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Mutilation and the Law in Early Medieval Europe and India: A Comparative Study -- OPEN ACCESS

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MUTILATION AND THE LAW IN EARLY MEDIEVAL EUROPE AND INDIA: A COMPARATIVE STUDY

PATRICIA SKINNER

IN HER SURVEY *Crime and Punishment in Ancient India*, Sukla Das highlights the occurrence—in religious texts, literary material, and legal digests—of the use of branding and mutilation of the face and body to punish specific misdemeanors, including theft, the sexual violation of women, female adultery, defamation, and assault. Moreover, mutilation (including blinding of the eyes) might also be prescribed instead of the death penalty for acts of treason, and was considered a lenient alternative to death.¹ Such penalties, the rhetoric surrounding their use, and the circumstances in which they were prescribed sound very familiar to a historian of early medieval Europe, where the language and targets of such precepts were similar to those set out in the Indian material.² Yet drawing a comparison between the two regions, or even suggesting that their similarities constitute a “legal encounter,” is fraught with methodological problems. First, there is a clear chronological mismatch between the development of the prevailing legal norms of India and Europe; second, neither region can be treated as an undifferentiated whole; third, there is an important qualitative difference between “legal” texts in Europe and India; and finally, even if points of similarity and difference are identified in the texts, these represent not so much a dialogue as a shared recognition that the human body has always been an effective target for coercive and corrective practices.³ All of this leads to an inevitable conclusion that the corresponding passages in Hindu and Western European texts should not surprise us at all.

Yet the apparent incommensurability of the two regions in the period before 1200 CE has not deterred historians from demanding and attempting comparative work. Susan Reynolds, for example, recently has called specifically for more comparative research on the laws of medieval Europe and India, and set out some

I should like to thank the editors for their invitation to write for *TMG*, the anonymous readers for their constructive criticism, and the Wellcome Trust for the grant (no. 097469) that supported research for this paper and my wider project on medieval disfigurement.

1 On blinding, see Bühner-Thierry, “Just Anger”; and Wheatley, *Stumbling Blocks*.

2 Skinner, *Living with Disfigurement*, explores the evidence for Western Europe in detail.

3 Miller (*Eye for an Eye*) and Geltner (*Flogging Others*) articulate this point from legal and historical perspectives.

questions surrounding the relationships between the royal authority and the law, the role of legal professionals, and the process of justice.⁴ This essay, whilst not addressing all of those broader issues directly, will first highlight the problems of comparison across time and place, before examining in detail a specific element of the legal culture of both regions, the use of corporal punishment. It will ask whether the representations of facial and bodily mutilation, in particular, suggest similar ideas in each region about royal authority, honor (and, if so, whose), and gender relations, and how these might have developed and changed between the third and twelfth centuries CE.

Problems of Comparison, Slippages in Time, Fragmentation of Space

The “comparative turn” in medieval history is no longer affecting only European regions, and its expansion has been marked—and fueled—in the past two decades by the appearance of serials such as *The Medieval History Journal*, edited and published out of India, and thus complicating the category “medieval,” and now by *The Medieval Globe*.⁵ To take just one example, the model of medieval “feudalism,” which Marc Bloch envisioned might be tested on Japanese as well as European society,⁶ is still being used to think through extra- as well as intra-European political frameworks in a way that stretches its validity (itself contentious) as a tool of analysis.⁷ As Reynolds and other historians of medieval Europe have commented, however, comparison is hard work, and particularly so when one is exploring a new area (for the present author, India) in which one has relatively little previous research experience.⁸ Lack of linguistic training, in particular, limits the survey of Indian texts used in this survey to those accessible in English translation, which significantly compromises the study of technical or descriptive words and phrases. (The English word “disfigurement,” for example, is regularly used as a catch-all term to translate a range of injuries to the face reported in Latin and Greek source texts in the medieval West, highlighting the potential pitfalls of relying on translated texts alone.) Bloch himself, however, was

⁴ Reynolds, “Early Medieval Law.”

⁵ Reuter, “Medieval: Another Tyrannous Construct?”; Mukhia, “Medieval India.”

⁶ Bloch, *La société féodale*, 610–12.

⁷ Bagge, *Feudalism: New Landscapes of Debate*; Hendricz, “Is There Evidence?”; Heirbaut, “Not European Feudalism”; Sharma, *Early Medieval Indian Society*; Chattopadhyaya, *Making of Early Medieval India*, 212–14.

⁸ Reynolds, “Early Medieval Law.” See also Wickham, “Problems in Doing Comparative History” and “Historical Transitions.”

an advocate of comparison as a means of better understanding one's *own* area of expertise, and exposing assumptions that a model developed in one part of the world was applicable, uncritically, elsewhere.⁹ (The subtlety of *La société féodale* in this respect has often been overlooked by subsequent commentators and generations of undergraduate students.) This caution is particularly applicable to the present study: as J. Duncan Derrett pointed out long ago, one of the difficulties for British colonial rulers in India was their assumption that Hindu *dharmaśāstra* (the teaching or science of righteousness) could be equated with Western canon law and separated from the secular concerns of the state.¹⁰ This assumption, in turn, affected the early Anglophone historiography of India. We shall return to the nature of "law" below.

The first problem of comparison for the present study is the time frame expressed by the term "early medieval." In Europe, it has traditionally been seen as the period from ca. 500 to ca. 1100, although the starting date is contested by those who champion "late antiquity" as a specific period of transition, and the eleventh century often appears in surveys of the "central" Middle Ages. Such mutability is also visible in the historiography of early India. Brajadulal Chattopadhyaya situates the "early medieval" from the seventh to thirteenth centuries CE,¹¹ and this estimation is echoed by Upinder Singh, who relates the start and end dates to the fall of the Gupta Empire (ca. 550 CE) and the establishment of the Muslim Delhi sultanate (1206), respectively.¹² This periodization incorporates the Ghaznavid conquest of parts of northwestern India under Mahmud (998–1030). But, as Singh points out, alternative "early Middle Ages" have existed in Indian scholarship: eschewing political frameworks, R. S. Sharma's model of Indian feudalism places the period as 400–1200 CE.¹³ The period of the Delhi Sultanate (1206–1526 CE) has also been termed "early medieval" or "medieval" to distinguish it from the "later medieval" Mughal state that lasted into the nineteenth century. (It is possible to posit a "medieval" period extending this late in Jewish history as well, as I have argued.¹⁴) But as Kesavan Veluthat points out, these are all chronologies largely driven by northern Indian political developments, and largely ignore the existence of the polities of the Rashtrakutas (ca. 750–1000 CE) and the Cholas (ca. 850–1280 CE, at its height till 1044 CE), whose hostilities in the early tenth cen-

⁹ Bloch, *Apologie pour l'histoire*, 107.

¹⁰ Derrett, *Dharmaśāstra and Juridical Literature*, 2–4.

¹¹ Chattopadhyaya, *Making of Early Medieval India*, 1–37.

¹² Singh, *Rethinking Early Medieval India*, 1.

¹³ Sharma, *Early Medieval Indian Society*.

¹⁴ Skinner, "Viewpoint. Confronting the 'Medieval.'"

ture impacted kingdoms such as the Cheras in Kerala, which is documented as a kingdom by the early ninth century.¹⁵ With these *caveats* in mind, the discussion that follows will focus on the period from the fifth to the eleventh centuries, and compare Christian and Hindu precepts. It will exclude discussion of imported Muslim norms but may utilize examples falling outside those beginning and ending dates.

Veluthat's work exposes the second problem of comparing Europe and India in this period: the shifting and heterogeneous political map of the latter. This, however, should not cause undue concern. Just as temporal boundaries were being challenged in the late 1990s as a hegemonic and Eurocentric historiographical construct, so Martin Lewis and Kären Wigen challenge the spatial organization of historical enquiry, the value-loaded terms "West" and "East," and the assumption of coherence in organizing the world into seven "continents."¹⁶ Drawing on this work for their own study of medieval India, Catherine Asher and Cynthia Talbot comment that "we can view the presence of numerous kingdoms [in India] in 1000 CE as a normal course of affairs," and suggest that, "like Europe, South Asia had a common elite 'civilization' that served to unify it culturally in a general sense prior to 1200, although there were many different local practices and beliefs."¹⁷

One element of such elite "civilization" was religious culture as expressed in the Hindu *dharmaśāstra*, the teaching of righteousness, which Derrett terms an overarching, systematic presentation of precepts suited to the diversity of Indian society. This framework, underpinning Indian jurisprudence in the medieval period, was already centuries old, dating back to well before the Common Era, and some have cautioned against treating it as "law" in the English sense of the word.¹⁸ Moreover, it was not unified or consistent.¹⁹ Surviving texts and commentaries (*smṛti*) range in date from ca. 600 BCE onwards, though precise dating, attribution, and place of composition remain vexed problems. Early Hindu law (even the term "Hindu" is problematic) encompassed not only the impetus to punish a criminal act, often with corporal punishment, and so to restore social order, but also a desire to encourage the individual to perform penitential acts that would rectify her/his offence against the moral order.²⁰ As Patrick Olivelle comments, the correlation between the two is often indistinct, but both were tied up in a reli-

¹⁵ Veluthat, *Early Medieval in South India*, 1–3, 185, 196.

¹⁶ Lewis and Wigen, *Myth of Continents*.

¹⁷ Asher and Talbot, *India before Europe*, 9.

¹⁸ Lubin, Davis, and Krishnan, *Hinduism and Law: An Introduction*.

¹⁹ *Dharmasūtras*, xxv–xxxiv; Olivelle, "Dharmaśāstra: A Textual History."

²⁰ Lubin, Davis, and Krishnan, *Hinduism and Law: An Introduction*, 1–4.

gious ideology that envisioned creating a virtuous human being and ensuring a positive rebirth, since the fate of the transgressor who failed to perform penance for her or his deeds would be to lose status between this life and the next.²¹ This religious dimension, it seems to me, opens up a point of comparison straightaway. Early law from the Visigothic, Lombard, and Anglo-Saxon kingdoms, and from the Byzantine Empire (included as a further comparator) certainly prescribe corporal punishments alongside monetary compensation, but they do not explicitly look to encourage the transgressor to repent. This, in large part, was the responsibility (at least after the conversion period in the fifth and sixth centuries) of the Church, not the king or state, and Western Europe provides numerous examples of early penitentials underpinning that duty.²² Yet, as numerous scholars have pointed out, this apparent separation between punishment/law and penance/religion in Western society is anything but: as Christianity became more institutionally embedded within Western European kingdoms, laws were drafted by, and/or with the assistance of, members of the clergy, and they incorporate, in a more or less explicit fashion, biblical concepts of right and wrong.²³ Whilst the replacement of tit-for-tat violence with monetary payments might speak to Christian ideals, the ruler's right to inflict a corporal punishment—whether beating, branding, or mutilation—draws upon not only Old Testament ideas of reciprocal injury but also expresses an explicit reservation to the ruler of the right to punish physically in order to enforce authority and make an example of the offender. The replacement of capital penalties with corporal ones, however, also signals that concern for an offender's soul demanded that he or she be given the opportunity to repent.²⁴ Looking forward to the next life, therefore, was a core consideration in the judicial cultures of both regions.

Ashutosh Dayal Mathur has argued for what he terms the secularization of Hindu law between the eighth and seventeenth centuries, as commentators sought to move away from law as *dharma* (righteousness)—the model described by Olivelle for earlier centuries—and towards an understanding of law as a state matter (*vyavahāra*), rather than a question of personal religious or moral conduct.²⁵ The pace of such change varied according to region, however, and *vyavahāra* is in fact visible in much earlier material.²⁶ But whereas earlier *dharmaśāstras* had

²¹ Olivelle, "Penance and Punishment"; see also Davis, "Before Virtue."

²² Meens, *Penitentials*; McNeill and Gamer, *Medieval Handbooks of Penance*.

²³ Wormald, *Legal Culture*; Evans, *Law and Theology*.

²⁴ Gates and Marafioti, *Capital and Corporal Punishment*.

²⁵ Mathur, *Medieval Hindu Law*.

²⁶ Derrett, *Dharmaśāstra and Juridical Literature*, 31 and 36.

made little distinction between civil or criminal disputes, later digests and commentaries paid more attention to offences that disturbed the order of the state and/or might be brought to the king's attention. The process that Mathur outlines, therefore, is roughly contemporary with the period in European history when the Germanic successor-states to the Roman Empire were beginning to produce codified books of law. Written law *mattered* in both geographical spheres, it seems, and functioned as a symbol of rulers' authority. The plurality of early medieval kingdoms and their law codes in Europe did not prevent similarities in their written forms, and this is also a useful way to think about the multiple commentaries existing across different Indian polities. The key difference lies in the fact that whilst the texts of most early medieval law codes in Europe are datable to within about a century (and some in fact carry dating clauses emphasizing when, in the ruler's reign, the codes were compiled), the complete and fragmented works of law surviving from early India are hard to date because their purpose was entirely different. Early Hindu texts, such as Kautilya's *Arthaśāstra* (recently redated to the fourth century CE, rather later than previously thought) had of course explicitly set up some of the qualities and duties expected of the king, still framed in religious terms; but medieval European laws varied in how much attention they paid specifically to him, since the very existence of the codes themselves marked out the king's concern with the limitation of violence.

It is unlikely that the two historical developments—a more “state-like” king in India, a focus on the king's responsibility to keep peace in Europe—were linked.²⁷ It is also debatable whether the transition outlined by Mathur for India led to anything like a fully secularized law code replacing older customs and practices. Chattopadhyaya comments that part of the process of change was the need for “constant validation of power,” against the background of political fragmentation among multiple kingdoms.²⁸ The temporal and the sacred domain were too interdependent to permit a clear split, however. Thus the priestly validation of temporal power continued beyond the period of the so-called Hindu dynasties. The full secularization of Indian law is, some commentators argue, not something that even the modern Indian state has achieved.²⁹ But it is clear that the Hindu laws retained far more than they discarded, whilst the various law codes in Western Europe are often distinguished by how much, or little, of preceding Roman (or Germanic) law is visible in their provisions.

²⁷ Kershaw, *Peaceful Kings*.

²⁸ Chattopadhyaya, *Making of Early Medieval India*, 196–97.

²⁹ Menski, *Hindu Law*, 24–25.

For our purposes, the main issue to keep in mind is the rather obvious point that no law is static: the written codifications and commentaries that historians now use were more a starting point in a negotiation, rather than the end game, and it is clear that legal precepts in India—and corresponding prescriptive texts in Western European kingdoms and the Byzantine Empire—set up ideals of behavior that were, often, unenforceable. In both regions, however, the process of revising and updating opinions allowed for flexibility as new situations arose. Reynolds highlights the wealth of legal commentaries in India that medieval Europe does not have (at least, until the twelfth century onwards), each shaping and offering possibilities for new interpretations of older texts.³⁰ In this sense, India seems more akin to the medieval Islamic world.³¹ But in Europe, codes of law were supplemented and updated when regimes changed, and some of this material shows signs of having responded to real situations. Overall, however, the picture presented by these texts is explored here without any assumption (or “naïve acceptance,” as Don Davis puts it)³² that it represents the social reality on the ground. (As Davis notes, different texts served different purposes.) Some older, nationalist historians of India have emphasized the durable nature of the Hindu achievement, focusing particularly on the areas of India that were not subject to Muslim conquest. For example, Ishwari Prasad stresses that the medieval period saw “some of our best [legal] commentaries” emerge in south India.³³ Yet even in areas that did come to be under Muslim rule, Hindu culture seems to have been valued rather than suppressed, and links were forged between the Mediterranean Sea and Indian Ocean that permitted the transmission not only of goods but of ideas.³⁴

Approaching Disfigurement as Injury: Honor and Shame

One way, perhaps, of drawing meaningful comparisons is to focus in on a very specific manifestation of the law and/or social custom and/or moral compass in each region, and to explore whether it occurs in similar circumstances as reported by the texts, as was done for instance by Richard Larivière for ordeals.³⁵ This essay is interested in the phenomenon of facial appearance and disfigurement, which appears most often in the context of legal codes and narrative sources. Both

³⁰ Reynolds, “Early Medieval Law.”

³¹ See Reid, *Law and Piety*.

³² See Davis, “Toward a History of Documents,” in this issue.

³³ Prasad, *History of Medieval India*, 549.

³⁴ Wink, *Al-Hind*, 10.

³⁵ Larivière, “Ordeals in Europe and India.”

European and Indian cultures appear to have placed great importance on facial appearance, including the presence, absence, or removal of facial hair. Barry Flood comments that “the differentiation of ethnic and religious groups through the prescription of appropriate hairstyles or modes of facial hair was common to both Indic and Islamic cultures,” and European historians, too, have noted its charged qualities as a signifier of status.³⁶ They might have added that facial perfection or impairment was similarly loaded with meaning. As a comparative topic, therefore, it seems a worthwhile seam to mine, and what follows is largely drawn from the ostensibly “legal” texts, although set alongside narrative sources.

The historic mutilation of the face and body in Indian and European cultures has already attracted the attention of some scholars. F. Barry Flood, for instance, explores the meeting of Indian and Islamic cultures in records of the Indian practice of cutting off little fingers or fingertips as a sign of submission to one’s lord.³⁷ The removal of digits also features in some European texts, but there it is either as a highly visible personal injury³⁸ or as an extreme sign of tyrannical or even diabolical behavior, as when the monastic chronicler Amatus of Montecassino says that Gisulf II (1052–76/77), prince of Salerno, cut off the fingers and toes of his wealthy hostage, Maurus of Amalfi, and made him eat them.³⁹ (This was *after* Gisulf had had Maurus’s eye gouged out.) Writing to please Gisulf’s eventual conquerors and the patrons of his own abbey, the Norman lord Robert Guiscard and his wife Sichelgaita, Amatus was implacably opposed to Prince Gisulf, which clearly colors his narrative. And yet a report of finger-cutting in India is no less problematic. Although its former attribution to the Persian sea-captain Buzurg ibn Shahriyar (in a work commonly known as *The Wonders of India*) has now been discarded, the account’s real author, a Cairene scholar named Abū ‘Imrān Mūsā ibn Rabāh al-Awsī al-Sīrāfi, was still writing with the perspective of an outsider.⁴⁰ Is either report therefore to be trusted? This is a problem that dogs the evidence surrounding mutilation, since its very prospect tended to induce fascination or horror in those recording it. The same fascination, arguably, has shaped later historians looking for evidence of the “barbarity” of the medieval period, drawing

36 Flood, *Objects of Translation*, 63. See also Leyser, “Long-Haired Kings”; Bartlett, “The Symbolic Meanings of Hair”; Dutton, *Charlemagne’s Mustache*.

37 Flood, *Objects of Translation*, 85.

38 As in the laws of King Æthelberht of Kent (Æthelberht’s code (Abt), § 53–58). See also Oliver, *Beginnings of English Law*, 72–3.

39 Amatus of Montecassino, *History of the Normans*, 189–90.

40 Ducène, “Review.”

upon not only reports such as these, but also folkloric and religious tales that are hardly reliable indicators of social “norms” (see below).

Injuries in Indian law were classified as verbal (*vākpāruṣya*) or physical (*daṇḍapāruṣya*). A similar categorization is found in European codes: the Salic law from Francia lists penalties for both physical injuries (*De debilitatibus*) and insults (*De convitiis*).⁴¹ The latter, mainly consisting of calling a person by the name of an animal, was undoubtedly insulting to honor. Calling a man a coward, informer, or liar threatened rather more damage to the reputation, requiring substantial monetary compensation (as in the law of the Kentish kings Hlothere and Eadric on calling someone a perjurer or “shamefully accosting him using mocking words”).⁴² Such transgressions, however, were largely limited to the social class in which the offender and victim belonged: the balance of honor needed to be restored, but vertical social ties do not appear to have figured in such offences. Other Western European cultures, however, posited insults as a serious challenge to vertical authority: in Ireland, in particular, close attention was paid to the respective rank of perpetrator and victim, and the high visibility of the poet in Irish society led to multiple tales of physical facial blemishes spontaneously appearing on kings and other social superiors by the effects of satirical verse.⁴³ Even publicizing a physical blemish by talking about it was regarded as an injurious act.⁴⁴

In the Indian context, however, the effects of all verbal and physical injuries were complicated by *varna* or caste. Transgression often meant loss of caste or even rebirth as a non-human, and this may explain why punishments handed out to the lowest group, the Śūdra, were, and remain over time, so severe. Already at the bottom of the pile, they were threatened with the most gruesome of punishments, often leading to death. For example, Gautama’s code orders that if a Śūdra uses violent language or violence against any member of the three upper classes, the body part that committed the crime should be cut off. If a Śūdra listens to a Vedic recitation, his ears should be filled with molten metal; and if he repeats the recitation, his tongue should be cut off.⁴⁵ This treatment was in contrast to that of other castes, who were more frequently fined for their transgressions. Yet the difficulty rests in knowing whether this very ancient law retained its purchase in later recapitulations. It would be tempting to see a parallel here with the frequent distinctions in European law codes between those of different status—the free

41 *Pactus legis Salicae*, 112–20 (§ 29–30).

42 Translated in Oliver, *Beginnings of English Law*, 131.

43 Kelly, *Guide to Early Irish Law*, 43–44.

44 *Ibid.*, 137.

45 *Dharmaśūtras*, 98 (Gautama 12).

and the unfree, those with official titles and those without.⁴⁶ Certainly slaves who committed offences were punished more severely than the semi-free or free. Thus in an addition to the Salic law of the Franks, a slave who struck a free woman or untied her hair would lose his hand; but—and this is the crucial difference—slaves were *owned* by someone else, and that person could, if they wished, mitigate the threatened damage to their property by paying a fine.⁴⁷ The Salic law also permitted the master of a slave who was about to be castrated or tortured to withhold the slave's punishment by paying the penalty plus the slave's value, though it is debatable how often such a substitution might happen in practice.⁴⁸

Turning to physical injuries, the classifications found in the later medieval Indian commentary *Vivāda Ratnākara* (ca. 1300) have strong resonance with similar lists of injuries found in earlier European texts. In ascending order of seriousness, physical offences in *Vivāda Ratnākara* included: defiling with touch; raising a hand or weapon with intent; hurting without drawing blood; blood-shedding injuries that were skin-deep, muscle-deep, or bone-deep; breaking of bones; and severing or mutilation of organs.⁴⁹ Defilement with touch was an injury particular to Brahmin status, where impurity lurked in inanimate objects and everyday gestures and actions as well as in physical contact between persons. Such religious defilement is not visible in the legal texts of medieval Europe, but it is notable that some early codes did classify touching women in certain ways as injuries to be compensated. A rather closer comparison can be drawn in the distinction between bloodless and bloody injury, and the grading of the latter. This has strong parallels in early medieval European laws such as the Visigothic code of the seventh century, which categorized wounds as slight, drawing blood, or down to the bone;⁵⁰ or the probably contemporary Ripuarian and the slightly later Alamannic codes, which retained the distinction between bloodless and bloody wounds (both adding the detail "if the blood touches the ground") and, in the case of the Alemannic code, added further distinctions of seriousness for head injury.⁵¹ Later still, in medieval Welsh law, the three "dangerous wounds"—a blow to the head exposing the brain, a blow to the body exposing the bowels, or the breaking of a limb—are again distinguished from other types of injury.⁵² In both Indian and European cul-

⁴⁶ Geltner highlights this issue for ancient societies: *Flogging Others*, 37 and 44.

⁴⁷ *Pactus Legis Salicae*, 260 (Capit. Addita 104.3).

⁴⁸ *Pactus Legis Salicae* 58 (§ 12).

⁴⁹ Mathur, *Medieval Hindu Law*, 177.

⁵⁰ *Leges Visigothorum*, 262–63 (VI.4.1).

⁵¹ *Lex Ribvaria*, 73 (II); *Pactus Legis Alamannorum*, 116–17 (LVII [LIX]).

⁵² *Laws of Hywel Dda*, 24–26 (book 1.3).

tures, the visible wound or scar clearly threatened status.⁵³ Baudhāyana asks, “If a Brahmin has an open wound filled with pus and bloody discharge and a worm appears in it, what penance should he observe?”⁵⁴ Here, though, the problem might well be the “worm”—a sign of decay and thus of degradation?—rather than the original wound. Infection of wounds was, of course, also a sign of guilt associated with medieval ordeals involving hot metal or water, so there may be a common understanding of bodily corruption indicating corruption of the soul in these parallel examples.

Disfigurement as Punishment

Facial mutilation as a *punishment*, however, was not as ubiquitous in Indian law as Das seems to suggest (and in fact is something of a rarity as a punishment in European texts as well). Certainly some very serious capital offences, such as someone from the lowest caste speaking rudely to a Brahmin, could be commuted to mutilation (in this case, the removal of the offending tongue).⁵⁵ But early laws forbid the capital or severe corporal punishment of Brahmins, limiting penalties to the placing of permanent marks on their foreheads indicating their crimes⁵⁶ in a process explicitly described as branding.⁵⁷ Similar markings in Western Europe were prescribed, for example, in the case of a recidivist thief: the Lombard laws say that one “should put a mark” (*ponat ei signum*) on his forehead and face, probably by branding.⁵⁸ In Byzantium (according to hagiographic sources, and thus not specifically “legal” ones) tattooing was used in specific cases, such as that of the martyred saints Theodore and Theophanes, known as the *Graptoi* (“those written upon”).⁵⁹ The Brahmins’ privilege, however, was withdrawn in later medieval commentaries, and it is by no means clear that all corporal punishment of this class was banned earlier on. The ancient code of Āpastamba, for example, states that a Brahmin guilty of theft should not be executed but “he should be blindfolded”⁶⁰ Olivelle does not believe this should be translated as “blinded”

⁵³ Skinner, “Visible Prowess?”

⁵⁴ *Dharmasūtras*, 152 (Baudhāyana 1.11.37).

⁵⁵ *Dharmasūtras*, 71 (Āpastamba 2.27.14); Mathur, *Medieval Hindu Law*, 178.

⁵⁶ *Dharmasūtras*, 53 (Āpastamba 2.10.16); Das, *Crime and Punishment*, 75.

⁵⁷ *Dharmasūtras*, 160 (Baudhāyana 1.88.17).

⁵⁸ *Leges Langobardorum*, 140 (Liutprand, LXXX [11]).

⁵⁹ *Byzantine Defenders of Images*, 204.

⁶⁰ *Dharmasūtras*, 71 (Āpastamba 2.27.17).

because this would be inconsistent with the ban on corporal punishment.⁶¹ Yet surely being convicted of theft when one occupied the highest caste was a matter of extreme disgrace, and the alternative punishment that the translator suggests is not really credible—unless the blindfold was to symbolize the thief’s moral blindness? Such an idea would not be implausible: with the Āpastamba, we are still in an age when the religious and the secular were intertwined, and a similar rhetoric of metaphorical blindness suffuses the writings of Christian commentators, too.⁶² In any case, law codes and religious precepts work on the basis of the *threat* of mutilation, and its attendant social exclusion, and this was far more common than its actual *execution*.

Medical care was sometimes prescribed in the codes for the victim of an illegal, disfiguring assault. Such care, however, only amounted to staunching a bleeding or continuously running wound (in Salic law)⁶³ and/or removing bone splinters from injuries to the head and body in a number of other codes.⁶⁴ Although the legal precepts of early medieval Europe seem to have been very focused on the appearance of the victim of an attack, the medical assistance that is described does not seem to have extended to any form of cosmetic intervention. In contrast, it has been claimed that the sheer prevalence of actual cases of judicial and vendetta-fuelled mutilation in India gave rise to precocious and sophisticated practices of surgical reconstruction of the face, centuries before such procedures were “discovered” in Europe in the early modern era.⁶⁵ This is a highly problematic contention, however. Although early Sanskrit texts, such as that of Suśruta (ca. 600 BCE), do suggest that ancient Indian surgical techniques were highly sophisticated—at least in theory—and Indian barbers of the early Middle Ages have been characterized as “celebrity surgeons,”⁶⁶ linking the development of surgical competence to a perceived need arising from judicial mutilation ignores the social disgrace inherent in being convicted, and the challenge to authority that such restorative surgery might represent. Even if the written record of Indian surgical practice does indeed point to a precocious art (or knowledge) of techniques of facial reconstruction, this does not, I would argue, derive from the prevalence of queues of mutilated patients. Ancient expertise in surgical techniques was already well-established

⁶¹ *Dharmasūtras*, 373.

⁶² Wheatley, *Stumbling Blocks*, 18–19, 65–72.

⁶³ *Pactus Legis Salicae* 78 (XVII.7).

⁶⁴ *Pactus Legis Salicae*. 77 (XVII.5); *Pactus Legis Alamannorum*, 21 (I.4); *Lex Baiuvariorum*, (IV.5, V.4, VI); *Leges Frisionum*, 71–74 (XXII).

⁶⁵ Gilman, *Making the Body Beautiful*, 76.

⁶⁶ Narayana and Subhose “Evolution of Surgery.”

in Egypt long before the Sanskrit texts of Suśruta and others, as the Edwin Smith papyrus (ca. 3000 BCE) illustrates.⁶⁷ That said, recourse to a surgeon might in fact represent resistance to authority on the part of elite victims. The challenge to legal authority inherent in undertaking to fix a criminal's face, moreover, is plausible when we look at the occurrence of doctors in ancient Indian legal codes. Offering medical assistance, indeed being a doctor at all, does not appear to have been a particularly honorable role, in notable contrast to the apparent high status of the early medieval doctor or *medicus* in Western European texts.⁶⁸ Practicing medicine was "a secondary sin causing loss of caste,"⁶⁹ and selling medicines was forbidden to the householder.⁷⁰ If the medic was indeed something of a marginal figure, perhaps the idea of reconstructing the mutilated faces of criminals is not so far-fetched.

As in Western Europe, the contexts within which we find evidence of corporeal and/or facial mutilation in India indicate it to have been a punishment interchangeable with the death penalty. Das, drawing upon the seventh-century *Tale of Ten Princes/Young Men (Daśakumāracarita)*, highlights the gouging out of eyes as a substitute for the death penalty in a case of treason.⁷¹ Mathur cites a surviving twelfth-century inscription from the village of Lāhadpura, in the Gahadwal kingdom, threatening robbers with blinding or death.⁷² These crimes by definition disturbed the peace of the kingdom. There is one area, however, that does not seem quite to fit this pattern, and that is the inflicting of facial mutilation on women.

Gender and Disfigurement

Early medieval European laws concerning women have been extensively studied and are best characterized as heterogeneous when it comes to women's agency and freedom of action. At one end of the spectrum were those women "living according to Roman law," enjoying legal identity and a certain degree of autonomy in the ownership and disposal of property. At the other end were women in Lombard society (in northern Italy) who seem to have enjoyed no separate legal personality at all, at least according to the law of King Rothari:⁷³

⁶⁷ Demaitre, *Medieval Medicine*, 2.

⁶⁸ Pilsworth, "Could You Just Sign This?"

⁶⁹ *Dharmasūtras*, 169 (Baudhāyana 2.13).

⁷⁰ *Ibid.*, 89 (Gautama 7.12).

⁷¹ Das, *Crime and Punishment*, 71.

⁷² Mathur, *Medieval Hindu Law*, 33.

⁷³ *Leges Langobardorum*, 50 (Edictus CCIV).

No woman living in our kingdom according to Lombard law may live under her own control, that is *selpmundia*, but should always be under the power of some man or the king; nor does she have the right to give away or alienate any movable or immovable property, except with the permission of him in whose guardianship (*mundium*) she is.⁷⁴

This is extraordinarily similar in language to chapter 9 verse 3 of Manu's *Authoritative Teaching of the Laws*, which says:

When she is a girl, her father guards her; when she is a young woman, her husband guards her; when she is an old woman her sons guard her. A woman should never be on her own.⁷⁵

Manu's text, although very early (dating to ca. 200 CE), certainly has resonances with Western European laws that establish guardianship over women (effectively, power over their property and bodies) as a central aspect of male legal competence. Stephanie Jamison has commented that Manu's position—or at least the language in which he articulated the law (he describes women as “whores”)—was by far the most extreme statement of women's legal incapacity in Indian jurisprudence.⁷⁶ It is tempting to deduce that the close guardianship is in fact an admission of women's relative *agency*. Jamison links Manu's position, for instance, to the rise of ascetic women in India who answered to no guardians.

At the heart of this apparently stringent supervision of women was anxiety about female sexuality, and in particular of inappropriate liaisons outside of marriage. These are expressed in the laws in two forms—punishments for sexual liaisons across caste boundaries, and for adulterous relationships. The former are articulated in many early recensions of Indian law, including the *Arthaśāstra*, where a low-status man (*śvapāka*) having relations with an *Ārya* woman was killed, while she had her nose and ears cut off.⁷⁷ Yet other early codes omit explicit mention of the mutilation of the woman: Āpastamba simply states that such a union makes her “sordid” and returns to the subject to prescribe death for the man and “emaciation” for her.⁷⁸ Whether this meant starving her to death or inflicting a fasting penance (of which there were many versions in Indian law) is unclear. In either case, however—mutilation or emaciation—the idea appears

⁷⁴ Translation adapted from *Lombard Laws*, 92.

⁷⁵ Quoted in *Mahābhārata*, 11.

⁷⁶ Jamison, “Women ‘between the Empires.’” Others are included the law code of Baudhāyana, 2.3.45: see *Dharmasūtras*, 175.

⁷⁷ Cited by Parasher-Sen, “Naming and Social Exclusion,” 421.

⁷⁸ *Dharmasūtras*, 32 and 70 (Āpastamba 1.21.1 and 2.27.8–9).

to be to deprive the woman of her beauty, as punishment for her inappropriate liaison.

We can compare this to the censure of free women who had sex with male slaves in European laws. The earlier laws of the Lombard king Rothari condemned both partners to death, although the woman could also be sold outside the kingdom by her family, or become the property of the palace.⁷⁹ King Liutprand later modified this by removing the death penalty, and allowed for the woman's relatives to deal with her before the penalty of enslavement was imposed.⁸⁰ Such unequal unions, however, could and did occur in medieval Western Europe: Suzanne Wemple has pointed out that free Frankish women who married below their station, whilst similarly condemned by the laws of that region, may have stood to gain economically from such choices (living as a bound peasant might have been more secure than living as a poor freewoman, for instance), particularly since their lords usually guaranteed the free status of any children born of the union.⁸¹ It is notable, of course, that unequal relationships the other way (lower status woman, higher-status man) attracted far less attention in European than in Indian legislation, the latter being concerned with questions of the caste of the potential offspring.⁸²

Turning to adultery, the mutilation of women's faces certainly seems to feature as one extreme measure in a spectrum of punishments. Das gathers some tenth-century evidence for punishment of this type having been carried out.⁸³ But the inscription she cites from Kogali, in the western Chalukya kingdom (dated 992), only *prescribes* that "the nose of the woman guilty of adultery is to be cut off and the adulterer put to death."⁸⁴ There is no evidence that this was actually done. And Das's other piece of evidence, like that used by Flood for the finger-cutting cited above, comes from an external observer. Moreover, the practice does not appear in all of the ancient law codes, suggesting that—like the punishment for sexual relations across caste—this type of punishment divided opinion. If anything, the developing legal framework discouraged such acts: the late twelfth-century jurist Devana Bhatta (fl. ca. 1150–1225) opposed the practice of husbands

⁷⁹ *Leges Langobardorum*, 53–54 (Edictus CCXXI).

⁸⁰ *Leges Langobardorum*, 118 (Liutprand XXIV [6]).

⁸¹ Wemple, *Women in Frankish Society*, 71–72.

⁸² For example, Gautama 4.16–28, which sets out the various combinations of parentage and condemns children of "reverse" unions to illegitimacy: *Dharmasūtras*, 85.

⁸³ Das, *Crime and Punishment*, 65–67.

⁸⁴ *Kannada Inscriptions from the Madras Presidency*, no. 77.

cutting off their adulterous wives' noses and ears.⁸⁵ This suggests that such punishments were, if not "private," then certainly not a measure condoned in the legal world. Indeed, thinking back to women's legal incapacity, it seems that adulterous women were considered to have been more acted *upon* than the male actors in Indian law (the Kogali inscription's more severe punishment for the male partner seems to underline this); and so we find penance, rather than punishment, prescribed in early codes such as Baudhāyana.⁸⁶ The punishment of adulterous wives in Western Europe was certainly, in some early laws, seen as the husband's prerogative, extending to permission to kill both the woman and her lover without penalty.⁸⁷ A number of later codes, however, did threaten facial mutilation as the appropriate punishment for sexual transgression: Byzantine laws of the eighth century, Cnut's English law of the eleventh, and southern Italian laws of the twelfth century (as codified by Frederick II in the mid-thirteenth) all include such punishments.⁸⁸ But I have suggested that these references ultimately derive from Old Testament precedents, specifically the story of the prostitute sisters Oholah and Oholibah in Ezekiel 23, and do not reflect contemporary practices, particularly since these penalties are not actually recorded as having been carried out in those regions.⁸⁹ We could equally well posit three very specific contemporary contexts for these metaphorical laws. Byzantium was suffering the pain of the iconoclast controversy, and the faces of icons were being erased just as the threat to erase facial features was issued; meanwhile, many saints of this era are said to have been mutilated and marked for defending icons, as in the cases of Theodore and Theophanes mentioned above. The law of King Cnut (990–1035) might have been inspired by the biblical knowledge of his bishop, Wulfstan, but it could also have derived from Viking traditions in his Danish homeland, where mutilation was often preferred to the killing of kin.⁹⁰ And the mutilation of women in twelfth-century southern Italian law could have taken its cue either from the pre-existing Byzantine model (though the applicability of Byzantine law in this region was by then rather diluted) or from the same biblical model. Southern Italy and Sicily, of course, also had histories of Muslim rule and influence, though again the "evi-

⁸⁵ Cited by Mathur, *Medieval Hindu Law*, 187.

⁸⁶ *Dharmasūtras*, 175 (2.3.48–50).

⁸⁷ For example, *Leges Visigothorum*, 149 (III.4); *Leges Langobardorum*, 51–52 (Edictus CCXII).

⁸⁸ *Manual of Roman Law*, ed. Freshfield; *English Historical Documents*, 458–59; *Die Konstitutionen Friedrichs II.*

⁸⁹ Skinner, "Gendered Nose."

⁹⁰ Van Eickels, "Gendered Violence," 593.

dence” for the treatment of adulteresses in Islamic culture may have derived from literary, rather than legal, sources.

Imagining Disfigurement?

These evidentiary uncertainties suggest that laws themselves can only take us so far. However, it is significant that the facial mutilation of women seems to have been a popular theme in medieval story-telling traditions throughout Eurasia.⁹¹ Famously, it features as an episode in the ancient story of Rama in the epic *Mahabharata*, surviving in numerous versions and strands of early Indian literature, and owing its continued popularity to the transformation of Rama from human to supernatural figure early in the story’s development.⁹² Whilst in exile, Rama persuades his half-brother Laksmana to disfigure the malignant demon *rākṣasī* (fem.) Ravana’s sister Surpanakha. In revenge, Ravana captures and takes away Rama’s wife Sita, who is only rescued with the aid of an army composed of monkeys and bears. But what had Surpanakha done to merit such a violent act as the removal of her nose and lips? Scharf explains that she is blamed for hostility between Rama and Ravana’s brother Khara, whom Rama in fact kills. One version of Rama’s story goes further, suggesting that Rama and Laksmana engage in a game of teasing Surpanakha when she proposes marriage to one or the other; and then, when she rushes towards Sita, threatening to eat her, Laksmana mutilates her with Rama’s encouragement.⁹³ As Peter Scharf comments, “the ethical propriety of some of Rama’s actions is less than ideal.”⁹⁴ Kathleen Erndl, too, has reflected upon the incident involving Surpanakha, commenting that she had “gotten a raw deal in a world where the rules were made by men.”⁹⁵

The *Mahabharata* even contains a specific word for “one whose nose and lips have been cut,” *nīkṛttanāsaṣṭhī*.⁹⁶ Given the popularity of the tale from its ancient origins throughout the medieval period in India, would such a figure have been familiar in real life, or was it just the most fantastical horror that could be imagined? I would suggest the latter, given the limited evidence in the legal codes as attesting to this as a practice. Story-telling was a much better way to communicate the boundaries of the acceptable to an audience, and it was perhaps useful to imag-

⁹¹ Girón-Negrón, “How the Go-Between Cut Her Nose”; Skinner, “Gendered Nose.”

⁹² *Rāmopākhyāna*, 2.

⁹³ *Ibid.*, 9.

⁹⁴ *Ibid.*, 8.

⁹⁵ Erndl, “Mutilation of Śūrpaṅakhā,” 68.

⁹⁶ *Rāmopākhyāna*, 227.

ine Surpanakha as a woman behaving badly. Did her inappropriate approaches to men, and threat to Sita, justify her cruel punishment? Or does the disfiguring of Surpanakha function as a means of deflecting attention away from Sita's own reputation, compromised as it now was by Ravana's capture of her, and requiring a drastic ordeal (walking on fire) to rehabilitate her in her husband's eyes?

Storytelling may in fact represent the one concrete link between South Asia and medieval Europe, via the Middle East. Singh has highlighted that the expansion of the Arab world gave rise to a sharp increase in the collection and translation of Sanskrit (and other) texts, an initiative focused on the court of the Abbasid caliph Al-Ma'mun (r. 813–33) at Baghdad. As a result, many stories which circulated in the medieval Arab and European worlds ultimately derived much of their material from Indian fables, in particular the *Khalila-wa-Dimna* collection, which includes similar episodes of disfigurement.⁹⁷ Violent or assertive women were often characterized as stepping outside an acceptable norm of behavior and punished violently in turn. We might think here of legal examples of females (though not demons) whose engagement in violent or transgressive acts open them up not only to corporal punishment but also to being disbarred from seeking compensation for injuries suffered. In Europe, Lombard law treated women involved in sinful or unseemly violence (*scandalum*) harshly,⁹⁸ whilst Irish law dismissed injuries inflicted in a fight between women as inactionable.⁹⁹

Conclusion

Was facial mutilation an "oriental" punishment that travelled West, or is it yet another example of that nebulous category of "Indo-European" cultural practices whose origins are lost to us but go back well before the Common Era? To take another example, there are the parallels between stoning and burning as punishments for adultery in Aztec law¹⁰⁰ and in the Bible (Leviticus 21:9; John 8:7). But Reynolds cautions against accepting apparent similarities at face value and suggests that differences are the more thought-provoking elements in the substance and processes of law, since "human beings find different solutions to similar problems."¹⁰¹ Perhaps it is best to think about the question another way: if the death of a perpetrator was, for whatever reason, not an option, damage to the face

⁹⁷ Girón-Negrón, "How the Go-Between Cut Her Nose."

⁹⁸ Balzaretto, "These Are Things That Men Do, Not Women."

⁹⁹ Kelly, *Guide to Early Irish Law*, 79.

¹⁰⁰ Offner, "Future of Aztec Law," in this issue.

¹⁰¹ Reynolds, "Early Medieval Law," 11.

was the most visible way of indicating religious defilement, inflicting shame, or signaling loss of status. The inspiration for European law codes that include this practice might ultimately derive from a common, Old Testament model, or might in fact be the coincidental product of different contexts. As Reynolds has pointed out, it was probably *local* pressure that decided whether and how a miscreant should be punished, and this may explain the apparent slippage between law and practice regarding adulterous women.¹⁰² (Eventually, the paths followed by Indian and European laws diverged in the former culture's continued inclusion of penance within punishment.) The linking of the two regions by trade connections opens up the possibility that ideas about *how* to disfigure traveled with material goods. Certainly, there is no doubt that Muslim geographers, whose "journeys" were sometimes entirely virtual and whose texts often adhered to quite rigid generic frameworks, may have inadvertently spread knowledge of exotic "wonders" that were already centuries out of date.

The assumption that mutilation was ubiquitous in Indian culture, then, is at best an over-reading of the often unreliable evidence, perhaps shaped by the fact that the best-known product of Indian culture, the epic of the *Mahabharata*, prominently features an episode of facial cutting. In both India and Europe, the threat or the idea of facial disfigurement occurs far more frequently in the surviving evidence than actual examples of the practice being carried out. In both regions, mutilation attracted the attention of lawmakers who wanted to express the extremity and "otherness" of the practice, but few actually wanted to see it in the flesh.

102 Ibid.

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Abstract This essay examines the similarities and differences between legal and other precepts outlining corporal punishment in ancient and medieval Indian and early medieval European laws. Responding to Susan Reynolds's call for such comparisons, it begins by outlining the challenges in doing so. Primarily, the fragmented political landscape of both regions, where multiple rulers and spheres of authority existed side-by-side, make a direct comparison complex. Moreover, the time slippage between what scholarship understands to be the "early medieval" period in each region needs to be taken into account, particularly given the persistence of some provisions and the adaptation or abandonment of others. The paper goes on to consider how the body and face are presented as sites of injury and punishment, and asks whether the prescriptive measures actually played out in practice. Despite tangible links between the Indian subcontinent and Europe during the period under review, it is concluded that direct influence of one set of laws upon the other is unlikely.