता धारानि वेद भूगान्ति विष्वा।
यो देवानां नामधा एक एव तं संप्रसं सङ्गता यत्वत्या।।

Rigveda, X. 82. 3.

"Father who made us, he who, as Disposer, knoweth all races and all things existing.
Even he alone, the Deities’ name giver,—him other beings seek for information.”

This Creator, this God is, says Visvakarma, विवकर्म: and सापूकम. Sayana explains these by saying—
अवसेभस्मांक रक्षान्य। स विनेत्रले विववस्मिनिविवस्म शुक्लोप्यादकः सापूकम ॥

Vide Sayana’s Commentary of Rigveda, X. 81. 7.

Here we again come across the idea, already noticed in connection with some earlier sages, that, this Primal cause, this Creator or
God, had a purposive existence. He created the universe for 'our
good', for human benefit. If he is a 'blissgenerator', if he is a 'doer
of good', it is because he wants to preserve us, because it is His pur-
pose to be our Preserver. He realises this purposive existence, even
becoming one of his creatures, and coming among men on Earth, to
serve the purpose of an Archetype:

य इमा विश्वा भूवनाहि जुल्लूः पहोऽत। न्यमुद्तितानि न: ।
स आशिया इविष्ठिताच्छमानः प्रथमक्षद्वरां आ विवेष ॥

Rigveda, X. 81. 1.

"He who sat down as Hotar-priest, the Rishi, our Father,
offering up all things existing,—

He, seeking through his wish a great possession,
came among men on earth as Archetypal."

Herein seems to be the germ of later Hindu theory of incarna-
tion.

It is now time to name a Vedic Rishi who is well-known to
everyone having anything to do with the Vedas. There has indeed
been a great deal of controversy over Purushasukta and the one result
of all these controversies has been to make its author famous.

The desire to determine the first cause of the universe was indeed
very keen among the Vedic sages and it grew keener when sages like
Prajapati, Dirghatamas, Vrhaspati traced this first cause to some
primal material substance and declined to press the enquiry further,
doubting at the same time if such further enquiry would indeed lead
to any result. Such scepticism and moments of disconcertment were
soon followed by mysticism. Sages came forward emphasising the
need of faith and pushed on the search beyond all material substance
to one whose existence was only a matter of faith. We have already
seen how Visvakarma rested his faith on one Great Creator and we
shall presently see how Narayana also similarly looks up to that Great
One to explain the origin of this universe.

Narayana gives us sixteen Riks to explain the nature of the first
cause of this universe and says:—

सहवशीष्य पुरुषः सहवशीष्य सहवशीष्य ।
म भूमि विश्वसंतो यौवनचित्तादिशंगुल ॥

Rigveda, X. 90. 1.

"Thousands of heads hath Purusha, thousands of eyes and
thousands of feet.

On every side pervading the universe he fills the space
and beyond."

पुरुष एवेव सर्व यजुर्वं यज्ञ भव्यं ।
उत्तमवत्सयोपानौ यज्ञानातिरिहलि ॥

Rigveda, X. 90. 2.
"This Purusha is all that yet hath been and all
that is to be;
The Lord of Immortality which waxes greater
still by food."

रिग्वेदः, X, 90, 3.

"So mighty is his greatness, yea, greater than this is Purusha.
All creatures are one-fourth of him, three-fourths eternal life in
heaven."

रिग्वेदः, X, 90, 4.

"With three-fourths Purusha went up: one-fourth
of him again was here.
Thence he strode out to every side over what
cats not and what cats."

रिग्वेदः, X, 90, 5.

"From him Viraj was born: again Purusha from
Viraj was born,
As soon as he was born he spread eastward
and westward o'er the earth."

रिग्वेदः, X, 90, 6.

"When Gods prepared the sacrifice with
Purusha as their offering
Its oil was spring, the holy gift was autumn,
summer was the wood."

रिग्वेदः, X, 90, 7.

"They balmèd as victim on the grass Purusha
born in earliest time,
With him the Deities and all Sadhyas and
Rishis sacrificed."

रिग्वेदः, X, 90, 8.
"From the great general sacrifice the dripping fat was gathered up. 
He formed the creatures of the air, and animals both wild and tame."

\textit{रिग्वेदः, आ 90. 9.}

\"From that great general sacrifice Riks and Sāma hymns were born, 
Therefrom were spells and charms produced: 
The Yajus had its birth from it."

\textit{रिग्वेदः, आ 90. 10.}

\"From it were horses born, from it all cattle with two rows of teeth:
From it were generated kine, from it the goats and sheep were born."

\textit{रिग्वेदः, आ 90. 11.}

\"When they divided Purusha how many portions did they make? 
What do they call his mouth, his arms? what do they call his thighs and feet?"

\textit{रिग्वेदः, आ 90. 12.}

\"The Brahman was his mouth, of both his arms was the Rajanya made 
His thighs became the Vaisya, from his feet the Sudra was produced."

\textit{रिग्वेदः, आ 90. 13.}

\"The Moon was gendered from his mind, and from his eye the Sun had birth, 
Indra and Agni from his mouth were born, and Vayu from his breath."

\textit{रिग्वेदः, आ 90. 14.}
"Forth from his navel came mid-air, the sky was fashioned from his head; Earth from his feet, and from his ear the regions. Thus they formed the worlds."

\textit{Rigveda. X. 90. 15.}

"Seven fencing-sticks had he, thrice seven layers of fuel were prepared,
When the Gods, offering sacrifice, bound, as their victim, Purusha."

\textit{Rigveda. X. 90. 16.}

"Gods, sacrificing, sacrificed the victim: these were the earliest holy ordinances.
The Mighty Ones attained the height of heaven, there where the Sadhyas, Gods of old, are dwelling."

According to Narayana then not only every particular thing originates from Purusha, but also the Purusa Itself is identical with the sum-total of these created things. The One is also the whole; and as from this One everything, which is and which is to be, everything, mortal or immortal, was born, so again all these divisions and parts tend to develop unto one distinct and concrete unit, unto the whole developed to its fulness. The universe is the Infinite Creature of an Infinite Creator, who is infinite in His complications and in His sum.

Here we find the explicit view that God exists and is wholly immanent in the world. This view may take two forms which must be clearly distinguished. Either (i) God is, or, is identical with, the world, or (ii) He is wholly immanent in it in the sense that there is nothing of God outside the world, although not necessarily in the sense that there is nothing in the world which is other than God.

Our Vedic Rishis seem to conceive of God as being no other than the universe which He transcends: He is the universe or is, at any rate, its soul.

There may be some difficulties in the way of this view. It may encroach upon the significance of human individuality. But that is beside the point for our present purposes.

Philosophical problems arise when thought, based on the mass of separate data of particular and immediate appearances, begins to refer them to a single principle, which shows their fundamental unity and renders a harmonic and integral vision of the universe. The Vedic conception of the universe or nature is philosophic in the sense that it supposes and indicates the need born in human mind of
unification, of systematization of the multiplicity and variety of phenomena, according to some criterion. What distinguishes the idea of this great whole, called the universe, from that of chaos? Is it the idea of a real existence of the elements which the universe contains? No; for we can conceive of these same real elements existent but unformed and discordant, which can only constitute the idea of chaos. In what then does the distinction lie? In the idea of the ordered and harmonic disposition of existent things and forces by which a single animated and active whole arises. The idea of this system of things and forces, coupled with the idea of secret and energetic order, with which it animates and preserves, renovates and guides everything, is called nature. Philosophy does not consist in a simple sum or agglomeration of separate data. A man is not a philosopher because he has the greatest knowledge of phenomenal reality, or because he has made discoveries in that field; but because he has subjected sensible data to a new elaboration and considered it from a higher standpoint with a new meaning, the universal absolute meaning of something perhaps already known in its relativity and particularity. It is the duty of a philosopher not so much to extend his outlook to hidden and rare phenomena as to think unusual thought about what is visible to all.

"As a general rule," says Schopenhauer, "it is not the observation of rare and hidden phenomena through experimental research which makes for the discovery of important truths, but the observation of apparent and everyday phenomena. And so the problem is not so much to see what no one has yet seen, as to think that which no one has yet thought of what everyone sees."

We next pass on to a class of Rishis whose contributions to the Vedic thought will have a more direct bearing on the conception of law. Vanamdeva gives us a more detailed description of the Vedic conceptions of law, and says:

"Eternal law hath varied food that strengthens; thought of eternal Law removes transgressions. The praise-hymn of eternal Law, arousing, glowing, hath oped the deaf ears of the living."

"Firm-seated are eternal Law's foundations; in its fair form are many splendid beauties. By holy Law long lasting food they bring us; by holy Law have cows come to our worship."

_Rigveda_, IV. 23. 8.

_Rigveda_, IV. 23. 9.
"Fixing eternal Law he, too, upholds it: swift moves the might of Law and wins the booty. To Law belong the vast deep Earth and Heaven: Milch—Kine supreme, to Law their milk they render."

The sage indeed deifies नर्म and emphasises the fact that law must not only be composed of the true but also of the certain. Law is firm and immutable नर्म ने दश कथानिं सति। The Vedic Rishi does not recognize the flexibility of law. Indeed at such an age it could hardly be observed that law cannot stand still. The social interest in the general security led men to seek some fixed basis for an absolute ordering of human action whereby a firm and stable social order might be assured. Demand for continual new adjustments to the pressure of other social interests as well as to new modes of engendering security, consequent upon the changes in the circumstances of social life, was not yet felt.

नर्म is conceived as the organized principle of the universe and is indeed the lex eterna of the later Roman thought. As the ordering principle of earthly life it is imbued with human purposes and is for human benefit and exemplified in the flow of the rivers which fertilize the fields, in the cattle useful to man, in the institutions of family and of state, and in man’s sense of responsibility for his sins. True, some of the Rishis make it identical with Voluntas dei but this Voluntas dei is really the same as ratio in Dio cristens.

Even these short verses of this Rishi do not fail to point out what according to him is the true basis of law. Self-interest or egoism indeed is the starting point of his theory of law. If law is to be respected it is perhaps because that will enure to one’s own benefit, because नर्म यि शुश्रुषः सति, नर्मेन दीर्घिरियंत पूक्ष। But it must be said to the credit of these early Vedic philosophers that they do not at the same time fail to lay stress on the ethical foundation of law. Law embodies not only the principle of egoistic utility but also leads directly to order and harmony.

It is said that this Rishi tends to utilitarianism. But what is the measure of this utility? The Rishi himself asks:

Ka मयादा वयुता कद्र वापमच्छा गमेम रथबो न वाज।

Rigveda, IV. 6. 13.

"What is the limit, what the rules, the guerdon?
Like fleet-foot coursers speed we to the contest."
The knowledge of all these is only given to the gods and these gods must be asked: किनो अस्य द्विन्य च तक्ष्याचेतसु योत्तराः प्रम, so that our doubts, our ignorance being thus expelled we may not do anything blameworthy. अस्य रेकु पदेन न निधाना अगम्य।

"What is our wealth therefrom, and what our treasure? Tell us, O Jatavedas, for thou knowest, What is our best course in this secret passage: we, unreproached, have reached a place far distant."

Rigveda, IV. 5. 12.

Indeed these Rishis do not trouble themselves so much with the legal provisions as with the social order which again is viewed only as a part of the universal order.

A great part of the content of law is no doubt economic matter, because law is the measure, the proportion of advantages, utilities and wealth. It cannot fail to refer to advantages, but it does not necessarily refer to wealth and utilities in the strictest sense. There are indeed ethico-juridical relations which have nothing to do with wealth, interest and utility as objects, and to which cannot be ascribed any material value. It is indeed gratifying to note that such elements did not altogether escape the notice of these early Vedic Rishis so as to lead them to the error of preaching doctrines of mere utility.

With Vamadeva, Rishi Srutavid and Rishi Pavitra might be mentioned. Srutavid, while commencing the 62nd Sukta of the Fifth Mandala of the Rigveda says—

अर्थपितं भूवं च सूर्यस्य यज्ञा विमुक्त्यवन्।
दश शतां सह तत्त्वुलिके देवानां श्रेयं विमुक्त्यवन्येऽ।

Rigveda, V. 62. 1.

"By your high Law firm order is established there where they loose for travel Surya's horses. The hundred stood together: there I looked on this the most marvellous Deities' one chief glory."

And Rishi Pavitra indeed tells us what are the qualifications of one who is to be protector of law:

अशुस्या गोपा न दभयमुजुल्ली श पवित्रा हुयंतरा वदे।
बिन्द्राम्भाक्ष्मा भुवनांभि पवित्रमाण्युष्ट्यान्त्याघ्याति कत्मं अब्रताः॥

Rigveda, IX. 73. 8.

"Guardian of law, most wise, he may not be deceived; three Purifiers hath he set within his heart. With wisdom he beholds all creatures that exist: he drives into the pit the hated riteless ones."
More than once we have noticed that these Vedic Rishis conceived of gods as having only purposive existence, the purpose being human benefit. These gods were given the function of maintenance of law, if not of its creation also. The Vedic Rishis always placed these gods in close relation with the interests and aims of the members of an earthly society; and if the combined efforts of these members would be directed towards the work of advancing the cause of these gods, that would only redound to their own advantage.

It must have already been noticed from the Vedic texts cited in the previous pages that these Vedic Aryans, for reasons best known to themselves, associated Mitra and Varuna, the twin Gods, with the administration of Justice. It is indeed difficult even to surmise any political significance of this conception of duality of the dispenser of law and justice, and whatever might be said of this would be no better than mere conjecture. Here is a Rishi who addresses his hymns to these twin gods and says:

ता वां विश्वेश गोपा देवा देवेषु यजिया।
कु तलावाना यजसे पूरदमाणा॥

Rigveda, VIII. 25. 1.

"I worship you who guard this All,
God's holiest among the Gods,
You, faithful to the Law, whose power is
sanctified."

भिशा तना न रथ्या वर्ष्णो वर्ष्ण सुकृतः।
सनात्सुष्णाता तनया भृगवत्॥

Rigveda, VIII. 25. 2

"So too, like charioteers are they, Mitra and
sage Varuna,
Sons high-born from of old,
whose holy laws stand fast."

ता माता विश्वेदवस्मय भ्रमहस्वा।
मही जगनाविविथिः कृतावरी॥

Rigveda, VIII. 25. 3

"These Twain, possessors of all wealth,
most glorious, for supremest sway
Aditi, Mighty Mother, true to Law brought
forth."

मही भिषावश्वा सम्भाजा देवावसुरा।
कृतावानावसुरा घोषवो बृहत॥

Rigveda, VIII. 25. 4

"Great Varuna and Mitra,
Gods, Asuras and imperial Lords,
True to Eternal Law proclaim the high
decree."
"The Twain, who from the lofty sky seem to
look down on herds below;
Holy, imperial Lords, are set to be
revered."

Rigveda, VIII. 25. 7.

"They, true to law, exceeding strong,
have set them down for sovran rule:
Princes, whose laws stand fast, they
have obtained their sway."

Rigveda, VIII. 25. 8.

"Here this one God, (मित्र:) the Lord of men,
looks forth exceeding far and wide:
And we, for your advantage, keep his holy
laws."

Rigveda, VIII. 25. 16.

Prof. Griffith translated this last Rik as follows:

"We keep the old accustomed laws, the
statutes of supremacy,
The long-known laws of Mītra, and Varuṇa."

The second half of the above Rik seems rather to mean,

"The ordained law of Mītra and the long-
known ones of Varuṇa."

Prof. Griffith seems to be correct in not taking दीर्घचुंभ as an adjective of Varuṇa. But if we remember how the Rishi attempts to give us the separate functions of these two deities after narrating their joint nature, it would hardly be reasonable to take दीर्घचुंभ with व्रत.

To me the Rishi appears to place दीर्घचुंभ in contradistinction with व्रत, Varuṇa being the lord of दीर्घचुंभ and Mītra of व्रत Sayana while commenting on the next preceding Rik, says:—

मित्रस्य कर्मणाय। विस्तेर्दशिवां पालिष्ठान्योमित्रावस्थणायोरकोऽयं मित्र: पुरुष पुरुषिन
वहति चोरुक्षण च द्रव्यापीतेऽश्च वि च चन्द्र। स्वतेज्यम् परमसि। तस्य मित्रस्य व्रतानि
कर्मणि वो युम्मद्यमनुचरामसि। अनूचराम। कुमेऽ इत्यर्थः॥
Whatever that be, we have at least the idea of a proclaimer of law and perhaps also of sovereign power laying down rules having the force of law. We are indeed so accustomed to hear from the Western Scholars that Hindu kings never thought of possessing any legislative function, their sole duty consisting of collection of taxes, that this statement that even the Vedic Rishis could conceive of the legislative function of a sovereign authority would surely be looked upon with much suspicion, if not with total disbelief. But even the author of Manusamhita, a firm believer in the divine origin of law, could think of such a function of the king and say:

तस्मादम् यमिष्टेषु स अवस्थस्थराधिष्ठितः।
अनिश्चिताश्वायणिष्टेषु त धर्मं न विचार्येत्॥

Manu, VII. 13.

"Let the King prepare a just compensation for the good, and a just punishment for the bad: the rule of strict justice let him never transgress."

also

अयं द्विजेष्विभिष्ठिः पशुधरम्मो विवाहितः।
मनुश्याणांपि गृहवेष राज्यं प्रभावितं॥

Manu, IX. 66.

"This practice, fit only for cattle, is reprehended by learned Brahmans: yet it is declared to have been the practice even of men while VE'NA had sovereign power."

If indeed Rishi Voivasva formed conception of व्रत 'as distinguished from custom and representing only a special aspect of कृति, the Vedic philosophers of his days must be taken to have been alive to the element of variability in law. कृति of course is eternal and immutable. But Vrata is only a specialized embodiment of कृति, and, being ordained by different deities for different purposes, must be various. It is no wonder that even in those early days changeability of law could not altogether escape the notice of the observers of jural phenomena. For the very facts which give rise to such phenomena would hold in them the causes for the variations in law. In general the facts which determine the production of a phenomenon are also those whose variations necessarily determine the variations of the phenomenon produced. We may assume, with much plausibility, that to give rise to law, the presence of two sorts of social activity suffice, viz., economic pursuits and the family: and it is now admitted on all hands that a variation in these activities determines also a variation in the jural facts.

Before closing this chapter three more Rishis must be named, if not for anything else, at least for their names. I mean, Vasistha, Gautama and Manu. Indeed these names are so familiar to the students of Hindu law that even without stopping here to see whether
or not these Vedic Rishis had anything to do with the Smritikars of the same name, we might proceed to see what these sages have to say about law. But connections have in fact been traced between these Vedic Rishis and the Smritikars of these names. So far as Rishi Vasistha is concerned, Vasistha Dharmasutra is considered to be a work composed by his teachings. Vasistha indeed is a prolific contributor and we can only give here a very few of his numerous verses.

कया नो अग्ने वि वस: सुबृत्ति कामु स्वधामृणव: शस्यमानः।
कदा भवेम पत्य: सुदत रायो बंतारो व्हुटरस्य साधोः।

Rigveda, VII. 8. 3.

"How dost thou decorate our hymn, O Agni?
What power dost thou exert when thou art lauded?
When, Bounteous God, may we be lords of riches, winners of precious wealth which none may conquer?"

भिन्नतयो वयनै मामन्त्र शम तोकाय तन्याय गङ्गा।
मा सो मुजेमायुजानमेनो मा तत्क्रमेव वसवो यज्ञवर्धे।

Rigveda, VII. 52. 2.

"May Varuna and Mitra grant this blessing,
our Guardians shelter to our seed and offspring.
Let us not suffer for another’s trespass, nor do the thing that ye, O Vasus, punish."

शुची वो वृद्धा मन्त्रः शुचिनां शुचि हिनोम्यवर्यं शुचिम्यः।
शुचेन सत्यमृतसाय आयुष्णिजन्मानः शुचयः पावकः।

Rigveda, VII. 56. 12.

"Pure, Maruts, pure yourselves: are your oblations:
to you, the pure, pure sacrifice I offer.
By law they come to truth, the Law’s observers,bright by their ‘birth, and pure, and sanctifying."

ता भूरिानावृह वृह तेतू दर्य्यं रिपये मत्यायः।
वृह तयथा मिथभवणा पाथा वामयो न नाता दुरिन्दा ततेस्म॥

Rigveda, VII. 65. 3.

Bonds of the sinner, they bear many nooses: the wicked mortal hardly may escape them.
Varuna-Mitra, may your path of Order bear us o’er trouble as a boat o’er waters.
"O Varuna! the Sin (पप्रभृति:) is not due to anything innate in
the self: its originating cause is wine, anger, gambling (सूति) or अचिंति
(ignorance).

Even the elders lead the younger ones to sin. Even dream may
be prompter of sin."

रिग्वेदः, VII. 86. 3.

"Pain to know this my sin I question others:
I seek the wise, O Varuna! and ask
them.

This one same answer even the sages gave me,
Surely this Varuna is angry with
thee."

रिग्वेदः, VII. 87. 7.

"Before this Varuna may we be sinless—him
who shows mercy even to the sinner—
While we are keeping Aditi’s ordinances,
Preserve us ever more. Ye Gods,
with blessings."

रिग्वेदः, VII. 89. 5.

"O Varuna, whatever the offence may be which
we as men commit against the heavenly
host,
When through our want of thought we violate
thy laws, punish us not, O God, for
that iniquity."

रिग्वेदः, VII. 104. 9.

"Those who destroy, as is their wont, the
simple, and with their evil natures
harm the righteous,
May Soma give them over to the serpent, or
to the lap of Nirriti consign them."
THE RIGVEDIC PHILOSOPHERS OF LAW

One important conception is met with in the contributions of this Rishi—I mean the conception of निर्मूलति: as opposed to रहत्. निर्मूलति appears as the source of all evil; it is perhaps the rebellion of men against the gods—the presumption, the overstepping of the limits set to human conduct, whence arises the rebellious mood and the resulting wrong doing.

Rishi Vasistha thus conceived of an impersonal moral law operative in the universe such that if man transgressed its ordinances he would suffer. He does, in fact, transgress them by aspiring above his proper station, and aspiring to obtain too much happiness, too much knowledge or too much power. The gods are jealous and are constantly on the look out for behaviour on the part of man which suggests an endeavour to make himself equal to them by the acquisition of power which are in excess of those proper to his nature.

If the wrong is not caused by any conscious overstepping it may not, may it should not, according to Rishi Vasistha, be punishable.

It must be noticed here that Rishi Vasistha seems to be inclined towards the doctrine of free will. At least his is a doctrine far from absolute Fatalism. If, indeed, a being is fatally ruled by forces foreign to himself, with no active or causal participation by his personality, without his being in any measure a force or a factor in his own destiny, this being rises or falls passively in the moral medium. It is difficult to see what he would have in himself to give him a worth of his own, that could impart dignity to him, confer upon him a personal right or fix on him any responsibility. This is not the proper place to enter upon a discussion as to the true nature of free will, and whether psychologically free will is possible. The psychologists would indeed question whether it is possible to prove that at the very moment when we make a resolution, we might also resolve to the contrary; since in fact experience shows us only one complete action and not two. However that be, we are here concerned only with Rishi Vasistha's conception of free will; what, according to this Rishi, was the nature of this freedom. Rishi Vasistha does not indeed seem to preach that free will is reducible to the power of willing at one and the same instant, all else being equal, a thing or its opposite, good or evil, the greatest good or the least. He does not attribute to man the faculty of willing one thing when he might will the opposite. His will is not the power of choice without motive; on the contrary, it seems to consist of the power to choose among several different motives. If Rishi Vasistha stopped here his would scarcely have been a theory really distinguishable from the first. This conception also no doubt resolves itself, as one examines it more closely, into a freedom of indetermination. Suppose, indeed, that the two contrary motives or tendencies are equivalent forces; they will cancel each other, and the choice of the will, which is nevertheless made, is undetermined or without motive. If these tendencies, however, are not
equal, and I choose an act the incentives or motives for which are least strong with me, I act not only without motive, but against all motives. Finally, if the resolution is made in the direction of the most powerful tendencies in me then there is a motive; but it is impossible to see where the freedom of choice lies. It is indeed impossible with the same innate disposition, with the same nature, and in the same circumstances, to have made a diametrically opposite decision. Rishi Vasistha seems to have anticipated this difficulty and wanted to avoid it by pushing the problem back a stage and placing the choice between different motives. Nay, it is we who spontaneously produce the force of our motives or incentives and confer upon them variable and fluctuating powers in deliberation.

Vasistha’s man is indeed the living being created on the eighth day of the creation of this universe. Animals created during the first five days are not free. God ordered them to live, to grow and to multiply. These animals were given no choice. The same command is given by God to the first human couple on the sixth day. This is only an animal in human form. On the eighth day God creates another living being having also the human form and for the first time He uses a different language. God “breathed into nostrils the breath of life; and man became a living soul.” He thus gave him and him alone a conscience so as to make it possible for Him to “forbid this creature to obey certain intransgressible orders given to all the others, the physiological orders, the animal instincts.” He could do this because this new being is free, because his endocrine bondage can cease if he wishes.

The Rishi further recognizes powers external to the will which also may sometimes determine our action. For acts so determined we should not in any way be held responsible; or rather such acts should not be deemed as ours at all.

With this Rishi the negative ideas अनूत्त, असत्य etc. are as real as the positive ones, and the distinction between the two contraries is indeed knowable. The principle of Vasistha’s ethics seems to be the identification of virtue with knowledge and of evil with ignorance. Whoever knows the good cannot fail to pursue it; whoever does the evil is ignorant of the good. Later on Rishi Parasara is credited with the saying:

एक: शब्दृः द्विकसाचित्त शुद्धतानुभुत्वः प्रृष्टस्मि राजन्।
येनावृत्तः कुश्ले संप्रयुक्तो घोराणि कर्माणि सुदास्यनि। २९।।

Mahabharat—Saniparba—Chapter 290, Stoka 29.

It must have been noticed that these early Vedic Rishis conceived of gods as existing for the purpose of maintaining law. Rishi Vasistha’s theory, it has been observed, starts with the supposition of the essential excellence of the moral attributes of the elements a society. This supposition would mean a complete self-regulation of
the human relations, and would negative the possibility of any disturbance of the harmony subsisting, from all eternity, between the interests of the community. Such being the state of affairs, the theory of the aim of maintaining law would confine the gods, in point of fact, to the part of acting as a mere index of activity of the human society. Gods would thus be scarcely necessary, not being any operative organism. These Rishis, however, elevated the position of their gods by reserving to them all knowledge of law and also by emphasising the possibility of conflict arising through ignorance or through some extraneous evil influences. The significance of the existence of the gods lies in their capacity to prepare man not only for his existence on earth, but also for life beyond.

Rishi Gautama has been found responsible for at least supplying the basic principles of the doctrine preached in the Gautama Sutra and this is the place to cite and examine his hymns relevant to our purpose. The Rishi sings:

तन्हि नू यादसीमसीद्रों को बीवा परः।
तस्मिन्न्युस्मुन करुं देवा ओजासि सं दधुर्चालनू स्नारायं॥

Rigveda, I. 80. 15.

"There is not, in our knowledge, one who passeth Indra in his strength:
In him the Deities have stored manliness, insight,
power and might, lauding his own imperial sway."

यामश्रवी मण्डलस्वर द्यृढ़ विद्यमल्ल॥
तस्मिन्न्युस्मुन पूर्वपेयं उच्चा समपत्तावेंत्रु स्नारायं॥

Rigveda, I. 80. 16.

"Still as of old, whatever rite Atharvan,
Manus Sire of all,
Dadhyach performed, their prayer and praise
united in that Indra meet, lauding
his own imperial sway."

कस्वा महा अनुवध भीम आ वाढपे श्रवः।
भ्य ऋषव उपाक्योति निम्ने हृदस्यान्ति हृदस्योपव्र्जमावसः॥

Rigveda, I. 81. 4.

"Mighty through wisdom, as he lists, terrible,
he hath waxed in strength.
Lord of Bay Steeds, strong-jawed, sublime,
he in joined hands for glory’s sake
hath grasped his iron thunderbolt."

पश्चरयान्य प्रथमः पवस्ते ततः सूर्यं हस्तपा वेन आस्मिन॥
आ गा वाजुरनाना कायः सचा यमस्य जातसम्पूर्त्य याजामहे॥

Rigveda, I. 83. 5.
"Atharvan first by sacrifices laid the paths;
then, Guardian of the Law, sprang
up the loving Sun.
Usana Kavya straightway hither drove the
kine, let us with offerings honour
Yama’s deathless birth."

\textit{Rigveda, I. 84. 19.}

With veneration, passing wise, honouring
his victorious might
They follow close his many laws to win them
due pre-eminence, good in their own supremacy.

\textit{Rigveda, I. 90. 1.}

"May, Varuna with guidance straight, and
Mitra lead us, he who knows,
And Aryaman in accord with Gods."

\textit{Rigveda, I. 90. 2.}

"For they are dealers forth of wealth, and,
not deluded with their might
Guard evermore the holy laws."

\textit{Rigveda, I. 90. 6.}

"The Winds waft sweets, the rivers pour
sweet for the man who keeps the Law:
So may the plants be sweet for us."

\textit{Rigveda, I. 91. 3.}

"Thine are King Varuna’s eternal statutes,
lofty and deep, O Soma, is thy glory.
All-pure art thou like Mitra the beloved,
adorable, like Aryaman, O Soma."

\textit{Rigveda, I. 91. 4.}

"With all thy glories on the earth, in heaven,
on mountains, in the plants, and in the waters,
With all of these, well pleased and not in anger,
accept. O Royal Soma, our oblations"
Gautama's supreme deity, Indra, is one who is not passed by anyone else in strength; "There is not one who passeth Indra in his strength." This Indra derived his strength from the deities "who have stored manliness, insight, power and might in him." This Indra is स्वरूप, is the dominating power par excellence. Herein perhaps lies Gautam's conception of State as a unique and permanent organism which, guided by the collective will, sustains and puts in operation the general force. Might of the sovereign, according to this Rishi, is the result of wisdom, is the ultimate product of the wisdom of policy. Its existence presupposes a fixed domination recognized by Atharvan, by Manu, by all. It is also terrible in the sense that its control is calculated to be coercive.

This Vedic Rishi may indeed be taken as looking upon this whole universe as one big State with a sovereign power as its head deriving authority from the noble class, the deities, who "store their manliness, insight, power and might in the sovereign." According to him the sovereign power would be the sum-total of the forces and capacities of the society.

अस्थायपरम् युवां युवान: शुमे निमित्तला विद्वेधे शुचान्।

Rigveda, I. 167. 6.

"Upon their car the young men set the
Maiden wedded to glory, mighty in assemblies."

व: समांतः गद्धा समतुष सन्तृस्वरूपगोष्ट गच्छन्।
आविर्भूविको विद्वेध विविभाजन्तः अरति पयोप आयो।।

Rigveda, IV. 36. 4.

"Who gaineth precious booty in the combats, and moveth winning spoil, among the cattle;
Shown in bright colour, looking on the assemblies,
beyond the churl, to worship of the living."

पृक्षय वृणो अल्पस्य न ू सह: प्र ू वेष विद्वेध जातेवदस:।
वैव्वानस्य मातिनव्वसी वृणि: सोम इत पवली चाहरनये॥

Rigveda, VI. 8. 1.

"At Jatuvedas holy gathering I will tell aloud the conquering might of the swift red-hued Steer.
A pure and fresher hymn flows to Vaisvanara,
even as for Agni lovely Soma is made pure."

पृष्ठ लेतो नयत हस्तगृहालिना त्वा प्र वहं रचेन।
गृहस्नानं गृहस्नली यथासो वासनी तवं विद्वेधमा वदसि॥


"Let Pushan take thy hand and hence conduct thee;
may the two Aswins on their car transport thee,
Go to the house to be household's mistress
and speak as lady to the Vidatha."
"His, Agni, Gods and men have made their chief support,
who drinks the fatness and completes the sacrifice,
With kisses they caress the Grandson of the Red, like the
swift ray of light, the Household Priest of Dawn."

Rigveda, X. 92. 2.

"He who bears gifts unto the kings, true Leaders, he
whom their everlasting blessings prosper,
Moves with his chariot first in rank and wealthy
munificent and lauded in assemblies."

There are passages in the Atharvaveda also that refer to
Vidathu. We are told:

वायोऽ सन्तुविद्वानानि मन्मथे यावातमन्नतु विशादो यो च रक्षथः।
यो विद्ववश परिपूर्णौ वामृवधशाली नौ मुद्वचतमह्सः।

Atharvaveda, IV. 25. 1.

"I think on Vayu’s and Savitri’s Vidathas,
Ye twain who penetrate and guard the living world;
Yet who have come to be this All’s pervaders,
deliver us, ye two, from grief and trouble."

अष्टुमुखृत समदी गमिष्ठो मृथो जेता गुर्व एता योध्यः।
इन्द्रेण गुलो विधाना निविव्वशुध्वशाली हिष्टां याहि शीभम्।

Atharvaveda, V. 20. 12.

"Shaker of things unshaken, readiest comer to battles;
conquering foes, resistless leader,
Guarded by Indra, watching our assemblies,
go quickly, breaker of their hearts who hate us."

पुलिध्वि वनस्थाते य एष निविव्वशालिः।
यथा यमस्य सादन आसाते विधा वदन्।

Atharvaveda, XVIII. 3. 70.

"Oh Thee, give back again this man who is deposited
on thee,
That he may dwell in Yama’s home addressing the
assemblies here."

व्यामुष्टुम् तवं परम्यद्वार सहस्वारं विद्यं
स्वजिष्ठं तवेदू विष्णो वहृष्णा शीभमण्य।

Atharvaveda, XVII. 1. 18.
"Round Trita, round the spring with thousand current
thou goest, round the light-finding assembly.
Manifold are thy great deeds, thine, O Vishnu."

The worshipper who pours the juice for gathering
and assembly fit,
And yonder foes-destroying Sun, these have
the Gods designed of old.''

"I am the speaker here, not thou: speak
thou where the assembly meets.
Thou shalt be mine and only mine, and never
mention other damnes.''

Rishi Vojyasva similarly places law above the sovereign, saying:

They, true to Law, exceeding strong, have
sat them down for sovran rule.
Princes whose laws stand fast, they have
obtained their sway.''

To Manu however "sovereignty above law" will be an
acceptable idea.

Here we might mention Rishi Vasukra who cherishes a similar
idea of the gods, and according to whom the most powerful of the gods
can indeed make things proceed against their nature. According to
Vasukra, the gods can make "the fox steal up to the approaching-lion,
the jackal drive the wild boar from the brushwood, the hare swallow up
the opposing razor and the calf wax in strength and eat the bullocks:'"

Resolve for me, O singer, this my riddle:
The rivers send their swelling water backward:
The fox steals up to the approaching lion:
The jackal drives the wild-boar from the brushwood.''

In bringing this chapter to a close we shall only quote what
Pandit Max Muller says of these Vedic Rishis after a careful scrutiny
of their teachings. "There is," Max Muller says, "what Leibnitz
called 'Perennis quoedam philosophia,' a search after truth which was not confined to the schools of Priests or Philosophers. Its language no doubt is less exact than that of an Aristotle, its tenets are vague, and the light which it sheds on the dark depths of human thought resembles more the sheet lighting of a sombre evening, than the bright rays of a cloudless sun rise. Yet there is much to be learnt by the historian and the philosopher from these ancient guesses at truth." These ancient gestures establish beyond doubt that man has already reached a stage when besides looking at the universe he sees it and sees it with extraordinarily penetrating eyes.
LECTURE VII

LEGAL PHILOSOPHY IN RIGVEDIC INDIA

Hitherto we have had in view the exposition of the philosophic position of the Vedic Rishis, considered more or less from juridical side; and, it must have been observed that though these early Aryans conceived of the Philosophy of law very variously, there was one conception of it which was common to and foremost among them all. They conceived of law as धर्म, as the organized principle of the universe, as also the divine ordering of earthly life. Indeed these Vedic Rishis scarcely ever consider man as a whole in himself and whenever they speak of human society they do not forget its relation to the whole universe. The isolated individual of course is an absurd abstraction in the philosophy of such a people.

In legal philosophies law is very often conceived ideally and transcending the more dubious and ambiguous social realities. We must not, however, overlook the distinction between law as a rational statement of principle of justice and law which designates the historic enactments of living communities. If we look beyond legal enactments to the whole structure and organization of historical communities, this structure will be found not to have been merely the order of a legal system. "The harmony of communities is not simply attained by the authority of law. Norms do not coerce the vitalities of life into order. The social harmony of living communities is achieved by an interaction between the normative conceptions of morality and law and the existing and developing forces and vitalities of community."1 The norms of law are usually compromises between the rational ideas of what ought to be, and the possibilities of the situation as determined by given equilibria of vital forces. Indeed the ideal is situated on the tangent. "Man strains towards it; but the forces of the world in which he lives continuously act upon him. It is impossible for him to move along the tangent to the desired goal. The product of his tangential desire and of the forces which act on him is his real course through time."2

Legal enactments are, on the one hand, the instruments of the conscience of the community, seeking to subdue the potential anarchy of forces and interests into a tolerable harmony. On the other hand, they are merely explicit formulations of given tensions and equilibria of life and power, as worked out by the unconscious interactions of social life.
Law is indeed an ethical principle and has intrinsic form and material content. Greek sages, Roman philosophers and jurists, and mediaeval thinkers of the natural law school had all recognized the law as based on reason, as ultimately discoverable by a due application of the rational instinct in man. To put it in modern phraseology, they admitted that reason is the form of law. But the material content of law is the need of life, utility and the demands of the species. These early Aryans in their conception of ऋत्विन् gave the earliest possible recognition to the ethical principle in law; and it will not perhaps be straining the meaning of the Vedic texts, if we read therein their cognizance of both the form and the content named above.

As to the material content of law, law affiliated with human purpose and human benefit, it may, without much hesitation, be asserted that these early Vedic Aryans did take cognizance of this factor. Their ऋत्विन्, as has already been said, is not forgetful of human purpose and has indeed the human benefit as its objects. It is ऋत्विन् which makes the rivers flow and the rivers flow only to fertilize the fields. Fire, the most useful of things for human purpose, "the milch cow and the bull in life's beginning" was born for human benefit and was born of ऋत्विन्. There was nothing more useful to these Aryans than their cattle and what else would ensure such useful things to them but their ऋत्विन्?

As to the other, it is only with much diffidence that one ventures to say that reason was recognized as the form of law even by these Vedic Aryans. Later Hindu sages no doubt stated the relation of law and reason in the clearest possible manner declaring ऋत्विन्यथा मन्यन्ति यो धर्मस्तत्वविवेचनः (Manu, II. 1); but while speaking of the Vedic Rishis it is difficult to make any such assertion. Yet we hear them say:

देवो धर्मस्तत्व अनुभवत गुरुविन्दरतिरिस्त्रोतेन भूमि
वर्षितमाप: पन्त्वा सुविविवेचत्वयुयो गम्भ सुधाति ए

Rigveda, I. 65. 3-4.

"The Gods approached the ways of holy Law; there was a gathering vast as heaven itself. The waters feed with praise the growing Babe, born nobly in the womb, the seat of Law." We almost suspect them as conscious of this relation: and our suspicion is really strengthened when we hear them say:

विनिमेयस्य ततो विधया हुदा वत्तान्तस्य असंयते ए

Rigveda, I. 67. 3-4.

"Men filled with understanding find him there, when they have sung prayers formed within their heart." The saying सतो शुरुस्ति निरविवेकायते प्रतीथिः कवयो ननना—Sages who searched with their heart's thought discovered the existent's kinship in
the non-existent—assigns to reason a place in the evolution of the universe, and though it only speaks of the relation between ens and non-ens, we may draw our inferences even from this sloka if only we remember the place of शृङ्खला. The Rishi says—

अष्टम्य ततुव्यत: पद्मन आ जिववाय अंगे वर्णस्य माया।
धीरादित्त्वसमसिक्षां आयुतात्रा तत्तथ वत्तायथसः॥

Rigveda, IX. 73. 9.

"The thread of sacrifice spun in the cleansing sieve, on Varuna's tongue-tip, by supernatural might,—

This, by their striving, have the prudent ones attained: he who hath not this power shall sink into the pit."

But he says nothing more really.

The Rigvedic Philosophy can really be reduced to a theory conceiving law as a phenomenal reality, as a natural formation, seeking for its causes in the forces that precede all development and in the evolutionary motion of things. According to these Vedic Rishis शृङ्खला च स्मर्य वाच्चां न कालोऽपि शृङ्खलायम्। (Rigveda, X. 190, 1)10. "From Fervour kindled to its height Eternal Law and Truth were born" and even this took place prior to all existence. Every other phenomenon, every other created thing grew out of it by a process of natural evolution. When such is the conception of law it cannot of course be expected that its natural formation will consciously be connected with any social ideality so as to fix upon the latter the responsibility of determining the nature of the former. According to these Vedic Rishis, before there could be any society, before there could be any social ideality, शृङ्खला evolved: the ordering principle came into existence even before there was any diversity: the whole existed even prior to its parts.

Modern research indeed gives preference to the doctrine of evolution of law considering it as Psychogenetical and historical: because, they say, law is practically a fact depending upon thought and will, and develops in human life. It is an ethical and historical fact whose primal elements, genesis and transformations, Philosophy can discover.

It cannot be denied that law is a phenomenal reality11 since it contains the certain: and law can be called a natural formation inasmuch as its nature is its origin, and as it is derived from the analysis of thoughts about the necessities and utilities of social life and from the modifications of human mind. The social idealities which the law comprehends and of which it is born, are really nothing more than the necessities and utilities of social life.

Indeed Rigvedic Philosophy does not ignore the consideration of law in its social aspects in relation to the purposes, needs and interests of life. Nay, the whole Vedic philosophy is saturated with utilitarianism, if we may borrow the expression from modern
philosophy, with the idea of utility to human society. Everything in
the world moves naturally to a specific fulfilment. Of the varied causes
which determine an event, the final cause, which determines the
purpose, is the most decisive and pervasive. Development here is not
haphazard or accidental. Everything is guided in a certain direction
by ‘कृत्य’ functioning from within. To these Vedic Rishis the one
crucial test of the worth of any thing is the utility of such a thing.
Even their gods are tested by this one ideal. Yet these Rishis scarcely
recognised the influence of the conditions of life on law. Theirs
seems to be a doctrine which sees this relation converted: Law is
everal and immutable; the conditions of life must harmonize with law,
must fit in, in the natural sequence of the rise of the universe, with
कृत्य, the primal principle, the divine ordering of earthly life; law is
as eternal as the universe itself and is immutable. The appearance
of sun and moon, of day and night is strictly regulated: and the regulating
principle is कृत्य. It is the creative principle of the universe and as such
it embodies the unchangeable principle that pervades the succession of
phenomena: It is pure energy.—Actus Purus: कृत्य हि बलतय : मुन्मतिपाल
वाजाय प्रदेपः सयते (Rigveda, X. 5, 4) and “wearing कृत्य, as a mantle,
Earth and Heaven grow strong by food of pleasant drink and fatness.”
Even the gods of these Vedic Rishis were subordinate to this कृत्य: they
were lovers and cherishers of कृत्य.

It has been seen that these Vedic philosophers conceived of कृत्य
as immutable, and it has already been observed how the flexibility of
law escaped the notice of these early Aryans. In all fairness to these
ancient sages it must, however, be pointed out that the conception
of कृत्य as the ordering principle may not indeed admit of any change.
There has in fact been a great deal of controversy over the immutability
of law. It is beyond our purpose to launch upon a survey of this
controversy. All that we should notice here is that while there are
some who would proclaim only the multiplicity of laws, there are others
who would emphasize the common element in the midst of this variety.
Prof. Ehrlich in an article entitled “The Sociology of Law” outlines
the point at issue between these two classes of jurists and tells us where
indeed to seek for the immutable element in law. The whole
controversy, according to Ehrlich, is only a dispute over the use of the
word ‘law’; and if ‘law’ is taken to mean the “social order” and
not the mere legal provisions contrived to safeguard this social order,
then Ehrlich feels inclined to the view that there is some fixed element
in law which is common to all people at all times. It is difficult to deny
the truth of what Prof. Ehrlich wants to convey to us in this short article.
And if this is so, when law is viewed as “social order” it will be much
more so when it is conceived as the ordering principle, as the ordering principle not only of human society, but of the whole universe.

It might at this place be enquired if the universe of the Vedic Rishis was, like all other organic developments, subject to decay and destruction. If so, the universe and with it अहूँ will not be eternal but will only exist for some finite time however large that may be. To my mind the theory of the Vedic Aryans did not admit of ‘Pralaya’ or annihilation of the universe and of the recurrence of the creation. There is at least one Rishi who says so in the clearest terms.

सकङ्गद चौरजायत सकङ्गदू मिरजायत ||
पूर्भ्या तुथः सकङ्गपूर्जव्यः नानु जायते ॥

Rigveda, VI. 43. 22.

"Once, only once, the heaven was made, once, only once, the earth was formed.

Once, only Prisni’s milk was shed: no second, after this, is born."

We have hitherto occupied ourselves with the philosophical conception of law prevailing among these Vedic Rishis. We scarcely hear them speak of what Prof. Ehrlich names as legal provisions. 16 And so the question arises ‘‘Is a legal system possible without legal provisions?’’ ‘‘Is a legal system imaginable which consists of nothing more than the social order?’’ It is indeed difficult to resist an affirmative answer to these questions, if not for anything else, at least for this reason that society is older than all legal provisions and ‘‘must have had some kind of ordering before legal provisions came into existence.’’ 19

There are, however, ample indications of the existence of the so-called legal provisions prevailing among the Vedic Aryans. We have already had occasion to say something about the conception of व्रत which indeed seems to refer to the specialized embodiments of अहूः. No doubt these sages only speak of divine rules whenever they speak of व्रत, but the conception of gods and of divine society prevailing among any people may safely be taken as the fair index of the nature of the society to which such people belong. At best the divine society will be the ideal thought of by such people.

One chief characteristic of व्रत consists of the idea of authority involved in it; and its inviolability lies in the fact that it constitutes a body of rules ordained or dictated divinely. It is indeed looked upon as command of this or that deity and its non-observance is met with punishment at the hands of him whose व्रत is violated. 20

The idea of command indeed appears as a great social force. Whatever may be the psychology of it, it is a notorious fact that one
man in the society often seeks to influence the conduct of others in every community. Sometimes this tendency will be promoted by pure personal interest; sometimes the disinterested desire to secure the advantage of those whom he wishes to control will supply the motive. Sometimes again the eagerness to diffuse what he considers to be some great truth or a mere love of power or a strong self-will that can brook no contradiction will prompt in man this desire. The motives will thus indeed be innumerable; but the methods by which the desired projects are carried into effect present much less diversity. There are indeed but three expedients by which human conduct is effectively controlled and these are the application of pleasures, of pains or of purposes. Some persuasive influence, some present good, or some expectation of future good, may be brought to bear upon the actor; or again, some evil may be threatened to him as likely to befall him in case of his refusal, or as likely to be averted in case of his compliance; or lastly, his mind may be so trained, his habits may be so formed, that use becomes a second nature, and spontaneous action takes the place of obedience. These motives and these means operate sometimes separately, sometimes in concurrence.

One great cause of such a desire is the inequality of conditions. There can be no denial of the fact that there is no equality in merit and intelligence, no equality in human powers. Diversity of power, whether of body or of mind or of wealth, arises out of the conditions of human existence and is consequently inevitable in human society. There always must be the difference between infancy and manhood, between manhood and old age, between male and female, between strength and weakness, between wisdom and folly, between energy and apathy, between experience and inexperience, between virtue and vice, between wealth and poverty, between co-operation and isolation. Within certain limits such diversity may perhaps be artificially restricted; but it can never be wholly banished.

In an actual state of any society the inequality is a universal phenomenon, and where inequality exists, the mode of influence always assumes one characteristic form. Men do not persuade where they can command.

Indeed, if not the greatest of human vices, the most potent source of human misery is man’s lust for power over his fellowmen.

Where there is on one side relative power and on the other side relative weakness, and where the conduct of the one party is likely to affect the well being of the other, command invariably appears, and a command necessarily implies a threat.

Whatever it is, these Vedic Rishis looked upon वृत्त as rules of conduct ordained by different deities for the guidance of the mortals; and if the observance of them be followed by rewards, their non-observance will always be met with punishments. Both वृत्त and चूर्ण
are conceived as inviolable; they are so, inasmuch as any violation of them will at once be followed by penalties. But while there scarcely seems to be any possibility of wilful violation of अतृत्त, with अतृत्त human beings are conceived as having a great deal of freedom. Violation of अतृत्त involves the action of निरूपति or of ignorance. But a person may have knowledge of a deity’s अत, and yet may not think it profitable to observe it. The result will be he will incur the displeasure of this deity and will lose his protection.

Both the positive and the negative injunctions, गृह्य and प्रतिविष्ठ seem to be involved in the conception of अत and it will scarcely be straining the meaning of the Rika

अनु पूर्वांपरं नासाङ्गक्ष सत्तिम
भिच्च्यि वदति वस्तृत दीर्घशुत॥

Rigveda, VIII. 25. 17

"We keep the old accustomed laws, the statues of supremacy,
The long known laws of Mitra and Varuna,"

if we read अत as distinct and different from custom.

Professor Berolzheimer finds in Vedic वधा a reference to whatever is sanctioned by law as custom or practice, and declares that the conception of वधा like that of अत is derived from अत to represent its special aspects. It may be so, but there seems to be a deeper philosophical significance of this वधा and this has been noticed elsewhere. वधा is indeed conceived of as the quality or disposition of nature, the essence of a person or thing, as derived from its genesis and growth. It is the order or construction of nature as a generating and creative force, developing from the spontaneous energy inherent in material objects without the intervention of any external agency. Herein seems to lie the authority of custom or usage.

Whatever is पूर्वी, whatever is दीर्घशुत, demands our respect perhaps because the very fact of its being done or observed by so many and so often, makes it more probably consistent with nature. What is contrary to वधा could not have been repeated so often. Moreover, such customs have proved acceptable to the gods in not being punished by them and hence point the way in which man may walk with safety.

One great question may be raised here. What, according to these Vedic philosophers, was the means of the knowledge of this वधा?

When we hear these Rishis saying this is so because this is its वधा, "it has happened thus because that is its nature," we are almost led to believe that according to these sages the interpretation of nature would demand experience. If so, such interpretations are calculated to be individualistic. Conceptions of the world in terms of ideas is
indeed to be found only in an advanced stage of society. The thought processes of primitive man are primarily perceptive. In early cultures the perceptual view of things predominates while the conceptual attitude is yet to be developed. To the contrast of perceptions and conceptions as applied to the sensory apprehension of the material world, there corresponds the like contrast of feeling and thought as applied to the cultivation of the ethical and the just. At lower cultural levels commendation proceeds upon an instinctive feeling, and the socially and traditionally acceptable: while advanced people judges and determines the beautiful, the ethical, and the just, by the aid of reason and philosophy.

It has been said above that from the manner in which these Vedic Rishis speak of स्वच्छ it might be inferred that they depended upon experience for the knowledge of it. There are, however, texts which would clearly show that these ancient sages had already turned to thought declaring that the senses are not infallible. Rishi Prajapati, for example, adverts to thought as the basis of knowledge when he says—सतो बंधुमसति निरविदन्तुहि प्रतीष्ठा कबयो मनीषा॥ (Rigveda, X. 129. 1. 21) and Dirghatamas perhaps goes a step further saying :

न वि जानामि यदि वेदमस्मि निष्पं संनदी मसा बरामि।
यदा मागः प्रयम्मज ऋणस्यादोऽध्येने भगमस्यम॥

Rigveda, 1. 161. 37.

"What thing I truly am I know not clearly:
mysterious, fettered in my mind I wander.
When the first born of holy law approached me, then
of this speech I first obtain a portion." 28

The knowledge of self-existence seems to be looked upon as the primal knowledge. From this primal knowledge, from this knowledge of self-existence are born all cognitions. Herein perhaps lies the germ of the later doctrine involved in अमतु परमी धम्मो वद योगेनान्तररथिनम् । and आत्मच देवता र्वः: सर्वमात्मचवरिष्यत ॥ Dirghatamas further tries to impress upon us the shortcomings of a perceptual view of things pointing out how often this may prove deceptive. "Ceaselessly they move in opposite directions. Men mark the one and fail to mark the other." 28

It has been observed elsewhere that even the supreme deity, the divine sovereign, of these Vedic Rishis was subject to a limitation, being subordinate to his own nature. Even the Primal one co-existed with स्वच्छ: आत्मद्वारा र्वच्छयात्रेक। (Rigveda, X. 129, 2). These Rishis thus accepted as the fundamental principle of law and right, not the divine will, but the divine essence, the divine reason. The Vedic Aryans scarcely ever admitted the theory of divine will. Indeed the theory of
divine will appears as antagonistic to every effort to found law and right upon a principle of order, intelligible, consistent and permanent. For, the divine will necessarily present itself as inscrutable and arbitrary, and beyond human understanding. The theory cannot, therefore, satisfy the philosopher who seeks to ascribe an independent value to the inferences of human reason. When, however, justice is made identical with divine reason, that is, with the divine nature and essence, which, being eternal and immutable, exclude all idea of arbitrariness, no such difficulty can arise. Human reason being only a reflection of the divine reason, the latter cannot be beyond human comprehension.

The most important of all the derivative conceptions is धर्म: which refers specifically to the moral function of rewarding good and punishing evil. The conception of Dharma indeed has a special bearing upon legal and ethical rights and duties. Under its dominion the gods are honoured and offered sacrifice, so that an equivalent reward may follow. As law is subject to divine regulation, so the State, the family, the social structure conforms to a ritual. Dharma thus acquires the several meanings of the just or of the customary, of conformity to standard and usages.

Religion or religious belief has indeed played a very prominent part in the development of legal ideas in primitive days. With these ancient Aryans it was such a dominating factor that in later literature we find a complete mixing up of the two, the same expression Dharma being used indifferently to convey both ideas.

It is comparatively easy for man to recognize his weakness and to know that he is too inextricably involved in history as process and flux to be able to complete it. But it is not so easy to recognize that his premature and pretentious efforts to fulfil what he cannot fulfil involve human history in tragic realities of sin, which only a divine mercy can purge.

It has been asserted by many Western scholars that the religious notion of sin is wanting altogether in the hymns of the Rigveda; and from this supposed state of facts they concluded the absence of moral truths in the ancient religions of the world. We have already noticed several texts which would suffice to refute such baseless assertions. Whatever moral sentiments we find in those ancient hymns are generally as true today as they had been thousands of years ago. Any one reading only the very few of the hymns that have already been quoted will find ample materials for being convinced that there is the belief in God, the perception of the difference between good and evil, the conviction that God hates sin and loves virtue. It is needless to point out that their conception of sin would be the same as their conception of guilt; for in these days civil, moral and legal guilt were not differentiated. But the conception of sin involves the idea of the violation of some law ordained by the gods; it is in fact the result of the rebellion of man against god;
it is nothing else than देश्यवंिेंसिम्भ्रोऽ—man's premature and pretentious effort to fulfil what he cannot fulfil. (Rigveda, VII. 90. 5). Sin may be committed even through inadvertence, so much so that even the sinner may not at all be cognizant of the fact of his having committed it. Such was the case with Rishi Vasistha who fain to know his sin questioned various persons and enquired of the wise: this one same answer even the sages gave him: surely this Varuna is angry with you. Rishi Vasistha says:

पुष्चे तदनो वधण दिशखुषयो पृथि विधिनः प्रुष्चे।
समानिन्दे कवयिस्विधाद पुर्यं तुष्यं वधणि हुण्ये॥

Rigveda, 7. 86. 3.

Rishi Vasistha cannot say he has not committed a sin, the act not being his wilful act: but only asserts that even if he has done so it must have been through the influence of wine, anger, gambling, or ignorance, and as such it should not be punished. "O Varuna" Vasistha says "the sin is not due to the पापपृवत्ति: of the self: its भृति:; its originating cause, is wine, anger, gambling or अर्थिति: (ignorance)." Even the elders lead the younger ones to sin. Even dream may be promoter of sin. Nay, even sin may be inherited—and hence the prayer:

अव दुस्मथानि विश्या सुजानो नोः या वयं चकोमा तनावः।
अव राजस्वार्जुपं न तामु सुजावसं न दामो वसित्ते॥

Rigveda, VII. 86. 5.

"Free us from sins committed by our fathers,
from those wherein we have ourselves offended.
O King, loose, like a thief who feeds the cattle,
as from the cord a calf, set free Vasistha."

Vice may indeed be defined for these Vedic Aryans "as a course of behaviour consented to by the will and having results which are bad", because they are god-achieving and because they are physically or psychologically harmful.

Vasistha Suktas are indeed important as evidencing the rise of that consciousness which resulted in the separation of the moral and juristic order from the physical. These early Aryans, as has already been noticed, found measure and harmony in nature and there was a complete confusion of the moral and juristic order with the physical. Consequently, ignorance and fatality could not fail to enter into the formation of the ethical concept. The act of man, through this confusion would be valued without consideration of the intention; and the fault would become original and hereditary. Punishment will befall whosoever, wilfully or unconsciously, disturbs the harmony of nature. "The disturbance in every case demands expiation and the penalty falls upon the author and his descendants, because perhaps the basis of primitive law was the family community and not the individual."
In the age of confusion of the moral and juristic order with the physical it would indeed be perfectly logical to expect that every act, wilful or not, violating that order should, as a matter of course, be met with penalty; and, as even gods themselves were subject to this eternal order, it would be quite reasonable to find them powerless to overlook the sin. These Vedic Rishis, however, are already prepared to appraise the ethical value of an act, with reference to the intention of the doer. And though the confusion never disappeared here with these Aryans, and though the measure of law remained unchanged and still continued to be identified with the physical order, yet through a gradually developing conception of God, the purpose of severance was attained. From gods owing their being to चृत they gradually reached the idea of God establishing the eternal laws of the moral world as well of the physical, and as such capable of forgiving, if willing, even those who offend against such laws: यो मुख्यति चतुर्द्वे विद्वानो वच स्थान वक्षण अतिनागः। (Rigveda, VII. 87. 7) a God, just, yet merciful, a judge and yet a father.

Whatever be the ethical value of this conception of sin it becomes pertinent to our purpose to inquire how these Vedic Rishis fixed the responsibility upon the offender. In other words, did the Vedic conception of चृत lead to the theory of complete determinism in nature leaving no freedom of will in man who, according to them, only formed a small fractional part of the universe? Or did these Aryans somehow contrive to conceive of some sort of free will in man? Something about this has already been said in connection with Rishi Vasistha; and it may here be asserted without any hesitation that these Vedic Aryans did at least recognize the superiority of an act realized voluntarily without external constraint, to that performed under compulsion. But is it enough that the will should be independent externally and exempt from all outside pressure? Did not the Vedic ideal recognize the possibility of internal independence? It cannot be denied that if the will of man should attain to moral freedom or at least approximate it as closely as possible, the individual would have within himself a higher and more personal value. We could justly attribute to this his inner perfection and his good will towards others, or in a word, the good of which he himself was the author. Perfection derived from others is the perfection of those others, who alone deserve the credit for it. Responsibility for evil done for the same reason should not be on its doer if indeed he was not internally free—if indeed his tendency, his nature, was predetermined by some superior force.

We have seen how even in these early days the Rishis did recognize this difficulty and did make attempts to solve it. As we have seen, they were not believers in a freedom of indifference which acts without motives. This indeterminate free will could not appeal to these Vedic sages and did not constitute their ideal of the will. Moreover, these

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Aryans early perceived that absolute materialism and fatalism, in suppressing every action of the individual, in explaining everything from without and nothing from within, leave no personal worth or responsibility to the individual. Hence, they were perhaps led to conceive ideal freedom as superior both to fatality and indeterminateness. Their freedom of will did not consist in an equal power to will things opposite; nor did they admit the complete passivity of every human individual. They had to conceive a force, a kind of miracle of nature, or rather, outside of nature, a force which is to be consistent with the determinism of nature itself. They conceived of free will as independent, meaning negatively the absence of all external constraint, and positively, the presence of a self-acting force, the plenitude of spontaneous conscious activity.

But in what does this independence consist? As commonly understood, free will is independent of all persuasive motives, can act contrarily to such motives and can suddenly create for itself a motive not arising from the laws of the mind. These Vedic Rishis did not concern themselves much with this capacity to act uninfluenced by any motive. They did not, by independence, mean independence of all motives. There is always, according to them, a hidden motive which explains human decision, an intellectual or emotional determinism.

We may in this connection notice their conception of heaven, the ideal place wherein they expect to find a realm of eager wish and strong desire.

यत्र कामा निकामास्त्र यत्र ब्रह्मय प्रित्य 
स्वाय च यत्र तुतित्त्वत तत्र माममुतं हृदिनामयेदः परि लबो II

Rigveda, IX. 113. 10.

"Make me immortal in that realm of eager wish and strong desire, The region of radiant Moon, where food and full delight are found. Flow Indu, flow for Indra's sake."

Their independence is independence of inferior and external motives, of egoistic and material motives; for them motives express not the normal, essential direction of the rational will, but a deviation caused by fatalities of external origin; they are really servitude. True liberty consists essentially and ideally in the power to do good and not in the power to do evil; its essence is not an ability to fall but the ability to rise. Evil is almost always the result of external compulsions of physical servitudes, necessities, passions etc., while good is the mere release of our true and proper activities, at once kindly and intelligent. In doing evil, the will would do that which it did not really intend; in doing good, it would do what it really preferred, what is indeed preferred by other wills, by the universe.

It can only be noticed here that such being the ideal 'will' these Aryans impliedly recognize human nature as essentially good; as essentially sociable. Herein perhaps also lies the solution of the
problem. "How is it that while we meet with a developed conception of duty among these Aryans, we scarcely hear them speak of right." The assertion of 'right' in its last analysis would mean some act that would not be in accordance with the interest of some other. "I have right to this or that" is an assertion which becomes necessary only when in going to realize my desire with reference to them I come in conflict with the interest of some other. Such an assertion would scarcely be necessary in a society where everyone will do only that which at the same time ensures to the benefit of all else.

The metaphysical basis of this duty perhaps lies in the principle which would rationally lead to a certain abstention in relation to the conscious will of one in so far as that conscious will refrains from intruding upon that of others. This abstention will indeed be a limit imposed upon the indefinite expansion of our egoism; that is to say, of our material strength and palpable interest. We have already noticed how these Vedic Aryans admit the existence of the unknown as well as a possible existence of the unknowable. We have seen how these Vedic Rishis hold in the background of their thought a "What do I know" and a 'perhaps'. They assert that the human brain is not adequate to comprehend the totality of reality; only a small fringe of it is knowable by us. And even what is knowable is not always known in its true light, but partakes of the colour of the media through which we perceive them. The totality of subjective thought cannot be conceived as identical with and adequate to the totality of objective reality; and hence they form an indirect parabolic conception of something other than the knowable, namely, the non-knowable, the hypothetical unknowable. The conception of this fundamental limitation of the mind and the brain led to the conception of an obscure beyond. Moreover, the subject itself is not completely comprehensible to itself: "न विज्ञानापि वदि वेदरसिंह" reflects the subject and confesses that consciousness does not comprehend itself. There is, then, at the bottom of the consciousness of the unknown, and of that which is perhaps irreducible to knowledge, something at least which for consciousness is intellectually obscure even though it be actually immanent in its very existence. In a word, the individual and introspective consciousness is not adequate to its own conditions, its own basis, its own content or its own synthesis. The common or synthetic basis of the object and the subject is hidden in darkness and they conceive other consciousnesses and are led, as it were, to an intellectual altruism, the foundation of all other altruisms.

The principle of relativity of knowledge had naturally a limiting effect on action as well as on thought. In limiting intellectual dogmatism, it limited practical dogmatism also and restrained the egoism of one individual specially in the presence of another. The ego not being the sole consideration, the principle of abstention became
more important and the idea was sufficient to necessitate the practical and moral restraint of one will in the presence of other wills, of one consciousness before the consciousnesses of others. Herein perhaps one must seek for the basis of duty as also of justice. Justice is indeed a mutual limitation of wills and consciousnesses by a single idea equally limitative of all, by the idea of limitation itself which is inherent in knowledge, which is inherent in our consciousness as limited by other consciousnesses. Inspite of ourselves we stop short before our fellow man as before an indefinable something which our science cannot fathom, which our analysis cannot measure, and which by the very fact of its being a consciousness is sacred to our own. On the contrary, to make one’s ego absolute is to dogmatize in action as well as in thought: it is to act as though one possessed the absolute formula of being: it is to say that the world as known is all, that force is all, that interest is all. Injustice originates in this practical dogmatism, in this blind absolutism.

From what has been stated above one will find wherein lies the ultimate guarantee of right. And even they, who emphasize that force must accompany right and say that ‘Justice without force is impotent, force without justice is tyrannical; therefore, justice and force must be united, and to that end, whatever is just must be strong and whatever is strong must be just’, cannot deny the superiority of this internal control to external force.

The Vedic Rishis did not, however, rely wholly on this ultimate guarantee; and though we may not find materials for inferring what exact social and political mechanism they possessed to realize social order, to enforce their legal system, we have at least this much from their philosophy that this force idea too did not escape their notice altogether. Their moral right did not disarm itself by renouncing material force. No violation of law could, according to these ancient thinkers, escape penalty either here or in life hereafter. To the people to whom the beyond was a reality, the infallible divine force behind law would suffice.

Before closing this discussion it may not be altogether irrelevant to observe the true significance of the use of the term अत्तम, as almost synonymous with सत्यम. At the inception of this universe, before the existence of anything could be possible, eternal law and truth were born. अत्तम च सत्यमात्मकां वसीयस्मिन समन्वित (Rigveda, X. 190. 1). Ever since that supreme moment these eternal twins walk hand in hand so much so that by the one the existence of the other is infallibly inferred. People would come to truth by law; and indeed whatever is true is right and whatever is right is true. The connection of these ideas does not seem to be merely accidental. There must have been observed some common thought connecting these ideas, and this common element seems to be the idea of appropriateness referring, with
regard to सत्यम्, to the agreement of knowledge with reality, to the mental conception of its meaning, and, with regard to व्यवस्था, to the practically desirable. It may be observed here that it is owing to this connection also that law and truth show in the Vedic literature a kinship with the idea of the straight, of the even, and of the direct, excluding as it were, all deviation and circuitousness: the idea of crooked being identified with things improper and wrong.

This survey of the philosophical conception of law of these Vedic Aryans would indeed be incomplete and incomprehensible if we ignore the fact how law and morals were confused in those early days. There was indeed necessary in those days an all-powerful, extended, single, indivisible force which contained all the activities of man within certain limits and established customs, and which enforced obedience and enjoined action in accordance with fixed norms. It is useless, therefore, to search in these ages for the traces of law distinct from morals. Indeed this confusion lasted even in the Samhita period and we shall always find the laws of this people intended not only to control the external activity of the citizens but also as tending to interpenetrate their intimate will.

So these Vedic philosophers give us the idea of what law is, give us the idea of the nature of law. Besides the general basic principle of law to be found in their conception of व्यवस्था and सवधा no less than five different conceptions of what law is may indeed be gathered from this Vedic philosophy. First, we have the idea of a divinely ordained rule or set of rules for human action in their conception of व्यवस्था and secondly in पूर्णः and दीर्घश्च तम् there is an idea of law as a tradition of the old custom which perhaps have proved acceptable to the gods and hence point the way in which man may walk with safety. A third and closely related idea is contained in the Vedic मयादा an idea conceiving of law as the recorded wisdom of the wise men of old who had learned the safe course for human conduct:

"सत्य मयादा: कब्यस्यतःसतासामकामिदभवमहूरो गातु"

Rigveda, X. 5. 6.

Herein might indeed also be the idea of law as a system of principles discovered philosophically and perhaps expressing the nature of things, to which therefore, man ought to conform his conduct.

In the fifth place law seems also to have been thought of as a reflection of the divine reason governing the universe, a reflection of that part which determines the nought addressed by that reason to human beings as moral entities, in distinction perhaps from the ‘must’ which it addresses to the rest of the creation. Of this last idea we have indeed much surer expressions in the Smritis which speak of law as ascertainable by one’s own conscience. But in this early Vedic age also we are told:
A man should think on wealth and strive to win it by adoration on the path of Order, Counsel himself with his own mental insight and grasp still nobler vigour with his spirit.”

These ideas of law, of course, are not presented to us as distinct from each other, but we find every one of them grafted on the others and on the idea of law as the ordering principle of the universe, as ensuring the order, the harmony, the status quo of the universe.
LECTURE VIII.

HINDU PHILOSOPHY OF LAW IN THE BRAHMANA PERIOD

It has been found that even in Rigvedic India, even during what is commonly known as the Mantra-period, there were some Philosophical ideas of law and it must have been noticed that there were attempts more to determine the nature of law, more to find out what law is, than to define the end of law, and to specify what law is for.

Law was viewed as an order of human behaviour, or rather as an ordering principle. No doubt, any discussion on the nature of law involves the question of what law is for, and as such, even in the Rigvedic age philosophers could not remain silent over this end of law. But "end of law" as a specific subject gradually gains in importance and we shall indeed find how subsequent Philosophy of Law mainly occupies itself with this end.

But before proceeding further we propose to notice here what informations on the philosophy of law can be gathered from the other Vedas; and for this purpose we shall examine a few hymns of the Sama and of the Atharvavedas. The literature is indeed very vast and it must be confessed that the study thereof does not yield any profitable crops for our purpose. The Samaveda, in fact, merely echoes what we have already found in the Rigveda and places रूपम् अविभाज्यम् exactly in the position where the latter places it. Its Gods are also अत्यन्तात् and अत्यन्तवर्ण: and they never fail to observe रूपम्. Like the Rigveda, Samaveda also recites

"अत्यन्तं विद्यमानं वृत्तवर्णम् अत्यन्तवर्णः कृत्यं वृत्तवर्णः "

Samaveda, IV. 2. 2.

"Mitra and Varuna, through Law, lovers and cherishers of Law,
Have ye obtained your mighty power."

and says: "who born in law hath waxen mighty by the law, King, God, and lofty ordinances."

It will serve no useful purpose to enumerate here again all the riks that have mostly been cited in connection with the Rigveda. We shall, however, examine a few of the hymns of this Veda which may give us some new idea of law, and for this purpose we shall refer at least to the following two verses:—

वर्ण समीचिष्ठस: समर्थदर्शस: सचेतस: स्वसंस्देह विनमरतात्विचला गो:।

Samaveda, II. 4. 2.
"This God who sees for thousands of mankind
the light, the thought of poets, and the law.
The brilliant one, hath sent forth hither all the dawns:
Spotless, one-minded, zealous in their home
they dwell, with thought upon the steer."  

अद्वैतपितृपरि मेघामृतस्य जयत्।
अहं सुर्यं इवाति।  

Samaveda, II. 2. 8.

I from my father have received deep
knowledge of the Holy Law:
I was born like unto the Sun."

Indeed both these verses seem to suggest an idea of law looked
upon as a body of ascertainments and declarations of an eternal and
immutable code.

This compares well with the views of a class of modern jurists who
would maintain that custom is not a constitutive fact, but has only a
declaratory character; it merely indicates the pre-existence of a rule
of law. This rule of law is created by God or by nature or by the
spirit of the people. Law is not 'made' but 'exists' within and is
born with the people since begotten in a mysterious way by the spirit
of the people. Hence customary observance is not the cause of law
but is only the evidence of its existence.

In modern French legal theory this doctrine of 'the spirit of the
people' (Volksgesit) is replaced by that of 'solidarite sociale' (social
solidarity). "Any act or fact the result of which is positive law—be it
legislation or custom—is not true creation of law but a declaratory
statement or mere evidence of the rule of law previously created by
social solidarity."

Ideas similar to what we notice in the Samaveda became
prominent later on. The author of Manusmriti in fact professes to
declare such a code, the knowledge of which may only be obtained
through divine revelation.

The Rigvedic conceptions of स्त्रया and स्वयं also figure
prominently in the Atharvaveda and even here these are taken in
the same sense. The word स्वयं, however, has already acquired
secondary meanings and we often find it used as food:

त्वमस्म इदो जात्रेतेवार्येऽस्याति सुभीते श्रीमतः।
प्रादा: पित्रस्य: स्वयं ने अशुक्कितं त्वं देव प्रयत्ना श्रीमतः।  

Atharvaveda, XVIII. 3. 49

"Thou, Agni Jatavedas, when entreated, diest
bear our offerings having made them fragrant.
And give them to the Fathers who consumed
them with स्वयं

Eat, thou, God, the gifts we bring thee."
Sayanacharaya has taken this स्वबंध to mean food offered to the manes: but it might very well have been taken in its primary Vedic sense of nature. There are, however, passages in this Veda where the use of the expression makes it clear that it has not been there in its primary import.  

In Atharvaveda, perhaps for the first time, we meet with ideas of what law is for. For says the Veda:

सत्यं बुद्धिमयं दीक्षा तपो ब्रह्म यश: पृथिवीं धारण।

Atharvaveda, XII. 1. 1.

"Truth, high and potent law, the consecrating rite, Fervour, Brahma, and 'Sacrifice' uphold the earth."

and

सवयोनवत्वं भूमि: दृश्याबलिता चोः।
ऋतेनादित्यासित्यं च दिव्य सोमो अधि भिरत॥

Atharvaveda, XIV. 1. 1.

"Truth is the base that bears the earth; by Surya are the heavens upheld. By Law the Adityas stand secure and Soma holds his place in heaven."

Indeed in the Rigveda we have found that all the ideas of law picture not merely as an ordering of human conduct and adjustment of human relations, but something more, namely, a doing of these things in a fixed, absolutely predetermined way, excluding all merely individual feelings or desires of those by whom the ordering and adjustment are carried out.

All the ideas of law of this period contain at least one common element; and this is some ultimate basis, beyond the reach of individual human will that is calculated to stand fast in the whirl of change of which life is made up. This steadfast ultimate basis had been thought of as the divine nature, the divine essence or reason, and as such not inscrutable and arbitrary not beyond the reach of human understanding. This fixed and stable starting point is usually the feature upon which the greatest emphasis is laid and we find in their conception of law a system of ordering of human conduct and adjustment of human relations resting upon this ultimate basis and derived therefrom by absolute process, by a process independent of human will.

This was no doubt a sub-conscious picturing of the end of law conceived of as existing to satisfy a paramount social need of general security. But in the Atharvaveda and later on we really observe a conscious thinking about the end of law. According to the Philosophers of this age law seems to be meant for the preservation of "status quo". They seem to think of ensuring the general security mediately through the security of the existing social institutions.
Later on, we shall find the Philosophers thinking of law as a device to keep each man in his appointed groove in society and thus prevent friction with his fellows. The virtue indeed consists of knowing the limits which nature fixes for human conduct and keeping within them. The vice which they denounce is the wilful transgression of the appointed bounds.

It is now generally admitted that whether or not there was any caste in Rigvedic India, the institution is found completely established during this period. The whole people is divided into the four castes of Brahmana, Ksatriya, Vaisya and Sudra; and these castes are already modelled on the castes in heaven.

The period no doubt is marked by the intellectual activity of the Sacerdotal caste,—the Brahmana, but the supremacy of the Brahmana over the warrior caste is not yet established. Indeed the Upanisadas seem rather to point to the other direction. We almost invariably find the Brahmanas seeking the help of the Ksatriyas for solution of problems.

Whatever might have been the position of the Brahmana as a caste it must not, however, be ignored that even during the preceding period Priests, though not as yet forming a distinct caste, were looked upon with considerable amount of respect and reverence. If this was so even when the primitive worship of the powers of nature was not yet transformed into a highly artificial ceremonies of this age, it is but natural to expect that their position could not at least be impaired in an age when the religious service has been of a sufficiently advanced and complicated nature to require some kind of special training for the priestly office.

Though of no consequence to us, we might notice here that the charge against the Brahmana that it was they who, with the intention of deepening and extending their hold on the minds of the people, brought about the transformation in the religious belief is indeed unjust. The ceremonial restraints might have been the natural consequence of the desire for following the less understood worship of the powers of nature instituted by the ancestors. Even during the period of Rigveda hymns were gaining supernatural virtues and mysterious efficiency in drawing down divine blessings on the pious worshippers.

It is indeed almost a general phenomenon in human history that as time goes on, the simple ceremonials of the ancestors become less and less intelligible and consequently more and more formal and complicated, necessitating a distribution of the sacerdotal functions among the priests. These priests thus gradually forming a distinct class became the Brahmanas. Equally with people they too believed in the ceremonies and their artificial rules of performance. The exclusive and selfless devotion of these priests to culture, their learning,
and their nobility of character together with the devout faith of the people, including these Brahmana themselves, in the efficacy of the sacrificial offerings gradually raised them to a position of supremacy over the people, over the Ksatriyas also. The superior culture and habitual communion with divine rulers over the destinies of man would naturally entitle them to a place of honour at least by the side of the chiefs of the clans or the rulers of the kingdom.

The question as to how the Brahmana ultimately succeeded in gaining supremacy over the ruling class receives but little light from the contemporaneous records. That they gained such supremacy is amply shown by the records of the later period and if from the legendary accounts of sanguinary struggles between the two classes and the final overthrow, even annihilation, of the Ksatriyas anything of a historical nature can be inferred, then this much at least can be said that the whole course might not have been altogether smooth and peaceful. Some sort of struggle must have gone on, and a disturbance of order and harmony in the society must have been felt. Hence might have originated the conscious thought about "the end of law."

Whatever it is, we are told by the Brihadaranyaka Upanisad that

ब्रह्म प्राप्ति इदमप्राप्ति हार्दिकोन्ये तद्वेग त्रा वर्ष ज्ञातश।
तत्त्वात्योपयमवृत्तेष्ट्वा श्रवणं सोमो र्णः परजनयो यमो मृत्यूरीशाखजः इति।
तस्मात् क्षत्रिय ५रं नान्ति
तस्माद् ब्रह्मण: अनिधिमेधस्ताद् राजसुवेष्ट्वो कृष्टैन एवतद् यथो वेदाग्नि सैत्व श्रमस्य दोनिन्धृवृवृ
ब्रह्म।
तस्माद् यदापि राजा परमता गम्भिरति ब्रह्मावलं उपनिश्यति स्वा योभिः य उ एवं
हिन्नति स्वा स्वायत्त्वृक्षति स वामीयान् भवति यथा अव्यासं हितित्।

Br. Ar. Up., I. 4. 11.

"Verily in the beginning this was Brahman, one only. That being one was not strong enough. It (तत्र) created still further the most excellent Ksatra, viz., those Ksatriyas among the devas—Indra, Varuna, Soma, Rudra, Parjanya, Yama, Mrityu, Isana. Therefore, there is nothing beyond Ksatra, and therefore, at the Rajasuya Sacrifice the Brahmana sits down below the Ksatriya. He confers that glory on the Ksatra alone. But Brahmana is nevertheless the birth-place of Ksatra. Therefore, though a king is exalted, he sits down at the end of the sacrifice below the Brahmana, as his birth-place. He who injures him injures his own birth-place. He becomes worse, because he has injured one better than himself."

"He (स्) was not strong enough. He created the vis, the classes of devas which in their different orders are called Vasus, Rudras, Adityas, Visvedevas, Maruts":

स नैव अभवत् स विभामवृज्त यास्यतांि देवजातानि गणण अल्पायत्वे वसयो यहा अविष्टिव
विश्वदेवा महत् इति।

Br. Ar. Up., I. 4, 12.
"He was not strong enough. He created the Sudra caste as Pushan, nourisher. This earth verily is Pushan the nourisher; for the earth nourishes all this whatsoever":

स नैव अभवत् स शौद्व वर्षस्यसुज्ञ पूर्णांमियं बृ पृथ्वियं हीनं सर्वं पृथ्वितं यदंद्र विक्रम् ||


Thus there was this diversity in the creation but nothing to hold all of them fast; and so He was not strong enough, स नैव अभवत्. Indeed the aim of creation, the end of all, has been to ensure security of the whole; and when this end was not achieved even after the creation of the might, the people and the nourisher "he created still further the most excellent law: तत्थ्योष्ठम्यसुज्ञ धर्मं. "Law is the Ksatra of the Ksatra, therefore, there is nothing higher than the law."

स नैव अभवत् तत्थ्योष्ठम्यसुज्ञ धर्मं तद्वेति धर्मं तत्ततैषं धर्मं यदमंतस्ततां संगीत्य परं नास्तवथ्य अबलायाय वर्षस्यसुज्ञसेते धर्मं परं यथा राजां यो व संगीत्य सत्यं वै तत्तै


This creation of law seems to have helped the complete realization of the end. "Thenceforth even a weak man rules a stronger with the help of the law, as with the help of a king. This law is what is called the true."

तस्मात् सत्यं वदन्त्याधिकर्षमेव सत्यतितिधर्मं वा वदन्तं सत्यं वदन्त्याधिकर्षमेव श्वेताधिकर्षमेव भवति।


"If a man declares what is true, they say he declares the law, and if he declares the law, they say he declares what is true. The both are the same."

The end of law then is to ensure order in the society, in the universe. It was indeed designed to keep peace at all events and at any price.

The author of the Upanishad declares law to be the क्षेत्र of शर्धमेव, more powerful than the power itself. In his opinion law exists without the sovereign and is above the sovereign. He does not believe the doctrine that "there is no law without a sovereign, above the sovereign, or besides the sovereign; law exists only through the sovereign."

This ancient philosopher is thus opposed to the absolutist doctrine of the unlimited power of the State. Nay, he even seems to oppose the doctrine of its self-limitation. The power of the sovereign, the power of the State, is limited not by itself, but by some inherent force of law. According to this philosopher there is a rule of law above the individual and the State, above the ruler and the ruled: a rule which is compulsory on one and on the other; and if there is such a thing as sovereignty it is juridically limited by this rule of law.

The passage, quoted above, emphasizes the fact that law is composed of the "true"—"The True" is indeed identified with law,
and, as has already been observed, this connection is not a mere accident. There is indeed a common thought connecting these two ideas. "Truth" no doubt signifies the agreement of knowledge with reality and as such, belongs to the order of logical notions. When taken in this sense of verity, it has behind it the idea of appropriateness referring to the mental conception of its meaning. And law having for its object the maintenance of social equilibrium, is connected with truth by the same thought of appropriateness referring this time to the practically desirable. Moreover, as law has behind it the divine authority it also has the element of the certain. As we have seen already this authority is also part of reason and not of caprice.

In the same Upanishad we are told later on that "He from whom the sun rises, and into whom it sets, "Him the devas made the law, he only is today, and he tomorrow also: त देवधर्मिरे धर्म स एवां न उ ध्व इति (Br. Ar., I. 5, 23). Whatever was determined then is also the law for the future: स एवावेदानी व्यंजन्यार्थ अविनंत्यार्थ कालेजुन्तृतः (Shankar's Bhashya on above). The immutability of law could not have been expressed in a clearer language than this.

Brihad Aranyaka Upanishad indeed contains the doctrine of various Philosophers of the age such as Uddalaka, Ajatasastra, Varuna, Atharvan, Pratardan, Sandilya, Jabala, Jaivali, Gargyayana, Mahidasa and Yajnavalkya. It forms in fact a part of the Satapatha Brahmana; and Yajnavalkya, the reputed author of the Brahmana, might well be considered as the author of this Upanishad. It is beyond our purpose to examine fully the doctrines of these various philosophers. All that we need do is to state briefly the doctrines of some of them so far as these might have some bearing on the subject under review.

Legal theory, indeed, reflects the fundamental philosophical controversy whether the universe is an intellectual creation of the ego or the ego a particle in the universal order of things. Uddalaka propounded an empirical theory of knowledge saying "No one can henceforth mention to us anything which we have not heard, perceived or known. Out of these they knew all." "Whatever they thought", says the philosopher, "looked red, they knew was the colour of fire. Whatever they thought looked white, they knew, was the colour of water. Whatever they thought looked black, they knew, was the colour of earth. Whatever they thought was altogether unknown, they knew, was some combination of those three":

न नीस्य कर्त्तव्यत्तममविभवात्मात्म्यायत्तीति छोभ्यो विदांत्वकुः। येव रोक्तति
भिवेवाहितिते तेजसोद्वूपंसति तत्तात्वान्नकुः शुचिमिश्वर्थुलिपि कुलितिः
तत्ततत्तान्नकुः। येवित्तीत्वभिवेवाहितिते तत्तात्वान्नकुः। समास इति
तत्तात्वान्नकुः नु, खलु सोभुदेतिसो देवता: पुरुष स्याह विबृत्त विवुद्देहेकां
भवति तन्मेव विज्ञानीहृतिः।

Ohh. Up., VI. 4. 5-7.
According to Uddalaka knowledge proceeds from sense perception and he suggests the inductive method of inference as the right method of scientific investigation into the nature of reality. ‘My dear,’ he said to his boy, “as by one clod of clay all that is made of clay is known, the Vikara being only a name, arising in speech, but the truth being that all is clay; and as, my dear, by one nugget of gold all that is made of gold is known, the ‘Vikara’ being only a name arising from speech, but the truth being that all is gold, thus, my dear, is that instruction by which we hear what cannot be heard, by which we perceive what cannot be perceived, by which we know what cannot be known’ :

यथा सोम्येकन मूल्यप्राप्तं सर्वं मूल्यं विज्ञातं स्याद् वाचार्यमणं विकारो नामचेवं मृतिगत्यवेव सत्यम् ॥

यथा सोम्येकन लोहमणिना सर्वं लोहमणं विज्ञातं स्याद् वाचार्यमणं विकारो नामचेवं लोहितंतियं सत्यम् ॥

यथा सोम्येकन नवनिन्तलनं सर्वं कारणिवयं विज्ञातं स्याद् वाचार्यमणं विकारो नामचेवं कृण्यायसमितियं सत्यमेव सोम्य स आदेशो भवतीति ॥

Chh. Up., VI. 1. 4-7.

The beginning as well as the end of this universe was, with Uddalaka, in that Being ‘which was one only in the beginning without a second—only that which is, was in the beginning. ‘It thought, may I be many, may I grow forth. It sent forth fire.’ That fire thought, may I be many, may I grow forth. It sent forth water.’ This water again by the same thought process sent forth the third element earth or food:

सदेव सोम्येदमग्र आसीदेकमेवाल्लति ॥

तद्वै आहुरसदेदमग्र आसीदेकमेवाल्लति ॥

तद्वै सदेव सोम्येदमग्र आसीदेकमेवाल्लति ॥

सदेव सोम्येदमग्र आसीदेकमेवाल्लति ॥

तद्वै तद्वै सदेव सोम्येदमग्र आसीदेकमेवाल्लति ॥


Uddalaka conceives of an intelligent principle which moves the world without being separated from it. According to him the essence of things rests on a creative thought and consequently to explain knowledge he does not have recourse to an empty and inert idea like that of a possible entity but to an idea which comprehends and originates everything,—to the creative idea, a new form of the original synthetic activity of sense and intellect. According to him ‘knowledge’ would direct ‘will’ and there is ample possibility of ‘objective values’.
HINDU PHILOSOPHY OF LAW IN THE BRAHMANA PERIOD

It will be interesting to remember in this connection the extreme opposites represented by the philosophies of St. Thomas Aquinas and Nietzsche. "For St. Thomas, will is necessarily determined by the knowledge of good. For Nietzsche, all knowledge is a technique used in the service of the Will to Power."

For legal philosophy this problem has become articulate through the attempts of Neo-Kantian jurists to establish an objective legal science, uncontaminated by political ideas. According to Kelsen every legal ideology is the expression of subjective will. "The manner in which, in the realm of knowledge, the subject is seized by the object, is, for a more profound analysis, very much like the question of domination which is the theme of politics. In either case, there is an implacable antagonism between a limited number of problems and their solution."

Before proceeding with the philosophy of Yajnavalkya we should have a glimpse of the doctrine of Varuna and Sandilya. The prominent feature of Varuna's philosophy lies in his conception of, ब्राह्मणः as the "Summum bonum" of life. Varuna enumerates various degrees of happiness. "Let there be a noble young man who is well read, very swift, firm, and strong and let the whole world be full of wealth for him, that is one measure of human bliss."

"One hundred times that human bliss is one measure of the bliss of human Gandharvas and likewise of a great sage who is free from desires."

"One hundred times that bliss of human Gandharvas is one measure of the bliss of divine Gandharvas and likewise of a great sage who is free from desires."

युवा स्यात साधुयुक्ताध्यायकः आशिषो दृष्टिकोटि बलिष्ठः। तस्येन पृथिवी सर्वा वितर्य पूर्णा स्यात्। स एको मानुष आत्मः। ते ये शतं मानुष आत्मः। स एको मनुष्यगत्वांशामान्यः। अभिनिर्वय चाकामहस्तस्य। ते ये शतं मनुष्यगत्वांशामान्यः। स एको देवगत्वांशामान्यः। अभिनिर्वय चाकामहस्तस्य। . . . स यथा च पुरुषे। यश्चासावविद्ये। स एकः।

Tait. Upa., II. 8. 1-5.

In this way Varuna's enumeration proceeds up to the bliss of Brahmana which too is likened, to the bliss of a great sage who is free from desires; and his "Brahman in man and Brahman in the sun both are one."

According to Varuna, wisdom is merely the science of happiness that teaches us how to achieve happiness, and happiness is a constant state of pleasure.

Yajnavalkya's conception of 'happiness' is expressed almost in the same language. He says:

स यो मनुष्याणां राजः समृद्धो भवत्येवामशिषयति: सवैमानुष्याः सम्पशतः। स मनुष्याणां परम आत्माऽपि ये शतं मनुष्यांमान्यः। स एकः सत्तुणां जितोकानामः.
If 'just order' is to mean an 'order' affording happiness to everyone, it is obvious that such happiness cannot mean what a man himself considers it to be. For, in that case it would be inevitable that the happiness of one will, at some time, be directly in conflict with that of another.

It is necessary to take into account all such theories that may give us some estimate of the nature of man, in order to know the nature of law and its objects, as conceived by the legal philosophers of the time. The basis or roots of law are indeed to be found in human nature and one of these roots is self-interest or egoism. This starting point of a theory of law is in fact found in our Manusmriti where after pointing out that कामात्मकाप्रवक्ता (Manu, II. 2) "Desire is no laudable motive" the Smritikar confesses that "yet an exception from that desire is not to be found in this world," नवेभेहास्य-कामता. Varuna, too, seems to be of the same opinion; his human bliss being for those having this काम: while the superior bliss is reserved for a sage who is free from desires.

A few words about Sandilya’s doctrine of will and belief must be said before we proceed to examine the philosophical position of Jaynadvalkya. According to Sandilya a man is a creation of will: कल्पना:. His destiny hereafter is determined by what he wills and believes here. "Let a man meditate on the visible world as beginning, ending, and breathing in Brahman—the intelligent, whose body is spirit whose form is light, whose will is true, whose nature is like ether, omnipresent and invisible, from whom all works, all desires, all sweet odours and tastes proceed,—he who embraces all this, who never speaks and is never surprised." 13 This Being is, according to Sandilya, what we conceive as self within our hearts, our conscience, our reason, being thus only a reflection of the divine self, divine reason. "He from whom all works, all desires, all sweet odours and tastes proceed, who embraces all this, who never speaks and who is never surprised, he, myself within my heart, is that Brahman—thus said Sandilya, yea, thus he said." 14 This being so, myself within my heart being that Brahman from whom again all works, all desires, all the materials, all the roots of law proceed, it necessarily follows that this law is discoverable by reason, is capable of being felt within our hearts. Herein is to be sought the origin of that idea of law according to which it is thought of as a reflection of that part
which determines the "ought" addressed by that reason to human beings as moral entities, in distinction from the "must" which it addresses to the rest of the creation. Such law is discoverable by reason because the will of God and human reason coincide. The source of law lies in God and its essence is reason. The mediation of philosophy and the resulting knowledge can illuminate the nature of justice and of law. Hence perhaps the philosophers could say

चत्वारो वेद्यम्यां; पर्यायविचारेभ व।
सा तृती तत्त स धर्मं; स्थविको वामाद्वविलम्भः।

"Four persons well-read in the Vedas and Religious Codes or a number of Brahmanas versed in the three Vedas, form a synod. Whatever this (synod) or a person foremost amongst those wellversed in spiritual science, declares, is religion."

Yajnavalkya Samhita, I. 9.

In saying this Yajnavalkya indeed seems to think that the learned men will equally be the just men also.

Yajnavalkya is reputed to be the author of Satapatha Brahmana of which the Brihadaranyaka Upanisad forms a part. As has already been said, a large portion of this Upanishad in fact professes to contain Yajnavalkya's philosophical views and his influential position at the court of Janaka, king of Videha is alluded to several times. In fixing the age of Yajnavalkya attempts have been made to identify him with the author of Yajnavalkya Smriti, the famous legal treatise. It, however, seems to be settled beyond controversy that though the author of the law code claims also the authorship of the Vedic treatise, they were distinct persons and of widely different times. Yet for our purpose an examination of the Yajnavalkya Smriti at this place will also be pertinent inasmuch as its author at least professes to follow the doctrine of the great sages and as such his tenets will at least give us an idea as to how Yajnavalkya was understood in the days of the Samhitakar.

One important feature in Yajnavalkya philosophy is his doctrine of self-love, his doctrine of ग्रात्मकाम.

"Verily, a husband is not dear, that you may love the husband, but that you may love the self, therefore a husband is dear." "Verily, a wife is not dear, that you may love the wife but that you may love the self, therefore a wife is dear." "Verily, everything is not dear that you may love everything, but that you may love the self, therefore everything is dear." "Verily, the self is to be realised, to be heard, to be perceived, to be marked, O Maitreyi when we, realise, hear, perceive and know the self then all is known."

According to Yajnavalkya self love lies at the foundation of all other loves and has its beginning in the instinct of self preservation. "Your Majesty" says Yajnavalkya addressing Janaka, "life itself is that which is dear, because for the sake of life, your Majesty, a man sacrifices even for him who is unworthy of sacrifice, he accepts presents
from him who is not worthy to bestow presents, nay, he goes to a country, even where there is fear of being hurt, for the sake of life. Life, O' King, is the highest Brahma:"

स होवाच न वा अरे पत्रः कामाय पति: प्रियो भवति आत्मनस्तु कामाय पति: प्रियो भवति।
न वा अरे जायाय जाये प्रिया भवतामतनस्तु कामाय जाये प्रिया भवति। न वा अरे पुत्राणां कामाय पुत्रः प्रिया भवतामतनस्तु कामाय पुत्रः प्रिया भवति। न वा अरे वितस्य कामाय वित्त: प्रियं भवतामतनस्तु कामाय वित्त: प्रियं भवति। न वा अरे श्रुद्धारः कामाय श्रुद्धाः प्रियं भवतामतनस्तु कामाय श्रुद्धाः प्रियं भवति।
न वा अरे क्रान्तिः कामाय क्रान्त: प्रियं भवतामतनस्तु कामाय क्रान्त: प्रियं भवति। न वा अरे लोकाणां कामाय लोकः प्रिया भवतामतनस्तु कामाय लोकः प्रिया भवति। न वा अरे देवाणां कामाय देवः प्रिया भवतामतनस्तु कामाय देवः प्रिया भवति। न वा अरे भूतानां कामाय भूतां प्रियाणी भवतामतनस्तु कामाय भूतां प्रियाणी भवति।
न वा अरे सर्वायं कामाय सर्वं प्रियं भवतामतनस्तु कामाय सर्वं प्रियं भवति। आत्रे वा अरे इतः,— श्रोतयो श्रद्धायो निविद्यासिद्धायो मैत्रयालयो वा अरे दर्शनेन भवणेन सत्या विज्ञानेनेवं सर्वं विदितम् ॥

Br. Ar., II. 4. 5.

Yajnavalkya's philosophy of law is closely connected with this ethics. It is incumbent upon men to perfect themselves and their condition, and to avoid whatever detracts from such perfection.

का प्रियता याजवल्क्या प्राणे एव स्मारितदिः होवाच प्राणस्य वै समारद कामायाज्ञयं
याजवल्क्याःप्रतिगृहस्य प्रतिगृहस्य तत्र वचारांशु भवति यां विदितेऽपि प्राणायेव समारदः
कामय प्राणी वै समारदं परमं ब्रह्म।

Br. Ar., IV. 1. 3.

अनुस्मरियं शुद्धं मनोबुद्धिस्मृतिनिद्रयं।
ध्येयः आत्मा स्थितो योजो शुद्धये दीर्घवतः प्रमुः॥

Yajnavalkya Samhita, III. 111.

"Having withdrawn the mind, understanding, retentive faculty and the senses from all their objects, the soul,—the lord, that is stationed like a lamp in the heart, should be meditated upon."

From this would arise the precept, as a rule of nature, to do that which helps the improvement of one's self and one's condition, and to avoid that which goes against it. The command of nature, "Perfect thyself" is at once a direction for physical and moral self-development and the fundamental principle of justice. Duties are divided into those towards ourselves, towards our fellow-men and towards God.

But the precepts need not issue from God as commands. These will come from Him as wise admonitions addressed to the heart which would not fail to recognise them, for heart is certain and will not mislead us. Hence perhaps was the precept

अतो यदातनोपथं परस्य न तदाचरैतु॥

Yajnavalkya Samhita, III. 68.
This indeed translates exactly into the formula of justice proposed by Thomasius which reads "do not to another what you would not have another do to you." "Quod tibi non vis fieri alteri ne feceris." This principle of Thomasius is notable for the reason that Kant derived from it his categorical imperative, "Act only according to such maxims as would enable you to will that they may become universal laws."

It is important to note here that according to Yajnavalkya the State arises from contract, its object being to promote security and self-sufficiency of all its members and to ensure the satisfaction of the needs and supply the conveniences of life. "When the Gods had performed the guest-offering, discord befell them. They separated into four different parties, unwilling to yield to each other's excellence—Agni with Vasus, Soma with the Rudras, Varuna with the Adityas, and Indra with the Maruts. Brihaspati with the All Gods, say some, but, indeed, those who separated into four parties were 'all the gods'. When they were separated the Asura-Rakshas came after them and entered between them. They became aware of it—'Forsooth, we are in an evil plight, the Asura-Rakshas have come in between us. We shall fall a prey to our enemies. Let us come to an agreement and yield to the excellence of one of us. They yielded to the excellence of Indra, wherefore it is said, 'Indra is all the deities, the gods have Indra for their chief.'"


This is how according to Yajnavalkya the state originated in heaven. For us human beings

Atharvaveda, XIX. 41. 1.

This is indeed a sort of social contract theory. We shall have more such theories later. Legal and Political theories are often characterised as hypocritical disguises for concrete political aspirations. Indeed such theories have not always been used as the result of genuine reflection on the relations of man and universe. Sometimes they have been used entirely as a cloak to cover the nakedness of the will to power and domination and in order to maintain the appearance of continuity of a civilization.

But this has not always been the case and it will indeed be unwise to start with such an assumption wherever we come across any theory of law or of society.
There are indeed various theories of such social contracts. "What links all protagonists of the social contract theory is that they find the source of political power in the people and are unanimously opposed to the deduction of political authority from above, whether from divine law or the grace of God."

It would appear that in this view of the social-contract theory the above falls outside this category. The divine society was no doubt the result of a contract; but the human society was ordained by the Divine power though it was modelled on the contractual society of the gods.

It must be remembered that our Vedic Philosophers conceived of human nature as essentially good and hence they could not conceive of a state of society, either here or in heaven, in which everyone's hand is raised against his neighbour, and in which every man preys upon every one else. According to our Vedic sages some external force threatening the security drove people to combine and covenant. But this could be possible only with the gods. For us, also the Vedic sages recognised the element of sociability in human nature and could not conceive of any pre-social stage. We started with society, with government, with state as divine gifts.

One great function of the State is to enforce the observance of law, and that is done through दण्ड:. We shall have occasion to discuss the Hindu theory of दण्ड: later on; but here it must be noticed that Yajnavalkya, too, like the earlier Vedic sages, values law as ensuring harmony, and order: according to him, harmony consists in each individual's keeping within a predetermined groove. Hence one function of the king is to see that none gives up his own avocation, and so the rule:—

कुलानि जाति: अप्रीपलक गणान्तज्ञदानंत्रथया।
स्वयमर्मचलितान्त्र राजा विषयं स्थाप्येर्चु पुर्ध॥ ३६१॥

Yajnavalkya Samhita, I. 361.

"Having duly punished (men of his own) family, caste, division and class and the subjects, the king should place them in the (right) path."

But one thing more of Yajnavalkya must not be left unsaid here. Yajnavalkya gives us his conception of good and evil which is in keeping with his theory of desire and knowledge. According to him whatever lands us into doubt, darkness, delusion and ignorance and increases hunger, thirst, sorrow, pain, decay and death is evil. Good makes us free from all these and leads to knowledge, and immortality. "That self is indeed Brahman, consisting of knowledge, mind, life, sight, hearing, earth, water, wind, ether, light and no light, desire and no desire, anger and no anger, right or wrong, and all things. Now as a man is like this or like that, according as he acts and according as he behaves, so will he be:"

Br. Ar. Upa., IV. 4. 5.
And here they say that a person consists of desires. And as is his desire, so is his will; and as is his will, so is his deed; and whatever deed he does, that he will reap.

With Yajnavalkya knowledge is faith while ignorance is doubt, knowledge is truth, ignorance is falsehood. Knowledge is virtue, ignorance is sin; knowledge is bliss, ignorance is sorrow. So when one has acquired knowledge he cannot do wrong, he cannot break the law.

No doubt to act without desire is the ideal preached by this Philosopher. But at the same time he does not ignore the fact that man does not always act for a disinterested end, or in view of an absolute good; most frequently he seeks to obtain what is useful for himself and for others. His actions are then measured by another standard: abstraction is made from the determining standard: abstraction is made from the determining motive, and the result is considered. The rule in such actions is no longer absolute goodness, but justice; it is the good recognised in its equality.

We next come to Mahidasa Aitareya, another great Philosopher of the age. His system of philosophy was named after his mother Itara Aitareya Brahmana and Aitareya Aranyaka are the two monumental works of which the authorship is ascribed to this philosopher, and Chhandogya Upanisad seems chiefly to follow his tenets.

Mahidasas, like Rishi Prajapati Parameshthin, looked upon water as the material cause of the world out of which it was created. Having described how Prana, the breath, and his companions or servants created the world, he discusses the question of this material cause and says, ‘Was it water really’? Was it water? Yes, all this was water indeed. This water was the root, that world was the shoot. He, the Person is the father, they (earth, fire etc.) are the sons. Whatever there is belonging to the son belongs to the father; whatever there is belonging to the father, belongs to the son. This was intended. Mahidasa Aitareya who knew this, said:

The principal task of philosophy according to Mahidasa, was to explain experience, and so according to him all philosophical investi-
gations should necessarily be kept within the bounds of experience. Hence his saying:

एतद सम वै तद्वादानाः महिदासाः ईश्वरे याहं माधवेभ्यो
वेद ओमवाब्लवेत: प्रवाहा होत हत: सम्सृता हति।।

"I know myself as far as the gods, and I know the gods as far as me. It is possible to know the gods because they receive their gifts from hence and are supported from hence."  

With Mahidasa man is a miniature universe, so that what is in the one, is also in the other. "Whatever there is belonging to the son it belongs to the father, whatever there is belonging to the father, it belongs, to the son" also. Our concepts of the universe are accordingly translatable at last into those of man and vice versa. This is so also with every individual thing or animal: nay, even with every root, seed, germ, or atom. Mahidasa views a finite thing of experience not only as a part of the sum total of things, not only as a part of the universe, but as the whole itself, as the universe itself. Nature in his opinion cannot be conquered without a knowledge of her laws, without interpreting her. And the interpretation of nature is possible only by experience, only by experience free from all that mind introduces therein of itself. The things of experience can be explained only in terms of पूर्व and भूत only in terms of cause and effect: and these cause and effect though distinguishable are not entirely separated from each other, and are identical in essence. 17

Mahidasa preached the unity of the universe and found no difference in kind between the physical universe, the organic world and man. The difference was only one in degree and he expressed this by saying, "He who knows, the gradual development of the self in him obtains himself more developed. There are herbs and trees and all that is animated, and he knows the self gradually developing in them. For in herbs and trees sap only is seen, but चित्र in animated being. Among animated beings again the self develops gradually, for in some sap is seen as well as thought but in others thought is not seen. And in man again the self develops gradually, for he is most endowed with knowledge. He says what he has known, he sees what he has known. He knows what is to happen tomorrow, he knows heaven and hell. By means of the mortal he desires the immortal; thus is he endowed. With regard to the other animals hunger and thirst only are a kind of understanding. But they do not say what they have known, nor do they see what they have known. They do not know what is to happen tomorrow, nor heaven and hell. 18 The self, the intelligent principle, develops gradually in the universe.

In herbs and trees sap only is seen, but चित्र develops in the higher forms of life manifested in the animal world. There again hunger
and thirst, instincts and impulses only guide the lower animals while the capacity to reason, the capacity to know what is to happen tomorrow, was to develop in a still higher form of life. Conscience, which alone can differentiate heaven from hell, which alone perceives the distinction between good and bad, is reserved for man, man alone having not only voice but speech as well, not only mind but prudence too.

Mahidasa seems to be of opinion that the formation of ideas can be explained by means of two faculties: sense and intellect. The senses, of course, have for their object singulares or individual things, and the intellect, universals; the senses present matters for cognition to the intellect which forms ideas. Ideas again are not products of the human mind; but the intellect by its abstractive power forms the universal from singulares, extracting from the latter what they have in common, for singulares are potential universals, the singular or individual things being not outside the genus. The capacity to form ideas is of course to be found only in man, only in "man who is the Sea, rising beyond the whole world."\(^{19}\) Indeed man is so constituted that "Whatever he reaches, he wishes to go beyond. If he reaches the sky, he wishes to go beyond. Nay, even if he should reach that heavenly world, he would wish to go beyond."\(^{20}\)

From what has been quoted above to demonstrate how Mahidasa conceived nature as an interconnected whole, it must have been noticed that the Philosopher’s conception of development was really that of an unfolding, of a transition from the hidden to the manifest, from the potential to the actual.

Before proceeding to appraise the ethical principles of Mahidasa we must notice one more point, I mean his conception of mind. Mind, according to him is the one wherein all desires dwell" the speech yielding these. "All desires dwell in the mind for with the mind he conceives all desires."\(^{21}\) Speech yields all desires, for with speech he declares all his desires.\(^{22}\)

The chief characteristic of Mahidasa’s philosophy is his conception of a gradual development with an end in view. The whole of nature is indeed a system of ends, the ultimate aim of life as a whole being the attainment of perfection,—perfection consisting of प्रज्ञा, न्यायम् and अमूल्यवस्मि. The continual advance is one from प्राण to प्रज्ञा, from प्रज्ञापति: to ब्रह्म, from bondage to freedom.\(^{23}\)

Mahidasa marks a gradation even in freedom; the highest freedom being reserved for the head, consisting of the powers of heart and mind by which alone a man knows "what is to happen tomorrow," knows "heaven and hell and desires the immortal by means of the mortal."

The desire for the immortal by means of the mortal, 
मन्यत्र अमृतं ईश्वर, is indeed the highest aspiration that a man can
have and its attainment is possible only through प्रस्ता. The chief aim of human life cannot indeed be the gratification of senses. All forms of life eat and drink; all classes of animals procreate. Even the plants and trees, after they have grown up, bear fruit.24 These cannot, these should not, be the whole duty of a human being who is placed highest in the scale of development, and who alone is endowed with the unique faculty of reason.

Mahidasa, however, was not a cynic. He did not preach that we should forego the legitimate pleasures of the senses. He did not make virtue consist in the freedom from desires and did not repudiate the fruits of civilization, such as government, marriage, property etc. There is no reason why we should forego the pleasure of the senses; only these must be legitimate, must be in harmony with the purpose of the whole of nature, must subserve the real end for which these are meant. When this legitimate end is kept in view, the gratification of the senses is not only permissible, but is obligatory. This philosopher, for example, emphasises the necessity of a son because, he says, through Narada,

अर्थमसिन्म संवथमूतत्वं च गच्चति। पिता पुत्रस्य जात्स्य पयवेच्छज्जीवतोमृतम्।
याबतः पृषिव्रया भोगा याबतो जातवदसि। याबतो अपम् प्राणिनां भूमान् पुने पितुस्ततः।

_Ait. Br._, XXXIII. 1. 4-5.

Nay, not only this, he goes even further and places the procreation of a son even higher than asceticism:

कि न मलं किमजिमं किमु शमारणं कि तपः।
पुरेभ्रह्मणं इष्टं स वै लोकार्थवादवः।

_Ait. Br._, XXXIII. 1. 7.

The necessity of पुनः is no less than the necessity of अर्थ;
अर्थ हि प्राणः वरणं हि वासः रूपं हिरणस्य पश्चवो विवाहः।
सब्ह हृ जाया कृपणं ह दुहिता ज्योतिश्रेष्ठ पुनः परमेव्यामन।

_Ait. Br._, XXXIII. 1. 8.

As a practical man, Mahidasa considered life as altogether imperfect without marriage and children. "Join what is sweeter than sweet with the sweet; for the couple (father and mother) is sweet, the offspring is sweeter, and he thus joins the offspring with the couple.

Mahidasa also, like Yajnavalkya, gives us his version of the origin of state, and like Yajnavalkya gives the gods the whole credit for founding it;

ते देवा विविषायवस्मात् विष्यमाणमम्विदम्मुरा आभिविष्मि इति ते व्युक्तव्यामम्वत।

_Ait. Br._, IV. 7. 8.

With Mahidasa also it was some external force that compelled these devas to combine, and to covenant out of the isolated state.

It has already been noticed how Mahidasa viewed the whole universe as a system of ends and it is only reasonable to infer that
his conception of law too shall bear this stamp. In his conception of state he seeks to emphasise the fact that the state is necessary to bring in harmony; and that the state is possible only on the assumption of a delimitation of individual desires by limiting individual interests.  

More often than once it has been said that one of the roots of law is to be found in self-interest or egoism. "A great variety of necessities, necessities both animal and ideal, impel human beings to action, producing conflicts in outer world." The basis of man's activity is to be found in the various human necessities; and if men, not performing a 'splendid isolation' should satisfy their desires without regard to others, discord would be inevitable. But the necessity of 'rest', the necessity of security is also at the same time felt, and the grosser egoism is thus transformed into a refined one, making the individual renounce the satisfaction of certain desires in order that he may better enjoy others and thus help the organization of the state and a system of legal order.

Man, according to Mahidasa, is endowed with capacity to reason, and it is necessary for the ordering of his sensations and experiences, to reason from the particular to the general; to discover from single phenomenon their overruling genus. "Man also apprehends himself, in nature, as an object of generalization, an object of his knowledge." He forms a conception of himself and generalizes; logically as well as practically, the necessity of order and harmony follows; and this order embraces also material things, and matters of property.

Herein indeed lies an ideational root of 'law'. Reason postulates the subordination of the conscious ego to its environment and consequently requires a certain concordance between egoistic and altruistic impulses. This gives rise to the legal sense and the legal impulse, and these manifest themselves in an inclination towards external order.

Mahidasa completely identifies भूतं with सत्यः:

४५|४५|४५|४५ (Ait. Br., XVIII. 6. 17)
४५|४५|४५|४५ (Ait. Br., XVIII. 6. 15)
४५|४५|४५|४५ (Ait. Br., XVIII. 6. 12)

This truth again is the greatest virtue that a man should achieve. "What is true is the flower and fruit of speech," a man who says what is untrue exposes his root, dries up and perishes.  

It has already been noticed how the Vedic Rishis also identified rita with 'satya' and how according to the author of Brihadaranyak Upanishad Brahma and Satya were mutually convertible ideas. Truth indeed signifies the agreement of knowledge with reality and thus belongs to the order of logical notions. The connection of these ideas are not merely accidental, appropriateness being the common thought connecting both. "Owing to this connection, justice, law, and right
show in numerous languages a kinship with the idea of the direct, of the straight, excluding, as it were, all deviation and circuitousness; the idea of the crooked being thus identified with things improper and bad.'

Before we leave Mahidasa, we should notice his views as to the inviolability of custom. "Let no man swerve from it," says Mahidasa. "Let no man transgress it. For the old did not transgress it, and those who did transgress, became lost." 28

It has been noticed elsewhere that the special feature of this age, so far as our subject is concerned, consists in the fact that here for the first time we come across a conscious thinking about the end of law; and it has also been adverted to that this end was the preservation of the social status quo. These philosophers indeed came to conceive of general security in terms of social status quo. To them, general security could only be maintained through securing the existing social institutions; and consequently law is but a device to set man in his proper predetermined place, thus avoiding friction with others. It will be seen later how in the next succeeding age this was carried to its extreme logical limit. Meanwhile we shall mention here a philosophical view of law, which emphasises the 'equality' in law and revolts against the ideal end sketched out above.

We hear in Dhanmapada that "a man is not just if he carries a matter by violence; no, he who distinguishes both right and wrong, who is learned and guides others, not by violence, but by the same law, being a guardian of the law and intelligent, he is called just." 29

We shall close this chapter with a schematic representation of evolution of law. We find the following passage in Anügita:

"Then the Brahmana smiling again said to Janaka: Know me to be dharma, come here today to learn something about you. You are the person to turn this wheel, the nave of which is the Brahmana, the spoke, the understanding, and which does not turn back, and which is checked by the quality of goodness as its circumference." 30

Law is likened to a wheel that can be turned and is thus mobile. There is nevertheless a part that is fixed or constant and this element is emphasised by making the Brahmana its nave. Law contains a substance which is immutable and a form which indeed can turn and turn round the fixed nave. The form of law is indeed determined by its quality of goodness and is attainable by understanding, by reason.

It will not be out of place to notice here a few of the modern theories of jural progress that will bear comparison with this. Law, in its most normal aspect, would evolve in harmony with the epoch, of which it represents the welfare. But is the evolution constantly in the direction of progress? Is there a constant ascendancy? This question has been variously answered in modern times. "One theory advanced is that of Deviation and
Recessions; another is that of alternating Integrations and Differentiations. The former theory plots the succession of events in a line constantly ascending in space, the latter theory plots it in an undulating or an angled line, made of ups and downs a progress and a regress, to which Pascal’s striking description would apply; two steps forward, then one step back; hesitation followed by rest; then three steps forward and one step back; then a stop, and then finally ahead again.”

Vico’s theory represents the line of evolution as a Periplus, a Cycloid, a line which returns by a circle to its beginning, thence to start once more over the same path. De Greef proposes a helicoid line, proposes a spiral which ascends straight over itself. Others depict evolution as parabola, emerging from the mystery of the past and disappearing in the mystery of the future. Lastly, Goethe conceives of evolution as represented by the figure of a rising spiral, whose curve broadens as it rises and thus takes account of the vast variability of things, especially in law.
LECTURE IX

HINDU PHILOSOPHY OF LAW IN THE SUTRA PERIOD

We next pass on to the Sutra period. The Sutras are generally recognized as later than the Brahmans and the Vedic Samhitas, and form the last branch of the Vedic literature. "They must be considered as belonging to the Vedic period of literature, not only on account of their intimate connection with Vedic subjects, but also because they still exhibit the irregularities of the old Vedic language."¹ "They form indeed the last branch of Vedic literature and are contemporary with the first spreading of Buddhism in India."² Professor Max Muller thus places the Sutra period as contemporaneous with the first rise of Buddhism. It is not necessary for us to stop here to discuss the tenability of this view of Prof. Max Muller. It needs only to be mentioned that Yaska quotes legal rules in the Sutra style, evidently, from some Dharma Sutra extant in his time; and if any inference can be drawn from this it will only point to an earlier composition of the Sutras on Dharma, prior to the first rise of Buddhism.

Whatever that be, we shall confine ourselves to the Dharma Sutras of Gautama, Vasistha, Baudhayana and Apastamba, these having generally been accepted as anterior to Manu Smriti. Of these again, Gautama Sutra is declared to be the oldest.³

Gautama says: "वेदो धर्ममूलं तवदिगं दृष्टिकृत्य समृतिशीते"

Gautama Sutra, I. 1. 2.

"The Veda is the source of the sacred law, and the tradition and practice of those who know Veda." He then proceeds to observe that "transgression of the law and violence are observed in the case of great men; but both are without force as precedents on account of the weakness of the men of later ages", दृष्टो धर्मश्र्यत्रक्ष: सारसव: महतां न तु दृष्टोपायाःरतिक्यादातु (Gautama Sutra, I. 3 and 4). The possibility of conflicting authorities is next admitted and he advises तुल्यविरोधोऽविरोधिन्निविक्तवः (Gautama Sutra, I. 5); if authorities of equal force are conflicting either may be followed as pleasure.

After thus sketching out the sources of law Gautama proceeds to enumerate in details rules of conduct which, if really observed, would regulate even the smallest acts of an individual's daily life and thus tie him down to his station in the society.
It has already been seen how the Vedic Rishis accepted, as the fundamental principle of law, the divine reason, the divine essence,—which being eternal and immutable excluded all idea of arbitrariness. Sometimes divine will might have been looked upon as the foundation of law; but this divine will was not necessarily inscrutable and arbitrary; divine will and divine reason being looked upon as different manifestations of the same one and harmonious essence of the deity. From the course of the stars, from the unchangeable and regular rotation of day and night and the seasons, from every phenomenon observed by them they could only conceive of the notion of the order of nature; they could only form the conceptions of ऋषी, of order, of harmony; and these were, subsequently, also applied to the inevitable relations of human activity such as the union of sexes, and the begetting and education of children. This order, we have seen, they imagined as standing above the deity itself, and as holding the supremest sway. The end of law was the maintenance of this order.

But the only way in which this order could be maintained would be by securing the existing social institutions, by maintaining the social status quo; and all the Sutrakars endeavoured to delineate the method of preserving the status quo. Minute details are laid down to regulate individual conduct, swerving of an inch from which would lower him in society and must be atoned for.

Gautama could scarcely escape the confusion of the juristic and the moral order with the physical, and consequently doubted whether one should perform any penance for a wrong. The ‘deed’ indeed does not persist in the physical world, and if there is nothing to distinguish the juristic and the moral from the physical order, all penance would only be useless, deviations being necessarily followed by penalties. So Gautama says:

"तत्र प्रायश्चित्तं कुर्यात तु कुर्यादितिः भीमासनं न कुर्यादित्याहूऽ द्वितीयं श्रीमं क्षीयत
idति कुर्यादितियवयः पुनःस्तोवमेष्ठुः पुनः सवन्नमायानीतिति विन्नियते।"

Gautama Sutra, XIX. 3-7.

"They are in doubt if he shall perform a penance for such a deed or if he shall not do it. Some declare that he shall not do it, because the deed does not perish. Others on the contrary say, he shall perform a penance; for it is declared that he who has offered पुनःस्तोमः may again come to partake of the libations of Soma."

Gautama after all rejects the doctrine of eternal damnation and declares in favour of penance; and he does so on the authority of the Vedas, because in the Vedas he finds instances of the efficacy of such penances. Gautama thus avoids the intolerable truth that all human acts, all evils and pains, are irremediable.

As has already been observed, the preservation of the social status quo was considered to be the purpose of law; for it was only
through the security of the existing institutions that order could be maintained. Equality was not the principle which weighed much with these Aryans, specially in the Sutra period. The Sutrakars no doubt attempt to base their theories on ‘welfare’ or ‘utility’, but their theory of welfare and utility extends to the conception of felicity after death. These two notions of welfare and utility are very often used as synonymous; yet they are not identical; the notion of welfare being more comprehensive than that of utility. The theory founded upon welfare no doubt is the ampler on the one hand; yet, on the other it is less clear, as its several factors are neither sharply defined, nor admit of being scrupulously weighed. The notion of human welfare, of human happiness, is separable from that of worldly advantage and utility, and admits of being associated with virtuous self-satisfaction and self-sufficiency, with absorption in the contemplation of abstract ideas, with acquiescence in the order of nature, with conviction of salvation in the world-beyond. The doctrines preached by these Sutrakars are rather eudemonistic than utilitarian, and are marked by the fact that the ‘welfare beyond’ outweighs in importance any earthly advantage and utility.

“वर्णालयम: स्वस्ववर्धनमित्वा: प्रेय वर्मर्म- मृण, यत: संयोग विजये देभाजानितकुलपापे: शून्यतचित्र: (२१) वित्तमूलमयो जन्म प्रतिपालने’

(Gautama Sutra, XI. 29) and those who act in a contrary manner perish.

“विपरीता नस्यलि” (Gautama Sutra, XI. 30). Hence, it is only to secure one’s own ‘welfare’ that one should not swerve an inch from the groove cut out for him.

The Sutra literature is characterised by the reservation of special privileges to the classes, particularly the Brahmans. “परिवार: परिवारो राजा

श्रेष्ठव्रतव्यवस्थितभवाश्ववातिकार्यस्वास्त्रीयविधियालार्थविद्याधिकारियाविद्याधिकारियास्वभाविष्यति।

(Gautama Sutra, VIII. 12-13). Such a Brahman must be allowed by the king immunity from the following six kinds of opprobrious treatment. He must not be subjected to corporal punishment, he must not be imprisoned, he must not be fined, he must not be exiled, he must not be reviled, nor be excluded.” Even in the fields of acquisition of property privileged classes have privileged modes of acquisition, acceptance of gifts being reserved for the Brahmans. “स्वाम्य श्रेष्ठव्रतव्यवस्थितभावाश्ववातिकार्यस्वास्त्रीयविधियालार्थविद्याधिकारियास्वभाविष्यति।

(Gautama Sutra, X. 30-10). “A man” Gautama says: “becomes owner by inheritance, purchase, partition, seizure or finding; acceptance is for a Brahman an additional mode of acquisition.”

It is needless to multiply examples of special privileges reserved for the classes. We should, however, notice here how the notions of indulgence, of privilege, and of charity are akin to each other being themselves related to the then prevailing conception of justice.

The ideas underlying indulgence and privilege do not rest on the principle of equality, but upon such human sentiments which going
beyond the effects of distributive justice, endeavour to render some help to the weak, to those who stand in some need therefor. But their applicability lies more in communities than in individuals, and by forbearance than by active participations. "These notions are not founded upon the principle of uniformity but upon that sentiment which going beyond the effects of distributive justice, provides protection and succour for weakness, and not only allow full scope to the exertion of others, but supplements it by the surplus of its own strength, and lays no claim to enlist it for purposes of community." Charity advances even further in the same direction, and relates to the relief of private wants which are outside and do not concern the social interests, and cannot be attended to sufficiently in any other way. This whole series of inclinations and virtues has, however, its foundation in the sense of the necessity of satisfying human wants, that self-same sense which has led to the formation and organization of the spheres of society, of which the conditions relating to and dependent upon human action are comprised in the law.

It must be observed that by Brahmana Gautama scarcely intends to mean only a Brahmana by caste. His Brahmana is a Brahmana deeply versed in the Vedas, and it was only for such a Brahmana that some indulgences, some facilities were to be reserved. Such a Brahmana would be necessary for the preservation of society. For, as has already been noticed, according to Gautama the Veda was the source of sacred law, and knowledge of such Veda would, therefore, be essential to uphold order and harmony.

Gautama, it has been said, looks upon the Veda as the ultimate source of law. Yet he does not discard altogether the function of reason in finding out law. "तक्तोःमूलनास्" (Gautama Sutra, XI. 23), he says, and so a king should decide properly after coming to a conclusion through reasoning.

Times and again belief in the power of reason has been followed by distrust of reason and corresponding faith in instinct. Intellect is pitched against intuition, reflection against life.

If this has been the case with Philosophy, legal theory also shows a corresponding cyclical movement. "The charismatic law finder of primitive communities finds the law intuitively. Systematisation of law goes parallel with a more rational attitude. When a disappointed generation, dissatisfied with the self-complacency of positivism, becomes doubtful about the power of reason, instinct and intuition come again to the fore."15

The most conscious application of the philosophical issue between instinct and reason to legal theory in the modern world is contained in Geny's system. Geny allocates the principles of reason to the facts of law. "These facts of law are the object of intellectual
perception, while juristic action moulds these facts in accordance with the needs of life through a creative intuition equipped with legal technique. Emphasis on instinct and feeling rather than intellect and reason characterises modern totalitarian legal theories. The liberty inherent in the use of instinct is countered, however, by the strict political supervision of the lawyer.

Here indeed we might notice Gautama's view as to the mode of discovering law in cases not provided for. We are told by Gautama:

अनाजीते दशावर्ते: शिवविहविद्विद्वार्ते: प्रतां कार्यम्।
चत्वारसूचिता ग्रामा वेवाना प्रागृहतत्त्वाः आश्रयिता:
पृथ्विर्भविद्विद्वार्ते, अतानु दशावर्तानु परियिष्टाचक्कले।
अस्मि लेवेपाम् योग्यायो वेदविविष्टम् विनिष्पत्ती यदाह।

(Gautama Sutra, XXVIII. 46-48.)

"In cases for which no rule has been given, that course must be followed of which at least ten persons, who are well instructed, skilled in reasoning, and free from covetousness, approve. They declare, that an assembly—परिषद्—shall consist at least of the ten following members, viz., four men who have completely studied the four Vedas, three men belonging to the three orders enumerated first and three men who know three different institutes of law. But on failure of them the decision of one Shrotriya, who knows the Veda and is properly instructed shall be followed in doubtful cases." The three orders referred to in this extract are those of ब्राह्मण, गृहस्थ: and बिशु:.

So a Vanaprasthi (वानप्रस्थ) is not one eligible for a Parishad.

Baudhayana, another Sutrakar of the age, in the very commencement of his Dharma Sutra says:

उपदिष्टो धर्म्म: प्रतिवेदम्। तत्स्य ज्ञात्वाय ज्ञात्यास्ताम्।
स्मातो विद्विद्। तृतीयश्चाप्ताम्।

(Baudhayana Sutra, I. 1. 14.)

"The sacred law is taught in each Veda. We will explain in accordance with that. The sacred law taught in the tradition (Smrti) stands second, practice of the Sishtas stands third." He then proceeds to explain what he means by Sishtas and says:

शिष्टा: खङ्गु विविहितार्थोऽविचारः
कुम्भोपाया अलोच्या दम्मर्यांतोमोयेतानोपविविष्टाः।

(Baudhayana Sutra, I. 1. 5.)

गर्गर्याधिकारो येवां वेदस्वपरिवर्जित हुष:।
शिष्टा स्वतन्त्रान्त: प्रस्तुतात्मः भूतित्वाक्षेत्रेऽवः। इति।

(Baudhayana Sutra, I. 1. 6.)
"Sishtas, forsooth, are those who are free from envy, free from pride, contended with a store of grain sufficient for ten days, free from covetousness, and free from hypocrisy, arrogance, greed, perplexity, and anger. Those are called Sishtas who, in accordance with the sacred law, have studied the Veda together with its appendages, know how to draw inferences from that, and are able to adduce proofs perceptible by the senses from the revealed texts. तद्भवे दसावरा परिषद्। (Baudhayana Sutra, I. 1. 7). "On failure of them," says Baudhayana, "an assembly consisting at least of ten members shall decide disputed points of law." He then cites the following verse:

चानुव्री विकल्पी च अनुविवदधर्मपावकः।
आद्रमसत्त्वयो विप्रा: पर्वदेया दशावरा॥

Baudhayana Sutra, I. 1. 8.

"Four men, who each knows one of the four Vedas, a Mimamsaka, one who knows the Angas, one who recites the works on the sacred law, and three Brahmans belonging to three different orders, constitute an assembly consisting at least of ten members."

and says further that,

पञ्च वा स्युर्वयो वा स्युर्वेण्यो वा स्यादनिनिभ्दः।
प्रतिवक्ता तु धर्मस्य नेतरे तु सहस्वः॥

Baudhayana Sutra, I. 1. 9.

"There may be five, or there may be three, or there may be one blameless man who decides questions regarding the sacred law. But a thousand fools cannot do it."

बहुदार्स्वधर्मस्य सुक्षमा दृष्ट्गुणा गति:।
तस्मात्व याव्या हाकेन बहुज्ञानापि संस्काय॥

Baudhayana Sutra, I. 1. 13.

"Narrow and difficult to find is the path of the sacred law, towards which many gates lead. Hence if there is a doubt, it must not be propounded by one man only, however learned he may be."

The Sutrakar then deals with custom as a source of law. Custom of course presupposes the juristic sentiment of people, and certain external, constant, and general acts by which it is shown. It takes its birth in some need felt by the Society; and satisfaction of such need might have been obtained, in the beginning, through some transitory and isolated acts gradually giving rise to a general conviction of the necessity of such satisfaction. The acts would develop into a customary law of people. Custom thus necessarily involves two conceptions; first, the conviction, and secondly, the constant and general use; and these two bear to each other the relation of a basic principle and an
external expression. It is thus formed under the influence of daily recurring circumstances of social life and is preserved by social traditions, recording most faithfully the characteristics. And such customs are apt to remain confined to some portion, or to some single section of society, being fostered by its opinion, and might obtain even at a time when the frame of society has already expanded and has been in part remodelled.

It has been observed that, according to the philosophical doctrines of the Vedic Rishis, legality of a custom lies in the fact that a need for the act is felt, and that repetitions of the same have not been followed by any untoward result. The demand shows that it is not inconsistent with nature, and repetition with impunity ensures its consistency with law.

According to Baudhayana practice or custom is authoritative only in the locality where it is found, and must not be practised anywhere else:

पञ्चव्या विश्वनिष्टिद्विखण्तस्तथोत्तरत:।

_Baudhayana Sutra, I. 2. 1._

"There is a dispute regarding five practices both in the south and in the north."

इतरेदिनरसिम्न कुरुन्तु दुष्यतीतरसिम्न।

_वृद्ध नन देशप्रामाण्यथेव स्यात्।_

_Baudhayana Sutra, I. 2. 5-6._

"He who follows these practices in any other country than where they prevail, commits sin. For each of these customs the rule of the country should be considered the authority."

He seems to have an inclination to restrict it further; for he cites Gautama for the proposition उभयं चैव नाओधिवेत | लिप्तस्मृतिवििरोधविशेषात्

_शिष्टायनवििरोधविशेषात्।_ (Baudhayana Sutra, I. 2. 8-9) that "one should not take heed of either, because they are opposed to the tradition of the Sishtas." Indeed he names only स्थितायम as the source of law. The Sishtas are those who, in accordance with the sacred law, have studied the Veda together with its appendages, know how to draw inferences from that and are able to adduce proofs perceptible by the senses from the revealed texts." Sishtas being thus well versed in the Vedas must be taken to have knowledge of law; and so, if any practice is explicitly condemned by them it cannot be deemed authoritative. When custom conflicts with any express provision in the three principal sources of law, it cannot prevail.

Baudhayana also seeks for the maintenance of status quo through law. His Brahman, Ksatriya, Vaisya and Sudra, all were
born to occupy their appointed places in the society, and virtue consists in keeping to their proper places.\footnote{7}

It must have been noticed that both Gautama and Baudhayana identifies knowledge with virtue. With them "to know the law is to observe it." Vasistha, however, seems to think otherwise. He says:

"अथवा: पुरुषस्य अभ्यस्त धर्ममिज़ासा। सत्या चालतिष्ठन। धार्मिकः। प्रवस्थतमो महत लोके वेत्य च स्वर्गोऽयं समस्तेति।
Vasistha Samhita, 1. 1-3.

"Now, therefore, the desire to know the sacred law for their welfare in men."

"He who knows and follows the law is a righteous man. He becomes most worthy of praise in this world and after death gains in heaven" (S. B. E., Vol. XIV, p. I).

The desire to know the law arises in man as a result of his desire for welfare. Law, if followed, will be conducive of this welfare. But there is a possibility of a man’s not following the course sanctioned by law even after having acquired a knowledge of it, and hence when the learned in law practise it as well, then alone they become praiseworthy.

According to Vasistha "the sacred law has been settled by the revealed texts and by tradition": श्रुतस्यविधिहतो धर्मः. On failure of these two "the practice of the Sishtas has authority": तदवपि लिखितार्थः प्रमाणम् (Ibid., I. 1-5). "But he whose heart is free from desire is called a Sishta," and "acts sanctioned by the sacred law are those for which no worldly cause is perceptible."\footnote{8} As regards custom it is authoritative only in the absence of revealed texts and only so far as they obtain amongst a special class of people.\footnote{9}

We have already adverted to the early existence of legends according to which the Vasistha Dharma Sutra was considered to be a work composed by the Vedic Rishi Vasistha,\footnote{10} or at least to contain the sum of his teachings, on the duty of men. It has indeed been found out by George Buhler that there is some truth in these legendary sayings, and in this respect he accepted the opinion of Govinda Swamin the commentator of Baudhayana.\footnote{11}

It will be remembered how the Vedic Rishi prayed that "when through our want of thought we violate Thy laws, punish us not, O God, for that iniquity,"\footnote{12} being of opinion that only wilful violations of law should be met with punishments. The Rishi thus in effect separated the juristic and the moral order from the physical, and it has been seen how, without a conscious clarification of the confusion, these Vedic Rishis arrived at the same ultimate result through a gradually developing conception of a supreme God placed even above order, even above सत्य।
As follower of this Rishi, the author of this Dharma Sutra says
अनुभिषिष्कृते प्रायशिवमपराधे अभिषिष्कृतेनुष्ये।

_Vasistha Samhita, XX. 1-2._

Some doubt that act done unintentionally, though may not constitute a punishable offence, yet may not be devoid of all effects. The confusion of the moral and juristic with physical order still persists; and as the result of this confusion these philosophers cannot ignore such acts altogether, only on the ground that the element rendering these punishable is wanting.

Vedic Rishi Vasistha is not indeed propounding any revolutionary principle when he is distinguishing intended results from accidental happenings. The tendency to this distinction seems deeply ingrained in human nature. Yet we all know that in other systems also “law in its earliest days tries to make men answer for all the ills of an obvious kind that their deeds bring upon their fellows.” The harsh attitude of the ancient criminal law is now well known and the emergence and the gradual development of the _mens rea_ concept would not, I believe, require here any detailed statement from me. When punishment was in the hands of the priests it took the form of an expiatory rite, and traces of “expiative theory” are still left in the language of some of the cases. The old notion seems to have been that punishment was necessary as a just retribution or requital for wickedness. But since omniscience is required for divine justice, it is necessary to support social justice upon a utilitarian rather than upon a divine basis.

It would be out of place to examine the rationale of _mens rea_ in this connection. I would only point out that even now the relation of knowledge to guilt is a highly variable factor.

Before entering upon a discussion of the philosophical views of law that can be gathered from these various sutras we must say a word about Apastamba Sutra which has been declared as possessing a special interest beyond that attaching to other works of the same class. The discovery of Apastamba’s aphorisms enabled Professor Max Muller to dispose finally of the Brahmanical legend according to which Hindu society was supposed to be governed by the codes of ancient sages, compiled for the express purpose of tying down each individual to his station, and of strictly regulating even the smallest act of his daily life. It enabled him not only to arrive at this negative result, but also to substitute a sounder theory, the truth of which subsequent investigations have further confirmed, and to show that the sacred law of the Hindus has its source in the teachings of the Vedic Schools, and that the so-called revealed law codes are, in most cases, but improvedmetrical editions of older prose works which in the first instance, were destined to be committed to memory by the young Aryan students, and to teach them their duties.” ¹³
Apastamba was a great puritan and an individualist. His puritan opinion regarding the substitutes for legitimate sons and his reasoning against the rule of Primogeniture would indeed secure for him a position of special interest amongst the Sutrakars. It will indeed be beyond our purpose to discuss these provisions of law. But the reasoning which this Sutrakar advances in opposing Primogeniture is interesting and must not be left unnoticed here. The author says:

अथापि निस्त्राणुवादमविषमहादुर्गित्विवो यथा तस्मादादायः
पञ्जुनाः सह चरणीति । तस्मात् नातकस्य मुखः रेमाधतीवः।

_Apastamba Sutra_, II. 6. 11. 13.

"But to this plea in favour of the eldest I answer: now those who are acquainted with the interpretation of law declare a statement of facts not to be a rule; as for instance: Therefore amongst cattle, goats and sheep walk together; (or the following). Therefore the face of a learned Brāhmaṇa (a Sutraka) is, as it were, resplendent."

"It is difficult," says Apastamba, "to learn the sacred law from the letter of the Vedas only but by following the indications given in the Veda it is easily accomplished: कृत्रिम, धर्मसमारूढः समाधिनाति। लक्षणकर्मणांसू न्यायते।" (Apastamba Sutra, II. 11. 29. 13). From this Professor Sarvadhikary concluded that according to this sage "the source of forensic law must be sought for elsewhere than in the Veda. It was the result of progress and the creature of circumstances. Social wants created it, and social advancement watched its formation and developed its proportions." 16

Professor Sarvadhikary further says: "Apastamba was revolutionist to the backbone and was determined to replace the old order of things by more refined and civilised institutions." 17

These Sutrakars almost invariably begin by enumerating the sources of law. It is indeed of supreme importance for a man to determine beforehand with all possible precision what are the rules which govern him, and what are the rights they give him and the obligations they charge him with. The determination is possible only when these rules have become objective and have assumed specific forms. "These objective forms of legal wishes which serve to indicate the obligatory character of the rule are called 'Sources of law'.'" 18

It remains to be seen whether our Sutrakars defined sources of law in this sense, or whether to them these were mere means of knowledge, शाक्कवेस्त्तृत, or mere historic monuments.

When Gautama says the Veda is the source of the sacred law he seems not only to inform us that these are the means of knowing what law is, but also to indicate the obligatory character of the rules to be found there. His Veda is, as it were, the authentic text of the divine enactment. The tradition and practice of those who know the Veda will be sources of law only as affording means of knowledge. In the
majority of cases, such tradition, such practice, would be in accordance with law; for one who knows law cannot fail to follow it in practice. This however does not exclude the possibility of all deviations, for.

\textit{(Gautama Sutra, 1. 1. 3)}. And so all traditions, all practices shall not, as such, have the force of law.

Vasistha and Baudhayana however seem to look upon all the three sources enumerated by them as authoritative, each succeeding source supplementing the preceding ones. The practice of the Sishtas is a source of law inasmuch as it gives obligatory rules of action and its authority is not derived from any prior source. In defining Sishta to mean only a person whose heart is free from desire, Vasistha seems to look to free heart as the ultimate source of law, a heart free from desire being able truly to reflect the divine reason governing the universe.

Baudhayana too defines Sishtas as those who are free from envy, free from pride, contented with a store of grain sufficient for ten days, free from covetousness, and free from hypocrisy, arrogance, greed, perplexity and anger; and envy, pride, discontent, covetousness, hypocrisy, would all be the outcome of desire. “The Philosopher to whom virtue was teachable, who identified knowledge with virtue, could only add that those, who, in accordance with the sacred law, have studied the Veda together with its appendages, know how to draw inferences from that, and are able to adduce proofs, perceptible by the senses from the revealed texts,” are the Sishtas.

Apastamba also looks to the Vedas as the ultimate source; but he seems to look upon the Vedas only as the source of knowledge; the immediate authority for law, and in this sense the real source of law being the समय: the agreement, of the learned: \textit{थथम्येतःसमयः प्रमाण वेदाात्} \textit{।} \textit{(Apastamba Sutra, 1. 1. 2)}. Everything found in the Vedas is not binding as law; the Vedas also contain mere statements of facts; and it is for those who are acquainted with the interpretation of law to declare what is law and what it is not.

It may not be altogether out of place to notice here how Manu viewed the matter. According to him

\begin{quote}
\textit{वेदः स्मृतिः सचाचारः स्वस्य च प्रथमात्मनः}।

\textit{एतसऽचौविं नाहुः साक्षादमन्यः वखणाम्}॥

\textit{Manu Sambhita, II. 12.}
\end{quote}

"The Vedas, the Smriti, the usage of good men, and what is agreeable to one’s soul. the wise have declared these to be the fourfold indices of dharma."

As we shall see later Manu looks upon these as sources in the sense of authority.
We have already noticed how the Vedic Rishis viewed the law as the ordering principle of the universe and hence of the human relations. Taitturya Sruti declares धर्म विवेक्य जगत: प्रतिष्ठा—धर्म: (Law) is the support of the entire world.

The contents of law according to these Sutrakars is, as has been noticed, human welfare. The theory of welfare or utility is indeed the most important among the theories resting upon a practical foundation. The two notions of utility and welfare, though often used as synonymous are not in all respects identical; the notion of welfare being more comprehensive than that of utility.

Welfare does not necessarily mean worldly advantage and utility; and in fact it does not bear that sense with these Sutrakars. This life only forms a small fraction of an immensely vast future life; welfare indeed is utility in that extensive whole existence.

Welfare thus would not admit of determination by a reference to any earthly advantage, and expert knowledge would be essential to define that which would be conducive to this bliss. These Sutrakars never regarded sensuous delights as leading to spiritual pleasures, as constituting the real happiness. Nay, the Hindu philosophers scarcely ever advocated such hedonistic theories. Their happiness also implied a state of pleasure; but a constant state of pleasure alone would be worthy of that name.

In the Kathopanishad we are told:

अय्यश्च योज्ययुतवै प्रेयस्ते उमेन नानायण पुण्यं मिनितः।
तय: षेय आदयानर्थ साधु
भवति हीयनेनार्थद्य उ षेयो वृणीने॥

Kathopanishad, 1. 2. 1.

"The good is different, the pleasurable is different; they both induce a man to diverse kinds of activities; among the two, he who takes up the good attains welfare: but he who selects the pleasurable misses it."

This distinction between 'Sreya' and 'Pryeya' may, indeed, be compared with Plato's distinction between 'pure' and 'impure' pleasures. According to Plato pure pleasures are distinguished from impure ones by reason of the fact that they contain no admixture of pain. Many pleasures are dependent for their pleasantness upon the degree of the preceding dissatisfaction to which they are relative. These are impure pleasures. The pleasures which are not dependent on any need are pure. These are pleasures of the mind and the spirit. Plato's recommendation of such pleasures are based on their immunity from the drawbacks both of the craving that comes before satisfaction and the satiety that succeeds it. These are in no sense determined by, or dependent upon, any preceding state of need, or a preceding experience of pain.
According to our Rishis

“उमे तीव्रवादनामायापि
शोभानियो मीते स्वर्गलोके ॥”

*Kathopanishad, 1. 1. 12.*

“Having got rid of both hunger and thirst and freed from sorrow they enjoy in heaven (The Gods in heaven are immune from death or old age).”

According to them:

श्रेवः श्रेवः मनुष्यं
स्वी सम्पूर्वाय विविभक्त धीरः
श्रेयो हि धीरोध्विन्श प्रेयोगो वृणीते
श्रेयो सन्नद्ध सोमानेवाद वृणीते ॥

*Kathopanishad, 1. 2. 2.*

“Both ‘Sṛgya’ and ‘Pṛgya’ attach men, but the wise, examining them carefully, discriminate between the two; the patient prefers the good to the pleasant, but the fool of short intelligence embraces the pleasant through greed and retention (of pleasurable things in life).”

‘Pṛgya’ has the drawbacks both of the craving that comes before satisfaction and the satiety that succeeds it. Attempt to secure happiness by means of a succession of pleasures of this category is as unsatisfying as the attempt to get a light at night by striking a succession of matches. Again most of the Pṛyas are limited goods also in the sense that the realization of any one of them by one precludes the achievement of that same one by another. The extent to which one acquires money or exercises power is *ipso facto* the extent to which another does not. Further, when achieved, they are found to be profoundly unsatisfying: the appetite for them grows with what it feeds on. Most of the purposes which men set before themselves for achievement in this world are for one reason or another found to be unsatisfying.

But our Hindu sages recognized purposes which extended beyond this world: they recognized a moral purpose realized in the pursuit of duty and resulting in the strengthening of character, or a religious purpose to be fulfilled in the long run by the achievement of salvation. These were exempt from the strictures which purely worldly ends provoked. Our sages did not fail to observe that there are certain impulses in human nature which are not satisfied by a life of self-seeking and which cannot be accounted for by any worldly standard. Indeed, judged by the criteria of profit and expediency they may stand revealed as pure folly. Why should one, for example, sacrifice oneself in any way if there is no standard other than the hedonic, if worldly goods are the only goods to be taken into account, unless the explanation of our life here is to be found in another life elsewhere, in terms
of which this life receives its meaning and from which it derives its justification? The ancient Hindu sages always insisted that there is another world and that our conduct should not be determined by "the ephemeral standard of the here and the now," but by the standard of the lasting satisfaction of eternity.

Our ancient Rishis say:

अत्तमानं रथिनं विद्वि शरीरं रथमेव तु।
वुः तु सारधि विद्वि मनः प्रवशमेव च।।
इन्द्रियाणि हयानातुविषयांस्तेषु गोचरान्।
आत्मोन्नद्रयमंदिर्युक्तं भोक्तेत्वातुर्मणीविष्णु।।
वस्तूवश्वास्तानु भवस्या युक्तेन मनसा सदा।
तस्मन्नृद्दाभ्यक्षत्वानि हुष्टाव्या इव सारधे।।
वस्तू विज्ञानवानु भवति युक्तेन मनसा सदा।
तस्मन्नृद्दाभ्यक्षत्वानि वस्त्रामशत्वा इव सारधे।।

Kathopanishad, I. 3. 36.

"Know the soul (individual Jivatman) to be the master of the chariot, the body as chariot, intellect as charioteer, and the mind as the rein. (Apparently Jivatman acts as a means to an end, i.e., Paramatman, though the two Atmans are practically the same.)

"The senses are said (by the sages) to be the horses, the objects of senses are alleged to be their guiding paths, and the sages call Him the enjoyer when united with the individual soul, senses, and the mind. (In fact, the Paramatman is the combination of all-Jivatman and body.)

"But he who is unwise on account of his mind being unconscionable, his senses become uncontrollable like the wicked horses of a charioteer.

"But he who is wise on account of his mind being conscionable, his senses become controllable like the good horses of a charioteer."

The end of law is as has already been said, the maintenance of order and harmony in the universe; and this would be possible, according to these Hindu law givers, only through the preservation of the existing social institutions.

It might be noticed here that in other ancient systems of law also there has been a time when the maintenance of social status quo has been looked upon as the end of law. In the Greek system, for example, we find similar theories of the end of law. The idea of maintaining social order through law is fully developed in Plato. But unlike our Sutrakars Plato did not regard the existent social order as what it should be. Re-classification of the people was deemed necessary; and when the classification and assignment of individuals to classes had been completed, the law was to keep them there. "It was not a device to set him free that he might find his own level by full competition with his fellows and free experiment with his natural

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powers. It was a device to prevent such disturbances of the social order by holding each individual to his appointed place." A shoemaker is to be only a shoemaker and not a pilot also; the farmer is to be only a farmer and not a judge as well; the soldier is to be only a soldier and not a man of business; and if a universal genius who through wisdom can be everything, and do everything, comes to the city state, he is to be required to move on.

Aristotle also puts the same idea in another form, asserting that justice is a condition in which each keeps within his appointed sphere. Indeed these ancient Greek Philosophers, like our ancient sages, were convinced that in every society there must be grades, masters and servants, the privileged and the unprivileged, the upper and the lower classes. They no doubt professed to preach that justice is equality, but their equality was only a relative equality. They would say "to those on a par, let there be a parity of treatment, but for those unlike in circumstance there shall be unlike treatment according to merit and service, according to worth or guilt."20

Our Sutratara also give us a similar measure of justice. Only they would not think of any re-classification made by some human agency.

The administration of this justice is the duty of a king, and it is said:

देशसंस्कृतम् सच्चाचेतनुऽविज्ञानस्य राजा चतुरा चर्मान् स्वरूपण्यं स्वायत्ताः।
तेष्वस्त्रादिवस्तु दण्डः सार्यवेयतः। दशस्तु देशसङ्ग्रामवयोविद्यास्थितिविवेळिहारामानः। कलापः।

Vasishtha Samhita, XIX. 7-9.

"Let the king, paying attention to all the laws of countries, castes, and families, make the four castes fulfil their respective particular duties. Let him punish those who stray from this. But punishment must be awarded after due consideration of place, time, age, learning of the parties and the seat of injury." Similar provisions are met with in all the other Sutras;21 and none of these Sutratara forgets the relative castes of the parties in defining the nature and measure of punishment.22

Here we come to the Sutra theory of Danda. They declare, says Gantana, "that the word Danda is derived from Damayati, he restrains; therefore he (the king) shall restrain themselves."23 According to Vasishtha, "A thief becomes free from guilt by entering the royal presence after his deed and asking to be punished; if a case worthy of punishment is allowed to go free, the king shall fast during one day and one night; and his domestic priest during three days and nights; if an innocent man is punished, the domestic priest shall perform a kricchra penance, and the king shall fast during three days and nights; men who have committed offences and have received from kings the punishment due to them, go pure to heaven, and become as holy as the virtuous, the guilt falls on the king who pardons an offender; if
he causes him to be slain, he destroys sin in accordance with the sacred law; it is ordained that kings become at once pure by bathing when they have done acts causing death."  

With Manu *danda* was the essential characteristic of law. Nay, Manu even proceeded further and identified *danda* with *law*. The Sutrakars however in their theory of *danda* only recognise the fact that force is necessary to guarantee justice. If they do not go so far as to declare that "justice without force is impotent," their theory of *danda*: at least evidences a rising consciousness of this force idea. It has already been noticed how according to the ancient Hindu Philosophers human nature was essentially good and sociable. This view of human nature had not yet been abandoned and so these Sutrakars could not, consistently with that view, declare fear to be the ultimate guarantee of right and duty. Yet they could not fail to observe how the maintenance of law and order would not be secure unless there were force behind. With their usual *eudemonistic* doctrines they elevated punishment itself from the position of a mere vulgar threat to that of a sublime purifier. Punishment was necessary not to satisfy the animal avenging spirit, not to threaten the future probable offenders, not even to correct the offender; it was necessary for the welfare of the offender himself: its essence lay in its utility to the sufferer himself in his whole existence. Punishment had thus its own ethical value.

It must not however be thought that the various provisions of punishment met with in these Sutras would be deducible from this Philosophy. There are penal provisions in these Sutras which would only remind us of the *tooth for tooth* law and would thus point to its low birth. These Sutrakars no doubt retained these laws, and if we are to deduce their Philosophy from them the story shall have to be differently told. But they have expressly philosophised on punishment and we do not wish to look behind their Philosophy.

These Sutrakars at any rate recognise the possibility of the assertion of law by *coercion*. Throughout this period their notion of law is attended with this idea. The necessity of the application of force, of course, arises only when persons decline to shape their actions voluntarily in conformity with the purpose of law. Hence, it is not the question of the applicability of *coercion*, but of the concrete necessity of employing it, which is naturally connected with the question of the sphere of action of the king. *Coercion* does not constitute such a component element of law as to be, in all circumstances, inseparable from it: for, an ideal condition, where there would never be an occasion for having resort to it, is not unthinkable: it only forms the reserve and background of existing law, to which it should be possible at all emergencies to appeal.
Before bringing this discussion to a close we must refer to the Mahabharata which forms a great store-house of information; for according to modern authorities, it forms the connecting link between the Sutra period and that which follows it.

When the great war of Kurukshetra was over, when the Pandavas had won a complete victory, Yudhishthira, the eldest of them, could not reconcile himself to the disaster and havoc caused by the war, and a deep sense of guilt set upon him. He declined to ascend a throne the path to which was so blood-strewn and resolved to renounce the world. He was eager to live the life of a recluse being of opinion:

त्यागवाच्य पुरु: पापं नावं कर्तु मिति शुन्ति: ||
त्यागवाच्य जन्म-मरणं नानोतिति ध्रुविन्यथा ||

Mahabharata, Saptapara, VII. 36-37.

"The self-abnegators cannot commit sin any more. So it is said in the Vedas. The selfless are beyond birth and death." This determination of Yudhishthira filled with consternation his friends and relations and they discussed the philosophy of life, their object being to circumscribe the rights of war.

Of those that took part in the discussion, Arjuna, Bhishma and Vyasa figure prominently and we shall proceed to examine their sayings.

Arjuna tells us how it is foolish on our part to give up our own avocations in life and think that the highest achievement lies in self-abnegation.26 True, acquisition of wealth is not possible without infringing on others interests; true, we do not find any gain of wealth without injuring others—क (Mahabharata, Saptapara, VIII. 30). Yet this wealth is of much importance to us and we must not hesitate to have it even though by that we injure others.

प्रमेयं दृ राजानो जयनि पृथिवीमित्
जित्वा महर्षीं बुधवे पुत्रा इस पितुर्वं नमः

Ibid., VIII. 31.

"Action," according to Arjuna, "is essential in life, and only the ignorant fools can blame action."

Arjuna’s theory of punishment दण्ड: is noteworthy. According to him:

दण्ड: शाजित प्रजा: सत्त्वा दण्ड एवाभिरक्षि:।
दण्ड: सुनेत्यु जागरि दण्डं धर्मं बिदुधुभा:।

Ibid., XV. 2.

"Punishment rules all creatures. Punishment again preserves them all; when all others sleep, punishment keeps awake: the learned know punishment as Dharma (identifying one with the other)."
"Punishment maintains law and order, O. Ruler of men, and so also (it secures) wealth. Punishment again protects Desire and (so) Punishment is identical with श्रवणीयम्. Punishment is essential for the maintenance of law and order, for the security of the community. Human nature, according to Arjuna, is essentially bad. He has indeed seen so much of this side of it that we would have been surprised if we found him agreeing with the Vedic Rishis in counting upon the essential goodness of human nature. He could not forget so soon how ferocious man was, and we are not in the least surprised to hear from him श्रवणीयम् मयादेवे अ दानादुत्तपत्म । (Ibid., VIII, 7)—if we do not devour each other, our own nature is not responsible for that; it is because there is that fear of punishment which possibly overcomes us and checks the free play of our inherent ferocity. There is indeed none, none in the four orders of life, no Brahmacarins, no Gṛihasthas, no Vanaprasthas (वानप्रस्थितम्) no Bhikshukas, who would think of doing good had there been no fear of punishment. If they do not swerve from the true path, if they keep within the bounds appointed, it is owing to the fear of punishment alone:

एकाः सध्यो श्रवणखे वानप्रस्थितम् भीक्षुकः।
द्रवणीयम् मयादेवे मनुष्या वर्मानि श्रवणीयम्।
नामोत्त : यज्ञे यज्ञावतो दातुतमिष्टान।
नामोत्त : पुरुषे कर्तिषु रमये स्थातुमिष्टान।

Ibid., 12-13.

Fear is thus placed very high in the scale, and is made the essential attribute of juridical phenomena. It may be, with different individuals, different kinds of fear would prevail; but not a single case can be conceived where this element would be altogether unnecessary:

राजद्रवणीयादेवे नरा: पापं न कुवर्ते।
यमद्रवणीयादेवे परलोकमयादि ॥
परस्परभ्रात्र: पापे पापं न कुवर्ते।
एवं साधुसिद्धे तोऽके सर्व्व द्रवणे प्रतिष्ठितम् ॥

Ibid., 56.

"Some sinners refrain from sin for fear of king’s punishment, others for fear of Yama’s punishment, as also for fear of the after-world. Other sinners refrain from sin for fear of each other; and thus throughout the world all rest on punishment."

HINDU PHILOSOPHY OF LAW IN THE SUTRA PERIOD

...
THE HISTORY OF HINDU LAW

"... But for this fear, but for punishment, blinding darkness would have engulfed all."

This character of humanity, however, seems to have been conceived of as after-acquired. Parasara observes:

॥ तं धम्ममसुरास्तात ! नामृत्युत्त जानास्विप !
विविध्यानामा: कः कम्यसत्र तेज्वाविविशन् प्रजा: ||
तात्ता तर्यः समभवतु प्रजानां धम्ममात्रात् ||
दयास्वास्तात: परसात् कः क्षयस्वास्तायत ||
ततः कौश्यमभूतानां बुद्धि कुज्जास्मामवितम् ||
हृद्दिवायनशुद्ध जानः ! ततो मोहो व्यजयत ||
ततो मोहपरीतात्ता नापृत्युत्त यथा पुरा ||
परस्परवर्धते वर्त्यस्यो यथासुकम् ||
तत्: प्राप्य तु स धिमृवष्णो न कारणमहतास्मात् ||
ततोभ्यस्मट्टः देवांश्च ब्राह्मणांश्च वर्धन्य ह ||

Ibid., 10-14.

This is also the proper place to examine the theory that has been placed in the mouth of Bhisma on this occasion.

Bhisma says:

॥ नैव राज्यं न राजासीश व दण्डो न दाण्डिकः ||
धम्मस्वेत्त्र प्रजा: सर्ववृ रक्षति सम परस्परम् ||
पाल्यमात्सास्तात्योऽन म धम्मम भारतः ||
किंद्र भृस्ताजम्मस्तात्त्वात् मोह आविष्टतः ||
ते मोहस्मास्त्रा मनुजा मनुज्ययम !
प्रतिपार्विमोहाल्च्छ धम्मस्तेवांस्मनीनि ||
नष्ठायं प्रतिपत्ति: च मोहश्च नरास्त्या ||
कोभ्यवस्मास्त्रा: सर्वं भरस्तस्तात !

Ibid., LVIII. 14-17.

॥ तास्तु कामवच्च प्राप्तान्त रागो नामाभिभस्यस्वतः ||
रक्तवाच्च नाम्यजानात नियायकायं युष्मिद्य्यर ||

Ibid., LVIII. 19.

"Originally there was no kingdom, no king, no punishment, no punisher. People then protected each other by law and law alone. Men thus preserving each other by law ultimately got tired and delusion occupied them. O, Prince of Men, these men being thus
overpowered by delusion, delusion destroyed Discrimination and Dharma. Thus with the destruction of Discrimination and being under the sway of delusion, all became subject to Ararice. Them, who thus became subject to Ararice, Lust overpowered, and O, Yudhishthira, heedless to the propriety of acts they became attached to them.’’

But how could people emerge out of this hopeless condition? Bhisma does not go the length of conceiving an inconceivable covenant between them who were thus devoid of all discrimination. Order had to be established, and it was established through some superior intervention. This chaotic state of human society very soon attracted the notice of the Gods and they observed it with horror:

नष्टे ब्रह्माणि धर्मं च देवांस्त्रासः समाविशतः।
ते षष्टा नरशाहूः! ब्रह्माणि शरणं यथः॥

Ibid., 22.

‘‘They approached ब्रह्मानु and prayed that the natural order that emanated from Himself might not thus be destroyed:’’

त्वत्रभावसमुविधोऽस स्वभावो नो विनियति।

Ibid., 21.

‘‘In compliance with this request of the Gods, Brahma, out of his own intelligence, produced a hundred thousands of chapters (of a code of law) wherein he described in details Dharma, Artha and Kama:’’

ततोज्ञायसहस्त्राणां शतं चयं स्वविद्विजम्।
यत्र धर्ममेत्यद्वायं: कामसूत्रवाभिनिः॥

Ibid., 29.

We are not concerned with the story as to how this voluminous Code became more and more attenuated in its course of transmission. All that we need notice here is that according to Bhisma this great code was intended to be handed over to one who was to rule the people according to its precepts; and so this code was originally designed more to help the ruler than the ruled. A ruler was necessary; for in an anarchical state, ‘‘people would devour each other even as the fish in water do, the stronger eating up the weaker:’’

अराजका: प्रजा: पूर्वविनेशिति न: श्रुतम्।
परसस्य भक्षयति दत्ता इव जले क्रुशानु॥

Ibid., LXV. 17.

तस्माधार्जेव कर्तव्य: सततं भूतिविश्वता।
न धनाथ्या न दाराध्यस्तेषां येषामाराजकम्॥

Ibid., 12.

‘‘Anarchy would not benefit even the sinners, for two would rob one and the two again would be robbed by many.’’
So Bhismâ did not characterise human nature as essentially bad. Originally and essentially it was good; but it became bad in time, through external influences. It seems, he attempted a reconciliation of the two conflicting views.

It has been said above that according to Bhismâ men could emerge out of the state in which they would devour each other through the intervention and influence of the Gods. At another place however the same wise man says:

"In ancient days the anarchical people were destroyed, eating up each other, even as the fish in water, the stronger doing unto the weaker. They then gathering together covenanted: A republican form of government was the result:"

But this was done only as a temporary measure; and these people seem to have been conscious of the fact that such a covenant would fail to produce any permanent result. They therefore approached the Creator:

and it was this पितामह who ultimately gave them a king. It will be of some interest to notice here that, even though thus given by the supreme God, the ultimate authority of the king lay in the consensus of opinion of the people. For, being thus approached by men, God
asked Manu to rule over them. But Manu would not accept the responsible office saying:—

विशेषः कर्मण: पापद्व्रयं हि भूषणुक्षरम्।
विशेषतो मनुव्येषु विव्याहृतेषु नित्यदा॥

Ibid. 22.

He, however, could ultimately be induced to accept the office only on the assurance of the people themselves who said:—

. . . . . मा भे: विधायामो धनं तय।
पृष्टार्थिष्ठान्याश्च दीर्घस्य तथव्यथवच॥
भांत्यसय दलम्भं भागं दास्यामः कोपवधस्य।
कन्या शुल्के चार्ष्पां विवाहैवध्वमते॥
मुख्येन शस्त्रप्रश्रणे येन मन्त्रया: प्राप्तवत्।
संगते तेज्यायति महेन्द्रमिव देवता॥

Ibid., 23-25.

Here is then the conception of the social order, as the result, not of rigid natural relations or of divine commands, but of conscious human contrivances. The state was thus an artificial structure, the organ for satisfying conscious human wants, and capable of being constructed and perfected.

It will be pertinent in this connection to enquire what reasons from time to time have been assigned in the modern world for the limits and moral preponderance of public power, as contrasted with the claims of individual liberty and of private aims,—how the question of the origin of human communities has been sought to be solved and how the origin of their concentrated consciousness and capacity for action has been sought to be accounted for.

We shall start with that conception of the state according to which it was derived directly from the will of individual men. In connection with this conception the discussion of the origin of the state presented itself, besides, as the solution of the problem how it was that such consciousness and force could spring from the will and consent of the individuals so as to exceed, not only in the matter of quantity, but also of quality, the combined consciousness and force of all the individuals.

The conception of the origin of the state prevailing throughout the whole of the Middle Ages and through the greater part of our own age has been invariably connected with some metaphysical proposition accepted as an a priori truth. The proposition that every individual has an absolute value and purpose of his own, and is consciously free, on the one hand, and, on the other, the conception of the Divine institution of the order of the world and of its embodiment in some certain external organism, were received as indubitable fundamental doctrines. As a consequence, the problems concerning the formation-
of self-consciousness of the community, as well as touching the sources of authority presented themselves in a metaphysical garb, and their solution involved the reconciliation of some seeming logical contradictions.

Indeed history can give us no direct answer to the question of the origin of the state. For it is impossible to draw inferences concerning movements which took place before the life of the state began from the changes occupying in the life of a state; history itself cannot explain backward beyond the existence of the state.

New states had, it is true, arisen, and are continually arising before the eyes of history; but they are invariably formed from the elements of antecedent states, and under the influence of existing institutions having the characteristic of state.

The notion of the state, and the directness of its powers, become clearly defined and highly perfected, whenever the constitution of the body of the state no longer permits the arraying of the material forces against each other, and, in lieu thereof, substitutes rules more and more general in nature, rules which refer not only to single action and individual aims, but embrace general conduct and permanent interest. Differentiation as to the interest of the society or community becomes distinguished from individual private interests. The consciousness of the state with respect to its own circumstances, its activity, and tasks, increases uniformly with the growth of the consciousness of its own members with regard to their relations to the state.

It will be beyond my purpose to review here the various theories of the origin of state. I would only notice here the conception of the state of nature and a few of the contractual theories of the state origin.

The writers on the theory of contract proceeded on the assumption of a supposed state of nature. Some assumed the state of nature to be imperfect and replete with ills; others took it to be contented and happy. The dismal or the cheerful view of the state of nature was taken according as the theorists occupied the standpoint of absolutism, or, at all events, that of the overwhelming importance of the sovereign power, or as they assumed the task of vindicating the supremacy of the people. The ready reception of either of these views was, however, influenced also by other circumstances with which we are not much concerned here.

The essential features, however, of any conception of the state of nature consist in this: that the individuals in a condition of nature were always imagined as independent, free, and not connected by any tie with each other except that of blood, but yet were invariably invested with the same mental qualities which individuals possess as a heritage of historical development.

We need not stop here to point out the contradiction contained in the last proposition. Nor need we enquire how it is that it struck
no one as being strange that the transition from the state of nature to that of society was accounted for by a mere contractual agreement. It is, however, tremendously important that we should know precisely what are the theories which the existing national states still believe and follow. A knowledge of this alone can place us in a position to predict, though roughly, how in a given set of circumstances they will act. We must avoid every approach that only points to the eclectic opportunism of power politics. The philosophical assumptions underlying the different peoples and governments of the contemporary world cannot be ignored for our present purposes. We must all be equipped with an intellectual realism grounded in a philosophical, economic and political theory which defines what we stand for, if we are not prepared to waste our power and influence in the contemporary world.

The so-called democratic countries of the contemporary world are still led by the Lockeian, Humean, Jevonian Philosophy, interspersed with Church of England or Roman Catholic, Aristotelian philosophical assumptions. The Soviet Russia follows the Marxian philosophy as expounded by Lenin.

According to Locke the condition of nature is not identical with that of war, but the latter may very easily arise from it, and the avoiding of this is a great reason why men should leave the condition of nature and enter society, where every member is no longer his own judge, but the community becomes the fixed, permanent, and impartial judge, and the common judge of all, in conformity with rules equal with regard to everybody. The protection of property forms specially an object of uniting into a state, for without it the maintenance of peace would be impossible, the state of nature being in this very respect most defective in affording such protection. Whenever then, the mass of men, by the consent of every man, formed the community, it formed at the same time the community into a body possessing the power to act as one body, which means nothing else but the rule of majority. According to Locke a second contract was not at all necessary to establish the state. It was Locke’s philosophy which prepared men in Great Britain as well as in the United States, after giving expression to their own opinions to accept the verdict of the majority and which so modified the theory of religious values as to lead them to regard toleration, not merely toward other Protestant sects and even toward Roman Catholic Christians, but also toward all other religious faiths, as a positive good. As George Trevelyan writes, “Locke’s argument that toleration was not merely politically expedient but positively just and right, became generally accepted as the eighteenth century went on.”

According to Locke, everyone, in agreeing with others to form a state under a common government assumes the obligation towards every other member of that society to accept the determination
of the majority, and to recognize it as final. Although men, in becoming members of the state, yield up the equality, liberty, and executive power which belongs to them in a state of nature, and place them into the hands of the society, to the end that they shall be used for the good of that society, yet as this is done by everyone with the intent of better guarding himself, his liberty and his property, the society or state formed by men can never extend further than the common weal. Hence, whoever is invested with the sovereign power of the state is bound to rule in accordance with fixed and permanent laws, which being declared and known to the people, must be administered through an impartial and upright judiciary; and is not permitted to employ the power of the community within the state except for the purpose of executing the law, and, without the state, merely to punish injuries done to it, or to defend it against foreign attacks.

It seems that Locke identifies the sovereign power with its depository, the ruler, and finding it reasonable that the power of the latter should be limited, looks upon the sovereign power itself as limited and thus confounds the limits of the rights of the supreme power with the conditions of the expediency of asserting it.

Rousseau's Social Contract consists in this that every one enlists his person and all his strength in the service of the community under the supreme direction of the general public will and enters into the body of the whole as its inseparable component element. From this social contract arises the sovereign power or the sum of the whole, in which every one has, so to say, covenanted with himself, and is therefore bound in two directions, namely, as a member of the sovereign power with regard to the particular individuals, and as a member of the state with regard to the sovereign power. But the sovereign power, as such, cannot, under any circumstances, be bound with regard to any one.

This doctrine of the sovereignty of the people rendered the theory of Rousseau attractive, not because it had been satisfactorily proved, but because he replaced the notion of the state, a notion which had well nigh merged into that of the ruler, by the notion of the nation, and insisted upon the absoluteness of the aim of the state, as being the public aim.

The practical and immediate effect and importance of ideas does not depend upon their truth: at least not upon the sense in which they were conceived as truths by their authors and propagators, but upon their aptitude for being able to express wants felt by some large groups of men.

It may be noticed here that this confusion of the sovereign power with the ruler is not without practical significance. As soon as there is government, some men have more power than others and we know what love of power means. Very soon, although primitive impulses towards social co-operation still exist, they are immensely
reinforced by the power of the government to punish those who disobey it. Soon only a minority at the top of the social scale need any psychological mechanism towards social cohesion: The rest, the majority, the mass merely obey. It does not matter that large parts of the population become unhappy so long as this condition of widespread suffering does not prevent the prosperity of the state, leaves unimpaired the enjoyment of life by the holders of power.

This is roughly the theory prevailing in the Democratic World as to how an association develops into a state.

We have noticed above the Hindu theory of the origin of the state. Hand in hand with the question of the origin of state, and, from what cause it arises, there presents itself the question of its aim, and the purpose for which it was formed. For, from the moment that the state was considered to be artificially constructed, as the result of conscious activity, either divine or human, the purpose directing that activity necessarily became a subject for investigation. Indeed fitness of purpose is nothing more than a consideration of human interests, whether these are imagined to have been previously marked out by the deity or to be conceived by nature, or whether they are drawn from the experience of mankind, and are developed in human consciousness. It is a remarkable psychological phenomenon that man's egotism makes him look upon himself as the centre of the world. This consciousness, originating in his primitive self-assertion, does not cease till he gradually learns that this conception was arrived at by objectising the factors of his own activity, and that his existence is but co-ordinate with that of other things, all equally subject to the general law of causality. And this self-centred conception makes man seek, in the first place, and in the realms of nature, the means fitted to design. Consequently, teleological explanation is always, from the first attempts at philosophising, the principal foundation of every scientific exposition.

The philosophy of law and civil society thus embraces also the aim of human communities, and especially that of the state. This aim appears as an object, not only of curiosity but in reference to the investigation of the secrets of the purpose embodied in the order of the world, but of important knowledge concerning the direction of human consciousness and activity. Philosophy, therefore, in these early days proceeded from the notion of the aims, for the purpose of pointing out the essence, sphere, and functions of the state.

The aim of the state, according to Bhismu, is to render the co-existence possible, to effect the most perfect co-operation possible. The creation and maintenance of law are so interpreted that men would thereby be prohibited from extending their activity beyond a certain measure and direction. Nay, not only this: law is defined not only as a limitation, not only as a rule directing conduct, but as the sum of the material conditions of co-existence and development. It
is for the state to maintain this law and thus to achieve its aim. The Hindu Philosophers never confine themselves to existence here on earth. They always keep in view the eternal beyond; and according to them, the aim of the state is to prepare men, not so much for his existence on earth as for the life beyond. The individual, according to this theory, is apt to be invested with an importance out of all proportion to that of the state; since in comparison with life beyond, all things mundane become quite secondary and insignificant, and thus, the ultimate weal of the individual is naturally placed above every other interest including that of the state.

According to the two Ksatriya princes named above the quality of being enforceable constitutes the most general characteristic of law. Rules of law present themselves as proceeding from the more powerful, from the deity, from the authorities. Human claims, the foundation of subjective right, can arise only where there exists the sense, suggestion or memory of the ability of at least partially satisfying them. Power, thus, figures as the most prominent component element of the notion of law and is received as its fundamental principle: Bhismā would even say:—

इद्राय स प्रशमने नमसे यो वतीयसे ।

Mahabharata, Santipara, LXXV. 11.

In this age, for the first time we get an idea of a divinely ordained rule or set of rules for human action, the idea of an immutable code of law. This code was composed by the creator himself and was designed to contain the detailed rules of law. Authority lay in the intelligence of that supreme God and in nothing else:

ततोप्राय सत्त्वाणि गति चक्ने वेवुद्धिकृतम् ।

यत्र धर्मस्वत्याचार्यः कामशचाष्टिभविषयः ॥

Mahabharata, Santipara, LVIII. 29.

and its purpose was the preservation of social status quo, the prevention of any deviation from nature, from Svabhava originating through divine ordination. It was composed because the gods prayed for the perpetuation of the स्वभाव:

अत्र निशेषणं यथार्थवाच स्वभावेऽपि पितामहं ।

स्वच्छात्मकस्मृतिवृद्धिइ स्वभावो नी विनिवृत्यानि ॥

Ibid., LVIII. 27.

Every prudent statesman of the age had only one ambition, that of maintaining the society in its status quo. The golden age was regarded not as in the future, but in the past. All disturbance of the existing institutions would only remove man further and further from the happy past and bring with it increase of evil. Hence they enjoined

स्वभावमेव वर्तमानस्य साधारे राजयो ।

यथावत्स्मित्यविधानस्य राजन! न विशेषन:॥

Ibid., XXXII. 26.
The greatest sin which a man could commit would consist in transgressing his own pre-appointed bound and trespassing into another’s province:

* *

Mahābhārata Adiparva, CXVI. 3-7

Students of Manu will remember how, on the same data, he condemns the same institution. The most important part of this argument of Pandu in favour of Niyoga lies in the fact that he considered the rule as authoritative inasmuch as it was observed by the lower born creatures. "And that is also the ancient law followed even now by the lower born creatures,"—नियमितः योगिनां ग्राजः—who are devoid of desire and anger and thus perhaps, according to Pandu, superior to civilized men.
It must have been noticed that in this as well as in the preceding period welfare forms the basis of law. We have observed elsewhere how the two notions of utility and welfare are often used as synonymous though they do not, in all respects, prove identical. The notion of welfare, we have seen, may at times invest the individual with an importance out of all proportion to that of the state. It has however one great drawback; it is not clear in sense, its several factors not being sharply defined, and as such it does not admit of being scrupulously weighed. This is not the place to examine how in the subsequent period of religious strifes unscrupulous Philosophers took shelter under this eudaemonistic doctrine of law to defend inequitous positions, and how gradually, as a result of that struggle, the doctrine itself received modifications. We might only notice here that though the welfare theory was never totally abandoned in ancient India, it gradually approached the utility doctrine, happiness here on earth being made the measure of individual welfare.

Yet, the so-called theory of utility could not satisfy a Hindu mind which was always so much alive to the relativity of pleasure and pain. Besides this, however, there remains the unsolved question of accounting, by the theory of utility, for law and right in those cases, in which the advantage of a future period is antagonistic to that of the living generation, and where it must be bought by some sacrifice on the part of the latter.

It is needless to say that these early Hindus attached much importance to this spirit of sacrifice. It is now a generally accepted doctrine of evolution that in the field of morality as well as in that of law and right, development in understanding leads to sentiments opposed to selfishness, and so produces a readiness for self-sacrifice for the attainment of objects indispensably necessary for the preservation of community, increasing in degree with the growing and greater extent of the spheres of which the individual has the sentiment of being a member, and in which he has obtained protection and culture, and, simultaneously with these the possibility of realizing his aims of a higher order. Accordingly the development of society would consist in the establishment of new psychological relations under the influence of which the community, as well as its surroundings, become transformed by passing from the condition of relatively indefinite and disconnected uniformity into that of relatively determinate and connected diversity, the constituent elements of the community becoming more and more decidedly individualized. Parallel to, and accompanying this evolution, go the amplification and enlargement of the sentiments and the dispositions and tendencies to action. In proportion as the differentiation proceeding in the surroundings of the society and of the individual increases, it is necessary that the activity, adapted to the satisfaction of the claims growing from such circumstances, should be more diversified and more effective whether these claims have become conscious or not; but the
development of social and individual consciousness must also accompany any progress. Hence human progress is always followed by the growth of the sum of the useful activity of mankind and by an increase in its availability. Moreover, two sorts of activity may be distinguished within the society; the activity of individuals which proceeding directly from the inclinations and consciousness of the individual, serves his own purposes, and social activity, which secures that the individual activities shall not obstruct each other, and that they shall not exceed the limits necessary to secure the liberty of activity of other individuals. That activity, which is directly employed to satisfy actual wants, is the greatest, whilst the relatively smallest portion of the whole sum of forces is consumed in the assertion and production of the consciousness and will of community. This economy in the activity is naturally relative, and is always in due proportion to the self-consciousness and discipline of the members of the society. A separation of the two sorts of activity is essential.

नेव राज्यं न राजसीत्रं च दण्डः न शानिकः।
धम्मण्डृष्ट्र प्रजा: सवब्र्वी रक्षान्ति स्म परस्यर्म॥

_Mahabharata, Santiparva, LVIII. 14._

can refer only to an undeveloped state of society when the activity directly employed to satisfy actual wants would not exhaust the whole force, but would leave sufficient surplusage for the consumption of the other class of activity. As society progresses, the pressure of individual activity also increases, and a stage is soon reached when individual energy is all exhausted in maintaining individual activity and so, nothing being left for the maintenance of social activity “बेदं परम्पानारम्” (Maha. Santiparva, LVIII. 15) the people grew tired and felt the necessity of state and law. Law is thus not “the chance product of profitable and unprofitable hours,” but is the result of an innate and reasonable impulse of humanity, a sociological process pushed forward by necessity due to the co-existence of reasonable beings with material and spiritual wants. Divinely ordained or not, its purpose is after all mundane, and it is meant for the preservation of society, by satisfying its needs and of the individuals composing it, and by providing something stable and substantial for generations still to come. Later generations of Hindu jurists effected some changes, filled in the outline thus drawn, elaborated the elements; but the cardinal principles thus delineated by the ancients remained practically unchanged. It is for us to admire and marvel how in the dim past, when the rest of the world was as yet steeped in darkness these savants reached at the light to light the path of future generations, how they struggled, with all their keenness of intellect, to harmonise the discordant and to evolve a cosmos out of a pervading chaos.
LECTURE X

Manu's Theory of Law

We know that during the course of the nineteenth century a succession of schools of jurisprudence appeared in Europe, each of which arose by way of reaction from the teaching of its predecessor, which it superseded for the time being. Each school laid especial emphasis on some particular basic point of doctrine or method. Perhaps it over-emphasized it from a particular point of view and thereby made a reaction from this over-emphasis inevitable. Thus a new school would arise with a new doctrine or with a new method, which in turn, over-emphasized, thus setting the stage for the appearance of another school of juristic thought.

We have already seen that here in ancient India also a stage in the development of our legal system was arrived at when a series of schools of law appeared, and it may be that their appearance also was to a certain extent the product of the action and reaction of the teachings of the different sages. We must not, however, be led away by any apparent analogy between the two. These different schools, unlike the later Mitakārahā and Dayabhaga Schools, did not so much represent any material difference in juristic thought either in method or in doctrine. No doubt in some of them we notice some doctrinal differences; but even there the difference is not the result of any reaction of the teachings of another school, but of something else.

We have already seen how the special law schools here were preceded by an age when law was studied by the different Vedic Schools as part of the Vedic Study and that was the possible general cause which led to the reproduction of that class of secondary smritis to which the Manava Dharma Sastra belongs. There we have suggested the cause that lies in the establishment of special law schools which were independent of any particular branch of the Veda, and which supplanted the Vedic Charanas as far as the teaching of the sacred law was concerned. We further observed how the Manusmriti exhibits the entire absence of all distinctive marks of any particular Vedic School and how it was designed to be applicable to all irrespective of the Vedic School and irrespective of the territorial division of the Aryan India.

The occasion for the so-called laws of Manu appears to have been the establishment and security of the basic principles of Brahmanism relating to the state and law in opposition to the counter influence of Buddhism.
Manu himself says:

योजवमन्येत ते शूके हेतुवास्त्राभवाद्विद्विजः।
स साधुभिरभृक्कर्यां नास्तिको वैविनिद्वः॥

‘Manu, II. 11.

वेदः स्मृति: सदाचार: स्वस्य च प्रयोगात्मनः।
एतत्तब्धवस्त्र प्राथः: साधुभर्णस्य लक्षणम्॥

‘Manu, II. 12.

अर्थांकोषस्वकानां धर्मं धर्मां विधीयते।
धर्मं जिज्ञासामनानां प्रभाव परमं श्रूति:॥

‘Manu, II. 13.

Manu may indeed be classed as a sociological jurist. He is not so much concerned with the validity of the norms enumerated by him as with the human behaviour. Of course, the norms given by him are all valid, all being of divine origin:

यः करिचपू कस्यचिरभाषनः मनुः परिकृतिः।
स सत्स्रोभिः वेदिः सर्ववाचारयों हि स:॥

‘Manu, II. 7.

But his emphasis throughout is on the efficacy of the legal order advocated by him:

श्रृतिस्मृतियुद्धत धर्ममन्युविष्णुः हि मानवः।
इह कालवाचार्यावाचार्याः प्रेमव चानुरम् युज्यम्॥

‘Manu, II. 9.

तेषु सम्पूर्णः वर्तमानो च गच्छत्यमर्याक्षताम्।
यथासत्किर्तिपतिस्तुष्टः सर्वसि कामानु समस्तं ने॥

‘Manu, II. 5.

The object of a sociology of law is human behaviour which the acting individual has adapted to an order because he considers that order to be valid. In order to be the object of a sociology of law, the human behaviour must be determined by the idea of a valid order.

Max Weber¹ writes: "When we are concerned with 'Law,' legal order,' 'rule of law,' we must strictly observe the distinction between a juristic and a sociological point of view. Jurisprudence asks for the ideally valid legal norms. . . . . . Sociology investigates what is actually happening in a society because there is a certain chance that its members believe in the validity of an order and adapt their behaviour to this order."

Manu begins with his own Theory of Creation. Everything, according to him, was already there in the Divine Idea, only they were beyond the field of animal perception. Creation was only the act of manifestation, the act of bringing these pre-existing things within this field of perception:
We have already noticed how our Vedic Rishi, Prajapati Parameshthi, gave his account of the origin of this universe and how according to him in the beginning there was neither ‘Sat’ nor ‘Asat,’ neither mrityu, nor amrita: there was an all-pervading darkness:

तम आमीतमसा गृहम्प्रयोज्यत सलिला सर्वमा इदम्।

Rigveda, X. 129. 3.

All that existed then was void and formless:

तुष्टचेतनामप्रधितं यदामेव
The Great One came into existence by the great power of तुष्ट:

Thereafter arose ‘desire’:

काममन्दिरेःसमस्तवृत्तं मन्मथां रूजः: प्रथमं यदामेव:
desire, the prana seed and germ of spirit.

Ibid., X. 129. 4.

Manu proceeds to give his account of the origin of the universe thus:

अपत्यंविकत्यम्यरुपज्ञित्वा सर्वंत:।

Manu, I. 5.

‘This universe existed only in the first divine idea yet unexpanded, as if involved in darkness, imperceptible, undesignable, undiscoverable by reason, and undiscovered by rcalation, as if it were wholly immersed in sleep:’

तन: स्वाभाविकः नावत्तो स्वात्मकः ||

Manu, I. 6.

‘Then the sole self-existing power, himself undiscovered, but making this world discernible, with five elements and other principles of nature, appeared with undiminished glory, expanding his idea, or dispelling the gloom.’

The Self-existent Supreme Energy thus brought itself into perceptible existence:

योज्याचार्यभ्रंश: सूक्ष्मभवत्व: सतात्मः।

Manu, I. 7.

‘He, whom the mind alone can perceive, whose essence eludes the external organs, who has no visible parts, who exists from eternity, even HE, the soul of all beings, whom no being can comprehend, shone forth in person.’

It was this Supreme Energy which became desirous of creation and desired ‘let there be water.’ When water was thus born it was impregnated with creative force, with creative energy:

सोविद्याय शरीरात् स्वतः किन्नुश्चितिवः प्रजा:।

Manu, I. 8.
'He, having willed to produce various beings from his own divine substance, first with a thought created the waters, and placed in them a productive Seed':

तत्त्वामयं सहस्रांशमप्रभम।
तत्सत्त्वं जगे स्वयं ब्रह्मा स्वच्छेऽन्त्विपि।।

Manu, I. 9.

'That seed became an egg bright as gold, blazing like the luminary with a thousand beams; and in that egg he was born himself, in the form of BRAHMA, the great forefather of all spirits.'

The significance of the sense of purpose can hardly be exaggerated. The pointlessness of human life in the universe revealed by science is no less intolerable than its insignificance. Our Vedic Rishis insisted that there must be something behind and beyond the visible appearance, that there must be Being and that that Being must be with a purpose. In the fulfillment of that purpose we have a part to play; we have been created precisely in order that we may play it. In this way these Rishis invested men with importance by making them of interest to a Personage who is Himself of overwhelming importance. Man's life was thus invested with significance by casting him for a part in the drama of some cosmic design. The notion of cosmic design implies a Mind, the Mind of the Designer. The whole universe existed in this Mind:

Thence was gradually created this purposeful universe. The Vedic Rishi Visvakarma named Him as विश्वशंभू and समस्तसाधुज्विम।. To these sages the universe was not without understanding, without meaning. The most natural expression of the conviction that the universe is rational in the sense of having an explanation is the view that it was created by a Mind.

Manu then in slokas 10 and 11 gives an account of how Brahma came into existence:

यत्तुकारणमथ्यलं निधयं सदसत्वाः।
तदव्युष्ट: स पुरुषो लोके ब्रह्मेति कीर्तव्ये॥

Manu, I. 11.

'From that which is, the first cause, not the object of sense, existing everywhere in substance, not existing to our perception, without beginning or end, was produced the divine male, famed in all worlds under the appellation of BRAHMA.'

This Brahma then did the rest of the creation thus:

तत्सत्त्वं द ममवान्वितवा परिवृत्वाः।
स्वयमेवात्मनो ध्यानात्तत्त्वशक्रोहितं॥

Manu, I. 12.
THE HISTORY OF HINDU LAW

‘In that egg the great power sat inactive a whole year of the Creator, at the close of which by his thought alone he caused the egg to divide itself;’

• तथ्यां स शक्लमात्राजः दिवं भूमिजन्य निममभे।
सध्यं ब्योम दिशश्चाप्तवर्य र्थानन्त्व शाश्वतमृ॥

Manu, I. 13.

‘And from its two divisions he framed the heaven above and the earth beneath: in the midst he placed the subtle ether, the eight regions, and the permanent receptacle of waters.’

उद्द्भवितमात्रायः मनः सदस्तलस्यम्।
सत्यश्चाप्तवर्य अपरामभिमात्रायामीवर्यम्॥

Manu, I. 14.

From the supreme soul he drew forth Mind, existing substantially though unperceived by sense, immaterial: and, before mind, or the reasoning power, he produced consciousness, the internal monitor, the ruler.

महानमेव चालानं सर्वाणि निगुणानिन्ति।
विपयाणं प्रहितुणि शते: पर्वेचिन्मियाणि च॥

Manu, I. 15.

‘And, before them both, he produced the great principle of the soul, or first expansion of the divine idea: and all vital forms endowed with the three qualities of goodness, passion, and darkness; and the five perceptions of sense, and the five organs of sensation.’

तेषांतवशश्च वशान्तु प्रभाव्यमित्वात्रंसाम्।
सचिद्वशश्चात्मत्रात्रु सर्वबृहत्ताणि निममभे॥

Manu, I. 16.

‘Thus, having at once pervaded, with emanations from the Supreme Spirit, the minutest portions of six principles immensely operative, consciousness and the five perceptions. He framed all creatures:’

Manu thus emphasizes the intellectual priority of the ego over the world.

He also conceives of minds not having any contact with the Physical World. Is it really meaningless to think of minds like these? It may be that in order that it may engage in prima facie purely mental activities mind must interact with brain upon which apparently it depends. Its activities may even be believed to be wholly caused by movements in the brain. Whatever that be, the point at issue here is not whether all the minds are dependent upon brains but whether it is meaningless to think of minds which do not have any contact with the physical world.
According to Bhismā mind functions in a body. Bhismā says:—

तत्त्वं रजस्तः काल: कर्मवृद्धिः भारत! ॥
मनः ध्रुवतिः वैतेर्वः नमक्षयत् ॥
यद्वृद्धी पादस्यः यथा भुजः यथा परम्परसि ॥
एततस्मिनेव क्षत्सनं वर्तं बुद्धिर्दशर्ये ॥
इत्यद्वितीयं नरे पञ्चं ध्रुवति मन उच्चते ॥
सत्त्वाः बुद्धिवेष्ठाः क्षेत्रतः पुनरप्सतः ॥ १५ ॥
धातुरोगनार्यसं शंकर्यं कुश्य मनः ॥
बुद्धिर्यवमानाः साक्षी क्षेत्रसं उच्चते ॥ १७ ॥
तम: तत्त्वं रजस्तः काल: कर्मेन च भारत! ॥
गुणेनः तस्माः बुद्धिवृद्धिर्वेष्ठामाणि च ॥
मनः ध्रुवतिः साक्षी बुद्धिवेष्ठाः कुश्याते ॥ १८ ॥
येन पश्यति तथाबः: भृजती भोगमुखते ॥
जित्वति भवति ध्राणं सतिति रसाय रसायः ॥ १९ ॥
स्वर्थस्य स्वयं स्वाः पुनरस्वाभिभिक्तः ॥
यदा प्रार्थयते मिथ्यात्तु तदा भवति सा मनः ॥ २० ॥
विश्वा गा गायकहर्षती यथा वेदामित्वाभिभिन्नायः ॥
इति भवनम् बुद्धिवेष्ठां मनस्मि वर्तते ॥ २१ ॥


This again is no answer to the question whether mind can exist without having any contact with the physical world.

Let us see what a modern scientist has to say about the mind?

At the end of his book, Mr. Hoyle, having surveyed first the materialist and then the religious hypothesis, asks the question whether our minds survive bodily death and points out very properly that the answer to the question depends at least in part upon what is meant by a mind. If, he comments, "we knew, 'we should be well on the way to getting an answer'. Unfortunately, we don't, he thinks, know what a mind is. But one thing he holds to be clear, namely, that 'the mind, if it exists in the religious sense, must have some physical connections', and must, therefore, be 'capable of physical detection'.

Dr. Joad however asks "Why should it be so capable? Not a scrap of evidence is advanced in favour of this assertion. Of course, if the mind is physical, it must have physical connections. But why should it be physical? Why, in short, should it be taken for granted that in me, whatever it is, that recognises that $A^2 - B^2$ equals $(A - B) (A + B)$, and can follow the chain of reasoning upon which the equation is based, must be a piece of matter analysable into charges of positive and negative electricity? Is it credible that it could be a piece of matter, or credible that it could be another piece of matter that finds it credible? Could one piece of matter find another piece either
credible or incredible? Can a piece of matter, indeed, do anything at all except move, that is, alter its position in space? But if it cannot—and for my part I find it self-evident that it cannot and regard all such phrases as 'matter become conscious of itself' as mere begging of the question—the mind cannot either be, or be of the same nature as, a piece of matter. Why, then, must it have 'physical connections' and 'be capable of physical detection'? The answer, such as it is, that Mr. Hoyle gives is that 'survival after death would be meaningless and unthinkable without some interaction with the physical world'. Again, one may ask, why should it be meaningless? Because, presumably, our minds, when they animate our bodies, do manifestly often interact with the physical world and Mr. Hoyle takes it for granted that what they often do now they must always do.

"But (i) there is absolutely no ground for this assumption. Mind may have pre-existed the body and it may survive it. Shorn of its bodily connection, it may cease to have any contact with the physical world and yet continue to be. We do not know that this is so, but we certainly do not know that it is not so.

"(ii) There is no ground for supposing that a mind which is not at every moment interacting with matter is meaningless and unthinkable. I can think of many kinds of mental activities which certainly do not seem prima facie to involve any interaction with the physical world, as, for example, my realisation of the truth of the algebraic equation given above, the train of mental activity upon which I engage when I do mental arithmetic or my recognition of such necessary relations as that, if \(P\) implies \(Q\) and \(Q\) implies \(R\), then \(P\) also implies \(R\)."

According to Dr. Joad "even if all those activities of mind with which we are familiar involved bodily dependence, it would certainly not be meaningless to suppose that there may be other activities that do not involve it. And, in fact, we do know of such activities. Telepathy, for example, whose occurrence must, I think, now be regarded as demonstrated, certainly seems to involve direct communication between minds, that is to say, communication otherwise than through the medium of brains and bodies. Precognition, again, certainly appears to occur, but precognition can hardly involve interaction between mind and the precog用地 events in the physical world. for if these events are really in the future, they have not yet occurred and do not, presumably, exist.

"(iii) The view that a mind must have some physical connections is exceedingly ambiguous. If it means that it must interact with matter or that it must be related to or dependent upon a brain, then the observations just made apply. But it may mean that it must have physical connections, as it were, tacked on to it, links or hooks, perhaps, attaching it to the brain, or perhaps some tail or trail of tenuous matter. Now this view is, I think, strictly unthink-
able, for if the mind is not material—and to say that it is, brings us back to the materialism which Mr. Hoyle explicitly repudiates—there is nothing for the hypothecated physical hooks and links to tack on to. 'There could only be such a point of attachment if the mind was, in fact, material.'

Whatever be the connection of the mind with the material body, its attributes are recognised to be knowledge, appetition, desire and will. It is indeed a theoretical and practical process.

Appetition is a state of physical activity, in that it is a tendency towards pleasure and aversion to pain. In its turn it transforms the stimulus. It is sensation become practical activity.

The first concrete and particular appearance of appetite is instinct, a tendency unconscious of its ends and means. Its end is the attainment of what is best for the satisfaction of the means without precedent experience.

The second state in which appetite is developed is desire, a tendency towards a representation which attracts the mind. In desire there is a knowledge of the end but the choice of means is lacking, because the relation between the end and the means is learnt, not by representation, but from an already experimented association of our internal states and external objects through reflection.

The third and highest state of appetite is will: it pertakes of reason as derivative power, originating in appetite itself. In will or rational appetite are found the determination of ends and choice of means.

The will presupposes a cause, or at least a motive.

Will is rational appetite and tends as such to the end of man. The end of man is his well-being, or happiness, in which, since man is a spiritual and organic subject, is included well-doing and well-living, duty and pleasure. The true human good in which lies the supreme end of conduct demands the subordination of sentiment, passion, and interest to reason.

Human good, which is the unity of right-doing and right-living or the subordination of the appetites and interests to reason, presupposes, as it does, the common life, and is an object of ethics.

Ethics, understood in this broad sense, contain the universal determination and the supreme principles of will and action. Morals and law are parts of ethics because the good can be developed largely in the intimacy of the relations of knowledge, and can, on the other hand, be well shown in the external relations between man and man, and man and things.

But let us go back to Manu's account of this universe. Manu continues:

\[\text{मनुस्मृत्युवः: सूक्ष्मास्त्येमान्याभ्यन्ति पद्} \]
\[\text{सत्स्माच्छरीरिनित्याहृतस्य मूलि नन्दिशिण} \]

\[\text{Manu, I. 17.}\]
'And since the minutest particles of visible nature have a dependence on those six emanations from God the wise have accordingly given the name of s'arira, or depending on six, that is, the ten organs on consciousness, and the five elements on as many perceptions, to His image or appearance in visible nature:'

तदा विशीर्षण भूतानि महान्ति सह कल्पितः ।
मन्त्रवाचयेः सूत्रमें: सत्येतैव ज्ञानेद्यम् ॥

Manu, I. 18.

'Thence proceed the great elements, endued with peculiar powers, and Mind with operations infinitely subtil, the unperishable cause of all apparent forms.'

तेपामिदलु स्वमानं पुर्वाणां महीजथाम् ।
सूत्रामायं मृत्तिमात्रायं: सम्बन्धस्यायाम् ॥

Manu, I. 19.

'This universe, therefore, is compacted from the minute portions of those seven divine and active principles, the great Soul, of first emanation, consciousness, and five perceptions: a mutable universe from immutable ideas.'

In the very proceeds of creation He ordained different functions for the different created matters:

सत्वायातु स नामानि कल्पिणि च पृथक् पृथक् ।
वेदवर्गेशेवादु पुरात्मुल्याश्च निर्माते ॥

Manu, I. 21.

'He too first assigned to all creatures distinct names, distinct acts, and distinct occupations: as they had been revealed in the pre-existing Veda:'

कल्पतरुमानाच देवानां सोज्जलं प्राणितं ग्रन्तः ।
साध्यामानाच गणं सूक्ष्मं यज्ञाच सनातनम् ॥

Manu, I. 22.

'He, the supreme Ruler, created an assemblage of inferior Deities, with divine attributes and pure souls; and a number of Genii exquisitely delicate: and he prescribed the sacrifice ordained from the beginning.'

अयुर्विवाहस्तु त्रयं श्रव्य सनातनम् ।
दृश्योह यज्ञसिद्धांदृश्युस्मात्सामालक्षणम् ॥

Manu, I. 23.

'From fire, from air, and from the sun he milked out, as it were, the three primordial Vedas, named Rich, Yajush, and Saman, for the due performance of the sacrifice.'

कालं कालिन्यक्तिं नवनानि प्रहीस्तथा ।
सरितं सामान्तः शैलान् समानि विवाणि च ॥

Manu, I. 24.
'He gave being to time and the divisions of time, to the stars also, and to the planets, to rivers, oceans, and mountains, to level plains, and uneven valleys.'

\[\text{तमोवच्यं रतिवच्यं कालवच्यं कृष्णमेव च।}
\]

\[\text{ृष्णसिद्ध सागरं च चैवेकः वर्गमयं च। प्रजा:॥}
\]

\[\text{Manu, I. 25}
\]

'To devotion, speech, complacency, desire, and wrath, and to the creation, which shall presently be mentioned: for He willed the existence of all those created things.'

\[\text{कर्म्यानां विशेषाय धर्मायमाय यथे भवयत।}
\]

\[\text{तत्त्वं रोठयोज्यं च एव मुकुट-विद्ये च। प्रजा:॥}
\]

\[\text{Manu, I. 26.}
\]

'For the sake of distinguishing actions, He made a total difference between right and wrong, and enured these sentient creatures to pleasure and pain, cold and heat, and other opposite pairs.'

\[\text{अन्ययो मात्रविनिहितस्य द्वादशोनां या: स्मृतः।}
\]

\[\text{ताभि: सार्थमेव सर्व सम्भवतः युपर्युपोऽपवेषः॥}
\]

\[\text{Manu, I. 27}
\]

'With very minute transformable portions, called \textit{matras}, of the five elements, all this perceptible world was composed in fit order:'

\[\text{यन्तु कर्मणि मद्भमन् स स्वयं दक्ष प्रथमं प्रमु:।}
\]

\[\text{स नंदेव स्वयं भेषे मृज्ञमाने: पुनः पुनः॥}
\]

\[\text{Manu, I. 28.}
\]

'And in whatever occupation the supreme Lord first employed any vital soul, to that occupation the same soul attaches itself spontaneously, when it receives a new body again and again:'

\[\text{हिंसाहिते मृदुकृते धर्माघ्रिंगम्यानां॥}
\]

\[\text{यद्यशः सोऽज्ञात: सर्वं तत्त्वं स्वयं मविश्वः॥}
\]

\[\text{Manu, I. 29.}
\]

'Whatever quality, noxious or innocent, harsh or mild, unjust or just, false or true, He conferred on any being at its creation, the same quality enters it of course on its future births:'

\[\text{सपृथुतिलोकानायस्तवः स्वयंवसतःपुष्यं ये।}
\]

\[\text{स्वानि स्वायत्वभिषेकते तथा कर्मणि देहित:॥}
\]

\[\text{Manu, I. 30.}
\]

'As the six seasons of the year attain respectively their peculiar marks in due time and of their own accord, even so the several acts of each embodied \textit{spirit} attend it naturally.'

The sage then gives how male and female were made and how the castes were created:
\textbf{THE HISTORY OF HINDU LAW}


dviṣa kṛtvā, viṇe bṛhadārṇa pūruṣoṭaṇa

dhāne naṁ tathāṁ tvam sarvasaṁjñatū prascū
dhān. I. 32.

'Having divided his own substance, the mighty power became half male, half female, or \textit{nature active and passive}; and from that female he produced VIRAJ:"

\textit{lokaṁantau viṣvānthu मुक्तवाहस्मातः।

brahmaṇaṁ kṣetrīyam āsheyuḥ śūlt♭nac nishānt vai.}

\textit{Manu, I. 31.}

'That the human race might be multiplied, he caused the \textit{Brahman}, the \textit{Cshatriya}, the \textit{Vaisya}, and the \textit{Sudra} (so named from the \textit{scripture}, protection, wealth, and labour) to proceed from his mouth, his arm, his thigh, and his foot.'

He then gives an account of how the creation functions and how it becomes extinct:

\textit{tamasā bhrūṣeṇa kṣhitā: karchheṇuḥ।

ālt:āntaka bhavantyeśu rūduḥ:kasamrṭita।}

\textit{Manu, I. 49.}

'These \textit{animals} and \textit{vegetables}, encircled with multiform darkness, by reason of past actions, have internal conscience, and are sensible of pleasure and pain.'

\textit{eyónaṁantu gatyāṁ bhuhmaṁ: samuḥrāta।

ghoreśiṁnaṁ bhuṁsamsaṁre śrīyam: satvabahiṇi।}

\textit{Manu, I. 50}

'All transmigrations, recorded in \textit{Sacred books}, from the state of \textit{BRAHMA} to that of plants, happen continually in this tremendous world of beings; a world \textit{always} tending to decay.'

\textit{evam sarvē sāṁśeṣe mātmāchāntyaparakam।

ābhagese māṁ: kālab kālēn pībhyan।}

\textit{Manu, I. 51}

'He, whose powers are incomprehensible, having thus created both me and this universe, was again absorbed in the supreme Spirit, changing the time of \textit{energy} for the time of \textit{repose}.'

\textit{yadā s tāte jāgratī tadbhāvāvahitā।

yadā svarpitā satvātmakā cārdā sarvē niśajvita।}

\textit{Manu, I. 52.}

'When that power awakes, \textit{(for, though slumber be not predicable of the sole eternal Mind, infinitely wise and infinitely benevolent, yet it is predicated of Brahma figuratively, as a general property of life) then has this world its full expansion; but, when he slumbers with a tranquil spirit, then the whole system fades away:}'}
"For, while he reposes, as it were, in calm sleep, embodied spirits, endued with principles of action, depart from their several acts, and the mind itself becomes inert."

Manu, I. 53.

"And, when they once are absorbed in that supreme essence, then the divine soul of all beings withdraws his energy, and placidly slumbers."

With Manu law is an order of human behaviour. He purports to declare only the existing norms, or rather the existing set of norms that have been found efficacious in establishing the desired order and enjoins their observance in the self-interest of the observer. The norms declared by him are those proceeding from the very nature of things,--for the regulation of human behaviour. This ordering of human relations according to Manu is absolutely valid and just because it emanated from the will of God, and because it has regulated the behaviour of men in a way satisfactory to all men. The rights and duties of man, established by this law, are innate or inborn in him, because implanted by nature and not imposed from outside.

Manu, I. 107.

"In this book appears the system of law in its full extent, with the good and bad properties of human actions, and the immemorial rules of conduct of the four classes."

Manu, I. 108.

"Immemorial custom is transcendent law, approved in the sacred scripture, and in the codes of divine legislators: let every man, therefore, of the three principal classes, who has a due reverence for the Supreme spirit which dwells in him, diligently and constantly observe immemorial custom."

But what was the nature and instrumentalties of social control? It is a familiar idea to us that law is but one type of social control. Manu begins by explaining the necessity of law and its basis.

One of the roots of law is self-interest or egoism. According to Manu "To act solely from a desire for rewards is not laudable, yet an exception from that desire is not to be found in this world; for on that
desire is grounded the study of the Veda and the performance of the actions prescribed by the Veda:"

"कामात्सत्ता न भशत्ता न चवेहास्त्यकामता।
काम्योपदिविधम: कर्मयोगमयि बैदिकः॥
"

Manu, II, 2.

Again "the desire indeed has its root in the conception that an act can yield them: and in consequence of that conception sacrifices are performed; vows and the laws prescribing restraints are all stated to be kept; through the idea that they will bear fruit. Not a single act here appears ever to be done by a man free from desire; for whatever man does, it is the result of the impulse of desire. He who persists in discharging these prescribed duties in the right manner reaches the deathless state and even in this life obtains the fulfillment of all the desires that he may have conceived:"

सकुम्मुल: कामो व यजः: रकुम्मुस्मुभवः।
श्रुन्ति नियममत्मास्विच सर्वेऽकुम्मुस्मुभवः: स्मृता:॥

अकामस्य क्रिया काजिस्य यथे नेन्द्र कहिष्ठितु।
यद्यपि कृत्तेऽकिचिन्तनं तत्रस्य कामस्य चेतित्तम॥

तेतु सम्मयवत्तमानो गच्छत्यमरलोककालम्।
यथा: सकुम्मुलतिस्विद्धम: सर्वानु: कामानु: समस्तु॥

Manu, II, 3-5.

The last sloka quoted above signifies that in desire there is a knowledge of the end, but the choice of means is lacking. The relation between the end and the means is to be learnt.

Every social development is attended by enhanced intensity and thoroughness of activity. In proportion as the differentiation proceeding in the surroundings of the society and of the individual increases, it is necessary that the activity, adapted to the satisfaction of the claims growing from such circumstances, should be more diversified and more effective, whether these claims have become conscious or not. But the development of social and individual consciousness must also accompany any progress.

Human progress is always followed by growth of the sum of the useful activity of mankind and by an increase in its availability. Two sorts of activity may be distinguished within the society: the activity of individuals, which proceeding directly from the inclination and the consciousness of the individual serves his own purpose; and social activity, which secures that the individual activities shall not obstruct each other, and that they shall not exceed the limits necessary to secure the liberty of activity of other individuals. This social activity also occasionally concentrates the individual forces, which are not ready to combine voluntarily into such activity as shall aim at the furtherance of a common general interest.
A great variety of necessities, necessities of an animal and of an ideal nature, impel human beings to action, and to conflicts in the outer world. The necessity of subsistence, the requirements of rest and sleep, shelter and clothing, and manifold wants of a physical and ideal character, are the basis of man's activity. If men, not living an isolated life, should satisfy their wants without regard to others, the struggle of all against all would be inevitable.

Manu's object was to establish status quo and he started with the theory of original non-conflict by saying that "But to whatever course of action the Lord at first appointed each that alone it has spontaneously adopted in each succeeding creation."

यज्ञु कर्मणि यस्मिन् स नयुक्ततः प्रथमः प्रभुः ॥
स तदेव स्त्रयं स भजे गृहयमानः पुनः पुनः ॥

Manu, I. 28.

"In order to protect this universe He, the most resplendent one, assigned separate duties and occupations to those who sprang from his mouth, arms, thighs and feet."

रूपसाय सूरसाय गुप्तयर्थ स भजायते ॥
मुख्याभृत्यज्ञानो पूवक्क कर्मण्यकलयत् ॥

Manu, I. 87

The real learning according to him lies in one's acquiring knowledge of this law of status quo and 'in accordance with the authority of the revealed texts' be intent on the performance of his duties.1

Every society, indeed, proceeds from individual initiative springing from the sense of necessity with reference to special concrete cases. This leads later to the complete state of society although it may be not fully conscious, nor active in details when the sphere of interest supplies the vital principle. The society is attended by success when it is founded on a firm conviction capable of exhibiting the inclination of masses, of attracting them to its sphere, of prompting them to the necessary activity, and of displacing them. But, although the development of the consciousness of the social interest in the widening sphere of the society always remains somewhat behind its external consolidation, and further organization is to a great extent the result of almost involuntary accommodation, nevertheless, this spirit does produce modes of conduct of a more and more general nature, in every direction of life; whereas initiative activity, in conformity with the special relations of primitive circumstances of a narrower sphere, is necessarily more irregular and varies with every changing case. It is owing to this that every manifestation of law begins with a determination having reference to special concrete cases, whilst the circumstance that this determination is ascribed to superhuman promptings is always in consonance with the mysteriousness of the new social interest, with the impossibility of explaining it upon the grounds of the previous circumstances of social co-existence and with the exceptional authority
of its initiator. For it is usual to derive the unconscious, that which is imperfectly understood, from superhuman forces. To such decisions were added, as purely human factors, military, religious, and ritual commands, which became habitual, in consequence of struggles and vicissitudes, and being constantly reiterated owing to their expediency and to natural selection, obtained at length the character of permanence. The opposite comprehension of these various elements of law, the recognition of the various and coinciding conditions of the organism of the society, the declaration of law in a body of laws, as well as in its consistent assertion, is then effected by the primitive codes, containing promiscuously religious and secular propositions. The true source of the authority of these primitive codes is the overpowering influence of genius, which appears in the light of divine inspiration. It is, in truth, this element of overwhelming individuality, towering far above the average, which thus for the first time obtains recognition, and which, although unable to assign reasons to itself and its surroundings for every one of its measures, yet, instinct with the prophetic power of inspired lights, discovers the very order necessary for the consolidation of the prevailing society, and makes its enactments appear natural and indispensable to the members, because corresponding to their instinct, to the capacities evoked by their surroundings, and to the extent of their readiness for action.  

The order of the society and of law, in this its early phase, is still, and to preponderating extent considered divine. Faith in the immediate interference of the Deity is still vivid. Besides, to the extent that men rise to the level of abstract conceptions, and thus to notions of permanent religious, natural, and human causalities, they also hold the latter to be of an identical character, and the results of identical agencies, and thus to be interchangeable. Men are unable to explain the formation of such an order, except by deriving it from superhuman power and consciousness. The members of the society venerate as divine every kind and source of authority, except that of rude force.  

This explains also the strict formalism of the early law. For, indeed, on the one hand, every religious act is necessarily tied down to fixed formalities, for it is a general psychological fact that all intercourse with the transmundane is looked upon as capable of being effected only by means of immemorial and traditional expressions and proceedings, to be scrupulously observed in their minutest details, and that this view is also transferred to all actions connected with earthly power, having a transmundane foundation. On the other hand, again, to the extent that the mode of explaining some relation, and the cause and ground of expediency of the connection between the antecedents and results of some relation, are not thoroughly understood, the lacking force of conscious conviction will be supplied by clinging to the external part of the proceeding, and by faith put in its mysterious nature. Moreover, the instinctive preservation of custom will continue
to protect ceremonial externals even after they have lost all their proper significance and importance, only that in the latter case, by their gradually wearing out and by becoming mere symbols, they hasten to their decay.

It must not be forgotten that Manu’s code was not the result of any legislation. As yet it was the customary law that held sway over the society. This period was at the same time the era of the supremacy of aristocracies in the societies that had attained dominion; the law, being traditional, was preserved in the memory of and applied and interpreted by those who represented the more ancient and perceptible element, who were the ministers of the intercourse between the people and the gods, and who having acted a part in the struggles of the society, had become more bound to the conditions of its maintenance, and hence, share to a greater extent in the traditions of the past as well as in the perception of the tendency of the development of the state, than the great bulk of the people. According to Manu himself “the knowledge of the sacred law is prescribed for those who are not given to the acquisition of wealth and to the gratification of their desires; to those who seek the knowledge of the sacred law the supreme authority is the revelation.” The Brahmans’ position as custodians of these traditions was indeed firmly secured by this, and it must be said, it excelled in this respect over that of priests in other countries. These Brahmans very early showed disinterestedness in worldly affairs to such an extent that people never had occasion to distrust these custodians.

Yet the customary law was highly aristocratical and almost ignored the wants of the lower classes of the people and their customs arising from wider circulation and closer intercourse. It thus appeared to these people uncertain and oppressive, partly owing to their want of familiarity with it, and partly to its motive being incomprehensible to them.

We have already noticed that when Mann’s code came into being the society had already met with a revolution. Mann could not altogether ignore this factor and the necessary rise of the mass consciousness. One of his sources of law was reason. According to him—

\[ वेदः स्मृतः संस्कृतः स्वस्य च प्रयमालमः । \]
\[ एकत्रिक्तुख्त्वं प्राहः साकाद्यपर्म्यम नस्थायम् ॥ \]

Mann, II. 12.

“the Veda, the Smritis, the customs of virtuous men, and one’s own conscientious pleasure” are the fourfold means of defining the sacred law”. Mann recognizes the possibility of conflict of laws and gives an account as to how to settle this conflict.

Men have always been unequal. Indeed according to Manu, they were created as unequal. Men no doubt have similar thoughts, desires
and wants; but at the same time they have entirely different thoughts, desires and wants. They have identical needs; but they have different needs as well. It is true, however, that primitive men must have been more alike than more advanced men. Differentiation has progressed in the same measure as civilization, or to be more exact, civilization itself is nothing more than the accentuation of dissimilarities between individuals. Nevertheless, the idea of equality is a product of civilization. The days of Manu are marked by greatest contrast between the classes. Indeed the necessity of proclaiming equality of men is seldom felt until the differences between them were appreciated. There is no question of equality of men in a society composed of sensibly homogenous elements, because such people feel that their needs are equal; equality of needs is the essential, if not the only, factor which unites them, and the idea of equality cannot be disengaged from the more comprehensive and simpler idea of solidarity through similitudes. Buddha proclaimed the equality of men at the time when inequality was strongly felt. Manu could not ignore this necessity for proclamation of equality.

But according to him equality did not mean exact sameness. Each has individually a worth which is equally to be respected in human relations. Equality of men, according to him, is the recognition of an equal protection for the worth of each man. He emphasized solidarity through division of labour. This could not fail to produce the desired effect. The more men differ one from another in this world, the greater becomes their mutual usefulness, and there comes a better understanding of the fact that individual activities, though different, are nevertheless socially equal, since they all contribute to social solidarity. This was also the explanation given in the Upanisads as to the creation of different Varnas in the society.

It must have been observed that Manu enjoins strict division of labour. This indeed is calculated to lessen individual suffering. Men have different aptitudes and different needs; these differences increase steadily with the progress of civilization, or rather are the civilization itself. Yet men are conscious of their unity, because they know that they can satisfy their needs only by an exchange of services; this solidarity grows closer the more pronounced are the differences in individual aptitudes, for then exchanges are more frequent and more productive. Consequently, the social bond grows the stronger as men are more sharply individualized. Thus division of labour is at once an element of solidarity and of individualization. At first it must have been spontaneous.

The general and unconscious cause which has favoured the development of division of social labour is the progressive condensation of societies, a condensation which has been brought about in three ways during the course of history: (1) Population has been steadily concentrating on smaller territories; (2) Cities have grown and a general
tendency is manifested among country people to go to cities; and finally, (3) the number and rapidity of means of communication have very considerably increased. It cannot be denied that even this third factor had an influential hand in this development since the vedic days.

Manu perceived this and exploited it for the purpose of quelling Buddhistic revolution. He however declared this division of labour to be hereditary. May be, he was led by the actual results of the influence of hereditary transmission of special aptitudes. But he failed to see that in the long run heredity retards it. It obstructs individual change and initiative and really there is no transmission of special aptitudes.

It will be pertinent to examine the influence of Manu's religion on development of law. Religion in the early consanguineous society, was at first the result of fear or admiration, afterwards the consequence of a cowering spirit of blind submission to tradition, and finally a symbol of seclusion and exclusiveness. It first sprang in the forms of Animism and Fetishism, from the fancied power of the departed, and from the experience of the transcendent power of natural agencies surrounding man, and was subsequently developed by a sense of wonder and respect for the unusual and exceptional, embracing the more striking phenomena of nature, especially those of the heavens and seasons, even if of daily occurrence. The conviction of the worldly usefulness of religion, its attachment to all the agencies of the proper sphere of a society as against foreign enemies, and finally, the feelings of devotion developing in parallel lines with the ties of consanguinity, indelibly endeared it to the hearts. Its topics continued to be the worship of the spirits of the departed, as well as of those haunting all nature, and of the external objects connected with them: the placating of mysterious powers and their employment to the advantage of man by means of external rites; and finally, the homage paid inwardly and by outward acts to the progenitor of the patriarchal sphere, figuring now as its preservers and patrons, and raised to the rank of divinities or of a higher class of superhuman beings. The influence of religion was nevertheless also productive of a moral result, already felt in the consanguineous society: namely, the gaining ground of the idea of the universal accountability of those inevitably adhering to it, not so much from faith, as from the fact of belonging to the same sphere of consanguinity. Primitive religion is not, thus, the result of individual conviction: it is a motive influence just as tangible and as inseparable from social life as any tradition, any familiar agency, or any accepted earthly authority.

In the early stages religion retained this feature. It however becomes consciously polytheistic through the co-ordination of the divinities of the various kinships forming the component parts of the society, and through a grouping of the transmundane powers corresponding with the order of the tribal and of the communal state. At a later
period, when the society itself establishes its rules with fixed purposes, Divine rule is no longer casually revealed by scattered capricious manifestations alone, but becomes the source and sustaining spirit of the laws of casual necessity now beginning to be recognized, whilst familiarity with abstract ideas and with their domain identifies the supernatural powers with notions of a general character, and with conceptions which present themselves at first as fatal forces existing before the deity side by side with, or above it, and, subsequently, as embodied in the essence of the gods, as asserting themselves in their attributes, and as symbolized in the religious fables concerning them. The preponderating importance of externals and ceremonies continued to be acknowledged in all the relations of the community.

In Mānu religion was looked upon as being essentially the symbol of the social bond, and the fulfilling of the task and duties connected with the veneration due to the gods, and with the expression of attachment to the state. Want of faith and indifference to religion met with the same condemnation as want of patriotism and contempt of civil virtues; for, they were considered identical. Religion thus became still more intimately connected with the ties of the society than with the spheres of individuality.

An eminent historian of our time has shown how the highest religions have made their appearance on earth in response to the challenge presented by the disintegrations of civilizations. "If religion is a chariot, it looks as if the wheels on which it mounts towards heaven may be the periodic downfalls of civilizations on earth. It looks as if the movement of civilizations may be cyclic and recurrent, while the movement of religion may be on a single, continuous upward line. The continuous upward movement of religion may be served and promoted by the cyclic movement of civilizations round the cycle of birth, death, birth."19

The higher religions with a mission to all mankind are said to be relatively recent arrivals on the mundane scene of human history. They have not arisen even among societies in process of civilization until after certain civilizations have broken down and have travelled far along the path of disintegration.

We have, however, already seen how even in the early Rigvedic age our Vedic Rishiis conceived of this unity of God. Indeed the earliest expression of that illumination of human soul which brought into Religion a perception of the Unity of God and of the consequent brotherhood of mankind was given on the Indian soil by the Rigvedic Rishi, Prajapati Paramesthin, in the clearest possible terms.

It has been the sad experience of the world that one of the keenest ironies of human history is that the very illumination of human souls bringing in the perception of the Unity of God does at the same time make these souls prone to fall into the deadly sins of intolerance and persecution for religion’s sake.
The explanation perhaps is that the idea of Unity in its application to Religion impresses the spiritual pioneers who first stumble upon it in this context with so overwhelming a conviction of its transcendent importance that they are apt to plunge into any short cut which promises to hasten the translation of their idea into reality by enabling them to impose it upon their fellowmen.

Whatever be the explanation, the enormity of intolerance and persecution in the cause of Unity, however, has shown its hideous countenance, almost without fail, wherever and whenever a ‘higher religion’ has been discovered and formulated and preached.

It must, however, be said to the great credit of the Vedic Aryans of India that somehow they succeeded in not allowing this impact of the sense of Unity upon religion to beget that spiritual enormity which such an impact almost everywhere else did beget in the shape of religious intolerance and religious persecution.

Primitive Religion is truly characterized as bounded by the narrow vision, and unpacified in the tribal feuds. But these positive limitations and blemishes of Primitive Religion have one important offsetting advantage: they foster a spirit of ‘live and let live’ in the relations between one primitive tribal worship and another. Under primitive social conditions the plurality of mutually independent parochial communities is taken for granted as a permanent state of affairs; the possibility of their consolidation into a universal state by one or other of the two alternative methods of voluntary cooperation or violent conquest remains undreamt of: and since the gods of each and every primitive parochial community are regarded as members of its social circle on much the same footing as its human and animal members, the moral acceptance of a social situation in which a number of separate parochial communities are living together side by side carries with it the moral acceptance of a plurality of parochial gods—each independent of his or her neighbour and locally master or mistress of his or her own domain in perpetuity.10

"In this social condition human souls are blind to the unity and ubiquity and omnipotence of the Godhead: but, precisely on that account they are immune from the temptation of succumbing to the sin of intolerance in their relations with other human beings who happened to worship this Godhead under different forms and titles."11

From what we have already noticed it must have been amply clear that the Vedic Religion far surpassed the primitive stage. Yet the impact of the Sense of Unity upon it did not beget that spiritual enormity, which in the shape of religious intolerance and religious persecution became almost the invariable product of similar but more modern impacts. But, leaving aside the Vedic Religion, no one can deny this exceptional virtue of tolerance to Buddhism.

A great thinker of the present age says:12 "Indian pacifism finds its completest expression in the teaching of Buddha. Buddhism,
like Hinduism, teaches Ahimsa or harmlessness towards all living beings. Alone of all the great world religions, Buddhism made its way without persecution, censorship or inquisition. In all these respects its record is enormously superior to that of Christianity, which made its way among people wedded to militarism and which was able to justify the bloodthirsty tendencies of its adherents by an appeal to the savage Bronze-Age literature of the Old Testament. For Buddhists, anger is always and unconditionally disgraceful. For Christians, brought up to identify Jehovah with God, there is such a thing as 'righteous indignation.' Thanks to this possibility of indignation being righteous, Christians have always felt themselves justified in making war and committing the most inhuman atrocities."

Aldous Huxley points out that before the coming of the Mohammedans, there was virtually no persecution in India. The Chinese pilgrim Huen Tsang, who visited India in the first half of the seventh century and has left a circumstantial account of his fourteen-year stay in the country, makes it clear that Hindus and Buddhists lived side by side without any show of violence. Each party attempted the conversion of the other; but the methods used were those of persuasion and argument, not those of force. Neither Hinduism nor Buddhism is disgraced by anything corresponding to the Inquisition; neither was ever guilty of such iniquities as the Albigensian crusade or such criminal lunacies as the religious wars of the sixteenth and seventeenth centuries.

Prof. Northrop points out how Buddhism indicates a way to obtain peace of mind. "Buddha, sitting amid the transitory, death-doomed, determinate things which are here and now, with his eyes half-closed, half open" is precisely showing the way to obtain real peace of mind.

There is nothing in the teaching of Buddha which one’s immediate experience does not contain. "Hence, having pointed out the factors which are there and having revealed the potentialities which they offer in practical living, for facing the stark transitory realities of life as they are, and even so finding it possible to gain an emotional, aesthetic, and hence essentially spiritual contentment, thereby preparing us for the death not merely of those who are dear to us but also of all other determinate things: and giving us a deep, even tragically deep, fellow-feeling for all creatures, vegetables and animals as well as men, he had taught us how to stand upon our own feet.""

"There is no transcendental hocus-pocus breaking into our lives from without in some manner which we can never understand, thereby always making us its slave. There is no claim that one cannot attain the perfect moral and religious life without the Buddha. There is no charge of sin loaded upon us of an origin so far as in the distant past that obviously, by its very nature, we can have no responsibility for it. There is as a consequence no over-righteous sense of self-
sacrifice nor any claim upon the part of the Buddha that he is suffering or dying for us, thereby making us permanently his chattels by putting us permanently in his debt. The Buddha’s claims upon the lives of men are merely those of a mortal man—he never claimed to be anything more—who, with the utmost realism and the most sober reasonableness, merely calls man’s attention to, and with him has a compassionate feeling for, the sufferings of human and natural things which the inevitable death that overtakes all determinate creatures entails; while at the same time pointing out another factor in the nature of things and the practical consequences with respect to aesthetic appreciation, spiritual sustenance, and emotional equanimity, which the awareness and cultivation of its existence engenders. **17**

It is no wonder that this Buddha, in spirit if not entirely in name, has won the hearts and the affection of more of the earth’s inhabitants than any other religious leader in the world. He has won this allegiance tolerantly by combining amicably with, and even losing himself in, other religions rather than replacing or destroying them.

**18** In his enlightened followers there has also come an appreciation of things intellectual as well as aesthetic, an open-mindedness—in fact, a positive welcoming of religious and philosophical doctrines other than one’s own, and, as Marco Pallis has noted, an attendant spirit of tolerance such as befits one who maintains that the divine component of the nature of things is truly and literally not merely in all persons, but in all aesthetic natural objects.

It seems that in Manu Samhita religion is valid only to the extent of its fitness to minister to the supremacy of the established order, and as far as it might be expressive of the manifestation of the devotion of the people to the sanctioned power of the state.

We have observed above that Manu’s code was not the result of any legislation. It may be pertinent to enquire whether legislation was thought possible in those days. Law being of divine origin *prima facie* any legislation in the modern sense of the term would be, at least theoretically, improbable. We have, however, already noticed such legislation in earlier India. Manu himself expressly recognizes king’s legislative function. As one such instance he refers to law promulgated by King Yena while discussing the propriety of Niyoga:

\[
\text{नोढ़हिङ्गुण मन्त्रेय नियोग: कौश्यते क्षतिचतुः}
\]
\[
\text{न विनाशविधावुक्तं विधातादेव पुनः पू:} \]

Manu, IX. 65.

Procreation of children by appointment on another’s wife (Niyoga) has nowhere been mentioned in the Mantras of nuptial rites nor the marriage of a widow has even been mentioned in the Sastra.

\[
\text{अयं डिले विष्णु: पत्स्थभर्मी बिमतिः}
\]
\[
\text{मन्त्रायामपि प्रोक्तो वेधे राज्यं प्रणामति} \]

Manu, IX. 66.
This beastly custom, which first prevailed among men during the reign of King Vena, is condemned by the erudite Brahmanas.

That foremost of kings (Vena), having enjoyed the whole earth, with his mind clouded by erotic feelings, introduced this custom (procreation of children under appointment on another’s wife) of yore among men which led to the intermixture of caste.

Since that time, he, who has appointed a widow to get a son procreated on her by another man, has been condemned by the virtuous.

It is indeed the function of every social order to bring about a certain reciprocal behaviour of human beings, to make them refrain from certain acts which, for some reason, are deemed detrimental to society, and to make them perform others which, for some reason, are considered useful to society. According to Manu:

For the classification of the works (duties) of the Brahmana and other castes of society in the order of enumeration, the wise Manu, the grandson of the self-originated one (Svayambhunba), framed this code.

This code should be diligently read and taught in its entirety to his pupils by an erudite Brahmana, and not by (a member of) any other (caste).

A Brahmana, who, while observing the vow of self-control, continence, etc., reads this code, is not tainted by the daily acts of iniquity done by his mind, speech and body.
"He sanctifies the row (pankfi) and the seven generations of his ancestors and descendants. He is fit to be honoured even with the gift of the whole earth."

इदं स्वस्त्यमाणं एष्टमिंद बुढ़ि-विवर्धनम्।
इदं यशस्मायूष्मिंद निषेष्यसं परम्॥

Manu, I. 106.

"This code (i.e., the reading of this code) is the greatest of all auspicious rites. It improves the intellect (of its reader), imparts fame and longevity, and is superlatively auspicious."

असिमन् धम्मोऽखलेनोऽको गुणदोषोऽव कर्मणाम्।
जयुष्मिनि वणिनामाचारस्यं शाश्वतः॥

Manu, I. 107.

"In this code are described system of law in its entirety, with the merits and demerits of acts, and the eternal rules of conduct, which govern the four social orders."

आचारः परमो धम्मः भृत्यकः स्मार्तं एव च।
तत्साल्सिमन् सदायुक्तो नितं स्मार्तस्वाभावः॥

Manu, I. 108.

"Immemorial custom is the highest virtue, as inculcated by the Sruti (Vedas) and the Smriti. Hence, a 'Dwija,' with his senses under control, shall always conform to these rules of conduct."

आचारादिस्वरुपो विस्ोऽ वेदवल्मिकः।
आचारेय तु संयुक्तं सम्पूर्णवल्मिकः॥

Manu, I. 109.

"Devoid of conduct, a Brahmana does not obtain the merit of reading the Vedas. Possessed of (good) conduct, he reaps the entire fruit (of such study)."

एवमाचारतो दृष्टं धम्मस्य मुनयो गतिम्।
सव्वभस्य तपस्यो मूलभाराचर मुझः परम्॥

Manu, I. 110.

"Having thus traced the origin of 'Dharma,' to the rules of (good) conduct, the sages accepted the same as the basis of all activities."

Sir William Jones translates this as follows:

"Thus have holy sages, well knowing that law is grounded on immemorial custom embraced as the root of all piety, good usages long established."

Again in Chapter XII we have:

चातुर्भव्यां गुरुस्तोऽभ्युद्युक्तो धम्मस्तव्यतः।
कर्मणां फलिन्वृतिः क्षीण नस्तत्त्वतः पराम्॥

Manu, XII. 1.

89-1859 B.
"O THOU sinless one, you have discoursed on the duties of members of four social orders, now truly describe to us the effects of acts, done by men in their former births."

पापत्बन्धेश्व पूजनस्वापि सब्जां।
अस्मदृढ्यापद्व वादसं व्याच्छतुविवधम्।

Manu, XII. 6.

"Harsh speaking, false speaking, speaking ill of another at his back, and idle gossiping are the four inauspicious lingual acts."

Manu claims to have laid down the norms whereby the socially desired behaviour can be brought about. The type of social order sought to be established by him is characterized by the specific motivation emphasized by Manu throughout the Samhita to induce individuals to behave as desired. The order contemplated by him attaches specified advantages to its observance and possible disadvantages to its non-observance. The sanction provided by the social order has a predominantly transcendental character.

एतिौहृष्टसं सवं निःश्रयस्करं परम्।
अस्माद्वध्वनिगतथः प्राप्तोति परसं गतिम्।

Manu, XII. 116.

"Thus I have described to you all that confer the highest good on man; those who swerve not from these duties become emancipated."

इदं स्वस्स्यन्नमेतेष्यमिदं वुढ़ि-विवर्धनम्।
इदं व्याच्छतायुष्मिदं नि.श्रयसं परम्।

Manu, I. 106.

"This code (i.e., the reading of this code) is the greatest of all auspicious rites. It improves the intellect (of its reader), imparts fame and longevity, and is superlatively auspicious."

It is needless to point out that the principal pre-occupation of man in these days was not so much the domination of his universe as to learn to dominate himself, not so much to subdue reality to the wishes of men as to learn how to conform the soul to reality.

The sources of law are thus given by Manu:—

वेदोङ्गज्जस्त घरमंमूलं स्मृतिशीलं च तद्विवागम्।
आचारशैव साधृणामात्रात्मास्वादितिवेल च॥

Manu, II. 6.

"The entire Vedas, the law codes framed by men, well versed in the Vedas, from their recollections, as well as the rules of life observed by them, the customs etc., of the pious, and the feeling of self-complacency are the proofs of virtue."

श्रुतितस्तु वेदोङ्गज्जस्त घरमशास्त्रन्तु वं स्मृतिः।
ते स्मृतिर्चरितां मांसध भर्मम् हि निष्णुमै।

Manu, II. 10.
"The Veda is called the Sruti, and the Dharma Sastra is called the Smriti. Their teachings should not be put to the test of logic, for virtue has emanated from these two."

\[\text{Manu, II. 12}\]

"The Vedas, the Smriti, good conduct, and self-complacency of one’s own, the wise call these four as the positive proofs of virtue."

\[\text{Manu, II. 14}\]

"In a case of two conflicting Srutis, both of which are equally authoritative, the wise have called both of them as virtues of equal authority."

\[\text{Manu, II. 16}\]

"The tract of country, which lies between the Sarasvati, and the Drshadvati, the two celestial rivers, that god-built country is called Brahmavartam."

\[\text{Manu, II. 17}\]

"The conduct of life, as it obtains from generation to generation in that country among the twice-born and the mixed castes, is called Sadachar (good conduct)."

\[\text{Manu, II. 18}\]

"He, who discusses the ethical teachings of the Vedas and of the Veda-based Smritis with processes of reasoning not hostile to their tenets is alone enabled to know the right principle of virtue and no one else."

\[\text{Manu, XII. 106}\]

"Laws, not specifically laid down in this code, should be unhesitatingly accepted, as virtuous (qualified) Brahmans would lay down and interpret."

\[\text{Manu, XII. 108}\]
Those who have thoroughly studied the Dharma Sastras, are well versed in the Vedas and Vedangas, and lead the life of a Brahmacharin and are living muniments of the texts of the Sruti should be judged as duly qualified (law-givers).

\textit{Manu, XII. 110.}

``Whatever a council of ten, or of three qualified Brahmanas, faithful to their duties, shall lay down as the law, must be accepted as such.''

\textit{Manu, XII. 111.}

``Such a council must consist of at least ten Brahmanas, who have studied the three Vedas, are acquainted with rules of reasoning and inference, and are well versed in the Nirukta and law codes.''

\textit{Manu, XII. 112.}

``In respect of determining a doubtful point of law, the council must consist of at least three Brahmanas, well versed in the Rik, Yajush and Sama Vedas.''

\textit{Manu, XII. 113.}

``Even whatever a single Veda-knowing Brahmana shall determine as the law shall be accepted as such in exclusion of what has been said by ten thousand ignorant Brahmanas.''

\textit{Manu, XII. 114.}

``A council, consisting of thousands of assembled Brahmanas, who are devoid of penances (vratas) and Vedic knowledge and live by the emblem of their caste, can never acquire the status of a true council.''

The most controverted question of Jurisprudence still is whether law exists for the sake of restricting the liberty of man. Akin to this is the question whether law is to be regarded primarily as a system of rights or of duties. In their ultimate analysis these problems will lead to the question—how individuality stands in relation to society.

As is pointed out by Professor Allen,"' "legal right, however we define it, must mean some enlargement, or at least some guarantee, of individual freedom of action or of enjoyment", while "legal duty
denotes some restriction, necessitated by the interests of others, upon self-interest.

It may indeed be an exaggeration to represent the individual as utterly subordinate to the general good of the majority. A man must have some security for existence and for self-development in relation to others who are all demanding the same security.

It is equally an exaggeration to look upon the individual's will and endeavour as the absolute source of his own development. These are not, in point of fact, independent factors; these draw their sustenance from the outside and from the mutual action and reaction upon each other of man and the circumstances surrounding him. Normal human activity springs from social conditions and is realized in society.

Before we can appreciate correctly what is the 'individual freedom of action' that requires some guaranteeing from law, we must know the normal tendency of human action. The purpose of human action (or more strictly, what the behaviour of men themselves reveals as the purpose of their lives) may be said to be that men seek happiness. For this purpose they enter into a strife which presents two sides, a positive and a negative. The strife aims, on the one hand, at eliminating pain and discomfort, and, on the other, at securing the experience of pleasure. If this strife creates in man an anti-social tendency, then securing free scope to individual action will not be conducive to social co-existence.

The ancient Hindu sages took cognizance of this strife in human life, but believed that the individual tendency was the result of environments and training, and as the individual never existed in isolation and has always co-existed in a society, they could not accept any anti-social tendency as essential for individual development.

If by 'interest' we mean the regulated interest only as distinguished from what any particular individual may desire, then assertion of right would not ultimately be anti-social. "I have a right to this or that" means only that some one is interfering with my own regulated interest, some one is trying to go beyond his regulated interest.

From what we have already observed it becomes abundantly clear that the Hindu philosophers almost always kept the individual interest prominent in their system. But this interest itself was very much circumscribed. The individual, according to them, had no interest in what they called 'Preya' or 'pleasurable'. The only interest that could claim safeguarding was 'Sreya' or good.

As has been asserted by Dr. Du Nouy in his 'Human Destiny,' "from a man's point of view, on his scale of observation, everything takes place as though he were free either to follow his animal instincts, which afford a great deal of physical satisfaction, or
else to scorn these satisfactions and seek another goal, the attainment of what we call higher human and spiritual values."

"We know," says Dr. Du Nouy, "that the pursuit of this goal means a struggle against his animal self, and often entails pain, though it is eventually conducive to the greatest joy."

Our ancient Hindu sages recognized quite early the existence of these two paths: they recognized that these existed for man alone, and man alone could acquire the liberty to choose between them. In man and in man alone the possibility of the choice became transformed into a moral idea.

The practical importance of a sound basic analysis of the ultimate legal relations can hardly be exaggerated, and it is, indeed, regrettable that the problem of defining the basic relations is yet unsolved. It may be of some use to know how the ancient Hindu philosophers conceived of these relations. They conceived of 'duty'; but we scarcely hear them speak of 'right'. They escaped the tyranny of 'duty' by making observance of duty itself essential for one's own development.

All human activity, not employed directly for the purpose of satisfying some primitive material want, and thus not a result of the rudest compulsion of nature—every activity, in short, which may be regarded as subjectively free—springs from social conditions and is to be realized in human society.

The voice of individual conscience claiming the performance of duty is originally but the echo of social opinion which deriving its strength from the customs, morals and views of life of the community, only becomes independent gradually and by slow degrees.

The more independent of external nature man grows and the greater his mastery over it, the more perfect may his social co-existence with his fellows become, and the less will his actions spring from motives of such a character as might bring him into conflict with the interest of others. In such a state duty may not appear as a tyrant. The more ideal the motives of human activity are, the more independent of external circumstances will they grow, and the more will they appear to us as resulting solely from free-will, regarded subjectively. Duty, in this manner, will gradually be its own law as regards the possibility of its future fulfilment, and obedience to it will always lead to the increasing independence and to the maintenance of the internal freedom of the agent in future. As commonly understood, free-will is independent of all persuasive motives, can act contrarily to such motives, and can suddenly create for itself a motive (not arising from the laws of mind). The ancient Hindu sages did not concern themselves much with such capacity to act uninfluenced by any motive. They did not, by independence, mean independence of all motives. There is always, according to them, a motive which explains human decisions. Their independence is independence of inferior external
motives, of egoistic and solely material motives; for, these motives express not the moral, essential direction of the rational will, but deviation caused by fatalities of external origin.

The essence of true liberty is not an ability to fall but the ability to rise. *Evil* is almost always the result of external compulsions, of physical servitudes, necessities, passions, while *good* is the release of our true and proper activities. Such being the conception of normal will, these Aryans recognized human nature as essentially good and sociable. Herein perhaps lies the explanation how it is that while we meet a developed conception of duty among these Aryans, we scarcely hear them speak of *right*. The assertion of right in its last analysis would mean some act that would not be in accordance with the interest of some other. ‘I have a right to this or that’ is an assertion which becomes necessary only when in going to realize my desire with reference to them I come in conflict with the interest of some other.

Of course, as I have noticed above, if by *interest* we mean only the regulated interest as distinguished from what any particular individual may desire, then assertion of right would not be anti-social.

Striving for the attainment of the good, the lawful, and the expedient begins where an emancipation from the blind forces of nature has already taken place, and man has recognized the useful. Yet the highest degree of utility is attainable in such a society only where its members are capable of the largest amount of co-operation, and, therefore, individually good, and observe in their conduct the limits of law, and where their social organization is, besides, perfectly expedient.

Activity can be brought under a standard only when and as far as its external results come into collision with the activity of others, and thus affect the conditions of co-existence and social freedom.

As I have noticed above, our ancient Hindu sages did not fail to notice the strife introduced in human life by the very purposes of human action. But they shaped this tendency so as to fit in with social co-existence.

Some of our ancient philosophers conceived of “अन्नद्र” (happiness) as the *summum bonum* of life. According to them, wisdom is merely the science of happiness that teaches us how to achieve happiness. Their happiness, however, was a constant state of pleasure and not a mere satisfaction of a transient lust.

Philosopher Mahidasa conceived of the whole of nature as a system of ends, the ultimate aim of life as a whole being the attainment of perfection—perfection consisting of ‘प्रज्ञा’, ‘ब्रज्ञतम्’, ‘अमृतवर्म्’ knowledge, bliss, immortality. The continual advance is one from Life (प्रज्ञा;) to Reason (प्रज्ञा), from Prajapati to Brahman, from bondage to freedom of action. The first and obvious sign of freedom is the power of free bodily movement, a power of which stocks and
stones are deprived. The second test of freedom is the power of generation by means of separate sex (मिश्रनम्). The next test is by the stomach, that is, the choice of food and power of assimilation, and so on, the final test being applicable to the brain or to the powers of heart and mind by which a man is endowed with knowledge. The highest in the scale of development is man who alone is endowed with the faculty of reason. His highest aspiration is the attainment of the immortal by means mortal and his principal means is प्रज्ञा. In order to enjoy full freedom one must, according to this philosopher, transcend in his thought all material conditions of existence, and rise above the sensuous.

By so saying Mahidasa does not mean that we should forego the legitimate pleasures of senses. According to him, pleasures of senses will be legitimate in so far as these are in harmony with the purpose of the whole of nature, that is, in so far as these subserve the real end for which these are meant, and no other. Delight in those things not indispensably necessary is sensuousness. The mind according to him is the seat wherein all desires dwell. Formation of ideas is explained by him by means of two faculties: sense and intellect. The senses, of course, have for their objects singulars of individual things but the intellect, universals; the senses present matters for cognition to the intellect which forms ideas. Ideas again are not products of the human mind; but the intellect by its abstractive power forms the universal from singulars. The capacity to form ideas is, of course, to be found only in man. Man says what he has known, knows what is to happen tomorrow, knows heaven and hell. By means mortal he seeks the immortal. Hunger and thirst, instincts and impulses only guide the lower animals—capacity to reason, capacity to know what is to happen tomorrow is only to be found in a higher form of life. Conscience, which alone can differentiate and perceive the distinction between good and bad, is reserved for man.

As I have pointed out above, Mahidasa did not make virtue consist in the freedom from desires. According to him, there is no reason why we should forego the pleasures of the senses. Only these must be legitimate, must be in harmony with the purpose of the whole of nature, must subserve the real end for which these are meant.

It is but natural that such a philosopher’s view of law should be as elevated as his view of life. In his conception of the state he emphasizes the fact that the state is necessary to bring in harmony, that the state is possible only on the assumption of a delimitation of individual desires by limiting individual interests.

Yajnavalkya, whose philosophy we find in the Brihadaranyaka Upanishad, and who thus flourished several centuries before Christ, preaches the doctrine of Self-love (आत्मकल्याण);
"Verily a husband is not dear, that you may love the husband, but that you may love the self, therefore a husband is dear. . . . . . . verily everything is not dear that you may love everything, but that you may love self, therefore everything is dear."

He represents everything as existing for the self-realization of the individual. His injunction is 'अतो यदात्मनीचत्यम् परस्य न तदाचरेत्' (Yaj. Samhita, III. 65): "Do not do to others what you do not like to be done to yourself." According to him, "heart is certain and will not mislead us". But, according to him, whatever lands us in doubt, darkness, delusion and ignorance (and increases lust) is evil. Good makes us free from all these and leads to knowledge and immortality.

According to Manu, "to act solely from desire is not laudable, yet an exception from that desire is not to be found in this world." Even the study of the Veda and the performance of the actions prescribed by the Veda are prompted by such desire. The desire has its root in the conception that it will have a yield—सङ्क्षेपमूलः कामः—and in consequence of that conception acts are performed. Not a single act here appears over to be done by man free from desire:

कामात्मकः न प्रयासः न च बौद्धस्य ज्ञाताः
काम्योऽविनं देवदिग्गमः कर्म्योऽविनं बैद्धः ॥
सङ्क्षेपमूलः कामो च यजया सङ्क्षेपसम्भवः ॥
पदा नियममहनिष्ठ सवि सङ्क्षेपजा स्मृताः ॥
अकामस्य क्रिया काचित्स्वयं भेद कहिचित्तः ॥
पदयदि कुले कनिचित्ता तत्ततु कामस्य वेष्टितम् ॥
तेषु समयस्य रमूलमानो गच्छत्यमरलोकाताम् ॥
यथा सङ्क्षेपपतिर्मेव न्तत्त्वान् कामान् समस्यते ॥

"To act solely from a desire for rewards is not laudable, yet an exception from that desire is not (to be found) in this (world); for on that desire is grounded the study of the Veda and the performance of the actions prescribed by the Veda. The desire for rewards, indeed has its root in the conception that an act can yield them, and in consequence of that conception sacrifices are performed; vows and the laws prescribing restraints are all stated to be kept through the idea that they will bear fruit. Not a single act here below appears ever to be done by man free from desire; for whatever man does, it is the result of the impulse of desire. He who persists in discharging these
proscribed duties in the right manner reaches the deathless state and even in this life obtains the fulfilment of all the desires that he may have conceived.'"

Human conduct is determined by a purpose. The purpose is the motivating incentive of the human will. The will does not act without a purpose; to act is to act as a means to an end.

The direction of desire exclusively to self-interest is egoism. Such self-seeking is incompatible with larger ends. These ancient Hindu philosophers, however, utilized this very self-seeking for the purpose of the larger ends by giving a direction to the self-interest itself.

According to Kathopanishad,

अन्यस्मेयोऽशुद्धिः प्रेमस्ते ऊँचे नानाचेपुरुषम् सिन्धितः। तुहे: श्रेय आद्यानासय साधु
भवति, हीपलेवचिद्रि य उ प्रेमं वृत्तिते।

Katha, I. 2. 1.

"The good (श्रेय:) is different, the pleasurable (प्रेम:) is different; they both induce a man to diverse kinds of activities; among the two, he who takes up the good attains welfare, but he who selects the pleasurable misses it": Thus the ancient Hindu philosophers always emphasized the distinction between 'श्रेय:' and 'प्रेम:' and their theory of law was based on this distinction.

A man learns only by experience to distinguish the boundaries of his freedom of will, and adapts himself but slowly and gradually to them. He is able to form, at first within a small circle, nothing but an estimate of his own interest; he needs protracted observation to be enabled to trace the verifications of these interests to a community of a higher order.

What is lawless may often seem to him expedient and what is immoral, lawful. This may all the more readily happen, seeing that man is apt to be much more vividly impressed by the expediency or want of expediency of the direct result of his conduct, than by the influence exerted upon his fate by their remoter consequences. Man requires a larger amount of trained foresight in order to submit to indirect social or moral coercion than to physical force; nay, a still larger amount of discipline is essential to enable him to replace the rule of external agencies over himself by the self-restraining rule of his own mind. Undue preponderance of egotistical considerations over such as are due to others is a moral defect.

In the Hindu system, two different but interconnected ideas clustered round the term 'law' (धर्म:) : (1) foundation on revelation and (2) conduciveness to true welfare. Both these ideas are conveyed in the definition of Jainini: परमेयाय अयोध्य धर्म: (Chap. I. 2). Dharma is that object of welfare which is indicated by an injunction,
Vasishtha gives the final end of Dharma (Law) in the following terms:

After studying the Vedas, enquiry should be made about dharma with a view to the ultimate attainment of permanent welfare:

"Knowing it and regulating one's conduct accordingly the virtuous become most commendable in this life and after death."

According to Kanada (Vaiseshika Aphorism) Dharma (law) is the source from which welfare and eventually salvation are realized:

The authority of Vedic texts containing precepts for the regulation of human conduct is founded on direct revelation: the wisdom of these precepts and their authoritative character are fundamental assumptions of Hindu Law which are not to be questioned or tested by the application of sceptical reasoning. The sphere of revelation has reference to two kinds of topics: (i) that which is perfect,—Siddha (सिद्ध:) (ii) that which ought to be done—Sadhyā (साध्य:). The Vaidika philosophers maintain that with regard to the latter topic the usual secular sources of knowledge (i.e., observation and inference) must necessarily be imperfect, for the rightness or wrongness of an action is not one of its sensible characters that can be directly perceived; and moreover, if in ascertaining the ethical character of an action one has to refer to its result, even then the shortcoming of observation and inference is apparent, for although they may enable a person to measure approximately the effect of an action as far as it exhibits itself during the short span of man's life, there remains an illimitable region beyond, which they cannot encompass within their range. This shortcoming, then, has to be mended by reference to the Vedas which contain injunctions and prohibitions indicating what actions should be performed and how they should be performed.

The Hindu Law has always been more or less independent of the State. According to the ancient Hindu views, Law was not an emanation from or an attribute of the State but was above it and anterior to it. It was a fundamental social phenomenon expressing the mechanics of social force in a community where with its help it was possible even for the weaker to rule the stronger:

The ancient Hindu philosophers based their theories of law not on divine will but on divine reason. They conceived of law as derived
from some positive revelation of the Deity, the revelation itself being the outcome of the divine reason. This divine reason is not necessarily inscrutable and arbitrary, and is not therefore antagonistic to any effort to found law and right upon a principle or order intelligibly consistent and permanent. Justice is identical with divine reason, with the divine nature and essence, which, being eternal and immutable, exclude all idea of arbitrariness.

It may be noticed here that this conception of divine origin of law may be due to:

1. The general hankering of the human mind after some fundamental principle;
2. Recognition of law as well-reasoned and calculated to produce harmony;
3. Failure to trace and explain its origin otherwise, law being extensive with the origin of humanity.

The most important among the theories of law resting upon a practical foundation is the theory of welfare or utility. These two notions may, indeed, be used as synonymous; but from the point of view of the system they do not, in all respects, prove identical. The notion of welfare is more comprehensive than that of utility, and hence, although the theory founded upon it appears, on the one hand, as the amplest, it is, on the other, less clear, as its several factors are neither sharply defined, nor admit of being scrupulously weighed. Hence the eudaemonistic doctrines, that is, those referring to welfare, seem to allow of being easily connected with their metaphysical system and often even accompany them; whilst in the proper theories of utility, a foundation upon experience is more conspicuous. The notion of human happiness is separable from that of worldly advantage and utility, and admits of being associated with virtuous self-sufficiency, with absorption in the contemplation of abstract ideas possessed of reality, with acquiescence in the order of nature, with conviction of salvation in the world beyond, and thus with every ascetic conception of the world.

The Hindu theories of antiquity are in general marked by these eudaemonistic rather than by utilitarian characteristics. These also, for the most part, conceived of human happiness as the sole aim of action, and, accordingly, as the fundamental principle of law and right, the notion of happiness itself being conditioned as above.

Whether law is believed to be only the will of the dominant local deity or of the dominant economic class, there is this agreement in the two that it is believed to be a manifestation of applied power. Even when the Philosophers introduced justice or righteousness as the source, the substance, and the ultimate end of law, its career did not become more honourable. "Justice is, of course, an ideal value of highest rank, but its positive embodiments are so thoroughly alloyed with other values and interests that it can never be completely refined out." 
lofty abstract concept lurks somewhere beyond our discernment; it offers no incarnation which may be trusted as quite unmixed and pure.’’ Or as Pascal would have it: ‘‘Justice is subject to dispute; might is easily recognized and is not disputed. So we cannot give might to justice, because might has gainsaid justice, and has declared that it is she herself who is just. And thus being unable to make what is just strong, we have made what is strong, just.’’

Even an analysis of the theories of Natural Law would ultimately reveal that ‘‘justice, to live at all, must seek the aegis of sovereign constraint’’. From this point it was only a step to accepting power as the substance of legality.

The story of the search of mankind for absolute justice and of its failure has indeed been a long one. It is doubtful if the whole story can be dismissed only as a hypocritical disguise for concrete political aspirations. Yet it can hardly be denied that mostly the primary purpose of legal ideology has been either to provide arguments for the alleged morally binding force of some existing legal order or to describe the standards to which a legal system ought to comply in order to be accepted as binding.

Prof. Cahn observes that ‘‘in the twentieth century, sheer power enjoys respect bordering on idolatry, and legal philosophers yield freely to the general worship.’’ The learned Professor says: ‘‘We hear the cynics, the disillusioned, and the callous. We hear also the devotees of the pure theory of law who dismiss all political considerations as irrelevant because justice and such like values are irrational and are therefore not subject to cognition.’’ Thus, whatever the particular pretext may be, the search for the meaning of justice appears to have been given up. The result is that irresponsible force threatens to occupy a field abandoned by those who might restrain it.”

If ‘‘sheer power’’ at last has succeeded in the twentieth century in being enthroned in the exalted position as observed by Prof. Cahn, it must be admitted that it has been struggling for this position from the very ancient days. We have seen how the deviations of the powerful were looked upon by our Sutrakars like Gautama and our heroes like Bhishma. ‘‘बुद्धश्चमधुसुब्धम: सामाजिक महताम्’’ says Gautama; ‘‘वर दोबित्यात्’’ Bhishma could say: ‘‘इद्राय स: प्रणमते नमते यो बलिवते।’’ It will be interesting in this connection to hear what Nietzsche said during the nineteenth century.

According to Nietzsche,‘‘55 behind all morality there is a secret will to power. Even humility is the protective colouration of the will to power. Against this passion for power, reason and morality are helpless; they are but weapons in its hands,—dupes of its games. It is these underground desires, these pulsations of the will to power, that determine our thoughts. ‘‘The greater part of our intellectual activity
goes on unconsciously, and unfelt by us; . . . conscious thinking . . . is the weakest." 26 Because instinct is the direct operation of the will to power, undisturbed by consciousness, "instinct is the most intelligent of all kinds of intelligence which have hitherto been discovered." Indeed, the role of consciousness has been senselessly over-estimated; "consciousness may be regarded as secondary, almost as indifferent and superfluous, probably destined to disappear and to be superseded by perfect automatism." 26a

"In strong men there is very little attempt to conceal desire under the cover of reason; their simple argument is, 'I will.' In the uncorrupted vigor of the master soul, desire is its own justification; and conscience, pity or remorse can find no entrance." 27 But so far has the Judaico-Christian-democratic point-of-view prevailed in modern times, that even the strong are now ashamed of their strength and their health, and begin to seek 'reasons'.

Nietzsche laments that the aristocratic virtues and valuations are dying out. "The whole of the morality of Europe is bent upon the values which are useful to the heart." 28 The strong are no longer permitted to exercise their strength; they must become as far as possible like the weak. The philosopher characterizes it to be a formula for decay that the virtues proper to the herd should infect the leaders and break them into common clay. To him Democracy is only a 'mania for counting noses' and it must be eradicated before it is too late. According to him just as morality lies not in kindness but in strength, so the goal of human effort should be not the elevation of all but the development of finer and stronger individuals: "not mankind, but supermen is the goal." 29

"The very last thing a sensible man would undertake would be to improve mankind: mankind does not improve, it does not even exist—it is an abstraction; all that exists is a vast ant-hill of individuals. The aspect of the whole is much more like that of a huge experimental workshop where most things fail; and the aim of all the experiments is not the happiness of the mass but the improvement of the type. Better that societies should come to an end than that no higher type should appear. Society is an instrument for the enhancement of the power and personality of the individual; the group is not an end in itself. 30

Democracy, according to Nietzsche, means drift; it means permission given to each part of an organism to do just what it pleases; it means the lapse of coherent and interdependence, the enthronement of liberty and chaos. It means the worship of mediocrity, and the hatred of excellence. It means the impossibility of great men—how could great men submit to the indignities and indecencies of election? What chance would they have? "What is hated by the people, as a wolf by the dogs, is the free spirit, the enemy of all fetters, the not-adorer, the man who is not a 'regular party member'? How can the
superman arise in such a soil? And how can a nation become great when its greatest men lie unused, discouraged, perhaps unknown? Such a society loses character; imitation is horizontal instead of vertical—not the superior man but the majority man becomes the ideal and the model; everybody comes to resemble everybody else; even the sexes approximate—the men become women and the women become men.”

Nietzsche like Manu advocates a super-race. “Now that the ‘herd-animal’ has become the prevalent type in Europe”, says Nietzsche, “is it not time to train, consciously and artificially, an antithetic type, and to inculcate in it the contrary virtues? Might not democracy itself find a justification and a goal if someone appeared who could utilize and build upon it? Ultimately, in addition to slavery (the novel and admirable climax toward which European democracy is headed) a superior strain might be produced. This higher breed of dominant Caesarian spirits would use democracy as a platform, brace themselves upon it and lift themselves above it. The new race would then achieve things hitherto thought impossible, attain to a vaster perspective and fulfil its earthly destiny.”

It will not be out of place to remind you in this connection that even a famous modern legal philosopher, Dean Pound,³² thinks that a by-product of the modern democracy is the exaltation of incompetence and distrust of special competency.

It may also be remembered here that, though not on the same ground, Democracy is generally believed to have failed. The system is perhaps rightly charged with having “dehumanized the worker, fettered the lower classes and destroyed personal and political liberty.”³³

Indeed, it is a new form of idolatry which prevents us from seeing that Democracy has failed and that it has become an imperative need for the humanity to devise a social structure within which the individual can really achieve some measure of self-fulfilment.

I have spoken of idolatry. ‘Fanaticism is indeed idolatry’: it has the moral evil of idolatry in it.³⁴ As was pointed out by Thomas Arnold,³⁵ a fanatic worships something which is the creation of his own desire, and thus even his self-devotion in support of it is only an apparent self-devotion; for in fact it is making the parts of his nature or his mind, which he least values, offer sacrifice to that which he most values. The moral fault, as it appears to me, is the idolatry—the setting up of some idea which is most kindred to our own minds, and the putting it in the place of that which combines all ideas of perfection and exhibits them in their just harmony and combination.

Indeed the more primitive forms of idolatry have ceased to be attractive with the spread of scientific education. As has been pointed out by Aldous Huxley,³⁶ it is easy for us to resist the temptations to believe that particular natural objects are gods or that certain symbols and images are the very forms of divine entities and as such must be
worshipped and propitiated. But different is the case with the developed and more modern forms of idolatry. Whether we admit it or not, these have achieved the highest degree of respectability.

It has been pointed out by Aldous Huxley that the several varieties of this higher idolatry may be classed under three main heads,—technological, political and moral. "Technological idolatry is the most ingenious and primitive of the three; for its devotees, like those of the lower idolatry, believe that their redemption and liberation depend upon material objects—in this case gadgets. Technological idolatry is the religion whose doctrines are promulgated, explicitly or by implication, in the advertisement pages of our newspapers and magazines—the source, we may add parenthetically, from which millions of men, women and children in the capitalistic countries derive their working philosophy of life. In Soviet Russia too, technological idolatry was strenuously preached, becoming, during the years of that country's industrialization, a kind of state religion. So whole-hearted is the modern faith in technological idols that (despite all the lessons of mechanized warfare) it is impossible to discover in the popular thinking of our time any trace of the ancient and profoundly realistic doctrine of hubris and inevitable nemesis. There is a very general belief that, where gadgets are concerned, we can get something for nothing—can enjoy all the advantages of an elaborate, top-heavy and constantly advancing technology without having to pay for them by any compensating disadvantages."

"Only a little less ingenuous are the political idolaters. For the worship of redemptive gadgets these have substituted the worship of redemptive social and economic organizations. Impose the right kind of organizations upon human beings, and all their problems, from sin and unhappiness to nationalism and war, will automatically disappear. Most political idolaters are also technological idolaters—and this in spite of the fact that the two pseudo-religions are finally incompatible, since technological progress at its present rate makes nonsense of any political blue-print, however ingenuously drawn, within a matter, not of generations, but of years and sometimes even of months."

"The moral idolaters are realists inasmuch as they see that gadgets and organizations are not enough to guarantee the triumphs of virtue and the increase of happiness, and that the individuals who compose societies and use machines are the arbiters who finally determine whether there shall be decency in personal relationship, order or disorder in society. Material and organizational instruments are indispensable, and a good tool is preferable to a bad one. But in listless or malicious hands the finest instrument is either useless or a means to evil."

"The moralists cease to be realistic and commit idolatry inasmuch as they worship, not God, but their own ethical ideals, inasmuch as
they treat virtue as an end in itself and not as the necessary condition of the knowledge and love of God—a knowledge and love without which that virtue will never be made perfect or even socially effective."

If Nietzsche ever appealed to us it is because there is a time when we tire of sentimentality and delusion and relish the sting of doubt and denial.

Nietzsche seems to have overlooked that civilization has a double part to play. It must progress in depth, and it must extend itself to the greatest possible number of men, if not for the sake of mankind, at least for multiplying the chances of individual progression in depth.

Philosophical systems are shining mirages. "What we see is not the long-sought truth, but the reflection of our own desires. The philosophers all pose as though their real opinions had been discovered through the self-evolving of a cold, pure, divinely indifferent dialectic . . . Whereas in fact a prejudicial proposition, idea or suggestion, which is generally their hearts’ desire abstracted and refined, is defended by them with arguments sought out after the event.""

Perhaps in politics Nietzsche's vision was sounder than in morals. Aristocracy perhaps is the ideal government. "O ye kind heavens! there is in every nation . . . a fittest, a wisest, bravest, best; whom could we find and make king over us, all were in truth well. . . . By what art discover him? Will the heavens in their pity teach us no art? For our need of him is great!""

But who are the best? Do the best appear only in certain families, and must we therefore have hereditary aristocracy? ""But we had it; and it led to clique-pursuits, class-irresponsibility, and stagnation. Perhaps aristocracies have been saved, as often as destroyed, by intermarriage with the middle classes; how else has the English aristocracy maintained itself? And perhaps inbreeding degenerates? Obviously there are many sides to these complex problems, at which Nietzsche has flung so lustily his Yeas and Nays.""

It will be interesting to notice here Manu's possible influence on the world outside India. Manu was the recognized inspirer of Nietzsche and Nietzsche's Dionysian cult is one of the latest great forces in world-culture. "Web of recent Eur-American life is being supremely invigorated by the warp of the Nietzschean 'will to Power'." Almost the whole of this new cult is reared on humanism and energism. "'Old India has contributed its hoary Manu as the master-builder in order to boss the supermen who are to architecture the Occident of the twentieth century.'"

Nietzsche asserts that the world is in need of a thorough-going transvaluation of values and prescribes the study of the Code of Manu as supplying the means to the re-humanizing of humanity. His morality is given the function of the rearing of a particular race and species. According to him "'the most magnificent example of this is offered by Indian morality and is sanctioned religiously as the 'Laws
of Manu'. In this book the task is set of rearing no less than four races at once: a priestly race, a warrior race, a merchant and agricultural race, and finally a race of servants—the Sudras. It is quite obvious that we are no longer in a circus watching tamers of wild animals in this book. To have conceived even the plan of such a breeding scheme, presupposes the existence of a man who is a hundred times milder and more reasonable than the mere lion-tamer. One breathes more freely, after stepping out of the Christian atmosphere of hospitals and prisons, into this more salubrious, loftier and more spacious world. What a wretched thing the New Testament is beside Manu, what an evil odour hangs around it!"

Nietzsche admires Manu as the propounder of an affirmative religion, the religion of the ‘deification of power,’ and prefers his religion to Christianity which latter, according to Nietzsche, is the creed of the slave.

As a teacher of political science also Manu is preferred by Nietzsche to the philosophers of the Western world. Nietzsche says: ‘Manu’s words again are simple and dignified; virtue could hardly rely on her own strength alone. Really it is only the fear of punishment that keeps men in their limits and leaves every one in the peaceful possession of his own.’

Regarding International politics also Nietzsche gives Manu better places and says:

‘Rather what Manu says is probably truer: we must conceive of all the states on our own frontier, and their allies, as being hostile, and for the same reason, we must consider all of their neighbours as being friendly to us.’

अन्तरराष्ट्रीय विवादितिसिद्धिनेत्र न ।
अरेराष्ट्र भिन्नमूदलालीं तयो: परम्।।

Manu, VII. 158.

Manu is recognized by Nietzsche as having been keenly alive to the animality in human life and interests and embodying the joy of living in its entirety. According to Nietzsche Manu has organized the highest possible means of making life flourish.

Nietzsche maintained that ‘‘truth is that form of error which enables a particular species to prevail ’’ and ‘‘falsehood is that kind of error which causes a particular species to degenerate and decay.’’

Nietzsche’s charge of falsehood against Christianity is not a moral one. Indeed it cannot be a moral charge as Nietzsche scrupulously avoids making moral charges and remains throughout faithful to his position repudiating all moral prejudice in charging humanity with corruption.

If Christianity is charged with having availed itself of all kinds of lies, the Code of Manu, which he admires so much, is equally charged with lies. Only in the Code of Manu the lies, according to Nietzsche,
are calculated to preserve and to create a strong and noble type of man, whereas in Christianity the opposite type was likely to be caused. The grounds of Nietzsche's condemnation of Christianity and admiration of the Code of Manu will be clear from what he says in aphorism 56. He says: "After all, the question is, to what end is falsehood perpetrated? The fact that, in Christianity, holy ends are entirely absent, constitutes my objection to the means it employs. Its ends are only bad ones: the poisoning, the calumniaition, and the denial of life, the contempt of the body, the degradation and self-pollution of man by virtue of the concept sin,—consequently its means are bad as well. My feelings are quite the reverse when I read the law-book of Manu, an incomparably superior and more intellectual work, which it would be a sin against the spirit even to mention in the same breath with the Bible. You will guess immediately why: it has a genuine philosophy behind it, in it, not merely an evil-smelling Jewish distillation of Rabbinism and superstition,—it gives something to chew even to the most fastidious psychologist. And, not to forget the most important point of all, it is fundamentally different from every kind of Bible: by means of it the noble classes, the philosophers and the warriors guard and guide the masses; it is replete with noble values, it is filled with a feeling of perfection, with a saying of yea of life, and a triumphant sense of well-being in regard to itself and to life,—the sun shines upon the whole book. All those things which Christianity smothers with its bottomless vulgarity: procreation, woman, marriage, are here treated with earnestness, with reverence, with love and confidence."

It is this secular outlook, this positive standpoint, this humanism that, according to Nietzsche, has given a sanctity to life in Hindu thought. "I know of no book," says he, "in which so many delicate and kindly things are said to woman, as in the Law book of Manu; these old gray-beards and saints have a manner of being gallant to women which perhaps cannot be surpassed. 'The breath of a woman', says Manu, on one occasion, 'the breast of a maiden, the prayer of a child, and the smoke of the sacrifice are always pure.' Elsewhere he says: 'There is nothing purer than the light of the sun, the shadow cast by the cow, air, water, fire and the breath of a maiden.'"

Nietzsche was thus full of admiration for the Code of Manu. At the same time he did not fail to see that it contained only "an affirmative Asian religion which is the product of a ruling class,"—that it was "the deification of the feeling of power in the Brahmin". He did not fail to see the 'terrible' in it; only, according to him, it became necessary to be so terrible. "But even this organization", says Nietzsche, "found it necessary to be terrible,—not this time in a struggle with the animal-man, but with his opposite, the non-caste man, the hotch-potch man, the Chandala. And once again it had no other means of making him weak and harmless, than by making him
sick,—it was the struggle with the greatest ‘number’. Nothing perhaps is more offensive to our feelings than these measures of security on the part of Indian morality. The third edict, for instance (Avadana-Sastra 1.), which treats ‘of impure vegetables’ ordains that the only nourishment that the Chandala should be allowed must consist of garlic and onions, as the holy scriptures forbid their being given corn or grain-bearing fruit, water and fire. The same edict declares that the water which they need must be drawn neither out of rivers, wells or ponds, but only out of the ditches leading to swamps and out of the holes left by the footprints of animals. They are likewise forbidden to wash either their linen or themselves, since the water which is graciously granted to them must only be used for quenching their thirst. Finally, Sudra women are forbidden to assist Chandala women at their confinements, while Chandala women are also forbidden to assist each other at such times. The results of sanitary regulations of this kind could not fail to make themselves felt; deadly epidemics and the most ghastly venereal diseases soon appeared, and in consequence of these again ‘the Law of the Knife,’—that is to say, circumcision, was prescribed for male children and the removal of the small labia from the females. Manu himself says: ‘The Chandalas are the fruit of adultery, incest, and crime (—this is the necessary consequence of the idea of breeding). Their clothes shall consist only of the rags torn from corpses, their vessels shall be the fragments of broken pottery, their ornaments shall be made of old iron, and their religion shall be the worship of evil spirits; without rest they shall wander from place to place. They are forbidden to write from left to right or to use their right hand in writing: the use of the right hand and writing from left to right are reserved to people of virtue, to people of race.’

चण्डालस्वप्नानि वहिणामात्र प्रतिप्रथिष्ट: ।
अपाताचारकलामवा चन्द्रमां श्वादैकसम् ।।

शान्ति महानेषु भिष्मं भोजनम् ।
कार्यायसमंज्जुर चरिषत्या च निभय: ।।

न तै: नमस्किरिणहृ युहिव धृश्यमाचरण: ।
व्यवहारो भिष्मस्तिं विवाह: सदाशी: सह ॥

अच्छेदां पराशीभवं ज्ञानानि स्वाधिकारान् ।
राज्यो न विचित्रशृद्धो ग्राममेव सत: ॥

दिवा चर्चेयु: कार्योऽच्छितु सवर्गाशाश: ।
अभान्तर्वं सवर्गायुविनिर्मिति स्वरूपति: ॥

Manu, X. 51.

Manu, X. 52.

Manu, X. 53.

Manu, X. 54.

Manu, X. 55.
Lately for Nietzsche in spite of all the shortcomings of Christianity that demoralizing oecumenical principle did not take root in the Christian soil. The ideal of modern Western Democracy might have been "to apply in practical politics the Christian intuition of the fraternity of all Mankind", but "the practical politics which this new democratic ideal found in operation in the Western World were not oecumenical and humanitarian but were tribal and militant."

The terror of the efficiency of "falsehood" which Nietzsche finds in the Code of Manu, in the Koran, in the Old Testament, in the New Testament, and in Buddhism lies in the fact that the masses of the people are apt quietly to accept such falsehood and tolerate even the intolerable. This indeed explains why "there are a few rulers and many ruled". The rulers are generally actuated by love of power, that "one terrible and fundamental wish" of man, and are mostly men with strenuous and unwearying will. The ruled are generally incapable of any strenuous effort; they are the masses "wallowing in the slothful irresponsibility of passive obedience to authority." This is why State could be named "immorality organized".

Indeed till now the story everywhere seems to have been one of ruthless fight for wealth with little regard for the rights or welfare of "inferior races". Even to-day two-thirds of the World's population live in a permanent state of hunger. Even now all but a tiny fraction are condemned to live in degrading poverty and primitive backwardness even on a continent rich with land and wealth, with all human and material resources.
LECTURE XI

HINDU LAW DURING THE PERIOD OF THE RIGVEDA

In the foregoing lectures we just had a glimpse of the spirit and characteristic soul of Vedic India. The trouble with the philosophy of the Vedic Rishis, however, is that its problems were mostly confused with those of religion. Before Manu we hardly discover any distinct sense of its essentially political basis and mission, any clear recognition that its problems were those of the organization of a just social order. "To idealize and rationalize the universe at large is a confession of inability to master the course of things that specially concern us." Yet it must be said that the Vedic philosophers did not altogether allow their philosophy to get lost in dreams of another world: "intelligence was not yet left in its lonely isolation at the remote edge of things, whence it would have to operate as unmoved mover and ultimate good", though, at the same time, it was not allowed "to take its seat in the moving affairs of men". These philosophers were conscious that things had to be explained. They did not, however, yet realize that these were to be explained not by supernatural causation but by their place and function in the environment.

But are we, modern people, in any better position?

"Philosophy is in flight today before the sciences, one after another of which have run away from her into the productive world, until she is left chill and alone, like a forsaken mother with the vitals gone from her and almost all her cupboards empty." She has withdrawn herself timidly from her real concerns—men and their life in the world. "What serious-minded men not engaged in the professional business of philosophy most want to know is what modifications and abandonments of intellectual inheritance are required by the newer industrial, political, and scientific movements."'

Never before than now have been the social and moral strifes so keen and never before than now has been the problem of their clarification so grave. If philosophy is really to supply a catholic and far-sighted theory of the adjustment of the conflicting factors of life, the modern world is badly in need of its help. We are confronted with the problem of how to prevent the world forces from combating and destroying each other and, instead, to make them complement and reinforce each other for the common benefit of all.

Indeed, we are passing through an age of transition, and the events are moving so fast that even the most sanguine mind ventures
not to base any hopes on things happening. In this changing world
adjustment has become the greatest of all problems. The present and
the future equally confront us with baffling challenges. Our very
existence in the future world will depend upon what response we can
offer to these challenges.

"Life," says Spencer, "is the continuous adjustment of
internal relations to external relations." According to the modern
approach in psychology and sociology, the real meaning of any human
activity can only be found when it is defined in terms of adjustment.
"Adjustment means that in some way an organism relates its inner
and overt behaviour to the requirements of the surroundings." It
does not necessarily mean merely mechanical adjustment in which only
one response is possible to a given stimulus. Every real human
adjustment to social conditions is creative adjustment where the total
organism is related to the total environment. Such creative adjustment
is a continuous liberation of new energies, a permanent give-and-take
between the original conditions and the human being.

The problems confronting us have almost become too big for men
to understand, and the gravest danger is that, when this happens, our
actions are likely to cease to be governed by the higher controlling
mechanisms of our conscious minds; the unconscious is likely to resume
its sway. But in the present-day world we can hardly afford to depend
on mere unconscious impulses. We can no longer deny the ideas and
conscious motivations their proper place.

Of course, this must not be taken as a recommendation of mere
addition of more words: we are already in a world submerged in an
inflation of words and meaningless symbols. Nor is it a recommendation
of that philosophy which is only to be "a device for making it possible
to do, coolly, continuously and with a good conscience, things which
otherwise one could do only in the heat of passion, spasmodically and
under the threat of subsequent remorse".

Throughout the world now a war is going on, a war of ideas and
of ideological doctrines in which race and nationalism play not a mean
role. This war can only be won if we have constructive ideas, not
only ideas in the abstract, but ideas helping the real inner reconstruction.
We are to see how these conflicting national or cultural ideas can best
be related. In attempting this we must avoid all insistence on the
divergences in mind and ideology. Such insistence is only apt to detract
attention from the vital problems and to magnify the situation for a
particular period arising under particular circumstances into something
absolute. We must remember in this connection that "deification of
race, or the nation, now so prevalent in the Western World, is a
serious and destructive form of idolatry." To read eternal qualities
into things so utterly temporal is only a symptom of low intellectuality.
It is further to be remembered that the racial explanation of differences
in human ability and achievement is a deliberate and cold-blooded piece
of deception in which the differentiating effects of upbringing and education are mendaciously ascribed to pre-existing differences of a racial order and this with the calculated object of producing certain effects in the practical field of social and political action.9

It is needless to say that any change that leads to new conditions will make for a revision of habits and reorientation of expectations. But the change which is fast coming is creating an unprecedented condition. The traditionally alien cultures of the orient and the occident are meeting: the working out of this meeting in a manner which will enable the values of each civilization to complement and reinforce rather than combat and destroy those of the other should be the chief task of the epoch just ahead.

It can, I believe, be legitimately hoped that the transformations of the world which are at present taking place are leading to a world which will enlarge human capacity for struggle and achievement. The only question is, how long the acute and difficult phases of the transition will last and how much damage and set-back will occur in the process.

Whatever may happen, we should remember that everyone of us shares a responsibility for the future, everyone of us owes a loyalty to the new world. But our loyalty will be a real intelligent loyalty, our responsibility will materialize into a genuine constructive effort, only if we realize the full meaning of our lives, the full significance of our endeavours and struggles, only if we keep faith in our high destiny in the coming transformation and fulfilment of human society.

If it is the habit of every age to regard its own problems as being of exceptional difficulty, it is because every age is, to a certain extent, an age of some change and every change involves fresh readjustment.

The problem of adjustment has acquired special prominence in the present world, specially in view of large-scale organizations brought in by the industrialized world, introducing organized relationships and their attendant problems. It is now generally felt throughout the world that this has had a considerable impact upon our behaviour and conduct and their evaluation. The psychological and moral crisis of our time is to a large extent due to the speed with which the industrial revolution built up its new organization hardly leaving time to realize the psychological and moral implications of the changes it brought about.

I believe we all realize that in our generation there have at least been two new challenges to which we have been exposed by the triumph of democracy and industrialism.10 The economic system of industrialism, in requiring a world market, "demands the establishment of some kind of political world-order as a framework for the operation of industrialism on its indispensable world-wide scale". Both industrialism and democracy demand from human nature a greater individual self-control and mutual tolerance and public-spirited co-operation than we have
been apt to practise. These institutions have put an unprecedentedly powerful material drive into all human social actions. The two world wars have brought on the surface these difficulties and have added to their gravity by causing disintegration of standards. Indeed, humanity can be saved only if the nations are speedily educated to adequate awareness and to a sense of one world.

The human race has indeed been going through global-change-of-life. "Science and technology have ushered man into a new cycle of civilization, and the consequence has been a terrifying problem of adjustment. In two centuries science and technology have narrowed the seas, ravaged the forests and irrigated the deserts. They have levelled national frontiers, undermined national self-sufficiencies and infinitely increased man's power to build and to destroy. The velocity of life has entered into a new phase. With it has come the imperative need for a social structure to contain that velocity—a social structure within which the individual can achieve some measure of self-fulfilment."

This new social structure must succeed where the ancient jurisdictions of the family, the clan, the guild and the nation-state have failed. It must solve the problems created by the speed-up of time, the reduction of space and the increase in tension. It must develop new equivalents for the sanctions once imposed by custom and by religion. The specifications for the new society cannot but strain to the utmost the emotional and moral resources of the individual and the community.

In retrospect, these demands seem to have been too severe and exhausting. Civilization has not met them; this is why today it is consumed by anxiety and fear. Failing to create a new social structure, it has become the victim rather than the master of industrialism. The liberation of the individual during the Renaissance and Reformation set the Industrial Revolution in motion; in its course, industrialism has given people new freedom and opportunity. Yet its ultimate tendency under whatever system of ownership—a tendency inherent in its very technical structure—is to impersonalize economic relationships. In the end industrialism drives the free individual to the wall.

As has already been observed the civilized world today is indeed in an age of spiritual chaos, intellectual doubt and political decadence. The whole world seems to be suffering from an epidemic of hysteria. From the ever-growing apprehension as regards safety. The most dangerous symptom of the malady lies in the fact that instead of decreasing, the alarm is seen to increase with the increased acquisition of the so-called strength:—it is not allayed even with the acquisition of atom bomb, or hydrogen bomb or nerve gas, the strongest weapons which a power could ever possess.

People are very variously appraising the cause of this universal fear. Some indicate its origin by pointing out that it is only the fear
of infection of Russian socialism in the newly-sensitive mind of the organized workers in the different countries and that this fear has seized the minds of the rulers of every country ever since the swiftly established socialism of Russia failed to fail as was confidently expected by the capitalist nations. Many would believe that the catastrophe so universally apprehended is not really going to be the destructive impact of any external force, but is a spontaneous disintegration from within. The whole thing may also be a mere product of fancy. Man, we know, is capable of creating many things unreal by drawing upon his own imagination.

We do not know which way the truth lies. Perhaps even here it will be true to say that every truth, however true in itself, yet taken apart from others, becomes only a snare. In reality, perhaps, each is one thread of a complex web, and no thread can be taken apart from the web. But this much seems to be certain that there is this paralysing fear and alarm almost everywhere in the world—everywhere even the most powerful minds have not succeeded in escaping it altogether. Everywhere humanity is beginning to feel that we are being betrayed by what is false within, we are almost giving way to find ourselves spiritually paralysed.

This indeed is a deadly malady. The patient here must first of all be brought to see that he is sick and to want to get well and to do of himself what is needed to get well. Perhaps something is awry both with the heart and the brain.

The world needs teachers who can reveal the world of values and can make us realize that that is the real world. The world needs a teacher who can dispel our fears, can remove all sense of frustration at least in so far as it is only an internal malady and can give us the meaning of life.

The world's present economic, social and international arrangements are indeed based upon organized lovelessness. All the world's organizations in relation to Nature, in regard to art, concerning human beings, reveal this lovelessness. Everywhere we witness lust for power to dominate and exploit; we witness contempt and exploitation of coloured minorities living among white majorities, or of coloured majorities governed by minorities of white imperialists. We witness racial hatred; we witness hatred of the poor.

We are getting wars and preparation for more wars. Indeed, "the society that has given us the kind of history we have been surviving for the past half a century is a mortally sick society", and seems everywhere to drift towards Orwellian pattern.

When this is the condition of the world, philosophy is expected to come forward to supply a catholic and far-sighted theory of adjustment of the conflicting factors of our complex life. But it is just at this moment that philosophy is in flight; she has withdrawn herself timidly from her real concerns—men and their lives in the
world. Unaided, we are devising only mechanical adjustments without full awareness, without a vision of the whole situation in which we are at present.

But let us come to our subject,—law during the period of the Rigveda.

It is highly improbable that law in these early societies originated in the deliberate act of any person or body of persons. The only reasonable theory of the origin of law in those days seems to be that it sprang unconsciously from the convictions and life of the people.

Indeed, in such ancient society law plays a relatively subordinate function. These ancient communities were saturated with customary and religious rules which would mostly meet the necessity for any separate and elaborate legal system in the strict sense of the term.

One of the strongest characteristics of man in these ancient ages is his fear of the unknown. He is for ever dreading that some act of his may bring down upon him the anger of gods. He may not fear his fellowmen, nor the beasts of the forest, but he lives in perpetual awe of those unseen powers which from time to time, seem bent on his destruction. "He sows his corn at the wrong season; he reaps no harvest; the offended gods have destroyed it all. He ventures up into a mountain and is caught in a snowdrift. He trusts himself to a raft, and is wrecked by a storm. He endeavours to propitiate these terrible powers with sacrifices and ceremonies; but they will not always be appeased. There are terrors above him and around him. From this state of fear, custom is his first deliverer. What has been done once in safety, may possibly be done again. What has been done many times, is fairly sure to be safe. A new departure is full of dangers, not only to the man who takes it, but also to those with whom he lives, for, the gods are apt to be indiscriminate in their anger." It is, therefore, incumbent upon them to see that none of them does in any way offend these gods; that none of them does anything in a novel way; that none of them violates custom.

It is commonly observed that the primitive men conform their rule to ancestral usages. This respect for ancestral usages is traceable almost in every ancient community, specially in the Hindu community:

एवभावराति दृष्टा धर्मर्ष मुनयो गतिम्।

\ldots \ldots \ldots \ldots \ldots \text{आचारे जगुहः परम्॥}

\text{Manu, I. 110.}

The emotional nature prompting the general code of conduct is derived from the ancestors and is a product of all ancestral activities. The governing sentiment is, in short, mainly the accumulated and organized sentiment of the past:

सप्तमयादः क्षयस्तन्तःसामायकासमिद्यंहरो गात्।

\text{Rigveda, X. 5. 6.}
Thus laws in fact originated in custom and possessed a supposed supernatural sanction. Early governing agents would not dare transgress these inherited usages and regulations. They would practically confine themselves to interpret and enforce the laws that might descend down to them by tradition or be revealed to some one from time to time by the gods. In administering the law they would act as mere agents of the deities.

One peculiar feature of the early law of the Hindus,—of almost every civilized people,—cannot escape our notice. We see that almost all the crimes are punished equally without regard to their magnitude. This is really an anomaly to us now in the present age. But as soon as we understand that all their laws were ordinances of God, the difficulty is solved. A culprit was punished not for the delinquencies he had committed but for having broken the commandment of the gods.

Here is again the explanation for another apparently anomalous element in the legal system of these ancient people.

We have in the Chhandogypopanisad that if a man charged with theft denies the charge, they say:

परस्ममि नपतेति स यदि तत्स कर्ता भवनि तत एवानूतमात्माने कुरुते साज्ज्ञातिःस्यो- ज्ञेनात्मानमन्त्यात् परस्मि तत्स प्रतिवृह्वति स दश्नोद्वृत्त हृयते ॥

Chhandogyupya Upa., VI. 16. 1.

"If the man against whom a charge of theft has been brought denies the charge, they heat a hatchet for him which he is to grasp by the hand. If he is burnt the guilt is proved and he is punished for the offence. If he is innocent, these Aryans believed the hatchet would not burn him and he would be released":

स न दश्नोद्वृत्त मुख्ये ॥

Chhandogyupya Upa., VI. 16. 2.

The reason for such belief is obvious. Their gods, as we have seen, were the guardians of the laws. They watched all violations of law; an offender's guilt might escape the human eyes, but gods would see everything and would take this opportunity of revealing and punishing his guilt. Of course, the fire in the hatchet would not burn his hand if he were really innocent; for these gods do uphold the right and protect the innocent from all injury.

Besides 'Agni' (Fire) was also a deity who would never punish wrongly. He would only declare god's judgment: he would, with his sharpened teeth, consume with flame only those who regarded not Varuna's commandments:

प्र तैं अनिन्यसत्तम्भं भर्तराज्यं यो श्रुताः ॥
प्र ये मिन्द्याति वश्यस्य धाम प्रिया मिन्द्यं चेतको ध्रुवतीष्ठा ॥

Rigveda, IV. 5. 4.

There could thus be no miscarriage of justice amongst these early Aryans. Nor would there be, according to their theory of law, any
violation of law that would not meet punishment. A number of such violations would no doubt be clearly proved by earthly evidence and would meet with punishment at the hands of the king. But he would punish not the actual guilt but only the disregard of law, the actual guilt would remain to be punished by the gods. There would be some doubtful cases but the doubt would be cleared by Ordeal, by God’s revelation. Others not even giving rise to any suspicion would also meet with punishment, but this wholly at the hands of the gods. Such violations would be visited with punishments in the shape of various diseases and mishaps.¹⁶

But we must confess we are not in a position to locate exactly the sources of legal development during this period. We have already noticed the legal philosophers of the age and it is probable that the chief sources of legal development was the declaration of law by these philosophers.

As has already been noticed there are two primary methods of looking at life which stand in contradiction to each other. The one is the method of regarding the system of nature as the final reality to which man must adjust himself. The other regards nature from the human perspective as either chaos or a meaningless order from which man will be freed either by his reason or by some unity and power within him higher than reason.

These two different approaches to life have produced in the world different practical results. These have produced differences in the attitude towards the things of daily life and as also in their functional form. The East generally took to the first approach and the West, the second.

Every person passes through the same stages of mental clarification, and each has to find its own solution of the eternal problem with which Nature confronts man, namely to find its own response to the challenge of nature. Every person seeks this end by a way of its own, and thus are developed the great differences which are in reality only relative.

In the Rigveda we have found that all the ideas of law picture not merely as an ordering of human conduct and adjustment of human relations, but something more. It means a doing of things in a fixed, absolutely predetermined way, excluding all merely individual feelings or desires of those by whom the ordering and adjustment is carried out. All the ideas of law of this period contains as common element some ultimate basis, beyond the reach of individual human will, that is calculated to stand fast in the whirl of change of which life is made up. This steadfast ultimate basis had been thought of as the divine nature, as the divine essence or reason, and as such, not inscrutable and arbitrary, not beyond the reach of human understanding. This fixed and stable starting point is usually the feature upon which the greatest emphasis is laid; and we find in their conception of law a
system of ordering of human conduct and adjustment of human relations resting upon this ultimate basis, and derived therefrom by absolute process—by a process independent of human will.

This was no doubt a sub-conscious picturing of the end of law conceived as existing to satisfy a paramount social need of general security. But in the Atharvaveda and later on we really observe a conscious thinking about the end of law. According to the philosophers of this age law is meant for the preservation of status quo. They seem to think of ensuring the general security mediatly through the security of the existing social institutions. Later on we find the philosophers thinking of law as a device to keep each man in his appointed groove in society, and thus prevent friction with his fellows. The virtue consists of knowing the limits which nature fixes for human conduct and keeping within those limits. The vice which they denounce is the wilful transgression of the appointed bounds.

In all ancient codes of law Procedure occupies the foremost place. Mann begins his chapter on law proper with the description of the constituent parts of a legal proceeding. So also does Narada. These classifications were in their times worthy efforts of the human intellect. These ancient compilers of law make the assumption that men do quarrel and they set forth the mode in which their quarrels may be settled without bloodshed or violence. Sir H. S. Maine in his *Early Law and Custom* gives an explanation as to why in ancient codes the first place was given to procedure. Similar explanation occurred to Wigmore also.

The scene of human life however is not the court room and it has not been so even in those ancient days. A man lives and has always lived in innumerable legal relations and, with few exceptions, he quite voluntarily performs the duties incumbent upon him because of these relations. "The order of human society is based upon the fact that, in general, legal duties are being performed, and not upon the fact that failure to perform gives rise to a cause of action."18

We shall follow the modern classifications in investigating into the history of Hindu Law and for this purpose direct our investigations under the following heads:

I. Law of persons;
II. Property and Ownership;
III. Contract;
IV. Crime; and
V. Procedure.

The convenience of using present legal categories as the framework of legal history is obvious. Naturally enough, we are interested in the sources and categories of the rules which we are to use daily. The arrangement suggested is likely to keep the discussion of the development of law within the framework of the present legal
vocabulary, thereby giving the study of legal history a more conservative function than it might otherwise have had. This may sound like subservience of legal historians to practising lawyer as if the legal past exists only for the convenience and cultivation of the latter. But at the same time its practical importance cannot altogether be ignored.

Adoptation of the categories of the modern developed legal system for the purposes of legal history, however, has one serious drawback;—it presents the legal history as a sort of legal embryology—a search for the rudimentary forms of the full-grown legal system. But to treat the provisions of the ancient legal system as mere rudimentary forms of the modern system is indeed misleading. This obscures the functioning of the legal system of the past: It is indeed asking whether an ancient institution was adequate to modern conditions. The adequacy or otherwise of ancient legal devices must be judged with reference to the peculiar social needs of their time. Keeping this in view, in the quest that is going to follow you will always try to direct your attention to functional analogues rather than to mere conceptual similarities.

The law does not consist of legal propositions, but of legal institutions. Indeed for our present purpose we may frankly confess that the available materials would not admit of much disclosure of the legal propositions prevailing in these ancient days. We may not however be in the same impossible position if we proceed to study the Vedic life with reference to the fundamental legal institutions and the vital forces that might have brought about their development.

Law indeed is not a series of rigid propositions but the social order, which is practically the same among all civilized peoples: The main institutions and facts of human society are practically identical everywhere.

It will not altogether be out of place here to attempt a little reflection on the several institutions of private law and their social functions. The legal institutions which we may bring under our examinations are ownership in land and movable property, contracts of various types, mortgage and lease, marriage and succession.

It may not be possible now to explore the social forces which in those hoary antiquities brought about the legal norms and institutions and worked changes in them. This aspect of inter-relation between law and society in that distant past perhaps would ever remain unexplored.

It may not also be possible now to trace out the economic forces and social changes operating in those ancient days and to appraise the results of their impact upon the functioning of legal institutions. We may, however, get hold of sufficient materials to enable us to reflect on the meaning and function of the institutions like ownership, obligation, marriage, etc., in these ancient days.
Karl Renner in *The Institutions of Private Law and Their Social Functions* presupposes the stability and relative immutability of legal institutions such as property and contract, and asks: "How is it possible that, given unchanged norms, unchanged conceptions of ownership and sale, contract and deed, mortgage and inheritance, their social function can nevertheless undergo a profound transformation? How is it possible that as a legal institution property can mean the same thing, say, in 1750 and in 1900, and yet in the latter year produce economic and social effects almost diametrically opposed to those it had in the former? How can one account for the functional transformation of a norm which remains stable? What, in particular, is the technique used by a developing capitalist society in order to adapt pre-capitalist and early capitalist legal conception to the needs of high capitalism without changing those conceptions themselves?"

Renner examines the economic and social functions of the legal institutions in general and gives an account of the functional transformation of property as also of the development of the legal institutions complementary to the property norm. In tracing the development of capitalist property Renner shows the relation between property and the contract of employment, labour, contracts of alienation, contracts of restitution, etc. and explains how property becomes *power of command*, assumes a function of organization, dissolves the old social order and becomes control of strangers as well.

Renner refrains from analyzing the questions as to how the norms originate which make up the legal institutions, how a legal norm grows from its economic background, and what are the economic causes of the creation of legal norms. He keeps himself confined to the examination only of the economic and social effects of the valid norm as it exists so long as the norm does not change. According to him "it is mere platitude to say that laws can influence economy sufficiently to change it and can therefore be considered as causes of economic results." "Laws are made with the intention of producing economic results, and as a rule they achieve this effect." "Social life is not so simple that we can grasp it, open it and reveal its kernel like a nut by placing it between the two arms of a nut-cracker called cause and effect." "Every economic process which in theory is an isolated unit is only part of the whole process of social production and reproduction." "If the economic function is related to this whole, it becomes the social function of the legal institution." "If we regard a social order as static and confine our attention to a certain moment of history, then the legal norms and the economic process merely appear as mutually conditioned and subservient to one another." We must, however, study the process in its historical sequence, the gradual transition of a social order from a given stage to the next.
Maine points out how progressive societies have developed from *status* to contract. Kenner 23 shows the anti-thesis: "The perversion of theoretical freedom and equality of contract into a state of inequality and dependence, in which the capitalists’ power over the worker appropriates the surplus value of his product in return for a subsistence wage, and is able to dictate conditions." "The directing motive, the end and aim of capitalist production is to extract the greatest possible amount of surplus-value, and consequently to exploit labour-power to the greatest possible extent.... The control exercised by the capitalist is not only a special function, due to the nature of the social labour-process, and peculiar to that process; but it is, at the same time, a function of the exploitation of a social labour-process, and is consequently rooted in the unavoidable antagonism between the exploiter and the living and labouring raw material he exploits.... Moreover, the co-operation of wage-labourers is entirely brought about by the capital that employs them. Their union into one single productive body and the establishment of a connexion between their individual functions, are matters foreign and external to them, are not their own act, but the act of the capital that brings and keeps them together. Hence the connexion existing between their various labours appears to them, ideally, in the shape of a pre-conceived plan of the capitalist, and practically in the shape of the authority of the same capitalist, in the shape of the powerful will of another, who subjects their activity to his aims." 24

"What is control of property in law, becomes in fact man’s control of human beings, of the waged labourers, as soon as property has developed into capital. The individual called owner sets the tasks to others, he makes them subject to his commands, and, at least in the initial stages of the capitalist development, supervises the execution of his commands. The owner of a *res* imposes his will upon *persona*, autonomy is converted into heteronomy of will." 25 "The right of ownership thus assumes a new social function. Without any change in the norm, a *de facto* right is added to the personal absolute domination over a corporeal thing. This right is not based upon a special legal provision. It is the power of control, the power to issue command and to enforce them." 26

Of course the importance of this power of control cannot be minimized. It is a social necessity. But at the same time it is profitable to the owners and it came to stay, not for the purpose of protection, but for the purpose of exploitation, of profit. The subordination of the workers is a corresponding phenomenon. The institution of property thus leads automatically to an organization similar to the state. Power over matter begets personal power.

Coming back to our quest we shall take up the law of persons first and this will involve the consideration of domestic and civil life of these early Aryans.
The real 'rights of man' are the right to life, liberty, and pursuit of happiness on equal terms with all. Perhaps you know how some philosophers deduce this right to liberty from the so-called laws of evolution. According to Spencer 27 'Of man, as of all inferior creatures, the law by conformity to which the species is preserved, is that among adults the individuals best adapted to the conditions of their existence shall prosper most, and that individuals least adapted to the conditions of their existence shall prosper least—a law which, if uninterfered with, entails survival of the fittest, and spread of the most adapted varieties.' According to him, 'ethically considered this law implies that each individual ought to receive the benefits and the evils of his own nature and consequent conduct: neither being prevented from having whatever good his actions normally bring to him, nor allowed to shoulder off on to other persons whatever ill is brought to him by his actions. . . . ' 28

This liberty of each is bounded only by the like liberties of all. It is taken to be a self-evident corollary from the law of equal freedom that, leaving other restraints out of consideration, each man's action must be so restrained as not directly to inflict bodily injury, great or small, on any other. Each man is given the right to physical integrity and to free motion and locomotion.

Evolution referred to above, however, is only mechanism of evolution. Evolution is comprehensible only if we admit that it is dominated by a finality, a precise and distant goal, the transformation of Sub-Man through Man into Super-Man. One stage of this evolution is said to be completed when the animal shape capable of sheltering the spirit, capable of allowing it to develop is found. 'From now on everything takes place as if the next step could only be realized progressively by abandoning on the way the scaffolding which has become useless as a result of the emergence of more perfect forms evolving slowly toward ultimate and still distant perfection.' 29 Man must fight to prepare the advent of the spiritual being he is destined to become. Evolution continues no longer on the physiological or anatomical plane but on the spiritual and moral plane.

It has already been noticed how difficult it is to determine the exact division of the Vedic people during this age. It is surmised that the Aryans of this age were divided into Janah or Tribes. As we have already seen we have numerous references to these tribes in the Rigveda. In some of these passages there is indication enough to show that these tribes had already been settled in various places in India.

एषा स्वा युजना पराकाल्प पद्म्य पिन्नी: परिसरो किरागाति।
अभिमप्यस्य वयना जनानां दिवो दुहिनाम् बनस्य पत्नी।

Rigveda, VII. 75. 4.

'She yokes her chariot far away, and swiftly visits the lands where the five tribes are settled. Looking upon the works and ways of mortals, Daughter of Heaven, the world's Imperial Lady.'
"Rousing the lands where men's Five Tribes are settled, Dawn hath disclosed the pathways of the people. She hath sent out her sheen with beauteous oxen. The Sun with light hath opened earth and heaven."

Rigveda, VII. 79. 1.

"All strength and valour that is found, Indra, in tribes of Nahushas, and all the splendid fame that the Five Tribes enjoy, bring, yea, all manly powers at once."

Rigveda, VI. 46. 7.

"Indra, whatever aids be thine, four be they, or, O Hero, three, Or those of the Five Tribes of men, bring quickly all that help to us."

Rigveda, V. 35. 2.

"Within whose hands deposited all the Five Peoples' treasures rest. Mark thou the man who injures us and kill him like the heavenly bolt."

Rigveda, I. 176. 3.

"Indra who rules with single sway men, riches, and the fivefold race, of those who dwell upon the earth."

Rigveda, I. 7. 9.

"To thee, Most Youthful God! to thee, O Agni, from near and far the people bring their tribute.

Mark well the prayer of him who best extols thee. Great, High, auspicious, Agni, is thy Shelter."

Rigveda, IV. 38. 5.

"Loudly the folk cry after him in battles, as 'twere a thief who steals away a garment;

Speeding to glory, or a herd of cattle, even as a hungry falcon swooping downward."
"Strong God! the folk at once put forth their vigour, striving together in the whirl of battle.
When warrior bands encounter one another some in the grapple quit themselves like Indra."

अभि तथेव दीवया मनीषावत्यो न वाजी सुध्यो जिहान:।
अभि प्रियाणि मर्मवच्मराणि कविरिच्छामि सुङ्गो सुमेधः ॥

"Hasting like some strong courser good at drawing, a thought have I imagined like a workman.
Pondering what is dearest and most noble, I long to see the sages full of wisdom."

The Janah or the tribes were divided into Visah or Cantons, the Visah into Gramas, the Gramas into Gosthis or Vrajas, the Gosthis or Vrajas into Gotras and the Gotras into Kulas or families. We cannot even guess what, if any, was the legal position of these several divisions.

It is difficult to say if Kulas or families were the lowest unit in civic life.

The type of family life no doubt was patriarchal, and the patriarch must have occupied a very important position in the legal system.

Ancient India, however, will be badly understood if the family head, the father, be looked upon as being the only subject of legal rights. We must not forget that there was another category of law at work in these ancient societies within the family or the guild and this law had the very weighty sanction of public opinion behind it. The father was the head of the family as long as he lived or at least was physically capable of discharging his duties. It seems that when he became too old or decrepit his place was taken by the eldest son who not only maintained his old parents in comfort with due regard to their helpless condition,
HINDU LAW DURING THE PERIOD OF THE RIGVEDA

We shall begin with an account of the domestic life of the Rigvedic Aryans. But before proceeding further you would better listen to what Hearn says by way of warning to students of history. "One of the chief difficulties", says Hearn, "in the study of history is the tendency to judge early men and early institutions by the standard and the lights of our own day. This tendency is indefinitely strengthened if we use the same name for both the ancient and the modern institution. There is, for example, little hope that we shall understand the nature of the archaic family if we permit ourselves to call it by that name. It is not only that the word family, or Familia, is hopelessly ambiguous, but also that the archaic Household is essentially different from the Family, as we understand the term". Inspite of this reminder, however, we are going to use the same term without attempting "to separate the prehistoric polity from the discrete institutions of marriage and of the modern family".

A little digression here perhaps will not be inexcusable, specially when our family and sex-control situation is already confused by the fact that lawyers do not know family sociology and family sociologists are ignorant of law and legal processes, and our legislators with scant knowledge of either discipline are rushing in with wholesale revolutionary suggestions in situations where the best of experts feel they should move cautiously. Indeed our modern family system now has to struggle hard against an anarchical and dishevelled culture. The suggested legislations are, possibly unconsciously, at war with our sex mores, our sex laws, and the general attempts at pro-familial regulation of sex in our civilization. In support of their extreme position the legislators mostly present some dubious logic, a dubious philosophical approach, a dubious history of the development of our present system of sex regulation, and certainly a false view of the sociology of sex-law, the social forces which produced it, and its aims. As a result of these errors the suggested reformations have contributed immediately to a de-rationalization of sex-control in our society, instead of helping to rationalize it. The long-run influences of such an approach may indeed be devastating, unless, of course, the immediate rise of this great challenge can foster adequate response of a strong understanding, and equally immediate opposite polarization of values by the pro-family sex-people. Such a long-time polarization of the groups in favour of strong social control of sex as a family hetero-sexual monopoly is, however, beyond human experience.

I need not remind you here that the family is by far the most important primary group in society. This family is a group defined by a sex-relationship sufficiently precise and enduring to provide for the procreation and upbringing of children. It seems well established that as far back as we can penetrate into the conditions of the primitive human world, we nowhere find a group in which some form of the
family does not exist. We always discover some form of mating, some degree of social regulation over sex-relationships.

Some authors no doubt put forward the theory that the original state of mankind was one of sexual promiscuity. The advocates of the theory rely on the survival among primitive peoples of customs assumed to point back to a state of promiscuity and on the early ignorance of biological paternity. These evidences, however, can be explained on other grounds and cannot outweigh the fact that even in the simplest societies known the family is found thoroughly established. The doctrine of original promiscuity has also been weakened by the weight of anthropological evidence. According to the modern anthropologists "the old concept of a promiscuous horde as the starting point for family development was required by the type of logic which made the Victorian family the last step in social revolution, but there is nothing else to support it".31

Westermarck in his History of Human Marriage supported the theory of Darwin that the family took shape from the operation of male possessiveness and jealousy, the dominant male claiming monopolistic rights and guarding them by force until they were secured by custom. This theory also has not gone unchallenged. There are authors who traced out the prevalence of matriloclal and matrilineal institutions in primitive communities and the fact that in some of them women held a social position equal to and sometimes superior to that of men. According to them the earliest form of the family was matriarchal and it was only with the development of higher agriculture and the economic dominance of men that the patriarchal type could emerge. The family, according to them, arose out of the insistent need of the mother for the economic and social protection of herself and her children: in following her basic instinct she won out against the more casual and merely sexual interest of the male.

The assumption that any deep-rooted social arrangement is the expression of some one particular human attribute or instinct is not, however, borne out by the evidence.

The quest for a single explanation of the form of the original family has been largely forsaken today. The family indeed has no origin in the sense that there ever existed a stage of human life from which the family was absent or another stage in which it emerged. Indeed "societies have not followed a single consistent line of evolution, but a multitude of diverging lines." 32

The family is a social institution and its central social function is the perpetuation of the race which includes procreation of the children and inducing them into the basic social heritage and superintending their initial adjustment to the world in which they must live. The desirability or otherwise of social controls of sex
cannot be determined by purely quantitative proof of behaviour, nor by mere poetic sentiments with knowledge all about the birds and bees and flowers. It will be wrong to assume that the ancients plotted to hold the modern world in ignorant sex-law bondage without themselves knowing anything about the birds and bees and flowers. Their ideas must have developed out of the turmoil and tragedy of their times and from their participation in it.

If a single answer to the question of origin of the family is not possible, it is possible to indicate the role of the various conditions that everywhere combine to produce a definite family pattern.

The family institutions have depended and still depend upon sex, reproduction and economy. The sex-drive motivates man to seek an established basis for its satisfaction, to find some safeguard against the precariousness of unlimited competition. Of course, all undue emphasis on this factor of sex-satisfaction must be avoided. The degree in which marriage suffices to satisfy the sex-need is, when we think even in terms of human experience and not of ethical dictates, highly variable and subject to perplexing differences of personality. The satisfaction involved may vary from mere release of physical appetite to a sense of total renewal of mutual love. There is then the reproductive urge strongly manifested in the mother, but gradually developing in the male as well by such social considerations as the pride of race, the desire to transmit property or prowess, the desire to have support in old age. Then again there is the economic need or group of needs. The changing economic role of women of our time has indeed been an important factor in bringing about the changed character of marriage.

Along with all these, man has two great life-urges, the love-urge and the power-urge. Romantic love, which is so individualized and is so responsive to the unpredictable conjecture of the harmony of moods between men and women in a changeful world is more apt to bring periodic stimulation to the individual life than to be the successful basis of a permanent institution.

But let us return to our subject.

We shall begin with an account of the domestic life of the Rigvedic Aryans. During this period we find the home well established, with the father as patriarch, possessing perhaps supreme control of the household. Marriage laws are fully observed and recognized. In fact, it was on the institution of marriage that the foundations of the Vedic home were laid. A merely passing or temporary union of the sexes like that of the lower animals would not have necessitated the creation of home. Indeed the home primarily owed its origin to woman who was the very embodiment of that great moral and spiritual force that ultimately worked itself out in the creation and development of
modern civilized society. Our ancient sage, Rishi Viswāmitra perceived
this thousands of years ago and sang:—

जयदेस्त मन्वस्मेतु योनिसदिव्यम युक्ता हर्यो वहुतु।
यदा कदा च सुनवाम सोममनिष्टु धूतो धनवाल्यन्न॥

Rigveda, III. 53. 4.

"A wife, Maghavan, is home and dwelling: so let thy Bay
steeds, yoked, convey thee hither.
Whenever we press out for thee the soma, let Agni as our
herald speed to call thee."

As we have noticed above, the researches of several recent writers,
notably those of Starke and Westermarck, tend to establish that promiscuity
never formed a general stage in the history of mankind. So far as
the Vedic Aryans are concerned we can say at least this much that they
are long past this age of promiscuity, if any. It seems, however, that
the Hindu savants believed in an age of promiscuity, as is evident from
what we are told in the Mahābhārata about the early primitive times.

The only passage in the Rigveda that is sometimes availed of
by various scholars as indicating promiscuity is the conversation of
Yama and Yami in the tenth Sukta of the tenth Mandal of the
Rigveda. A careful reading of the Sukta itself, however, will
conclusively shew that it was simply showing the perversity of the
particular sister and nothing else. At any rate it was not depicting
any general feature of the community. At its worst it was giving
another theory only of an earlier stage.

Whatever may have been the theory prevalent during the Vedic
age and whatever might have been the earlier customs and usages, it
is certain that marriage or sexual connection between brother and
sister was condemned in the Rigvedic times as highly immoral and
sinful.

The story of Pururābā and Urvasi as given in the Rigveda
will be of some interest to us while considering the institution of
marriage in Vedic society. We find in the 95th Sukta of the tenth
Mandal the following verses:

हन्ये जायेय मनसा तिथ्य घोरे वचासि मिथमा कृष्णवावः नू।११।
न नौ मंत्रा अनुवित्तास एते मय्यकर्त्तरते चनाहः ।११।

"Ho, there, my consort, stay, thou fierce-souled lady,
and let us reason for a while together.
Such thoughts as these of ours, while yet unspoken
in days gone by have never brought us comfort."

किमेता बाजा कृष्णवा तवाहं प्राणभिष्पुसामदिशेयेव।
पुरुरवः पुनरस्तः परेहि दुरापना चतं इवाहमस्मि ॥२॥

"What am I now to do with this thy saying ‘I have
gone from thee like the first of Mornings?’
Pururavas, return thou to thy dwelling; I, like the wind,
am difficult to capture."
"Giving her husband's father life and riches, from the rear dwelling, when her lover craved her, she sought the home wherein she found her pleasure, accepting day and night her lords' embraces."

"Thrice in the day didst thou embrace thy consort, though coldly she received thy fond caresses. To thy desires, Pururavas, I yielded; so wast thou kind, O here, of my body."

"When will the son be born and seek his father mournerlike will he weep when first he knows him. Who shall divide the accordant wife and husband, while fire is shining with thy consort's parents."

"I will console him when his tears are falling; he shall not weep and cry for care that blesses That which is thine, between us, will he send thee, go home again thou fool; thou hast not won me."

"Nay, do not die, Pururavas' nor vanish, let not the evil owned wolves devour thee With women there can be no lasting friendship; Hearts of hyenas are the hearts of women."

I, her best love, call Urvasi to meet me, her who fills air and measures out the region Let the gift brought by piety approach thee. Turn thou to me again; my heart is troubled."

The hymn is a dialogue between Pururava and Urvasi, and they are severally the Rishis of the Riks which they speak. The dialogue.

37—1858 B.
which is sometimes unintelligible, contains the germs of a legend related in the Satapatha Brahmana and in the Mahābhārata and the Purānas. According to this legend, Urvasi, Nymph of heaven, has been banished to earth where she consents to live with king Pururavā on condition that he takes care of her two pet rams, and that she never sees him unclothed. She lives with Pururavā for four years when the Gandharvas resolve to bring her back. They steal one of the rams by night. Pururavā springs from his bed; the Gandharvas send on him a flash of magic lightning, and Urvasi sees her husband naked. One of the conditions of the continuance of their union is thus broken, and the nymph vanishes. Pururava meets her afterwards and in vain implores her to return.

This story is significant as seemingly implying that marriage during this age might stand dissolved on the happening of an agreed event. It must, however, be remembered that Urvasi lived with Pururavā more as a concubine than as his married wife.

It has sometimes been asserted that polyandry was prevalent amongst the Vedic Indians. The story of Draupadi’s marriage as given in the Mahābhārata indicates that at least in theory such polyandry was justified by the Aryan sages. Precedents are cited there to justify Draupadi’s marriage with the five brothers. In the Rigveda itself we are told that the Maruts had one common wife named Rōdasi who was devotedly attached to her husbands.

राष्ट्रीय अवस्था में व्यक्ति सामान्य व्यक्ति से अधिक मिलकरः।
न रोदसी अपि नृसंह वोरा जूकान मृत्य सब्याय देवाः॥

Rigveda, I. 167. 4.

“Far off the brilliant, never weary Maruts cling to the young maid as a joint possession
The fierce Gods drive not Rōdasi before them,
but wished for her to grow their friend and fellow.”

जोषस्वरूपाित्वं सच्चमृहितकर्षो रोदसी नृस्वणा:।
आ सूर्यादिविष्ठ विश्वस्तो रथं गायत्रिप्रतीका नमसो नेत्या॥

Rigveda, I. 167. 5.

“When chose immortal Rōdasi to follow—she with loose tresses and heroic spirit.
She clomb her servant’s chariot, she like surya with
Cloud like motion and refugent aspect.”

आत्मापायत युक्ति युवान: शुभे निधित्वं विद्येषु ज्ञाना:।
अर्की यद्य मस्तत्त हुर्विन्यात्मार्ड्याण्य सुलोको दुर्वियोऽ।

Rigveda, I. 167. 6.

“Upon their car the youngmen set the Maiden wedded to glory, mighty in assemblies.
When your song, Maruts, rose, and with oblation the soma power sang his hymn in worship.”
This Rōdasi, however, stands for lightning and the whole description seems only to be a metaphor or some imagined ideal. But as this is spoken of gods in praise of them this seems at least to indicate that such a connection was not looked down upon by the people at this age. In another verse we are told of two men living with one woman; one is a youth brown, active manifold: he decks the golden one with ornament; another, luminous, occupies the place of sacrifice, sage, among the gods. Two with one dame ride on with winged steeds and journey forth like travellers on their way. Two, highest, in the heavens have set their seat, worshipped with holy oil Imperial Kings:

विनिध्रोऽऽचरत् एक्यः सह प्र प्रवासेव बसतः।
सदत्र द्वा चकलेन उपमा दिव्या सम्राज्या सपिगमुनी।

_Rigveda_, VIII. 29. 8-9.

This is what we find in the 29th Sukta of the 8th Mandala of the Rigveda. The Rishi who gave us this Rik was Manu himself and this again was in praise of gods. Those are the only slight indications of the prevalence of polyandry at one stage in Vedic India.

In the passages quoted above we have got some indication as to woman’s position. They were more like chattels in the eye of law. There were certain verses in the Rigveda which may be made to bear an interpretation showing that wives used to be pawned in the games of dice of which the Rigvedic Aryans were exceedingly fond. We are told:

न मा मिमेष्व न जिद्धेऽऽपाषा शिबा सत्सिभ्य उत महामासीत्।
अख्तायांकर्पस्य हतोर्नु ग्रहकामण ज्यामारोय।

_Rigveda_, X. 31. 2

ैर्द्विट तवत्तुय जायू रुषद्य न नापितो विवन्दो महंतारं।
अष्टायेव जरतो वस्त्याय नाहे विदाभ्य बित्तस्य भोगं।

_Rigveda_, X. 34. 3.

अन्ये जायां परि मृत्युशस्य अक्षाग्रुहं देवने वायुक्ते।
पिता माता भावते एतमाहृं जानोमेहो नर्जनता वधुर्भें।

_Rigveda_, X. 34. 4.

स्त्रियं दृष्टस्य कित्वं ततपायेशं जायं सुकृतं च योनिः।

"She never vexed me nor was angry with me, but to my friends and me was ever gracious.

For the dice’ sake, whose single point is final, mine own devoted wife I alienated.

My wife holds me aloof, her mother hates me; the wretched man finds none to give him comfort.

As of a costly horse grown old and feable, I find not any profit of the gamester."
Others caress the wife of him whose riches the die
hath coveted, that rapid curser;
Of him speak father, mother, brothers, saying, we know
him not bind him and take him with you.
Sad is the gambler when he sees a matron, another's wife
and his well ordered dwelling.''

This picture, however, is possible without actual disposal of wife
as a chattel.

The Rigveda, at the same time reveals a stage showing that Aryan
women, at any rate of the higher and better classes, enjoyed equal
freedom with men in all matters, social and religious. It was this
feeling of equality and freedom that evoked the highest virtues of
Aryan womanhood and lifted society to a high state of culture.

We have seen elsewhere how these Vedic Aryans identified the
home with wife. As it was quite natural to attribute the same source
of happiness to the gods as to men, it was conjectured that Indra had
a happy home, presided over by a good, gracious and loving wife, which
rang with the dulcet music of her sweet voice and the merry laughter of
the children. Thou hast drunk Soma, Indra, turn thee homeward;
thy joy is in thy home, the gracious consort:

यत्र रश्यय बृहतो निधानं विमोचनं वाजिनो दक्षिणात् ||

Rigveda, III. 53. 6.

"Where thy tall chariot hath a place to rest in,
and thy strong courser is set free with guerdon".

The wife is not only loving but also obedient, promptly responding
to the call of her husband and ministering to his wants:
पत्नीव पुरैव हि वार्ध्या उपसानक्ता पुरुषा विद्वाने। (Rigveda, I, 122. 2.)
She is not only a loving wife but also a loving mother. She
is described by the Vedic sages as the ornament of the home. She has
many household duties and has to offer jointly with her husband
oblations to the sacred Household Fire.

The poetic ideal of the family was decidedly high and we have
no reason to doubt that this ideal was often actually realised. On her
marriage the wife was at once given an honoured position in the
house; she is emphatically the mistress in her husband's home,
exercising authority over her father-in-law, her husband's brothers
and his unmarried sister, when perhaps, owing to the decrepitude of
the parents her husband has become the patriarch of the family.
This is not inconsistent with the great stress elsewhere laid on the
fact that respect is due to a father-in-law.

The true domestic felicity depended upon the mutual harmony
of husband and wife and their pious performance of the religious duties
they owed to the gods.
HINDU LAW DURING THE PERIOD OF THE RIGVEDA

"O' Gods, with constant draught of milk, husband and wife with one accord
Press out and wash the soma juice.
They gain sufficient food: they come united to the sacred grass
And never do they fail in strength.
Never do they deny or seek to hide the favour of the Gods;
They win high glory for themselves.
With sons and daughters by their side they reach
their full extent of life,
Both decked with ornaments of Gold."

The status of women in Rigvedic society indeed became very high and honourable:

"Serving the Immortal one with gifts of sacrificial meal and wealth,
They satisfy the claims of love and pay due honour to the Gods."

"She never vexed me nor was angry with me, but
to my friends and me was ever gracious.
For the die's sake, whose single point is final,
mine own devoted wife I alienated.

Rigveda, VIII. 31. 5.
Rigveda, VIII. 31. 6.
Rigveda, VIII. 31. 7.
Rigveda, VIII. 31. 8.
Rigveda, VIII. 31. 9.
Rigveda, X. 34. 2.
Rigveda, X. 34. 11.
"Sad is the gambler when he sees a matron,
another's wife and his well-ordered dwelling.
He yokes the brown steeds in the early morning,
and when the fire is cold sinks down an outcast."

Rigveda, X. 85. 19.

"By their own power these Twain in close succession move;
They go as playing children round the sacrifice.
One of the Pair beholdeth all existing things; the other
ordereth seasons and is born again."

Rigveda, X. 85. 19.

"He, born afresh, is new and new for ever; ensign of
days he goes before the Mornings.
Coming, he orders for the Gods their portion. The
Moon prolongs the days of our existence."

Rigveda, X. 85. 42.

"Be ye not parted; dwell ye here; reach the full time
of human life.
With sons and grandsons sport and play, rejoicing
in your own abode."

Rigveda, X. 85. 46.

Over thy husband's father and thy husband's mother
bear full sway.
Over the sister of thy lord, over his brothers rule supreme.
Though she was obedient to her husband and apparently
subservient to his will, she was treated by him with proper respect.
She had a right to perform the sacrifices with her husband."

Rigveda, I. 28. 3.

"The History of Hindu Law

Rigveda, V. 48. 15."
Marriage in the early Vedic texts appears essentially as a union of two persons of full development. The choice of husband generally rested with the young lady herself. As her marriage was contingent on this selection it often happened that a woman often remained unmarried. This is shown by the numerous references to unmarried girls who grow old in the house of their fathers. But a spinster was not a desirable member of the family; not only on economic, but also on moral grounds as she stood the risk of going astray. Even in the Rigveda we find reference to a spell by which a lover seeks to send all the household to sleep when he is to visit his beloved. Whatever that be in Rigvedic times no girl was married before she could exercise her own judgment, before she had reached her womanhood. She must be fully developed physically in her father’s house before her marriage could be thought of. Surya, the daughter of Surya was given away in marriage to Soma, only when she became youthful and yearned for a husband. Ghosa, the lady Risi, married when she almost passed her youth. The marriage ritual also quite clearly presumes that girl is fully mature.
It happened sometimes that an unworthy man had to pay a heavy price for his bride:

अधिक हि भूरिदात्रिनि वां विजामतुश्च वा धा स्मालानि।
अशा सोमस्य प्रकटी युव्वशाहिदः त्वमं जनयामि नवम bbw.

This Rik refers to the Gods Indra and Agni as more generous than a Bijamatri. As has been pointed out by Professors Macdonell and Keith, the force ‘Bi’ in the word Bijamatri is something unfavourable and the sense is that a son-in-law who was not in other respects altogether suitable might have to buy his bride at a heavy price. This ‘Bijamatri’ is, in fact, अ जामाता in Rigveda, VIII. 2. 20.

This goes to show that the parents often arranged a match, though they did not always control the marriage. That the parents had some control over the marriage of their children is indicated also in the fact that the father, before giving his daughter in marriage, might enter into an agreement with the bridegroom by which the former was to be the owner of the issue of the marriage.

आ स एतु य ईवदै अदेवः पूर्तमादवे।
यथा विधो अश्वः पुश्चायं कानित्तमः व्युष्यावे॥
दमासः पूष्यभवसः कानित्तमः सुरायसः।
रघच हिरण्यं दत्तं महिषः सुरिस्मृहिष्ठमकृत भव॥

The legal position seems to be that however the marriage might have been settled it was the father of the girl who gave her in marriage. This seems to be reasonable in view of the patriarchal form of the family. The marriage of a girl of one family with a young man of another meant that she would abandon the paternal fire and henceforth invoke that of her husband. From the potestas of the father as it were she comes under the manus of her husband as in the Roman System.

We have no direct evidence as to whether there were more than one form of marriage recognized by these early Aryans. There are, however, passages in the Rigveda which indicate that there were at least the following few forms of marriage:—
1. One in which the father or the brother of the girl gave her well dressed and handsomely decked with ornaments to the suitor who had wooed and won her, in the presence of the family altar. The husband in this form of marriage held her by the hand, took her home and there presented her before his family altar. The marriage perhaps was complete only after such presentation.\textsuperscript{41}

\begin{quote}
हस्तेनं ग्राहम् अधिस्या ब्रह्मायणयमिति चेदवीचन्।
न हूँतया प्रधानं तथा एवं तथा राज्यं गुप्तत्वं क्षात्रयम्।
\textit{Rigveda, X.} 109. 5.
\end{quote}

\begin{quote}
गृहाभमो ले सोभमवत्यु नदवं मत्या जरधवत्यंशाः।
भगो अरुणसा सरत्पा पुरुषलेख्यं लवदुगंधमिश्यां देवा।
\textit{Rigveda, X.} 85. 36.
\end{quote}

\begin{quote}
तुम्ममये परयवहल्तू सूया वहतुना सह।
पुतः पतिभयो जायां दा अर्न प्रजया सह॥
\textit{Rigveda, X.} 85. 38.
\end{quote}

\begin{quote}
सोमो वधूयु रभदवश्वनमात्सुभाना वरा।
सूया यत्सत्ये शंस्ती मनसा सर्ववतवदा॥
\textit{Rigveda, X.} 85. 9.
\end{quote}

\begin{quote}
त्वन्दा दुधिने बहुतू क्षणोतीनं विश्वं भुवनं समेत।
यमस्य माता पर्यूमाना मही जाया विवस्तो नन्दाय॥
\textit{Rigveda, X.} 17. 1.
\end{quote}

2. In another form the bride was carried, perhaps against the will of her father, to her lover’s house where she would be married to him.\textsuperscript{42}

\begin{quote}
युवं रघुन सिन्धुदाय शुद्धुयं यूर्धु: पुर्वभमस्य योष्णाः।
युवं हतं वधिमल्या अग्रधतं युवं सुषुद्वत चक्रचु: पुज्यये॥
\textit{Rigveda, X.} 39. 7.
\end{quote}

3. In a third form the bride’s father took money from the bridegroom as her price and gave him his daughter.\textsuperscript{43}

\begin{quote}
अक्षचं हि भूहिरवत्तरा वाण विजामातुह वा या स्वालुः।
अधा सोमस्य प्रवशि युवश्चामिद्रामणी स्तीम जनयायि नवं॥
\textit{Rigveda, I.} 106. 2.
\end{quote}

4. There seems to have been yet another form in which the bride herself took a husband.\textsuperscript{44}

\begin{quote}
कियती योषा मर्यादी वधूयो: परिप्रीता पत्यसा वायरेण।
भगा वधूमन्वित यतु सुषेप्सा: स्वयं सा मित्रं वनुनं जने वितू॥
\textit{Rigveda, X,} 27. 19.
\end{quote}

The wedding ceremony usually commenced at the bride’s house. In the tenth Mandal of the Rigveda Surya’s marriage is described at some length. A careful analysis of the Sukta will disclose some details of wedding rites.

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Though monogamy was the rule in Vedic India, polygamy was allowed.45 As to Polandry we have already observed that though this might have been allowed sometime, it was not at least in general existence in Rigvedic times.

We have no materials in the Rigveda to show the effect of marriage on the proprietary rights of the parties. At the time of marriage girls were given many valuable presents including slaves. These were presented in the presence of the altar and perhaps became the property of the husband.46

Professors Macdonell and Keith in their Vedic Index give an account of woman’s position in Vedic India under the head ‘Wife’s Property and Status’. They point out that very little information as to the legal relations of wife and husband are available in the Vedic literature. The learned professors say: “It may be assumed that the husband appropriated the wife’s dowry, if any, as well as her earnings, if any: even in the Epic the rise of the recognition of woman’s property as their own (Stridhana) is only slow.” This is indeed only a surmise on their part; only this surmise is based on subsequent texts as also on the fact that the husband exercised large power of control and correction, almost as large as was expressly allowed to the husbands in England in the eighteenth century by English law.
We have in the Satapatha Brahmana नातमन्वननते न दातस्य चनेले। They own neither themselves nor an inheritance (Satapatha Brahmana, IV. 4. 2. 13).

The Brihadaranyaka Upanishad speaks of husband’s power of correction thus:

सा चेदमे न ददातु कामेनामयूरक्षयि व च चेदमे नैव ददातु कामेनाय ददा वा पणिना बोधहुयातिकामेदिद्वेषेन ते यशोस्य यस्य आद्य इत्ययशा एव भवित।

VI. 4. 7.

Marriage seems to have been indissoluble during the lifetime of the husband. The tie could be dissolved only at the death of the husband.47

The story of Pururaba and Urvasi as given above however may be taken as indicating dissolubility of marriage even earlier.

There is hardly any clear evidence of widow re-marriage in the Rigveda. The custom of such remarriage might have been alluded to in Rigveda (X. 40. 2 and X. 18. 8). The burning of a widow on the funeral pyre of her dead husband may have been a custom among this early Aryans.

From the earliest times in all nations the system by which the stronger enslaves the weaker has prevailed. In early times it was usual to reduce to the status of slave all captives taken in war. This was really a step in advance of the earlier indiscriminate slaughter of the vanquished enemies. Our Vedic Aryans had such slaves whom they treated more like things than human beings.48 We are told of disputes over slaves as over cattle and other movable property.49 They exercised the right of exclusive user and of alienation in their slaves. There is however no indication of their destroying their slaves. They distinguished the slaves as human property, as dwipada wealth, and it is natural to expect for these slaves to improve their status and become almost equal to the Aryans. Kavasa Ailusah was the son of a slave woman and still could become a Rishi himself.

That the slaves were treated as property seems pretty clear from the various texts. We have many reference to black-skinned slave.50 A Rishi prays to Agni for one hundred slaves. Another Rishi is thankful to king Trusadasyu, son of Purukutsa, for his making a gift of fifty slave girls to him.51

The word dasa however as used in the Rigveda does not always mean slave.
Sometimes it signifies a tribe or people, who though perhaps belonging to the Aryan stock, did not subscribe to the orthodox Vedic faith, or perform the Vedic sacrifices. The Yadus and Turbasas were undoubtedly Aryan tribes who, seceding from the Vedic faith crossed the ocean and settled on its further shores. Indra however brought them back again safely to Sapta Sindhu across the water, and anointed their chief as king. They have however been described as the Dasa kings. Indeed all non-sacrificers were Dasas.

Sonship during this age did not, it seems, admit of any fiction of adoption. There are texts indicating sons born of others’ loins;

रूढः पालो अन्तःअन्यजातमस्त्रयेतातन्त्र भा प्रथा विन हुश:।

Rigveda, VII. 4. 7.

Again, ‘no son is he who springs from others, lengthen not the pathway of the foolish.’ Unwelcome for adoption is the stranger, one to be thought of another’s offspring, though grown familiar by continual presence:

नहि प्रभायरणः सुयुज्येत्रयोऽऽमनस्संस्तव उ।
अघाविदशेन पुनरित्स एत्या नो वाज्यमहीपाद्रेतु नव्यः॥

Rigveda, VII. 4. 8.

We are also told

वषमधो निवयुपत्ति यशे प्रजावंतं स्ववर्यं कर्मे न:।
स्वप्रञ्जलो शोभा वातुघानं॥

Rigveda, VII. 1. 12.

‘By sacrifice which the steeds’ Lord ever visits, there make our dwelling rich in seed and offspring Increasing still with lineal successors.’

मा नो अग्रेजीवरे परा दा दुर्विसमुद्रसये मां नो अर्ये।
मा न: छुःं मा रक्षस ऋताभो मानी दे मा वन आ जुगुप्ते:॥

Rigveda, VII. 1. 19.

‘Give us not up, Agni, to want to heroes, to wretched clothes to need, to destitution.
Yield us not, Holy one, to fiend or hunger; injure us not at home or in the forest.’

इष्ट्यते ततो मिथस्तनृषु सं जात्त स्वपनेयसुः॥

Rigveda, I. 68. 8.

‘Men yearn for children to prolong their line, and are not disappointed in their hope.’

In these days of warfare a male issue was much valued. These prayers indicate this natural yearning of the Aryan mind of the age. Except in the texts quoted from the seventh Mandal, there is no indication of the fiction of adoption in the others. The texts of the seventh Mandal referred to above are the sayings of Rishi Vasishttha and it is significant that later when adoption was undoubtedly in force it
was Vasishtha who purported to give us the detailed law regarding this institution. The Vedic texts however may not indicate anything more than the mere illegitimate issues.

There is no satisfactory evidence of the prevalence of Niyoga during this age. The numerous texts of the Rigveda on the other hand make its prevalence improbable; these Vedic Aryans were so zealous of issue born of their own loins. The explanations given of an inference drawn from the passage कौं गुरुत्र विष्णो देवरं मयं न योय धनुष्ट रथं आ। found in the tenth Mandal of the Rigveda, Rik 2 of Sukta 40, are not well founded.

These Aryans of the Rigveda always desire to have sons born of their own body and the possession of such a son alone was looked upon as praiseworthy. When they have no son they rather look to their daughters for the continuance of the family.

शास्रि मुनि हिन्दुन्तस्यं गान्धर्वा अजन्त्य दीथिति सयर्यनु।
पिता यत्र दुहितुः नेत्रेः जन्तलं शरम्भेन मनसा दथवेः॥

Rigveda, III. 31. 1

न जायमे तात्रो रिमुरालैक्ष्यकार गर्म फलितुनिषाँ।
यदि मात्यो जन्यं विलिुमयः कर्तृ मुक्तोर्वम कृपण।

Rigveda, III. 31. 2.

Wise, teaching, following the thought of Order, the sonless gained a grandson from his daughter.

Fain, as a sire, to see his child prolific, he sped to meet her with an eager spirit.

The son left not his portion to the brother, he made a home to hold him who should gain it.

What time his Parents give the Priest his being, of the good pair one acted, one promoted.

The sonless father according to Sayana, stipulates that his daughters’ son, his grandson, shall be his son, a mode of affiliation recognised by law, and relying on an heir thus obtained, and one who can perform his funeral rites, he is satisfied.

It has already been noticed how difficult it is to give the exact legal relations between father and son during this age. It seems, a father had an absolute power of life and death over his children. He had an absolute control over those belonging to his family and had a right to exclusive user of his children. An injury to them would perhaps be an injury to the father:

शुरी वा शुरूं वन्ते शरीरार्नात्मकां तस्य यतुवलिते॥
तोके वा गाण्यु तत्वे यत्स्यु वि जंतसी उर्वरामु ब्रहणे॥

Rigveda, VI. 25. 4.

A son’s acquisition, it seems, belonged to the father. At least we are told:
It was, however, the duty of the father to maintain his children:

It seems pretty certain that a part of the domestic religion of these Aryans was ancestor worship. One of the first rules of this worship seems to have been that it could be offered by each family only to those deceased persons who belonged to it by blood. 57

Besides sons there were certainly others who were under the control of the father. A daughter was under her father's control so long as she would remain unmarried. Her marriage would transfer her to her husband's family.

"Now from the noose of Varuna I free thee, wherewith Most Blessed Savitar hath bound thee.
In law's seat, to the world of virtuous action, I give thee up uninjured with thy consort."
Hence and not thence I send thee free:

I make thee firmly fettered there. 58 Daughters would sometimes remain unmarried throughout their life and would remain under their father's potestas. 59 In such a case after the death of her father she should come under the control of her brother, if any, provided the brother undertook to maintain her. Otherwise perhaps she would be her own mistress. 60 Perpetual tutelage of woman is of later origin.

The Vedic literature does not throw any light on the views, if any, of the Vedic legal philosophers as to the fundamental bases of rights of property. The terms used to denote 'property', 'property right' or 'wealth' do not throw any light in this respect. We have the word 'pati' used in the Vedas in connection with land in expressions like

"We through the Master of the Field, even as through a friend, obtain. What nourisheth our kine and steeds. In such may he be good to us."
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शेषस्य पते मयुमत्सूमि धेनुरिव पयो अस्मासु चुक्षः।
मयुर्षुतं पूत्मिव सुमुत्मृतस्य न: पतयो मृडळंतु॥

Rigveda, IV. 57. 2.

"As the cow yieldeth milk, pour for us freely, Lord of the Field, the wave that beareth sweetness,
Distilling meath, well-purified like butter, and let the Lords of Holy Law be gracious."

मयुमतीरोपणीव आपो मयुष्माहो भवत्तंतरिः।
शेषस्य पतिरमुच्यामो अस्तवरिवयतो अन्वेन चरेऽ॥

Rigveda, IV. 57. 3.

"Sweet be the plants for us, the heavens, the waters, and full of sweets for us be air's mid-region,
May the Field's Lord for us be full of sweetness and may we follow after him uninjured."

श नौ देवः सब्वत चाचयमायः श नौ भवत्तूषयो विभातीः।
श नौ: परजयो भवतु प्रजायः: श नौ शेषस्य पतिरस्तु हङ्गः:॥

Rigveda, VII. 35. 10.

"Prosper us Savitar, the God who rescues, and let the radiant Mornings be propitious.
Auspicious to all creatures be Parjanya, auspicious be the Field's benign protector."

आ याहीम इंद्रोवजपि गोपत उज्जापते।
सोमं सोमपते चिभ।

Rigveda, VIII. 21. 3.

"Come hither, for the drops are here, O Lord of corn-lands, Lord of horses, Lord of kine:
Drink thou the Soma, Soma's Lord!"

देव्याः होतारा प्रथमा पुरोहितं कतस्य पञ्चामन्वेमि साधया।
शेषस्य पति प्रतिवेरियामहे विद्वान्यात्वाम् अभूतं अप्रुच्छः॥


"I follow with success upon the path of law the two celestial Hotars, Priests of oldest time.
We pray to him who dwelleth near, Guard of the Field; to all Immortal Gods who never are remiss."

We have similar expressions in the Atharvaveda also:

नमः सनिधाक्षोष्यो नमः संवेद्योऽः।
नमः शेषस्य पति: बीकुऽत्रियनाशनयः क्षत्रियाः कुच्छः॥

Atharvaveda, 2. 8. 5.

द्वावापृष्ठीं उव्याभिरिंश्चैव शेषस्य पत्राः साष्टायोः।
उत्तात्रिकसभु वातगोपं त इह तत्यत्सं मधु तथमावे॥

Atharvaveda, 2. 12. 1.
The word पति is derived from the root पा: पातेिति. This derivation of the word indicates that originally its implication was duty to protect, to maintain. If it means any power of control or domination that is only for enabling पति to discharge his duty to protect, to maintain, to guard.

Later on we find the word स्वामी also to mean ownership. This word is derived from स्व and it seems to imply extension of personality to material objects.

During the Sutra period we are given legitimate methods of acquisition of property. But beyond this there is no conscious thinking about the rational bases of the property right.

In the Mitakshara for the first time we meet with some discussion of such a rational basis. Vijnaneswara, while giving the rules of inheritance, takes up the question—what is property: तत्त्व स्वत्मेव तावपि-प्रयते: “Under this head of discussion property right itself is necessarily explained.” He formulates the question to be discussed thus: निष्ठुष्ठक्षेत्रसमयवेद्यमानसमयमयिति— “Whether property be deduced from the sacred institutes alone, or from other (and temporal) proof.”

The discussion that follows reads thus:

तत्त्व शास्त्रसमयवेद्यमानसमयिति तावपि-प्रयते गौतमचनानात। स्वामी अभूक्तनस्थविभाग-परिष्ठुष्ठक्षेत्रसमयमानसमयमयिति तावपि-प्रयते गौतमचनानात। तथा स्वेतालिङ्गमेवे मनु: योजनासारिनिहस्ताविलीनक्षेत्रबावधोपनसमयमानसमयिति शस्त्रसमयवेद्यमानसमयमयिति तत्त्वात्व तत्त्वस्थ स्वत्मेव, स्वागतानादिनादि कारणेन दयववज्ञानं दयववलालस्वस्त्रादिनादि कारणेन दयववज्ञानसमयवेद्यमानसमयमयिति तत्त्वस्थ स्वत्मेव।

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...
a Brahmana an additional mode; conquest for a Kshatriya; gain for a Vaisya or Sudra." For, if property were deducible from other proof, this text would not be pertinent. So the precept ("A Brahmana, who seeks to obtain any thing, even by sacrificing or by instructing, from the hand of a man, who had taken what was not given to him, is considered precisely as a thief"); which directs the punishment of such as obtain valuables, by officiating at religious rites, or by other similar means, from a wrongdoer who has taken what was not given to him, would be irrelevant if property were temporal. Moreover, were property a worldly matter, one could not say "My property has been wrongfully taken by him"; for it would belong to the taker. Or, (if it be objected that) the property of another was seized by this man, and it therefore does not become the property of the usurper; (the answer is,) then no doubt could exist, whether it appertain to one or to the other, any more than in regard to the species, whether gold, silver, or the like. Therefore property is a result of holy institutes exclusively.

To this the answer is, property is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do; but the consecrated fire and the like, deducible from the sacred institutes, do not give effect to actions relative to secular purposes. (It is asked) does not a consecrated fire effect the boiling of food; and so, of the rest? (The answer is) No; for it is not as such, that the consecrated flame operates the boiling of food; but as a fire perceptible to the senses; and so, in other cases. But, here, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but through property only. That, which is not a person's property in a thing, does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen also among inhabitants of barbarous countries, who are unacquainted with the practice directed in the sacred code: for purchase, sale, and similar transactions are remarked among them.

Moreover, such as are conversant with the science of reasoning, deem regulated means of acquisition a matter of popular recognition. In the third clause of the Lipisa sutra, the venerable author has stated the adverse opinion, after (obviating) an objection to it, that, "if restrictions, relative to the acquisition of goods, regard the religious ceremony, there could be no property, since proprietary right is not temporal"; (by showing, that) "the efficacy of acceptance and other modes of acquisition in constituting proprietary right is a matter of popular recognition." Does it not follow, "if the mode of acquiring the goods concern the religious ceremony, there is no right of property, and consequently no celebration of a sacrifice?" (Answer) "It is a blunder of any one who affirms that acquisition does not produce a proprietary right; since this is a contradiction in terms." Accordingly, the author, having again acknowledged property to be a popular notion,
when he states the demonstrated doctrine, proceeds to explain the purpose of the disquisition in this manner, "Therefore a breach of the restriction affects the person, not the religious ceremony": and the meaning of this passage is thus expounded, "If restrictions, respecting the acquisition of chattels, regard the religious ceremony, its celebration would be perfect, with such property only, as was acquired consistently with those rules; and not so, if performed with wealth obtained by infringing them; and consequently, according to the adverse opinion, the fault would not affect the man, if he deviated from the rule: but, according to the demonstrated conclusion, since the restriction, regarding acquisitions, affects the person, the performance of the religious ceremony is complete, even with property acquired by a breach of the rule; and it is an offence on the part of a man, because he has violated an obligatory rule." It is consequently acknowledged, that even what is gained by infringing restrictions, is property: because, otherwise there would be no completion of a religious ceremony.

It should not be alleged, that even what is obtained by robbery and other nefarious means, would be property. For proprietary right in such instances is not recognized by the world; and it disagrees with received practice.

Thus, since property, obtained by acceptance or any other (sufficient) means, is established to be temporal; the acceptance of alms, as well as other (prescribed) modes for a Brahmana, conquest and similar means for a Kshatriya, husbandry and the like for a Vaisya, and service and the rest for a Sudra, are propounded as restrictions intended for spiritual purposes; and inheritance and other modes are stated as means, common to all. "An owner is by inheritance, purchase, partition, seizure or finding."

Unobstructed heritage is here denominated 'inheritance'. 'Purchase' is well known. 'Partition' intends heritage subject to obstruction. 'Occupation' or seizure is the appropriation of water, grass, wood and the like not previously appertaining to any other (person as owner). "Finding is the discovery of a hidden treasure or the like. If these reasons exist, the person is owner." If they take place, he becomes proprietor. For a Brahmana, that, which is obtained by acceptance or the like, is 'additional', not common (to all the tribes). 'Additional' is understood in the subsequent sentence: "for a Kshatriya, what is obtained by victory, or by amercement or the like, is peculiar." In the next sentence, 'additional' is again understood: "what is gained or earned by agriculture, keeping of cattle (traffic), and so forth, is for a Vaisya peculiar; and so is, for a Sudra, that which is earned in the form of wages, by obedience to the regenerate and by similar means." Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed classes in the direct or inverse order of the tribes (as the driving of horses, which is the profession of the Sutas, and so forth),
is indicated by the word 'earned' (nirvishta); for all such acquisitions assume the form of wages or hire; and the noun (nirvesa) is exhibited in the Tricandi as signifying wages.

As for the precept respecting the succession of the widow and the daughters, etc., the declaration (of the order of succession), even in that text is intended to prevent mistake (although the right of property be a matter familiar to the world), where many persons might (but for the declaration) be supposed entitled to share the heritage by reason of their affinity to the late owner. The whole is therefore unexceptionable.

As for the remark, that, if property were temporal, it could not be said "my property has been taken away by him"; that is not accurate, for a doubt respecting the proprietary right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right.

The purpose of the preceding disquisition is this. A text expresses "When Brahmanas have acquired wealth by a blamable act, they are cleared by the abandonment of it, with prayer and rigid austerily." Now, if property be deducible only from sacred ordinances, that which has been obtained by accepting presents from an improper person, or by other means which are repudiated, would not be property, and consequently would not be partible among sons. But if it be a worldly matter, then even what is obtained by such means, is property, and may be divided among heirs; and the atonement abovementioned regards the acquirer only: but sons have the right by inheritance, and therefore no blame attaches to them, since Manu declares "There are seven virtuous means of acquiring property, viz., inheritance, etc."

The theory of Vijnaneswara, it must be said, confuses the rational basis of property with its historical origin. The basis of property right must be an idea, a principle and not simply a fact, as occupancy or partition. In the opinion of Vijnaneswara private property is based upon the consensus of the components of society. This consent, express or implied, is a fact.

The natural-law theories of property, of which Grotius and Pufendorf were the chief exponents, built up a complete system of natural rights of property upon a postulated original division by agreement or a subsequent discovery and occupation.61

In order to explain why men abandoned the primitive community, the idea of a convention and contract is very often relied upon. But if we go back to the historic origin of property, we find no trace of such a contract. When we seek to derive a right from a fact, unless the reality of that fact is established, the right has no foundation.

Kant and other metaphysical theorists do not maintain that such consent is a historic fact, but speak of it as a juristic necessity. Kant answers the question by a metaphysical version of the occupation theory of the eighteenth century. He holds that specification creates a
provisional ownership, which only becomes final by the consent of all
the members of society.

Property according to Kant, lies not only in physical possession
but in intellectual possession, because the ‘mine’ by right is, accord-
ing to him, so inherent in me that its use by another without my
consent harms me even when I have not the physical possession of it.

Hegel gets rid of the idea of occupation by treating property as a
realization of the idea of liberty. Property he says, ‘“makes objective
my personal individual will.”’ A person must give to his freedom an
external sphere, in order that he may reach the completeness implied in
the idea.

It will be interesting to remember in this connection that modern
jurists like Hobbes, Montesquieu, Bentham and Comte make positive
law the base of property without troubling themselves with the questions
whether positive law, in its recognition of private property, conforms
or not to reason and justice.

It will not be out of place here to remind you of the various
modern theories of property right.

Property, says Miraglia, is the greatest right, the plena potestas
in re. It is a general, if not absolute, power over objects, and at least
it comprehends the greatest number of rights including possession,
acquisition, enjoyment and disposition.

Man must attain his ultimate end, and therefore he expands his
activity and binds and subjects to himself external things and makes
agreements with other men for the reciprocal preservation of necessary
and useful objects. From the expansion of his personal activity are
derived property and personal rights. Fundamentally it is nothing
more or less than freedom applied to things; it is the dress and
investiture of individuals and is as inviolable as the person. Hegel
thinks that a person has his external existence in property. According
to Trendelenburg property is the result of victory of mind over matter:
it is the instrument of the person. ‘‘Things, in the power of man,
become animated means for the purposes which they may serve, and,
ceasing to be impersonal, represent the determination of the will.’’
Rosmini asserts that the common character of all property is due to the
connection of an object with the personal principle. The connection
is duplicate, both physical and moral. The concrete connection lies in
the suitability of its occupancy for the attainment of some end, and the
moral connection is shown by the act of intellect by which we conceive
a thing as useful to us, free and capable of being occupied. According
to Cousin property is the condition of personal dignity.

According to these philosophers man has a primal property in his
person and power. From his person and power all others are derived.

While the positivists like Spencer base their theory of property
on a deduction from a fundamental ‘law of equal freedom’ verified by
observation of the facts of primitive society, the historical jurists have maintained their theory on the basis of two propositions: (1) The conception of private property, like the conception of individual personality, has had slow but steady development from the beginnings of law; (2) individual ownership has grown out of group rights just as individual interests of personality have been disentangled gradually from group interests.

Thus property, according to some sociologists, is primarily and essentially a group affair. While in its correlative and complementary aspect property is a power enjoyed by persons, and a function essential to the completion of personality, in its origin, its force, its continuance as property it is chiefly an exercise of group energy.

Certain economists like Roscher, Mill and Seneuil think that without property there would be no stimulus to labour or saving. Wagner calls this system the economic theory of nature. The 'natural-economical' theory has the great advantage that by basing property on general utility, it allows of successive improvements in existing institutions consonant with new wants and technical advances.

Those who regard property as a natural right derive their inspiration from Fichte's excellent work on the French Revolution. "The transformation (bildung) of materials by our own efforts is the true juridical basis of property, and the only natural one."

The same theory is explained more completely by Ahrens in his manual on natural law (Naturrecht). For every man property is a condition of his existence and development. It is based on the actual nature of man, and should therefore be regarded as an original, absolute right which is not the result of any outward act, such as occupation, labour or contract. The right springing directly from human nature, the title of being a man is sufficient to confer a right of property.

Although this natural right to property is absolute, their form is modified, because man, the subject of rights, changes. What is the best form of property at any given moment we can only learn from the study of man's nature, of his wants and sentiments and the ordinary consequences of his acts. So long as man knew of no means of subsistence but the chase, pasturage or agriculture, his patrimony was a share in the soil, a part of the 'allmend'. In the middle ages, in the towns, where industry was developed and organized, it was a place in the corporation with a share in the ownership of all that belonged to this community. The equalizing movement, which agitates modern society so profoundly, will probably end in obtaining new recognition of the natural right of property, and even a guarantee for its exercise, by means of institutions in harmony with the existing necessities of industry and the prescriptions of sovereign justice.

Renner's main concern is to show how the legal institution of ownership which was adequate and just in a society where property, work and use in the economic substrate coincided, came to fulfil an
entirely different function in the capitalist age. In fact, according to
Renner, ownership has ceased to be what it was. While remaining,
in legal form, an institution of private law implying the total power
of doing with the thing what one likes, it has in fact become an institu-
tion of public law, and its main functions are exercised by comple-
mentary legal institutions, developed from the law of obligations.

The law eventually takes account of this change of function by
giving property an increasingly public law character. Renner asks
socialists to abandon their passive attitude towards the law and to create
the legal norms which adequately express the trend of social development.

Indeed, today there is a very clear sense abroad that the individual
is not the end but the means; that the individual is only a wheel of a
huge mechanism, the body social; and that his only reason to exist
is the part which he performs in the labour of society. The individu-
alistic system of property is vanishing because it was developed
solely to protect the application of wealth to individual interests, and
therefore was useless in protecting its application to collective purposes.

The individualistic system seems to be in open opposition to the
temper of the modern conscience. In modern life, where a deep and
well-defined consciousness of social interdependence has become dom-
ninant, liberty has been transformed into a duty of the individual to
employ his physical, intellectual and moral forces to enrich this inter-
derpendence. In just the same way property has become for its
possession an objective duty or obligation to employ his wealth to support
and enlarge social interdependence. Property is no longer a subjective
right of the owner; it is the social function of the possessor of wealth.
Indeed, functionless property, as Tawney points out, is the greatest
enemy of the legitimate property itself. It is the parasite which kills
the organism that produced it.

The institution of private property must be emancipated from the
moribund legal abstractions of the eighteenth century. It must cease
to be a dead juridical entity and serve the needs of a progressive society
without surrendering its economic or ethical value. The fact that pro-
erty is primarily a social trust creates a constant need for correlating
the laws that govern the right of property and the human values it is
designed to serve.

In primitive times the laws of ownership are the main or sole
instrument of maintaining the integrity of the family group.

During the period under our consideration the attention of the
law is concentrated upon family and village ownership.

सहस्वस्र ग्रामीणां रिष्यति: सूर्येनास्य यत्मानेतु दक्षिणा।
सावण्डेवः प्र तिरंत्वायूर्यसिद्धवाता असनाम वाज्ञ॥
Rigveda, X. 62. 11.

dक्षिणावानप्रयमो हृत एति दक्षिणावान्यः,सणीयमेति।
tमेव मन्ये नूपै जनाना वः प्रयमो दक्षिणामाविवाय॥
Rigveda, X. 107. 5.
In spite of this the individual ownership of those things which are needed for the sustenance of physical life becomes increasingly recognized.

It is not in respect of every physical object that, at any given time, the law cares to exercise the control and to prescribe rules and conditions of appropriation.

These Vedic Aryans recognize ownership in all their movable necessaries of life. We are also told of contest for seed, offspring, waters, kine and corn-lands:

"... With strength of limb the hero slays the hero, when bright in arms they range them for the combat.
When two opposing hosts contend in battle for seed and offspring, waters, kine, or corn-lands.''

The history of property is indeed in the last analysis the history of human nature itself. This must be so if "property is freedom applied to things".

We have seen how our Vedic philosophers, particularly Prajapati Paramesthin and the author of the Brihadaranyakopanishad, conceived of evolution as from the simple through the complex to the unified harmony. They observed that in all manifestations of human activity progress is the divergence from the simple to the complex, from formless homogeneity to varied heterogeneity, accompanied by the greatest similarity and profound correlations of parts and by a constantly increasing perfection of attributes. Indeed the ancient philosophers of other countries also were of the same opinion. They too like our Prajapati Paramesthin, expressed this by saying that "from the one and from the whole, before the existence of any sub-divisions of the great unit, there came a division and separation of the parts which trend to develop into one distinct and concrete unit or whole developed to its fullness". "At first the human community was one in which the individual was only a part and instrument; then he developed concrete individuality, trying to free himself from society, and tends to reach a rational harmony between his particular determination and the social."
Property, we are told, goes through the same phases, being at first collective, it becomes individual and egoistic and finally tends to take its place in society and the State.\textsuperscript{65}

The collective property of the ancient days is not the effect of a sense of justice or an instinctive affirmation of the natural rights of man and the conception of equality.\textsuperscript{66} It is the consequence of two necessities—one a natural development, the other a product of the social state.

In those days when the greatest part of the earth's surface was neither cultivated nor cultivable by the then imperfect methods of farming, possession of land could not have occupied much of the activities of man. Common pasture was all that man during pastoral age cared for.

These Vedic Aryans had the term गभ्यति: for pasture land:

परा मे वसि धीलयो गावो न गभ्यतीर्थु। इच्छन्तीष्ठुशक्ति॥

Rigveda, I. 25. 16.

"Yearning for the wide-seeing One, my thoughts move onward unto him,
As kine unto the pastures move."

आ नो मित्रावरण चूतेमं चूृतिमुक्ति। मध्या राजांसि सुकृतु॥

Rigveda, III. 62. 16.

"May Mifra-Varuna, sapient Pair, bedew our pasturage with oil,
With meath the regions of the air."

ता वामेषे रघुनामुखी गभ्यतिमेषा। रात्र्य अस्त्र सुकृति दधृस्तोमंगनामह॥

Rigveda, V. 66. 3.

"Therefore we praise you that your cars may travel far in front of ours—
You who accept the eulogy of Rāatahavya with his hymns."

अविवामा हूरे अविवामुखवी गभ्यतिमवं कृपी न:।
याय देवं आ भरा वसूलि चोदय रोणो गुणते मध्यः॥

Rigveda, VII. 77. 4.

"Draw nigh with wealth and dawn away the foeman: prepare for us wide pasturage free from danger.
Drive away those who hate us, bring us riches: pour bounty, opulent Lady, on the singer."

अगभ्यपूर्ण कृत्याणाम् देवा श्रवी सती भूमिवर्णायुः।
बृद्धपति प्र चित्तित्सा गविष्टाविष्ठ तत्स जरित्रिहो इंद्र पंथ॥

Rigveda, VI. 47. 20.

"Gods, we have reached a country void of pasture: the land though spacious, was too small to hold us.
Brihaspati, provide in war for cattle; find a path, Indra, for this faithful singer."

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Yama, first found for us a place to dwell in: this pasture never can be taken from us. Men born on earth tread their own paths that lead them whither our ancient Fathers have departed."

"Let no fiend come among us. O thou rich in light, no spells those who deal in spells. To distant pastures drive faint hunger: far away, O Agni, chase the demons' friends."

"Stretch forth your arms and let our lives be lengthened: with fatness dew the pastures of our cattle. Ye Youthful, make us famed among the people: hear, Mitra-Varuna, these mine invocations."

"Come, taste our offering, Varuna and Mitra: bedew our pasture with sweet food and fatness. Pour down in plenty here upon the people the choicest of your fair celestial water."

"So for devout Sudeva dew with fatness his unfailing mead, And make it rich for sacrifice."

It was with the gradual development of agrarian communities that land was more and more valued. In order to make it useful for the purpose of cultivation great cost and labour became necessary: The value of the possession of land thus was the offspring of economic thought." Agricultural land is felt not to be a pure gift of God. These Aryans become more and more conscious of the fact that land only attains its value when man applies his own activity thereto in ploughing, fertilizing, cultivating and making it a productive agent.

The conception of ownership carries with it a legally supported claim to the exclusive use of the thing at least during the lifetime of the owner.
The Vedic Aryans also claim a capacity of transferring their right to another by sale, gift or otherwise. Gift is frequently praised.

One of the modes in which the right of ownership is recognized by these Aryans as accruing is possession. It must be possession of a thing not already belonging to any one else.

Man has an inherent right to extend his activity over external things for the attainment of his objects. Indeed this is the result of the spontaneous activity which looks to the procuring of nourishment, common alike to animals and men, and which seeks the things necessary and useful to the existence of the individual and the social body. Of course, such activity with man assumes a character different from that with other animals. In other animals acquisitive functions are confined within certain bounds and "are always limited to the sphere of instinct and the mechanical associations of desire and satisfaction, and lead to the temporary possession of the object: in man, mind, which desires everything, and the principle of its autonomy control such functions, and they make for ownership and property." "An animal can join itself to an object by a physical bond and can grieve for it if it is deprived of it, but is not able to create the moral bond, which distinguishes property from possession."

These early Vedic Aryans founded such inherent right on divine gift. Gods, according to them, were the owners of all wealth and it was they who gave these to their worshippers:

पुरुष्याने पुरुषा त्याया कसौनि राजन्यसुता ते अश्यां।
पुरुषगी हि लेये पुरुषार संत्याने वसु विपक्ते राजनि त्ये॥

Rigveda, VI. 1. 13.

"May I obtain much wealth in many places by love of thee and through thy grace. King Agni,
For in thee, Bounteous One, in thee the Sovran, Agni, are many boons for him who serves thee."

कि ते कृतिति कौक्षेषु गायो नाशिरं दुहे न तपति धर्म।
आ नो भर प्रमंडल्य वेदो नैचाशालं मर्गव्यर्जय न।॥

Rigveda, III. 83. 14.

"Among the Kikatas what do thy cattle? They pour no milky draught.
Bring thou to us the Wealth of Pramaganda: give up to us.
O Maghavan, the low-born."

Though this inherent right must be equal to all, the first inequality in this respect is justified by the relation in which the claimant stands to the gods. These Vedic Aryans deny this right to the 'Dasys' or the aborigines. All the wealth of the land belongs to the gods and as the Dasys are godless, they cannot claim any property. The right to property is for the Aryans only.
Abstract equality of this inherent right to property must have been entrenched upon by the intervention of a fact as soon as such a fact was recognized as necessary to give birth to the juristic power over things. This intervening fact is acquisition. As the result of the intervention of this factum of acquisition acquired property makes its appearance introducing inequality in property rights. Recognition of this intervening fact finds clear expression during the Sutra period:

"स्वाभूम अधक्य कल्याणविभागपरिश्राधियनिष्ठे"।

It is needless to point out that the recognized methods of acquisition are of two categories: some are original, and some, derivative. The original methods are 'appropriation', 'accession', 'confusion' and 'prescription'. अधक्य, कल्याण are derivative methods.

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One of the modes in which the right of ownership is recognized by these Aryans as accruing is possession. It must be possession of a thing not already belonging to any one else.

We have already seen that generally speaking only the father of a family may become an owner. The acquisition by others must be considered as his. It must be remembered how in those early days the means of acquisition must have been very difficult and complex. The relations established were hardly between individuals. These were mostly between organized social bodies, between the diverse communities existing in the midst of the tribe. An individual in that age did not acquire rights and duties by himself but as the head of a society or family.

The appropriation of a thing belonging to another will be theft punishable (with death perhaps) by the king.**

It is the duty of a rich man to help the poor.** Economic principle of much importance is involved in the doctrine.

Members of the family could not as yet acquire anything as their own individual property. (Rigveda, I. 126. 3.)

But a father might give any of his sons property during his lifetime which would probably be that son's separate property at the time of the partition.

Slaves were regarded as property. Impartible nature of a woman slave is mentioned in Gautama Sutra.

It is difficult to determine exactly the law relating to land tenure during this age. There is ample indication in the Rigveda that these Vedic Aryans already took to agriculture. We are repeatedly told of कृषि (Krishi) अक्रिषिबल (Akrishibal), ploughing, and plough-lands in the Rigveda:
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उतो स महामिद्रवः  षड्युक्ताः अनुसेषिणवः। गोभिर्यंवं न च हर्षंत्।
    Rigveda, I. 23. 15.

'' And may he duly bring to me the six, bound closely, through these
drops,
As one who ploughs with steers brings corn.''
तस्मां बेशां गिरो य एकस्वर्यंस्यामां। अनु स्वयं यथुपर्य्यते भवं न च हर्षंपद्।
    Rigveda, I, 176. 2.

'' Make our songs penetrate to him who is the Only One of men;
For whom the sacred food is spread, as the steer ploughs the barley in.''
अक्षर्या दीवभ: कृषिमित्युक्तस्व विबृं रसस्व बहु वन्यमानः।
तत्र गावः कितव तत्र जावः तन्मेव वि च चप्ते सवितायममः।
    Rigveda, X, 84. 13.

'' Play not with dice; no, cultivate thy corn-land. Enjoy the gain, and
deem that wealth sufficient.
There are thy cattle, there thy wife, O gambler. So this good Savitar
himself hath told me.''
कृषिवित्तुमाल आचितं कृषोति यज्ञवानमप्य वृंक्तेत् चारिचैः।
वदन्तं बद्रावतेत् वनीयान् पृणामपिश्वसुपृणंतंविभं प्र्यात्।
    Rigveda, X. 117. 7.

'' The ploughshare ploughing makes the food that feeds us, and with
its feet cuts through the path it follows.
Better the speaking than the silent Brahman: the liberal friend out-
values him who gives not.''
आंजनगृंथिर सुरभि बहुज्ञानकुञ्जीवल्ल। प्राः मृगाणां मातरसम्प्रणालिनिसतसिं।
    Rigveda, X. 146. 6.

'' Now have I praised the Forest Queen, sweet-scented, redolent of
balm,
The Mother of all sylvan things, who tills not but hath stores of food.''
यून ऊष नविभोट्य बृज्या: पावक्स अभ्य सोमरे विरा। गाय गा इव चहः पदर्।
दशस्यातं महेस्व पुष्टेऽविभ यबं वृक्षेण कर्विशः।
ता वामचु सुमुखसिं: शुभस्पति अत्विना प्र सुवीमति।
    Rigveda, VIII. 20, 19 and 22. 6.

'' O Sobharsi, with newest song sing out unto the youthful purifying
Bulls,
Even as a plougher to his steers.''
'O ye with your plough, when favouring Manu with your help, ploughed
the first harvest in the sky.
As such will we exalt you, Lords of splendour, now, O Asvins, with
our prayer and praise.''
शुनं वाहा: शुनं नरः शुनं क्रष्त्रु लाभ्। शुनं वर्त्ता वध्यंतो शुनम्भ्रामुस्विविय।
    Rigveda, IV. 87, 4.
“Happily work our steers and men, may the plough furrow happily.
Happily be the traces bound: happily may he ply the good.”

Rigveda, IV, 57. 8.

“Happily let the shares turn up the ploughland, happily go the ploughers with the oxen.
With meath and milk Parjanya make us happy. Grant us prosperity, Suna and Sira.”

Rigveda, I, 117. 21.

“Ploughing and sowing barley, O ye Asvins, milking out food for men.
Blasting away the Dasyu with your trumpet ye gave far-spraying light unto the Arya.”

Satapatha Brahmana. VII. 2. 2. 4.

“The Daughter of the Sun, your car ascended, first reaching as it were the goal with courser.
All Deities within their hearts assented, and ye, Nasatyas are close linked with glory.”

Rigveda, I, 116. 17.

“Forth from the mortar is the juice sent, like a car-horse, to the sieve:
The Steed steps forward to the goal.”

Rigveda, IX. 36. 1.

“Yea, to the Shining milk-anointed beaker, as to his goal, hath stepped the conquering Courser,
Pious-souled men have sent their gifts of cattle unto Kakhivan of the hundred winters.”

Rigveda, X, 33. 6.

“The sire of Upamasravas, even him whose words were passing sweet,
As a fair field to its lord.”
As has been pointed out by Professors Macdonell and Keith, cultivation of the soil seems to have been known to the Indians before they separated from the Iranians.\(^6\) It is, however, not without significance that the expressions for ploughing occur mainly in the first and tenth Mandal of the Rigveda and only rarely in the so-called family books. The word Kṛṣi is found in the 8th Mandal twice.\(^6\) In the family books we find it only in the fourth Mandal.\(^4\) The word vikṛṣ also occurs in the same sukt.\(^7\) In the Atharvaveda Prithī Vainya is credited with the origination of ploughing,\(^7\) and even in the Rigveda the Asvins are spoken of as concerned with the sowing of grain by means of plough.\(^7\) In the later Samhitās and the Brahmanas ploughing is repeatedly referred to.\(^7\) From the texts cited above it can hardly be denied that some importance was already attached to agriculture even during this age. Later on, however, there is clear proof of the importance attached to it.\(^7\) In the Panchavinsa Brahmana,\(^7\) the Vratyas are described as not cultivating the soil.

The plough-land was called Urvara or Ksetra from the Rigveda \(^7\) onward and must have gained much importance in the then economic life of the Vedic Indians so as to occupy the mind of the Vedic Poets.

We are told:

\[ \text{स हि शर्यों न माल्ये तुविव्यायनस्त्तीयो भूरास्त्विनययितिनाय स्तिष्ठोः।} \]
\[ \text{आदिवाचायादितियंस्य केतुरहुः।} \]
\[ \text{अर्ज्ञ्म्यस्य हर्यतो हुर्यवतो तिष्वके ज्युतं पंचं नरः घुषे न पंछं।} \]

\[ \text{Rigveda, I. 127. 6.} \]

"He, roaring very loudly like the Maruts' host, in fertile cultivated fields adorable, in desert spots adorable. Accepts and eats our offered gifts, ensign of sacrifice by desert; So let all, joying, love his path when he is glad, as men pursue a path for bliss."

\[ \text{तोरे हिते तनय उर्वरायु सूरो दृषीके वृषणयण्यां पीत्ये।} \]
\[ \text{इंद्रा नो अद्भुत भवणां स्वतांवृंदिस्तं परितज्ज्वाया।} \]

\[ \text{Rigveda, IV. 41. 6.} \]

"For fertile fields, for worthy sons and grandsons, for the Sun's beauty and for steer-like vigour, May Indra—Varuna with gracious favours work marvels for us in the stress of battle."

\[ \text{पुरुष यत इंद्र सत्यन्या गवे चक्रयवर्तरासु गुप्तन।} \]
\[ \text{तत्स्य शूरयां विद्रोहसि स्वे वृषा समतुम दासस्य नाम चित्र।} \]

\[ \text{Rigveda, V. 33. 4.} \]

"Thou, because many lands are thine, O Indra, wast active warring in the fields for cattle. For Surya in his own abode thou, Hero, formedst in fights even a Dasa's nature."
``With strength of limb the hero slays the hero, when bright in arms they range them for the combat.

When two opposing hosts contend in battle for seed and offspring, waters, kine, or corn-lands.''

\textit{Rigveda, VI. 25. 4.}

``Go to the reservoir, O ye Adhyvaryus: worship the Waters' Child with your oblations.

A consecrated wave he now will give you, so press for him the Soma rich in sweetness.''

\textit{Rigveda, X. 30. 3.}

``And thou, O Agni, thou of Godlike nature, sparest the stones, while eating up the brushwood.

Then are thy tracks like deserts in the corn-lands. Let us not stir to wrath thy mighty arrow.''

\textit{Rigveda, X. 142. 3.}

``He, roaring very loudly like the Maruts' host, in fertile cultivated fields adorable, in desert spots adorable.

Accepts and eats our offered gifts, ensign of sacrifice by desert;

So let all, joying, love his path when he is glad, as men pursue a path for bliss.''

\textit{Rigveda, I. 197. 6.}

``Waters which come from heaven, or those that wander dug from the earth, or flowing free by nature,

Bright, purifying, speeding to the Ocean, here let those Waters, Goddesses, protect me.''

\textit{Rigveda, VII. 49. 2.}
The fields were carefully measured according to the Rigveda:

शब्दाम् वि ममुस्तेजनेन् एकं पानमृतमविजेहमान
उपस्तुता उपमं नाशमाना अमत्वेणु श्रव्य इत्यादानाः ॥

*Rigveda*, I. 110. 5.

"The Ribhus with a rod measured, as 'twere a field, the single sacrificial chalice wide of mouth,
Lauded of all who saw, praying for what is best, desiring glorious fame
among Immortal Gods."

This fact seems at least to point to individual occupation of land
for the plough; and there is ample indication that such occupation was
on the level of personal possessions. 'This is supported by the reference
of Apala to her father’s field, which is put on the same level as his
head of hair as a personal possession. Apala sang:

इत्यादि श्रोत्वा विष्ठ्या तानीः वि रोहय ।
वियस्तत्तत्पत्योर्वावरामिव । उपोदेरे ॥
असी ॥ या ॥ न उवराविन्यो तत् ॥
अस्य तत्त्वा यत्च्छरः सर्वं ता रोपणा कृषिः ॥

*Rigveda*, VIII, 91. 5-6.

"O Indra, cause to sprout again three places, these which I declare,—
My father’s head, his cultured field, and this the part below my waist."

"Make all of these grow crops of hair, you cultivated field of ours,
My body, my father’s head."

Consistent with this are the epithets *urvara-sa*, *urvara-jit*,
*Ksetra-sa*, meaning winning fields:

उत्सो हि वां दात्रा संवां पूर्व या पूर्वमयस्तस्य सन्तोषः ॥
क्षेत्राः दस्यस्तवरालां घनं दस्यम् तो अभिमुखीमुष्म ॥

*Rigveda*, IV. 88. 1.

"From you two came the gifts in days aforetime which Trasadasyu
granted to the Purus.
Ye gave the winner of our fields and plough-lands, and the strong
smiter who subdued Dasyus."

षोभने य इदानि भूमायस्तत्स्य रथः शच्या पूर्वसु जनान् ।
तं न: सहलरमुवरालां ददि सूनो सहसो वृत्तुर ॥

*Rigveda*, VI, 20. 1.

"Give us wealth, Indra, that with might, as heaven o’ertops the earth,
overcomes our foes in battle.
Wealth that brings thousands and that wins the corn-lands, wealth,
Son of Strength! that vanquishes the foeman."

आधि: शहम वृहस्तं तुः ब्रह्मायुक्ते खेत्रोपि स्तवविन्त्यं गां ।
ज्योक्ष विश्र तस्यवांसो अरण्डस्यूक्तवाष्ठरां बदनामः ॥

*Rigveda*, I. 38. 154
'Svitra’s mild steed, O Maghavan, thou helpest in combat for the land, mid Tugra’s houses.
Long stood they there before the task was ended: thou wast the master of the foemen’s treasure.”

Rigveda, II, 11. 1.

"To him the Lord of all, the Lord of wealth, of light; him who is Lord for ever, Lord of men and tilth,
Him who is Lord of horses, Lord of kine, floods, to Indra, to the Holy,
bring sweet Soma juice."

The word Urvraka-pati, lord of fields though used of a god is also significant:

आ याहीम इदभोजवपते गोपल उर्वरापले।
सोमं सोमपते निभ।

Rigveda, VIII, 31. 3.

"Come hither, for the drops are here, O Lord of corn-lands, Lord of horses, Lord of kine:
Drink thou the Soma, Soma’s Lord!"

Moreover, fields are spoken of in the same connection as children:

'Fields—on the same level with children.'

Rigveda, IV. 41. 6.

"For fertile fields, for worthy sons and grandsons, for the Sun’s beauty and for steer-like vigour,
May Indra-Varuna with gracious favours work marvels for us in the stress of battle."

Pischel suggests that the plough-land was bounded by grass-land denoted by Khila or Khilya, and these latter were common lands. There is no trace in the Vedic literature of communal property in the sense of ownership by a community. A sort of individual ownership in the homestead seems to have been recognized even in these early days. These dwelling-houses are named as Kshitirdhruba:

र त्वा तरी दम आ निष्यमिद्यमने सच्चि सिलसिल्य स्रुतवाचु।
अविष खुन नि दप्तूर्मयनस्मान भवा विश्वायुर्तणो रयीणां॥

Rigveda, I. 73. 4.

"Thee, such, in settlements secure. O Agni, our men serve ever kindled in each dwelling,
On him have they laid splendour in abundance: dear to all men, bearer he be of riches."

Rigveda, VII. 88. 7.
While we abide in these fixed habitations, and from the lap of Aditi win favour,
May Varuna unite the bond that binds us. Preserve us evermore, ye Gods, with blessings.''

puṣṭāṁ ṛgva śhitim āryā śiṣṭā śirinām mūlam śraddhām n aṁśūm |
artho nāmaṁntusagṛ一定是 śīśuṁ śraddhāṁ k ēṁ vartaṁ ||

Rigveda, I. 65 6-6.

"Like grateful food, like some wide dwelling-place, like a fruit-bearing hill, a wholesome stream;
Like a steed urged to run in swift career, rushing like Sindhu, who may check his course?"

n nāṁ śrībhūyaṁ vītamayasyaṁca śaṁśataṁ |
yātī nāṁ pruṣāvaḥpravātī śhitiṁ phalam apāvya ||

Rigveda, III. 13. 4.

"So may the gracious Agni grant most goodly shelter for our use;
Whence in the heavens or in the floods he shall pour wealth upon our lands."

n saṁ rāja vāsthitā vṛttaṁśrīdśtriṁś caṁ pīvitaṁ gāṁśhayaṁ |
jaṃ samvājitaṁ hīṁ kṛṣṇaṁ śhitiṁ śhitiṁ śrungā naṁ pruṣāva ēva ||

Rigveda, V. 37. 4

"No troubles vex that King in whose home Indra drinks the sharp Soma juice with milk commingled.
With heroes he drives near, he slays the foe: Blest. Cherishing that name, he guards his people."

The master and the mistress of the house are given the epithets 'Grihapati' and 'Grihapatni'.

ābhī naṁ nāṁ vṛṣṭī vīrīṁ pravṛṣṭīkṣitaṁ | vāma gṛñṛṣitaṁ naṁ ||

Rigveda, VI. 53. 2

"Bring us the wealth that men require, a manly master of a house, Free-handed with the liberal heed."

Apr oṣadhisāṁ dīśka śrāviṁ | ardhībhavamīnīntusamaraṇoḥprasāyaṁ naṁ śrīḥśrīśrāvaḥ |
śrāvaḥ gṛñṛṣitaṁ prasāyaṁ naṁś centreḥ śrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrāvaḥ śhrात् ः satapatha brahmāṇa, IV. 6. 8. 5.

�हः पतंज्ज्वद हि उपदाहाति। यवः वेनाक्सरः यज उ एव तपंज्ज्वदन्तः इम्य जवार ज्ञात्वयो गृहातित्यभासायते नाक्सरो होतः: पतंज्ज्वद्वि अविनिकाः हि तपः द्वीरो यजु क्ष अविनिकाः चूः: स तपः तपः चूः: ||

Satapatha Brahmana, VIII. 6. 1. 11.

पूजा त्वतीय नष्टु हलत्योजयत्स्वयमेव तव भवतां रघुनो | गृहान्त मच्छ गृहस्ती लघासो यहहनी त्वं विध्ययमवदास ||

Rigveda, X. 85. 28.
"Let Puṣhan take thy hand and hence conduct thee; may the two
Asvins on their car transport thee.
Go to the house to be the household's mistress and speak as lady to thy
gathered people.''

We also have 'Grihapati' as epithet for 'Agni'.

अनितर्मिनः समिध्ये कबिरूपार्थिर्मिनः ||
हेमवाल जुध्वास्यः ||

Rigveda, I, 12. 6.

"By Agni Agni is inflamed. Lord of the House, wise, young, who
bears
The gift: the ladle is his mouth."

मंडो होता गृहस्थार्थ दूतो विशालिति ||
र्ये विद्या संगतानि प्रता भुश यानि देवा अहिङ्गव ||

Rigveda, I, 36. 5.

"Thou, Agni, art a cheering Priest. Lord of the House, men's
messenger:
All constant high decrees established by the Gods, gathered together.
meet in thee.''

उस्क्ष्पावको वसुमानुष्येषु वरेण्यो होतावानय विल्ख ||
दमूण्डु गृहवतिर्देश आं अभिमुखविविती रघूणां ||

Rigveda, I, 60. 4.

"Good to mankind, the yearning Purifier hath among men being placed
as Priest choice-worthy.
May Agni be our Friend, Lord of the Household, protector of the riches
in the dwelling.''

विवाहलो गृहपतिविशालिति त्वममि मात्रावान ||
शतं प्रौषितेनि पाणिहस सेवदारं शतं हिमा: स्तोत्रमुखं ये च ददि ||

Rigveda, VI, 48. 8.

"Thou art the Lord of house and home of all the tribes, O Agni, of
all tribes of men.
Guard with a hundred forts thy kindler from distress, through hundred
winters, Youngest God! and those who make thy singers rich."

The precise nature of the individual property, however, cannot be
determined. The legal relationship of the head of a family and its
members is nowhere clearly explained. As has been pointed out, it is
difficult to ascertain precisely how far the son was subject to parental
control and how long such control continued.

There is, however, no trace of the family as a land-owning cor-
poration. Very often a family may have lived together with undivided
shares in the land. The rules about inheritance of landed property do
not occur before the sutras. In the Satapatha Brahmana the giving of
land as a fee to priests is mentioned, but with reproof. Land was no
doubt even then a very special kind of property, not lightly to be given
away or parted with. The disapproval perhaps was due to the fact
that the land was inalienable without the consent of the clansmen.
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We have noticed the existence of village—Grama—as a division of the Vedic people. The Vedic literature, however, tells us very little about the legal position of this village. There is nothing to show that this village as such held any land. On the contrary, individual tenure of land seems to have been recognised as has been indicated above.

The position of the king with regard to the land is somewhat obscure. Whatever might have been his position later, the evidence available for this period is inadequate to prove that king was the landowner. King is sometimes denoted as Ksapaavan, protector of the earth in the Rigveda.\textsuperscript{83} The word signifies the function of the King as the protector of the tribal territory.

We have referred to common land of the Rigvedic age denoted by the words Khila and Khilya. The Rigvedic word Gavyuti also seems to refer to such common pasture grounds. Subsequently, it acquired the sense of measure of distance.

Whatever difficulties may be felt in determining the ownership of land, it seems clear that individual ownership in homestead was fully recognised. Ksiti in the Rigveda,\textsuperscript{84} means a dwelling and Ksitirdruva, the secure dwelling is very often mentioned \textsuperscript{85} in a context that shows it to be equivalent to the vṛjana or Grama regarded as a stronghold. The other words to denote homestead are Grha, Dhaman, Dham, Bastyā, and Harmya. The master of the house is known as Grhapati.\textsuperscript{86}

LAW OF CONTRACT:

The purpose of the Law of Contract is to impart stability and security to certain temporary relationships with one another which men spontaneously enter into for themselves.

The essential quality of the relationship implied in contract is freedom in respect of its original creation, in respect of the description of its nature and of its terms and in respect of the mode and period of its conclusion.

The fact of contract is due to the natural conditions of the social and economic life and is essentially necessary in a moderately developed social existence in which the accumulation of wealth and the consequent co-operation, division of labour and mutual reliance are necessary concomitants.

The result of every contract is to create a group of persons wholly apart from all similarly formed groups and having their mutual relations determined by a voluntarily evoked rule.

In the Rigveda we meet with the developed form of contract in Mandal I, Sukta 126, Rik. 1.

There was a contract between Bhavayavya and Kaksivan that Kaksivan would prepare stoma for Bhavayavya and for this the latter
would pay the former hundred ‘niskas’. Kaksivan performed his part of the contract whereupon Bhavyavaya paid him the promised sum.

In Mandāla IV. Sukta 24, Rik. 9, we are told of the irrevocable nature of a sale. After the price has been paid and things delivered the sale is complete and neither party can rescind it.

Contracts seemed to have been made at the time of sale and purchase, and the terms agreed upon could not be violated or altered afterwards. There is a particular reference to this in the Rigveda, IV. 24. 9:

भूसा वत्तमतरस्तक-नीयोविविकतो अकालिनं पुनर्भमत
स भूसा कनीयो नारिरेशीद्यना दक्षा वि दुहिति प्र शासम

‘He bid a small price for a thing of value; I was content, returning, still unpurchased.

He heightened not his insufficient offer. Simple and clever, both milk out the udder.’

The idea seems to be that as soon as the bargain is made, there is no going back upon the original terms of the sale.

The next verse seems to indicate that letting and hiring were also looked upon as sale. The purchaser takes the property only for a specific purpose. When the purpose is fulfilled he is to return the thing:

क इमं दसर्भिमेन्द्रं कीणाति वेनुसि
यदा वृत्तिषि जंघनददानं ने पुनर्ददत

Rigveda, IV. 24. 10

‘Who for ten milch kine purchased from me this Indra, who is mine? When he hath slain the Vritras let the buyer give him back to me.’”

The meaning of these two verses may thus be explained according to Sayana: ‘one who takes a small price for valuable goods, comes afterwards to the buyer and says, this has not been sold by me, and so saying, he requires the balance of the price; but he, the vendor, does not recover the full price, nor does he get back the article; according to the bargain between them it may not be otherwise; the sale has taken place, and if the bargain has been kept, then it was only to be considered that such is the object of the price and that is the conclusion; a bargain has been made and the stipulated price given. Therefore, in the first place, an agreement is to be made by me; so reflecting, Vamadeva having by much praise got Indra into his possession or subjugation, proposes to make a bargain when about to dispose of him.’”

The word used for price is sulka.

More than once in the Rigveda we are told of debts. Debts are repayable and can be paid in instalments. (Rigveda, VIII. 47. 17.)

The Panis have been condemned in several verses for their greed, hard-heartedness, irreverence, heterodoxy and niggardliness. They were extremely rich:
HINDU LAW DURING THE PERIOD OF THE RIGVEDA


Not with the wealthy panis who pours no Soma doth Indra,
Souma-drinker bind alliance.
He draws away his wealth and lays him naked, own Friend to him
who offers, for oblation.''

But as they never performed the Soma sacrifice, they incurred the
displeasure of Indra. These Panis or merchants used to lend money
to needy people at a very high rate of interest.

As has been pointed out in the Vedic Index the word वेणनाटू has
a foreign appearance. It might just as well be aboriginal and Baby-
lonian. As the money-lenders were oppressive, indebtedness was cursed
and prayers were offered to God to make the people free from debt. It
has been pointed out in the Vedic Index that '‘Rina, debt, is repeatedly
mentioned in the Rigveda onwards having apparently been a normal
condition among the Vedic Indians. Reference is often made to debts
contracted at dicing.'" To pay off a debt was called rinam samni.'"
Allusion is also made to debt contracted without any intention to pay.'"
The result of non-payment of debt seems to have been serious,'" the
debtor might fall into slavery. The debtors were very often bound by
their creditors to posts ' presumably as a means of putting pressure on
them or their friends to pay up the debt. It is not possible to make
out if any legal rate of interest was specified.
The Aryan horror of debt seems to indicate the origin of debt in
crimes. It seems that originally वैदेय was the debt and hence, if
the debtor could not buy off the spear he must bear it. Gradually,
however, contractual debts developed; but the hard fate of the debtor
continued. Maybe, that even this necessity for borrowing money
originated in some antecedent crime. Maybe, at first the debtor to
pay off the person whom he has offended (e.g., whose son he has killed)
had to borrow money from another. When he failed to pay this debt
his new creditor was in the same position to exact payment as the old
one. This seems to explain why debtors were looked upon like thieves
and other male factors.

INHERITANCE AND LEGACY

As we all know, inheritance in Hindu Law is mixed up with
religious theories and observances.
In these early days these Vedic Aryans believed that when they
performed yajnas, the manes of their ancestors came to seat themselves
beside them and took nourishment which was offered them.
The domestic religion, the family and the right of property are intimately related to each other.

Between the gods and the soil men of the early ages saw a mysterious relation; and the family, which through duty to ancestors and religion remains grouped around its altar, is as much fixed to the soil as the altar itself.

The right of property was established for the accomplishment of a hereditary worship. The right does not, therefore, fail after the short life of an individual and continues with the continuance of the domestic religion and descends down to one who is to continue the religion.

If any person left a son behind, he had to perform the yajnas wherein his deceased ancestor’s spirits would be offered repasts.\footnote{73}

There are numerous passages in the Rigveda which indicate the right of inheritance of a son to his father’s estate.\footnote{74}

A son was liable to pay his father’s debts and this was so whether any property of the deceased came to his hand or not.\footnote{75}

Ordinarily, a son could not acquire property for himself during his father’s lifetime.\footnote{76}

Acquisition by one member of a family would be for the whole family.\footnote{77}

But sons in certain cases could have a property of their own even during their father’s lifetime.\footnote{78}

At any rate a father could make over his wealth to his sons during his lifetime.\footnote{79}

Partition of the property might take place during the father’s lifetime if he so desired, as was the case with the property of Nabhandistha’s father (ibid., X. 61. 18.); in such a case the sons would share with the father (ibid., III. 45. 4).

The eldest son had no preferential claim at the time of partition, because with these Vedic Aryans all the sons were equally necessary and desirable.\footnote{80} The theory that the eldest son is the only one whom the father begets for religion is of later origin.

If at the time of partition of a property by the father a brother is absent he may not get any share (ibid., X. 61. 7).

After partition a son may acquire property for himself.\footnote{81}

**Daughter’s Right of Inheritance**

A daughter living in her father’s house throughout her life would get a share of his property.\footnote{82}

Married daughters living with their husbands could inherit from their father only when they had no brothers.\footnote{83}

**Grandsons**

Grandsons also inherit the property of their grandfather.\footnote{84}

These Vedic Aryans were equally anxious for their grandsons.
HINDU LAW DURING THE PERIOD OF THE RIGVEDA

A daughter perhaps would not inherit in case there was a son’s son.\textsuperscript{85}

To a man who had no son (and possibly no son’s son) a daughter’s son would be like a Poutra and would inherit his property.\textsuperscript{86}

WIDOW

A widow could inherit from her husband.\textsuperscript{87}

FICTITIOUS SONS

We have already seen that in some cases these Aryans might have looked to the continuance of the family by adopting persons as sons.

Adopted sons did not, it appears, inherit from their adoptive father even later.\textsuperscript{88}

They could perhaps succeed to the property of their natural family.

COLLATERAL RELATIONS

Any member belonging to a family might offer repasts to the names of that family.

If a man died without leaving any child his collaterals would perhaps succeed him.

They are for this reason called ब्राह्मण.

TESTAMENTARY SUCCESSION

It has always been said that there is no indication of anything like testamentary succession in early Hindu Law.

In Rigveda perhaps we meet with some such testamentary disposition of property in Nabhanedista’s affairs (\textit{ibid.}, X. 61 & 62).

The story is explained in the Aitareya-Brahmana thus:

While going to heaven the Angiras told Nabhanedista that he would take all their property. But when in accordance with this gift (to take effect after the Angiras had gone to heaven) Nabhanedista proceeded to possess the property, he was opposed by some one who claimed the whole (by right of inheritance perhaps). This latter’s claim prevailed; but he did give it over to Nabhanedista.

From the above it would appear that testamentary disposition of property was not recognised by these early Aryans. The property would devolve on the heir; he would perhaps be morally bound to satisfy the legacy of his predecessors.

A man on his death-bed might perhaps dispose of his property by gift to take effect at once.\textsuperscript{89}

Death severs a man’s connections with his wealth.\textsuperscript{91}
The prevention of mutual hurts is naturally a paramount object in every system of law. People early become conscious of this right to life and liberty and these rights do not come into being with the State but arise out of social relations that may exist where a State is not.

In the Rigveda we find many disparaging terms used for "anger" because it is through anger that one hurts another. Thus anger is named "Jurnih" or that which renders a man blameable in the eyes of all. "Gacchhatyaena lokagarham hinasti paran va."

These rights, at first, are only very dimly and inadequately appreciated. They are discovered rather by the conscious shock attending the first early violation of them than by any antecedent reflection upon their intrinsic importance.

They are looked upon as belonging to individual persons and not as having reference to the whole State.

Later on, in the course of the early struggles of a community, a blow is inflicted on the community by some member which causes widespread consternation and horror. On one such occurrence the national consciousness starts into existence; people feel themselves injured and menaced as a corporate whole and consequently determine to judge the offender themselves.

The convenient doctrine of modern writers, that the administration of justice, as we understand it, was always the special function of the King or State, is quite unwarranted by the facts of history.

The earliest notion of justice, as distinct from mere indiscriminate revenge, is blood feud.

The Vedic Aryans have in all probability passed through this stage of blood feud and reached a higher one where money payment might compensate for the injury inflicted. This is amply indicated by the use of the word वैरेष्य in the Rigveda.

Direct evidence on the point is not available. There are not many hymns in the Rigveda which allude to quarrels between two individual members of the same society. In Mandal VI, Sukta 25, Rik 4 & 6, we meet with such quarrels which seem to end in money composition.

We have in the Veda words that may help us in the matter, viz., Nrinnam, Kstram, Radhah, Brahma and Vritram, all meaning wealth.

'Nrinnam' means that wherewith the enemies are made friends 'Nrin Satrubhutan Pratinamati'.

'Kastram' is synonymous with 'Dhanam' because with its help people can be relieved of their unlawful works.

With 'Radhah' people can perform lawful things, and 'Brahma' is that which increases our lawful acts: वर्धिते भृनेन ब्रह्मादयः.
HINDU LAW DURING THE PERIOD OF THE RIGVEDA

Vritram, Acchhadyate rajatah, is that which protects one from king's punishment. This indicates king's interference in fixing the वैरेखय and imposing times.

This money composition must at first have been voluntary in its payment and acceptance alike.

There were offences which could not be atoned for by money payment.

The protection must have been extended only to the members of the State. Outsiders must always be avenged upon in those early days.

It is difficult to say whether criminality required criminal intention in this age.¹⁰⁴ Even during this age law gradually developed in this respect as is indicated by Vasishtha's theory.¹⁰⁵

Thieves and robbers seem to have been very common in Rigvedic times. A thief was called a Taskara or Stena, who generally took advantage of the darkness of night to commit his crimes.¹⁰⁶ He also stole cattle ⁹⁷ and committed burglary.¹⁰⁸ There were also gangs who haunted the wood and robbed unfortunate travellers who happened to go through them, by tying them with ropes.¹⁰⁹ There was another class of thieves called Tayus, who though not as daring as the Taskaras, yet stole cows, under cover of darkness in night and also clothes.¹¹⁰

The punishment of these offenders when caught appears primarily to have been left to the action of the robbed. The practice of binding them in stocks seems clearly referred.¹¹¹

\[
\text{वात्रिभवा भव्यमाधुस्तदय केवते हृद आ वि चष्टे।}
\text{श्रूःशरो यमहुःगुरूत: सो अर्मानुजा वर्णो स्मोकृतु।}
\text{श्रूःशरो ह्यामुःगुरूतिष्ठच्छवादित्यं हृश्वेषु भद:।}
\text{अर्थ्यं राजा वर्णं समुख्याहिंद्रो अदल्लो वि मुमोक्तु पावान्।}
\]

\text{Rigveda, I. 24. 12-13.}

Sometimes they used to be hauled up before the King where, it seems, their backs were scorched with a view to marking them as such thieves.¹¹²

\[
\text{गुल्ला कुडुहितिदिबो मा चिरं तनुषा अप:।}
\text{नेत्रवा स्तेनं वथा रिपुं तमाति सूरो अविष्णा मुजाते अव्य सून्ते।}
\]

\text{Rigveda, V. 79. 9.}

Procedure:—The history of procedure is indeed very obscure and we have practically no information about it in the Rigveda.
LECTURE XII

HINDU LAW DURING THE PERIOD OF REDACTION OF THE VEDAS

It has already been indicated that portions of the Rigveda itself as well as the other Vedas belong to this period. It is difficult to determine the exact changes, if any, in the various branches of law. There is hardly any evidence of much change in the law relating to persons. It seems, however, that some legal differences involved in sex is already developing. Further, religion seems to involve some legal differences during this age. We are told of Vratyas in a disparaging tone. These vratyas are included in the list of victims at the Purusamedha in the Yajurveda, where however no further explanation of the same is given. Fuller information is furnished by the Atharvaveda which describes at length a certain rite intended for the use of the Vratyas. These were treated as outcasts, the lma. As has been pointed out by Professors Macdonell and Keith, they were Aryans outside the sphere of brahmin culture already developing. They are said not to practice agriculture or commerce nor to observe the rites of Brahmacharya. They were, however, allowed to become members of the brahmanical community by performance of the ritual prescribed.

The exact legal position of women can hardly be determined. We have the words nari, jani, jaya, dampati, dara, patni, and stri to denote women in the Vedic literature. The word nari occurs in the Rigveda and later to denote woman as a wife. The word jani appears to denote wife only. The more general sense of woman is doubtful. A review of the text, wherein these several words occur would not lead us to any certain conclusion as to the exact legal position of the woman. As yet, these women did not become mere chattels in the eye of law. Traces, however, of a lowering in the position of women, probably due to the growing sense of the importance of ceremonial priority are left in the literature of this period.

Even during this period marriage appears essentially as a union of two persons of full development. This is shown by the numerous references to unmarried girls who grow old in the house of their fathers. Child wives first occur regularly in the Sutra period.

It is difficult to say with certainty within what limits marriage was allowed. The dialogue of yama and yami in the tenth Mandal of the Rigveda clearly points to a prohibition of marriage of brother and sister. During the sutra period we find prohibitions against marriage within the gotra. In the Satapatha Brahmana, however, marriage is allowed in the third or fourth generation. The former being allowed,
according to Harivamini, by the Kanvas, and the second by the Saurastras, while the Dakshinatyas allowed marriage with the daughter of the mother's brother or the son of the father's sister. This at least shows that this rule of prohibition of marriage within the same gotra was not always the same, and it seems this prohibition did not as yet exist.

We have seen that caste was developing during this age. It did not, however, fully develop as yet and sameness of caste was not an essential to marriage. It must be remembered that even during the dharma-sutric period this was not essential.

During this age, however, it has already been the rule that the younger brothers and sisters should not anticipate their elders by marrying before them. We are given in the literature of this age a series of names expressive of such anticipation, censuring as sinful those who bear them. These terms are the pari-vividana, Agredadhus, and Didhisi-pati.

It has been seen that in the early Rigvedic period a girl given in marriage but retained under the protection of her father’s domestic altar was called kanya and her son was the kanita son of her father. Later, however, the word acquired the sense of unmarried girls. The word is used in this sense in the Atharvaveda.

No material changes in the essentiality of the wedding ceremony and in the forms of marriage are traceable. Some ceremonial details might have developed since the early Rigvedic age.

It seems that the custom of remarriage of a widow has developed during this age. This seems originally to have taken the form of marriage, or more accurately, the custom of begetting a son, by the brother or by the next nearest kinsman of her deceased husband given in the tenth Mandal of the Rigveda. In the Atharvaveda, a verse refers to a charm which would secure the reunion in the next world, of a wife and her second husband.

Polygamy was allowed as before. But Polyandry was not at all Vedic. Despite polygamy there is ample evidence that the marriage tie was not lightly regarded as far as the fidelity of the wife was concerned.

In the literature of this period we have many references to illegitimate love and to the abandonment of the offspring of such union. But concubinage in the Roman sense of the term is hardly met with.

Very little information is available even now, as to the legal relations of wife and husband after marriage. It is not at all probable that the husband was absolute master of a wife as of a slave, though he doubtless exercised some power of correction.

On the death of her husband, in some cases the widow burned herself or was burned by his relations. This is clearly implied in the reference to this ancient custom in the Atharvaveda.
It is significant that both suttee and the custom of widow remarriage, or more accurately, the custom of begetting a son by the brother or by the next nearest kinsman of her deceased husband developed during this age. It is further significant that the probable second husband is the person under whose protection the widow perhaps shall be after her husband's death. Maybe, that the custom had its origin in the frequent lapses that might have taken place under such circumstances. No doubt law, being essentially an ethical principle, should not encourage illicit unions. It should, however, protect children born out of matrimony from the acts of the parents, in whom often love is lacking, or is smothered by the interest of their legitimate families or by conventionality. There is nothing wrong if law should visit all the consequences of the fault upon its authors, and not extend it to others. Maybe with some such idea our early law-givers allowed children so begotten to have the status of legitimate issues of the deceased, while jealousy developed the suttee.

In a hymn of the Atharvaveda extreme claims are put forward for the Brahmana, who alone is a true husband and the real husband, even if the woman has had others, a Rajanya or a Vaisya; a Sudra husband is not mentioned, probably on purpose. The marriage of Brahmanas with Rajanya women is illustrated by the cases of Sakunya, daughter of king Saryata who married Cyavana, and of Rathaviti's daughter who married Syavasya.

It is difficult to say whether or not adoption prevailed during this period. Later on it seems pretty certain that adoption was allowed.

Law relating to property and ownership: Whatever difficulties there might have been in defining the position of land tenures in the early Rigvedic age, it seems pretty certain that during this age individual rights were fully recognized. In the Atharvaveda and later the sense of a separate field in the word ksetra is clearly marked. Thus we are told: "I wish this plant have ruined all malignant powers of witchery. The spell which they have laid upon thy field, thy cattle, or thy men." Similarly, in Book V, hymn 31, we have 'thy field', 'thy sacrificial hall', 'thy gambling board', and 'thy shafts and arms'. These and similar other texts seem amply to indicate that individual ownership of fields was recognized during this age. Agriculture developed highly during this age as is indicated by the details given in the literature of the period. Plough-lands were denoted as urvra or ksetra. Intensive cultivation by means of irrigation is amply indicated in the Atharvaveda while allusion is also made to the use of manure. The conquest of fields—ksetrani samji is often referred to in the Samhitas. In the Chhandogya Upanishad the things given as examples of wealth include fields and houses—ayatanani.

The position of the king with regard to the land is yet not very clear. The expression gramakama, desirous of village, which occurs frequently in the literature of this period, points to the practice of
the king’s granting to his favourites his royal prerogatives over villages so far as fiscal matters were concerned. Later, the idea developed that the king was the owner of all the land and parallel with that idea the view that the holders of such grants were landlords. But of either idea there is no vestige in Vedic literature beyond the word *gramakama*, which more probably refers to the grant of regalia than to the grant of land. Such grants perhaps tended to depress the position of actual cultivators, and to turn them into tenants, but they can hardly have had this effect to any appreciable extent in early times. The king’s share in a village is referred to as early as the Atharvaveda.26

The constitution of the village is also not very clear. The village does not appear to have been a unit for legal purposes in these days, and it can hardly be said to have been a political unit. The village, no doubt, as later, included in its members various menials, besides the cultivating owners, and also the Brahmans and Ksatriyas who might hold interest in it by royal grant or usage without actually cultivating land, such as chariot-maker (rathakara), carpenter (taksam), smiths (karmara), etc., but they did not, presumably in any sense, form part of the brotherhood. All alike were politically subject to the king, and bound to render him food or service or other tribute, unless he had transferred his rights to others of the royal family or household. At the head of the village was the Gramani who is referred to even in the Rigveda27 and often in the later samhitas and in the Brahmanas.28 The exact meaning of the title is not certain. Zimmer regards the gramani as having had military functions only, and certainly he is often connected with the senani, the leader of an army. Presumably, however, the gramani was the head of the village both for civil and for military purposes. Later in the Brahmana literature he is ranked as a ratnini, one of the jewels of the royal establishment.

Later, in the Satapatha Brahmana we find him inferior to the suta or charioteer. The post of gramani was specially valuable to a Vaisya who, if he attained it, was at the summit of prosperity, gatasri.29 The gramani’s connexion with the royal person seems to point to his having been a nominee of the king rather than a popularly elected officer. The rank of gramani was often called gramanitya.30 Presumably there must have been many gramanis in a kingdom. But the texts seem to contemplate only one as in the royal entourage. As yet there is no mention of village as such owning lands and there is absolutely no indication of communal cultivation.

It will not be out of place to mention here a term very often found in the literature of this period. We find the use of the word *vesa* and *vesya* during this period. The term *vesa* is of somewhat doubtful sense, apparently denoting ‘vassal’ ‘tenant’ in a few passages.31 Weber takes Vesas and Parivesas as used in the Atharvaveda, II. 32. 5. as meaning servitude and compares Vaisya in the Taittiriya Samhita, II. 3. 7. 1. Vesa in two passages of the Rigveda 32 seems to denote the
relation of dependence rather than neighbourhood. The word upasti is also used in the similar sense. It denotes both in the Rigveda and the Atharvaveda, a dependent, just as later in the epic, the subordination of the Vaisya to the two superior castes is expressed by the verb upastha 'stand under' 'support'. The word also appears, in the same sense, in the form of 'sti' but only in the Rigveda. The exact nature of the dependence connoted by the term is quite uncertain. Zimmer conjectures that the dependents were the members of the defeated Aryan tribes who became clients of the king, as among the Greeks, Romans and Germans, the term possibly including persons who had lost their freedom through diceing. The evidence of the Atharvaveda shows that among the upasthis were included the rathakara, the taksam, the suta and the gramam.

We are also told of Kinasas, a ploughman or cultivator of the soil. A kinasas and a karsivana were the actual cultivators of the soil.

There is not much indication of any change in the law of contracts. The word karya for sale does not occur in the Rigveda. The verb kri, from which this noun is derived is, however, found in the 24th Sukt of the fourth Mandala. Both noun and verb are common in the later samhitas. Besides 'kri', we have 'apakri' 'parikri' and 'vikri' used in the literature of this period, all carrying the meaning of sale or barter. Sale appears to have regularly consisted in barter in the Rigveda; ten cows are regarded as possible price for an image of Indra to be used as a fetish, while elsewhere not a hundred, nor a thousand, nor a myriad are considered as an adequate price for the purchase of Indra. The Atharvaveda mentions, as possible objects of commerce, garments, coverlets, and goatskin. The haggling of the market was already familiar in the days of the Rigveda. The price was called vasna. and the merchant, Vanij, his greed being well known.

There is a little evidence of a standard of value in currency having been adopted. When no specific mention is made of the standard, the unit is probably the cow; later on, however, the expressions hiranyam satamanam, are used suggesting that there must have been some standard other than cows. The use of the krsuila as a measure of weight suggests that the meaning is gold weighing a hundred krsualas. This unit, however, seems to have been known even in the Rigveda.

ऋण, Rina, debt, is repeatedly mentioned from the Rigveda onwards, having apparently been a normal condition among the Vedic Indians. Reference is often made to debts contracted at diceing. To pay off a debt was called rinam sam-ni. The result of non-payment of a debt might be very serious; the dicer might fall into slavery. Debtors, like other malefactors, such as thieves, were frequently bound by their creditors to posts-drupada—presumably as a means of putting pressure on them or their friends to pay up the debt.
HINDU LAW DURING THE PERIOD OF VEDIC REDACTION

It is not yet clear whether or not the debt was a heritable interest or obligation. The Kausika Sutra regards three hymns of the Atharvaveda as applicable to the occasion of the payment of a debt after the creditor’s decease. These are hymns 117 to 119 of the sixth Book of the Atharvaveda. The debt there is conceived as attaching to the body of the debtor till paid. It is however not clear whether the obligation was inherited by the heirs.

For the payment of a debt by a relation of the debtor evidence is almost negative. Zimmer thinks that payments of debt were made in the presence of witnesses who could be appealed to in case of dispute. This conclusion however is uncertain, resting solely on a vague verse in the Atharvaveda.

It is significant to notice that though these Aryans were not wanting in charity, debtors always had a very cruel fate. The probable reason seems to lie in the origin of debts. It seems the original debt was nairadeya and hence the law developed either to pay it off, or bear the spear. The next contractual debt seems to have been that incurred at diceing, not provoking much sympathy for the debtors.

It is significant that the word daya which occurs in the Rigveda only in the sense of reward of exertion, gradually acquires the meaning ‘inheritance’, that is, a father’s property which is to be divided among his sons either during his lifetime or after his death. The passages all negative the idea that the property of the family was legally family property; it is clear that it was the property of the head of the house, usually the father, and that the other members of the family only had moral claims upon it which the father could ignore. Thus Manus is said in the Taittiriya Samhita to have divided his property among his sons. He omitted Nabhunadistha whom he afterwards taught how to appease the Angirases, and to procure cows. This is perhaps an indication that the property divided was movable rather than land. As for the method of division it seems clear from the Taittiriya Samhita that the elder son was usually preferred; perhaps this was always the case after death. Women seems to have been excluded from partition or inheritance, according to the Satapatha Brahmana.

The heir is called dayada in the Brahmana literature.

Even in the literature of this period there is very little evidence as to the administration of justice or the Code of law followed.

The crimes recognized in Vedic literature vary greatly in importance, while hardly any distinction is made between real crimes and what are now regarded as fanciful bodily defects or infringements of merely conventional practices. We find bodily defects like that of having bad nails and discoloured teeth, infringements like marrying a younger sister while her elder is still unmarried coupled with murder though not equated with it. The crimes enumerated name the slaying of an embryo (bruna) the slaying of a man (vira) and the slaying of a Brahmin as serious offences. Taittiriya Aranyaka declares that the
slaying of a Brahmin alone is truly murder. According to the Satapatha Brahmana the sin of murdering a Brahmin can be expiated only by the performance of an Asvamedha where extraordinary generosity is extended to the Brahmins.

There is no trace, as yet, of an organized criminal justice vested either in the king or in the people. There still seems to have prevailed the system of wergeld-Vaira which indicates that criminal justice remained in the hands of those who were wronged. In the Sutras, however, the king’s peace is recognized as infringed by crimes. It may therefore reasonably be conjectured that the royal power or jurisdiction steadily increased; the references in the Satapatha Brahmana to the king as wielding punishment (danda) confirm this supposition. Whether, as the analogy of the other systems suggests, the king was assisted in his judicial duties, as he undoubtedly was later, by assessors, cannot be made out clearly. There is a story in the Pancavimsa Brahmana (XII. 3. 12) of vrsya jana, where the death of a boy by careless driving is mentioned, and the king is reproached for it by his purohita. This seems to indicate some function of the king in the administration of criminal justice. The Kathaka Samhita (XXVII. 4) speaks of a Rajanya being an adhyaksa when a Sudra is punished (ban). In the Atharvaveda (XVIII. 1. 33) we have कि स्विष्ठ्रो राजा जगुहे कदायति बन चक्मा को विबेद। — “Hath the king seized us? How have we offended against his holy ordinance? who knoweth.” All these seem to indicate that the administration of criminal justice is gradually passing into the hands of the king.

The procedure adopted in deciding cases is quite uncertain. In the Chhandogya Upanisad the ordeal of the red-hot axe is mentioned as applied in an accusation of theft. No other judicial ordeal however is known to Vedic literature. The fire ordeal seen in the Atharvaveda by Schlagintweit, Weber, Ludwig, Zimmer and others, has been disproved by Grill, Bloomfield, and Whitney. Such an ordeal however later appears in the Brahmana literature. Geldner suggests that this usage is referred to even in the Rigveda. Profs. Macdonell and Keith consider this highly improbable. In the Rigveda (X. 97. 11) we have the word ‘Jiva grībha’ (जीवग्रीभा:) meaning seizing alive. Roth takes this to mean ‘a police officer’. There is another word ‘ugra’ in Rigveda (VII. 38. 6) which is later used to mean policeman.

Very little is recorded as to civil procedure in the literature of this period. The list of victims at the Purusamedha includes a prasnin, an abhi-prasnin, and a prasna vivaka, in whom it is not unreasonable to see the plaintiff, the defendant and the judge. The terms may refer to what is probably an early form of judicial procedure, a voluntary arbitration. The same idea may be conveyed by the word madhyama-si, which occurs in the Rigveda itself and which is under-
stood by Vedic scholars as meaning an arbitrator or judge, the expression being derived from the judge acting with other judicial persons and being perhaps surrounded by the assembly of the people.

In the Yajurveda, we are told of a granva vadin, apparently meaning a 'village judge'. His 'sabha' is also mentioned in the Maitrayani Samhita. This sabha was apparently a court house. We find a sabha-cara, as a victim at the Purusamedha in the Yajurveda. As he is dedicated to Dharma, justice, it is difficult to avoid the conclusion that he was a member of the sabha as a law court perhaps as one of those who sit to decide cases. There is, however, nothing to show whether the whole assembly did so, or only a chosen body. Similarly, we have sabhasad 'sitter in the assembly'. This is probably a technical description of the assessors who decided legal cases in the assembly. The term as found in the Atharvaveda and later cannot merely denote a member of the assembly. Professors Macdonell and Keith conjecture that the sabhasads were perhaps the heads of families who were expected to be present at the sabha oftener than other members.

The word *pratistha* found in a passage in the Atharvaveda seems to have been used as a technical term of law, possibly meaning a sanctuary.

The use of witnesses as evidence is uncertain and the ordeal is not recorded as deciding any civil matter except the dispute between vatsa and his rival as to the true Brahmanical descent of the former, which was settled by his walking unharmed through the flame of a fire. It is probable that ordeals may have been used for the purpose of deciding disputes. Whether the oath was so used cannot be determined. It seems, however, that a Brahmin was preferred in legal matters to a non-Brahmin. In two passages of the Atharvaveda the word *jnat* occurs with a somewhat obscure sense. Zimmer conjectures that the word is a technical term, taken from law, meaning witness. The reference may be to a custom of carrying on transactions of business before witnesses as practised in other primitive societies. Roth suggests that the word has the sense of surety.
LECTURE XIII

HINDU LAW DURING THE BRAHMANA PERIOD

While dealing with the juridical thinking of the period we have seen how the sages of the age were already given to the quest for 'end of law' and how they differentiated between 'pleasure' and 'good'. Their discussions of 'pleasure' and 'good', प्रेय and प्रेव, are indeed illuminating. They asserted that pleasure and good were different and that the pursuit of the good was the concern of law.

The juridical thinking of these sages was thus directed to problems which still comprise the major issues of social sciences. Indeed the problem regarding the place of values in the social disciplines has acquired an unprecedented gravity in this age of anxiety when the very grounds of our civilization, of our certitude, are breaking up under our feet, and all familiar ideas and institutions vanish as we reach for them. We can hardly claim to have any settled views concerning the right patterns of human behaviour and conduct. One set of educational influences is preparing the new generation to practise and defend what is viewed as 'self-interest' in a competitive world, while another lays emphasis on unselfishness, social service and subordination to common ends. 'One set of social influences is guided by the ideal of asceticism and repression, the other, by the wish to encourage self-expression.'

These ancient sages contributed greatly to the solution of these problems at least for their age and seem somehow to have succeeded in bridging the gulf between 'is' and 'ought' of law.

The problem concerning the 'is' and 'ought' of law in the last analysis includes two principal questions: (1) The nature of law viewed as functional or institutional, and (2) the criticism of law. To these ancient sages the actual was also the ideal. It included ends already realized and continuing efforts to incorporate the designed values more fully. The function of the law was to educate the citizens by persuading or coercing them to live a good life.

The bed-rock of modern legal institutions is twofold. First, the individual adult is treated as an entity quite independent of the family, the village, the gild or any other corporation. Secondly, the woman is juridically a self-sufficient unit enjoying rights distinct from and independent of, those of the man, even of the husband.

It is interesting to observe that even under ancient and mediaeval conditions the legal sense of the Hindus was akin to and approached the modern conscience in both these postulates of civic existence.
The emancipation of the individual from the head of the family seems to have been effected very early in Hindu law though not to the extent to turn the society asocial. Individual freedom seems already to have been gaining in value though still retaining its foundation in community and thus fully possessed of its protective tissue.

We have already noticed that during this age the Vedic society was sufficiently settled in India to admit of an elaborate differentiation of functions and occupations among the people, and already presented an economic environment favourable to the growth of industrial and commercial combinations in the community leading to the formation of specialized institutions like the guilds. These were perhaps the natural and necessary growths out of the conditions and requirements of the economic life of the age with its many-sided development.

It is admitted on all hands that Vedic society at a comparatively early period divided itself into three fundamental orders or castes, viz., the ruling caste or the warrior caste comprising the king and his entourage, the priestly caste, distinguished in learning and religion, which though not directly wielding any political or martial power, was possessed of supreme influence in the state as regulating the king's will, and the people caste with its Aryan blood and eligibility for all Aryan privileges in the matter of legal rights, religious rites and educational opportunities. All these castes or classes were, from political point of view, well-organised units with defined status and occupations, except the people caste where we have an internal sub-classification in three well-organized bodies, socially and economically apart from one another. Historically, these three sub-castes were (1) with their dependents the herdsmen and cow-boys, (2) the agriculturist or farmer and (3) the entire trading population, whether by land or by sea, maintaining active intercourse with foreign merchants. Later literature clearly specified these threefold occupations of the Vaisya naming them as krisi, pasupalya, and vanijya: Thus Kautilya says वृक्षनर्किश्यमन वजन दानं द्रविपाणुपाल्ये वाणिज्य च।1 There were also the mechanics, artisans, carpenters, pedlars and the like and the line between legitimate and objectionable labour was very often crossed as is proved by the frequent denunciations in our legal literature of those that did so, and also by the relaxation of the legal strictness in cases of distress due to failure of legitimate living.2 There were thus in course of development three specialized sub-castes dividing the unity of the people caste each pursuing its particular interests to the exclusion of other interests, so that ultimately the traders as a class made themselves into a distinct body apart from the classes to whom belonged the care of agriculture and cattle. Thus the due development of the commercial interests of the country was secured, leading to the establishment of guilds. The same thing happened in the case of the artisan class as well.
The guilds were thus but natural and necessary growths at a very early period of our history, due to the considerable progress which the country had achieved in arts, manufactures and trade. They presuppose and imply in fact a development to which history testifies.

A group of human beings becomes an association through organization. Organization is the rule which assigns to each individual his position and his functions. The human mind always associates such rules with certain facts. These facts, though apparently heterogeneous, may be traced back to usage, domination, possession and declaration of will.

The majority of the present-day associations have an order which is based on agreement, articles of association, legal proposition, and constitution.

In the associational organizations of these ancient days, however, the normative part is still played by usage. The custom of the past becomes the norm for the future. It is the usage which determines the position of the head as well as of the members of the association, the relation of superiority and of inferiority, and the functions of each individual member.

We are not in a position to say how the laws of guilds, classes, and families came to be recognized as such. These might have enjoyed their authoritative character from the days of the patriarchial rule, when the families lived by habit and custom of their ancestors.

Usage is effective through the 'normative power of the factual'. Its ordering and regulative power in the association is based on the fact that it reflects the equilibration of the forces existing within the association. The interest which all members have in the associational life, their interest in the proper utilization of every force which is operative in the association, in placing every one of its members where he can render most service, in assigning to him rights and duties according to the needs of the whole, are counterbalanced by the aspiration of the individual to live his own life, to assert his own personality, to pursue his own interests. Usage always reflects the final equilibration of the forces.

We shall see later how the ancient dharma-sutakars and Mann viewed such usages of various associations.

We may here refer to the Vedic texts relating to these several associational bodies. We have the use of the words sresthan and sraisthva, which from their contexts would appear to have respectively the sense of the headman of a guild and the foremost place that belongs to श्रेष्ठ , a headman, the presidency of a guild. Professors Macdonell and Keith point out that the word sresthan occurs in several passages of the Brahmana literature:

यस्माद् प्रजापतिर्निर्माणादि देवतानां श्रमुष्णु हच्चाय शरि। पिन्नारा कलाजूरं श्रव्यमुर्तिविनिर्माणां उ तस्मादेव कारणालोकेकस्य श्रेष्ठः कर्मचिन्हनिपि यें स्वकृयं भूषय-
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In another place we have:

इद्याय वे देवा ज्ञेष्ठाय श्रेष्ठाय नातिष्ठल सोजर्वीदृ बुहृपति याजय मा ढाॅढाशाहेनति
tमण्याजयतु ततो वे तस्मे देवा बीष्ठाय श्रेष्ठाय अविष्ठल, इति।


In Panchuka VII, Adhyaya 33, Khand 6, Kandika 8, we are given:

ते सम्प्रेक्षो वेदवामित्रा: सवें साक्स सागर:।
देवराय सत्यिे पूष्ये ज्ञेष्ठाय गाहिना:, इति।

Ait. Br., VII. 33. 6. 8.

The St. Petersburg Dictionary assigns to the word the sense of a man of consequence. It is, however, possible that the word may already have the sense of the headman of a guild, the modern sastha. There is a similar doubt in the use of sraisthya which is perhaps not merely the foremost place as usually assumed, but definitely the presidency of a guild. These guilds are referred to in the Dharmasutras and they play a considerable part in the Buddhist texts and the epic. The Vedic evidence, however, is not sufficiently definite in this respect though there are several references to these. The Aitareya Brahmana has three passages bearing on the subject. In one4 we are told श्रेष्ठी पापे रोचयते यं कामाण्तेत्। (3 Panchika, 13 Adhyaya, 6 Khand, 3). In explaining this Sayana points out how Prajapati succeeded in making the gods accept the Rubhims as equal to them and says: "For that very reason also a merchant prince, desirous of rendering acceptable a dependant of his to others refusing to own him, has nevertheless the power to enforce the grant to him of a worthy position by them, in spite of his disqualification due to violation of social rules. In the Satapatha Brahmana 7 also the word Sraisthya is used to indicate lordship. In the Atharvaveda 8 there is the expression "bestow on him lordships (sraisthaya) over his fellows." The terms sresthin and sraisthaya are similarly used to denote the chief of the guild or the high position that belongs to him among his fellows in the Chhandogya Upanisad. 9 In the Brihadaranyaka Upanishad (ब्रह्मदर्शनकोपनित्थु) Sarkara reads a reference even to co-operative trading or industry.

In all these references from the Vedic literature the manner of the allusion to the head of the guild, his high social position and pre-eminent influence, seems to support the conclusion expressed by some Vedic scholars that the guild was then already known and was a familiar institution, a commonplace phenomenon, an ordinary object of daily observation.
As yet we find no definite conception of honour in the legal sense. The conception of Prayascitta or Prayascitti is there denoting a penance or expiation. Penances are prescribed for every conceivable sort of ritual, social or moral. A complete list of them is included in the Samvidhana Brahmana. Hitherto we do not find any clear indication of the conception of the loss of civil honour in the Hindu system. Later on, we shall be told of Pātaka and Pātitya and their legal significance.

It seems during this period sex disqualification is increasing in importance. Indeed the position of woman has suffered a decline since the Rigvedic period. The probable reason seems to be the introduction of non-Aryan female element into the Aryan household. The Brahmana literature very often groups the women and the Sudras together as embodying impurity. Gradually the wife was displaced from her position of partnership with the husband at sacrifices and the ritualistic explanation for the bondage of woman and her incapacity to inherit property given in the Satapatha Brahmana is indeed significant. "With the thunderbolt, the butter, the gods beat and weakened their wives; and thus beaten and weakened they had no right whatever to their bodies or to inheritance." There are, however, other passages showing that the wives could yet take part in the yajna and other religious ceremonies.

There does not seem to have been much change in the marriage laws since the Rigvedic age. The word gotra seems to have acquired the meaning of family or class. The Brahmana literature employs the word in this sense. Later on, in the Grihyasutras stress is laid on the prohibition of marriage within a gotra, or with a sapinda of the mother of the bridegroom. Senart has emphasized this fact as a basis of caste, on the ground that marriage within a curia, phratria, or caste (varna) was Indo-European, as was marriage outside the circle of agnates and cognates. The Satapatha Brahmana, however, expressly recognizes marriage within the third or fourth degree on either side. According to Sayana the Kanvas accepted marriage in the third degree, the Saurastras only in the fourth, while the scholastic on the Vajrasuci adds to the Kanvas, the Andhras and Dakshinatyas, and remarks that the Vajasanoinos forbade marriage with the daughter of mother's brother. All apparently allowed marriage with the daughter of a paternal uncle, which later was quite excluded. Change of gotra was quite possible, as in the case of Sunahsepa and Gritsamad who, once an Angirasa became a Bhargava. As distinct from gotra we find the use of another word, kula, in the literature of this age denoting house or house of the family. The use of the word points to a system of individual families, each no doubt consisting of several members under the headship of the father or eldest brother, whose kula the dwelling is. As distinct from gotra, kula seems to mean the family in the narrower sense of the members who still live in one house, the undivided family.
It has been noticed above that according to Satapatha Brahmana marriage was allowed amongst some with the daughter of the mother's brother or the son of the father's sister. But it seems daughter of the mother's sister and son of the father's brother were always prohibited. The marriage within a kula was prohibited. But the prohibition within the gotra did not as yet exist, though marriage outside the gotra was perhaps frequent. Similarity of caste was also not an essential to marriage, as hypergamy was permitted even by the Dharmasutras so that a Brahmana could marry wives of any lower caste, a Ksatriya, wives of the two lowest castes as well as of his own caste, a Vaisya, a Sudra as well as a Vaisya although the Sudra marriages were later disapproved in toto. Instances of such intermarriage are common in the Epic, and are viewed as normal in the Brhaddevata.

It was still considered proper that the younger brothers and sisters should not anticipate their elders by marrying before them. The literature of this age also presents a series of names expressive of such anticipation, censuring as sinful those who bear them. These terms are the parivividana, or agredadhus, the man who, though a younger brother, marries before his elder brother, the latter being then called the parivitta. Agredidhusu is the man who marries a younger daughter while her elder sister is still unmarried and the didhisu pati, who is the husband of the latter. These terms seem to indicate that some sort of dishonour was attached to such marriages. The evidence however is not even now sufficient to enable us to ascertain whether or not these involved any loss of civic honour.

The remarriage of a widow was apparently permitted. This seems originally to have taken the form of the marriage of the widow to the brother or other nearest kinsman of the dead man in order to produce children. At any rate, the ceremony is apparently alluded to in a funeral hymn of the Rigveda. We have already noticed these and similar texts. These are really only obscure references to such remarriage. The later Dharmasutras however clearly recognised remarriage in case of the death of the first husband. Pischel finds some evidence in the Rigveda to the effect that a woman could remarry if her husband disappeared and could not be found or heard of. In the Atharvaveda for the first time a remarried wife gets the name of Punarbhuv.

We have already seen that polygamy was allowed in Vedic India. This is clearly proved by many passages in the Rigveda and the later Samhitas. Manu, according to the Maitrayani Samhita had ten wives. The Satapatha Brahmana explains polygamy by a characteristic legend. Moreover, the king seems regularly to have four wives attributed to him (the mahisi, the parivritki, the vavata and the palagali). The mahisi appears to be the chief wife, being the first one married according to the Satapatha Brahmana. The parivritki, the neglected is explained by Weber and Pischel as one that has had
no son. The vavata is the favourite while the palagali is, according to Weber, the daughter of the last of the court officials. The names are curious and not very intelligible, but the evidence points to the wife first wedded being a wife in the fullest sense. This view is supported by the fact emphasised by Delbruck. But in the sacrifice the patni is usually mentioned in the singular, apparent exceptions being due to some mythological reason. Zimmer is of opinion that polygamy is dying out in the Rigvedic period, monogamy being developed from polygamy; Weber, however, thinks that polygamy is secondary, a view that is supported by more recent anthropology. The Aitareya Brahmana speaks of the permissibility of polygamy but declares that polyandry is absurd:

एकस्य वहीरे जाय भविन्ति नैकस्ये वहकुः सद पति:।

Ait. Br., XII. 12.

Despite polygamy, however, there is ample evidence that the marriage tie was not lightly regarded as far as the fidelity of the wife was concerned. Monogamy seems to be approved even in the Rigveda so that even from that age some higher idea of morality was in course of formation.

Forms of marriage as also the ceremonies attendant on them were not much changed during this age. Celibacy on the part of a man is discouraged; one without a wife is not entitled to drink soma juice.

Even now we have little information as to the legal relations of wife and husband after marriage. That the husband was absolute master of a wife as of a slave is not probable, though he doubtless exercised some power of correction. The wife was a regular participant in the offerings of the husband. In this connection the term patni regularly applies to her in the Brahmanas where jaya designates her in her conjugal capacity. We have already seen how in this respect her position gradually deteriorated. Yet even now she is looked upon as half her husband. It is she who completes him.

The main object of a woman’s marriage was the production of children, this being repeatedly asserted in the Rigveda and later. The desire for offspring as was natural in a society which mainly counted relationship through the father, took the form of a wish for a son to perform the necessary funeral rites for the father, and to continue his line. Sonlessness is termed avirata and is placed on the same level as lack of property: amati, and agni is besought to protect from it. The birth of a daughter was certainly not specially welcome: the Aitareya Brahmana contains an old verse which says that a daughter is a misery (kripkanami) while a son is a light in the highest heaven.

On the failure of natural children adoption seems to have been possible. During this age it seems it was even resorted to when natural children existed, but when it was desired to secure the presence
in the family of a person of specially high qualifications, as was the case of Visvamitra’s adoption of Sunahsepa (सुनाहसेप). It is not clear whether adoption from one caste into another was possible. There is no good evidence that Visvamitra was a Ksatriya while Sunahsepa, a Brahmin. All that is clear is that Sunahsepa belonged to the Angirasa family and was adopted into the family of the gathis. It should be remembered that adoption was rather condemned in the Rigveda by Vasishtha.

Even during this age these Aryans desire for sons born of their own body. The Atharvaveda defines a son thus:

पुत्रं बै रेति: भवति तत् हिन्दुयाम् धनुस्विंश्च ते ततुः बन्युवयः वेदनं तत्र प्रजापति प्रभवेत्।

Atharvaveda, II. 10. 1.

The primary importance of a son is even now purely earthly:

यद् यथिवादः प्रियः पुत्रः पितरं प्रिया जाया वा पतिः सुभिं पितृमुपुष्पुक्ष्याविविसः।

Ait. Br., XXXIX. 7. 10.

According to these Aryans या खेत्र पुत्रपण सा विलेखना

Br. Up., IV. 4. 22; Ait. Brah., II. 5. 1. 6. 7. 8.

Those amongst them who are of philosophic turn of mind and so look down upon gross earthly wealths, equally disclaim the desire for a son:

पूर्व विहासः प्रजाः न कामयते किं प्रजया करिष्ठामो येवां नोमांस्यां लोक इति।

Br. Up., IV. 4. 22.

But the theory that a son is necessary for providing the father with after-life sustenance is already gaining ground though it has not as yet reached a stage when a son must be had at any cost. There seems to be no clear indication of Niyoga even during this stage. Satapatha Brahmana condemns this by saying that when a woman who belongs to one carries on intercourse with another, she undoubtedly commits sin.

The story of Sunahsepa as given in the Brahmana literature supports the theory of a Swayyamdahta son. Here again he is adopted into the family of Visvamitra not to fill up the want of a son; according to the legend Visvamitra already had one hundred sons. The story however indicates the following important points:

1. It indicates the right of a father to sell his son.
2. But he can sell his son only to save his family from starvation.
3. Even then his action is much looked down upon by others.
4. He can in no case sell his eldest son.
5. Mother's consent is also necessary before a son can be sold away.
6. If the purchaser sets the son, so sold to him, free, the son does not necessarily come back to his father's potestas. Henceforth the father would have no control over him.
7. The position of a son in his adoptive family seems to depend on the special contract for the purpose.
8. The adoptive father alone cannot confer any status on the adopted son. Consent of the members of the adoptive family may be essential.
We find mention of another kind of son who is called kanita:

आ स एतु य ईवदि प्रदेव: पूर्तमादवे।
यवा चिन्ही प्रस्थव: पूव्यवसिः कार्मित्तक्या यव्यादवे॥

Rigveda, VIII. 46. 21.

This kanita son seems to be the prototype of later kanina son; but the two seems to mean different things altogether. Kanita seems to be the son of a girl married in a particular form in which she is not transferred from the protection of her father's family deities. Kanina later became the son of an unmarried girl. No other kind of son is mentioned during this age.

We have already noticed that slavery was recognised from the early Vedic period. The word dasa has the sense of slave in several passages of the Rigveda.45 Dasi, the feminine, always has this sense from the Atharvaveda 46 onwards. Aboriginal women were, no doubt, the usual slaves; for on their husbands being slain in battle they would naturally have been taken as servants. They would sometimes also become concubines, thus Kavasa was taunted with being the son of a female slave, dasyah putrah, in the Aitareya Brahmana.47 Dasya occurs in the Brihadaranyaka Upanishad 48 in the sense of slavery.

Even now we are not in a position to give any detailed account of the land system prevailing in the country. Some hints are available only from the accounts of the relations and functions of the castes as summed up in the Brahmana literature. Aitareya Brahmana 49 treats of the castes as opposed to the Ksatriya. According to it the Brahmana is a receiver of gifts (a dayi), a paṣī (a drinker of soma), avasayi (a seeker of food) and yathakama prapyah (liable to removal at will). The Vaisya is ‘anyasya Balakṛt’ (tributary to another), ‘anyasyadyah’ (to be lived on by another), and ‘yathakama jveyah’ (to be oppressed at will). The Sudra is the servant of another ‘anyasya presyah’ ‘kamoṭhpyah’, to be expelled at will and ‘yattra kama vadhyah’, to be slain at pleasure. This description seems calculated to show the relation of each of the castes to the rajanya. Even the Brahmana can be controlled by him; whilst the Vaisya is inferior to a Brahmana and is a tributary whom, it seems, the rajanya can remove without cause from his land, but who is still free and whom he cannot maim or slay without due process. But the expulsion of the Vaisya from his land may not be allusion to quasi-ownership of land by the king or Ksatriya: it may be only an act of royal authority not an incident of tenure. In another passage of the Aitareya Brahmana 50 however we are told:

प्राः प्राः राजायो वैष्णो तिक्तस्वभागः; याविणं देववजनं माचिि।

Ait. Br., 34. 2.

This indicates that Ksatriya was looked upon as the ultimate owner of the land. A passage in the Satapatha Brahmana 41 seems to strengthen this view. The passage runs as follows: ‘‘Yama is the ksatra and the fathers (deceased ancestors) are the clansmen; and to whomsoever he,
with approval of the clan, grants settlement, that settlement is properly given, and in like manner does Yama, the ruling power with the consent of the clans, now grant to this sacrificer a settlement on this earth.''

We have already noticed how division of lands into well-defined plots is indicated even in the early Vedic times. Even in the Rigveda we are told:

\[ \text{रिक्तस्य च चक्षुं स वास्तव: संघाय न मध्ये।} \\
\text{मन्सुर्यं स मुख्यं विश्ववर्धनं संपत्यं संस्कारं।} \]

Rigveda, 1, 100, 18.

'He, much invoked, hath slain Dasyus and Sunyus, after his wont, and laid them low with arrows.

The mighty Thunderer with his fair-complexioned friend won the land, the sunlight, and the waters.'

Elsewhere we are told:

\[ \text{क्रिक्किर न विवर्धणे एक वात्रस्मो वेष्याः।} \\
\text{रिक्तस्य च चक्षुं स वास्तव: संघाय न मध्ये।} \]

Rigveda, 1, 110, 5.

'The Ribhus with a rod measured as it were a field, the single sacrificial chalice wide of mouth.'

This shows that even in those early days lands were measured and divided into plots and perhaps given to several families for the purpose of cultivation.

It seems that land belonged to the community of the Ksatriyas who were perhaps looked upon as its acquirer. The chief of the Ksatriyas with the consent of his clansmen could give settlement in plots. If these plots were to be used for a purpose other than agricultural (say, for the performance of yajna) a special grant from the chief would have to be taken.

The position of the king with regard to the land is still obscure. Later literature, however, clearly recognized the king's overlordship and described the king as 'Lord of all', a phrase which Bühler was inclined to interpret as proof of land-owning.

Hopkins thinks that the gifts of land to priest seems to be the first sign of land-transaction in the Brahmanas. These might have been either actual gift of land or the mere grant of a superiority. Transfer \textit{inter vivos} of land is hardly yet recognized save exceptionally as a sacrificial fee, dakshina. Even then it was disapproved.

It has been noticed above that perhaps the Ksatriyas were looked upon as acquirers of the property by conquest. That property could be acquired by conquest, there is no doubt about that. The word \textit{uda} is used in the Maitrayani Samhita to denote the share of the booty of war taken by the King after a victory, \textit{Samgramam jitva}.

It seems, the dependent members of a family could not as a rule earn anything as their separate property. But we find some indication of the relaxation of this rule at least in certain cases. The story of Sunasepah is indicative of this relaxation. According to that story
Rohita could earn property as his own wherewith he purchased Sunasepah. He thus acquired property in Sunasepah and could purchase his release by giving him (Sunasepah) over to his (Rohitas’) father, Harischandra, to be sacrificed to Varuna as agreed upon. The Aitareya Brahmana tells us:

स पितरसेवोवाच ततहन्ताः मनोनिशीता निन्यकाः शति

\[ Ait. \text{Brah., 35.} \]

This may however be a special case with the Ksatriyas only. And even with them, it seems to hold good only when the earning is by conquest without any help from the father. Rohita could earn property for himself only when he became a सत्राह an expert in the use of weapons. This seems to be something like the Roman peculium castrense.

As for contract, save in regard to money-lending practically not much is to be gathered from Vedic literature. Much of the labour, which would in a more developed society have been done by worker, would be performed by slaves, while the technical workers of the village, of whom long lists are given in the Vajasaneeyi Samhita and the Taittiriya Brahmana, may have been recompensed, not by any sum based on each piece of work done, but by fixed allowances, much as the village servants are in modern times.

Debts no doubt were creatures of contract and men of this age considered undischarged debts as taints that would mar all their after-life prospects. Debts were looked upon as evil to be discharged with utmost care. Even the literature of the earlier period expressed this horror of debt. The Atharvaveda, for example, tells us, “As men discharge the utmost debt, collect the eighth and sixteenth part. So to the foeman we transfer together all the evil dream.”

Again “Vaisvanara the Purifier purge me when I oppose their hope and break my promise Unknowing in my heart, With supplication, Whatever guilt there is in that, I banish.”

We have indications of the factum of deposits, but nowhere in the literature of this period we meet with any reference to the law regulating the relations constituted by such transactions. One word used to mean deposit is परिवर्तणम्. This seems to indicate that the transaction took the form of gift. It seems to have been looked upon more as gift than anything else with this difference only that the donee in such cases had to give back the very things given to the donor himself on some future time or to some one else named by the donor.

We are told in the Atharvaveda:

अयो यानि च यस्मा ह यानि चान्त: परीनति।
तानि ते परि ददृमति॥

\[ Atharvaveda, XIX. 48. 1. \]

“Then all that we accumulate, all that the treasure chest contains
All this do we entrust to thee.”
Further

रात्रि मातःप्रेमे न: परि बेहि।

*Atharvaveda, XIX. 48. 2.*

"'Entrust thus us to Dawn, O mother Night.'"

These seem to convey some idea of trust prevailing amongst these early Aryans. The word *Nidhi* is also found even in the Rigveda to mean deposit or store. It also acquired the sense of treasure generally. The word is used in the Chhandogya Upanisad as well to denote some sort of science. From these passages, however, no indications as to the law of deposit can be gathered.

The literature of this period indicates that in entering into contracts some ceremonial observances became necessary. It seems that a promise derived its sense of inviolability from these ceremonials. The Satapatha Brahmana tells us "'He who is about to enter on the vow, touches water, whilst standing between the Ahavaniya and Garhapatya fires, with his face turned towards the east. Looking towards the Ahavaniya fire, he enters on the vow with the text 'O Agni, Lord of the vows, I will keep the vows, may I be equal to it, may I succeed in it.'" This extract indicates the formularies used in entering into covenants. Similar requirements are indicated in the Aitareya Brahmana as well. A contract was deemed to be of divine origin having its prototype in the sacred 'Tanunapatra'. Invioability was its essential feature. To ensure this inviolability sometimes hostage seems to have been necessary. Once the contract is entered into one can be released from it only by another similar formula. After the completion of his promise he is to divest himself of the vow with the text: "'O Agni, Lord of vows, I have kept the Vow; I have been equal to it; I have succeeded in it.'" The Satapatha Brahmana discourages the idea of contracting with anybody and everybody: "'But let him not contract with anybody and everybody.'"

Betting seems to have prevailed from very early times. The word *Aji* is constantly used in the Rigveda and the later literature to express the sense of a race. Horse-racing was one of the favourite amusements of the Vedic Indian, the other being dicing. The race course called Kastha or Aji appears from the Atharvaveda to have been a quasi-circular one to a mark and back again. In the Rigveda the course is described as broad (urvi) and the distance as measured out (apavrktā aratnayah). Prizes were offered and eagerly competed for. The person who instituted a race is referred to as ajisṛt and Indra is called Ajikṛt and Ajipati.

The rate of interest on loans is not yet specified. We have the word *Kusidin* as a designation of the usurer in the Satapatha Brahmana and the Nirukta. Jolly referring doubtless to the expression *Kusida apratitā*, a loan not yet repaid, occurring in connec-
tion with anrna, free from debt appears to be right in taking Kusida
to have the sense of loan in the Taittiriya Samhita.\textsuperscript{75}

Standard of value in currency is already adopted. The word
Hiranya in the Rigveda and later denotes gold. It is hardly possible
to exaggerate the value attached to gold by Vedic Indians. The metal
was, it is clear, won from the bed of rivers. A gold currency was evi-
dently beginning to be known in so far as definite weights of gold are
mentioned: Thus a weight, Asta-prud, occurs in the Samhitas\textsuperscript{76} and
the golden satamana, weight of a hundred Krnasalas is found in the
same texts.\textsuperscript{77} In several passages moreover hiranya and hiranyam may
mean pieces of gold.

Before proceeding to examine the law of inheritance and succession
it will be pertinent to notice that the theory of after life under-
went some material change during this age. According to Chhandogya
Upanisad the spirits go to the world of the fathers, thence to the ether
and thence again to the Moon. \textquoteleft\textquoteleft Having dwelt there till their good
works are consumed, they return again that way as they came, till they
attain some birth the nature of which depends on the nature of the
works done by these while living here during previous birth.'\textquoteright

\textit{Chhand. Up., V. 10. 4. 5. 7.}

Ancestor worship continues as of old, but it has undergone some
change in the detailed ceremonials. It seems the number and the line
of ancestors worshipped are limited. The necessity for food in the
after life becomes more and more felt till this food the fathers make
their lives' sustainer.\textsuperscript{79} People have already begun to make monthly
offerings to the Pitr\textit{is}.\textsuperscript{80} They pay special attention to a limited num-
ber of these Pitr\textit{is}.\textsuperscript{80} The father of our father, his grandfathers, these
fathers they shall worship with oblations. \textquoteleft\textquoteleft The father of our father,
his grandfather, those who have entered into air's wide region. Those
who inhabit earth or dwell in heaven, these fathers will we worship
with oblation.'\textquoteright\textsuperscript{81}

The limit to the number of Pitr\textit{is} to be worshipped was perhaps
a necessary consequence of the change in the theory of after-life.

In the whole literature of this age the word \textit{cousin} almost always
means \textquoteleft\textquoteleft enemy\textquoteright\textquoteright.\textsuperscript{82}

\textbf{The Atharvaveda tells us:}

\begin{quote}
रवणेन प्रयणिता भ्रातृवा मे सवन्नवः।
अयुर्वर्जो अयगुर्वेण यत्ववघमं तमः। ।
\end{quote}
\textit{Atharvaveda, X. 2. 9.}
Affrighted by the Varana, let my near Akin to
Pass to the region void of light; to deepest
darkness let them go.''
Again we have 'From family sickness, Kinsmen's
destruction, from Druh, from varuna's noose
I free and save thee.''

This indicates disruption of Vedic family. Naturally no one would rely on such an enemy for his sustenance in after life. Possession of a son thus gains in importance. But even now a sonless man can, if he conducts himself well in this life, reach the highest heaven:

ये अप्रव: शामाना: परेयुहित्वा इष्टस्यनपः पत्वे।
ते शामुरित्याविवेदत लोक नारस्य पृत्ठो अधि दीप्ताना॥

Aitareya, XVIII. 2. 47.

Unmarried men who willed and have departed, the childless, having left their foes behind them,
Have found on high the world whereto they mounted, reflecting on the ridge of Vaulted heaven.''

We have already seen that very little indication is obtained that the property of the family was legally family property. It seems that from the early Rigvedic period it has been the property of the head of the house, usually the father and that the other members of the family only had moral claims upon it which perhaps the father could ignore, though he might be coerced by his sons if they were physically stronger. The father might divide the property among his sons as was done by Manu according to the story given in the Taittiriya Samhita. Manu seems to have omitted Nabhanedista, whom he afterwards taught how to appease the Angiras, and to procure cows. This is a significant indication that the property he divided was movable property, rather than land. In the Aitareya Brahmana the division is said to have been made during Manu's lifetime by his sons, who left only their aged father to Nabhanedista. According to the Jaiminiya Brahmana again four sons divided the inheritance while their father was old but still alive. It is possible to regard daya as denoting the heritable property of the family; but this goes against the developed sense of 

patra potestas of the father as indicated by the story of Sunasepah. This story is inconsistent with the view that the sons were legally owners with their father, unless and until they actually insisted on a division of the property. Probably land was not divided at first, but its disposal began to follow the analogy of cattle and other movable property as soon as the available supply of land became limited.

As for the method of division the Taittiriya Samhita seems to indicate that the elder son was usually preferred; perhaps this was always the case after death. The story of Sunasepah also indicates the possibility of some advantage attached to the position of the eldest
son. When Visvamitra offered to adopt Sunasepah, the latter insisted upon being made the eldest son of the family.

Some of Visvamitra's sons objected to this even at the risk of being disinherited. These are really indicative of some privileges attached to the position. In spiritual matters the eldest son had some undoubted preferential claim.⁹⁹

Sunasepah too by his adoption as eldest son became entitled to some preference in spiritual matters in the adoptive family.

During father's lifetime an eldest son might have been superseded by another at the option of the father. This seems to be indicated by the story of Sunasepah itself, as also by a passage in the Panchavimsha Brahmana.⁹²

There is a passage in the Satapatha Brahmana indicating that women were excluded from inheritance.⁹³ This seems to be indicated by Nirukta as well.

The Brihadaranyaka Upanishad gives an account how Yajnavalkya when going to enter upon another state proposed to divide his estate amongst his two wives. He said "Maitreyi, I am going away from this my house. Let me make a partition of my property between thee and Katyayani.

There is no clear reference to daughter's right of inheritance; but there is no reason to think that her position became changed for the worse since the early Vedic days.

That father had a right to disinherit his sons is amply indicated by the story of Abhyagni Aitasayana. This man, according to the Aitareya Brahmana,⁹⁵ unfortunate enough to quarrel with his father Aitasa. The result was that he and his progeny were called the worst of the Aurvases. In the version of the Kausitaki Brahmana,⁹⁶ the Aitasesayana Ajaneyas take the place of the Abhyagins and the Bharigus of the Aurvases. The story of Sunasepah also indicates similar power of father. But in both cases the process followed seems to have been to curse down the son to suffer some sort of infamia.

The story of Nabhanedista seems to indicate that a disposition of property to take effect after the death of the transferor was not possible.
Death was considered as severing man’s connection with the property. The very name रूप: of property indicated this:
रूप: अवतिष्टः प्रयूतस्य छृ़यमाणस्य घनं

The gift made by the Angirasas to Nabhanedista, thus could not take effect. While going to heaven the Angirasas told Nabhanedista that he would take all the property left by them. But when in accordance with this gift, which was to take effect after the Angirasas had gone to heaven, Nabhanedista proceeded to possess the property he was opposed by someone who claimed the whole. This latter’s claim prevailed.

It seems, however, that a man might on his death-bed dispose of his property by gift to take effect at once:
रथि न कविचन्मृताँ अवाहा

Rgveda, I. 116. 3.

The crimes recognized in Vedic literature vary greatly in importance, while hardly any distinction is made in principle between real crimes and what now are regarded as fanciful bodily defects or infringements of merely conventional practices. This will be evident if we compare the list of criminals in Maitrayani Samhita, Kathaka Samhita, Kapisthala Samhita and Taittiriya Brahmana. The crimes enumerated include the slaying of an embryo (Bhruna), the slaying of a man (Vira) and the slaying of a Brahmana. The Taittiriya Aranyaka declares that the slaying of a Brahmana alone is truly murder, and the Satapatha Brahmana states that the sin of murdering a Brahmana can be expiated only by the performance of an Asvamedha, the ne plus ultra of human generosity of Brahmanas. Treachery is mentioned in the Panchavimsha Brahmana as being punishable by death. There is, however, no clear indication of an organized criminal justice vested either in the King or in the people. There still seems to have prevailed the system of Wergeld (Vaira) which indicates that criminal justice remained in the hands of those who were wronged. In the later literature however king’s peace is clearly recognized. In the Atharvaveda we are told of a man being under arrest at Kings’ order:

कि यिन्नो राजा यगुहे करस्याति व्रतं चह्मा को वि वेद

Atharvaveda. XVIII. 1. 38.

It may reasonably be conjectured that the royal power of jurisdiction is steadily increasing. The reference in the Satapatha Brahmana to the King as wielding Danda, punishment, confirms this supposition. Whether the king was assisted by the assessors or not cannot be made out clearly.

The procedure adopted in deciding criminal cases is not quite clear. We have, however, some indication of the procedure followed
during this age in trying an offender. The alleged offender is most probably brought under arrest by the King's officers:

कि लिप्रो राजा जग्गे कदस्याति श्रव बढ़ा को वि वेद

Athravadeva, XVIII. 1. 33.

He is brought before the Magistrate, the Pratyenasah, by these arresting officers, most probably by the ugrah, the police officer. There in his presence the prosecutor brings his charges against the accused. If the accused denies the charge, evidence in support of the charge may become necessary. The Magistrate may however take the help of an ordeal. It seems that in the trial by an ordeal the gods reveal the truth. 103

चंद्र यस्मायं वत्स श्रव नानाम राजाः सत्यमकारीं तथा वर्णमर्मे तपस्विः स यदि तस्य करो भवति तत एव यस्मादमन्ताः कुष्ठे सत्यमकारीं यज्ञात्मानमन्तथे।
अय यदि तस्याकर्ताः भवति तत एव सत्यमात्माः कुष्ठे स सत्यमकारीं सत्यमन्ता-मन्त्रात्माः परम् अत्य तथ वत्स श्रव नानाम राजाः स न ददातेव यज्ञात्माः।

Chhand. Up., VI. 16, 1, 2.

In the Chhandogya Upanishad the ordeal of the red-hot axe is mentioned as applied in an accusation of theft. It must apparently be understood to have been inflicted by the direction of the king. The punishment of theft was, in some cases at least, death, probably when the thief was taken redhanded. In other case binding to posts was a penalty presumably accompanied by the return of stolen goods. Magnitude of the crime is gradually coming into consideration in punishing the criminals. 104 Each crime involves also a guilt. King punishes the criminal; but the guilt is punished by the gods. Hence a law-breaker must expiate himself from the sin by expiation. Otherwise he would undergo another punishment in the shape of a low birth or sickness for the actual delinquency. That the king had some hand in the administration of criminal justice is indicated by the literature of this period. The Satapatha Brahmana describes a Brahmana as 'a-dandy'. He however inflicts punishment on others. The later sutras make it clearer by saying rojapreṣito dandaḥ. 105

It will serve no useful purpose to enumerate the various classes of crimes recognized and punished during this age. It seems that even defamation and false prosecution were considered as offence. The Aitareya Brahmana tells us

अनेनसमु एनसा सोजिश्वस्तावः एनसघंथोवाणंपराणेन:

Ait. Br., XXV. 5.
Adultery was generally recognised as a serious offence against the husband of the woman affected.

As regards Procedural law in civil matters no clear account of the same is available. But there are ample indications to show that the system was much developed. The list of victims at the Purusamedha includes a Prasnik, an Obhi-prasnik, and a Prasna Vivaka. Probably these were plaintiff, defendant and the judge. Sabhachara in Taittiraya Brahmana also referred to a judicial member of the body known as Sabha. The word Sabhasad probably was the technical name of assessor who had to decide legal cases in the Sabha. There is the word Sthapati used in the Vedic literature which perhaps meant chief judge, indicating that already gradation in courts of law became known. Sthapati is the name of a royal official mentioned in the Atharvaveda and often later. According to Satapatha Brahmana Revottarasa Cakra was the Sthapati of the exiled king Dustaritee Paum Sayana, of the Sruyajas. He succeeded in restoring the king to his royal dignity. The exact sense is not certain. But the meaning Chief Judge is more likely. He is inferior in position to the Kings' brother.

The word Gramya Vadin, indicating a village judge, also speaks of this gradation. The king is the later chief civil judge, and may presumably have been so even in these early days, maybe in conjunction with the leaders of the tribe.

The use of witnesses as evidence is clearly indicated. But the ordeal is not recorded as deciding any civil matter except the dispute between Vatsa and his rival as to the true Brahmanical descent of the former. Whether the oath was so used cannot be clearly shown. It appears however that a Brahmin was preferred in legal matters to a non-Brahmin.

The story of Nabhanedista refers to settlement of dispute by arbitration, the arbitrator being conversant with law, being a Nisthaba. The earlier Madhyamasi also indicated arbitrators. It will be interesting to notice how in the dispute between Nabhanedista and Vastu, each party puts forward his claim. "This is mine, because the Angiras made a gift of this to me." "This is mine, because I am vastu." Then Nabhanedista's opponent mentions one as an arbitrator and Nabhanedista agrees to refer the matter to him. The matter is then referred to the arbitrator in the exact language of each claimant. The decision of the arbitrator is binding on them.
LECTURE XIV

Hindu Law During the Sutra Period

It has already been observed that to a certain extent Hindu Law was lacking in unity. From the end of the Rigvedic period onwards they seem to have been characterized religiously by particularism, there being different Vedic schools, and the whole body of Aryans being divided into these different schools. The dismemberment of the law in such cases would be a necessary consequence in view of the fact that religion and law were intermixed and interdependent in those early days. We have further noticed that Hindu Law was in a sense racial. Yet the conception of territorial law was not altogether foreign to the Hindu system.

Whatever that be, the informations available for this era do not apply to the entire territory occupied by the Aryans. Any rational utilization of these materials would demand that the different territories must be kept distinct. Sources giving an account for Southern India, for example, would require cautious utilization for a picture of the north. The Southern India again may be divided for our purpose into the Andhra land, the Konkan and further south and the Maharasta and Eastern Hyderabad. The sources of information for these tracts will chiefly be the Dharmasutras of Gautama, Apastamba, Baudhayana and Hiranyakeshin.

For Northern India Vasistha Sutra will be an authority. This sutra, though coming after the establishment of special law school, will give us an account of the probable customs and usages prevailing in the north. We shall also refer to the Vishnusmriti which was of special authority in the Punjab and Kashmir.

We have already noticed how in the early Vedic literature the local bodies or guilds appear as developed institutions, possessed of a distinct organization of their own, claiming and commanding a recognized position of importance and influence in the state. The legal literature of the period under consideration recognizes their distinct and practically independent political status and amply indicates their constitutional relations with the state. These guilds or local bodies developed a distinct body of laws or by-laws to regulate their work and activities the existence and authority of which are clearly affirmed and admitted in the legal treatises of the period. Thus Gautama while stating how a King’s administration of justice should be regulated states:

तत्स्य च व्यवहारो वेदो धर्मशास्त्राय ज्ञानप्रयोगानुपायेन पुराणं। देशावलितेऽवधेकमधिकारं विच्छेदः प्रमाणं। कर्मसाधिकारणां संप्रसारकूलकुसंतिक्षणानां स्वे स्वे वर्गं। तेन्मयो ग्रामसंस्कारसंपलं ग्रामविधाय धर्मशास्त्रं।

Gautam S., II. 2. 19-22.
"His administration of justice shall be regulated by the Veda, the institutes of the sacred law, the Angas and the Purana. The laws of countries, castes and families, which are not opposed to the sacred records have also authority. Cultivators, traders, herdmen, money-lenders and artisans have authority to lay down rules for their respective classes. Having learned the state of affairs from those who in each class have authority to speak he shall give the legal decision. Similarly, Vasistha says that

देशामेजातिधर्मेकुल्यमानः शर्यभावदशविन्मनः।

Vasistha, I. 17.

"Manu has declared that the peculiar laws of countries, castes, and families, may be followed in the absence of rules of the revealed texts." Again he says:

देशामेजातिधर्मेकुल्यमानः सर्वत्रिकाठण्यांश्च राजा चतुरो वर्णानां स्वात्मं स्वतं विषयं।

Vasistha, XIX. 7.

"Let the King, paying attention to all the laws of countries, castes, families, make the four castes fulfil their particular duties."

Similar statements are to be found in the other Dharma Sutras as well. Apastamba says:

एतेन देशकुलधर्म म्यायमातः।

Apastamba Dharmasutra, II. 6. 15. 1.

Baudhayana also says:

ता तथा देशप्राप्तमाणेव स्पतुः।

Baudhayana Dharmasutra, I. 2. 6.

No doubt there is no evidence regarding the organization of the various local bodies in the literature of this period. This however is supplied by the later literature and there is no reason to suppose that this organization did not hold good during this period as well. The efficiency of the organization will be apparent from the laws of apprenticeship of which we have some indications in the Sutras of this period. Later on these laws are given in details. Thus Narada states: "If a young man wishes to be initiated into the art of his own craft, with the sanction of his relations, he must go and work with a master, the duration of his apprenticeship having been fixed. The master shall teach him at his own house and feed him. He must not employ him in work of a different description, and should treat him like a son. If one forsakes a master, who instructs him and whose character is unexceptionable, he may be compelled, by forcible means to remain at the master's house and he deserves corporal punishment and confinement. Though his course of instruction be completed, an apprentice must continue to reside at the house of his master till the fixed period has expired. The profit of whatever work he may be doing there belongs to his master. When he has learnt the art of his craft, within the stipulated period, the apprentice shall reward his master as plentifully as he can, and return home, after having taken leave of him. Or a certain fee having been agreed upon after examining the skill of the pupil, the apprentice shall
take his fee and shall not go to live in the house of another man." Brihaspati also gives indication of these rules by saying: "Arts—work in gold, base metals and the like, and the art of dancing and the rest, are termed human knowledge; he who studies them should do work at his teacher's house." Katyayana fixes a penalty for employing an apprentice in other work saying: He who does not instruct his scholar in the art, and causes him to perform other work shall incur the first amercement; and the pupil may forsake him and go to another teacher, released from this indenture." Gautama tells us:

शिष्यशिष्टरमेवं, अशक्ती रज्जुविभूद्यमां तनुभामनवेन धन् राजा शास्यः।
Gautama Samhita, I. 2. 48-50.

"As a rule pupil shall not be punished corporally. If no other course is possible, he may be corrected with a thin rope or a thin cane. If the teacher strikes him with any other instrument, he shall be punished by the King."

It seems that if the art could not be learned in the time stipulated for the purpose, there should be a formal extension of the apprenticeship. Jajnavalkya (याज्ञवल्क्य) on the other hand tells us:

कृतविश्वेषपि निवसेतु कृतकालं गुरोण्हे।
अन्तेवासी गुरुप्राप्तमोजनस्तत्तः॥
Jajnavalkya Samhita, II. 187.

"Even if an apprentice has learnt the art he must live in the house of his master for all the full stipulated period."

It seems that the considerations of caste did not affect the admission of apprentices into a craft. The barriers between occupations were not so fixed and rigid as yet.

If the Vedic Indians were really immigrants from outside India, it is obvious that these early Vedic societies were surrounded by neighbours not of a kindred nature. Where the vital interests of neighbouring societies are not of a kindred nature, their opposition is likely to grow irreconcilable and absolute, and the struggle can only terminate with the subjection of one of the contending societies, that is, with the reconstruction of the one worsted in conformity with the principle of that neighbouring dominant society which has proved stronger of the two. The rivalry of such neighbouring societies as own the same principles, on the contrary, finds its limits in the consideration of those principles common to all of them, which form the cherished common property of a certain period of civilization, and are publicly proclaimed as ideals of a higher standing than the single objects of the several kindred societies, states and nations. These early Vedic societies had to face both these kinds of struggles. This produced a great effect upon their inner life. Such twofold struggle imposes upon every society the fulfilment of a twofold task; firstly the care of providing the means, the employment of which should enable it to secure the vital interests of its members; and next, the keeping up of its strength, and render-
being it available for the purpose of maintaining its organism against other societies.

The former function embraces the industries of peace and the production of material and moral resources, whilst the latter necessitates measures of defence and eventually of attack, thus embracing the arts of war. Military activity, indeed, demands an organization which can be subordinated to the guidance of a single Will which will render it possible for its inherent forces to be concentrated at any moment and to be employed on any side; an organization which requires strict external discipline, and which, necessitating absolute directions issued from above and blind obedience rendered from below, necessarily leads to the centralization of the government of the society. The activity of the central power, accordingly, continually expands in a society of a preponderatingly military character. Even the tasks of production, which have to be fulfilled according to the exigencies of war, are subjected to immediate official control. Such a society always endeavours to find within its own Units, so far as possible, all the means of satisfying its own wants, and, fencing itself off against its neighbours, becomes more and more exclusive. Moreover, owing to the fact that the authorities absorb all important business, and that individual activity is thus restrained in every respect, the spirit of initiative wanes in individuals, whilst the inequality of the social classes goes on increasing, and is ossified in a hierarchy of military grades. A society, on the contrary, in the life of which military activity plays but a subordinate part, and where the economical activity of the members predominates, attempts to assert the conditions of natural competition from the standpoint of the cheapest possible production, and of the most advantageous disposal. Such a society, moreover, by affording securities to public liberty, develops the inclination for individual initiative, and brings into prominence the features of individual self-reliance and thus does not permit any expansion of the central power beyond the point at which this might be indispensable to the preservation of the society. Our post-Vedic societies were the resultant of these two factors.

The Sutra literature seems to recognize what in Roman law is known as *infra*. We have no positive conception of Civic honours in Hindu Law. But its loss seems to be indicated by the word “पतितः” or ‘पातितः’. Gautama after giving the law of castes and of orders proceeds to explain how a man is polluted in this world. He says:

अब सब्बम धूम धापण अथवा कल्याणो जिल्पते यथात्तू अयाज्ञायज्ञम् अस्मयमित्रम्,
अवत्ववनं शिष्ट्वाशिष्ट्वा प्रतिपद्यसेवनम् इति।

_Gautama Samhita, III. 1. 9._

"Now, indeed man in this world is polluted by a vile action, such as sacrificing for men unworthy to offer a sacrifice, eating forbidden food, speaking what ought not to be spoken, neglecting what is prescribed and practising what is forbidden."
In Chapter XXI he names the persons who suffer this infamia by saying:

चतुर्वत्तिः पितृज राजसाधनं भृद्भाईंतरं वेदविष्ठास्म भूराणं भृद्वात्याश्चात्याश्चात्याश्चात्याश्च.

Gautama Samhita, III, 2. 1.

"Let him cast off (even) a father who assassinates a king, who sacrifices for a Sudra, who sacrifices for his own sake with a Sudra's money, who revolts against the Vedas, who destroys the fetus, who dwells with men of the lowest castes, or copulates with a woman of the lowest caste."

He then proceeds to describe certain ceremonials to be observed to cause a man lose his civic honour. "Having assembled the sinner's spiritual gurus and the relatives by marriage, the sons and other kinsmen shall perform for him all the funeral rites, the first of which is the libation of water. And afterwards they shall overturn his water-vessel in the following manner. A slave or a hired servant shall fetch an impure vessel from a dust heap, fill it with water taken from the pot of a female slave and, his face turned towards the south, upset it with his foot, pronouncing the sinner's name and saying 'I deprive N. N. of water.' All the kinsmen shall touch the slave passing their sacrificial cords over the right shoulder and under the left arm and untying the locks on their heads. The spiritual gurus and the relatives by marriage shall look on. Having bathed, they all shall enter the village."

तत्त्वं विद्यागुरुः योगिसम्बन्धाच्छ चतुपात्यसन्तुष्टिः सतीमयुक्ताविदातीर्थतिः प्रेतकर्मणी कुरुः पार्श्वस्वाय विपर्यस्तेश्च।

Gautama Samhita, III, 2. 2-7.

"The murderer of a Brahmana, he who drinks spirituous liquor, the violator of a guru's bed, he who has connection with female relatives of his mother and of his father (within six degrees) or with sisters and their female offspring, he who steals, an atheist, he who constantly repeats blamable acts, he who does not cast off persons guilty of a crime causing loss of caste, and he who forsakes blameless (relatives) become outcasts. Likewise those who instigate others to acts causing loss of caste, and he who for a (whole) year associates with outcasts."

बहुसुधे विष्णुपुरुषस्त्रयेपार्श्वावतीर्थतिः प्रेतकर्मणिः पीताः पार्श्वस्वाय विपर्यस्तेश्च।

Gautama Samhita, III. 3. 1-3.

Gautama notices a conflict of opinion by saying "some declare that a man does not become an outcast by having connection with female relative except when he violates a guru's bed."
HINDU LAW DURING THE SUTRA PERIOD

न स्त्रीष्वछु सत्यं पतीत्येके ॥
नागुल्ले पतीत्येके ।

Gautama Samhita, III. 3. 8.

A woman becomes an outcast by procuring abortion, by connection with a man of lower caste and the like heinous crimes.

चूँकित होनेवाले सेवावों न स्त्री पतीते।

Gautama Samhita, III. 3. 9.

Giving false evidence, calumnies which will reach (the ears of) the King, an untrue accusation brought against a Guru (are acts) equal to mortal sins—(mahapataka).

कौटसाक्ष्य राजागमि पेशुन गुरुरन्तुतामिन्द्ररथ महापता सारभाणि ॥

Gautama Samhita, III. 3. 10.

The consequences of being an outcast are to be deprived of the right to follow the lawful occupations of twice born men and to be deprived after death of the rewards of meritorious deed. It caused as it were a civil death and the outcast was outlawed altogether.

This Anudakakriya (अनुदरक्रिया) of the Sutra period bears a close resemblance to the Roman censorian notatia marking an individual in such a way as to produce the effect of some serious ignominia attaching to him.

Similar provisions are to be found in the Vasistha Sutra as well. 4

It seems clear that this loss of civic existence could be regained by observing certain penances. Gautama cites the Vedas and says he who has offered a Panastoma may again come to partake of the libations of soma. Likewise he who has offered a Vralyastoma. Further he who offers a horse sacrifice, conquers all sin, he destroys the guilt of the murder of a Brahmana.

तरं तथा चाप्लां तरं त्रायुष्मां योस्तः क्षेत्रविशेष ।

Gautama Samhita, III. 1. 9.

He further says that "if an outcast sinner is purified by performing a penance, his kinsmen shall, after he has become pure, fill a golden vessel with water from a very holy tank or a river, and make him bathe in water taken from that vessel. Then they shall give him that vessel and he after taking it, shall mutter: 'Cleansed is the sky, cleansed is the earth, cleansed and auspicious is the middle sphere, I here take that which is brilliant.'"

यस्तू प्रायः क्षितले बुद्धेऽत्तमस्मिन् शुद्धे शात्कुमः भिमम पात्रं पुष्ठमाधवत गुरुराचारा सत्तिमयो
बा तत्त एनम्न उपस्थाप्युः।

बत्रायं ततः तिवं दृश्यं सात्तिप्रतिग्रहा जिवेचान्ता दृश्याद्या शान्तं शूचिविश्व शान्तं चित्वर्न्तरिक्षं
यो रोजनस्तमिं गृह्यामालं।

Gautama Samhita, III. 2. 10-11.

"But he whose penances must end in death, is purified on death. Let his kinsmen perform for him all the funeral rites, the first of which is the libation of water."
“यथातु प्राणात्मको प्राप्तित्वं स मृतः सुध्येत्। सत्त्वायेव तस्मिन्वदकारोनिप्रेलकारणी
कुर्या। एतदेव शास्त्र्युदकं सर्वपूर्वात्केषु सर्वपूर्वात्केषु।”

Gautama Samhita, III, 2. 16-17.

Gautama cites Manu to say that the loss of caste occasioned by
the murder of a Brahmana, by the drinking of spirituous liquor and
by violating a guru’s bed cannot be expiated.

Vasistha also says that outcastes who have performed the
prescribed penances may be readmitted. According to him this readmission
is like rebirth and he concludes by saying that “all the other ceremo-
nies to be performed on the readmission of one who has bathed in
this manner have been explained by those ordained on the birth of a
son.”

These outcastes, so long as they remained so, had no legal capacity
at law. Vasistha expressly names them as incapable of inheriting. If
Gautama gives no such rule, it is because no such rule is necessary.
The outcaste is dead in the eye of law and all the consequences of
death follows.

LAW RELATING TO FAMILY RELATIONS

We have already noticed the family-sex rigidity of the Vedic
culture. Instead of relaxing, the lawgivers of this period seem to have
tightened this rigidity further, the basic idea of public legal control
of sex and family still underlining the family organizations. The sex
freedom period, if any, were still mere matters of theory with the
lawgivers of this age.

Gautama names four orders that may be followed by a person.
These are:

ब्रह्मचारी गृहस्थो भिषुव्वानस्।
Gautama Samhita, I. 3. 2.

Of these he recommends the order of a householder;
तेषां गृहस्थो योंिनिर्ग्राजनत्वादिविविरेषाम्
Ibid., I. 3. 3.

Householder is the source of these, because the others do not produce
offspring. It seems one was entitled to become a householder only
after the termination of his apprenticeship. Some sort of ignominia
though not amounting to capitis diminutio seems to have attached to a
person who married before the expiry of his studentship. A man is
prohibited from feeding a person who during his studentship has
broken the vow of chastity. A man is thus directed not to marry until
the completion of his period of studentship. The period commences
with the Upanayan and lasts till the apprentice has acquired the
knowledge. Generally perhaps this period ends when the student
attains the age of twenty-three.
Gautama says that a man should not feed at the funeral oblations "a younger brother married before the elder brother, an elder brother married after his younger brother, an elder brother whose junior has kindled the sacred fire first, a younger brother who has done that."

...परिवर्ति परिवेत्र परिष्नित परवाङ्गानु...  
Gautama Samhita, II, 6, 18.

We have seen how even during the earlier age such marriages were condemned and it seems that though a younger brother may not legally be incompetent to marry before his elder brother, some sort of ignominy attached to these brothers when they married in this irregular order. If an elder brother has gone to a foreign country, his younger brother must wait twelve years before he takes a wife or kindles the domestic fire. Some declare that he shall wait six years.

ब्राह्मण चेवं यायसिः यथीयानं कन्यायामपुष्पयमेव पड़ेयेके।  
Gautama Samhita, II. 9. 18-19.

A minor as such is not deemed incompetent to marry. But as one should not marry until the completion of his period of studentship, it almost invariably happened that none married before attaining the age of majority.

There is nothing in the law of this period to show that persons of unsound mind was in any way incompetent to marry.

It is however difficult to say whether impotency was disqualification. Gautama in Chapter XXVII says:

जड़कीवो मर्यं | अपत्यं जड़स्य भागाहेम्।  
Gautama Samhita, III. 10. 41-42.

He does not say anything as to the position of the son of an impotent person. This seems to indicate that while it was possible for an idiot to have a son, an impotent might not have one. Maybe, impotency was disqualification for marriage. This is however mere conjecture. Vasishtha also gives the rule saying:

श्रेष्ठत्वाभ्यांत्यांतरगताः: कलौलमान्तपत्तितान्तरम्  
Vasishtha Sutra, XVII,

"But those who have entered a different order receive no share, nor those who are eunuchs, mad men or outcasts. Eunuchs and mad men have a claim to maintenance."

Later, however, in Manu we are told of the competency of an impotent to marry. Manu says:

यवाचिता तु दारी: स्यातू कलौलानां कस्यचन।  
तेतवायुपप्रत्यत्तूवाक्षश्च दायमहृति॥  
Manu, IX. 208,

As polygamy is not prohibited in Hindu law one having a wife living is not incompetent to marry again. But monogamy is deemed praiseworthy.
We have seen that during the Vedic age a female was an active party to marriage. It was necessary to woo and win her—to secure her consent before one could expect to have her as his wife. The Vedic marriage rites also did not indicate that she was merely a chattel in the eye of law to be the object of gift. During the age just under our consideration, however, her position in this respect seems to have changed for the worse, though in certain cases she is yet permitted to take a husband by her own choice. Gautama tells us;

श्रीनृ कुमार्यूँ पुनर्नाथ स्वयं पुज्येवलानिन्दकिलोत्सृजय विश्वासलक्षकारान्।

Gautama Samhita, II. 9. 20.

"A maiden shall allow three monthly periods to pass and afterwards unite herself of her own will to a blameless man." Vasistha increases the period to three years, by saying:

कुमार्यूँ पुज्येवलानि श्रीणि वर्षिण्यपासील। अद्व जिम्यों वर्षेयम्: पलि विन्दुत्सृम्।"

Vasistha Samhita, XVII. 67-68.

This development of the law seems to indicate that girls were originally parties to the marriage in the eye of law. Gradually however in cases of marriage at immature age guardians had to take active part, perhaps to supplement the capacity of the minor girl. In course of time when such marriages at immature age became common, father’s right of disposal developed. A girl on attaining the age of puberty passed out of this parental power. When a girl on attaining puberty, selected her own husband, she was penalized by being made to give up the ornaments given to her by her father. Gradually parental power developed so as to reduce the girls to mere chattels in this respect. A girl’s choice of her husband was looked upon as a penalty to a negligent father who neglected to give her daughter in marriage earlier.

Minority of a girl is no disqualification during this age. During the Vedic age girls as a rule would not marry before they reached the age of puberty. The sutra literature however shows a contrary inclination. It recommends marriage at a very early age. Even Gautama cites earlier opinions in favour of reducing this marriageable age. He says:

प्रदान भ्रात्रोऽप्रवयन्यप्रस्था प्राप्वासस: प्रतिपत्तेनिर्यापुः।

Gautama Samhita, II. 9. 21-23.

"A girl should be given in marriage before she attains puberty. He who neglects it, commits sin. Some declare that a girl shall be given in marriage before she wears clothes." Last marriage would be delayed on the ground of poverty, he enjoins, "In order to defray the expenses of a wedding and when engaged in a rite enjoined by the sacred law, one may take money even from a Sudra."

द्वादान्यं विवाहनिद्रयं धर्मंत्रसंथोऽन च मूर्तत्त।

Similarly Vasistha says: “Out of fear of the appearance of the menses let the father marry his daughter while she still runs naked. For if she stays after the age of puberty, sin falls on the father. As often as the courses of a maiden, who is filled with desire, and demanded in marriage by men of equal caste, recur, so often her father and her mother are guilty of the crime of slaying an embryo.”

Vasistha Samhita, XVII. 70-71.

These elaborate provisions as to the consequences of keeping a girl unmarried even after she has attained puberty seem, however, to indicate that marriage of girls before they attained womanhood was still exceptional. Vigorous attempts were being made to reduce the marriageable age. A marriage after attaining puberty is not yet sinful.

Gautama gives the position of women in the following terms:


Gautama Samhita, II. 9. 1-19.

“A wife is not independent with respect to the fulfilment of the sacred law. Let her not violate her duty towards her husband. Let her restrain her tongue, eyes, and action. A woman whose husband is dead and who desires offspring may bear a son to her brother-in-law. Let her obtain the permission of her Gurus and let her not have intercourse beyond the proper season. She may obtain offspring by a sapinda, a sagotha or a samanpravara or by one belonging to the same caste. Some declare that she must not have connection with anybody other than husband’s brother. She shall not thus bear more than one son. The child belongs to him who begets it except if an agreement to the contrary has been made. When husband is living the child belongs to the husband (if begotten at his request). But if it was begotten by a stranger, it belongs to the latter. Or to both the natural father and the husband of the mother. But being reared by the husband it belongs to him. A wife must wait for six years, if her husband has disappeared. If he is heard of, she shall go to him. But if the husband has renounced domestic life, his wife must refrain from going to him. The wife of a Brahmana who has gone to a foreign country for the purpose of studying must wait twelve years. And in
like manner if an elder brother has gone to a foreign country his younger brother must wait twelve years before he takes a wife or kindles the domestic fire. Some declare six years."

A careful perusal of the above extract would show that wife and her issue were looked upon as property and the question was approached more from the viewpoint of ownership.

The passage indicates the legality of *niyoga* in the days of Gautama during the lifetime of the husband. It seems that the rule that a wife must wait for six years and similar others, gave a rule of evidence, the length of period giving rise to the presumption of death of the husband. From these rules it cannot be inferred that the wife was, after such lapse of period, entitled to marry again. It seems only to mean that after the period she may behave as above indicated like a widow. Vasistha says:

> प्रेतस्ती षणरान्तः प्रतिप्रभारावरः सुभ्यानाँ: प्रियतः। उन्हें पद्मो भारस्य व पति दत्वा विद्वाकरङ्गमुनां सत्यायित भाति वा नियोगायायत। नामां व व्याधयाचं व्याख्यात वा नियुग्याणाः। व्याख्यातिः। वादित्वम्। न च एदामविनाः स्त्राः। प्राणांसय शुरुतां पानिश्रवाहकमुस्तरेयत्र संस्कारास्य वाकप्राये दृष्टपातां स्नाताः। श्रास्त्राचार्रकरूपानां तरिकायनं भागानाः स्त्राः। अनिवर्यकारे। उन उनसमस्तः पुजार्यत्वाः। स्त्राचेतानायायित। रिख्याभावाचारा नियोग।।

*Vasistha, XVII. 55-65.*

"The widow of a deceased person shall sleep on the ground during six months, practising religious vows and abstaining from pungent condiments and salt. After the completion of six months she shall bathe and offer a funeral oblation to her husband. (Then) her father or her brother shall assemble the Gurus who taught or sacrificed (for the deceased) and his relatives, and shall appoint her (to raise issue to her deceased husband) or set her to religious austerities. Let not a widow who is mad, ill-conducted or diseased be appointed. Nor one who is aged. Sixteen years after maturity is the period for appointing a widow. (Nor shall an appointment be made if the widow is sickly.) Let him approach the widow in the *muhurtta* sacred to Prajapati like a husband (but) without amorously dallying with her and without abusing or ill-treating her. Let her obtain the expenses for food, raiment, baths and unguents from the estate of her husband. They declare that a son begotten on a widow who has not been duly appointed, belongs to the begetter. If she was appointed, the child belongs to both the males connected with the appointment. No appointment shall be made through a desire to obtain the estate."

There is ample indication here that the custom of Niyoga is gradually being restricted. Indeed it seems that this usage was a very short-lived one amongst the Hindus. It seems to have originated
during the post-Vedic ages and was much disfavoured even before Manusmriti. Apastamba says:

पूर्वव्यायांसंस्कृतां वर्णनित्रे च मैथुने दोषः। तत्तथापि दोषवानुप एव। उत्तपादितु: पुनः इति हि ब्राह्मणम्। अवायुवाहिन्ति। इदारूपेक्षा जनकः स्त्रीसहाय्यामि

नो पुरा यदा यमस्य सादने जनयितु: पुण्यमुनि। रेतीपा: पुनः नयति परेष्य यमस्य सादने।

tusmaṭhaṃ kṛtaṃ vibhavat: parantar:। अभ्रस्तता रक्षया तत्तुमेते मा: क्षेत्रे परवीजातिः

वास्वः। जनयितु: पुष्ट्रो भवति वापरायु मोच वेतार कुःते: तत्तुमेतेति।

Apastamba Sutra, II. 6. 13. 4-7.

“"If a man approaches a woman who had been married before or was not legally married to him, or belongs to a different caste, they both commit a sin. Through them their son also becomes sinful. A Brahman says the son belongs to the begetter. Now they quote also (the following Gatha from the Veda): (Having considered myself) formerly a father, I shall not allow (any longer) my wives (to be approached by other men), since they have declared that a son belongs to the begetter in the world of Yama. The giver of the seed carries off the son after death in Yama’s world; therefore they guard their wives, fearing the seed of strangers. Carefully watch over the procreation of your children, lest stranger seed be sown on your soil. In the next world the son belongs to the begetter, an (imprudent) husband makes the (begetting of) children vain (for himself).”” Vasistha also referred to similar reasons against Niyoga as also to its probable origin. He said: ‘‘The father throws his debts on the son and obtains immortality if he sees the face of a living son.’’ It is declared in the Veda: ‘‘Endless are the worlds of those who have sons, there is no place for the man who is destitute of male offspring.’’ There is a curse in the Veda: ‘‘May our enemies be destitute of offspring.’’ There is also the following passage of the Veda, ‘‘May I obtain O. Agni, immortality by offspring. Through a son he conquers the worlds, through a grandson he obtains immortality, but through his sons’ grandson he gains the world of the Sun.’’

नगर्ग पुनर्जगित्रिः अमृतवेल्थ गच्छित।

पििदा पुत्रमु जातस्य परेष्यन्त सजीवं मुख्म।

वन्नता: पुरुषां लोकं नापुरुषं लोकोज्जगतीतिः श्रूयसे प्रजा: सत्यपुरुषं इत्यथा:।

प्रजाभिमुखेन्त्रकु मृत्युमःस्मात्मात्मामभिः निम्बेरो भवति।

पुल्लेण लोकाः जगित्रिः परेषाणास्मात्यमंस्थते।

अथ पुत्रमु पुत्रे जन्मस्यानान्निम्बेति।

Vasistha Samhita, XVII. 1-5.

Thus signifying the importance of having a son he proceeds to consider whether the purpose will be served by having a son begotten by Niyoga.
He says:

केतिष्ठ: पुनः जनयितु: पुनः इति विवदते। तत्राभ्यायायुद्वाहरति।

Vasistha Samhita, XVII. 6-7.

He then refers to conflicting views but himself gives no decision.

It seems Niyoga came into use when a son became necessary for after-life existence. Apastamba assailed the very ground on which it was based. He warned the people of his age against the examples of the earlier people by saying:

दृष्टो धर्म्मतिलकः साहसं च पूर्वसाम्।
तेषां तेजविषेषं प्रत्यवादो न विवदते॥


"This practice might not have been sinful to those early peoples. But a man of later times who seeing their deeds follows them, falls":

तदन्वीष्य प्रयुज्ञान: सीद्धांवर:॥

Apastamba Samhita, II. 6. 13. 10.

Gautama nowhere gives any indication of the possibility of the marriage of a woman having her husband living. The rules referred to above where he enjoins a wife to wait till certain period are not clear enough to indicate that after the lapse of the period she would be entitled to remarry. On the contrary, the context seems to indicate that these rules only entitled her to raise an issue to her husband after such a period.

Vasistha however gives some clear indication of the possibility of such re-marriage when he says:

कीमारं भर्तरमुन्‌सुध्दाय्यं: सह चरित्वा तर्येंव कुतुम्माधारं ति स पुनःप्रभवति या च
कलीवं पतितमुहम्भते वा भर्तरमुन्त्रुद्दाय्यं पति विवद्ये गृहे वा सा पुनःप्रभवति।

Vasistha Samhita, XVII. 19-20.

"She is called remarried who leaving the husband of her youth and having lived with others, re-enter his family. And she is called remarried who leaving an impotent, outcaste or mad husband, or after the death of her husband takes another lord."

No doubt Gautama also uses the expression Punararbhuh in the sense of a remarried woman. But there is nothing to indicate that he did not mean only the remarried after former husband’s death. As regards those women whose husbands are absent for some length of time Vasistha says:

प्रोक्तिस्यानी पञ्चवस्त्रियापासीत्। उच्चं पञ्चवस्त्रयं वर्षेयं भर्तरुकाणं गच्छेद्।
यदि धर्मार्थायं प्रवासं प्रत्यन्तकामो न स्थायया प्रेत एवं विनितत्वं स्तात्।

Vasistha Samhita, XVII. 75-77.

"The wife of an emigrant shall wait for five years. After five years she may go to her husband. If for reasons connected with spiritual or with money matters she be unwilling to leave her home she must act in the same manner as if her husband were dead."
HINDU LAW DURING THE SUTRA PERIOD

Vasistha then proceeds to prescribe different periods for women of different castes and under different circumstances and enjoins that:

अत ऊबः समानार्थजन्मसिपड़कः दक्षिणां पूर्वः पूर्वाणि गरीवान्—न तु बलः कुलो निविद्यामाने परगामिनी स्थातः।

Vasistha Samhita, XVII. 79-80.

"After that among those who are united with her husband in interest, or by birth, or by the funeral cake, or by libations of water or by descent from the same family, each earlier named person is more venerable than the following ones. But while a member of her family is living she shall certainly not go to a stranger."

These rules are only to recommend where she should seek shelter when thus forsaken.

Enough has been said to indicate that widow remarriage was recognized during this age. It seems, however, that already such remarriage is disfavoured and some social branding is attached to it. Though Gautama does not give any detailed rule regarding widow marriage, it seems that widows of advanced age seldom thought of remarriage. In the days of Vasistha more definite rules limiting such remarriage seems to have developed. Vasistha says:

अन्तर्वनि च दत्तयानि निर्वेत्याऽः वरो यदि।
न च मनुष्यनिता स्वातं कुमारी निवरेव सा॥
बलाचेत् प्रहुता कन्या मन्नैर्मदि न संस्थूतो॥
अन्यस्ये बिष्ठिं यथा कन्या तवैव सा॥
पाणिन्धे नृत्ते वाला केवलं मन्नसंस्थूतो॥
सा चेदक्षेत्योऽनि: स्वातं पुनः संस्कारमहंस्तीति॥

Vasistha Samhita, XVII. 72-74.

"If the intending bridegroom of a betrothed maiden die after she has been promised to him verbally, and by a libation of water, but before she was married with the recitation of sacred texts, she belongs to her father alone. If a damsel has been abducted by force, and not been wedded with sacred texts, she may lawfully be given to another man; she is even like a maiden. If a damsel at the death of her husband had been merely wedded by the recitation of sacred texts, and if the marriage had not been consummated, she may be married again."

It seems that the difficulty in justifying the remarriage of a widow was felt when these early jurists looked upon girls as objects of gift and marriage was in the eye of law a contract between bridegroom and bride's father. The difficulty was whether after promising the gift it was open to the promisor to give her to another. The difficulty was much greater when the gift was already complete. It seems that these early Aryans tried to get over this difficulty by taking such gifts as implying some purpose. The gift was deemed incomplete till consummation. As has been noticed above the remarriage was already
reprobated by the society and both the remarried widow and her issue on such remarriage were infamous in the eye of the law.

A girl already betrothed to one should not be taken in marriage by another.

सङ्कुल प्रदीपयते कन्या हरेिस्तां चौर्यशमनः।

Yajnavalkya Samhita, I. 65.

A girl whose elder sister is unmarried is unfit for being taken as wife.

परिवित्त: परिवेत्ता प्रयोदितियों दिविषु पतिर्वीजहा ब्रह्मण इत्येत एतिनिव।

Vasishtha Samhita, I. 18.

A woman belonging to the same gotra is declared not eligible for being taken as a wife.

गृहस्थ: . . . असमानस्मिरिस्यमस्संख्यां यवियसीं सदृशीं भायी विन्द्वेत्।

Vasishtha Samhita, VIII. 1.

असमानप्रवर्तिवाहः।

Gautama Samhita, I. 4. 2.

Girls related to the man within certain degrees of relationship are not to be taken in marriage.

गृहस्थ: सदृशीं भायी विन्द्वेतानन्ययुवां यवियसीं।

Gautama Samhita, I. 4. 1.

पञ्चमी मातःन्युः: सप्तमी पितुवन्युः।

Vasishtha Samhita, VIII. 2.
Gautama Samhita, I. 4. 3.

All the Sutrakaras direct that a man should marry a damsel younger than himself. The rule, however, is only directory in its nature.

A girl belonging to the same caste is recommended to be taken in marriage. Thus Gautama says:

गृहस्थ: सदृशीं भायी विन्द्वेतानन्ययुवां यवियसीै। असमानप्रवर्तिवाहः। ऊँचे
सप्तमालूं पितुवन्युः ब्रजजनांग, मातःन्युः: पञ्चमालू।

Gautama Samhita, I. 4. 1-3.

"A householder shall take a wife of equal caste who has not belonged to another and is younger than himself. A marriage may be contracted between persons who have not the same Pravars. And who are not related within the six degrees on the father's side, or on the side of the begetter, nor within four degrees on the mother's side." Afterwards he enjoins "children born in the regular order of wives of the next, second or third lower castes become Savarnas, Ambasthas, Ugras, Nisadas, Daushmantas or Parasavas. Children born in the inverted
order of wives of higher castes become sutas, magadhas, Ayogavas, Ksattris, Vaidehakas or Chandalas".

अनुकरोमनन्ते रक्तान्तरद्वयत्रायु जाता: सवार्थीमेतो ग्रामिणादीवृम्भलितवार्षिकः।
प्रतिलोमास्तु सुतांगासायोगिकृतवेदेषीतज्ञांचाला:।


According to Gautama those born in the inverse order from fathers of a lower and mothers of a higher caste stand outside the pale of the sacred law:

प्रतिलोमास्तु धर्मोहिना:।

Gautama Samhita, I. 4. 20.

This will also be the fate of a son born of a Sudra woman by a higher caste male. But he whom a sudra begets on a female of unequal caste shall be treated as an outcast:

असमानायां तु शूद्रान्तः पञ्चवृत्ति:।

Gautama Samhita, I. 4. 22.

These indicate the legal consequences of inter-caste marriage. It is important to remember that though inter-caste marriage was recognized, the legal status of sons of such marriage differed greatly with the difference in caste of their parents. But this rule also is only directory during the Sutra period, and its violation would not nullify a marriage.

Several other minor defects in girls are enumerated; but all these are mere directions for choice of a bride.5

Most of the rules about disqualifications for marriage are in the nature of directions for regulating choice in matrimony, disregard of which would certainly be improper as involving...शिष्टस्याक्षरे प्रतिष्ठितरोक्षनम्।
(Gautama Samhita, III. 1. 2)

But the disqualifications arising from identity of gotra, and relationship within the prohibited degrees, would invalidate a marriage. Gautama prescribes:

तत्रे क्योऽवने गुप्ताल्पम्: शयित।
सब्जीस्योनित्यस्याश्चिप्यभार्यार्यस्य स्नुष्यायां गवि च गुप्ताल्पम्।।

Gautama Samhita, III. 5. 8, 12.

FORMS OF MARRIAGE:—

Eight forms of marriage are named in the Sutras, viz., Brāhma, Daiva, Prājāpatya, Ārsha, Gāndarva, Āsura, Paisācha, Rāksasa.

Vasistha names only six forms, viz., Brāhma, Daiva, Ārsha, Gāndharva, Ksātra and Mānusa.

वष्णुवाहा:। ब्राह्मो देव आर्थ गान्धर्व: क्षत्रो मानुषवैति।

Vasistha Sutra, I. 28-29.
Apastamba mentions Brähma, Arsha, Daiva, Gándharva, Asura and Rákṣasa rites.


**MODE OF CONTRACTING MARRIAGE:**

During the period under our consideration betrothal seems to form an important part of the nuptial rite. Betrothment is a promise to give a girl in marriage.

Regarding the legal effect of betrothment, there is some difference of opinion. During the period under our consideration it is looked upon as a revocable promise of marriage only.

In regard to ceremonies attending marriage "various indeed are the customs of the different countries and the customs of the different villages; those one should observe at the wedding."

The following are commonly observed, *viz.*, seizing of the bride's hand, the treading on the stone, circumambulation of the fire, sacrifice of fried grain, the seven steps, carrying the bride to the husband's home, ceremonies observed on entering this home, looking at the polar star.

It is laid down in the sutras that these ceremonies must be observed at the wedding. Non-observance of them will pollute a man. According to Baudhayana a girl who has not been wedded with sacred texts, may lawfully be given to another man.

**LEGAL CONSEQUENCES OF MARRIAGE:**

Marriage in the Hindu Law is not merely a contract: it is a sacrament; and the rights and duties of the married parties are determined solely by the law, and are incapable of being varied by their agreement. The husband has both conjugal rights over and duties towards his wife.

If a man is declared an outcast his rights over his wife will cease.

Adultery is deemed both a deadly sin and a heinous crime; and both the adulterer and the adulteress are liable to punishment.

Man and wife are deemed as one person in Hindu Law only for religious purposes. Wife may enter into contract and she may sue and be sued. Husband and wife may be competent witnesses for or against each other.
The institution of marriage is indeed the legal foundation of family life and it is needless to say that the family exists for purposes other than mere satisfaction of sexual desires. The central social function of the family is the perpetuation of the race which included procreation of the children, inducing them into basic social heritage and superintending their initial adjustments to the world in which they must live. The sex-partnership of a family has thus a different basis having different purposes and different consequences from those of other partnerships. It has its own special social claims and social responsibilities. From the standpoint of the society it is not so much the relation of lovers to one another which counts as the relation of parents to children which is of vital importance. The institution must provide a way of combining and harmonizing the closely related functions of (1) stable satisfaction of sex-need, (2) production and rearing of children and (3) provision of a stable home. Only in a permanent and stable family can these functions be efficiently united, each re-inforcing and enriching the satisfaction of the others. Sex is not allowed to become a detached phenomenon: it is to be a part of a longer experience of meeting common problems.

Our early Hindu sages thus laid much emphasis on the principle of indissolubility of marriage. Manu thus declared:

अन्योपयोगव्यवहितारी भवेदान्वणांतः ||
एव धर्मः समासेन श्रेयः स्वीपृस्योः परः ||
तथा नित्यं यतेत्यातः स्वीपृस्यो तु कृलकायो ||
यथा भविष्टरतां ती वियुष्टावितरतरस् ||

*Manu, Ch. IX. 101-102.*

"Let mutual fidelity continue till death:" this in few words, may be considered as the supreme law between husband and wife.

"Let a man and a woman, united by marriage, constantly beware, lest, at any time disunited, they violate their mutual fidelity."

No doubt there are some references in the Sutra literature to the possibility of a woman once married marrying again under certain circumstances. Vasistha seems to refer to the right of a woman to get her marriage-tie dissolved under certain circumstances. It is, however, doubtful whether the texts in question referred to divorce in the ordinary sense of the term. On a review of all these texts Sir Gooroodass Banerjee in his *Marriage and Stridhana* still stick to the view that divorce in the ordinary sense was unknown to Hindu Law.

It cannot be denied that indissolubility of marriage might occasionally have caused injustice to married woman. Justice, of course, is an ideal value of the highest rank, but its positive embodiments are so thoroughly alloyed with other values and interests that it can hardly be ever completely refined out. In social matters particularly this lofty abstract concept lurks somewhere beyond our easy
discernment: It offers "no incarnation which may be trusted as quite unmixed and pure." Introduction of divorce might not have been an unalloyed justice in a society where almost the entire woman community was economically dependent on man.

The supporters of divorce proceed on the hypothesis that love is the true basis of marital union. They would thus support divorce because it makes its appearance only when the real union has ceased. According to them, divorce is not the violent destruction of marriage, but is only the legal end of a union which no longer exists in fact. When love dies the union is broken and matrimony is left without its true base: Divorce only marks the end of a union.

Romantic love which is so individualized and is so responsive to the unpredictable conjecture of the harmony of moods between men and women in a changeful world is more apt to bring periodic stimulation to the individual life than to be the successful basis of a permanent institution.

It will not, I believe, be out of place to notice here that all that can be said, and all that has been said, by the world jurists and philosophers in support of the divorce is that it is an evil, though according to some it is a necessary evil. It is intrinsically undesirable, though sometimes relevant to the existing historical circumstances. None approves of it, though there are jurists and philosophers who are prepared to tolerate it.

SONSHIP:

We have already had occasion to refer to texts relating to sonship during this age. It seems the question was approached more from the viewpoint of ownership than from anything else. The mother of the child was the property of her husband and issues were looked upon more like fruits of the field. Vasistha cites a text which says "if one man's bull were to beget a hundred calves on another man's cows, they would belong to the owner of the cows; in vain would the bull have spent his strength."

His enumeration of twelve kinds of sons is consistent with this theory. He says:

वृजस्य इत्येऽप्रत्यक्षस्यः पुत्रः। पुराणदृष्टः। स्वमित्तांसदिः स्वमेव संस्कृतायां प्रयोगः।

तदस्मात् नियुक्तायां क्षेत्रमेव विहितः। तृतीयः: पुरुषोक्ता विज्ञाप्ते। अप्रातूर्ता पुंसः पितृस्वयं प्रतीतीवैं गच्छति पुत्रसम्।

तत्र श्लोकः।

अप्सर्यां कर्यादिति तु दृष्टिः कन्यामलंकृतादृष्टिः।

अस्त्यां यो जायते पुत्रः। स मे पुत्रो भवेदिति।

पीडीनेषुवस्तर्यः। ....... कानीन: पश्चमः। य भिदौऽस्मित्ता कामादुपावः

न्यातांसन्तुः पुत्रः। भवेदितैः। अप्सर्यादहिति।
"Twelve kinds of sons are noticed by the ancients. The first among these is the son begotten by the husband himself on his legally married wife. The second is the son of a wife who is begotten on failure of the first on a wife or widow duly authorised thereto by a kinsman. The third is an appointed daughter. It is declared in the Veda 'a maiden who had no brother comes back to the male ancestors of her own family; returning she becomes their son.' With reference to this matter there is a verse; 'I shall give thee a brotherless damsel decked with ornaments; the son whom she may bear, shall be my son.' The fourth is the son of a remarried woman. . . . . the fifth is the son of an unmarried damsel. They declare that the son whom an unmarried damsel produces through lust in her father’s house, is the son of his maternal grandfather. Now they quote also the verse; 'If an unmarried daughter bears a son begotten by a man of equal caste, the maternal grandfather has a son through him, he shall offer the funeral cake and take the wealth of his grandfather.' A child secretly born in the house is the sixth. They declare that these six are heirs and kinsmen, preservers from a great danger. Now among those who are not heirs but kinsmen (only) the first is he who is received with a pregnant bride. The son of a damsel who is married pregnant is called a son received with bride. The second is the adopted son. . . . . The fourth is self-given. That is explained in the story of sunasepah. The son cast off is the fifth. He is called so who, cast off by his father and mother, is received as a son. They declare that the son of a woman of the sudra caste is the sixth. These six are kinsmen but not heirs."

The entire list is based on this conception of ownership. In the second group, with the exception of the last, the others were undoubtedly another man’s property. The new father acquires property in them subsequently. In the first group are those who from their very birth are under the ownership of the father, either by special contract or otherwise.

Gautama mentions these sons in his chapter on inheritance thus:—A legitimate son, a son begotten on the wife, an adopted son, a son made, a son born secretly and a son abandoned inherit the estate.
of their fathers. The son of an unmarried damsel, the son of a pregnant bride, the son of a twice married woman, the son of an appointed daughter, a son self given and a son bought belong to the family of their fathers. On failure of a legitimate son or of the other five heirs, they receive a fourth of the estate:—

“पुत्र औरसथ्रज्ञवत्कलितमण्डूत्पत्तिविवाहसोह्मम्। वानस्त्रहोऽप्रिनंभवं
पुत्रिकापुत्रवंदतक्रता गौत्रमास। चतुर्भागिन औरसाधिये।”

Gautama Samhita, III. 10. 80-82.

It appears that Gautama’s rules in this respect look more modern than the Vasistha rules. It must not however be forgotten that the two are not giving law for the same locality. It may be that sonship by fiction developed earlier in the south than in the north.

It is clear that some of these sons are so by fiction only, while others are born during wedlock. Of these again all, except the Sahodha, must be conceived during wedlock. Gudhotpannah (गुड्होत्पन्न) is evidently the issue of an adulterous connection. But he is placed within the first six evidently because he is conceived and born during wedlock and the law is always in favour of presuming legitimacy shutting out rebutting evidence on grounds of public policy on such delicate matters.

During the age under our consideration a man was permitted to marry a woman of an equal or of an inferior caste, but not one of a superior class.

The offspring of the allowable kind of internmarriage were called anulomaja; and those of the prohibited form were called Pratilomaja.

“अनुलोमान्तरकालकृत्यमत्रानुसारे जाता: सवर्णान्तरेऽप्रीतिवादीप्रभृति
पार्शवः || १४ || प्रतिलोमस्तु सूतमागणयते्वक्रधोषे्कण्चणः॥”


The position of the pratilomaja sons was much degraded.

प्रतिलोमस्तु धर्ममेहः ||

Gautama Samhita, I. 4. 20.

The position of the Anulomaja sons by wives of different castes depended on the castes of their respective mothers.

“...असत्सनस्तु विवेयः प्रतिलोमस्तुकोमजः। जातयुत्त्त्तेऽह्यये सत्ये पत्नेःपदेउः बः।
व्यत्यये कर्मों साम्ये पूर्वेवत्तराधरणम्॥”

Yajnavalkya, I. 95-96.

The position of the sons depended to a certain extent on the form of the marriage of their parents,
ADOPTION:

Adoption of a son is recognized by all the sūtras, though the position of the adopted son is different according to different Rishis.

Vāsiṣṭha’s text is said to afford the foundation for the law of adoption.

His text runs as follows:

“षोषितपरसत्सथमभ: पुरुषो मातापितुनिमित्तकः। तस्य प्रवचनाविक्रयायामेव मातापितरी
प्रभवतः।”

Vāsiṣṭha Sūtra, Ch. XV.

According to him a father and a mother are competent to give, sell or abandon a son.

A mother alone cannot give, sell or abandon her son without her husband’s consent. Neither can she take a son in adoption without such consent.

Vāsiṣṭha’s text as well as the example of sale, and gift of a son given by him supports the view that mother’s consent is also necessary before a son can be so disposed of.

But Baudhayana says that the boy may be given by his father and his mother, or by either of the two.

The law during this age seems to be that a father alone may dispose of his son unless opposed by the mother in so doing; but a mother must not sell or give her son without the father’s permission so long as he is alive.

A widow mother may perhaps dispose of her son of her own accord.

The story of Sunahseppah seems to indicate that a son can be sold or given away only when such a disposal is necessary to save the family from extreme distress.

The adopter need not be sonless at the time of the adoption.

An only son can neither be given nor taken in adoption.

An eldest son as well as a youngest son should not be given in adoption (Tait. Br. XXX. 3). But there is as yet no express text prohibiting the adoption of such sons.

Certain formalities must be observed for a valid adoption.

The status of an adopted son seems to have been very low. Vāsiṣṭha places him amongst the last six of the twelve kinds of sons and makes him an ‘adayada’ (प्रदायद).’

Gautama places him amongst the first six (Gautama Samhita, III. 10. 30).

The story of Sunahseppah seems to support Vāsiṣṭha’s classification.

Before leaving this question of sonship it will be pertinent to examine the position of a son begotten on a slave woman. The Sūtras under consideration do not say anything about Dāsi-putra. The only law on the point is given under the head son by a sudra. We have
already seen how Gautama places him as the worst kind of son having no right of inheritance. In another place he says the son by a sudra wife, even if he be obedient like a pupil, receives a provision for maintenance out of the estate of a Brahmana deceased without other male issues. It seems a son begotten on a female slave remained a slave in the eye of law and did not acquire the status of a son who was free born.

PROPERTY :

Property is the greatest right, the "plena potestas in re". It is a general, if not absolute, power over objects, and at least it comprehends the greatest number of rights, including possession, acquisition, enjoyment and disposition. This property idea occurred to men very early. "Man must attain his ultimate end, and therefore he expands his activity and binds and subjects to himself external things and makes agreement with other men for the reciprocal preservation of necessary and useful objects. From this expansion of his personal activity are derived property and personal rights, the first, having to do with the relations between man and things and referring mediately to other persons inasmuch as they have a duty to respect these rights and sometimes a power to limit them; the second, dealing with the relations between man and acting only indirectly on thing containing all obligations reducible to an agreement or promise.

Ancient Hindu law fully recognized the distinction between property and possession. Possession is expressed by the derivatives of Bhu while 'Svam', self, and its derivatives are used to convey the conception of property.

Gautama tells us:

स्वामी ऋग्वेदम्

=Gautama Samhita, II. 1. 31.

A man becomes owner by inheritance, purchase, partition, seizure or finding. These were the legal modes of acquisition of property open to all. Here also the obligation of caste played an important part. In India, the obligations of caste indeed became so numerous and burdensome that their observance could be kept only by a belief in supernatural penalty. As a result of this obligation of caste, Gautama formulated:

श्रवणस्वामिकः लघुः कष्टिस्य निजितं निविष्टं वैश्यस्यः

=Gautama Samhita, II. 1. 40-42.

"Acceptance is, for a Brahmana, an additional mode of acquisition; conquest for a Ksatriya, gain by labour for a Vaisya or Sudra."

We have already noticed that even during the early Vedic age property in land was recognized. The exact nature of this property, however, is difficult to ascertain. In the Rigveda we have met with the word Ksetra used in a sense pointing clearly to the existence of
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separate fields carefully measured off. The sense of separate field became more definite and pronounced in the Atharvaveda and even before that we have Ksetrapati, Ksetrapatnī, Ksetrajesa, Ksetrasa, Ksetrajaya and several other similar terms indicative of property in land. Then we have the term Khila or Khīya meaning waste land lying between cultivated fields. From Rigveda onwards Urvāra, with Kṣetra regularly denotes a piece of plough-land and we are also told of Apnāsvatī, fertile fields and Artana, fields lying waste. Intensive cultivation by means of irrigation is also indicated in the Vedas. There are also passages in the Rigveda itself, which indicate that fields used to be carefully measured even in those days. From all these it seems reasonable to infer that some sort of ownership in these plots was recognized even in these ancient days. There are also passages indicating at least individual possession of these fields. These fields are often spoken of in the same connection as the children. There is no trace in the Vedic literature of communal property in the sense of ownership by a community of any sort, nor is there any mention of communal cultivation. Besides, in one instance at least in the Rigveda, we are told of division of lands conquered among the members of a community.

रघुनाथाय श्रवणे एवेवं हरिभवाय नृत्यं नि बर्तितः।
सत्तन्द्रेयं सुवर्णं विवस्त्रेयं सत्तन्त्रेयं सन्दपं मुखः॥

Rigveda I. 100. 18.

and are very often told of private quarrel regarding fields. All these indicate at least individual control over the land, and a sort of individual property seems to be deducible later on while in the Chhandogya Upanishad, for example, we find in the list of man’s wealth, his fields and houses.

गोच्छविश्व महेष्मायाचक्षुः हरिसिद्धर्ष्यं दासायां कः अस्मायायणवाग्नारीति नामवें ब्रह्मिमम
ब्रह्मीमि होवाचाय्र्यो द्वारसमस्मूः प्रतिष्ठित इति॥

Chhandogya Upanishad, VII. 24. 2.

Yet the precise nature of this so-called individual ownership is not capable of determination from the materials that we possess. The father, the head of a family, might have a sort of ownership in the field as well. But the legal relationship of the head of a family and its members in this respect is nowhere indicated.

The question remained obscure even for the post-Vedic age. There are however some materials in the post-Vedic literature that might indicate a sort of feudalism prevailing during that age. In the Satapatha Brahmana we are told:

गाहिर्षस्व चैषांन पलावालाय भूमुहितः। अष्टस्यं हैंतदार्गामवं चित्तोति य सुषं वै के
वाच्चित्वितोस्त्रयामेव तेजसितायस्वयमविनेद्रगितातिनः तदुपहिते नेद्रसितान्यायस्या गोविते॥

अपि च चैवेद वि च वेद च सप्तवातं इत्येतस्वेदवरसिपायातान्यः।
"Being about to build the Garhapatya he sweeps its site with a palasa branch. For when he builds the Garhapatya, he settles on the place; and whatsoever builders of fire altars there have been, they are indeed settled on this earth; and when he sweeps he thereby sweeps away those settled there before him thinking ‘lest I should settle on those already settled’.

"Yama hath given the settlement on earth to this sacrificer. For Yama indeed rules over the settling on this earth, and it is he who grants to this sacrificer a settlement on this earth."

"The fathers have prepared this place for him, for Yama is the Ksatria (nobility or ruling power), and the fathers (deceased ancestors—विन र्) are the clansmen; and to whomsoever the chief (Ksatriya), with the approval of the clan, grants a settlement, that settlement is properly given; and in like manner does Yama, the ruling power with the consent of the Pitris (the clan) now grant to this sacrificer a settlement on this earth."

Elsewhere in the same Brahmana we find: "But the Tandya (तांद्य) used to say 'surely the bricks possessed of prayers are the nobility and the space fillers (lokamprima) are the peasants; and the noble is the feeder, and the peasantry the food; and where there is abundant food for the feeder, that realm is indeed prosperous and thrives'."

It would appear from the above extracts that क्षत्रिय had some special place in the land system of these early days. Who these Ksatriyas were is not easy to answer. Professor Macdonell and Keith say: "The evidence of the Jatakas points to the word ‘Khattiya’, denoting the members of the old Aryan nobility who had led the tribes to conquest, as well as those families of the aborigines who had managed to maintain their princely status in spite of the conquest. In the epic also the term Ksatriya seems to include these persons; but it has probably a wider signification than Khattiya, and would cover all the royal military vassals and feudal chiefs, expressing in fact, pretty much the same as the Barons of early English history. Neither in the Jatakas nor in the epic is the term co-extensive with all warriors: the army contains many besides the Ksatriyas, who are the leaders or officers, rather than the rank and file.''

Whatever that be, so far as the period under our review is concerned even Macdonell and Keith agree that the Ksatriya stands as a definite member of the social body,
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and the earlier use of the term in the Rigveda is exclusively connected with royal or divine authority.

Agni is Master of sublime dominion, Agni is Lord of strength and lofty riches.

Three spheres of light, O Varuna, three heavens, three firmaments ye comprehend, O Mitra;

Kings, guards of mighty everlasting Order, come hitherward, ye Princes, Lords of Rivers.

They, true to Law, exceeding strong, have sat them down for sovran rule;

Princes whose laws stand fast, they have obtained their sway.
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क्षत्र जिन्तलित जिन्तवं नृहान्त रक्षासं षेषतमूला।
सजोष्मा उपसा सुर्यं च सोम मुन्ती अयन्ता।

Rigveda, VIII. 35. 17.

Strengthen the Ruling Power, strengthen the men of war; slay ye the Rakshasas and drive away disease.

Accordant, of one mind with Surya and with Dawn, the presser’s Soma, Asvins! drink.

त्यासं क्षत्रियां अव आदिवाण्यानाथामहे। सुमरुयाको अविघ्ने॥

Rigveda, VIII. 67. 1.

Now pray we to these Kshatriyas, to the Adityas for their aid,
These who are gracious to assist.
हस्तेनाच्छ आदिवाण्या ब्रह्मणाये विनाध्वमदितै वैदेशवन्।
न हूताय प्रहँ तस्य एवा तथा राष्ट्र गुप्तेऽक्षमयम्॥

Rigveda, X. 109. 3.

The man, her pledge, must by her hand be taken when they have cried, She is a Brahman’s consort.
She stayed not for a herald to conduct her: thus is the kingdom of a ruler guarded.

It is neither possible nor necessary for us to determine what persons were included in the term Ksatriya. That it covered the royal family may be regarded as certain. There is another term Rajanya, in the Vedic literature, which seems to mean almost the same class of persons, though there are passages to indicate that these two were not identical. In Aitareya Brahmana, for example, we are spoken of Rajanya asking Ksatriya for a place for देववाण। It would scarcely be correct to say that Ksatriya in the Vedic times denoted only the warrior class. Even for a Brahmana it was provided :

वाज्यवच्चनप्रतियारः सर्वभास। तदायं भवतु॥

Gautama Samhita, I. 7. 4. 6.

In the Rigveda and later we are told of persons other than Ksatriya regularly fighting :

रहस्यतम स्वतं योग उपासकसात सिद्धो अर्यसात।
सं विद्वालोजस्वल्युध्या आदिवें इम्यं इम्यं अर्मीके॥

Rigveda, IV. 24. 4.

Strong God! the folk at need put forth their vigour, striving together in the whirl of battle.

When warrior bands encounter one another some in the grapple quit themselves like Indra.

श्रुति न इम्यं व्रानतिः त्वा महो वाजस्य सातो वाचवणा।
सं यिद्वालोजस्वल्युधस्य उष्ण नोभं पायं अभवत॥

Rigveda, VI. 26. 1.
O Indra, hear us. Raining down the Soma, we call on thee to win us mighty valour.

Give us strong succour on the day of trial, when the tribes gather on the field of battle.

They paint their bright rays on the sky’s far limits: the Dawns come on like tribes arrayed for battle.

Thy cattle, closely shutting up the darkness, as Savitar spreads his arms, give forth their lustre.

Like sticks and staves wherewith they drive the cattle, stripped bare, the Bharatás were found defenceless:

Vasistha then became their chief and leader: then widely were the Tritsus’ clans extended.

And then the Drop in Ansumati’s bosom, splendid with light, assumed its proper body;

And Indra, with Bhraspati to aid him, conquered the godless tribes that came against him.

Towards the common people, Ksatriya in these early days stood in relation of unquestioned superiority, and Vaisya, the Vedic and post-Vedic agriculturist, is described as tributary to another; they are said to be व्यास्तस्व वस्त्रकृत्, अन्यस्यायः; बृहस्पति; all these epithets were perhaps used to define the relation of the nobles and the agriculturists. If any inference is legitimate from these it may be taken as sufficient indication of how these agriculturists were at the mercy of the nobles.

We are informed तम्यान्त् राजस्वेनाधिपत्यम् वैश्वम्बन्धित् and all these go to show that though the relative position of the Ksatriya and Vaisya had perhaps nothing to do with property in land, there was a sort of feudalism unconnected with landed property prevalent in ancient India.

We have noticed elsewhere what is the significance of the Vaisya’s being devoured at will, and how some scholars have asserted that this leads to the conclusion that the King was the land-owner, the cultivators only holding it with his leave and license; while others found in it only a political power unconnected with any question of ownership of land. It is however beyond our purpose to examine these
different conclusions. All that we might notice here is that the passage quoted above from the Satapatha Brahmana goes far to show some sort of communal control over landed property. No stranger, it seems, could be introduced even by the King unless and until the consent of the community was secured. So far as the members of the community are concerned there seems to be little doubt that they held lands as their separate properties, and we are not in a position to say how far individualism developed so as to override the ownership of the family. Rules relating to inheritance of landed property do not occur in this post-Vedic literature, and we cannot say whether or not division of land was possible. Ought that we know there appears to be nothing in the post-Vedic theories of ownership which would prevent such a division.

The Rural Settlements of India during the Sutra period is expected already to have developed differences in different parts of the country. Yet in spite of the possible distinct features of their own these villages were rooted in the common spirit of Vedic India. We must confess we have rather a scant knowledge of the regional characteristics of these villages. Such a regional history of the ancient Indian village and of its field system will perhaps ever remain to be written.

We may assume that India passed through the pastoral stage rather early. Since then she has remained for a very long time, indeed up to the present day, predominantly an agricultural country. Vedic and post-Vedic literature of India sufficiently reveals that the knowledge of agricultural methods, water regulations, etc., was already well advanced.

There are texts which would seem to point to the fact that land was not always partible. The Dharmasutras, however, are almost silent over the point and individual property in land does not seem to have been fully recognized even during this period. The chapters on inheritance and succession in Dharmasutras do not expressly speak of landed property. In none of them any mention of land is made in assigning additional share to the eldest sons.

Gautama teaches us that भूमि cannot be sold and निध्यविवाहो राजचन्द्र ब्राह्मणस्वाभिपञ्ज ब्राह्मणोद्याहो यथा व्यम्बेः (Gautama Samhita, II. 1. 43-45). According to him पशुपार्श्वीणामनांभागान: and पशु येनेजालेपो पाल्योनितको:.. But all these may refer only to the present occupation of land without having any property or ownership in the soil. According to Kautilya कौशिक: all lands belong to the King who makes a grant of them to the people. This gift, according to Kautilya, is made only for life and for restricted purpose. If those to whom it is given would neglect to cultivate then the king would be entitled to resume it and make a fresh gift to another: ब्रक्ष्यामाणिन्द्रवायथ अयमित्र: or these resumed lands may be cultivated by village labourers: ग्रामस्तवः सञ्चारते वा कौशिक:.. Such persons who take the lands as gift from the king would not
naturally have unlimited right of disposal: Kautilya tells us
करराः कर्तव्यान्तः विकृतम् वा कुर्चैः। ब्राह्मणिका ब्राह्मणिकम्। अन्यथा पुरवसायतिष्ठिण।
They can transfer the property only to another of their own
class. The right of alienation is thus restricted without much
latitude in the choice of the transferee. Though land is thus
theoretically granted for the life of the first taker, Kautilya recognizes
right of heirs to inherit the land and we are told that in case a man
would die leaving minor sons, elders among the villagers shall improve
the property of such bereaved minor till the latter attains the age of
majority. Unprepared lands cannot be taken away from those who are
preparing them for cultivation and even according to Kautilya interest
in land cannot be lost by adverse possession.

Though it has been said that King was the owner of all land and
no private individual had anything more than a mere right to hold it on
condition of his bringing it to cultivation, there are rules which would
go to show that a sort of limited individual interest in land was
recognized even in those early days. We are told in Kautilya that rich
persons among kinsmen or neighbours may in succession proceed to
purchase the land and other holdings. Forty more neighbours other
than the purchaser shall congregate in front of the holding for sale, and
announce it as such. If on crying aloud "who will purchase this at
such and such a price," no opposition is offered, the purchaser may
proceed to purchase. When it is thus announced that the holding is
going to be sold at such a price anyone of the neighbours may offer to
purchase it at that price. Even after this stage when the purchaser
proceeds to purchase, the assembled neighbours may also bid for the
land and it is sold to the highest bidder.

शास्त्रार्थान्तरान्तरानां अयोग्यान्तरानां अनुपायां भाविते।
ततोर्षे वाही। सामतं नवरिशाकुण्या गृहान्तितूप्ये वेषम् भाविते।
सामान्याक्रमे श्रेष्ठमार्गम सार्ववर्त्य वेश्वरमान्यवर्त्यं वेश्वराणां वेश्वराणां वेश्वराणां
यथायथयथम्। अनेनार्थं क: कैता इति निरायुप्तिमनुभवते।
कैता: अनुतु लमेत। ............ सर्वया वा मूलवर्णे मूलवर्णे
सबुर्का कोश गत्तल। विभुग्र्यितकोष्ठ प्रयुक्त द्वारान्।

Kautilya, III. 9.

It will be interesting to notice here that these holders of land
had not only to pay rent to the King, there seems also to have been
some military duty attached to it, and Kautilya cites his teacher in
support of the proposition that "land occupied by a high born person
is very productive" for it supplies men to the army:

"अभिजातोपर्यथ भूमि: महाफलावयवोपकारिणी।"

Kautilya, VIII. 4.

Kautilya speaks of a sort of record of rights kept by the govern-
ment. Plots of grounds as cultivated, uncultivated plains, wet lands,
gardens, etc., are kept recorded by the revenue collector who also
registers gifts, sales, charities, etc.
From all that has been collected from Kautilya a sort of village system seems to have been prevalent in those days, and in the Dharma Sutras and Smritis of the age we find mention of many village officers. Manu tells us how property in land can be acquired and we are told रामाणुज्ञाता के शास्त्रमात्रा: शास्त्रयोगो मूम्रम्। There are indeed texts which appear to recognize a right beyond that of the community; but it is not clear whether such right is in the individual or in the family. It is significant that while speaking of boundary disputes Manu could only think of dispute between two neighbouring villages: सीमां प्रतिमणुपुर्वे विबादे ग्रामयोगोऽयोऽयोऽ। अधिक नचि नयेन सीमां मुखार्थेयु नेनुर। (Manu., VIII. 245). He is fully alive to the fact that people very often would quarrel over the boundary, and says...सीमान्ते नृणा विशेष निवृत्य लोके वियायम्। (Manu., VIII. 249). Yet it never strikes him that individual members of the same village or family may have similar disputes over the boundaries of their respective plots.

It is however difficult to say that no individual right was recognized in land. Kautilya gives ample evidence of this individual right which, as we have seen, was also saleable. Even Gautama speaks of mortgage of lands.

It must be remembered that in Vedic literature there is ample material for the conclusion that highly developed system of village communities were in existence in Vedic India, though the village does not appear to have been a unit for legal purposes. ‘ग्राम’ is the name for village in the Vedic literature and we are told of ‘ग्रामण’, ‘ग्रामकाम’ and ‘ग्रामवादिन’ in the various Vedic texts. According to Professors Macdonell and Keith Gramani or the village elder seems to have been a nominee of the King rather than a popularly elected officer. But Rhys Davids thinks that he was elected by the village council or was a hereditary officer, the Kings claiming the appointment only later. Gramakama (ग्रामकाम) points to the practice of the Kings granting to his favourites his royal prerogatives over villages so far as fiscal matters were concerned. It rather indicates grant of regalia than grant of land. According to Zimmer ‘Gramani’ had military function only. But there seems to be little reason for thus limiting the function of this officer. The ‘Gramavadin’ was a village judge and we are not in a position to say how he was appointed. We hear of a Satapati also in the Vedic literature and Indra is very often designated by that name. It will not be unreasonable to surmise that there must have been an analogous human functionary who was the lord of a hundred villages and must have occupied an important position in the eye of the people. The functionary named as ‘ग्रामगुप्त’ dealer out of portions, is one of kings
Ratrin in the Yajurved Samhita and Brahmana and seems also to have been a village officer, the supervisor of lands.  

It is beyond our purpose to examine in details the village system prevailing in Vedic India. All that we need notice here is that there is ample indication of the existence of the village system; but the materials are not sufficient for the purpose of defining the exact legal position of the system. It will be a mere conjecture if we say that even in these early days land belonged to the village exactly as in later years. The little that we hear of the land system rather goes to indicate the contrary. We have already seen how individual families very often spoke of their landed possessions, and in view of those texts it will indeed be difficult to deny individual property in land prevailing in Vedic India.

Miraglia says: "It can no longer be doubted that in India before the system of caste, the property was collective. God gave the land to men for their enjoyment simply. They had no existence apart from the life of the tribe or family. When caste was introduced the Brahmins considered that God had given the land which they allowed others to use." It is indeed difficult to see on what materials is based this assertion of his. No doubt in the Vedas we are very often told that lands are given to men by Gods—and it is Gods who make men like Mandhata and Sirtra's son owners of fields. Yet in the Rigveda there is scarcely any material to support the conclusion that the individual had no existence apart from the life of the tribe or family. On the contrary we find fathers almost as absolute heads of families who may very well be taken as absolute owners of the family properties. No doubt in their younger years sons are under the absolute control of their fathers; but even in their case we find only a very mild type of patria potestas exercisable by the fathers and these sons are very often spoken of as being independent fathers themselves when sufficiently grown up. As to Brahmin claiming to be owner of lands as given to them by God there is material in the Vedic literature which would point to the directly contrary position. In the Aitareya Brahmana we are told who is the owner of the soil in connection with land for the purpose of देव्याजन, and a Brahmin there is enjoined to get it from the king. It cannot, after this, be said that it was ever the contention of these priestly classes that land belonged to them. It is only in the Dharma Sastras of later years that we find such assertions.

Baden Powell speaks of Vedic feudal system and assert that Vedic society was a land-holding aristocracy superimposed upon an agricultural aboriginal stock. It is no doubt quite possible that the aborigines had already taken to agriculture even before the advent of the Vedic Aryans in India, and it may be that one result of the conquest was that the conquerors got hold of the lands: but there seems to be little material for saying that the Vedic Aryans did in India what the Normans in England did after they conquered the country. The Vedic Vaisya was an agriculturist and there is no reason to deny that he was an Aryan.
The history of Hindu law

But who was the owner of the soil according to these Vedic Aryans? The position of the king in this respect is indeed obscure. Professors Macdonell and Keith refer to some Greek remarks on the question, and citing from Diodorus and Strabo state, "the Greek notices (in which, unhappily, it would be dangerous to put much trust since they were collected by observers who were probably little used to accurate investigations of such matters) vary in their statements. In part they speak of rent being paid, and declare that only the king and no private person could own land, while in part they refer to the taxation of land." Hopkins is strongly of opinion that the payments made were as tax. The king was recognized as owner of all land and yet the individual or the joint family also owned the land. Baden Powell asserts that the idea of the king as a landowner was later. As against this Hopkins refers to those Vedic texts which speak of kings devouring the peoples and according to which the Vaisya can be devoured at will and maltreated, and from these he urges that the king must have been the owner of the soil. The power of devouring, however, seems only to refer to political power and it is difficult to find any reference to ownership of soil in these texts.

Family organization:

It is needless to say that the family organization of the Aryans of this age was patriarchal. We have already noticed that it had been so even during the Vedic age. It is not necessary for us to proceed to ascertain the conditions leading to the formation of the patriarchal organization. Paternity we are told is shown in history when there is established an individual control in the form of matrimony and the law of marital union at first depends less on the law of relationship, not to speak of affection, than on the law of property and authority. That paternity is a derivation of the right of ownership is proved by diverse facts. One of these proofs is traced by scholars to the ancient Aryan language, particularly in Vedic literature. A father in Sanskrit, is called a patar, owner or janitar, creator. In the Vedas the two terms are joined, forming pitājanīta. Such a conjunction, and later such a confusion, of the conception in the language are sure indications of the influence of property rights in the development of masculine family.

We should not, however, be deceived by the position of the husband as pater familias. He is no doubt the organizer of the family as an economic unit of which he is the representative and for which he works. But the wife, the mother, is the real centre; from her emanate the forces which link all members of the family together. It is the mother who creates and embodies the family, and is the truest symbol of the social structure. Subconscious affection for the mother is a stronger tie than the more rational powers of the father. The relationship of the mother to her family is based on love, while that of the
father rests on confidence and respect. A father can keep a family together by economic bonds, but he cannot create those emotional radiations with which a mother permeates her family. It is not going too far to say that the family structure is only in theory based on patriarchy. In reality the mother is the centre of home life.

The earliest patriarchal groups seem to mean the paternal administration of the property in the interest of the family. Whether or not it is possible for a savage, ‘‘with his selfishness and without any idea of justice or sentiment of responsibility’’ to administer the goods and chattels in the interest of his family, such a system of paternal administration did, as a matter of fact, prevail in Vedic India, and these Vedic Aryans were neither savage and selfish nor without any idea of justice and sense of responsibility so as to render the existence of the system impossible. We have already noticed the extent of paternal power in Vedic India, and have seen how, even in that early age, the father is almost the owner of the property belonging to the family. But we are not certain whether the property included land as well, and whether the early Vedic families were not still the migrating ones, so that not being as yet able to establish itself in certain places its indefiniteness hindered extensive cultivation of land with the result that land was not yet valued much. Later on however the family became well established in certain places, and it is only when the family thus becomes certain, and establishes itself in certain places, when the occupation of territory becomes settled in consequence of the increasing congestion of inhabitants, that the appropriation of land assumes strict forms.

Individual property in land does not seem to have been fully recognized even during this period. These Dharma Sutras are silent over the point. Their rules of inheritance do not speak of landed property. In assigning additional share to the eldest son no mention of any land is made. Later Kantilya expressly indicates that all lands belong to the king who shall give them to the tax-payers only for the purpose of cultivation.

Theoretically, it seems, all lands belonged to the king who divided them amongst the cultivators for the purpose of cultivation.

When thus given to a cultivator it would of course be his property during his lifetime unless resumed by the king.

Even this limited property in land could be acquired only by king’s gift.

Hence the law of Gautama that property in land cannot be acquired by long possession:

\[ \text{Gautama Samhita, II. 3. 36.} \]

**OWNERSHIP:**

A man becomes owner by inheritance, purchase, partition, seizure, or finding: ध्रुव अक्षयसचिवालयमपरिवहारिचितम्। (Gautama Samhita, II. 1. 39).
Acceptance is for a Brahmana an additional mode of acquisition, conquest for a Ksatriya and gain by labour for a Vaisya or Sudra:

Gautama Samhita, II. 1. 40-42.

Treasure-trove is the property of the king and hence no one can acquire property in it by finding, etc.

A man may acquire property in things belonging to others by long user, by adverse possession for a certain prescribed period.

According to Gautama the property of a person who is neither an idiot nor a minor, having been used by a stranger before his eyes for ten years belongs to him who uses it. But not if it is used by Srotriyas, ascetics or royal officials. Animals, land and females are not lost by another’s possession:

Gautama Samhita, II. 3, 34-36.

According to Vasistha

Vasistha Sutra, XVI.

‘‘Property inherited from a father, a thing bought, a pledge, property given to a wife after marriage by her husband’s family, a gift properly obtained for performing a sacrifice, the property of reunited coparceners and wages as the eighth. Whatever belonging to these has been enjoyed by another for ten years continuously is lost to the owner. They also quote a verse on the other side. A pledge, a boundary, and the property of minors, an open deposit, a sealed deposit, women, the property of a king and the wealth of a Srotriya are not lost by being enjoyed by others.’’ It is thus apparent that law as prevailing in the country where Vasistha was an authority was not the same as in the south where Gautama’s authority prevailed. Both Gautama and Vasistha recognized self-acquisition by a member of a joint family. According to Gautama स्वचरित्यमेधेण्यो वेदः काम न वचानः what a learned coparcener has acquired by his own efforts, he may, at his pleasure, withhold from his unlearned coparceners: According to Vasistha however येन जैसं स्वचरित्यमेधेण्यं स्वातं इत्यासेवं हुर्तुं if one of the brothers has gained something by his own effort he shall receive a double share. In one respect the law of self-acquisition is more developed in the north inasmuch as there it is not confined to acquisition by learning only. As regards the right of the acquirer, however, Gautama gives a greater right; the property really becomes acquirer’s.

The bed-rock of modern legal institutions as distinguished from the ancient ones lies in the individual adult being treated as an entity
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quite independent of the family, the village, the guild, or any other corporation and in the woman being a self-sufficient unit enjoying rights distinct from and independent of those of the man. It is interesting to observe that even under ancient conditions the legal sense of the Hindus was akin to and approached the modern conscience in both these postulates of civil existence. Both Gautama and Vasistha recognized proprietary right of women. Gautama gave special rules of inheritance to a woman’s separate property calling such property as रश्मीपतम्. Vasistha too recognized this right in clear terms. We have already noticed that even during earlier ages women got this recognition from the Hindu jurists.

I would refrain from troubling you here with the legal norms relating to obligation, inheritance and crimes given by these Sut rakars. The norms of law prevailing during this period will be found well-collected in the Sutras of Gautama and Vasistha.

Indeed, the Aryan settlements of India during the Sutra period are expected already to have developed differences in different parts of the country. Yet, in spite of the possible distinct features of their own, these settlements were rooted in the common spirit of Vedic India.

We have already noticed this common spirit of Vedic India. For these ancient Indians the universe is an existing and finite entity brought to perfection. Such a world cannot be transformed by man; man can only adapt himself to such a cosmic order. The cosmic order itself must not be disturbed or transformed. A modern man, on the other hand, is faced every day with the task of creating his world anew and of living in the face of facts.

Influenced by the Western philosophy of life, we introduce a dynamic and transforming power into our relationship to the external world,—a relationship which is tantamount to a continuous revolution of environment leading us to such bold adventures as the smashing of atoms. Ultimately we do not accept anything as definite. For these ancient people, however, the external world is fixed. It is not to be changed by the efforts of man. He imbues it with a deeper sense, making it significant and meaningful beyond its actual appearance. For him the symbolic meaning of all forces and appearances is the elemental and primary factor, and only behind this symbolic foreground does he construe Reality. This demands the preservation of the outer form, of the outer appearance, which is much more deeply related to the subconscious in human nature and consequently more static just because it represents a symbolic value. Ancient India is thus very different; but her “otherness” perhaps touches a section of conscious and subconscious thinking and feeling which is also present in ourselves, being only inadequately developed. The rational super-activity of the modern age is no doubt a creative factor of the highest order; but it is creative with the concomitant evils of disintegration and destruction.

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A Vedic Indian will insist that one must let the world live and grow. He would never arrogate to himself the function of putting it in order. He would not believe that the world must still be put in order. Only by doing nothing in this respect does one provide quietness for the development of the true nature of man.

This must not be misunderstood as inaction. This is an activity of another kind, and by no means passivity, as we are only too readily inclined to assume. And if we only have the courage to admit it, it is just this restrained activity after which the world is yearning to-day, and which lies dormant in the depth of its spirit.

Such philosophical utterances as those given above have not only a theoretical value. They are a seismograph of spiritual and intellectual oscillations and reflect in an unsurpassable way the spirit of a country. Indeed, the Rishis whom we have met earlier are not mere "theory". It is the conscious and subconscious action and thought of the people of the day that found their deepest expressions in the "theories" of these Rishis. These "theories" were the true image of their conception of the world. To formulate theories is not to squander one's time in purposeless intellectual acrobatics. Rather it is the expression of the will to measure the subtlest oscillations of a period, especially its characteristic trends of group behaviour. It is in this sense that the sayings of the philosophers quoted in earlier chapters should be valued.

The attitude of the ancient people towards the outer world cannot be judged by modern standards. It is not their aim to conquer the outer world, but to understand it and to adapt themselves to its order and working.

This difference, however, is hardly fundamental. The goal of conquest is, in the last resort, order, and the goal of appreciative non-interference is also order. Both are creative media. The Vedic way is to avoid a fancied re-creation of the outer world through man's activities. Rather it is a remodelling of man through the forces of Nature. Indeed every person passes through the same stages of mental clarification and each has to find its own solution of the eternal problem with which Nature confronts man, namely, to find its own response to the challenge of Nature. Every person seeks this end by a way of its own, and thus are developed the "great" differences which are in reality only relative.

Indeed, we are yet to learn that we cannot create communities to order. A community must grow. It is a living organism; but it is not a rationalized organization. What we can do is to educate ourselves for social partnership, for creative leisure and for insight into the whole pattern of life and all its variety and interplay of changing conditions.

One salient feature of this ancient age must be noticed here. It is the trend towards unification as opposed to uniformity as a consoli-
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dating force. Unification means the integration of a diversity of individual elements in an organic fabric. Uniformity means the levelling ground of diverse forces. The one is antagonistic to the other. Uniformity is the suppression of individual creativeness, and is characteristic of a compromise-ridden attitude. Unification, on the other hand, demands a large-scale conception and the moral and intellectual strength not only to recognize the multitude of different values and factors as given, but also to accord them their appropriate place in the environment. This was understood as leading man to a higher form of life and to an invigorated social partnership. The much-vaunted coming age of common man shall be a reality and shall yield a desirable state only when we shall have control of those forces that would free us from the want of an integrated personality.

The creative powers of the Vedic Indian must have been apparent to you in his capacity for integration and balanced co-ordination, while those of the modern world find their greatest triumph in subordination and domination. Collective order and individual order: harmony with Nature and conquest of Nature: these are the contrasting issues of the two people.

In the preceding pages you have come across the picture of a society which might have been difficult for you now to appreciate. Most of us are the products of an age of a laissez-faire principle affecting in reality the whole of our life. Indeed this laissez-faire principle, the competitive spirit and the profit motive have been the three principles influencing the philosophy of life in the present age. They have all grown out of the same root, namely, the belief that individual actions and individual valuations in separate fields will produce not only the results individually desired, but even the results most conducive to the interest of the community. This attitude developed in the wake of the industrial revolution and is still predominant, especially among those who can see no other way save to cast the future in the mould of the past. Its idolatrous worship is really the antithesis of cooperation and integration: it is antagonistic to social life and it prevents the creation of an environment within which man's diverse gifts can fully and freely express themselves.

The picture of the society which the Vedic and the post-Vedic sources present to us indicates just the opposite trend. It indicates social values as the guiding forces of life. Industrialism has completely reversed this trend.

It is legitimately doubted if in this industrial age Democracy as a philosophy of life has at all worn well. It seemed more solid at the high noon of success than it does in the uncertainties of falling dusk. In its traditional form, it has pre-supposed emotional and psychological stability in the individual. It has assumed, much too confidently, that the gnawing problems of doubt and anxiety would be banished by the advance of science or cured by a rise in the standard of living.
spectacular reopening of these problems in our time finds the democratic faith lacking in the profounder emotional resources. Democracy has no defence-in-depth against the neuroses of industrialism. When philosophies of blood and violence arise to take up the slack between democracy’s thin optimism and the bitter agonies of experience, democracy by comparison appears pale and feeble.

The essential strength of democracy lies in its insight into the value of the individual. Yet we must not forget that this insight can become abstract and sterile. Arrogant forms of individualism sometimes discredit the basic faith in the value of the individual. It is only so far as that insight can achieve a full social dimension, so far as individualism derives freely from community, that democracy will be immune to the viras of totalitarianism. The individual requires a social contact, not one imposed by coercion, but one freely emerging in response to his own needs and initiatives.

Freedom in the present-day life has lost its foundation in community and has become a torment; individualism of the present day strips the individual layer after layer of protective tissue.

We require individualism but we require individualism which would not wall man off from community; we require community but we require community which would sustain but would not suffocate individuals.

Our Mahatmaji fully realized this and that is why in wrestling with the problem of the penetration of India by the Western system of industrialism and by the Western spirit with which this system goes hand in hand, he came to the conclusion that India must repudiate not only the present-day apparatus of Western technique but the whole system and spirit for which this apparatus stands, if she is to find her own salvation.

But even our profoundest loyalty to the wisdom of Mahatmaji could not halt the process of Westernization in Oriental countries of which industrialization covers a major part. If, however, Oriental countries are to defend themselves effectively against any aggressive exploitation by the West there is no other alternative than to take to industrialization. It is absurd to expect that the world will readily go back to the pre-industrial days. A sensitive conscience may be revolted by the tragic and brutal realities of mass-life in an industrial age. Industrialism might have been the benefactor of our time but it became so to the West only because there was the East to be exploited. No doubt there was a high noon of success for industrialism if we view only its effect on the West. But East and West viewed as one unit would show that on the whole it has been the worst villain of our time. Even for the West for which it did create wealth and comfort in undreamed-of abundance, though only reducing billions of the Eastern people to a life of degrading poverty on a continent rich with land and wealth, with all human and material resources, it did not
bring in unnmixed blessings. In the wake of its incomparable economic achievement it has left even in the West the thin, deadly trail of anxiety. The connecting fluids of industrial society begin to dry up; the seams harden and crack; and society is transformed into a parched desert, "a heap of broken images, where the sun beats, and the dead tree gives no shelter, the cricket no relief, and the dry stone no sound of water"—that state of social purgatory which Durkheim called "anomie" and where Eliot saw fear in a handful of dust.'

'Under industrialism the social order ceases to be society in faith and brotherhood. It becomes the waste land, "a-social society," "a society of onlookers, congested but lonely, technically advanced but utterly insecure, subject to a complicated mechanism of order but individually irresponsible". We live on from day to day, persisting mechanically in the routine of a morality and a social pattern which has been switched off but which continues to run from its earlier momentum. Our lives are empty of belief. They are lives of quiet desperation.'

It is no wonder that the sensitive conscience of our Mahatmagi revolted against this tragedy. But unless the leaders of the Oriental countries are prepared to disavow all social responsibility it is difficult to condemn their policy of industrialization of their country in the present condition of the world.

History, it seems, must have its course. The Oriental countries, however, must not forget that they are proceeding in this respect under circumstances fundamentally different from those prevailing in the early stages of the industrial revolution in the West. Considerations of human needs and social rights, scarcely noticeable when the industrial revolution began, have now become inseparable from economic and technical progress. They mean a substantial burden to the designers of industrial progress and to the agencies working for economic advance. The newly stirred consciousness of the masses and their articulate expectations and claims for a better living offer a challenge demanding urgent response.

In the last four lectures I have tried to give you just a glimpse of the development of the ideas of property, contract, crime, etc., in our ancient system. More information about this you will find in Kautilya's Arthasastra, Visnu-Samhita and Manu-Samhita. It is beyond our purpose to bring in these texts for our consideration here. Indeed it would require no searching for these texts: they are well collected in the books named above.

Legal history, when seriously considered, has been looked upon as an Alchemy of distilling legal principles. Its function has been set to be to supply to lawyers an appropriate erudition. What I have said in my lectures in the name of legal history of Vedic India might not supply any useful erudition to you: to give form to the chaos of this hoary past is never easy, and is mostly impossible. As I have already
told you, we have failed to pronounce upon the adequacy or otherwise of the legal devices of these remote ancient days to the peculiar social needs of their time, for the simple reason that we are not in a position completely to reconstruct any useful social account of these people.

We have studied the available data under the categories of modern law. This might have rendered it somewhat difficult for you to have a sympathetic understanding of the uses of these legal concepts in the remote past.

There is, we are assured, no formula for protecting the historians against obsolescence. Legal history, like other history, must always be re-written. The legal historian can hope only to give to the data of the past one of many possible formulations. Many possible arrangements of the data of legal history will appear as soon as one is freed from the necessity of finding in the distant past the seeds of current legal principles. A change in attitude in this respect alone would enlarge the possibility of legal history. So long as legal history is considered mainly as the raw material from which legal principles are distilled, the approach to it remains narrow: Legal historians keep themselves busy with tracing legal principles to their legal culmination. But law itself is a part of history: a legal historian should be more concerned with the relationship at any time between legal institutions and the rest of the society, and less concerned with the embryology of the professional vocabulary.

There are matters that still remain to be presented by historians who would not assume that law has a life all its own. Legal history then would be more likely to make its potentially rich contribution to social history.
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INTRODUCTORY

(Pages 1-18)

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Dr. Augustus Pulszky, Theory of Law and Civil Society, pp. 219, 227.


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4 2 Pulszky, Theory of Law and Civil Society, p. 312.

Dr. Rudolf Schleisinger defines law as the sum of the general rules of behaviour enforced by the state. Soviet Legal Theory, p. 2.


6 4 Prof. Eugen Bhrlrich, Fundamental Principles of the Sociology of law—Foreword.

Dr. W. Puchman, Legal Theory, p. 178.

5 Marx, Critique of Political Economy.

See also Dr. Fritz Berozheim, The World’s Legal Philosophies (translated by Rachel Szold Jastrin), Introduction, pp. 269-74.

6 See also Schlesinger, Soviet Legal Theory, Chap. II.


7 See also Berozheim, The World’s Legal Philosophies, p. 276.

Wintermtrz. Some Problems of Indian Literature, p. 5.

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9 9 E.g., Cultural Linguistic and Literary Historical Gleanings.

10 Weber, History of Indian Literature, p. 3.

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15 Weber, History of Indian Literature, p. 35.

16 Dr. Abimitsh Chandraw Das seeks to establish the vast antiquity of the Rigveda on an examination of the Geological data. See his Rigvedic India, Chaps. I to VIII.

17 Weber, History of Indian Literature, p. 35.

18 Weber, ibid., p. 36.

19 See Dr. Das, Rigvedic India, Chaps. IV to IX. Dr. Das discards the theory of the Western scholars that Sndhu in the Rigveda only meant a river and that ocean was unknown to the Vedic Indians. See his Rig-vedic India, Chap. III.

20 Weber, History of Indian Literature, p. 37.

THE HISTORY OF HINDU LAW

LECTURE 11

SOURCES OF THE HISTORY

(Pages 19—33)

As to the circumstances leading to the establishment of special schools of science, see S.B.E., XXV, p. xlvii.

George, Bühlcr, S.B.E., XXV, pp. lvi-lxiii.

See also Jolly, Recht und Sitte, p. 38.

Patanjali, Mahābhāṣya.

Vasishtha Samhita.

Gantama, Dharmasutra.

Baudhayana, Dharmasutra.

Also called Yajnavalkya Smriti.


Max Müller, History of Ancient Sanskrit Literature, p. 134. This is also Jolly's view—see in Recht und Sitte, Chap. 13.

Jolly, Recht und Sitte, p. 9.

S.B.E., Vol. II; also Jolly, Recht und Sitte, p. 9.


Ibid., pp. liv-livx. See also Jolly, Recht und Sitte, Chaps. 1 and 3.

S.B.E., Vol. XIV, pp. xxvii to xlv, also Jolly, Recht und Sitte, p. 7.

Jolly, Recht und Sitte, Chap. 1, p. 7.


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Jolly, Recht und Sitte, Chaps. 1 and 2; also S.B.E., Vol. XXV, p. xxi.

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There are, moreover, unmistakable indications that it is the work of the same author who wrote the remainder of the Kalpasutra. One important argument in favour of this view is furnished by the fact that Prasna XXVII, the section on Grihya ceremonies, has evidently been made very short and concise with the intention of saving matter for the subsequent sections on the sacred law. The Apastambhiya Grihyasutra contains nothing beyond a bare outline of the domestic ceremonies, while most of the Grihyasutras include a great many rules which bear indirectly only on the performance of the offering in the sacred domestic fire. The restricted scope of Prasna XXVII of Apastamba can be explained only on the assumption that Apastamba wished to reserve all rules bearing rather on the duties of men than on the performance of the domestic offerings, for the sections on the sacred law. A second and no less important argument for the unity of the whole Kalpasutra may be drawn from the cross references which occur in several Prasnas.


Apastamba I. 2, 3, 4.

According to Max Muller the Sutra period was one and the same for all the four Vedas. See also Joly, Recht und Sitte, p. 5.

Apastamba I. 5, 1 ff. See Joly, Recht und Sitte, p. 5.


Also Apastamba II, 7, 17, 17.

At. Br. VII. 18.

Baudhayana I. 1.

See George Buhler, S.B.E., XIV, p. xxxviii.


Varishta I; see also Joly, Recht und Sitte, p. II.

S.B.E., Vol. VIII, pp. x to xvi.

See also Joly, Recht und Sitte, p. 13.


Joly, Recht und Sitte, p. 32.

Jayaswal, Manu and Yajnavalkya.

See also Joly, Recht und Sitte, p. 40.

S.B.E.; see also Joly, Recht und Sitte, p. 32.

Shamsastri, Kautilya, pp. xiv et seq.

Kapson calls it 'The Epic Age'. See Rapson's Ancient India, Chap. IX.

LECTURE III

VEDIC SOCIETY

A General Survey

(Pages 34 to 59)

Justice Dixon.

Dr. Abinash Ch. Das, Rigvedic India.

Maconell, History of Sanskrit Literature.

Keith & Maconell, Preface to Vedic Index.

A. F. Rudolf Hoernle, A History of India.

See also Archaeological Survey of India.

Grierson, Indian Empire, I, p. 357.

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**LECTURE IV**

**VEDIC SOCIETY**

(Pages 60—85)

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*See ante* Chap. VI, particularly Prajapati Paramesthin, Brihaspati & Gautama.
A FEW POLITICAL INSTITUTIONS OF THE AGE

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Power never exists, we are told, without an alloy of physical force but it is always more than physical force.

Some seems to see the identity of Wisdom and Power or at least some intimate relation between the two. See in this connection Gita, Chap. VII, ss. 10 to 12.

There is, however, also power as ‘demonic possession’. The terrible consequences of modern demonic possessions, particularly in political life, need hardly any mention. They furnish the useful lesson of proving that human life is actually subject to power and not merely to mind (see Niebuhr, Human Destiny, p. 115).

As to the bearing of Power on social life—see Niebuhr, Human Destiny, pp. 266-78.

According to Niebuhr, the perennial importance of power in social organization is based upon two characteristics of human nature itself: The one is the unity of vitality and reason and the other is the force of human sin,—the persistent tendency to regard ourselves as more important than any one else and to view a common problem from the standpoint of our own interest (ibid., p. 268). The second characteristic is said to be so stubborn that mere moral or rational suasion does not suffice to restrain one person from taking advantage of another. Dr. Niebuhr does not see any practical wisdom in the creed of non-violence: “A sensitive conscience may be revolted by the tragic and brutal realities of man’s social life and decide to disavow all power. But if this powerlessness is not accompanied by a concomitant disavowal of social responsibility it leads to the moral confusions in which secular and religious perfectionists are usually involved. Complete non-resistance may have moral meaning, if it is understood that unprotected rights and privileges will probably be lost and that in many social situations they are practically certain to be lost. Non-violent resistance has meaning as a pragmatic technique; for it is well to explore all methods of achieving justice and maintaining peace, short of violent conflict. But non-violent resistance as a moral or political absolute is a source of moral and political confusion. The implicit and explicit aversion of the democratic world to violent forms of dispute was a factor upon which
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<td>Proponents of ‘total war’ calculated. It increased the probability of their success and therefore the certainty of their venture.” Compare and contrast Niebuhr’s view of human nature and the views of Rousseau and Hobbes. Rousseau credits man with <em>amour de soi</em> and <em>amour propre</em>, the latter being only a perversion of the former engendered by bad social institutions. Hobbes found men to be naturally pugnacious and competitive, their ideas of right and wrong being determined by their pleasures and desires. It may be noticed in this connection that it was perhaps Hobbes who dealt the heaviest blow to the theory of Natural Justice. If we start with Hobbes’s original viciousness, ‘justice’ to live at all must seek the reigns of state constraint. From this point it was only a step to accepting ‘power’ as the substance of legality. See Prof. Cahn, <em>The Sense of Injustice</em>, p. 7.</td>
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LECTURE VI

THE RIGVEDIC PHILOSOPHERS OF LAW

(Pages 111-158)

115 | 5 | According to Fuller ‘natural law’ is essentially a way of thinking: “The law in quest of itself.” |
117 | 6a | For the conception that the gods were also born see ante., p. 127. |
118 | 7 | Tr. by Griffith. |
121 | 10 | Max Müller, *S.B.E*. The translation of the Riks given below are by Griffith. |

I feel tempted to give here Max Müller’s version of these verses:

‘Nor Aught nor Nought existed; yon bright sky
Was not, nor heaven’s broad woof outstretched above,
What covered all? what sheltered? what concealed?
Was it the water’s fathomless abyss?
There was not death—yet was there naught immortal,
There was no confine betwixt day and night;
The Only One breathed breathless by itself:
Other than it there nothing since has been.
Darkness there was, and all at first was veiled
In germ that still lay covered in the husk
Burst forth, one nature, from the fervent heat.
Then first came love upon it, the new spring
Of mind—yea, poets in their hearts discerned.
Pondering, this bond between created things
And uncreated. Comes this spark from earth
Piercing and all-pervading, or from heaven?
The seeds were sown, and mighty powers arose—
Nature below, and power and will above—
Who knows the secret? who proclaimed it here,
Whence, whence this manifold creation sprang?
The gods themselves came later into being—
Who knows from whence this great creation sprang?
He from whom all this great creation came,
Whether his will created or was mute,
The Most High Seer that is in highest heaven.
He knows it—or perchance even He knows not."

It will not be out of place to notice here the various comments on these texts by the various Upanishad-brāhmas.

We might mention in this connection that the Vedic speculations noticed in this lecture date at least three thousand years before Christ. Similar speculations prevailed amongst the Greeks and the Romans, but at much later times. The earliest Greek speculations date about 600 B.C.

According to Greek speculation the fundamental principle of things and of knowledge is to be found always outside the mind in the object. The object for the Ionics is water, the primitive material without determinate quality (that is, infinite, and the air; for the Pythagoreans, (Pythagorus about 582-500 B.C.) it is number, the essence of things; for the Eleatics is pure, abstract, and immovable being, that has no beginning, nor end, that is not divisible, that does not go from place to place, but is always one and perfect. The origin of beings, according to Heraclitus (535-475 B.C.) is birth or the perennial flow; according to Empedocles, it lies in the complexity of the four elements, water, air, fire, and earth, originally different in quality, from whose union and separation things are born and perish; and for Democritus, it consists in the indefinite plurality of atoms without qualitative difference and various only in form.

Anaxagoras builds up the Whole with primitive elements of diverse nature, called by him 'seeds' and later 'homolomerei', and with the Noos or intelligence that gives them their order. The
SOPHISTS show that truth cannot be found by natural knowledge, because phenomenon is variable and contradictory. The reality of things is different from our knowledge, and therefore thought is only a belief, and happiness lies in pleasure and utility. SOCRATES (469-399 B.C.) discovers the ideal object, and teaches that true knowledge is founded on the concept of things, separated by induction and determinated by definition. PLATO (429-348 B.C.) raises the Socratic concepts (now become ideas) and gives them their order by dialectics. Belief, in his mind, is connected with sensible phenomena, while the concept corresponds to the real and immutable essence or idea, as a metaphysical principle. ARISTOTLE (384-320 B.C.) makes the Platonic idea the form of reality, because there can be no essence without phenomena.

After Plato and Aristotle came the philosophers of the ideal objectivity, with the belief that the principle of things is not yet found, and that, consequently, it is convenient to let practical interest prevail and to dull the spirit to sleep with internal satisfactions. STOICISM, EPICUREANISM, and SCEPTICISM express the same tendency of the subject to renounce the possibility of self-satisfaction.

Scepticism is the demonstration that truth cannot be learned by reason; differing from the teaching of the Sophists, which is the demonstration that truth cannot be attained by natural knowledge or sense. Therefore, Socrates opposes the Sophists and says that if truth cannot be learned by sense or belief, it is found in knowledge, or the concepts.

Since we cannot learn truth by reason, conclude the NEO-PLATONISTS, it must be higher than reason and must be regarded as a principle transcendent, supra-intelligible, ineffable, an object of faith, ascetics, and ecstatics. The supra-intelligible in Neo-Platonism is nothing more than the old Greek intellect, which by its nature always seeks the principle of things without itself, since it is without its own content; that is, truth which is felt in an objective manner.

The Roman world is the world of the will, and, therefore, of law and politics. The will, in such a world, on the one hand, is continuously seen in the controlling and inflexible order of the State, and, on the other, begins to develop in the form of individual rights. With the development of the principle of will with its subjective nature, private rights cannot fail to raise, and the State cannot long preserve the rough semblance of a natural organic object. In Rome, private law was at first strict, ironclad, and cramped. Then it extended, becoming facile, general, supple, and equitable; for equity guards the right, which the law, in its generality, cannot protect. And finally it became human law, and, consequently, proclaimed the principle that slavery, an institution of mankind and contrary to nature, does not control the spirit, and that men, in natural law, are free and equal.

CICERO, the greatest philosopher of the Roman world, having no scientific knowledge of the manifestation of subjective rights as the act of the abstract power of the will, is inferior to Roman realism.
Remember in this connection what Prof. Berolzheimer has said about the indebtedness of the World to the Vedic Aryans: The learned Prof. says: "Closely connected with the religious and philosophical views of the Aryans are certain fundamental positions in regard to the philosophy of law, which in turn became the antecedents of later legal and ethical developments among the Greeks and Romans. Foremost among these philosophical conceptions is 'rita', which is at once the organized principle of the universe and the divine ordering of earthly life".

"We may recall that to the Vedic Aryans the central philosophic conception of organized nature was 'rita,' which included the natural and the human order. A closely related conception was 'dharma.' The Greeks, by emphasizing the creative energy, made of 'rita,' φύσεως and of 'dharma,' θέματος. The Romans, through the Greeks, derived from 'rita' their central conception 'natum,' 'ratio,' 'naturalis ratio'; and Augustine christianized 'rita' and 'Pax.' Order is the universal bond that holds the world together; order assigns a place to all created things; it is a directive and distributive justice."

Parameswin's Ekam is the univocally eternal ground known by human minds! This Ekam seems to be the timeless Providence from the stability of whose Mind the manifest world takes its causes, order and forms. The temporal things, though diverse, though infinite, are all embraced together in that Great Ekam, the unfolding of the temporal order being united in the foresight of that Divine Mind.

The Sixth Kanda of Satapatha Brahmana takes up its theme from these Riks of Prajapati and begins thus:

अध्यास्मात्र स्वरूपायां प्राणायां शाश्वते 
तदात् किं तदसन्धारितवयो शाश्वत 
नेत्रेअववाहयो नव: के तदवयं दत्त प्राणायां व रक्ष्यवर्ते गतं 
पूर्बाच्यायोहिं वनिष्कर्षः तपस्वीविशिष्टः नासायां 

(Satapatha Brahmana VI. 1. 1. 1.)

Brihadaranyakopanishad also took up these Riks and expounded them in its own way. We have in this Upanishad:

नैवेद्य शिवाय चालीकानुविद्वद्वात्मास्चैन्य 
अभ्यास्मात्र श्रवणाय श्रवणोऽर्जल्लक्ष्यैः

(Brih. Up. I. 2. 1.)

"In the beginning there was nothing (to be perceived) here whatsoever. By Death indeed all this was concealed,—by hunger; for death is hunger. Death (the first being) thought, 'Let me have a body.' Then he moved about, worshipping. From him thus worshipping was produced water."

The Upanishad then proceeds to say how from water earth developed and how thereafter fire and the rest of the creation came into being. Later on we are told how and why law was created.

शाश्वस्य शाश्वस्य यज्ञं सर्व चालीकात् तत्त समहं 
क्षेत्रियविवेक शाश्वस्य शाश्वस्य तथा ज्ञेयस्य सत्तम नेत्री रक्षितं विरक्षिताचि: 

(Brih. Up. I. 2. 2.)

"Verily water is arka. And what was there as the froth of the water, that was hardened, and became the earth. On that earth be
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<td>(Death) rested, and from him, thus resting and heated, Agni (Vira) proceeded, full of light.&quot;</td>
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<td>&quot;That being divided itself threefold, Aditya (the sun) as the third, and Vayu (the air) as the third. That spirit (prana) became threefold.&quot;</td>
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<td>कौशिकामत्व विनियोग स भावो जागीरितिः स सन्नवा वाच्य निषुम्भ सममयद्वनाया। विक्रमद भद्रेण भानीत् स संवत्सरीरविषमयः</td>
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<td>(Brih. Up. I. 2. 4.)</td>
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<td>&quot;He desired, 'Let a second body be born of me', and he (Death or Hunger) embraced Speech in his mind. Then the seed became the year.&quot;</td>
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<td>(Brih. Up. I. 4. 1.)</td>
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<td>&quot;In the beginning this was self alone, in the shape of a person (purusha). He looking round saw nothing but his Self. He first said, 'This is 1;' therefore he became I by name.&quot;</td>
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<td>(Brih. Up. I. 4. 2.)</td>
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<td>&quot;He feared, and therefore any one who is lonely fears. He thought, 'As there is nothing but myself, why should I fear?' Thence his fear passed away. For what should he have feared? Verily fear arises from a second only.'&quot;</td>
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<td>(Brih. Up. I. 4. 3.)</td>
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<td>&quot;But he felt no delight. Therefore a man who is lonely feels no delight. He wished for a second. He was so large as man and wife together. He then made his Self to fall in two (pati) and then arose husband (pati) and wife (patmi) . . . Therefore the void which was there, is filled by the wife. He embraced her, and men were born.&quot;</td>
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<td>(Brih. Up. I. 4. 7.)</td>
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<td>&quot;Now all this was then undeveloped. It became developed by form and name, so that one could say, 'He, called so and so, is such a one.' Therefore at present also all this is developed by name and form, so that one can say, 'He, called so and so, is such a one.' &quot;</td>
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<td>&quot;He (Brahman or the Self) entered thither&quot;</td>
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"Verily in the beginning this was Brahma, that Brahma knew (its) Self only, saying, 'I am Brahma'. From it all this sprang. Thus, whatever Deva was awakened (so as to know Brahma), he indeed became that (Brahma); and the same with Rishis and men."

"Verily in the beginning thus was Brahma, one only. That being one, was not strong enough. It created still further the most excellent Kshattra (power), viz., these Kshatras (powers) among the Devas—Indra, Varuna, Soma, Rudra, Parjanya, Yama, Mrityu, Isana. Therefore there is nothing beyond the Kshattra."

"He was not strong enough. He created the Vis (people), the classes of Devas which in their different orders are called Vasus, Rudras, Adityas, Visvesh Devas, Maruts."

"He was not strong enough. He created the Sudra colour (caste), as Pushan (as nourisher). This earth verily is Pushan (the nourisher): for the earth nourishes all this whatsoever."

"He was not strong enough. He created still further the most excellent Law (dharma). Law is the Kshatra (power) of the Kshatras, therefore there is nothing higher than the Law. Thence forth even a weak man rules a stronger with the help of the Law, as with the help of a king. Thus the Law is what is called the true. And if a man declares what is true, they say he declares the law; and if he declares what is true. Thus both are the same."

"In the beginning this was Self alone, one only. He desired, 'Let there be a wife for me that I may have offspring, and let there be
REFERENCES

wealth for me that I may offer sacrifices.' Verily this the whole desire, and, even if wishing for more, he would not find it.'

In the Chhandogyopanishad we are told:

"

(Chhand. Up. III. 19. 1.)

"Aditya (the sun) is Brahman, this is the doctrine, and this is the fuller account of it:--

In the beginning this was non-existent. It became existent, it grew. It turned into an egg. The egg lay for the time of a year. The egg broke open. The two halves were one of silver, the other of gold."

(Chhand. Up. III. 19. 2.)

"The silver one became this earth, the golden one the sky, the thick membrane (of the white) the mountains, the thin membrane (of the yoke) the mist with the clouds, the small veins the rivers, the fluid the sea."

(Chhand. Up. III. 19. 3.)

"And what was born from it that was Aditya, the sun. When he was born shouts of hurrah arose, and all beings arose, and all things which they desired. Therefore whenever the sun rises and sets, shouts of hurrah arise, and all beings arise, and all things which they desire."

(Chhand. Up. VI. 2. 1.)

"In the beginning, my dear, there was that only which is (Tvo"v), one only, without a second. Others say, in the beginning there was that only which is not (Tò Mù or), one only, without a second; and from that which is not, that which is was born."

(Chhand. Up. 2. 2.)

"' But how could it be thus, my dear?' the father continued, 'How could that which is, be born of that which is not? No, my dear, only that which is, was in the beginning, one only, without a second.'"

(Chhand. Up. VI. 2. 3.)
"It thought, may I be many, may I grow forth. It sent forth fire.

That fire thought, may I be many, may I grow forth. It sent forth water.

And therefore whenever anybody anywhere is hot and perspires, water is produced on him from fire alone."

(Chhand. Up. VI, 2, 4.)

"Water thought, may I be many, may I grow forth. It sent forth earth (food).

Therefore whenever it rains anywhere, most food is then produced. From water alone is eatable food produced."

Taittiriya Upanishad says:

चतुष्क्षण धर्माय खाकियत्। ततो वेद भद्धायत्। तद्यथां सध्यकुलं
सञ्जातं सुखवेदते॥

(Taitt. Up. II. 7.)

"In the beginning this was non-existent (not yet defined by form and name). From it was born what exists. That made itself its Self, therefore it is called the Self-made."

That which is Self-made is a flavour (can be tasted), for only after perceiving a flavour can any one perceive pleasure. Who could breathe, who could breathe forth, if that bliss (Brahman) existed not in the ether (in the heart)? For he alone causes blessedness.

When he finds freedom from fear and rest in that which is invisible, incorporeal, undefined, unsupported, then he has obtained the fearless. For if he makes but the smallest distinction in it, there is fear for him. But that fear exists only for one who thinks himself wise, (not for the true sage).

स्यामुमयन-चुँक सन्म प्रागनविन्दश्च स तपोत्तथतम। स तपायात्
हमें संस्कृतं विश्वसंस्कृत। वर्द्धेन किष्क। तत्संस्कृत।
तत्संसंस्कृतविनिर्भायत॥

(Taitt. Up. II. 6.)

"He wished, may I be many, may I grow forth. He brooded over himself (like a man performing penance). After he had thus brooded, he sent forth (created) all, whatever there is. Having sent forth, he entered into it."

Prajapati Paramesthin seems to think that everything in the world moves to a specific fulfillment but it moves by the hand of that Great One. According to him, there is that Providence designing earthly structures and events. Everything in the world has a beginning excepting that Great One, the Divine Providence.

It sometimes becomes difficult fully to grasp his meaning as to the place of motion in the scheme.

तसं धार्मिकम् द्राक्षापालप्रकृतं सशिष्टं सम्बंधा प्रभृत्
तुष्टिविश्वस्विचरं वदार्थप्रवेशश्च वदार्थवेदकये॥
कायांस्य वस्तथत्तत्स्त्रसं वस्त्रो रेतं प्राचं वहलोच्तु॥
स्यो षुष्मधक्षि निरालोक्षुद्धिद् प्रशोभा कषो रत्नाय॥

(Rigveda, X. 129. 3 & 4)
These two Riks have been translated differently by different scholars. Griffith translates them thus:

Darkness there was: at first concealed in darkness this All
was indeterminate chaos.
In that there was to be and formless: by the great power of Warmth was born that Unit.

Then in the beginning, Desire, the primal seed
and germ of Spirit.

Sages who searched with their heart's thought discovered the
evidences' kinship in the non-existent.

Max Müller would translate them thus:

Darkness there was, and all at first was veiled
In gloom profound—an ocean without light.
The germ that still lay covered in the husk
Burst forth, one nature, from the fervent heat.
Then first came love upon it, the new spung
Of mind to, poets in their hearts discerned,

Fondering, this bond between created things
And uncreated.

In the commentaries of Sāyana the portion of the Ruk

Comming to the next Ruk he comments on the portion:

Prajapati's एकम्, as we have seem, already existed with सृष्टि.

In the void in which this beginningless एकम् existed with सृष्टि
the germ of the creation also seems already to have been present
tough covered in the husk. It burst forth from the fervent heat.

This heat, it seems, is something existing within. Even the mind
and love and desire are coming from within.

Prajapati's God really does not seem to create; but he moves
the world and perhaps he moves it not as a mechanical force but as
the total motive of all operations in the world. He is the final cause
of nature, the drive and purpose of things, the form of the world.
He did not create but it may be he knows whence this great creation
sprang. Prajapati brings in mind and desire but does not say that
great एकम् has desire, will or purpose. His एकम् may only be the
system of relationships in which all things move and have their being and their significance.

The Upanishad, however, understood Prajapati a little differently, for it ascribes desires and will and purpose to the creator. In his commentary Saunakacharya also follows this interpretation. Even the non-existent of Upanishads seems to be different from the non-existent of \textit{sadhanamabhismitram}. Things in some of the Upanishads are more subjective notions, not tangible objective realities. There was 'nothing' in the beginning in the sense that there was nothing yet defined by form and name.

Whatever be the differences of opinion in this respect, it seems to be agreed on all hands that everything moves to a specific fulfilment. Of the causes which determine an event, the final cause determines the purpose: everything is guided in a certain direction from within.

We may, in this connection, refer to the most recent views as given in General Smuts's \textit{Holism and Evolution}, specially chaps. II & III. The Reformed Concept of Matter and the Cell and the Organism.

"Indeed the significance of this view is that it reduces matter simply to a form of energy or rather Action, and still further simplifies the scheme of the universe."—Smuts, \textit{Holism and Evolution}, p. 38.

"Matter itself is nothing but concentrated structural energy, energy stereotyped into structure."—\textit{Ibid.}, p. 48.

"The difference between inorganic and organic bodies lies not only in their structures, but even more in their functions, especially the functions of the organic cells, to which there is apparently nothing corresponding in the inorganic world. About these cells we at present know comparatively little, except that their functions and activities are the basis of the functions and activities of the organisms which they compose, all being co-ordinated into a single system of a new type called 'life'. In the march of Evolution from the inorganic to the organic the cell is the real innovation, to which nothing corresponding in the inorganic has yet been discovered. To use a metaphor, the cell is the point where matter or energy roused itself from its slumbers and became active from within, with activities and functions which reveal its inner character and nature, so to say. It is a new structure in which energy develops or acquires a new form of activity, becomes functional, becomes in some inexplicable way endowed with special characters of selectiveness and reproduction, of self-help and self-control, which constitute a unique departure in the universe."—Smuts, \textit{Holism and Evolution}, p. 62.

"Reproduction of the most primitive forms takes place in a fluid medium, and all protoplasm still has a fluid jelly-like consistency. It is therefore probable that the most primitive forms of protoplasm might have arisen under favourable conditions of sunlight and warmth when the warm water still contained much of the crust in solution or dispersed in small particles in colloidal form, and thus presented conditions favourable for the selective formation of complex substances, such as the predecessors of the present forms of protoplasm."—Smuts, \textit{Holism and Evolution}, p. 70.

See also Smuts's view of creative evolution given in the chapter on 'Holism and Evolution'.

See also Prof. Whitehead, \textit{Science and the Modern World}. 
REFERENCES

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149 | 1 | *S.B.E.*
157 | 2 | Translation by Griffith.

LECTURE VII

LEGAL PHILOSOPHY IN RIGVEDIC INDIA

(Pages 159—74)

159 | 1 | Neibuhr, *Human Destiny*, p. 266.
160 | 3 | *Post*., p. 115.
6 | *Ibid*.,
7 | *Manusmriti* II, 1.
8 | *Rigveda* I, 65, 3-4.
10 | We may notice here the fundamental difference between the vedic view of law and the views of those who believed that law was only the will of the dominant local deity or of the dominant economic class. The last two views agree in defining law as a manifestation of applied power while the vedic view defines it in terms of divine reason.

*See* Prof. Calin, *The Sense of Injustice*.

161 | 10 | *Cf.* Vico, *Philosophy of Law*.
11 | *Miraglia, Comparative Legal Philosophy*, pp. 93-96.
162 | 12 | Here is an important antecedent of our Eastern approach to the investigation of Nature. Indeed there can hardly be any science unless there is a widespread instinctive conviction in the existence of an order of things, and, in particular, of an 'order of Nature'. For an illuminating account of the rise of the instinctive faith that there is an 'order of Nature', see Prof. A. N. Whitehead's *Science and the Modern World*.

General Smuts points to the inference of a Supreme Mind behind Nature: *see* his *Holism and Evolution*, pp. 338-39.

Indeed the power of perceiving in the harmony of created things, the hope of that which is high to which Dante refers, is essentially human. It is this perception which inspires poetry which man seeks to capture in language. The miracle is not language itself; which is essentially precarious, everchanging, always too heavy: it is the tension that confers nobility upon language, that leads it to create sublime and enchanting themes.

Of course, the order visualized by the Vedic Rishis or the one spoken of by Prof. Whitehead is not what we may designate as
imposed order' meaning imposed by human institutions or organizations.

See in this connection Ehrlich's *Fundamental Principles of the Sociology of Law*, particularly at pp. 20-4 & 75 et seq.

"The centre of gravity everywhere lies in the order which the associations create for themselves and life in the state and in society depends more upon the order of the associations than upon the order which proceeds from the state and from society."—Ehrlich, *Fundamental Principles of the Sociology of Law*, p. 119.

See also Chapter XVII.

Poste, p. 113.

14

See in this connection Ehrlich, *Fundamental Principles of the Sociology of Law*, particularly Chaps. XVII and XX.


15


Ibid.

16


17

In उपनिषद् perhaps we have the conception of law as manifestation of applied power of a local deity.

18

Poste, p. 109.

19

See poste, pp. 120-21.

20

It requires a very unusual mind to undertake the analysis of the obvious.

21

Dirghatamas perhaps seeks to put mind back into nature.

"The mental cognition is seen as the reflective experience of a totality, reporting for itself what it is in itself as one unit occurrence. This unit is the integration of the sum of its partial happenings, but it is not their numerical aggregate. It has its own unity as an event. This total unity, considered as an entity, for its own sake, is the pre-eminent unity of the patterned aspects of the universe of events. Its knowledge of itself arises from its own relevance to the things of which it comprehends the aspects."—Prof. Whitehead, *Science and the Modern World*, p. 174.

See also Suñāta, *Holism and Evolution*—particularly Chap. IX where he deals with mind as an organ of wholes.

Ibid., p. 89 where he deals with creativeness of thought.

22

Prof. Neibuhr says that "where there is history at all there is freedom; and where there is freedom there is sin."—*Human Destiny*, p. 83.

See also at page 3 where he deals with the real evil in the human situation.

23

Poste, p. 151.

24

Cf. Neibuhr, p. 222 where he points out that the denial of the finiteness of our knowledge and the false claim of finality is always partly the ignorance of our ignorance.

25


26

Expiability is indeed an important attribute of mature law that may lighten the load of the guilty. See Prof. Edmond N. Cahn, *The Sense of Injustice*, p. 158.

27

Poste, p. 151.
REFERENCES

170  30  Therefore Freedom bears in its own dynamism the necessity of control. Cf. the Renaissance insistence of the autonomy of reason and the Renaissance and Reformation conceptions of liberty.

40  In so far as the freedom of man to be creative in history implies a freedom over history itself, there are tangents of freedom which stand indirect relation to eternity.

41  Freedom, however, has its roots deep down in the foundations, and constitution of the universe.

See Smuts, Holism and Evolution, Functions and Ideals.

171  42  Poste Lecture VI.

172  44  Indeed the connection of the ideas of law and of truth is not merely accidental; truth signifies the agreements of knowledge with reality, and thus belongs to the order of logical notions. Appropriateness is the common thought connecting both, referring with regard to truth taken in the sense of verity, to the mental conception of its meaning, and, with regard to justice, to the practically desirable.


173  46  Ibid., p. 317.

LECTURE VIII

HINDU PHILOSOPHY OF LAW IN THE BRAHMANA PERIOD

(Pages 175—95)

176  1  Translation by Griffith

177  2  See Lecture VI.

178  3  See Lecture IX and Lecture X.


See also Prof. G. D. H. Cole, Essentials of Democracy, and Ehrlich, Fundamental Principles of the Sociology of Law, Chap. II.

See also in this connection Max Müller's History of Ancient Sanskrit Literature, pp. 132 ff. and S.R.E., Vol. II.

4  See Prof. N. K. Dutt, Origin and Growth of Caste in India, Vol. I.


7  See Lecture VI.


183  9  It has been truly said that the view of man really dictates the view of law. In Bentham’s System of Utilitarianism humanity is taken to be the weather-cook of pleasure and pain.

See in this connection Kelsen’s General Theory of Law and State, pp. 6 and 12.

10  Translation taken from the SACRED BOOKS OF THE EAST SERIES.

184  11  Hence in order to get a knowledge of the nature of law we cannot ignore this fact. The distinction, however, between ‘ought’ and ‘is’ is fundamental for the description of law.
See in this connection Prof. Cahn, The Sense of Injustice, pp. 38f.

Indeed the oldest and loftiest notion of freedom is freedom from desire, from insatiable ambition. This, however, involves a resolute withdrawal from the arena of affairs.

See in this connection Pulszky, Theory of Law and Civil Society—theory of activity dealt with at p. 377 ff.


Sandilya conceives of actuality in essential relation to an unfathomable possibility. His 'Brahman' is the required principle of concretion.

So Brahman is the ultimate limitation. In the language of Prof. Whitehead 'His existence is the ultimate irrationality.' "For no reason can be given for just that limitation which it stands in His nature to compose. He is not concrete, but He is the ground for concrete actuality. No reason can be given for the nature of Brahman, because that nature is the ground of rationality." See Prof. Whitehead, Science and the Modern World, Chap. XI.

S.B.E., Vols. I, XV & XII.

Contrast: Hobbe's view of human nature.

Cf. Rousseau's views.


Ibid.

See in this connection Pulszky, Theory of Law and Civil Society, Book I, Chap. II, Aims and Ideals, pp. 51-59.

Ibid.

Ait. Br.: As to modern concept of mind consult Smut, Holism and Evolution. See also Prof. Whitehead's Science and the Modern World, particularly Chap. III, where he deals with the several variations of the concept. As to its role in evolution see Prof. du Noüy, Human Destiny, pp. 134-41.

Ait. Br.

For modern belief in creative evolution and its implications see Smut's, Holism and Evolution, particularly at pp. 8-10, 18, 88-9, 132-39.

See also Prof. Bower. Evolution in the Light of Modern Knowledge.

See in this connection Prof. du Nöüy, Human Destiny, p. 235 and the chapter on Civilization.

See Smut's criticism of the purposive view of evolution, Holism and Evolution, pp. 338-40.

According to him purposive activity is peculiarly holistic, see ibid., p. 264.

Ait. Br.

Pulszky, Theory of Law and Civil Society, p. 317.

Ait. Br.

S.B.E., Vol. X.

S.B.E., Vol. VIII.

The Evolution of the Law Series.
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### LECTURE IX

**HINDU PHILOSOPHY OF LAW IN THE SUTRA PERIOD**

(Pages 196—225)

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| 1         | Max Müller in his letter to W. H. Morley.  
See also Weber, *History of Indian Literature*, p. 15 ff.  
132 ff. |
For a discussion of the importance of expiabiility as an attribute of mature law, see Prof. Cahn, *Sense of Injustice*, p. 158 ff. |
| 7         | *Baudhāyana* I, 10, 18. |
| 9         | *Vāsiṣṭha* I, 8 to 16. For the Hindu view of custom see author's *Law of Primogeniture* (Tagore Law Lectures 1925), pp. 370-78 |
| 10        | *S.B.E.*, XIV, Introduction. |
| 12        | Cf. What Professor Carnot of Louvain University says regarding the *trinity*, Varuna, Mitra and Aryaman: "Varuna is the most exalted deity of the Veda. As it was the will of Mazda that had made Darius a king, it is Varuna’s *will* or *command* that rules the world. He is the *ahuramazda*, he whose commands are firm and immutable. He is often identified with rita, the asha or art of the Iranians, which is the great law of the world, moral and material, the principle of all order, causing the sun to rise, rain to fall, rivers to flow, fire to come out of the rubbed stones (ritajan agni) and imposing on man the moral obligations of justice, truth and piety. If man be guilty of rebellion against the rita, he becomes loaded with the chains of Varuna and has to pray him to be released from his fetters and obtain the freedom of innocence (aditi)"—The *Visva-Bharati Quarterly*, October 1923, pp. 197-98.  
| 14        | *Apastamba* II, 6, 13, 1 to 12.  
| 15        | *Apastamba* II, 6, 14, 6 to 14.  
See also Sarvādikārya, *The Principles of the Hindu Law of Inheritance*, p. 185.  
See also author’s *Law of Primogeniture*, p. 264. |
| 18        | E.g., *Gautama* I, 102: “The Veda is the source of the sacred law, and the tradition and practice of those who know the Veda.” |
Vasishtha I. 1 to 6: "Now, therefore, the desire to know the sacred law for their welfare in men. . . . . . The sacred law has been settled by the revealed texts and by the tradition of the sages. On failure of these the practice of the shishas has authority. One whose heart is free from desire is a shista."

Baudhayana I. 1, 1. 1 and 4: "The sacred law is taught in each Veda. We will explain it in accordance with that. The sacred law, taught in the tradition, stands second. The practice of shishas stands third, &c."

Apastamba E. 1. 1 and 2: "Now, therefore, we will declare which form part of the custom of daily life, as they have been settled by the agreement of those who know the law. The authority of these duties is the agreement of those who know the law and the authorities for the latter are the Vedas alone."

Korkunov, Theory of Law.


Kelsen, General Theory of Law and State, pp. 131; 152.

Roscoe Pound, Introduction to Legal Philosophy, p. 76.

See Pulszky, Theory of Law and Civil Society, p. 207; 337.

Berolzheimer, World's Legal Philosophies, pp. 60-66.

W. Durant, Stories of Philosophy, pp. 18-22; 45.

Roscoe Pound, Introduction to Legal Philosophy, p. 77.

Berolzheimer, World's Legal Philosophies, pp. 60-66.

Pulszky, Theory of Law and Civil Society, p. 209.

Berolzheimer, World's Legal Philosophies, pp. 69-74.

W. Durant, Stories of Philosophy, p. 81.

Gautama XI. 9 and 10

See also Baudhayana I. X. 18.

Baudhayana I. X. 18 and 19.

Gautama XII; Vasishtha XIX to XXI.

Apastamba II. X. 29.

Gautama XI. 28.

Vasishtha XIX.

See Cahn, Sense of Injustice, Expediency of Law, p. 158.

See in this connection Niebuhr's Human Destiny, Structure of Justice, pp. 266-79, specially at pp. 269-70.

See also Prof. Cahn, Sense of Injustice, pp. 7, 27 where he speaks of law as a vehicle of persuasion.

See also Korkunov, Theory of Law—Force, if an essential element in law.

Mahabharat, Santiparva, VIII. 4.

Mahabharat, Santiparva, VIII. 9.


See Aldous Huxley, Ends and Means, Chap. I.
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LECTURE X

MANU’S THEORY OF LAW

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So long as law, in regulating the spheres of right, produces the equilibrium of society by distributing the various fields of action in conformity with the abilities of individuals and with their recognized and attainable wants, justice, in relation to the creation of this social equilibrium, is a dynamic principle. It, however, also simply effects the maintenance of the equilibrium thus established. In this respect it is a statical principle.

One notorious characteristic of law is its prescience of continuity. Indeed the legal system stands as a symbol of persistence. See Prof. Cahm, Scuse of Injustice, p. 142.

See also Pulszky, Theory of Law and Civil Society, s. 173, pp. 315, s. 219, p. 386.

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See in this connection Prof. du Noüy, Human Destiny, Chap. 13.

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<td>9 Ibid.</td>
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<td>10 Toynbee, Civilization on Trial See Pulszky, Theory of Law and Civil Society, pp. 170 ff.</td>
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<td>12 Aldous Huxley, Ends and Means, War, p. 92. Dr. Noel-Hume, however, fails to appreciate the wisdom of non-violence in politics, see Human Destiny, pp. 269-70.</td>
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<td>14 Ibid., p. 246.</td>
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<td>15 Prof. Northrop, East and West, pp. 346-74, particularly at p. 551.</td>
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<td>16 Ibid., pp. 354-55.</td>
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<td>18 Ibid., p. 355.</td>
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<td>19 Prof. Allen, Legal Duties, p. 186.</td>
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<td>254</td>
<td>21 Ibid., p. 48.</td>
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<td>261</td>
<td>25 See Prof. Will Durant, The Story of Philosophy, Friedrich Nietzsche, p. 421.</td>
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THE HISTORY OF HINDU LAW

LECTURE XI

HINDU LAW DURING THE PERIOD OF THE RIGVEDA

(Pages 270—331)

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Before the First War, the case against Communism was generally made in terms of efficiency, the case against Capitalism in terms of morality: Communism was conceived to be enlightened in principle but was held not to work. Now we see a reverse tendency—a disposition to admit the inefficiency of Capitalism and justify it as providing margin on which liberty and democracy subsist. Communism is charged with leaving no such margin.

According to Aldous Huxley among the Communists ambition has been more or less effectively divorced from avarice, and the lust of power manifests itself in a form which is, so to say, chemically pure: See Ends & Means, p. 20.

The symbol and the instrument of power is political position for which they would fight ruthlessly.

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See also Pulsk, Theory of Law and Civil Society, pp. 308 ff. and pp. 419 ff. As to Hindu Theory of Custom see Author's Law of Primogeniture (Tagore Law Lecture, 1925), pp. 370-78.
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Page 277 16 As to expiability as an element in law see Prof. Cahn, Sense of Injustice, p. 158.
Manu, I. 87.
Gantama, XI.
Vasistha XIX.
Ehrlich, Fundamental Principles of the Sociology of Law, Chap. V.
Ibid., Chap. IX—The Structure of the Legal Proposition.
See Dr. Friedmann, Law and Social Change, Chap. 2.
Ibid.
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Ibid.
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Spencer, Principles of Biology.
See also Prof. Durant, The Story of Philosophy, p. 390.
Ibid.
Prof. du Naïy, Human Destiny, Chap. 7; Significance and Mechanism of Evolution, pp. 81-99. Chap. 8: The New Orientation of Evolution, pp. 103-19, particularly p. 103.
Rigveda, X, 85.
The Story of Sunashepa.
Sociology.
Ibid.
Rigveda, VII, 81. 4; X, 94. 14; IX, 61. 14; VII, 43. 3.
Rigveda, I, 28. 3; V, 43. 15; VII, 31. 5-8; X, 10. 10.11.
Rigveda, X, 27. 12.
Rigveda, X, 27. 12.
Rigveda, X, 85, 21-22.
And (the gods), said (to Brihaspati)—This pledge of hers is to be taken by the hand, this is the wife of Brahman: she has not made herself known to the messenger sent (to seek her), so is the kingdom of a Kshatriya protected.—X. 100. 3.
I take thy hand for good fortune, that thou mayest attain old age with me as thy husband; the gods Bhaga, Aryaman, Savitri, Purandhri have given thee to me, that I may be the master of a household.—X. 85. 36.
(The Gandharvas) gave Surya to thee, Agni, with her bridal ornaments; do thou, Agni, give (us) husbands our wife back again with male offspring.—X. 85. 38.
Soma was desirous of a bride; the two Aswins were the two grooms when Savitri gave Surya, who was ripe for a husband. (to Soma endowed) with intelligence.—X. 85. 9.
Tvashthri celebrates the marriage of his daughter: therefore the whole world is assembled; but the mother of Yama, the newly married wife of the mighty Vivasvat, disappeared.—X. 17. 1.
You brought, Sundhru, the daughter of Purumitra to (her husband) Vimadah you came at Vadhramati's invocation, and gave excellent offspring to her who was full of wisdom.—X. 39. 7.
THE HISTORY OF HINDU LAW

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I have heard, Indra and Agni, that you are more munificent givers than an unworthy bridegroom, or the brother of a bride. Therefore, as I offer you a libation, I address you, Indra and Agni, with a new hymn.—I. 109. 2.

How many a woman has been gratified by the flattering praise of man's desire, when the bride is fortunate and beautiful, she of herself chooses her husband amongst men.—X. 27. 12.

Rigveda, I. 62. 11 : I. 104. 3 : I. 105. 8 ; IV. 58. 8 ; VII. 18. 2 ; VII. 26. 3.

Rigveda, X. 85. 13.


Rigveda, I. 92. 7 ; VI. 1. 5 ; VIII. 1. 12 ; X. 85. 43.

Rigveda, VI. 25. 6.

Rigveda, VII. 86. 7 ; VIII. 56. 3.

Rigveda, VIII. 19. 36.

Rigveda, I. 174. 9 ; VI. 20. 12 ; VI. 15. 1.

Rigveda, IV. 30. 17.

Rigveda, V. 34. 6 ; X. 86. 19.

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Rigveda, X. 85. 25.

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Rigveda, VII. 1. 6 ; I. 121. 7 ; X. 40. 5.

See Miraglia, *Comparative Legal Philosophy*, Chap. IV, pp. 382 et seq.

Posto Leces. VI and VIII.

See *Miraglia, Comparative Legal Philosophy*, § 245, p. 409. See also Smuts, *Holism and Evolution*.

Miraglia, *Comparative Legal Philosophy*, § 245, p. 409.


Ibid., p. 405.

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Ibid. See also under the heads Ksatriya and *Vedic Index*, Vol. II, p. 210; Rajan, p. 214.

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89 Ibid.
90 Ibid.

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73 Rigveda, III. 31. 2 ; X. 40. 10 ; VI. 33. 1.
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75 Rigveda, II. 28. 9 ; VI. 61. 1 ; Oit. Br., VII. 13.
76 Rigveda, I. 126. 3.
77 Rigveda, VII. 32. 24.
78 Cf. The Story of Nabhandistō.
79 Rigveda, III 45. 1 : 1, 70, 5 ; I. 89. 9 ; VII. 18, 3 ; VII. 67. 6 ; VII. 32. 26 ; I. 116. 3.
80 Rigveda, X. 85. 45 ; II. 33. 1.
81 The Story of Nabhandistō as given in the Oit. Br.
82 Rigveda, II. 17.
83 Rigveda, III. 31. 2.
84 Rigveda, VII. 67. 6 ; II. 25.
85 Rigveda, X. 40. 5.
86 Rigveda, III. 31. 1.
87 Rigveda, I. 124. 7 ; X. 102. 11.
88 चातीति द्रवणी श्रुतस्योक्तमपूर्तमाः।
नीर्माणां नाधिपते द्रवणार्धिपये द्रवणे अग्निनासः।

Oit. Bra., VII. 12.
89 Rigveda, I. 116. 3 ; रचियं न नाधिपत: ब्रह्मः
90 Hence Wealth is रचियं न नाधिपत: ब्रह्मः। रचियं न नाधिपत: प्रत्य

Also means the same.
330 91 See Vedic Index.
92 Rigveda, VI. 25. 6
93 See Vedic Index.
94 See Rigveda, VII. 86. 3 ; VII. 89. 5.
95 Posto Lees. VI & VII.
96 Rigveda, I. 191. 5.
97 Rigveda, VI. 28. 3.
98 Rigveda, VII. 53. 3.
99 Rigveda, X. 4. 6.
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101 Rigveda, I. 24. 14 and 15 ; VII. 86. 5.
102 Rigveda, V. 79. 9.

LECTURE XII

HINDU LAW DURING THE PERIOD OF REDACTION OF THE VEDAS

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Ibid., pp. 482-83.
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Ibid., p. 477; Ath. Veda. IX. 5. 27. 28.
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Ath. Veda, III. 5. 6.
Rigveda, VII. 19. 11: X. 181. 4; VII. 66. 3; X. 69. 4.
Allindisches Leben, pp. 184, 185. Rigveda, X. 34.
Ath. Veda, III. 5. 6. 7.
Ibid.
Ibid., p. 196 under Kraya.
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Ath. Veda, VIII. 7. 11.
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Ibid., Rigveda, IV. 24. 9.
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55  Ibid., p. 351; Rigveda, X. 114. 10.
56  Tait. Sam., III. 1. 9. 4.
57  Sat. Br., IV. 4. 2. 13.
59  Ibid.
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63  Ibid.
64  Ibid., p. 394.
65  Ibid., p. 399.
66  Ibid., p. 394.

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69  Ibid., p. 428 under Sabhāsād.
70  Ibid.
Ath. Veda, VII. 32. 3.
72  Panchatantra Brahmana, XIV. 6. 8.
See in this connection Vedic Index, Vol. I, p. 364 under Dībya
73  Tait. Sam., II. 5. 11. 9.
Ath. Veda, VI. 32 3 ; VIII. 8. 21.

LECTURE XIII

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1  Kautilya, I. 1. 1. 3.

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7  Sat. Br., XIII. 7. 1. 1.
See in this connection Prof. Cahn's *The Sense of Injustice*—the Chapter on "Security and Change", Section III. "The Cabin and the Rail" pp. 151-174 at pages 156-159 where he deals with "Law and the Burden of Guilt". No mature system of law can ignore the load of the guilty. Of course, the measures adopted to lighten the load may be different in different systems. The aim of the principle of expiation (पापविर्गु) of the ancient Hindu system was this lightening of the load.

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Ibid.

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See Vedic Index, Vol. I, p. 496.

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See Gautama, XV. 16; Vasistha, I. 18; XX. 7.

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Ibid., p. 486.

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Rigveda, I. 91. 20; 92. 13; III. 1. 23; X. 85, 25.

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मा नो च चापि चकरति साक्षा राष्ट्रायुः।

साक्षा व शक्यशुप्य मा निद्धरित्स्पर्शाय रङ्गिः।।

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THE HISTORY OF HINDU LAW

LECTURE XIV

HINDU LAW DURING THE SUTRA PERIOD

(Pages 388—398)

388  4  Vasiṣṭha Dharmaś, XV. 11-20.
389  5  Cf. Manu. III. 6-11.
## COLLECTION OF REFERENCES TO VEDIC AND POST-VEDIC TEXTS

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(Sayana’s commentary)

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(Sayana’s commentary also)

(Sayana’s Commentary)

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| 137  | 6    | ' ' ' ' |
| 165  | 11   | 'Rik' 'Rika' |
| 200  | 29   | insert 'I' between 'I' and 'I' |
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| 227  | 30   | read 'Weber' for 'Webber' |
| 227  | 31   | insert inverted comma before 'legal' |
| 238  | 6    | read गाउड़ियादियाण्य: for गाउड़ियादियाण्य: |
| 238  | 23   | 'Polyandry' 'Polandry' |
| 343  | 23   | ' ' ' ' |
| 348  | 40   | ' ' ' ' |