Early modern Sanskrit thought and the quest for a perfect understanding of property

*In Sanskrit discourse, discussions about property and ownership traditionally belonged to two disciplines: hermeneutics (*mimamsa*) and moral-legal science (*dharma-sastra*). Scholars of hermeneutics tended to ponder the question of what motivated people to acquire and alienate property, and scholars of moral-legal science contemplated exactly how people did acquire, use and alienate property. Beginning in the 16th century, however, a remarkable disciplinary shift occurred.*

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A group of scholars of what was termed 'new logic' (*navya-nyaya*) established a movement devoted to the analysis of property, ownership, inheritance and a wide range of other aspects of civil law. They reasoned that both hermeneutics and moral-legal science had been addressing legal matters by using terms and concepts that were essentially undefined. It was very nice to explain how or why people became owners of property, but what did 'being an owner' actually mean? If we were to see two men, each holding a ball, and knew that only one man owned his ball, what, precisely, would allow us to discern one man as the owner of his ball and the other man as not owning his ball? The new logicians determined that they could use the discursive method peculiar to their philosophical system to resolve such questions. Their efforts created what I call the Sanskrit philosophy of law, a new branch of Sanskrit thought devoted exclusively to the understanding of those concepts intrinsic to legal doctrine.[1]

'Property': a universal concept

The emergence of this Sanskrit philosophy of law depended first on a late-11th century ascetic named Vijnanesvara. In a groundbreaking work of moral-legal science entitled *Mitaksara* (The Breviloquent), Vijnanesvara concluded that property was a universal concept. He noted that 'people who live beyond [our] borders, who are unaware of the practices [discussed] by works of moral-legal science, nevertheless make use of the concept of property, because we see that they buy and sell [things]'. Specific laws could, and, in fact, did, differ from place to place, but the basic conceptions behind these differing laws remained constant. The notions of property and ownership could not, therefore, be traced to some specific, authoritative text or oral work, but had to exist in the world of shared human experience.

For Vijnanesvara, property and ownership achieved their full expression within the total ambit of a property law that was temporally and regionally circumscribed. As a result, established legal practices and dictates would provide sufficient answers to questions such as how we knew property to be property and an owner to be an owner. In the eyes of a group of philosophers specialising in the emerging discipline of new logic, however, the characterisation of universal concepts through legal particulars proved unsatisfactory.

New logic and the development of a philosophy of law

The landmark *Tattva-cinta-mani* (The Philosopher's Stone for the Real Nature of the Material World) of Gangesa Upadhyaya (fl. late 13th c.) had encouraged scholars of new logic to develop a vocabulary of Sanskrit terms infused with highly technical meanings with which they could construct precise and accurate characterisations of what people actually knew and how they knew it.[2] These new logicians distanced themselves from the 'old' logic, which had focused on a broad range of issues unrelated to epistemological concerns, and they tended to privilege views that belonged to proponents of 'new' (*navya*), or 'very new' (*atinavina*), ideas. While the new logicians developed original approaches to old problems, they were equally determined to explore new philosophical territory. In particular, they were captivated by the question of how human beings actually recognised owners and property as such. Gangesa's own son, the 14th century philosopher Vardhamana Upadhyaya, may have been the first writer on new logic to think about such issues, and he was soon accompanied by such luminaries as Sankara Misra (15th c.) and Raghunatha Siromani (16th c.).

Raghunatha must be credited with establishing property and ownership as canonical concerns for new logic. In a work he called the *Pada-artha-tattva-nirupana* (An Investigation into the True Nature of Conceptual Categories), Raghunatha noted that previous scholars had made the grievous error of trying to understand property and ownership in terms of an object's capacity for legitimate employment. Such reasoning allowed us to discern a man who ate someone else's food as the owner of that food, which meant there was no reason for us not to attribute ownership to thieves who made appropriate use of their stolen goods.

Raghunatha wanted to impress upon his audience that an object's status as property could not depend upon its potential for use, much as a person's status as an owner could not depend on his capacity to use. Instead, our knowledge of an owner and his property had to be independent of any activity on the part of either the person owning or the object owned. Raghunatha argued that the easiest solution was to root our entire knowledge of property and ownership in the objective authority of the corpus of works on moral-legal science. In this way, we would recognise as 'property' and 'owner' what moral-legal science called property and whom it called an owner. Yet Raghunatha also recognised that property and ownership existed outside the confines of moral-legal science. To this end, he suggested that property and ownership were characterised the world over by the cause and effect relationship. Certain events, such as purchase, resulted in the production of ownership, just as certain other events, such as sale, resulted in the destruction of that ownership. Property and ownership could then be viewed as the results of this causal framework, and knowledge of the causes themselves would be derived from the local laws in force.

Raghunatha cleverly avoided defining property and ownership per se. But his successor, the 16th c. scholar Ramabhadra Sarvabhauma, was willing to argue that linguistic expressions such as 'John's horse' caused us to recognise the presence of a relationship through which John and the horse assumed the new and mutually dependent identities of 'owner' and 'property'. What remained in question was how, precisely, this relationship functioned.

The maturation of the philosophy of law

The 17th and early 18th centuries witnessed an explosion of activity, as the work of both Raghunatha and Ramabhadra provoked new logicians and, to a lesser extent, hermeneutists and scholars of moral-legal science to construct definitions of property and ownership. Those involved in this endeavour included the era's brightest minds in Sanskrit thought, such as the new logicians Gadadhara Bhattacarya, Jayarama Nyayapancanana and Gokulanatha Upadhyaya; the specialists in moral-legal science Nilakantha Bhatta and Mitra Misra; the hermeneutist Kamalakara Bhatta; and the Jain logician Yasovijaya. These philosophers were pre-eminent in their fields, and it is telling that they all deemed work on a theory of property and ownership to be professionally and intellectually worthwhile.

Increasing interest in property and ownership did not, however, lead to a conclusive definition of the two concepts. Instead, 17th and 18th century scholars of new logic, moral-legal science and hermeneutics demonstrated their ingenuity by constructing unique approaches to the matter. Their pursuit of originality led them to reject or modify the views of both prior and contemporary thinkers in order to distinguish themselves as singularly capable of solving what appeared to be an intractable problem. In addition, the Sanskrit philosophy of law had become an increasingly interdisciplinary enterprise, and doctrinal differences often rendered competing characterisations of property and ownership incompatible.

Of perhaps greater interest is that scholarship of the 17th and 18th centuries expanded the examination of property and ownership to include a wide range of legal phenomena. Jayarama, writing in his *Karakavyakhya* (An Explanation of Grammatical Case-Relationships), asked whether 'sale' and 'barter' were really conceptually identical, and Gokulanatha, writing in his *Nyayasiddhantatattvaviveka* (A Meditation on the Truth about the Established Conclusions of the System of Logic), explored how gambling contests resulted in the destruction of the loser's ownership and the creation of the winner's.

The 17th century also witnessed the emergence of a genre of juridico-philosophical treatises that used the methodology of new logic to address legal concerns. The most significant of these was the curiously anonymous *Svatvarahasya* (The Mystery of the Proprietary Relationship). Gifts, inheritance and religious offerings had been the subject of innumerable disagreements among scholars of moral-legal science, and either a new logician or a group of new logicians determined to resolve them. He, or they, thus composed the *Svatvarahasya*, a series of essays devoted to demonstrating the logically sound – and, in the view of the new logicians, correct – understanding of contentious legal topics.

It appears that the composition of such treatises continued into and beyond the 18th century, and there are numerous essay-style works from the 18th and 19th centuries on individual legal topics that remain in manuscript form. Judging from the *Svatvarahasya*, it would seem that the Sanskrit philosophy of law was well beyond its infancy, and it is reasonable to conjecture that subsequent work would have continued the *Svatvarahasya*'s methodological trend.

The Sanskrit philosophy of law was a remarkable development that mirrored a period of renewed creativity in Sanskrit thought. Its evolution, from a subject of limited interest to a small number of new logicians into an intellectual movement that elicited the contributions of leading scholars from multiple disciplines, has been a focus of my dissertation. To this end, I have been engaged in preparing translations and analyses of those texts that constitute the Sanskrit philosophy of law. It is my hope that their eventual publication will lead to further inquiry into a neglected area of intellectual history. <

Notes

1. The first, and only, western scholar to have discussed this matter at length is J. Duncan M. Derrett. My overview is indebted to his 'Svatva Rahasyam: A 17th-Century Contribution to Logic and Law' and 'The Development of the Concept of Property in India c. A.D. 800-1800', in Derrett, J. Duncan M. *Essays in Classical and Modern Hindu Law*, v. I & II. 1976-1977. Leiden: E. J. Brill.
2. For a good overview of *nyaya*, see: Matilal, Bimal Krishna. 1998. *The Character of Logic in India*. Albany: State University of New York Press. For a survey of early *navya-nyaya*, see: Potter, Karl and Sibajiban Bhattacharyya, eds. 1993. *Encyclopedia of Indian Philosophies*, v. 6. Delhi: Motilal Banarsidass. Still an excellent guide to the history of both *nyaya* and *navya-nyaya* is: Mishra, Umesha. 1966. *History of Indian Philosophy*. Allahabad: Tirabhukti Publications.

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