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Sanskrit Law: Excavating Vedic Legal Pluralism*

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Abstract In light of currently developing and purportedly postmodern global comparative legal analysis (see e.g. Glenn, 2006; Menski, 2006) and recent theoretical writing about the ubiquitous phenomenon of law (Melissaris, 2009), this paper critically re-examines our somewhat self-congratulatory assumptions of the advances of postcolonial and postmodern legal scholarship and demonstrates that legal pluralism is actually nothing new at all.¹ Ancient Sanskrit sources, which can be excavated because somewhat miraculously we still have some of the relevant texts with their many variant readings, indicate that legal pluralism has existed for thousands of years as a basic fact of human life. Thus legal pluralism is not appropriately seen and discussed today as a contested postmodern phenomenon. Rather it seems to be true, as Griffiths (1986: 4) declared with some conviction, that legal pluralism is simply a fact. If this is correct, as seems confirmed even by ancient textual evidence, we have been ignoring this ancient truth at our peril and have simply been engaged in re-inventing wheels also in legal pluralism studies, an admittedly exciting but increasingly tired and overworked seam of academic knowledge about law.

I myself assumed uncritically for many years that ancient Sanskrit had no proper word for 'law', accepting others' positivistic and orientalisising assertions, without conducting research of my own. Once I began to research the grammar of Sanskrit law in the light of legal pluralism theory, however, it became rapidly apparent that early Sanskrit did in fact develop and begin to distinguish an increasingly large number of terms for 'law', though notably not for state law. The admittedly difficult language of early Sanskrit reflects a richly patterned and fluidly evolving understanding of legal pluralism within ancient Indic societies and cultures, showing that various interlinked legal phenomena existed and were thought about thousands of years before our time. Since the purported absence of a single

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key word for 'law' in Sanskrit has given rise to rather misguided assumptions among scholars of Indology as well as lawyers that ancient Indians were somehow deficient in legal theorising and/or lacked a clear conceptualisation of 'law', the entire field of knowledge now needs to be re-examined, with some urgency, to excavate the rich plurality of nuanced meanings of what in English we might label as various types and conceptualisations of 'law'.

This article demonstrates that the various Sanskrit terms that were known and used match to a surprising extent the well-known major manifestations of law that have been globally discussed, namely different forms of natural law, socio-legal norms and state-made positivist laws (Menski, 2006), even globalisation in a macrocosmic sense. Establishing a rough taxonomy of these legal terminologies in Sanskrit, the paper examines in particular to what extent ancient Hindu law could be seen as a natural law system, focused on the key concepts of *rita* and *satya*. In addition, *dharma*, *danda*, *vyavahāra*, *ācāra* and its various forms and other terms relevant to a deeper understanding of the richness of ancient India's conceptualisations of 'law' are briefly examined. The conclusion from this exercise has to be that ancient Indians were much more plurality-conscious and legally aware than we have imagined so far, while retaining the somewhat idealistic presumption that self-controlled ordering and informal settlement of any issues would be preferable to more highly formalised methods. In that respect, too, ancient South Asian cultures and normative systems seem to share much with other non-Western legal orders. The absence of state-centricity, in particular, remains deeply relevant for understanding the messy functioning of Indian laws today.

Introduction

The ancient Indians were apparently much more plurality-conscious when it comes to understanding 'law' than Indologists and lawyers have given them credit for. It seems that Sanskrit scholars today are facing severe problems in the arduous task of excavating Vedic culture and laws because the preconceived notions and predilections of our present times are constantly interfering in the task of objective, rational analysis of ancient forms of law. We find it difficult to locate the lenses through which Vedic people perceived the world but significant fragments of the early texts have survived into our days and are available in print. Whether we properly understand their meanings and implications is an entirely different matter. We have no anthropological records, no fieldwork notes, only somewhat mythical and hence largely 'religious' textual representations of assumptions that inspired some people at that early time to produce an originally oral literature, now in front of us as chains of printed words that we struggle to decipher.

Unlike us today, Vedic people themselves probably 'knew' what they were doing when they were manipulating those texts, often by merely changing a single letter or sound to achieve dramatically changed outcomes.² This was a time of significant changes from Vedic models of early Hinduism (if indeed one can call it that) to later *dharma*-centric manifestations. These people were certainly not animal-like primitive creatures; indeed many of them must have been highly intelligent and sophisticated individuals, able to manipulate the nuances of their amazingly complex language through mental gymnastics, often on-the-spot interventions of an allegedly magic nature. Evidently, some of these early emitters

of messages were not only brilliant linguists but highly skilled legal pluralists and skilled cultural navigators, as we might call them today (Ballard, 2007 [1994]). But these people experienced legal pluralism rather differently than we do today. There was no pressure at that early time to push for or submit to one global ‘soft’ law for all people made by some international convention. States were still embryonic, and the main focus was on religion, ethics and above all on local societal norms and changing processes within wider patterns of connecting humans and the universe. In other words, these early texts were created and manipulated within constantly evolving and hence fluid and contested ritual structures, which were clearly not just religious.

Then as now, humans as individuals had to make sense of the various manifestations all around them of what today we call interdisciplinarity and pluralism. Individual perceptions and, as we shall see, individual conscience and consciousness, became critical epistemological tools. Culture, power, economics, law, everything was recognised as being interlinked, as the early concept of *karma* so clearly indicates (Tull, 1989). As Olivelle (2006a) and others indicate in ongoing painstaking text-based research, it seems that Vedic Indians and those who followed them practised early forms of ‘living law’ (Ehrlich, 1936) in which border crossing between different religious and secular aspects was constantly necessary, recognising the ubiquitous presence of both, as well as their internal pluralities.

Some academic shadow boxing continues to occur over the ‘theological rhetoric’ (Olivelle, 2006a: 184) of the nature and extent of dependency of ancient Indic legal concepts on Vedic religious models. This struggle occurs among today’s scholars, who clearly also have their own agenda. The polycentric tree of Hinduism (Lipner, 1994: xv) has many parts that remain puzzling, but the whole tree clearly exists and has more ancient roots than any excavation work can cope with. Common people, in Vedic times as well as today, would know very well what their own Hinduism is like, but will have remained mostly uneducated about the roots of Hindu law that one can trace in Sanskrit texts. In desperate efforts to make sense of an allegedly glorious and certainly idealised past, encapsulated now in that dirty and polluting word *hindutva* (‘Hinduness’), reflecting efforts to make sense of one’s own roots in today’s often highly nationalistic contexts, many Indians and their more or less scholarly and highly politicised spokespersons simply like to believe today in certain myths. That is of course much easier than textual excavation work. Hence many Hindus today assume that their law just fell from heaven one day into the lap of humanity, basically that this ‘law’ came from one big God at some point, as happened to other fortunate and/or chosen people, one believes. This early law was then remembered by some special holy men with long hair and funny clothes, often now depicted in films and other media in various shades of orange colours. Such simple and convenient images serve to reflect the broadly familiar transition from somewhat divinely revealed knowledge or Truth (*śruti*) to humanly remembered knowledge or truth (*smṛiti*). The main trouble (or beauty, depending on the reader’s position) remains, however, that this entire process of genesis and reconstruction must be characterised as marked by deep

internal pluralities. For Hindus as a whole there is neither one God in whom everyone has to believe nor one special human that received this Truth and passed it on to others. In typical positivist lemming mentality, however, partly induced by colonial interventions, it is taught – most prominently by today’s telegurus and many others - that such ancient rules and their interpretations by special people (who tend to be men, of course) just need to be followed now by Hindu believers. Most Hindus are thus denying themselves the agency to think for themselves and to be creative makers of rules for their own lives. Mental dependency on *gurus* has become a common form of Hindu positivist infection and is globally manifested all over the globe. *Dharma* has become a symbol of obedience rather than a key to dynamic self-definition and creative self-realisation. Brahmins still claim to be in charge of everything. Positivised crowds of Indians and many foreign scholars let them get away with such assertions. Among the latter, of course, those who argue against ‘tradition’ or ‘religion’ of any form find such images rather useful to simply uphold the dodgy construction of ancient threatening monsters with tentacles that reach deep into present times.

The real story (which of course we will never be able to excavate) is certainly not so simple and gives in my assessment much more power to Hindu individuals than *gurus* and other power brokers wish to admit and acknowledge. Not only is religion a huge business, clearly since Vedic times. Later wishful Hindu thoughts about early Golden Ages, about legal genesis and progression (or rather deterioration, as we shall see) are equally clearly influenced and polluted by religious politics and engineering, ultimately now strengthening the monotheistic trends of our times, fearful that ‘others’ around the roughly 800 million or so ‘Hindus’ in the world today may have a better system and might take over, whether through love-induced conversions, missionary activities, or *jihad* and the sword. There are indications that this kind of competitive scenario, involving fear of ‘the other’ and feelings of superiority on the part of a dominant group or elite under challenge, was a key issue even in Vedic times. Chattopadhyaya (2007: 146) notes:

The earliest expression of an idea of irreconcilable hostility is articulated in the hymns of the *Rgveda*, the earliest available Vedic text, placing the despicable *dasyu* and the *dasa* (non-Aryans) against *arya*, the representative of the respectable society.

What, however, is a ‘respectable society’ if there are many competing belief structures and value systems in the world, then as now? The above vision of an early form of ‘war on terror’ was further complicated by the emerging presence of Buddhists, Jainas and others who challenged the very basics of the Vedic worldviews and of related expectations about how humans should lead their lives. Vedic Hindus must have been deeply upset when people came along to challenge their worldview as bogus and, as Marx would later say, ‘opium for the masses’, well before there was concern with such masses, because Vedic religious structures seem to be based primarily on a tiny literate elite as ritual actors. Vedic notions of

dharma, right action, were focused on correct ritual action by those few who could handle such complex tasks. The massification of *dharma* occurred later, and it reflects changing meanings and implications, as we shall see. Reading Olivelle (2006a) together with a new study on India's 'composite culture' (Chattopadhyaya, 2007) was thus an eye-opener about the stresses caused, today as in Vedic times, by the presence of 'others' and the challenges posed by the ubiquitous phenomenon (Melissaris, 2009) of legal pluralism.

Well before the postmodern age, then, as I always suspected but never properly explained and spelled out, ancient Indians did not need the troubling experiences of modernity to come up with what we today, self-flattering and proud of our own sophistication, tend to see as 'post-modern' thoughts about different perspectives of our 'gaze' (oh what a fashionable word this, in turn, has become!), fragmentations of existence, the limits of law, let alone the limited reach of the state and its often aggressively expressed methods of governance. It is becoming clearer now that Vedic people's scepticism towards the possibilities of avoiding chaos and ultimate destruction, their apprehensions about the scope for dignified survival, must have been rather different in detail from those we face today. However, certain structural elements can be recognised and compared. Vedic scepticism and pluralism are certainly not the same as postmodern pluralities and conflicts in terms of substance. But in principle, the exposure to legal pluralism itself and the conflicts that this phenomenon inevitably imposes on human existence were manifestly already part of the Vedic experience of life.

The main emphasis of the present article is therefore to show that this conflict-ridden plurality is quite clearly reflected in ancient Sanskrit terminology, our main evidence from those early days. We may have changed the culture-specific language used and the terminology applied to grapple with the challenges of legal pluralism, but many of the still confused and confusing pluralist tensions and problems that humans suffer today as legal beings were already 'big issues' in Vedic times. Can we, however, excavate such legal histories today without being accused of engaging in fiction and mythmaking?

What do we know, and what do we need to know in the light of pluralist analysis?

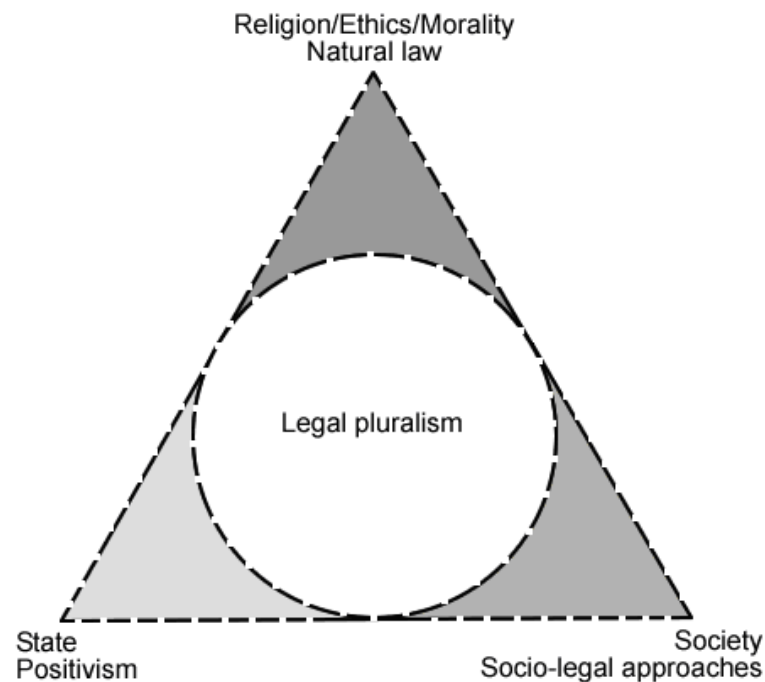
Without wishing to slip into a Maine-type evolutionary model (Maine, 1861), I suggested so far in my writing on Hindu law that, starting from a macrocosmic natural law focus, encompassed in *rita/satya*, there has over a vast time span been enormous dynamism, involving a gradual shift of emphasis towards the socio-legal and more individualised, microcosmic concept of *dharma* with its many specialised sub-categories within Hindu law as a conceptual entity (Menski, 2003). I do not see that this trajectory of Hindu law is significantly different in principle from the complex jurisprudential images constructed for general jurisprudence (see Freeman, 2001). The focus on *dharma* (basically the duty to do the right thing at

any point of one's life) as a key concept is widely accepted by text-based scholars and other commentators on Hindu law, though Davis (2004: 12) has rightly suggested that the boundaries of Hindu law can perhaps be determined more exactly by examining another key term:

Ācāra, localized standards of law sometimes called customary law, is dharma in practice, continually recreated manifestations of dharma in particular local contexts. *Ācāras* may conflict with each other and still be dharma in their respective contexts.

Dharma is thus the central normative element and *ācāra* can be seen as its praxiological manifestation. The above quote beautifully encapsulates the inbuilt dynamism of Hindu law as a living entity, and represents well what my most recent cohort of students has learnt to understand and perhaps even enjoy as 'pop', law as 'a plurality of pluralities'. This even more intense representation of dynamic pluralism than found in Menski (2006: 612) in triangular form now appears as a kite structure, in which globalisation, international norms and human rights concerns constitute a fourth plurality of pluralities (Menski, 2009).

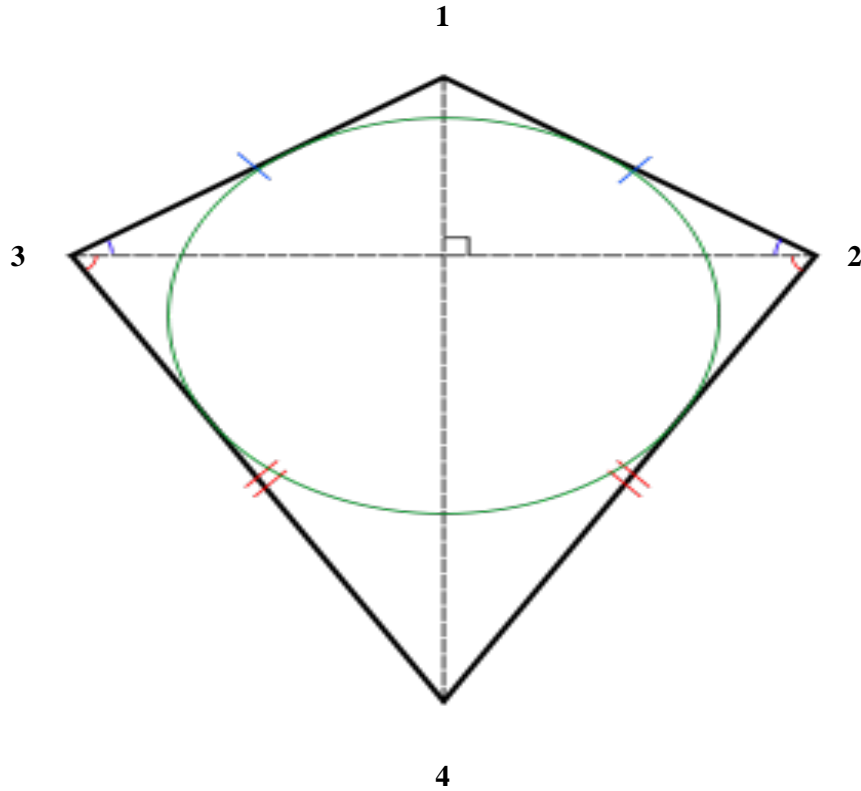
The two models require some brief explanations for a wider readership here. The triangle, taken in modified form Menski (2006: 612) where law as societal norms was basically designated as corner 1, state law as corner 2 and religion/ethics/natural law as corner 3, seeks to express the interconnected nature of all law, with legal pluralism at the centre of the structure, composed of overlapping elements of law in various conjunctions with each other. This model was gradually devised while I relied mainly on Chiba (1986) and was not yet ready to add international law into this model (see Menski, 2006: 3-24):

Figure 1. Triangle

Source: Taken in modified form Menski (2006: 612)

The more recent kite model below is so far only published in a Japanese journal that is difficult to access (Menski, 2009) but makes an appearance also in essays currently published in Italy, India and Bangladesh. The fourth corner represents now international law and human rights as a further internally plural element. It is important to note that the numbering of the earlier three corners has now been changed, so that natural law in the form of religion/ethics represents corner 1, social norms form corner 2 and positive law is now located in corner 3, with corner 4 given to international norms or, indeed, new natural law. This, it appears to me presently, reflects better the broadly historical sequence in which these types of law have tended to enter into the fray. At the same time, these various elements of law are highly interactive, internally plural and always reactive, so the existing image with its somewhat more rigid lines seems a little misleading; there ought to be broken lines everywhere here, too, and we are working on new computer-based graphics to express this ‘pop’ structure more adequately. But this is what is found presently in Menski (2009: 35):

Figure 2. Kite Model



Source: Menski (2009)

To return to the ancient Sanskrit texts, only slightly later than in the earliest layers, and thus together with *dharma* and *ācāra*, we find important further legal concepts like *danda*, *vyavahāra* and *nyāya*, which might all be taken to indicate more explicit state involvement (*Verstaatlichung*) in legal management and would thus be placed close to corner 3 of the kite model above. However, as I have explained in detail elsewhere (Menski, 2003; 2007) the real picture will have been closer to continued reservations about state involvement, hence continuing pulls towards *Entstaatlichung*. This means that these somewhat later Sanskrit concepts signify various internally pluralised hybrid entities rather than stagnant indications of more or less complete state control. This means and implies first of all that much more reliance was in Hindu legal history directed towards what I have called ‘assisted self-controlled ordering’ (Menski, 2003: 107). Since ancient Hindu law never seemed to accept the more or less total dominance of the state, as modernity-infected legal scholars and Indologists often tend to do, positivistic readings and interpretations of the ancient grammar of Sanskrit law are in my view quite misguided. They are polluted by the ongoing global fetishisation of legal

positivism and are infected by various forms of authoritarian control mania. Ancient Hindu law, however, relied really more on self-controlled ordering (Menski, 2003) and cannot be understood properly without taking that rather informal and hence elusive trope seriously. Excavating such informal legal structures, which extend to mental processes, clearly poses additional challenges to legal scholarship.

In ancient India, then, the major boundary in dealing with ‘living law’ is not, as the creator of this concept (Ehrlich, 1936) observed in his own time and with reference to some remote corner of the Habsburg empire, the dynamic interaction of state law and local social norms, but primarily management of the combination of various forms and aspects of natural laws (perhaps largely religious) and social norms (probably in large part secular). This includes, as Olivelle (2006a) so rightly stresses, and many writers would endorse, local and family customs, which are another ‘pop’ structure. The primary interaction of living law in ancient India occurs then somewhere between points 3 and 1 in the triangle of law (Menski, 2006: 612) or rather between points 1 and 2 in the kite model above, which does make more sense in view of the conceptual evidence. Given such inherently dynamic hybridisations of law, there were clearly culture-specific kinds of deeply plural legal scenarios in existence thousands of years before our time. Of course we can only ‘see’ this if we apply pluralist methodologies of analysis. Whether these kinds of laws are then ‘religious’ or ‘secular’ is a different question, considered further below, and remains of course a matter of deeply subjective assessment.

So much seemed reasonably certain also earlier, namely that no prominent word for secular, rational ‘state law’ developed in early Sanskrit. The term commonly used in Hindu law, much later of course, is the Arabic/Urdu term *qānūn*. There is of course a huge time gap between Vedic times and the emergence of the threatening Turuskas (Turks) in the eleventh century (Chattopadhyaya, 2007: 150). Yet there will never have been a legal void in between. So what exactly is or was the nature of early Indic law as expressed in Sanskrit terminology? Pre-empting charges that this is merely another form of ‘Menski’s law’, I argue prophylactically, first of all, that surely law was not entirely absent, since no society is without law (Moore, 1978). We must also note, however, that important eurocentric legal scholars sought to argue that ‘primitive communities’ simply have no proper law. A few years ago I shocked the incoming cohort of law students at the National Law School in Bangalore and their teachers when I proved that we can still blame none other than Hart (1961: 89; 1994: 91) for such rather obvious forms of myopia. It is there in clear print, no need for excavation. One just has to carefully re-read this almost canonical text and the misguided message jumps at the reader like a gremlin.

If we can now perhaps take it as an axiom that no human society is without some form of law, however informal, our contemporary tendency to speak of ‘lawless’ people and places is also highly questionable. This now relates more to discussions of ‘law and morality’ and the key issue of conflicting values. All we are saying in such loose language of ‘lawlessness’ is that we do not agree with

what those ‘others’ are doing in the name of law. This often constitutes simply a reflection of our own biases, but this language use also hides neo-imperialistic efforts to impose ‘our’ eurocentric values on ‘others’ in the name of global discourses. Current wars on terror and constant attempts to dictate to others how they should live their lives, mixed with much (even if partly justified) indignity and approbation of how certain people choose to live and conduct themselves produce such deeply questionable terminologies. Not much change from colonial times, really, though 9/11 and 7/7 clearly played a role here, too, and increased the heat of conflict. Ongoing struggles of this kind today cloud our intellectual capacity to engage in plurality-conscious global legal theory, which could of course never be value-free and thus itself creates tensions. A bad law in the eyes of some of us is still a law, and it might actually be the right law from the perception of those who disagree with us. So we fight over everything, gender, women, polygamy, dress codes, to name but a few flashpoints. This is not to say, of course, that total aberrations do not exist and are not possible. This, too, the ancient Indians knew very well, otherwise we would not have the massive epic dramas of the Mahābhārata, which are elaborate illustrations of ferocious battles over good and evil. As a grandchild of Nazi Germany, I need not say more about this kind of issue here. Together with much British evidence of systematic discrimination, unearthed every year in our courses on Ethnic Minorities and the Law (and of course all around us), this may well be one major reason why my own research reflects and stresses the vast scope for self-controlled ordering and the techniques of legal reconstruction and ‘inner migration’, another psychological phenomenon which state-centric lawyers conveniently choose to ignore. Awareness of such worrying aberrations in the name of the law induces deep suspicions about blind belief in *Verstaatlichung* or international normative monism. None of the four corners of the kite on its own, this confirms, can be trusted to produce Stammmler’s ‘richtiges Recht’ (Menski, 2006: 133-4). It appears that the ancient Indians knew such basic truths while they searched for an appropriate terminology in Sanskrit.

The above passage demonstrates that such excursions into current politics of law and scholarship remain highly relevant for handling the challenges of excavating Sanskrit law and Vedic pluralism. They impact on our vision and shape our tools for excavation. So if we wish to tackle the task of excavating ancient Indic laws today, what exactly do we need to know about the nature of early law as expressed in Sanskrit terminology? First of all, as we saw, such law is clearly not state law, nothing unusual for comparative lawyers. But if law was not ever absent, there can simply not have been a kind of legal void, as positivistic scholars like Lingat (1973) seemed to imagine and Sir Henry Maine’s (1861) historical approach also seems to stipulate. These types of outdated scholarship, based on civilisationally evolutionist thinking, are now in need of serious revision, since we recognise with increasing clarity that law is (and hence was always) ubiquitous, as the latest study on legal pluralism (Melissaris, 2009) so elaborately posits, without really telling us anything new.

Finding messy pluralism as a fact of human life, in ancient times as well as now, is therefore not just a professional hazard for legal pluralists, those who can see how pluralities of law work themselves out in all human lives at all times. It critically affects all lawyers, and it critically impacts on the work of area studies specialists who inevitably have to work across time and space. Moreover it is also simply part of the challenge of human life itself, of gradually growing up as a thinking human being, becoming aware of the various diversities around us and our own - mostly rather limited - role in making a difference.

Early law tends to be seen as something religious. Indeed the basic concept of natural law in its eurocentric manifestations suggests this, reflected in the work of major early scholars like St. Thomas Aquinas (1226-74). He was first of all a Christian natural lawyer, not consciously a global theorist or a legal pluralist. But his model of various types of natural law clearly goes beyond the realm of religion and connects the corners of whatever pluralist structure of law we may envisage today. As indicated, assessing whether a whole complex system of rules and processes can be seen as something 'religious' rather than 'legal' and/or 'secular', is a difficult challenge. If globally there are so many competing religious claims, in efforts to remain realistic and plurality-conscious, one tends to become agnostic as a global pluralist.

Reporting here about recent findings among legal theorists regarding the relationship of law and religion, I relate this to ongoing, fascinating indological analysis of the third generation, an endeavour 'formed by an attitude ready to learn and to be crossfertilized' (Panikkar, 1985: xii). Both sets of scholarship are still constantly thrown back to the arduous global key issue of what we actually mean by 'law' and also now, quite pointedly, to what scholars, including Indologists, may mean at global level by 'religion'. It is surely not sufficient to simply assume that everything written in Sanskrit or the whole body of Hindu knowledge or law expressed in Sanskrit is just 'religious' (Menski, 2002: 108).³

To achieve greater clarity, it is necessary here to explore in more depth the extent of the religious nature of early Hindu legal pluralism and our understanding of it. My published work (Menski, 2001, 2003; 2006) suggests throughout that, for early Hindu law as much as in modern Hindu family law and even in India's constitutional law regulation today, the internalised expectation of self-controlled ordering among Hindus and today's Indian citizens generally is a central ingredient of the phenomena we call 'law'. Whether this is a matter of religion or more of secular characteristics is actually not an either/or issue; there will always be elements of 'religion' and of 'secular' law in this pluralist bundle of interlinkages. In our new 'pop' paradigm at SOAS, both 'religious' and 'secular' elements are always part of this internally plural structure of law. It may be in different mixes or percentages, but none of the two is ever entirely absent, though we may see many efforts to deny this.

This intrinsically interconnected vision is of course radically different from the approaches taken by supposedly rational state-centric positivism, such as French laïcism on the extreme side of the secular spectrum. This model is supposed to

have been received in Turkish law, for example, and many other places, but significantly not properly in India, which has its own (albeit of course contested) definition of ‘secularism’ as ‘equidistance of the state from all religions (Larson, 2001). Globally, post-Enlightenment scholarship has somehow come to believe that law and religion can be divided, that politics and law can be segregated and put into separate boxes. While secularism itself is manifestly also an ancient concept, it appears more prominently only in its post-Enlightenment, disconnected form as a separate entity, technically a matter of non-establishment in the management of State-Church relations. Such separate and segregated secularism appears to be mainly a later phenomenon in human history. For a long time it was linked to religious, also explicitly Christian, concepts, and thus was never value-neutral (see earlier the *lex humana* of St. Thomas Aquinas). If in the West today we still assume and virtually insist that some things can just be ‘value-free’ and ‘rational’, most often purportedly ‘secular’, we seem to be committing huge errors of judgment, therefore. No form of law seems ever value-neutral. Secularism, like atheism, is then just another form of ‘religion’, a ‘pop’ phenomenon like law and another academic conundrum that will keep us busy forever.

The Vedic expectation of dynamic alertness on the part of those ‘who know’, thus stereotypically essentially the Brahmins (and those that managed to act or think like them) in every moment of their existence, was supposed to stimulate and influence various patterns of ritual activity and socio-legal behaviour. It is surely a religious phenomenon, but at the very same time it is also practical and secular; both these aspects are interconnected and both have legal implications. The Vedic ‘pop’ culture thus constantly jumps out of the analyst’s box, confounds restrictive analysis and would deeply irritate positivist efforts to rein it in. As we shall see below, this elusive evasion and dynamic boundary crossing occurs primarily in Vedic law because *rita* and *satya* co-exist from the start as two interconnected forms of Truth. This linguistically marked internal plurality of the most basic point of the entire structure then also impacts critically on how we deal with law and legal analysis in all other later respects. Thus, for example, methods of informal dispute settlement, encapsulated eventually in the technical term *vyavahāra*, comprise any form of removal of doubt about *dharma* (Menski, 2007). Any form, that means, from a mental process in one’s mind to a formal court hearing and probably even armed warfare. Because this broad and internally plural term was generally but misleadingly translated as ‘dispute settlement’, even more narrowly as ‘judicial proceedings’ (Lariviere, 1989), we have simply become blindfolded by our own proclaimed expertise and have miserably failed to understand Vedic ‘pop’ culture.

Discussing this particular later Hindu concept of ‘removal of doubt’ opened it up for pluralist analysis (see Menski, 2007). In light of that particular examination, the primarily internalised expectation of self-controlled ordering appears now even more like a fitting internally plural corollary to the central Hindu concept of interlinkedness. It is one of the elements of the dynamising motor that moves the typically slow engine of the Hindu train through history. If others can speak of

‘Hindu economics’ and the related phenomenon of a slow Hindu growth rate, legal scholars should be at ease with the vision that Hindu dispute settlement is an extremely subtle phenomenon subject to many imponderables, clearly another plurality of pluralities.

If this analytical approach is correct, this means that none of the legal entities examined here in Sanskrit law could ever be presumed to have existed in ‘pure’ form or in isolation. Moreover, and this is an absolutely crucial point to stress, no element or entity could ever prevail *to the exclusion* of all other phenomena or considerations. This was already alluded to above. Everything is found on that triangle or kite, or we might imagine a train through history; everything is invisibly and visibly linked. Or we could think of an ancient serpent that changes its skin every so often but lives on. Everything discussed here contributes to the various dynamisms involved in the process of excavating Sanskrit law and its pluralisms.

Whatever image one uses, in the pluralist field called ‘law’, also in Vedic times, there was then never just one element or ‘entity’, as I called it to express the fuzzy boundary of what may be seen as ‘law’ (Menski, 2006: 184). Notably, the term ‘entity’ is actually used quite a lot in writing on law, confirming that it is a convenient *passe-partout*. If law anywhere was and is always a multi-dimensional phenomenon, never just one thing or concept on its own and operating in isolation, analysts need to work extra hard to understand the resulting complex processes of how people in their respective own times, places and cultural contexts managed the internally plural relationship of those entities. That does not prevent us from thinking of what Allott (1980: 2) identified as LAW as a global phenomenon, *Law* as a particular legal system, or ‘law’ as a label for a single rule, especially if we use the English language with its multi-faceted register of meanings for this little word. Again, all these concepts co-exist as ‘pop’ phenomena; any one does not exclude or supersede the other.

What appears to have happened within the complex field of Hindu law, then, over time, is that the searchlight of analysis and the focus of concern have gradually shifted from one legally relevant concept to another, never making the other concepts and sub-categories of this complex system non-existent or totally irrelevant. Our dynamic gaze has just changed the focus. Thus today, most Hindus will not even know any longer what the ancient Vedic concept of invisible Truth as *rita* means, and how it can be distinguished from the visible Truth identified by the term *satya*. The former term has simply become embedded in the plurality encompassed by the better known key term of *dharma*. Hindus will, however, instantly recognise the implications of such deeper ‘pop’ structures within Hindu law, provided scholars explain this to them in language that they can follow. As elsewhere, meaningful communication across time, space and cultures is only possible if we chose languages and media that can be understood by others.

Sanskrit, as we know, is not one of the easiest languages nor is it mainly a spoken language. The language of law that needs to be excavated from the ancient Sanskrit texts, given that they are not legal documents, is so evidently full of intricacies that we still struggle today over basic concepts. An additional challenge

is to translate such complex plural meanings and messages into easily communicable sound bites that a global community of legally focused theoretical scholarship can then build into structures of comparative legal theory. I argue that ancient Sanskrit legal concepts can contribute much to such global legal scholarship by being confident and candid about their own internal plurality, instead of trying to fit into purportedly uniform global models. The resulting ‘pop’ images are amazingly colourful and meaningful, grounding and confirming the well-known basic principle that law remains everywhere a culture-specific part of human life in all its various aspects (Menski, 2006). It also confirms, as Olivelle (2006a) so convincingly shows, that the role of custom in law generally, and in Hindu law in particular, is much larger than lawyers, judges, and the various types of religious leaders around the world (not only *hindutva-walas*) wish to acknowledge.

By ‘law’, however, at least in English parlance today, one seems to mean first of all ‘state law’. Evidently, that instant mental association remains problematic. Such dominant presumptions of our positivism-centric days have clearly impacted on the methods and strategies which Sanskrit scholars in the past and also now are employing in their analysis of ancient texts. As a result, a rather too brief focus of the searchlight on early Sanskrit sources will yield no findings about ‘law’, simply because positive law was then not a prominent phenomenon. But it was not absent, for example one of the earliest functions of a ‘good’ Indic ruler would have been to sponsor the huge Vedic sacrifices and thus to contribute to the maintenance of global Order. If state law does not play a directly visible prominent role in early Sanskrit law, this means that as analysts we have to be super-conscious of what else there may have been. To reiterate, the ancient Hindu cultural space was simply not a lawless arena. Potential positivist pollutions by our own current thinking need to be constantly identified to re-adjust and sharpen our lenses for the possibly rather fuzzy boundaries and resulting plural interpretations of relevant ancient Sanskrit terms.

The main purpose of this particular article remains therefore a fresh attempt to explore and explain the various key terms used in early Sanskrit to identify certain aspects of law as a foundation for further discussions about their theoretical and practical relevance and connectivity, aware of disruptions of our thoughts particularly by positivistic concepts and the difficult current debates about the boundaries of religion/secularism. Accepting that in earlier times religion played a large part in law, as indicated above, does not automatically create or endorse claims that everything was governed by religion. Let us also be clear about that from the start.

The article originally planned to move from key concepts of the Vedic period to a focus on *dharma* as self-controlled ordering in the highly idealised Golden Age and/or ‘classical period’ of Hindu law. It then sought to examine the various concepts brought in to support self-controlled ordering in less ideal and less perfect later circumstances, aware that all the time various notions of chaos are opposed to the ideal concepts of Order/order that can be identified. As I researched relevant

material and began to write this article, it soon became obvious that there is so much to say about legal pluralism in Vedic Sanskrit law itself that the later sections are going to have to be very short indeed.

The Vedic core: Focus on *śruti*, *rita*, *satya* and early *dharma*

Law and Nature: How - and whether - to identify the conceptual core

In the preface to my current main study of Hindu law (Menski, 2003: xvi), I indicated that '[t]here may be something like an essential conceptual core, but in the case of Hindu law, even that core has remained so flexible, diffuse and internally diverse that we do well to think and speak of 'unity in diversity' rather than imagining a fixed, unified Hindu system'. Today, then, we speak about 'pop'. Such pluralising elements seem to have been ignored by other writers on Hindu law or are treated as confusing history with theology (Olivelle, 2006a: 172). Here I place legal pluralism as manifest within early Sanskrit law firmly onto the table of analysis and re-examine it in more depth. Sanskritists have been tempted, as I noted earlier, 'to pick out certain aspects of rules as placative evidence of what Hindu law was or is, ignoring the multidimensional internal contests within it' (Menski, 2003: xvi).

I ran into this kind of trouble while preparing the various entries on Hindu law as one of the area editors for the recently published Oxford International Encyclopedia of Legal History (OIELH; see Katz 2009), specifically when Professor Stephanie Jamison (2009) insisted that Vedic law was not a form of natural law, and that this term had no place in her entry. The present article is partly a reaction to her strong objections and an effort to clarify the contested points. In the process, I found much more than I expected and am extremely grateful to my learned colleague for motivating me to dig deeper. This article would not be what it is without Jamison's initial protest about the role of religion and Nature in Vedic law.

As an indologist, I first took this concept on board after studying Miller (1985). Re-reading Miller's enlightening study and specifically the substantial Foreword by Raimundo Panikkar (1985: xi-xix), I note his explicit reference to Miller's explosion of old views like 'the naturalism of the Vedas' (Panikkar, 1985: xiii). I show further below that one cannot simply conflate such suspect orientalist 'naturalism' with lawyers' concept of 'natural law', which itself has many different meanings. That may explain the more recent explosions of scholarly disapproval, indicating lack of interdisciplinarity and preference for a particular worldview about 'religion', thereby causing tensions about understanding legal 'pop' structures in ancient India. But let us first turn to the key terminology in Sanskrit.

Śruti

The concept of *śruti* refers to a process of textual transmission and indicates also exalted status of the textual foundations of Vedic law. Since the word links to the root for ‘to hear’, it has indeed been tempting to imagine that Vedic literature is a form of revealed sacred scripture made by some all-powerful God, a text that one day just fell from heaven or was graciously given to humans much before computers were invented. These are polluting thoughts indeed. Proferes (2009) in his marvellous OIELH entry on ‘Śruti’ clearly identifies the various Vedic and later nuances of early Hindu perceptions of how *śruti* can be understood in relation to *rita* and the concept of ‘Truth’. This brings out quite clearly that early Hindus differed dramatically on whether the basic foundations were made by a God (*īśvara*), according to the Nyāya and Vaiśeṣika approaches and various later theistic schools, or whether it was simply a ‘cosmic imperative’ (Proferes, 2009: 344), eternal and *apaurusheya*, as according to the Pūrva Mīmāṃsā approach (on which see now Francavilla, 2006). The entry thus indicates and confirms that the very foundations of Hindu law are plural, forever invisible, and hence open to belief and speculation. For Hindus, there is never just any unchallenged ultimate truth claim of a monotheistic nature. We cannot really go further in excavation, it seems. That foundational plurality underpins and explains the entire internally pluralistic nature of later Hindu law and of Hinduism itself as a collection of entities rather than one fixed whole. We clearly know this, but should never forget this ‘pop’ element while dealing with any matter of Hindu law. Perhaps, however, the combination of the words ‘Hindu’ and ‘law’ automatically sets off restrictive perceptions in our minds, confirming that we lack plurality-consciousness and urgently need to open what one of my current students has called ‘our fish eyes’. So if scholars of Hinduism like Gavin Flood (2004: 35) discuss various conceptualisations of the Veda, we simply have to read, expressed in more fashionable language, ‘between the lines’:

The Veda is regarded by some Hindus as a timeless revelation which is not of human authorship..., is eternal, and contains all knowledge, while others regard it to be the revelation of God. It was received or ‘seen’ by the ancient seers...who communicated it to other men and was put together in its present form by the sage Vyāsa. Indeed, a popular definition of a Hindu is somebody who accepts the Veda as revelation. This idea is not without problems and exceptions, but indicates the undoubted importance of the Veda in Hindu self-perception and self-representation.

Despite the scholarly rider in the last sentence of this quote, it seems that the damage is done in our myopic minds, even if we are desperately seeking to avoid it. History and theology have been conflated; a theistically slanted mirror image of Hinduism has been produced in which the Veda, ‘put together’ by an ancient sage, appears like the basic rule book for all Hindus. The skeleton of another Hindu law-maker rattles in the cupboard. While I myself emphasised the historically unquestionable role of the Veda as a conceptual foundation for the later emergence

of Hindu law concepts (Menski, 2003: 78), I also warned, almost in the same breath, against facile assertions about the divine authority of the Vedas (Menski, 2003: 79) and Napoleonic visions of grandeur. Can one say more? Does one need to say more? Let us re-examine the closely related concept of *rita* first.

Over to rita

Whether theistic or non-theistic preferences are brought in and are thought to prevail (evidently, over time and space different types of Hindus thought about this in different ways) the concept of *rita* itself seems to mean first of all something quite essentially true and good. This ‘Order’, with a big ‘O’, in the macrocosmic sense, already strays in Vedic times into microcosmic dimensions. I think that cannot be denied. Jamison (2009: 150) refers to this term as ‘[t]he most charged Vedic word’ and quite properly treats it as very complex and much more than either ‘cosmic order’ or ‘truth’, namely:

the capturing, in words, of the true principles that undergird the functioning of the cosmos and therefore of human society. It is thus both a reflection of reality, standing for reality itself, and a product of human mental and verbal activity, conferring certain powers on the human with the insight to discern the hidden truth. This notion is reflected in the later Indian institution of *satyakriyā* (act of truth).

If this is not first of all an acknowledgement that Nature and Law may be seen and treated as interlinked entities, I shall probably have to get new lenses. Jamison (2009: 150) moves on rather swiftly to tell us that ‘[a]longside such grand conceptual schemata, Vedic texts also contain early hints of the elaborate systems of minute regulations of everyday life’, characteristic of later *dharma* texts. So in the few words allowed by an encyclopaedia entry, we find here a brief reflection of emerging Vedic legal pluralism, in which the cosmos and human society are clearly perceived as interlinked, while humans are beginning to devise methods to understand the world around them and to regulate relations with each other. Nothing new, but central concepts are flagged up. Considering the links between Man and Nature, also reflected in the ritual focus of the Vedic literature as a whole, it remains puzzling why Jamison refused insertion of the term ‘natural law’ into this entry to help comparative lawyers in understanding Vedic law.

As a comparative analyst, I see from the words used that natural law conceptualisations (‘the cosmos’, ‘hidden truth’) are quite central in this particular entry. So we seem to disagree simply on what to call this kind of law, not on whether the phenomenon itself exists or not. We have excavated it, but do not know how to call what we found. Are we just refusing to be cross-fertilised, as Panikkar (1985: xii) would say? It is absolutely clear and also implied by Jamison (2009) that already in Vedic times the searchlight is beginning to be focused on human efforts to live a ‘good life’ and to understand human existence more deeply. Surely, this would not occur in isolation from cosmic Truth. This invisibly

connected scenario reflects, again, St. Thomas Aquinas and his *lex humana* (see Menski, 2006: 143-4). Jamison's wonderful work on early Indian women 'between the lines' (Jamison, 2006) clearly shows that socio-legal concerns, including gender issues, were already in Vedic times popping up all over the place, like mushrooms. They did not pop up for feminist reasons, but manifestly because Nature has given women a very special place – men could not give birth, they could only contribute to it, and nobody knew how a new human was 'made'. Given that the comprehensive search for knowledge in all fields of life was clearly 'on', the emerging focus on some form of 'ultimate knowledge' as part of this development is becoming strongly evident in the Vedic texts. The exalted status given at first to 'those who know' – or claim to know, warns the cynic in me – is also quite clearly emerging from such texts. That is typical of all early human systems of thought, and it is wonderful for Sanskritists to have all those Sanskrit sources that confirm such epistemological processes so clearly. The orality-focused Africans' struggle to prove that they have been thinking humans, too, is much tougher in comparison. While Africans faced and still face denial of acceptance of their ancient philosophies and of their laws as 'law' (Menski, 2006, chapter 6), the special place given to a literate elite is also found in early Chinese cultures. Later it is replicated in early Islamic law, where the emerging effort (*ijtihad*) to understand God's words and their meaning after the Prophet's death in 632 AD eventually gave rise to an entirely new 'legal' system with many familiar elements and ingredients, another pop structure. Comparative law teaches us also that all humans are alike, searching for deeper meanings and excavating culture-specific truths to the best of their abilities.

Challenges to rita

For, as today, there are many limits to what humans can know – a lot of knowledge is simply based on assertion or make-belief. As indicated, in early India, any tempting focus on monotheism and on the Vedic key concepts themselves was constantly questioned by all those polluting 'others' that were around at the same time (Chattopadhyaya, 2007: 145-6). Vigorously queried, these contested matters were ultimately demasked as constructs and had to be left open to individual belief. Nobody had ultimate proof that their truth was the only one. If the Buddhists so clearly negated Vedic sacrifices (Chattopadhyaya, 2007: 147), they would also challenge early Hindu conceptualisations of *rita*, not just vaguely emerging concepts of Hindu *dharma*. If Olivelle (2006a), to some extent rightly, argues that Buddhists rather than Hindus should be credited with developing *dharma*, I suggest that in this pluralist cauldron, a giant *wok* of comparative jurisprudence, no one group could ultimately claim total credit for contributing to or developing any of these notions. They are hybrid notions, of hybrid issues, pluralist noodles in that early giant *wok*.⁴ All elements were influenced and flavoured by the other elements around them, and the respective terminologies are only slightly different through use of Sanskrit and different types of colloquial languages or Prakrits. Most evidently, Sanskrit *dharma* becomes *dhamma* in Prakrit, and so on.

Significantly, too, the Buddha did not set himself up as a messenger from God, nor as a god himself, simply as a role model or as an authenticable authority, as is clearly explained by Olivelle (2006a: 177). Jainism, too, is largely based on role models, guides across treacherous ground (*tīrthankaras*), most prominently Mahavira (Jain, 1991: 15). More than a few hundred years down the line, and in a slightly different part of the world, a certain other man called Mohammad (c. 570-632), was equally super-conscious not to slip into the tempting role of Napoleon-like law-maker and only claimed to be God's dutiful messenger (Menski, 2006: 285). Much later still, the Sikhs cultivate their monotheistic messages in various plurality-conscious ways, too. Evidently, in the various cultural contexts of Asia and Africa self-controlled ordering and karmic connections retain a prominent value. No Austinian law-maker's skeleton rattled in Vedic cupboards. Instead there were vigorous and clearly unsettling – and hence also intellectually stimulating and fierce – debates and contests over Truth and right belief and, increasingly, over right action.

In these early manifestations of struggles to identify what is the 'right law', we see reflections of an era of decay (*kaliyuga*) – which continues today – already during Vedic times. While this is normally treated as the later Hindu technical term for the age of confusion, the phenomenon itself is not just a post-classical element of Hindu law; this, too, already has Vedic roots. Unsurprisingly, Brahmins as the early leading searchers for truth and understanding would claim superior status within the emerging caste system and would set themselves up in 'business' in various ways, especially once the Vedic ritual system began to collapse. As skilled cultural and legal navigators, they had the tools needed to redefine and restructure the early foundations and to mould them according to their own specific needs. So we find new ritual practices, but also new ventures in agriculture and other lines of acquisition of wealth (*artha*), another key term which must never be read as totally delinked from its overarching *dharma* connection.

However, putting the spotlight on Brahmins we seem to gaze at religion and also perceive early forms of the Indian caste system. Today, we thus stumble into the irritating global thicket of how to handle difference and diversity at various levels, quickly losing sight of the internal processes of navigating truth claims within early Indic cultures. Since various strands of scholarship encounter serious ideological problems with such subjects as religion and caste, and various shutters come down in the process, the task of excavation becomes more difficult again in the resulting darkness of the mental laboratory. Sanskritists find themselves today almost collectively blacklisted, since discussing anything 'Hindu' appears offensive these days to many secular universalists; indeed, the term itself has become a kind of dirty word. Banned from relevant discourses unless they toe dominant politically correct lines (see Vasudevacharya, 2008), Sanskritists are sidelined specialists that struggle to claim a legitimate voice as interdisciplinary cultural experts. Some lawyers and judges write books on Hindu law that contain many good points, but are treated with deep suspicion (Jois, 2002). I tried this excavation work a few years ago (Menski, 2003), only to be pelted with abuse and

to be cold-shouldered by those who wear glasses that filter out anything ‘religious’ and ‘traditional’.

Reflections of this fierce ideological struggle are also found in law classrooms every single day of our working lives. This simmering conflict infects scholarship in Sanskrit, too, largely invisibly, like a virus in an immune system. As a result, we do not talk in sufficient depth about Vedic religion and law and even refuse to discuss the natural law foundations of Hindu law, as Jamison’s action so clearly showed. Instead energies are manipulatively channelled into currently fashionable topics, like gender and human rights, which actually offers the chance to develop really wonderful new interdisciplinary research of the kind that Jamison (2006) herself has produced, if only this was connected to current legal research about women’s rights (Kotiswaran, 2008). But this does not happen; there are significant mental blockages. At the end of the day, regrettably, energetic analysis *sans gaz* remains without fizz, deprived of the intellectual vitamins needed to face the strains of global tests of credibility (see Menski, 2010).

Amazingly, such current issues of global terror in scholarship, attempting to silence others, are a familiar pattern even in Vedic discourses. If we examine our texts closely enough, we realise that the ancient search for Truth reflected in them is still on today. Wars over words and their meaning thus continue, as though we learnt nothing for centuries. Excavation stirs up trouble; it may locate unexploded shells. The official view often is, therefore, that such scholarship is not desirable in today’s world; it rocks the boat of political correctness. In such dictatorial efforts to shut out ‘the other’, inadequate attention is given to producing deep analyses of different legal systems of the world, and especially of Asia and Africa, more so if we start only at much later periods of development. Of course, if the view is taken anyway that the entire world should work towards having one legal system, ancient forms of Indic and other truths lose all relevance in comparison to the fashionable axioms of Eurocentric human rights discourses. Jamison’s refusal to discuss Hindu natural law shows that such scholar-politicians desperately deny any legitimacy to arguments that ancient Hindus knew what we know about law. One must wonder whether such perceptions are more inspired by doggedly persistent beliefs in positivist dogma, the desperate desire to divide law and religion, or Western-led efforts (Jamison, too, being American) to dominate the world. Raising such questions enters inevitably into contemporary scholarly politics and distracts from the task of excavating other early forms of Sanskrit law.

Emerging socio-legal dimensions in Vedic law: *dharma*, *mitra* and *vrata*

To return to Vedic law, we note that in the remainder of her encyclopedia entry, Jamison (2009: 151) indicates that early legal regulation focused particularly on family law. I have no problems with that in principle, especially:

That all these passages concern laws relating to women suggests that the gradual codification of customs began with marriage and family law, marriage representing the most potent exchange relation found in early Vedic society.

My unpublished doctoral thesis (Menski, 1984) has much to say on the socio-cultural, ritual and legal reconstruction of marriage, from a time well before I morphed from a Sanskritist into a comparative lawyer. While the notion of a ‘gradual codification of customs’ in the above quote seems rather too legalistic, I agree with the amazingly strong text-based findings by Olivelle (2006a) that appreciating custom is already central to Vedic law, and certainly later in the era of *dharma*. While we certainly do not find state involvement as yet in such codification projects, the main risk here is, however, that text-based scholars lead us towards seeing the later *dharma* texts as more or less codified custom. But who was behind this codification, and why? I cannot emphasise enough that this remains a huge problem for understanding early Hindu law, discussed *ad nauseam* by reference to the skeletons of Manu and other purported ‘lawmakers’ (Menski, 2003). For, it is certain that early Indic states did not make marriage laws and other rules about people’s daily lives –this would have violated the basic principle that *dharma* is context-specific. In fact, even today Indian Hindu marriage law remains primarily a matter of customary ritual celebration, not state-centric bureaucratisation (Menski, 2001, chapter 1). But we continue to find new books on Hindu law with deeply misleading titles, indicating the emergence of early law codes (Olivelle, 2000) or even *The Laws of Manu* (Olivelle, 2006b). Apparently, this is happening simply because of the economics of publishing, since publishers find that such books sell better than ancient philosophy or analyses of legal pluralism. Remarkably, there is now a brand new study on *The spirit of Hindu law*, emphasising intriguingly that ‘law itself can be understood as a theology of daily life’ (Davis, 2010: i).

Staying in Vedic times just a little longer, we need to switch on the analytical searchlight again to re-examine the huge entry on *rita* in Monier-Williams (1976 [1899]: 223-4), which testifies to the importance of this early key term and provides all kinds of definitions for the noun that typically blur various disciplinary boundaries:

fixed or settled order, law, rule (esp. in religion); sacred or pious action or custom, divine law, faith, divine truth (these meanings are given by BRD,

and are generally more to be accepted than those and native authorities and marked L. below)...truth in general, righteousness, right...

Additional explanations like ‘right means of obtaining a livelihood’ (*id.*) and the many combinations of the word with various suffixes leave it entirely open to interpretation precisely what kind of ‘law’ the term *rita* refers to. Monier Williams was not a legal theorist, so the term ‘natural law’ is not listed under this entry, nor is ‘Nature’, but ‘truth’ and ‘order’ are clearly mentioned. The key issue then becomes whether such concepts are to be perceived as religious or secular entities. In this context, other terms may well be relevant, or may distract the analyst.

Mitra, vrata and rita: Religious or secular, or both?

Re-reading May (1985: 18-25) side by side with Jamison (2009), one sees many more references that link *rita* to natural order, but also to the Sanskrit terms *vrata* (‘commandment’, later ‘vow’, see further below) and *dharman*. Notably, there are more pluralities and there is much fluidity. Jamison (2009: 150) states:

Even using concepts that structure later periods of ancient India is problematic, for the terminology is entirely different (e.g. Vedic *dharman* “foundation” is not semantically equivalent to the classical term *dharma*) and the institutions that reflect or impose dharma in later India have not developed their classical form.

This awareness of plurality is highly relevant for further explorations of other terms for ‘law’ in early Sanskrit law. Apparently, only Rigveda 5.63.7 brings all the three key terms together (May, 1985: 18) and this text also indicates that Mitra and Varuna are the early powerful gods, perceived to rule over the whole world according to cosmic order (*ritena*) and to have established the sun. May (1985: 18) sees here ‘an all-embracing idea of action and order to co-ordinate the visible and invisible phenomena’. According to May (1985: 21), then, whose analysis relies on several earlier studies, the key image or conceptualisation is that out of an imagined universal Ur-Chaos, the transformation to an ordered cosmos took place, in a manner that humans can forever only speculate about. This interpretation takes us back to and matches the analysis by Proferes (2009), discussed above. Interestingly, neither analysis seeks to deny the presence of what comparative lawyers and jurists call ‘natural law’ and no explicit distinction is made between secular and religious spheres. An imperfectly ordered universe is a global reality – how to explain where it came from and what might make it ‘tick’ are different matters and challenges.

We then note that Jamison’s (2009: 150) entry on ‘Vedic law, 1500-800 B.C.E.’ states from the start that ‘[t]he preserved texts are entirely religious. Secular authority, distinct from the religious social structures evident in the Vedic texts, can only be studied indirectly’. Such explicit comments set up the textual foundations of Hindu law as exclusively religious, rather than legal, but a few lines

later they also recognise the social dimensions involved and leave it open whether these are religious or secular. In this model of analysis, then, any form of ‘law’ comes after ‘religion’ and is not *per se* religious, while religion is quite closely and somewhat less hesitantly linked with society, presumably to form early Vedic culture. It is obvious that in such a frame of reference, the concept of natural law, to the extent that it suggests some religious input, irritates and confuses the text-focused non-lawyer indologist who seems to reserve the category of ‘natural law’ only for early European legal systems and more specifically for pre-Christian law as found in Greece, but refuses to recognise its presence for early non-Western legal systems. This kind of Eurocentric myopia poses huge problems also in scholarship on Chinese law, African laws, and to some extent, but differently, for Islamic law (see Menski, 2006).

Jamison’s entry proceeds to clearly identify ‘exchange’ and various other forms of human relationships, prominently hospitality, as a social requirement. Are such exchanges ‘social’, ‘economic’, ‘cultural’, or an amalgam of various aspects? A comparative lawyer sees that the perspective taken here without further comment is typical of historical or socio-legal approaches: humans developed various relationships. Given that indologists have to be interdisciplinary navigators, is this possibly also a form of normative construction and thus of ‘law’? Are there links between such social norms and/or laws and religion? Significantly, while I concentrated in my analysis (Menski, 2003: 86-93) on *rita*, Jamison’s (2009: 150) entry focuses next on the concepts of *mitra* and *vrata*:

The requirement of hospitality bound all members of society, but there were other more specific relationships: an “alliance” (*mitra*) could be mutually contracted, entailing reciprocal responsibilities between equals; by contrast, a “commandment” or “ordinance” (*vrata*, later “vow”) was imposed by a superior on an inferior. The domain of the term *vrata* is the closest to be found in Vedic terminology to the conceptual sphere of “law”. The verb regularly governing *vrata* belongs to the root *dhri*, “uphold, support”, and it is surely no accident that a nominal derivative, *dhārma*, takes over much of the semantic space of *vrata* in later Sanskrit. Gods in a kingly function and earthly kings themselves are charged with the upholding of *vratas*, later of *dharma*, and over the Vedic period the consolidation of legal power around kings can be discerned.

This becomes highly relevant for the present discussion of different categories of early Sanskrit law. Jamison identifies early contract law (*mitra* being the relevant concept) as a secular entity, an early form of ‘private law’. However, this also seems myopic. In light of references to a solemn contract in the epic Rāmāyana between Rama and Sugriva, which is a pact between two fighters, one sees that this contract was solemnised by both men walking round the fire (*agni*) as a holy witness. This is certainly not an early civil partnership, as we would call it now, but an alliance in warfare. Whether Rama and Sugriva were equals, a peripheral issue

at this point, may actually be doubted. What fascinates is that this solemn ritual of two men walking round a fire later seems to become a key ritual element of Hindu wedding ceremonies. One still sees this today when a Hindu husband and wife go around the holy fire a number of times. This ritual of *agniparināyana*, confused and conflated with the *saptapadī* ritual not only in old India, but also in section 7(2) of the *Hindu Marriage Act* of 1955 in India today, which imagines the couple going round the fire a number of times,⁵ still raises huge unanswered questions about whether husband and wife are seen as equals and thus are engaged in a contractual *mitra* type of law or a kind of *vrata*.

Jamison (2009) as cited above distinguishes this type of law from various forms of *vrata* as command. This Austinian element seems to be a secular entity as well, and eventually turns into what we would today call 'public law'. So there is some evidence, according to this explanatory model, of early forms of both private and public law. But where exactly the various boundaries (private/public and religious/secular) are to be drawn within this plural legal field is not made clear in this analysis.

Positing that the basic condition of interlinkedness militates against drawing of clear-cut boundaries anyway, I find this really exciting, since it is now no longer just a matter of discussing whether natural law existed or not in early Vedic law. We are locating here the origins of various forms of Vedic positive law and are drawing boundaries. Jamison tells us, in effect, that *vrata* rather than *rita* should be seen as the key concept of later Hindu law, manifesting eventually in the shape of *dharma*. This finding is also exciting because taking *vrata* as 'contract' or 'promise' means that the foundations of Hindu law are based on an understanding that humans have to honour obligations, not necessarily a matter of religion, but a form of positive law, most likely then of secular law.

But can such manifestations of law really be seen as entirely divorced and separated from 'religion'? A scholar may not wish to talk about religion, but are we re-constructing something secular here out of basically religious elements? As we saw, the texts in which such early concepts appear were accepted by Jamison herself as 'religious' texts and wisely (as we shall see, for more than one reason) she does not claim that they are also 'legal'. The links between ordering human relationships and honouring contracts between humans, whether we think immediately of king-like figures and thus the state or not, cannot, however, be treated as totally separate from links between humans and Nature. The Vedic rituals were not, as far as I know, performed to make humans obey obligations to each other, but primarily linked Man and Nature.

Looking again carefully at Jamison's quote above allows us to realise that she primarily makes a distinction between explicitly social relationships (centred on *mitra*) and emerging state law (centred on *vrata*). This means she avoids - or maybe sees no need for - a discussion of whether this is a religious or a secular law.⁶ The debate seems to be focused, then, only on different types of secular law within a religious textual context. In Indian caste-based societies, which have indeed Vedic foundations that Jamison herself refers to, reciprocal relationships

would primarily arise between unequals, but still at a social level. So *mitra* cannot be simply or exclusively seen as ‘private’ law or ‘social’, and *vrata* exclusively as ‘public’ law or ‘legal’, because the only distinction highlighted by Jamison is whether the respective parties are equals or unequals. Both of these categories of human relations, in my interpretation, are primarily social and/or political concepts, whether between equals or unequals. To refuse to accept this reasoning would imply that a contract between equals cannot be a form of law, and is only a social norm, clearly not a feasible argument.

In Jamison’s scheme, then, making contracts and establishing personal relationships, whether equal or unequal ones, is not actually primarily seen as a matter of law, but as the creation of social relations and socio-political normativity. Law for Jamison, therefore, is restricted only to what legal scholars call ‘positive law’, involving the imposition of rules by someone who is in some kind of power relationship to command or, if inferior, to exert force over the superior, through a *vrata*, claiming an obligation, maybe even a right. This is also the position taken by Lingat (1973: 6) when he had problems with ‘individual conscience’ as a source of law (see Menski, 2003: 126).

So here we have the evidence I was looking for: According to the quote from Jamison (2009: 150) as already cited above, ‘[g]ods in a kingly function and earthly kings themselves are charged with the upholding of *vratas*, later of *dharma*...’ is portrayed as the starting point of Vedic law which can properly be called ‘law’. This law is secular and has primarily nothing to do with religion. It is no surprise, then, that Jamison had no time for any form of natural law.

This explanatory model, however, simply attempts to shut out religion, presenting in my view an incomplete and rushed analysis of ancient Sanskrit law. This restricted methodology fails to identify that at the same time as these secular concepts are developing, other linkages have to be added to the equation. As indicated, when two men walk round a holy fire to close a contract, when a couple does the same for marriage, or a ruler engages in various forms of rituals, Nature and thus natural law also slips in and religion cannot be entirely sidelined. We have proof of this in the marriage hymns of the Rigveda itself. Vedic Sanskrit law does not ring fence law from religion, they are treated as closely interlinked and in fact as supplementary.

Further, I noted that Chattopadhyaya (2007: 146-7), who analyses the intense competition between different groups in Vedic society, points out that a string of negative terms in Rigvedic texts refer to the *dasyus* and *dasas*. These are not as curious as the author seemed to think:

They are *akarma*, apparently referring to the set of proper rites which they did not perform; they are also *anyavrata*, devoid of the right kind of ritual, performing another kind instead. They are *amanta*, that is, they do not pay heed to what obviously requires careful attention, and are therefore not human beings, or are *amanusa*.

This dehumanising ‘othering’ is quite comprehensive and reflects an intricate mixture of ethical/religious and socio-legal concerns. I do not think that we have so far analysed such linkages and messy mixtures in sufficient depth. I note with particular interest that *anyavrata* is here linked explicitly to ritual action, not the refusal to obey orders, or to honour contractual obligations. So these allegedly lowly people are not just socially and economically unreliable, they also fail to follow correct ritual models. If we follow Jamison’s secular understanding of *vrata*, then the above refusal ‘to do the right thing’ in ritual terms is an unwarranted interpretation. Is one of these interpretations of the Sanskrit terminology wrong, therefore?

Given the scope for different interpretations of the old Sanskrit terms, here explicitly *vrata*, the next analytical challenge would then be to re-examine the links and crossovers between secular and religious normative constructs within Vedic law. I suggest *a priori* that legal pluralist methodology helps to throw added light on this complex subject.

Vedic ritual connectivity as a manifestation of legal pluralism

The key question is thus probably how an early Vedic ruler would have viewed the emergence of Vedic law and his own role in it. Surely, such a ruler was not an Austinian law maker or some kind of Napoleon? Jamison’s focus on *vrata* simply posited that the business of ruling and issuing commands eventually led to legal structures. It seems to make nice sense, especially in view of perceptions that law is about ruling and governance. How tempting, and yet how myopic, especially in light of what Chattopadhyaya (2007: 146-7) suggested about the violation of *vrata*. I have no problem with the argument that a Vedic ruler might simply use *vrata* to command something and demand the delivery of obligations. He might indeed be corrupt, power hungry, aggressive, dictatorial, but was this tolerable? As indicated so far, if a ruler were to issue commands in relation to equals, then this would be a *mitra* – type of legal relation rather than a *vrata* – type. I see no problem in principle, bar the difficulty to determine what is or is not equal or unequal.

More tricky, however, is the question whether a superior person or institution would also monitor contracts of the *mitra* or *vrata* type, and would thus establish some early kind of Hindu ‘rule of law’. The scenario itself is entirely possible, so that the Vedic ruler has an emerging extra function, specifically securing the sanctity of contracts, and maybe then even punishing or threatening to punish wrongdoers, those who failed to honour various types of contractual obligations, whether social, economic or political. That kind of control function, from our current Western perspective, would be, primarily, a secular function, and one that becomes probably increasingly important in later discussions within Hindu law of *rājadharmā*. But is that already a Vedic concept, or does it properly belong into the formative period, even late classical Hindu law, where we certainly find *danda*, the concept of deterrent punishment to assist the maintenance of *dharma*?

I suggest at this point that something extremely critical to the Vedic framework of reference has still been left out here, whether deliberately or by coincidence.

What do we know, and what do we need to understand about the obligations of the Vedic ruler, whether a king-like figure or head of household (the Roman *pater familias*) to ensure that the cosmic Order of Nature was upheld and strengthened? What about the function of rulers – and their wives – as Jamison herself so brilliantly showed in Edinburgh during the previous Sanskrit Conference in 2006, as upholders of cosmic Order in the first place? Here again, we see that Vedic Man could not escape from concepts of Nature and thus of natural law. Why, then, is this gap here in the indological analysis? Is it a strategic silence, deliberate omission, or a simple oversight? The latter would be surprising, given the prominence of early Vedic sacrificial rituals.

The question becomes then whether we can find a specific term for this kind of obligation as well, and if so, what is it? The Vedic sacrifices would have to be done in a proper manner, *ritena*, in accordance with Order, to be effective. If I focus again on *rita* here, where then does this leave Jamison's *vrata*? Is *vrata* really just a secular category that eventually turns into *dharma*? Or are both *vrata* and *dharma* also religious concepts and entities? Or are both *vrata* and *dharma* actually subsumed in *rita*, embryonically located there, and then gradually developing their own specific meanings?

The question is therefore also what makes humans engage in these Vedic sacrifices. What kind of obligation is this, a religious or a secular one, or both, and what term or terms do we find used in relation to such rituals? Specifically, is there a Sanskrit word for the obligation to conduct or at least to finance the Vedic rituals, as the sacrificial sponsor (*yajmān*) and his wife (*patnī*) would be expected to do? And if there is, what kind of legal phenomenon, what kind of 'law' is that? Can we bring it under *vrata*? Or is that also an aspect of *rita*? In that case, the Sanskrit term *rita* may also include the obligation to partake in the Vedic rituals, or at least to contribute through some other means to their performance.

If we dig again for the definitions of *rita* cited from Monier Williams (1976 [1899]: 223-4) above, the element for further examination here would be 'sacred or pious action or custom', namely the Vedic customary action to conduct rituals to connect humans and the cosmos. If this assumption is correct, then *rita* does indeed include a somewhat religious obligation on the part of specific resourceful persons in Vedic society to ensure that cosmic harmony and balance does not turn into chaos. Then *rita* is also the earliest aspect of *rājadharma*, and it would in my scheme of internally plural legal pluralism count as an obligation to the cosmos, and would thus be primarily religious rather than secular. The main point is, though, that it is both at the same time.

To be absolutely sure, I cross-checked the entry under 'natural law theory' in a prominent recent legal reference work (Cane and Conaghan, 2008: 821-3). We read here, succinctly written by Professor Roger Brownsword (2008: 821-2) that there are many theories of natural law, but that they have one particular thing in common:

Broadly speaking, theories within the natural law tradition emphasize an essential conceptual connection between law and morals. In response to the core jurisprudential question, ‘What is law?’, such theories elaborate a conceptual view that necessarily links (and subsumes) legal reason to moral reason, legal obligation to moral obligation, legal validity to moral validity, and so on. In some versions, the link is procedural, moral notions of fair dealing shaping legal doctrines of due process; in others, the link is substantive, moral principles setting the standard for the content of legal rules. In some versions, the grounding is secular; in others, it is religious (most famously perhaps in the schematic thought of Thomas Aquinas). However, the common denominator in all versions of natural law theory is that the ‘separation thesis’ of legal positivism – the thesis that, while the existence of law is one thing, its moral merit or demerit is quite another matter – is contested. Or, to put this another way, if we follow natural law theory, we will reject the idea that law is an entirely autonomous, discrete body of rules and principles; law might not be identical to morality, but there is a sense in which they are necessarily related and integrated.

Now, why then are indologists afraid of natural law? Jamison (2009: 150), as cited earlier above, conceded ‘religious social structures’, but wishes to keep ‘law’ and ‘religion’ as entirely separate. Again, it is clear that in such a deliberately myopic scholarly worldview of the interaction of law, society, religion and culture, no room is allowed for natural law as a religious entity. But the evidence we are dealing with here is not from secular post-British America, but from Rigvedic early India. Should that not make a difference? What is going on here?

The fear of religion among Indologists

Again entering the troubled territory of ideology, let us not forget what we are trying to achieve here as scholars of Sanskrit law. Being in stage 3 of the indological quest for knowledge, in Panikkar’s terms (1985), one is trying to understand the earliest roots of Hindu law, examining Sanskrit concepts of relevance to this discussion. It is in my view undeniable that these earliest roots are clearly, as in other legal systems, lying in a pluralistic basis, which includes manifestations of religious-cum-secular natural law. The Vedas, as stated, did not drop from Heaven in some Golden Era of Indic history, they developed organically into texts, over a long time. Perceived and portrayed as *śruti* because nobody could credibly claim to universal satisfaction in this hotpot of religious discussions and competing philosophies that a particular God or god had made this kind of ‘law’, these textual foundations later turned into *smṛiti* and could then be taken, by some, as manifested predominantly as positive law. That this option is possible does not mean that it is the only possible explanation for what ancient Hindu law is and how it developed from Vedic roots to later manifestations. Legal development occurs in

all legal systems. Short of denying the religious roots of the Vedic system, we thus cannot avoid to find that Vedic Sanskrit law is a form of natural law, linked to people's view of the world, morality, ethics, and a lot of psychology.

If that is correct, however, then it does not make sense to deny the presence of Vedic natural law – this is mere ideological positioning. It also does not make sense then for indologists to speak of the later 'classical' or formative period, as Olivelle (2009) does, as the truly formative period of Hindu law. In that case the label 'formative period' ought to be allocated already to the Vedic period, since it was firmly established during that period that humans have obligations not only to each other or to their own salvation agenda, but also to Nature, or a higher Order, however perceived, which they can only fulfil through correct ritual action, namely the elaborate Vedic sacrifices. That this was vigorously challenged by Buddhists and others is a different matter. We are trying to search for Hindu roots in a soil in which all these various roots are intertwined and clearly cross-fertilised. Vedic sacrifice, then, falls under *rita* rather than *vrata*, and both concepts in various amalgams seem to have contributed to the later prominence of the consolidated and typically multi-faceted key concept of *dharma*. Saying this does not exclude the very plausible analysis by Olivelle (2006a) to the effect that *dharma* was prominently influenced by Buddhist concepts and later had to be recycled by Hindus to retain its central role. While in any human society, a sense of obligation to do the right thing would be central, what is contested everywhere is simply what is the right thing to do, not the principle itself.

So why are scholars of Vedic Sanskrit afraid of comprehensively examining the links between religion and law? It seems clear, as I know well from personal experience (notably my predecessor, Professor J.D.M. Derrett recounted similar attacks), that indological specialists studying aspects of Hindu law run the professional risk of being treated as proponents of *hindutva* in its more militant, Hindu nationalist manifestations. So Sanskrit law specialists are collectively shunned as potential fundamentalists and may become worried about being polluted by religion and its superiority claims. The problem is, however, that scholars of Sanskrit cannot avoid finding, all over the place and in various periods of Hindu legal history, that law is linked in various ways to a culture-specific religion that evolves over time. Our basic texts, certainly the Vedas, are clearly of a religious nature. To that extent, Jamison is clearly right.

So the problem is really only in our own minds as scholars operating in today's world. We seem to think we have reason to be afraid of being seen as dominated and dictated to by religion. We are afraid to identify and accept legal rules in Hindu law as linked to what St. Thomas Aquinas identified as Nature because we worry that we will be seen as 'fundamentalists'. Speaking from his particular medieval Christian perspective, Aquinas of course took the view that God's law was supreme, that Nature was of God's making and that consequently God's law must be supreme. But even St. Thomas Aquinas left room for *lex humana* and thus laid conceptual foundations for the eventual emergence of full-scale recognition of various culture-specific forms of positive law, which could then also later be seen

as secular laws. In comparison, Indologists have simply not deeply enough internalised the basic foundations of the internal plurality of Hinduism and of Hindu law. If we refuse to consider the role of religion in relation to law and insists on seeing Hindu law as a separate, secular entity, as free as possible from religious pollution and particularly rabid and aggressive *hindutva* ideology, we are not giving a true reflection of what this ancient law was like. It appears now that the most recent study by Davis (2010) addresses just that issue without fear of scholarly censorship.

I show below not only that the methodologies of legal pluralism can rescue us from such globally feared pollutions of law by religion, but that unless we constructively examine and employ the linkages that Sanskrit law knew to exist between these supposedly separate categories, we will not understand the complex nature of Hindu law (and thus also of Indian laws today) as living manifestations of legal pluralism that have existed, with numerous variations and transmogrifications, since Vedic times.

The only ideological trouble that prevents leading scholars of Sanskrit from agreeing with this approach is the fear, then, that accepting the evidence that Hindu law has strong Vedic roots leads to support for arguments that these strong religious roots should then dictate to us, at any point of our lives – or rather to hundreds of millions of Hindus in existence today - how to conduct their daily lives. One finds clearly stated evidence of this kind of fear in Olivelle (2009: 152), which suggests that these linkages are a kind of convenient religious fiction:

The claim that the Veda is the source of all *dharma* is clearly a theological fiction created to endow later texts with the transcendence, authority and sacrality of the Vedic scriptures.

This is clearly a reflection of the evident dangers of religious politics, but does not pay sufficient attention to the remedies offered by plurality-conscious comparative legal scholarship. So do we need to embark on a fourth stage of indological scholarship here, connecting the findings of classical Indology to global legal scholarship today to avoid going off on a tangent polluted by ideologies of our days?

The remedy: Plurality-conscious scholarship

If one applies the pluralist methodology that I am developing and recognises that law is always at the same time natural law, socio-cultural norms, positive state-made law and now also international law, *and not one or the other*, then all ideological phobias about ‘religion’ ought to vanish instantly, or at least the fears they generate ought to die down considerably. I was inspired by a Japanese scholar, Professor Masaji Chiba (1986) to argue in this way, and fittingly this particular paper was originally given in Chiba’s home country. None of the four types of law

that I now identify, in the extended model based on Chiba's (1986) tripartite structure,⁷ can claim to be permanently dominant. If all of them co-exist in the basically semi-autonomous internally plural field we are calling 'law', there is simply a systemic need for constant navigation and balancing of such pluralities of laws, as much so today as earlier in history. This basic truth seems to have been familiar to ancient Vedic Indians. Of courses abuses will happen and have happened in all legal systems, but this is an inevitable outcome of the composite nature of law itself. Whole legal systems will crash, like kites in a storm. Individuals will kill themselves if they cannot handle the tensions that this constant balancing exercise seems to demand of all of us at all times. This is as true today as it was in Vedic times.

To put one's head in the sand and fear 'religion' is thus not a wise strategy, especially not for Sanskritists, since clearly not all aspects of Hindu law are explicitly religious. If much of Hindu law is actually secular in nature, what then is our worry? Why be afraid of Hindu law and its Vedic roots, which are also not entirely religious? For *rita* is not alone in the semantic field of cosmic and other Orders and orders, we find it paired with *satya* (see below). Even if we find it difficult to accept that ancient Vedic law was a natural law system, because we are still afraid that in Indic discourses 'religion' may claim to trump 'law', we need to see that within the internally pluralistic Vedic framework, religion in the form of the 'invisible' is complicatedly mixed with 'visible' elements. Most importantly of all, and this is an extremely significant difference to mainstream Islamic concepts, according to which God somehow needs no human help in running this universe, Vedic humans assumed that their ritual actions could help to 'make the world go round'. The assumed connectivity of Vedic rituals via *karma* concepts (Tull, 1989), whether Buddhist or Hindu, and the inherent links between Vedic concepts of Man and Nature, created not only a highly pluralist field of reference, they also systematically prevented the totalising emergence of religious determinism and fundamentalism.

To reiterate, then, among early Indic people, nobody could identify to the satisfaction of all persons who or what was behind this cosmic Order. That issue remained a matter of belief and personal choice or preference. Hence early Hindus learnt to become skilled managers of internal pluralities, a characteristic that has stayed with Hinduism as an entity. Early Hindus agreed to disagree a long time ago and respected what has often been called 'unity in diversity'. They became plurality-conscious. Buddhists, Jainas and others became 'dissenters' in this largely Hindu-dominated environment. Muslims, as comparative analysis shows, agreed later on one specific God as global motor and all-authoritative guide, but then agreed to disagree among themselves over the extent to which human interpretation could ascertain God's will. Muslims, too, if they are good Muslims, thus have to be of necessity legal pluralists (Menski, 2006: 281). But most Hindus (and of course many other people) simply do not know this, and hence fear the supposedly well-organised Muslim 'other'.

In today's fear-ridden chaotic world, we cannot afford to ignore such basic elements of evidence of deep legal pluralism in the various legal traditions of Asia and Africa, in the distant past as much as today. If we get too involved in remembering our own legal histories as a series of violent struggles over the right to make laws, and to make people believe in certain Gods, obviously we will be stifled by a lot of fear. Vedic Sanskrit liberates us from such not entirely irrational fears and teaches us that the beauty of pluralist compromise was not only invented in post-modern minds during the past few decades, it actually has ancient roots. With that in mind, we can now turn to a further analysis of the fuzzy boundary between 'law' and 'religion' in Vedic legal developments to put a further nail in the coffin of fears about Hindu domination by 'religion'.

Rita and satya: Does the distinction help?

To exemplify this internal plurality and the need to find symbiotic management tools, it helps enormously if we re-examine the basic distinction made in Sanskrit between *rita* and *satya*. In this way, we might get a little further in reducing fears of Hindu fundamentalism and promoting increased recognition of the ameliorative potential of Hindu traditions for current Indian legal developments. If both concepts, *rita* and *satya* are aspects of 'truth', but *rita* is more of a religious concept, with many secular implications and linkages, the reverse may need to be said about *satya*. It is a secular concept, 'visible truth', but that truth is not entirely devoid of invisible links to the universe. It is an interlinked part of the universe, connected in ways that humans may or may not be able to explain, it will depend on the scenario. The duality of these two terms illustrates the conceptual foundations of deep legal pluralism in Vedic times. As the moon's journey across our night skies indicates, the boundaries between the visible and the invisible change with time and space and thus are fuzzy, too. And whether the sun as a globally visible phenomenon can be fully explained in all its various aspects remains a riddle that a non-scientist ought not to attempt – grave questions of a philosophical nature will remain open even if we can explain some or most aspects of this phenomenon of Nature.

In Monier Williams (1976 [1899]: 1135) one finds so many notions for *satya* that, like for *rita*, it becomes impossible to be definite beyond finding 'truth' or maybe an inkling of emphasis on 'reality'. Much will depend on the context within which that specific term appears in any particular text. It seems to me that *satya* is first of all a form of 'truth' that is visible and humanly ascertainable, while *rita* seems to be a form of truth (maybe then better or conveniently put as 'Truth' without the claim that it is necessarily higher, it is just different within this pluralistic context!) that is not humanly explicable, or at least not easily explainable. Again, there will be fuzzy boundaries between the two. What to one person seems clear and obvious may be a totally inexplicable myth to another. Let us not forget that the cleverest scientists in this world have become somewhat

‘religious’, if they lived long enough, in the sense that they realised that all their life-long efforts to explain everything would never be completely successful. The ancient Vedic Indians, intuitively, seem to have known this. Many of them concentrated on real life, it seems, not even trying to explain for themselves and/or others what was ultimately invisible and inexplicable. And then of course there were those huge solemn Vedic rituals as an explicit form of ritual and dramatic recognition of the interlinkages between Man and Nature, as a device to protect oneself against lurking dangers, as an appeasement or support mechanism for the cosmos as a whole, or simply as ritualised bribery.

What we cannot deny, as Sanskritists or as comparative scholars, is that *rita* and *satya* co-exist within this pluralistic verbal and conceptual stew-in-the-wok called Veda, and that these two terms will therefore mean different things. The two terms *rita* and *satya* are used side by side in the very beginning of the Vedic marriage hymns in Rigveda 10.85 and I shall focus my analysis here only on this slice of text. This particular text appears at a strategically important moment, in a ritually extremely significant and potent place, at the beginning of the Vedic marriage hymns. Not only does it bring sun and moon together and seems to draw linkages between this macocosmic pairing of sun/moon and day/night, it also prefaces the microcosmic human pairing of husband and wife and thus nicely does what Jamison (2009) suggested so clearly, illustrating the emergence of social norms, linked to religious texts and concepts, within Vedic society. The relevant text goes as follows:

satyena uttabhitā bhūmih sūryena uttabhitā dyauh
ritena ādityas tishthanti divi somo adhi śritah

How do we bring out the distinction between these two terms? Volume II of Griffith (1971: 501) translates as follows:

TRUTH is the base that bears the earth; by Sūrya are the heavens sustained.⁸
 By Law the Ādityas stand secure, and Soma holds his place in heaven.

Geldner (1951: 267-8) translated earlier into German:

Durch die Wahrheit wird die Erde emporgehalten, durch die Sonne wird der Himmel emporgehalten. Durch das Gesetz haben die Āditya's Bestand, und ist der Soma in den Himmel versetzt.

I suggest that these two terms are not quite as distinct as Geldner's and Griffith's opposition of 'truth' and 'law' seem to suggest, but that they are two sides of the same coin of macocosmic Order. One is primarily 'secular' and visible truth (*satya*), namely the earth around us and the sun (and the moon), all of which are clearly observable realities. The other pair also exists, but is somewhat less visible, i.e. partly invisible (as is indeed much of the moon, even when it is there), and

hence more a matter of ‘religious’ truth (*rita*). The Ādityas as gods clearly fit that pattern of invisibility, but the reference to Soma is somewhat ambiguous – and that is quite deliberate. It relates not just to the moon, and appears to be a kind of sophisticated word play. That Soma is actually the substance used in solemn Vedic rituals rather than the moon in the sky is obvious from RV 10.85.5, which also uses *māsa* (with another word play of moon/month), linked to *soma*, and explicitly noted by Geldner (1951: 267-8). Since Soma just as the moon would be more like the sun, Soma as the magically potent ritual tool that helps to connect heaven and earth is more like a deity and less of a secular natural phenomenon like earth and sun.

We can now see that particularly the German translation of ‘Gesetz’ (‘positive law’) seems so far off an invisible law of nature and even suggests something tangible, like legislation or an Austinian ‘command of the sovereign’. Not so confusingly, then, in the above translations, observable truth or visible Order, as I would call *satya*, is the more secular element, while known truths that are not so easily understood and observed are linked to *rita* as invisible Order. The obligation and expectation to conduct ritual sacrifice must then be more a matter of *rita* than of *satya*. The purpose of the rituals is not only to connect microcosmic and macrocosmic dimensions and arenas, but to bring about ritually promoted fulfilment of the abundant marital expectations that these particular Vedic hymns illustrate, good health, long life, a football team of sons, and so on.

At the start of the Vedic marriage hymn, thus, we can see how the effort to link macrocosmic entities with microcosmic realities points us invisibly towards presumably later concepts of Hindu marriage as a sacrament, a solemn contract between a man and a woman in front of the entire universe, later and even today in most cases customarily represented by the holy fire, Agni, which might in certain situations just be a candle or an oil lamp waved in front of a couple. This ritualised contract is leading towards the establishment of key areas of Hindu family law, again a form of private law. Jamison’s understanding of *mitra* as a relationship of equals can actually still be seen as reflected in the later *saptapadī* rituals of Hindu marriage that treat the spouses as friends for life, and maybe even beyond this life (Menski, 1991).

Jamison also showed in the Edinburgh conference how the Vedic sacrificer needed a wife (*patnī*) to be able to fulfil his ritual obligations. From this follow further gendered expectations about matrimony and ritual activities by the spouses on a daily basis, which are no longer explicitly part of the Vedic context, but flow into ‘classical’ Hindu law’s heavily idealised expectations concerning different types of *dharma*, including of course the perfect wife’s *strīdharmā* that our deceased colleague Julia Leslie (1989) wrote about so well.

Conclusion on Vedic Sanskrit laws

To summarise, then, Vedic Sanskrit as a stew-in-the-wok (and vegetarians can of course create a vegetarian version of this, though that does not reflect Vedic realities) clearly uses various terms for ‘law’ that can be placed on the kite model of global law (Menski, 2009) in different places. Some of those concepts are closer to the natural law corner, while most concepts are grouped in the angle of social normativity. No concept is just ‘state law’, but if we accept Jamison’s explorations, then *vrata* comes closest to the corner of the state. No concept as yet focuses specifically on what today we call ‘international law’, but the strong and ritually elaborated awareness of cosmic interlinkedness suggests the conceptual presence of global dimensions, so that *rita* (or maybe *rita/satya* together) must also be deemed to incorporate this element and should then be the conceptual pair that occupies the central spot in this kite structure.

Nothing new thereafter? ‘Classical’ Hindu law or ‘the formative period’?

The element of expecting self-controlled order as a central theme of Hindu law (Menski, 2003: xix) remains in place in the gradual transition from *rita* to *dharma*, which signifies the shift of emphasis from Vedic macrocosmic focus towards the more microcosmic orientation of *dharma*. What we do not know in detail, and will probably never be able to ascertain or excavate, is how in socio-legal reality these various shifts took place.

While the semantic field itself and its internal dynamism appear to be well-researched, there seem to be several possible interpretations of how this happened on the ground. I have emphasised the Vedic roots of later Hindu legal developments and have sought to bring out the conceptual linkages between Hindu-centric *rita* and *dharma* (Menski, 2003: 96-99), citing Kane and Lingat, in particular, to illustrate the gradual shift from Vedic natural law to ‘classical’ Hindu socio-legal theory. So, Menski (2003: 96-7) suggests:

The early, but properly ‘classical’ development of Hindu law can be distinguished from the Vedic stage primarily by placing more emphasis on the individual actions of every Hindu, and by developing a more elaborate rule system which reinforces the processes of individualization and Hinduization. In terms of sacrifice, this means that every Hindu should now engage in the various sacrificial rituals as part of *dharma*, but also that ritual action alone would not suffice to achieve positive cosmic reactions. Eventually, right action and appropriate behaviour at every point of one’s life became the core expectation of Hindu law, encapsulated in *dharma*.

Thus, over time Hinduism has evolved and adapted. It has quite radically changed its gods, its form of sacrifice, but not its conceptual basis in terms of Order/order, which has merely internalised the shift from macrocosmic to microcosmic emphasis. The basic concept of mutuality between the visible and the invisible, between human sphere and universe, remains at the core. During the classical period, these linkages become further elaborated and illustrated with innumerable references to situations of daily life. The general shift from an earlier emphasis on ritual action to the expectation of righteous action at any point of one's life is clearly manifest.

I see no reason to take any of this back in the light of the current analysis. However, it appears that this kind of effort is perceived as dangerous in terms of supporting *hindutva* agenda. I discussed already that Olivelle (2009: 152) suggests that these linkages are a kind of convenient religious fiction. To cite this again:

The claim that the Veda is the source of all *dharma* is clearly a theological fiction created to endow later texts with the transcendence, authority and sacrality of the Vedic scriptures.

However, such exaggerated *hindutva* claims can only be made in the first place if one assumes that the Vedic texts themselves were some kind of positive 'law'. I think that particular claim or assumption is simply not supportable on the basis of the texts that we have. What we do have, however, is ample evidence of conceptual linkages and ethical expectations, with constantly refigured additions to the older Vedic tradition. In other words, the legal pluralist scenario of the Vedic period continued to develop dynamically and in specific ways that we need to research further.

In the OIELH, Olivelle (2009: 151-5) suggests in this regard a formative period of Hindu law between 400 B.C.E. – 400 C.E., which of course now oddly leaves 400 years of gap between the entry on Vedic law and that on the formative period in volume 3 of the OIELH, which the entire editorial team did not seem to notice. In that black hole of 400 years, the development of early Hindu law certainly did not stand still, however. Olivelle (2009: 151) explicitly raises the question of how the genre of *dharmasūtra* and *dharmaśāstra* literature arose and suggests:

Dharma is still a marginal concept in the theology expressed in the Vedic literature; it is used principally within the royal or secular rather than the strictly ritual or religious vocabulary. It probably rose to prominence in the religious discourse of India between the fourth and fifth centuries B.C.E. because of its adoption, along with other terms and symbols of royalty, by the newly emergent ascetic religions, especially Buddhism, and its use in an imperial theology articulated by Emperor Aśoka in the middle of the third century B.C.E. Given the marginality of dharma in the Vedic vocabulary, it is unlikely that the term would have been the subject of intense scholarly or

exegetical enquiry by Brahmanical theologians, the priestly guardians of the Vedic scriptures, during the late Vedic period (seventh to fourth centuries B.C.E.).

I can live with that, and do not have the energy and skills to contradict the assertion by Olivelle (2009: 151) that the Brahmins were virtually forced by developments in other religious and legal traditions developing around them to reconfigure their central concepts of 'law'. It must be noted, though, that the OIELH entries exactly do not cover the late Vedic period. We will need to undertake further text-based and conceptual research specifically on that crucial period to excavate, if possible, if any further linkages and developments can be shown. It is already quite clear that the key argument promoted by Olivelle (2009: 151-2) makes good sense in various ways:

Once dharma had become a central concept in the religious discourse of Buddhism and penetrated the general vocabulary of ethics, especially through its adoption by Aśoka and possibly also his predecessors in developing an imperial theology, Brahmanical theologians had little option but to define their own religion, ethics, and way of life in terms of dharma. Indeed, the scrutiny of the early meaning of dharma in its dharmaśāstric use suggests that it was not the Vedic but the "community standards," prevalent in different regions and communities, that were taken to constitute dharma. The early texts on dharma speak of the dharma of regions, castes, and families. These texts regard dharma as multiple and varied; each of these kinds of dharma can hardly be expected to be based on the Veda. Recent scholarship has demonstrated that the early texts on law were basically records of such community standards or local customs.

This then leads to the final statement, already cited above, that it is a convenient theological fiction to claim that the Veda is the source of all *dharma*. Quite so, but the critical word here is simply the little word 'all'. Lawyers should be extra careful about such little words.

In an internally pluralist scenario, marked in addition by the competitive co-existence of Buddhist, Jaina and Hindu laws, and probably quite a few other forms of law, we should imagine what current South African pluralist scholarship has described as a huge pot, in which the stew of law is slowly cooking and in which all sorts of ingredients influence the flavour of the other elements. Something like this South African pot food, as Professor Christa Rautenbach described it to us in a lecture at SOAS in November 2008, was in its late Vedic manifestation a scenario in which various religious and ethical conceptualisations and expectations competed and co-existed. So what we find again is not an either/or scenario, but the typical legal pluralist scenario of co-existence, competition, and mutual enrichment. I do not think there is any problem with acknowledging that the trajectory of late Vedic Hindu law was significantly influenced by Buddhist, Jaina

and other elements. The pluralist interactions will have gone on, the cross-fertilisations continued. They probably continue even today.

I note finally that, very appropriately, Olivelle as cited above has highlighted the influence of local custom on the emerging *dharmaśāstra* corpus. Here is where we re-connect and where the conceptual shift from *rita* to *dharma* occurs, all along powered by the engine of *karma* concepts as a dynamising influence. Citing Kane and Lingat, I have shown how the gradual shift from natural law towards socio-legal concerns may have occurred (Menski, 2003: 96-9). It has also been made clear and is uncontested that these were idealising assumptions, and that social reality may have been very different. Here, I wish to highlight that Olivelle's emphasis on the critical importance of customary norms is precisely reflected and replicated in my analysis (Menski, 2003: 125) of how Manusmriti 2.6 and 2.12 deal with the question of the sources of *dharma*. So there is no reason to be nervous about scholarly politics any more – we seem to be singing from the same hymn sheets.

By finding that in socio-legal reality 'classical' Hindu law's process of ascertaining *dharma* starts in the individual mind and not in a book of law, Vedic or later, I am highlighting that Lingat (1973), as a legal positivist of the French civil law tradition, failed to see the socio-legal and even psychological flexibility that Olivelle (2006a) so readily accepts. What needs to be clarified now, I feel, is how this matches with the research findings by Olivelle that suggest that texts like the *Manusmriti* turned into virtual codes of law. I believe that Olivelle himself is saying that this assumption is a constructed one and not the only vision or perspective on this subject.

So there was heavily contested Vedic legal pluralism as a fact, which means that the trajectory of early Hindu law is not slavishly dependent only on Vedic texts or Vedic law, and is neither exclusively religious, nor devoid of religious connections. Sanskrit law is itself, as reflected in the rich terminology, a 'pop' structure, a plurality of pluralities that needed to be managed at all times. It was and is indeed a very colourful kite in the sky of global laws.

Postscript: Is this relevant for Hindu law today?

Jumping millennia, I pull together the key strands of this paper by just emphasising that the realities of pluralist discourse over the 'right' way to do all manner of things in Vedic times, and to believe various things in connection with Vedic 'roots', are replicated in today's attempts to hold a plural nation like India together by constructing terms like 'composite culture' (Chandra and Mahajan, 2007). This term was written into Article 51-A(f) of the Indian Constitution of 1950, in an amazingly culture-specific set of amendments introduced with effect from 3 January 1977, the *Constitution (Forty-Second Amendment) Act, 1976*. There are many reasons to assume that this set of amendments re-invigorated certain

principles of ancient Hindu jurisprudence in post-colonial India's desperate search for 'the right law'.

The partly violent debates that Sanskritists can excavate from the ancient texts, and their various shades of meanings, remain crucially relevant in today's conflict-ridden world and specifically in South Asian discourses about violence and the management of diversity. All the terms identified here as ingredients in the verbal stew of Sanskrit law are still there today, some more openly and more prominent than others, some with changed tastes and flavours. But it could not be said that such antiquarian research is merely an ivory-tower occupation that cash-strapped governments might be tempted to close down because such ancient concepts have no relevance today. Writing this article reinforced my conviction that there is a future for Sanskrit Law Studies also in relation to current legal developments in this 'glocal' world. We are as comparative lawyers clearly shooting ourselves in the foot if we are afraid of 'religion' or 'natural law' and pretend or claim that entities like Sanskrit Law have nothing to do with Nature, 'religion' or with reconstructed 'Hindu' elements. As a pluralist entity, and a culture-specific manifestation of law, early Sanskrit law necessarily involved and still involves both the religious and the secular. As elsewhere, the most interesting and legally productive elements are the rich evidence of boundary crossing and cross-fertilisations within this pluralist scenario, in time and space, and thus in Vedic times in India as much as all over the globe today.

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² A key example that I stumbled upon in my doctoral thesis many years ago (Menski, 1984) is the change from *punah* in Rgveda 10.85.41 to *sanah* in Atharvaveda 14.2.1. This puzzling minor textual variation reflects a critical change in ancient Hindu marriage rituals and emphasises the dramatic involvement of priests in such late Vedic rituals, which quite soon turned out to be too risky to handle, because it involved magic pollutions by the bridal blood of the first night. Today such ritual elements are avoided by Hindu priests and are instead handled by women through locally coloured symbolisms and rituals. It took me six months to understand the reasons for this modification and to crack this nut.

³ The same will of course need to be said about Islamic law and other legal systems. I raise this point here to highlight that scholarship in ancient Vedic law retains enormous current relevance for modern states and for comparative analysis, especially in the current age of panic about 'religion'. To focus only on Islamic legal issues in such debates would be a grave error of judgment and of policy. To reduce public funding for Indic research in whatever form is thus extremely short-sighted if one wants to combat 'terror' in its various forms.

⁴ Over the past few years, my students have come up with various other pluralist models of law, wedding cakes with layers, ice cream cones with different flavours, snowflakes, giant spider webs, even a computerised image of the God of Law as a spaghetti monster. Blasphemous thoughts for some, indeed, but Vedic Indians were clearly used to blasphemous thoughts.

⁵ The ritual of seven steps in the most ancient *grihyasūtra* texts that include this ritual (not the Vedas) implies that at the end of the rituals the couple walk away from the fire, not around it.

⁶ Indeed, during the discussion in Kyoto, she bluntly stated that she was not interested in religion.

⁷ Chiba (1986) spoke of 'official law', 'unofficial law' and 'legal postulates', a terminology which I decoded as references to legal positivism, socio-cultural norms and various forms of natural law (Menski, 2006). The fourth element now is international law, leading to kite-like structures (Menski, 2009).

⁸ Griffith (1968, II: 159) translated 'upheld' instead of 'sustained' for the same Sanskrit verse, which, we should note, is also Atharvaveda 14.1.1, the start of another, but very different marriage-related Vedic text (Menski, 1984).