The legal term *deśa* and documentary evidence in early Indian law: a closer look into the intertextuality of *Dharma*- and *Arthaśāstra*

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For Heidrun Brückner, in memory of our joint encounters with Julius Jolly

It was Julius Jolly, founder of the Würzburg chair of Indology and undoubtedly one of the most profound scholars in the field of Dharma literature, who remarked in his "Kollektaneen zum *Kauṭilīya Arthaśāstra*":

> Der Grad der Ausbildung des Urkunden- und Schriftenwesens ist für die relative Chronologie der Smr̥tis sehr wichtig und läßt sich in den jüngeren Smr̥tis, die hier wieder mit dem K.A. parallel gehen, stufenweise verfolgen (Jolly 1914: 355 = 2012: 875).

Although Jolly's conclusions about the date of the *Arthaśāstra* can no longer be accepted, he pointed here to an important methodological approach. In my 2002 edition and translation of the *Lekhapaddhati-Lekhapañcāśikā*, an anonymous medieval text on models of letter writing and the composition of legal documents from 12th-15th century Gujarat, I tried to follow Jolly's advice by investigating different Dharma texts in order to establish different phases of a gradual development as represented in those texts. It was my aim to define the place of documents in the wider context of public and civil law and their relation to the later authoritative principle of the threefold evidence in juridical procedure (*trividhapramāṇa*) consisting of documents, witnesses and possession.

As I showed there, older texts, including all the preserved *Dharmasūtra* texts as well as the most ancient *Dharmaśāstras*, are not aware of written documents as legal evidence. According to my analysis, the last phase of this legal procedure without written evidence is represented by two texts: the *Mānava Dharmaśāstra* and the *Kauṭilīya Arthaśāstra*. It was again Jolly who, soon after the discovery and first edition of the *Arthaśāstra*, noticed the close parallels between *Dharmaśāstra* texts and Kauṭilya's *Arthaśāstra* (Jolly 1913 = 2012: 817-864). In fact, many passages can be interpreted as direct borrowings either from the *Kauṭilīya Arthaśāstra* itself or from a closely related text of the same genre.[1]

The reason that I now take up this issue again is that some recently published translations of the *Mānava Dharmaśāstra* and the *Kauṭilīya Arthaśāstra* seem to contradict my former conclusions and therefore demand a reconsideration of the arguments which I brought forward in 2002.[2]

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1 The mechanisms and intentions that lay behind this process are aptly described in Vigasin & Romanov 1980.

2 The following discussion is largely based on my study on the development of diplomatics as represented in ancient Indian law texts (Strauch 2002: 19-52). Since the book appeared in German and

At that time I described the situation in the two texts as follows:

> Manu may have known writing. However, written documents of any kind did not play any role in its juridical system. Contrary to the Kauṭilīya Arthaśāstra he doesn't even refer to written legal procedure. (…) Out of the later *trividhapramāṇas* juridical authority is attributed only to witnesses and possession. This should not to be taken to mean that private documents did not exist, nor that they were not used in practical law at the time when these texts were composed. But the codified law as represented here takes no notice of them. (…) These two texts represent a state of ancient Indian law in which writing as well as written public documents were known. In the sphere of civil law, however, written documents apparently did not play a significant role (Strauch 2002: 34-35).

This brief essay is not the place to address the entire issue. In fact, this is not even necessary. If we look at the relevant passages in both texts, there is apparently only a single word that determines the validity of my evaluation: *deśa*.[3] It was recognized quite early that there are passages in the *Arthaśāstra* and in *Dharmaśāstra* texts where this term cannot be translated in its conventional meaning "place, region", but has to be conceived as a specific legal term. I therefore want to use this article to summarize what we know about this word in the context of early legal terminology and to determine whether this knowledge really helps us to settle the question about written documents in civil law and legal procedure.

1. Manu and Kauṭilya : Śāstric intertextuality

In the *Mānava Dharmaśāstra deśa* occurs only in the following passage:

> *apahnave 'dhamarṇasya dehīty uktasya saṃsadi* /
> *abhiyoktā diśed* ***deśaṃ*** *karaṇaṃ vānyad uddiśet* // 8.52
> ***adeśaṃ*** *yaś ca diśati nirdiśyāpahnute ca yaḥ* /
> *yaś cādharottarān arthān vigītān nāvabudhyate* // 8.53
> *apadiśyāpadeśyaṃ ca punar yas tv apadhāvati* /
> *samyak praṇihitaṃ cārthaṃ pṛṣṭaḥ san nābhinandati* // 8.54
> *asaṃbhāṣye sākṣibhiś ca* ***deśe*** *saṃbhāṣate mithaḥ* /
> *nirucyamānaṃ praśnaṃ ca necched yaś cāpi niṣpatet* // 8.55
> *brūhīty uktaś ca na brūyād uktaṃ ca na vibhāvayet* /
> *na ca pūrvāparaṃ vidyāt tasmād arthāt sa hīyate* // 8.56
> *jñātāraḥ santi mety uktvā diśety ukto diśen na yaḥ* /
> *dharmasthaḥ kāraṇair etair hīnaṃ tam iti nirdiśet* // 8.57 (ed. Olivelle 2005: 668-669, my emphasis)

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since at least for many of our colleagues German has ceased to be a language that is commonly perceived as a medium of academic communication, I decided to repeat some of my previous arguments and to confront them with Olivelle's recent interpretations. For making this discussion accessible to a wider audience, I use the English language. For the same reason, quotations from my work will also be translated into English. I use this opportunity to thank Richard Salomon (Seattle) who took the trouble to check the English of this paper.

3 For a discussion of *karaṇa*, another potential candidate for the meaning "written document" in the *Mānava Dharmaśāstra* and the *Kauṭilīya Arthaśāstra*, see Strauch 2002: 34-34. Following Kangle, Olivelle translates *karaṇa* in *KA* 3.1.16 as "document" (2013: 180), but he remarks in his notes (2013: 584-585) that the "last transaction [*karaṇa*]" is considered as valid. This latter interpretation of *karaṇa* as "transaction, legal act" is certainly preferable here (Strauch 2002: 32-33).

In his 2005 translation of *Manu*, Patrick Olivelle interpreted *deśa* as "document." Consequently, he translated this passage as:

> When the debtor, told in court to pay up, denies the charge, the plaintiff should produce a **document** or offer some other evidence. When the plaintiff produces something that is **not documentary evidence**; produces and disavows it; does not realize that his earlier points contradict the points he makes subsequently; states his case and then backs away from it; does not acknowledge under questioning a point that has been clearly established; secretly discusses with witnesses a **document** which is prohibited from being discussed; objects to a question clearly articulated; retreats; does not speak when he is ordered "Speak!"; does not prove what he asserts; and does not understand what goes before and what after – such a plaintiff loses his suit. When a plaintiff says "I have people who know," but when told "Produce them" does not produce them, the judge should declare him also the loser for these very reasons (2005: 169-170, my emphasis).

This translation was accepted by Axel Michaels and Anand Mishra in their recent German translation of the *Manu-Smṛti* (2010: 155 and 353, fn. 52).

In an article published in 2004, Olivelle points to the obvious parallelism of this passage to *KA* 3.1.19 and concludes his discussion with the statement:[4]

> The term *lekhya* for a document produced as evidence, a term that becomes standard in later *dharma* texts, is not found either in the *AŚ* (= *Arthaśāstra*, I.S.) or *Manu* within the context of judicial proceedings, even though the *AŚ* uses the term for other kinds of writings. The conclusion then is that *deśa* was an old term for a document produced in court of law, possible related to *diś* in the sense of pointing out … (Olivelle 2004: 285).

In accordance with this understanding, Olivelle also translates the respective *KA* passage 3.1.19 in his recent translation of this text:

> *nibaddhaṃ vādam utsṛjyānyaṃ vādaṃ saṃkrāmati, pūrvoktaṃ paścimenārthena nābhisaṃdhatte, paravākyam anabhigrāhyam abhigrāhyāvatiṣṭhate, pratijñāya deśaṃ nirdiśety ukte na nirdiśati, hīnadeśam adeśaṃ vā nirdiśati, nirdiṣṭād deśād anyaṃ deśam upasthāpayati, upasthite deśe 'rthavacanaṃ naivam ity apavyayate, sākṣibhir avadhṛtaṃ necchati, asambhāṣye deśe sākṣibhir mithaḥ sambhāṣate, iti paroktahetavaḥ //* (ed. Kangle 1969: 97)
>
> The man casts aside the plaint as recorded and moves on to another plaint; does not make a point made subsequently accord with what was stated previously; after challenging an unchallengeable statement of the opponent, remains obstinate; promises to produce a document (*deśa*), but when told, "Produce it," does not produce it, or produces a defective document (*hīnadeśa*) or something that does not constitute a documentary evidence (*adeśa*); puts forward a document (*deśa*) different from the document (*deśa*) specified; denies a significant statement in the document (*deśa*) he has put forward, saying "It is not so"; does not accept what has been ascertained through witnesses; secretly carries on a discussion with witnesses with regard to a document (*deśa*) that is prohibited from being discussed – these are the reasons for loss of suit (Olivelle 2013: 180-181, Skt. terms my addition).

Both passages would thus witness a rather advanced stage of development in the history of Indian diplomatics, in which the authority of written documents in legal procedure is generally acknowledged. Initially unnoticed by Olivelle – but referred to in his 2013

4 Olivelle repeats some of his arguments in the introduction of his translation of *Manu* (2005: 47-49).

translation of the *Kauṭilīya Arthaśāstra* (Olivelle 2013: 585-586) – was the quite similar attempt by Samozvancev who already in 1978 wrote a long article in which he tried to show that *deśa* in the *Kauṭilīya Arthaśāstra* means "document".[5]

Although their individual arguments differ,[6] both scholars share the same conviction: Since documents are not referred to in either of these two texts in the context of legal procedures by their conventional terms such as *lekha*, *likhita* or *lekhya*, they must be hidden under an obscure terminology which has to be uncovered by the diligent philologist. This conviction is based on the assumption that the theory of the *trividhapramāṇa* was somehow a latent system that underlay the Indian legal procedure from the very beginning of its attestation.

Manu uses the term *deśa* only in this single passage. Whether and how he understood it is difficult to say. The terminology of this passage is strange in comparison with the rest of the text, and its commentators – as well as modern translators – have clearly had problems in interpreting it.

If we look at the commentators, none of them understood *deśa* or its combinations as "document"; evidently, the meaning of this term was less than clear to them. Nonetheless, they hesitated to introduce into this context a well-known institution that was otherwise lacking in *Manu*'s exposition of a legal procedure. As shown by Olivelle (2004: 283-284), they either replaced the somewhat obscure *deśa* by *deśya* and interpreted the latter as "witness who was present/at the spot", or they understood *deśa* in its common sense as "place",[7] indicating that the plaintiff would have to indicate the transaction's location. Bhāruci (ca. 8th c. CE), who was the earliest commentator on *Manu* and who was well acquainted with the *Kauṭilīya Arthaśāstra* or a closely related Artha text (Derrett 1965, Trautmann 1971: 132-168), knows both readings. The term *deśa* he perceives as a statement that has to include the place and time of the acquisition, as well as the witnesses' testimony to prove it. The variant reading *deśya* he explains as *deṣṭavyaṃ yathā gṛhītaṃ kathayet* "to be indicated: he should tell how it was obtained". Only for *karaṇa* in *Manu*'s text – a term that was used in later *Dharmaśāstras* and in medieval times to designate a kind of written document – does Bhāruci consider a link to written documents (ed. Derrett 1975,1: 96-97; tr. Derrett 1975,2: 109-110). He clearly states that *deśa* has to be regarded here as the more general term that also comprises *karaṇa*: "And so even the word 'place' (*deśa*) is intended to imply the 'proof' (*karaṇa*)" (tr. Derrett 1975,2: 109).[8] In none of his explanations does he confine the meaning of *deśa* to "document". Olivelle

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5 Samozvancev repeated his arguments in several articles (1981, 1984), some of them also published in English (1980/81, 1982/83).

6 For a detailed criticism of Samozvancev's arguments see my discussion of *deśa* in Strauch 2002: 24-30.

7 According to Olivelle (2004: 284), the connotation "place" was chosen by Bhāruci, Sarvajña-Nārāyaṇa and Nandana. Medhātithi, Govindarāja, Kullūka, Rāghavānanda, Rāmacandra and Maṇirāma understood *deśa/deśya* as "witness". Modern translations of this passage normally use one of these options. Cf. e. g. Bühler 1886: 263: "(a witness) who was present" for *deśyaṃ* in 8.52, "a witness not present at the transaction" for *adeśaṃ* in 8.53 and "in a place" for *deśe* in 8.55. Burnell consistently renders *deśa* as "place" for: "point out the place (where the debt was contracted)" (8:52), "an impossible place" (8:53) and "in a place" (8.55) (Burnell 1884: 185-186).

8 Bhāruci's interpretation is based on his reading *karaṇaṃ vā samuddiśet* that is also found in a number of manuscripts. Part of the difficulty in translating this verse is due to the different renderings of this *pāda* and the ambiguous relationship of the terms *deśa* and *karaṇa*.

attributes this inconsistency to Bhāruci's ignorance of the "precise meaning of technical terms such as *deśa* for a legal document" (2013: 52).

It is obvious that none of these explanations and translations is completely satisfactory. This situation is completely understandable when we consider this passage as a rather uncritical incorporation of textual material from another tradition. Therefore Olivelle is doubtlessly right in pointing to the necessity of interpreting this term on the basis of its use in the *Arthaśāstra*, from which this passage was obviously imported and where we should expect a more consistent use of terminology. For this purpose it is necessary to go beyond the limited evidence of the single passage (*KA* 3.1.19) quoted above and to expand the scope of our investigation at least to the juridical chapters of the *Kauṭilīya Arthaśāstra* (*adhikaraṇa*s 3 and 4) in their entirety. There we find many more occurrences of the term *deśa* which might help to reveal its terminological meaning in the *Arthaśāstra*.

2. *Deśa* and the right of ownership in the *Arthaśāstra*

Meyer in his admirable German translation of the *Kauṭilīya Arthaśāstra* already recognized that it is not possible to translate *deśa* consistently in the 3rd and 4th *adhikaraṇa*, and proposed the meanings "Entscheidungspunkt, Beweisstück, Beweismittel" (1926: 957).[9] Similarly, R.P. Kangle suggested "evidence, proof" (1969, 1: 313), although he also considered a possible secondary "proof of ownership, title". As I have shown (Strauch 2002: 25-26), this latter rather specific interpretation is contradictory and should be given up in favour of the more generic "evidence, proof". However, both passages where *deśa* has to be understood, according to Kangle, in this more specific sense of "proof of ownership, title" form a suitable starting point for our discussion. They are part of the exposition the right of ownership and have to be placed against this background.

The first of these passages (3.16.29) runs as follows:

> *svasvāmisambandhas tu - bhogānuvṛttir ucchinna****deśānāṃ*** *yathāsvaṃ dravyāṇām* (ed. Kangle 1969, my emphasis)
>
> Fortlaufender Besitz gilt für Sachen, bei denen die **Beweispunkte** weggefallen sind, als gleichwertig dem Eigentumsrecht (Meyer 1926: 300, my emphasis).[10]

In accordance with his understanding of *deśa* Olivelle (2013: 215, my emphasis) translates:

> With reference to the relation between owner and his property, however – for assets to which **the documentary evidence** has been lost, their continuous enjoyment establishes the respective ownership.

The second passage that concerns us here is found in the fourth *adhikaraṇa* (*KA* 4.6.9):

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9 Cf. also Jolly, who translated *hīnadeśam adeśaṃ vā nirdiśati* in *KA* 3.1.19 as "er gibt den Streitpunkt zu niedrig oder falsch an" (1917: 232 = 2012: 925).

10 Unfortunately, this passage is left untranslated by Kangle (1972). Cf. also the Russian translation by A.A. Vigasin: "esli (drugie) dokazatel'stva utračeny" ("if [other] pieces of evidence are lost") (Vigasin & Samozvancev 1984: 82). Kal'yanov's translation (1993: 207) "dlja lic pokinuvšix dannoe mesto" ("for persons who had left the respective place") is completely off the point.

> *nāṣṭikaś cet tad eva pratisaṃdadhyāt, yasya pūrvo dīrghaś ca paribhogaḥ* ***śucir*** *vā* ***deśas*** *tasya dravyam iti vidyāt* (ed. Kangle 1969: 137, my emphasis)
>
> If the person who lost the article were also to prove the same, he shall hold the article as belonging to him whose possession of it was earlier and long or whose **title** is **clear** (Kangle 1972: 270, my emphasis).
>
> Wenn es sich um einen handelt, der etwas verloren hat, soll er ebendasselbe nachweisen. Wer vorher und lange fort im Besitz (des betreffenden Gegenstandes) gewesen ist oder wessen **Angabe makellos** ist,[11] dem gehört der Gegenstand. So soll er (der Richter) es ansehen (Meyer 1926 : 335-336, my emphasis).

Although in his Russian translation of the *Arthaśāstra* Kal'yanov is not really consistent in the rendering of *deśa*, he gives here: "čestnye svidetel'skie pokazanija", "honest testimony of witnesses" (Kal'yanov 1993: 236).

Again Olivelle's translation has a different interpretation of *deśa*:

> If the person who lost the article were to establish the same, he should recognize that the article belongs to the person who possessed it first and longer, or who has **a valid document of title** (Olivelle 2005: 235-236, my emphasis).

But is such a rather specific understanding of *deśa* really possible in these two cases?

Both Kangle's "title" and Olivelle's "document of title" show that they consider *deśa* to be associated with the concept of the "title of ownership". Both passages deal with different aspects of the law of ownership. In ancient Indian law, legal ownership is established by a title. The Sanskrit term used here is *āgama,* and makes clear that the legal appropriation of an object (by donation, inheritance, purchase) presupposes legal ownership. It is a general opinion in *Dharmaśāstras* that possession without a title (*āgama*) cannot establish legal ownership. However, in cases where the title cannot be proven by evidence, although the object was legally acquired (even if that cannot be proven anymore), uninterrupted possession can result in legal ownership.

This is obviously this situation addressed by the first of these two passages, *KA* 3.16.29, introducing a chapter that describes the conditions under which the uninterrupted possession of an object can result in a title of ownership (usucaption). Accordingly, *ucchinnadeśa* describes a situation when the proof (of a title) can no longer be procured. If we were to translate *deśa* here as "documentary evidence", this would clearly rule out any other kind of evidence that could be procured by the original owner to prove his case. The understanding of this expression therefore has to rely on the *Arthaśāstra's* definition of the title and the ways in which it can be proven.

This leads us directly to the second passage quoted above. Here the text addresses another type of unclear ownership and describes the procedure in the case of lost property. In explaining how the owner can prove his legal title on the object in question, the text says (*KA* 4.6.7-4.6.10):

> *tac cen niveditam āsādyeta, rūpābhigṛhītam āgamaṃ pṛcchet "kutas te labdham" iti. sa cet brūyāt "dāyādyād avāptam, amuṣmāl labdhaṃ krītaṃ kāritam ādhipracchannam, ayam*

11 Meyer is not sure about the exact reading (*vādeśas* or *vā deśas*) and remarks (fn. 11): "Ist *ādeça* Ausweis, Indizien, Leumund? Oder soll man mit dem Text *vā deças* trennen: 'bei wem der Ort koscher ist', d.h. bei wem man solch einen Gegenstand erwarten darf?"

asya deśaḥ kālaś copasamprāpteḥ, ayam asyārghaḥ pramāṇaṃ lakṣaṇaṃ mūlyaṃ ca" iti, tasyāgamasamādhau mucyeta // nāṣṭikaś cet tad eva pratisaṃdadhyāt, yasya pūrvo dīrghaś ca paribhogaḥ ***śucir*** *vā* ***deśas*** *tasya dravyam iti vidyāt // catuṣpadadvipadānām api hi rūpaliṅgasāmānyaṃ bhavati, kim aṅga punar ekayonidravyakartṛprasūtānāṃ kupyābharaṇabhāṇḍānām iti* (ed. Kangle 1969: 168, my emphasis).

If he comes across the reported article he should ask the man arrested with the article about his legal title to it, saying, "Where did you get this?" If he were to say, "I obtained it through inheritance. I received it – bought it, got it made, received it secretly as a pledge – from that individual. This is the place and the time of its acquisition. These are its price, size, distinguishing marks, and value," he should be released when his legal title to it has been substantiated. If the person who lost the article were to establish the same, he should recognize that the article belongs to the person who possessed it first and longer, or who has **a valid document of title**; for even among quadrupeds and bipeds, there is a similarity in appearance and distinguishing marks – how much more among forest produce, ornaments, and wares produced with material from the same source and by the same manufacturer (Olivelle 2005: 235-236, my emphasis).

The passage makes it clear that the title (*āgama*) depends, first, on the plausible indication of the mode of appropriation, and second, on the correct statements about the specific features of the object in question. If both parties give this information, the decision is then to be made on the basis either of the criteria of possession (*paribhoga*) or of *suci deśa*. In my opinion, *suci deśa* can here only be interpreted in the sense of "clear evidence," including the testimony of witnesses who were able to confirm the statements made above, and any other indications that support the statements made by both parties. The *Kauṭilīya Arthaśāstra*'s following reference to the problems of identifying an object as someone's property could indicate that here *deśa* has to be understood in a more general sense, i. e. as referring to statements that clearly prove the ownership of one person by indicating specific and distinct features of this object. Such an interpretation is also favoured by *Manu*'s rendering of the same situation (8.31-32):12

mamedam iti yo brūyāt so 'nuyukto yathāvidhi /
saṃvādya rūpasaṃkhyādīn svāmī tad dravyam arhati // 8.31
avedayan pranaṣṭasya deśaṃ kālaṃ ca tattvataḥ /
varṇaṃ rūpaṃ pramāṇaṃ ca tatsamaṃ daṇḍam arhati // 8.32 (ed. Olivelle 2005: 664)

A man who claims "This is mine" and, when questioned according to the rule, identifies its physical appearances, number, and the like correctly, is the owner and deserves to have that property; but if he is ignorant of the exact place and time when it was lost and its color, physical appearance, and size, he deserves a fine equal in value to that property (tr. Olivelle 2005: 168).

As we have seen, in both cases it is rather difficult to limit the semantic scope of *deśa* to "document" without neglecting the context of the legal system. These difficulties are also obvious if we consult a third passage of the *Kauṭilīya Arthaśāstra* that describes a very similar case within the sphere of the right of ownership. The topic of this passage is *asvāmivikraya* "unauthorized sale", one of the traditional eighteen *vyavahārapada*s "titles of law."

12 Cf. also *Yājñ*. 2.35.

As in the passage quoted above, the legal title of ownership has to be proven by an indication of the legal acquisition. The question is again: *kutas te labdham* "From where did you get it?" and thus refers directly to the legal title (*āgama*). The present holder of the object is then asked to indicate the circumstances of the sale, and in particular the seller of the object. There is no mention of a written document in this procedure. If in Kauṭilya's legal system a document would be required to prove the title, it should have been mentioned here. Instead, the text uses the term *karaṇa* "proof". It says (*KA* 3.16.17-18):

> *nāṣṭikaś ca* ***svakaraṇaṃ kṛtvā*** *naṣṭapratyāhṛtaṃ labheta.* ***svakaraṇābhāve*** *pañcabandho daṇḍaḥ* (ed. Kangle 1969: 122, my emphasis).
>
> The one who lost the article, furthermore, should receive the lost article that was recovered **by showing proof of ownership. If there is no proof of ownership** the fine is one-fifth of the amount (tr. Olivelle 2013: 214, my emphasis).

If we compare this phrase with the passages discussed above, it is obvious that the rather generic *svakaraṇaṃ kṛtvā* corresponds to the phrase *yasya pūrvo dīrghaś ca paribhogaḥ śucir vā deśas*. The equation of both passages completely matches with the legal principle according to which either uninterrupted possession or clear evidence (for ownership) establish the right of ownership.

3. Back to intertextuality: the *Arthaśāstra* and Dharmaśāstric strategies of interpretation

The *Yājñavalkya-Smṛti*'s treatment of the *vyavahārapada* "*asvāmivikraya*" seems to be largely indebted to the Arthaśāstra or to a closely related text (cf. Jolly 1913: 74 = 2012: 882). Yājñavalkya renders the passage in question as:

> *āgamenopabhogena naṣṭaṃ bhāvyam ato 'nyathā /*
> *pañcabandho damas tasya rājñe tenāvibhāvite //* 2.171
>
> The (ownership of something that has been) lost is to be proven by title (and) possession, not otherwise. If he cannot prove it to the king, his fine is one-fifth.

Yājñavalkya-Smṛti here paraphrases the generic *svakaraṇaṃ kṛtvā* of the *Arthaśāstra* passage by the more specific explanation that the right of ownership is based on two principles: title based on legal acquisition (*āgama*) and possession of the object (*upabhoga*).

This is not exactly the same as what is expressed in the *Kauṭilīya Arthaśāstra* passage discussed above (*KA* 4.6.9), where possession and *suci deśa* were regarded as alternative conditions for ownership. It is therefore not possible to equate *āgama* and *deśa* – as Samozvancev did – since according to Indian law, possession without a legal title (whether proven or not) can never constitute ownership; and conversely, a title without possession can in certain circumstances result in the loss of the object and the right of ownership. In the same way, it is not possible to render *āgama* here as "document". With regard to this parallel, already Meyer observed:

> Man mag *āgama* hier mit Rechtstitel übersetzen, darf aber, wie aus dem folgenden erhellt, nicht etwa eine schriftliche Urkunde darunter verstehen, sondern nur den Rechtsanspruch, genauer: den rechtlichen Erwerb, öffentlich und vor Zeugen (1927: 102).

Therefore the relation between *deśa* and *āgama* as revealed by the comparison of these passages can be explained as follows: *Deśa* signifies evidence that can prove or disprove the validity of a legal title,[13] whereas *āgama* signifies the title itself, characterized by the legal acquisition of the object. In case the title cannot be proven (but also not disproven) (= *ucchinnadeśa, KA* 3.16.29), possession alone can constitute ownership.

Such an interpretation of *deśa* can be easily employed for other occurrences of this term in the *Kauṭilīya Arthaśāstra*. And it seems also to be involved in *Manu*'s rendering of the *Arthaśāstra* passage that contains this obscure term. A more careful reading of both parallel texts (*Kauṭilīya* and *Manu*) might give a hint on what *Manu* perceived as *deśa*. In the beginning of the passage he simply takes over the *Arthaśāstra's* text with *deśa*. But in the concluding part he seems to give a more specific explanation, when he says:

brūhīty uktaś ca na brūyād uktaṃ ca na vibhāvayet /
na ca pūrvāparaṃ vidyāt tasmād arthāt sa hīyate // 8.56
jñātāraḥ santi mety uktvā diśety ukto diśen na yaḥ /
dharmasthaḥ kāraṇair etair hīnaṃ tam iti nirdiśet // 8.57

[If he] does not speak when he is ordered "Speak!"; does not prove what he asserts; and does not understand what goes before and what after – such a plaintiff loses his suit. When a plaintiff says "I have people who know," but when told "Produce them" does not produce them, the judge should declare him also the loser for these very reasons (tr. Olivelle 2005: 169-170).

These two sentences can be read as a paraphrase of the dictum in *KA* 3.1.19:

pratijñāya deśaṃ nirdiśety ukte na nirdiśati
He who promised evidence but when told "Produce it!" does not produce it …

According to this parallel, *deśa* comprises the plaintiff's own testimony and the testimony of persons who are acquainted with the case (*jñātāraḥ*)[14], i.e. witnesses.

Manu is not the only *Dharmaśāstra* that contains verses that are obviously shaped on the basis of the *Arthaśāstra* text in question. These texts reveal different strategies of appropriation. While *Manu* preserved the original text and added an explanatory paraphrase, others replaced *deśa* by a more comprehensible term and thereby adapted the passage to their own terminology. Such a case is clearly represented by the verse preserved in the Mātr̥kā 2 of the *Nārada-Smr̥ti*, a section which is only preserved in a part of the manuscript traditions, but which was also known to Asahāya, the earliest extant commentator on the *Nārada-Smr̥ti* (cf. Lariviere 1989,2: 229). The verse is found in a passage that describes the general features of a lost case.

abhiyukto 'bhiyogasya yadi kuryād apahnavam /
abhiyoktā diśed deśyaṃ pratyavaskandito na cet // *Nār.* Mātr̥kā 2.26

If the accused denies the charge, the accuser has to prove the case, except when the accused demurs (tr. Lariviere 1989,2: 234).

13 This was also the understanding of Viśvarūpa who comments on Yajñ. 2.175 *lekhyādinā*, indicating that the principal types of evidence have to be understood here.

14 Certain recensions replace *jñātāraḥ* by *sākṣiṇaḥ* "witnesses".

This verse replaces the obscure *deśa* by the more readily comprehensible adjective *deśya* "to be indicated".[15] Again the generic meaning "evidence, proof" is inevitable here as the term must include different types of evidence that were acknowledged in the legal procedure. Accordingly, the commentator Asahāya completely correctly paraphrases *diśed deśyaṃ* by *kriyām ānayed* "he should procure a proof."

The same understanding underlies the rendering of this verse by *Bṛhaspati-Smṛti* 1.2.21:

> *apadiśyābhiyogaṃ yas tam atītyāparaṃ vadet |*
> *kriyām uktvānyathā brūyāt sa vādī hānim āpnuyāt ||*
>
> If a plaintiff makes a charge and, disregarding it, says something else,
> (or if) after declaring the evidence he then contradicts it, he would lose the case.

Bṛhaspati's variant clearly corresponds to the *Arthaśāstra*'s *nirdiṣṭād deśād anyaṃ deśam upasthāpayati* (*KA* 3.1.19). Like Asahāya's commentary on *Nār.* Mātṛkā 2.26, this verse replaces *deśa* by *kriyā* thus using a more common and established Dharmaśāstric term.

The same *Arthaśāstra* phrase was probably also the basis for the verses *Yājñ.* 2.13 and *Nār.* (vya.) 1.175 that occur in a closely related context, namely the physical signs of a false witness. But instead of replacing the obscure term *deśa* by a commonly understood equivalent, they reinterpreted the sense of the passage according to the habitual meaning of *deśa* as "place," thus representing a third method of appropriation:

> *deśād deśāntaraṃ yāti sṛkkiṇī parileḍhi ca |*
> *lalāṭaṃ svidyate cāsya mukhaṃ vaivarṇyam eti ca || Yajñ.* 2.13
>
> He moves from one place to another and he licks the corners of (his) mouth,
> and his forehead is sweating and his face loses its colour.
>
> *yas tv ātmadoṣabhinnatvād asvastha iva lakṣyate |*
> *sthānāt sthānāntaraṃ gacched ekaikaṃ copadhāvati || Nār.* 1.175
>
> But he who betrays himself by his own faults, i.e., if he acts as if he were sick, if he moves from one place to another and looks to this one and that one for assistance (after Lariviere 1989, 2: 85).

Although these three examples reveal different strategies of intertextuality – uncritical borrowing with additional explanations, substitution of obscure terms, and reinterpretation – none of them indicates for *deśa* the meaning "document".

Summary

In the present paper, the semantic scope of *deśa* has been approached from two different perspectives: the right of ownership in legal procedure as described in the *Kauṭilīya Arthaśāstra* and the secondary interpretations as found in the *Dharmaśāstra* parallels. The internal evidence of the *Kauṭilīya Arthaśāstra* as well as the related passages in several Dharmaśāstric texts cannot support the interpretation "document" for the legal

15 As Lariviere points out, the second half of the verse that contains the term *deśya* is not quoted by any other commentator (1989,2: 234).

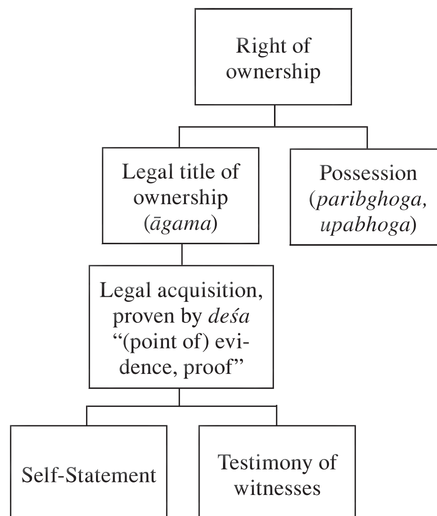
term *deśa* used in the *Kauṭilīya Arthaśāstra* and in *Manu* 8.52-57. Rather, *deśa* regularly occurs in a context where we expect a rather general meaning "(point of) evidence, proof."

Moreover, the term *deśa* is nowhere mentioned where we should definitely expect it if it were really designating a written document. Nor is any other term for "document" used in these passages: the chapters on *vyavahāra* in *Manu* and the *Kauṭilīya Arthaśāstra* do not contain any systematic treatment of documents as authoritative evidence, and documents are not even mentioned among the types of evidence used in the juridical procedure. Instead, both texts devote long passages on witnesses and their function in a process.[16]

In order to reliably establish the semantic scope of the term *deśa*, it is therefore necessary to take into account the overall legal system as represented in the *Kauṭilīya Arthaśāstra*. Narrowing down the meaning of *deśa* to "document" would raise several problems with regard to the integrity of the *Arthaśāstra* text and its legal system. These problems can be easily avoided by adopting the meaning "(point of) evidence, proof".

Such a general understanding is also the basis of the different renderings of *deśa* and of passages in later *Dharmaśāstra* texts, such as the *Nārada-Smṛti*, the *Yājñavalkya-Smṛti* and the *Bṛhaspati-Smṛti*, that probably originally contained this word. Although these texts are quite aware of the *trividhapramāṇa* principle and include long passages about written documents as legal authority in the juridical procedure, none of them substitutes or interprets *deśa* as "document."

Based on the evidence discussed here, the position of *deśa* with regard to the right of ownership as presented by these early texts can be represented as follows:



16 *Manu* 8: 61-108, *KA* 3.11.26-50.

Once the meaning "(point of) evidence, proof, *indicium*" is established, it is of course possible to replace this general term by more specific kinds of evidence. Hence a translation that substitutes "witness" – as some of *Manu*'s commentators did – is not contradictory, if done in an isolated passage; and in the same way, translating this term as "document" does not really spoil the text. The same attitude can be observed in the case of the related generic term *karaṇa*, which some of *Manu*'s commentators paraphrased by *lekhyādi* "documents, etc." (cf. Strauch 2002: 33-34). However, given the overall context of the legal procedure as described by the *Kauṭilīya Arthaśāstra* and by *Manu*, such a translation seems to produce serious conflicts within the entire text.

Before revising our ideas about the development of Indian diplomatics and the role of written documents in the legal procedure of ancient India, it seems therefore advisable to look for further, more convincing evidence that could justify an interpretation of *deśa* as "document. For the time being, I suggest a return to the more cautious and more plausible explanation brought forward by Meyer, Kangle and Vigasin: *deśa* is one of the terms designating "(point of) evidence, proof" – a meaning that can be easily explained on etymological grounds (*diś* "indicate, show"), and can even be connected with the etymologically related Latin term *indicium*, used in legal terminology in the meaning "evidence".

Abbreviations

Bṛh.	Bṛhaspati-Smṛti (ed. Aiyangar 1941)
KA	Kauṭilīya Arthaśāstra (ed. Kangle 1969)
Manu	Manu-Smṛti / Mānava-Dharmaśāstra (ed. Olivelle 2005)
Nār.	Nārada-Smṛti (ed. Lariviere 1989,1)
Yājñ.	Yājñavalkya-Smṛti (ed. Ganapati Sastri 1921-22)

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