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Dharma and Imperium: A Comparative Study of the Manusmriti and Classical Roman Law

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Abstract

This article presents a comparative analysis of two foundational legal systems of antiquity: the Manusmriti (Mānava-Dharmaśāstra) of ancient India and the classical Roman legal tradition spanning the Twelve Tables to the Corpus Juris Civilis. Despite their temporal and geographical distance, both systems addressed universal questions of order, justice, authority, and social hierarchy. The article examines how each civilization conceptualized law's origins—dharma as cosmic duty versus ius as human enactment—and how these foundational philosophies shaped legal institutions, social stratification, family relations, criminal justice, and judicial administration. While the Manusmriti presents law as inseparable from religious obligation, embedded in a divinely ordained caste hierarchy, Roman law evolved as a secular, juristically sophisticated system that distinguished law from morality and religion. The article critically evaluates both traditions' treatment of women, slaves, and lower social groups, engages modern scholarly critiques including postcolonial and feminist perspectives, and assesses their enduring influence on contemporary legal systems. It concludes that whereas the Manusmriti's authority derived from its claim to transcendent revelation, Roman law's flexibility and jurisprudential methodology enabled its adaptation across millennia, shaping civil law traditions worldwide.

Keywords: *Manusmriti, Hindu Law, Roman law, Dharma, Imperium, Comparative Jurisprudence, Dharmashastra, Legal Philosophy, Social Hierarchy, Ancient Legal Systems.*

1. Introduction

Every civilization that aspires to endure beyond the lifetime of its founders must confront the question: *What is law, and from whence does its authority spring?* Ancient India and Rome answered this question in profoundly different ways. India's *Manusmriti* (c. 200 BCE – 200 CE) presented law as *dharma*—a cosmic, divinely ordained duty that transcended human will, encompassing religious ritual, moral conduct, and legal obligation within a unified framework. Rome, by contrast, developed a legal system that, while acknowledging religious origins, gradually asserted law's autonomy as a human institution, subject to reason, precedent, and the will of the citizen body or emperor.

This article offers a systematic comparative analysis of these two ancient legal traditions. It examines their historical emergence, foundational philosophies, institutional structures, and enduring legacies. The comparison illuminates not only how different civilizations solved similar problems—crime, property, inheritance, dispute resolution—but also how their deepest assumptions about reality, divinity, and human nature shaped their laws.

Methodology: This study employs comparative legal history's functional equivalence approach, examining how each system addressed analogous legal domains. Primary sources include the *Manusmriti* in Georg Bühler's translation (Sacred Books of the East, Vol. XXV) and Patrick Olivelle's critical edition, the Twelve Tables, Justinian's Digest, and the *Institutes* of Gaius. Secondary sources range from classic works by Lingat, Derrett, Jolowicz, and Nicholas to contemporary scholarship by Davis, Olivelle, Frier, and others.

2. Historical Background

2.1 Ancient India: The Emergence of Dharmaśāstra

The *Manusmriti* (or *Mānava-Dharmaśāstra*) is the most authoritative and best-known legal text of the Dharmaśāstra tradition—the body of Sanskrit literature dedicated to law, duty, and social conduct. Composed between approximately 200 BCE and 200 CE, it represents a synthesis of earlier Dharmasūtra traditions (dating from roughly 600–200 BCE). As Patrick Olivelle notes, Manu's code "is indeed one of the most important surviving texts from any classical civilization." The text is structured as a dialogue between the primordial sage Manu and a group of sages, covering topics ranging from creation cosmology and the four stages of life (*āśramas*) to kingship, legal procedure, marriage, inheritance, and penance.

Importantly, the Manusmriti is not a "code" in the modern sense of an enforceable statutory compilation. Rather, it is a normative, prescriptive text outlining how social and religious life *ought* to be conducted. As scholars note, it reflects "the social and religious norms that were considered ideal, not necessarily the reality of legal practice in every context." Nevertheless, its authority—amplified through centuries of commentaries and, later, colonial

appropriation—has been immense.

The political context of classical India was characterized by regional kingdoms rather than a single unified empire (excepting the Mauryan period). The king's authority was theoretically circumscribed by *dharma*; his primary duty was to uphold cosmic order, not to create law arbitrarily.

2.2 Rome: From the Twelve Tables to Justinian

Roman law developed across more than a millennium, from the early Republic (c. 509 BCE) to the fall of the Western Empire and Justinian's codification in the 6th century CE. The foundational text was the Law of the Twelve Tables (*Lex Duodecim Tabularum*), enacted in 451–450 BCE following the Conflict of the Orders between patricians and plebeians. The Twelve Tables addressed legal procedure, debt, paternal authority, property, inheritance, and criminal penalties. Although the original bronze tablets have not survived, their provisions were copied and transmitted, becoming the bedrock of Roman *ius civile*.

Roman law's classical period (c. 1st century BCE – 3rd century CE) witnessed the emergence of a professional juristic class—legal experts such as Gaius, Ulpian, Papinian, Paulus, and Modestinus—who developed the first form of what would later be called "legal science." These jurists collected, organized, and interpreted Roman law using sophisticated taxonomies, producing treatises and commentaries that shaped legal reasoning for centuries.

The crowning achievement of Roman law is the *Corpus Juris Civilis* (Body of Civil Law), commissioned by Emperor Justinian I between 528 and 534 CE. This monumental compilation comprised the *Institutes* (a textbook for students), the *Digest* (*Pandects*)—a fifty-book collection of juristic writings—and the *Codex* (imperial enactments). The *Corpus Juris Civilis* would, after its rediscovery in 11th-century Europe, become the foundation of continental civil law systems.

3. The Concept of Dharma and Imperium

3.1 Dharma: Cosmic Duty as Law

The central concept of Hindu jurisprudence is dharma. Unlike Western notions of law as a system of state-enforced rules, dharma signifies a much broader concept: the inherent order and duty that sustains the universe, society, and the individual. In classical Hindu thought, dharma "implies obligation in different settings. This could mean either strict obligations or even friendly, lawful and profound obligations." It became "a prescriptive idea as it depicted what individuals ought to or shouldn't do."

Dharma originates from the Vedas (divine revelation), is elaborated in the Smriti texts (tradition, including the Manusmriti), and is further shaped by custom (*ācāra*) and self-satisfaction (*ātmatuṣṭi*). The Manusmriti claims direct divine sanction: Manu received the law from the creator god Brahmā, who himself derived it from the eternal Veda. This theistic grounding meant that

violating dharma was not merely a legal infraction but a sin with cosmic consequences, potentially affecting one's rebirth.

The king's role in the dharma system was to enforce existing dharma, not to create new law. As one analysis explains, "the king gave the final verdict of the case. The State through the king assumed the responsibility of performing judicial functions in certain matters. A king who administers justice in accordance with dharma, evidence, customs and written law will be able to rule."

3.2 Imperium: Legal Authority and State Power

Roman law's foundational concept of authority is *imperium*—the legally vested power to command. In Roman society, *imperium* was "a more formal concept of legal authority. A man with *imperium* had, in principle, absolute authority to apply the law within the scope of his magistracy or promagistracy." Unlike many ancient monarchs whose powers derived from divinity or conquest, Roman magistrates' authority rested on law and legal precedent, through a type of statutory authorization known as "*imperium legitimum*."

The evolution from Republic to Empire transformed *imperium*. Under the principate, the emperor "may be described as a magistrate with a super-imperium, outranking all other magistrates and liberated from the check of the tribune's power." This centralization of authority had profound consequences for legal development, enabling the emperor to issue binding constitutions and to shape jurisprudence through appointed jurists.

Crucially, Roman law distinguished among *ius civile* (civil law applicable only to Roman citizens), *ius gentium* (the "law of nations" applied to foreigners and gradually incorporated into Roman law), and *ius naturale* (natural law, rooted in reason and applicable to all beings). This tripartite division—entirely absent from the Manusmriti—allowed Roman law to adapt and expand as Rome absorbed diverse peoples.

4. Sources of Law and Legal Authority

4.1 Hindu Law: The Four Dharmamūlas

The Manusmriti recognizes four sources (or *dharmamūlas*, "roots of dharma"):

Veda (Śruti) – Divine revelation, the ultimate and infallible source.

Smriti (Tradition) – Texts including the Manusmriti, derived from the Veda but authored by sages.

Ācāra (Custom) – The practices of virtuous and learned people in different regions and communities.

Ātmatuṣṭi (Self-satisfaction) – Personal conscience, invoked only when the other sources provide no guidance.

This hierarchy places revelation above human reason. Custom and self-satisfaction are subordinate; they cannot contradict the Veda or Smriti. The Manusmriti's own authority derives from its claim to represent Manu's

recension of Vedic law.

4.2 Roman Law: Pluralistic Sources and Juristic Science

Roman sources of law were far more diverse and human-centered:

Statutes (*leges*) – Enacted by popular assemblies (Republic) or by the emperor (Principate).

Plebeian enactments (*plebiscita*) – Initially binding only plebeians, later extended to all citizens.

Senatorial decrees (*senatus consulta*) – Increasingly important under the early Empire.

Imperial constitutions – Edicts, decrees, rescripts, and mandates issued by the emperor.

Praetorian edicts (*ius honorarium*) – The annual edict of the praetor, which adapted and supplemented the *ius civile*.

Juristic writings (*responsa prudentium*) – Opinions of legally authorized experts, which under the Law of Citations (426 CE) were given binding force.

The Roman jurists, as Bruce Frier has shown, transformed law into a professional discipline. They "developed the first form of what would later be called 'legal science,' and a new genre of legal writing was invented in service of this discipline, in which jurists would collect and organize Roman law according to complex taxonomies." This juristic methodology—distinguishing, defining, reconciling apparent contradictions—constituted an engine of legal growth unparalleled in the ancient world.

5. Political Authority and Legal Sovereignty

5.1 Kingship under Dharma

In the Manusmriti, the king (*rājan*) is not sovereign in the modern sense of an ultimate lawmaker. Instead, his role is to protect and enforce the pre-existing *dharma*. The text famously states that the king who administers justice according to dharma, evidence, custom, and written law "will be able to rule"—a condition, not a definition. The king's legislative capacity is minimal; he may issue rulings in cases not covered by existing dharma, but these must conform to dharma's spirit.

The king's court was the highest judicial authority, next to which came the court of the Chief Justice (*Pradvivāka*). The king could hear appeals and original cases of vital importance, assisted by Brahmin advisors. Local courts included village councils and guild tribunals, which enjoyed considerable autonomy.

5.2 Roman Sovereignty: From Populus to Princeps

Roman legal sovereignty underwent a radical transformation. Under the Republic, ultimate authority rested in the people (*populus Romanus*)—their assemblies passed laws, elected magistrates, and decided on war and peace. Magistrates held *imperium* as a delegated authority, subject to checks including collegiality, term limits, and the tribunes' veto.

Under the Empire, sovereignty concentrated in the emperor. As Justinian's *Digest* would later formulate, "What pleases the prince has the force of law" (*quod principi placuit legis habet vigorem*), justified by a supposed "royal law" (*lex regia*) by which the people transferred their power to the emperor. This doctrine gave the emperor vast lawmaking authority, though in practice he typically legislated through established forms (edicts, decrees, rescripts).

The Roman state exercised a monopoly over legitimate coercion far more effectively than any pre-modern Indian kingdom. Criminal justice was increasingly centralized under imperial control through the *cognitio extra ordinem* procedure.

6. Social Structure and Legal Hierarchy

6.1 The Manusmriti's Varna System

The Manusmriti famously divides society into four hierarchical *varnas* (castes):

Brahmins – Priests, teachers, and scholars. Highest status; exclusive authority to study and teach the Veda.

Kshatriyas – Warriors and rulers. Responsible for protection and governance.

Vaishyas – Traders, farmers, and artisans. Engaged in commerce and agriculture.

Shudras – Servants and laborers. The lowest varna, whose dharma is to serve the twice-born castes.

According to the text, these four varnas were created from the body of the primordial being: Brahmins from the mouth, Kshatriyas from the arms, Vaishyas from the thighs, and Shudras from the feet—a hierarchy explicitly sanctioned by divine creation. Legal rights and penalties varied dramatically by varna: a Brahmin's life was worth far more than a Shudra's; a Brahmin could not be executed; and the same crime might incur vastly different punishments depending on the perpetrator's and victim's castes.

Crucially, women were placed in a permanently subordinate status. As Manu states: "Her father protects her in childhood, her husband protects her in youth and her sons protect her in old age; a woman is never fit for independence." Modern commentators have noted that "all women, according to the Manusmriti, are shudras" in legal capacity, regardless of their birth varna.

6.2 Roman Social Classes and Legal Status

Roman law classified persons according to three principal *status*:

Status libertatis – Free or slave.

Status civitatis – Roman citizen, Latin, or foreigner (*peregrinus*).

Status familiae – Head of household (*paterfamilias*) or dependent (*alieni iuris*).

The hierarchy of citizenship was fundamental: only Roman citizens

enjoyed full protection under *ius civile*, including the right to contract a legal marriage (*ius conubii*), to own property in the fullest sense (*ius commercii*), and to appeal certain judgments. Slaves had no legal personality; they were *res* (things) under the power (*dominica potestas*) of their master, though they could operate businesses through a *peculium* (a separate fund).

The Roman *paterfamilias* possessed a degree of domestic authority comparable to—in some respects exceeding—that of the Indian patriarch. Known as *patria potestas* ("power of a father"), this was "power that the male head of a family exercised over his children and his more remote descendants in the male line, whatever their age, as well as over those brought into the family by adoption." This power was "in principle perpetual and unlimited." Children—including adult sons married with their own children—owned no independent property; all acquisitions belonged to the *paterfamilias*. Moreover, the *paterfamilias* had the *ius vitae necisque*: the legal right to kill his children (though this was rarely exercised in the classical period).

Roman women, while subordinate to the *paterfamilias*, could under certain circumstances achieve relative independence. By the late Republic, a woman could own property separately from her husband if she was not *in manu* (under her husband's hand). However, she remained under perpetual guardianship (*tutela*) of a male relative unless exempted by having three children (*ius liberorum*).

7. Family, Property, and Civil Law

7.1 Hindu Family Law: Joint Family and Limited Women's Rights

The Manusmriti's family law centers on the joint family—an extended patriarchal household in which property is held in common, the senior male (usually the father) manages assets, and adult sons have a right to maintenance and, eventually, a share upon partition. Inheritance is governed by strict rules of agnatic (male-line) succession. A sonless man could adopt a son or appoint a daughter to raise a son for him—the institution of the *appointed daughter* (*putrikā*).

Women's property rights were severely restricted. The Manusmriti recognizes *stridhana* (literally "woman's property"), which included gifts from her parents at marriage and items given by her husband. However, she could not dispose of this property independently; it was managed by her male guardians. In inheritance, women could not inherit landed property, only limited movable goods.

The text specifies twelve kinds of sons, with the biological legitimate son (born of a legally wedded wife of equal or lower varna) having the strongest inheritance rights. Mixed-caste offspring were assigned lower status and specific duties—a system of hereditary occupation that reinforced the varna hierarchy.

7.2 Roman Family Law: Absolute Paternal Power

Roman family law revolved around the *paterfamilias* and *patria potestas*. As noted, the *paterfamilias* held absolute power over his descendants for life. Sons and daughters in power "owned no property, though they might be allowed to administer property held by permission of the paterfamilias: this was called *peculium*."

Marriage in Roman law could be *cum manu* (where the wife came under her husband's *potestas*) or *sine manu* (where she remained under her father's authority or became independent). Divorce was relatively easy, especially in the late Republic—a significant difference from Hindu law, which strongly discouraged or penalized divorce.

Inheritance followed either *intestate succession* (by default) or *testamentary succession* (by will). Roman law recognized a degree of testamentary freedom unknown in ancient India: a *paterfamilias* could, within limits, disinherit children, though later law required that a will specifically name children. The *Lex Falcidia* (40 BCE) guaranteed that at least one-quarter of the estate passed to the designated heir, preventing capricious disinheritance.

7.3 Property Rights

Roman law distinguished carefully between ownership (*dominium*)—the fullest possible right to use, enjoy, and dispose of property—and possession (*possessio*), which was protected separately. The conception of *dominium* was individualistic: property was owned by persons, not families or lineages (though in practice, family property was common). "The kind of 'things' that can be owned in Roman law are quite varied, including movable property, real estate, living beings, and more abstract rights."

Hindu law, by contrast, conceived of property largely in terms of family ownership and joint tenancy. Individual ownership existed, but it was qualified by obligations to family members and by the overarching framework of *dharma*, which limited permissible uses (e.g., restrictions on usury, taboo occupations for certain castes).

8. Criminal Justice and Punishment

8.1 Hindu Criminal Law: Danda and Varna-Based Penalties

The Manusmriti's criminal law is organized around the concept of *daṇḍa*—punishment wielded by the king as an instrument of *dharma*. The text prescribes four types of punishment:

Vak daṇḍa (admonition)
Dhik daṇḍa (censure)
Dhana daṇḍa (pecuniary fine)
Badha daṇḍa (physical punishment, including death)

Punishments are meticulously graded according to the varna of both offender and victim. A Shudra who insults a Brahmin suffers corporeal punishment (e.g., having his tongue cut out); a Brahmin who insults a Shudra

pays a modest fine. Theft penalties vary: a Shudra caught stealing receives severe corporal punishment; a Brahmin is fined and may perform penance. This hierarchical differentiation was integral to the system.

The Manusmriti also provides for penance (*prāyaścitta*) alongside state-imposed punishment. Penance—including fasting, donations, ritual bathing, or pilgrimages—addresses the *sinful* dimension of wrongdoing, which the state's *daṇḍa* alone cannot erase. The overlap between religious penance and legal punishment reflects the text's assumption that all law is ultimately under *dharma*, not separate from it.

8.2 Roman Criminal Law: From Talion to Public Prosecution

Early Roman law (the Twelve Tables) included the *lex talionis*—the principle of "an eye for an eye" or, more precisely, proportionate retaliation. As one source notes, "talion provided the rationale for such corporal punishments as flogging, branding, mutilation, the stock, and the pillory." However, by the classical period, monetary compensation had largely replaced physical retaliation.

Roman criminal procedure evolved from private vengeance to state prosecution. The Twelve Tables established procedures for the trial of capital crimes, with appeal to the popular assembly (*provocatio*). Under the Republic, *quaestiones perpetuae* (standing criminal courts) tried specific offenses: murder, poisoning, forgery, embezzlement, and treason.

The Empire saw the rise of the *cognitio extra ordinem*—an inquisitorial procedure conducted by imperial officials (prefects, governors) that bypassed the traditional jury courts. This procedure allowed for torture of slaves, written evidence, and administrative discretion in sentencing. Penalties included death (by beheading, crucifixion for slaves, or burning for arsonists), exile (*aquae et ignis interdictio*), forced labor (*opus publicum*), and confiscation of property.

Roman law also recognized delicts (*delicta*)—private wrongs analogous to torts—which could be prosecuted civilly for damages. The best-known delicts were *furtum* (theft), *rapina* (robbery), *damnum iniuria datum* (property damage), and *iniuria* (personal insult or assault). Compensation was typically double or four times the value of the damage.

9. Religious Influence on Law

9.1 The Manusmriti: Law as Divine Revelation

In the Manusmriti, law is inseparable from religion. There is no independent secular sphere. Religious duties (*śrauta* and *smārta* rituals) are as much a part of *dharma* as rules about contracts or theft. The authority of the Brahmin—learned in the Veda—derives from his direct access to the sources of divine law. The king must consult Brahmins as legal advisors.

Penance (*prāyaścitta*) represents the religious dimension of law: wrongs require not merely state punishment but also expiation to cleanse sin and restore cosmic order. As the text indicates, the system includes six

elements: creation, law (*dharma*), civil/criminal rules (*vyavahāra*), penance, and future recompense of acts.

9.2 Roman Law: From Sacred to Secular

Roman law, in its earliest period, was closely bound to religion. The *pontifices* (college of priests) controlled legal procedure, interpreted the law, and kept the calendar of court days. But the publication of the *Leges Actiones* (the forms of legal procedure) in the *Jus Flavianum* (c. 304 BCE) marked the secularization of law. By the classical period, law was an independent discipline, taught in law schools, interpreted by lay jurists, and administered by magistrates who were not required to be priests.

The Romans themselves articulated this separation. The jurist Ulpian famously distinguished *iustitia* (justice) as "the constant and perpetual will to give each his right" (*iustitia est constans et perpetua voluntas ius suum cuique tribuendi*)—a philosophical, not theological, definition. While Roman law acknowledged the divine (*fas*), it operated in the realm of human law (*ius*). As Cicero wrote, "We are not born for ourselves alone" — law serves human community, not celestial order.

10. Judicial Administration and Legal Procedures

10.1 Hindu Judicial System: The King's Court and Local Assemblies

According to the *Dharmaśāstra* tradition, the judicial system had a hierarchy:

Family councils (domestic arbitration)
Village councils (*grāma*)
Guild courts (*śreṇi*)
Provincial judges appointed by the king
The king's court (highest jurisdiction)

The Manusmriti specifies eighteen titles of law (*vyavahārapadas*) covering debts, deposits, sale without ownership, partnership, non-payment of wages, boundary disputes, slander, assault, theft, and others. Procedure included written pleadings, witnesses, oaths, and written documents as evidence.

Trial by ordeal—including fire, water, poison, or hot iron—was recognized in cases where evidence was inconclusive or the parties were of unequal standing. The ordeal invoked divine judgment to resolve the dispute, reflecting the theocratic presupposition that dharma would manifest through supernatural means.

10.2 Roman Procedure: Three Historical Systems

Roman civil procedure evolved through three distinct forms:

Legis actiones (c. 450 – c. 150 BCE) – Archaic, highly formal, ritualistic procedure divided into two stages: *in iure* (before a magistrate to frame the issue) and *apud iudicem* (before a private judge to decide facts). The plaintiff had to recite specific, invariable words; a single mispronunciation could lose

the case. This system, "marked by unreasonable archaism and enormous formalism," was replaced due to its rigidity.

Formulary procedure (c. 150 BCE – c. 250 CE) – The praetor issued a written *formula* specifying the legal issues to be tried. More flexible than the *legis actiones*, it allowed the praetor to create new remedies and defenses (e.g., *dolus malus*, *metus*) not found in the Twelve Tables.

Cognitio extra ordinem (c. 250 CE onward) – Inquisitorial procedure before an imperial magistrate or provincial governor. There was no *iudex*; the magistrate decided both law and facts. Appeals were heard by higher magistrates and ultimately the emperor. This system became dominant in the late Empire and continued in Byzantine practice.

Roman criminal procedure followed a similar trajectory, with the *cognitio* procedure giving the state unprecedented control over criminal justice.

11. Comparative Analysis

11.1 Similarities

Both the Manusmriti and Roman law:

Established written or codified legal norms (the Manusmriti as a prescriptive text; the Twelve Tables and *Corpus Juris Civilis* as enforceable law).

Recognized social hierarchy as legally relevant (varna in India; citizenship and *status* in Rome).

Placed family patriarchs (the *paterfamilias* in Rome; the senior male in the joint family in India) in positions of extensive authority.

Differentiated between severe (capital) and minor (monetary) penalties.

Provided mechanisms for settling disputes through courts and procedural rules.

11.2 Fundamental Differences

Category	Manusmriti (Hindu Law)	Roman Law
Source of law's authority	Divine revelation (Veda)	Human enactment (*leges*) and reason (*ratio*)
Central concept	*Dharma* (cosmic duty)	*Ius* (right/justice) and *imperium* (authority)
Legal vs. religious	Unified; law is a subset of religion	Separated (though acknowledging *fas*)
Legal professionals	Brahmins (priests) as jurists	Lay jurists, legal schools, professional advocates
Capacity for change	Limited; new dharma must be consistent with Veda	High; praetor's edict, juristic interpretation, imperial legislation
Social hierarchy	Rigid, hereditary varna system	Status determined by law (citizenship, freedom, family position)
Women's legal position	Perpetual minor status, no independence	*In manu* or under *tutela*, but could own property
Criminal punishment	Varna-differentiated; penance alongside daṇḍa	Lex talionis (early), then compensation and state sanctions
Legacy	Survives in Hindu personal law	Foundation of civil law systems worldwide

11.3 Explanations for Divergence

The divergences reflect fundamental philosophical and political differences. The Manusmriti's theocratic premise—that law derives from revelation and that Brahmins possess unique access to revelation—precluded the emergence of lay jurisprudence. As Davis notes, "In classical Hindu India the discipline of legal theory or jurisprudence (Dharmaśāstra) always bore close conceptual links with that of scriptural hermeneutics (Mīmāṃsā)." Law

remained a branch of religious learning.

Rome, by contrast, experienced no equivalent to the Brahmin caste and its claimed monopoly on revelation. The Conflict of the Orders established that law could be made by plebeian assemblies and interpreted by lay experts. The institutional separation of priesthood from magistracy—complete by the 3rd century BCE—allowed law to become a secular, professional discipline. As Bruce Frier's work demonstrates, the rise of the Roman jurists represents "the emergence of law as a professional discipline in the later Roman Republic."

12. Modern Critiques and Scholarly Debates

12.1 Postcolonial and Anti-caste Critiques of the Manusmriti

The Manusmriti has become a focal point for critiques of caste oppression and patriarchy in modern India. B.R. Ambedkar, the principal architect of India's Constitution and a lifelong opponent of caste, "held Manu responsible for the caste system and writes that 'Manu can be charged with being the progenitor, if not the author, of the caste system.'" Ambedkar famously burned copies of the Manusmriti in 1927 as a protest against caste discrimination.

Feminist scholars have similarly condemned the text's treatment of women. The text's declaration that "all women, according to the Manusmriti, are shudras"—combined with its denial of women's legal independence—has led to demands that the Manusmriti be rejected as a source of normative authority in contemporary India.

At the same time, some scholars caution against reading the Manusmriti as a direct cause of modern social evils. The text is normative and idealizing, not an accurate description of ancient legal practice. Moreover, it existed alongside other *Dharmaśāstra* texts (e.g., Yājñavalkya, Nārada) that sometimes offered more liberal interpretations. The British colonial administration, particularly William Jones's 1794 translation, *chose* the Manusmriti as the authoritative "Hindu code," elevating it above other traditions and freezing it as the definitive statement of ancient Indian law.

12.2 Debates on Roman Law: Imperialism and Justice

Roman law has also faced critique—primarily for its sanctioning of slavery, its harsh *patria potestas*, and its use as an instrument of empire. Roman jurists, despite their philosophical sophistication, largely accepted slavery as natural. The *Corpus Juris Civilis* explicitly classified slaves as property.

Modern scholars have debated whether Roman law contained any internal checks on imperial power. Some argue that the concept of *iustitia* and natural law (*ius naturale*) provided normative limits; others contend that the emperor's *imperium* was effectively absolute, especially after the 3rd century. The legacy of Roman law—especially its reception in European colonial empires—is also contested: the same Roman principles that formed the basis of human rights discourse were used to justify conquest and dispossession.

12.3 Comparative Legal Historiography

Recent comparative scholarship has moved beyond simplistic "influence" models. Rather than asking whether Roman law influenced Hindu law (unlikely, given geographic and chronological distance), scholars now use comparison to illuminate each system's distinct features. As one researcher notes, "The two systems can be seen as parallel solutions to similar problems: how to maintain social order, legitimate authority, and resolve disputes. The differences reveal different assumptions about human nature and the cosmos."

The "null hypothesis" in comparative legal history—that differences arise from independent development, selective preservation, or distinct socio-legal pressures—is now the starting point for responsible comparisons.

13. Influence on Contemporary Legal Thought

13.1 Manusmriti's Enduring Legacy

The Manusmriti's direct legal authority in modern India is limited. Independent India's Constitution (1950) abolished untouchability, prohibited caste discrimination, and provided for equality before the law. The Hindu Code Bills (1955–56) reformed Hindu personal law, abolishing many of the Manusmriti's patriarchal provisions (e.g., giving women inheritance rights, allowing divorce). However, Hindu personal law on marriage, adoption, and inheritance remains influenced by Dharmaśāstra traditions, including those codified in the Manusmriti.

Beyond India, the Manusmriti continues to be invoked in debates over caste discrimination in Nepal, Sri Lanka, and the global Indian diaspora. It also serves as an object of study for legal historians and for those seeking to understand the development of legal systems in South and Southeast Asia (where Dharmaśāstra influenced early legal codes in Burma, Thailand, and Cambodia).

13.2 Roman Law's Global Reach

Roman law's influence has been far more pervasive. The *Corpus Juris Civilis*, rediscovered in 11th-century Bologna, became the foundation of legal education in Europe. Civil law systems in France (Code Napoléon), Germany (Bürgerliches Gesetzbuch), Italy, Spain, Latin America, and beyond are direct descendants of the Roman legal tradition. Even common law jurisdictions (England, United States, Commonwealth) incorporate Roman-derived concepts: contract, tort, property, trust, and legal procedure owe much to Roman models.

The concept of *imperium* has influenced modern constitutional doctrine on executive authority, while *patria potestas*—though rejected in its Roman form—has shaped debates over parental rights and child protection. Roman law's "legal science"—its commitment to definition, classification, and systematic reasoning—is arguably its most enduring contribution.

14. Conclusion

The Manusmriti and classical Roman law represent two great experiments in ordering human society through law. The Manusmriti rooted law in the sacred, in a divinely ordained hierarchy of castes and stages of life, and in a theocratic vision where the king was a guardian of eternal dharma rather than a sovereign lawmaker. Roman law, while retaining religious origins, evolved toward secularism, professional jurisprudence, and a state-centered conception of legal authority—where law was what the populus or princeps willed, within the framework of reason and justice.

The comparison reveals that no legal system exists apart from its civilization's deepest commitments. India's caste hierarchy, its emphasis on hereditary obligation, and its acceptance of social inequality as cosmically ordained were—and in some quarters remain—defended as manifestations of dharma. Rome's social stratification, its patriarchy, and its toleration of slavery were defended as necessary for the *res publica* and, later, the *imperium*. Neither system was "just" by modern liberal standards; both appear harsh and discriminatory in their treatment of women, slaves, and subordinate groups.

Yet both also made contributions. The Manusmriti codified for millennia the idea that law could be comprehensive, that it could regulate everything from food to marriage to punishment, and that it could aspire to a unified moral order. Roman law bequeathed to the world the techniques of legal reasoning—definition, distinction, classification, reconciliation of opposing rules—that remain at the heart of jurisprudence.

In the end, the deepest difference may be this: the Manusmriti claimed to reveal the law from an eternal, changeless source, challenging its followers to conform; Roman law claimed to create the law through human institutions, inviting its adherents to reason. One looked upward, to the gods; the other looked outward, to the forum. Both remain, in their fractured and contested legacies, foundational to the civilizations they helped to shape.

References

1. The Laws of Manu. Translated by Georg Bühler. Sacred Books of the East, Vol. XXV. Oxford: Clarendon Press, 1886.
2. Olivelle, Patrick, ed. and trans. Manu's Code of Law: A Critical Edition and Translation of the Mānava-Dharmaśāstra. Oxford: Oxford University Press, 2005.
3. The Digest of Justinian. Edited by Theodor Mommsen and Paul Krueger; translated by Alan Watson. 4 vols. Philadelphia: University of Pennsylvania Press, 1985.
4. The Institutes of Gaius. Translated by Francis de Zulueta. Oxford: Clarendon

Press, 1946.
5. The Twelve Tables. Translated by M. Crawford. In Roman Statutes, edited by M.H. Crawford. London: Institute of Classical Studies, 1996.
6. Davis, Donald R. Jr. The Spirit of Hindu Law. Cambridge: Cambridge University Press, 2010.
7. Derrett, J. Duncan M. Religion, Law and the State in India. London: Faber & Faber, 1968.
8. Doniger, Wendy, and Brian K. Smith, trans. The Laws of Manu. London: Penguin, 1991.
9. Frier, Bruce W. The Rise of the Roman Jurists. Princeton: Princeton University Press, 1985.
10. Frier, Bruce W. A Casebook on the Roman Law of Delict. Atlanta: Scholars Press, 1989.
11. Jolowicz, H.F., and Barry Nicholas. Historical Introduction to Roman Law. 3rd ed. Cambridge: Cambridge University Press, 1972.
12. Lingat, Robert. The Classical Law of India. Translated by J. Duncan M. Derrett. Berkeley: University of California Press, 1973.
13. Menski, Werner. Hindu Law: Beyond Tradition and Modernity. Oxford: Oxford University Press, 2003.
14. Nicholas, Barry. An Introduction to Roman Law. Oxford: Clarendon Press, 1962.
15. Rocher, Ludo. Studies in Hindu Law and Dharmaśāstra. Edited by Donald R. Davis Jr. London: Anthem Press, 2012.
16. Schiavone, Aldo. The Invention of Law in the West. Translated by Jeremy Carden and Antony Shugaar. Cambridge, MA: Harvard University Press, 2012.
17. Watson, Alan. The Spirit of Roman Law. Athens, GA: University of Georgia Press, 1995.
18. Olivelle, Patrick. "Dharma" in the Hindu Tradition. In Hinduism and Law: An Introduction, edited by Timothy Lubin, Donald R. Davis Jr., and Jayanth K. Krishnan, 23–33. Cambridge: Cambridge University Press, 2010.
19. Ambedkar, B.R. The Annihilation of Caste. 1936. Reprint, New Delhi: Navayana, 2014.
20. "Criminal Justice Tenets in Manusmriti: A Critical Appraisal." In Routledge Handbook of Indian Legal History, edited by anonymized, 2020.