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THE SPIRIT OF HINDU LAW

Law is too often perceived solely as state-based rules and institutions that provide a rational alternative to religious rites and ancestral customs. *The Spirit of Hindu Law* uses the Hindu legal tradition as a heuristic tool to question this view and reveal the close linkage between law and religion. Emphasizing the household, the family, and everyday relationships as additional social locations of law, it contends that law itself can be understood as a theology of ordinary life.

An introduction to traditional Hindu law and jurisprudence, this book is structured around key legal concepts such as the sources of law and authority, the laws of persons and things, procedure, punishment and legal practice. It combines investigation of key themes from Sanskrit legal texts with discussion of Hindu theology and ethics, as well as thorough examination of broader comparative issues in law and religion.

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Preface

A book with this title was supposed to have been written by my teacher, Richard Lariviere, in the University of Georgia's "Spirit of the Laws" series. His higher calling into academic administration left a gap in the series that I always lamented. When I approached Richard and, through him and with his permission, Alan Watson, who edited the series, it became clear that there was no hope of placing one more volume in the old series. To my great delight, Cambridge agreed to publish the book, which is certainly very different from what Richard would have done, though still inspired by his ideas and still very much in line with the series' intention to provide basic surveys of law and religion in the major traditions of the world.

There are three audiences for the book: Indologists and scholars of Religious Studies and Legal Studies. Indologists will find a certain amount of technical investigation of key discussions from the Sanskrit texts, though not as much as some may like and much of it in the notes rather than in the main text. Where possible, I use standard translations of the Hindu legal texts and do not provide the Sanskrit original there. In most cases, I give my own translations, especially of the medieval commentaries, in which case I also provide the original text in a note. Some of the Indological discussions attempt an original contribution to the field, while others simply restate the results of older work.

Scholars of religion should expect discussions of Hindu theology and ethics, though in (often legal) terms that they may not be quite used to. In many ways, this book is a further elaboration of my earlier thesis about the pivotal, indeed definitional, role of *dharmā* in the Sanskrit legal texts within Hinduism. I am increasingly convinced that Hindu studies have become overly focused on mythological, philosophical, and ritual issues at the expense of other fundamental religious elements, including law.

Finally, scholars of law will find first an ambitious argument about law itself and its intimate connection to religion, especially theology, and to

ordinary life. Within this argument, however, I try also to demonstrate important insights into persistent problems in legal and religious studies generally through an examination of the Hindu law materials. Here I primarily suggest lines of thought that might enable Hindu law to find a more secure and productive place within comparative legal studies and legal history.

My great hope for the book is that scholars in each group will find both something familiar and sound from their disciplinary perspective and something fresh and attractive about my use of disciplinary approaches and ideas that are new to them. I have brought these fields together in the hope of creating something innovative and useful for each of them, while acknowledging the risk of displeasing those who may not find such interdisciplinarity as persuasive and helpful as I do. Throughout the book, I have tried to restate complicated arguments in plain language and make use of everyday analogies in order bridge the disciplinary divides that have for too long prevented a more productive confluence of approaches to law and religion.

Acknowledgments

The writing of this book was supported by fellowships from the Institute for Research in the Humanities (IRH) at the University of Wisconsin-Madison (UW) and from the National Endowment for the Humanities. I received additional funding from the UW Graduate School and the College of Letters and Science. I am extremely thankful for both the release time from and financial support of these institutions.

Portions of the book were presented at the IRH Colloquium and the Center for South Asia at UW, and at the Annual Meetings of the American Academy of Religion and of the American Oriental Society. I am grateful for the feedback and questions raised at those venues. Students in my Hindu Law course were subjected to a draft of this study in the fall term of 2008. I thank them for the refinements I was able to make as a result of their feedback and reactions.

I owe a continuing debt of gratitude to my teachers and mentors, Richard Lariviere, Patrick Olivelle, and Ludo Rocher, each of whom provided both specific opinions about and general ideas for portions of the book. Charlie Hallisey provided both moral support and uniquely served as a sounding board for many of my ideas. Timothy Lubin and I had several conversations about ideas in the book and his affirmations and criticisms helped me quite a bit. Rajeev Dhavan patiently spent a long afternoon with me while I presented the basic ideas of the book to him. His wise comments improved several chapters. I wish also to acknowledge my friend, Werner Menski, whose gracious and good-natured encouragement of my work, in spite of our intellectual disagreements, continues to be an inspiration for me personally and professionally. Ethan Kroll read through the entire manuscript at a crucial moment and provided very helpful reactions to the central ideas of the book. Of course, all errors and missteps remain my own. Finally, Fred Smith and Federico Squarcini provided much needed affirmation and criticism at the earliest and last stages of writing.

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Finally, I owe my largest debt of gratitude and love to my best friend and always supportive wife, Mary Rader. Her natural suspicions of academic truths combine with her gentle and nurturing spirit both to keep me grounded and to keep me moving forward at the same time. The patience that she and our two sons, Jasper and Zimm, showed during the stressful periods of writing mean more to me than they'll ever know.

Abbreviations

BDh	<i>Baudhāyana-Dharmasūtra</i>
DhK	<i>Dharma-Kośa</i>
GDh	<i>Gautama-Dharmasūtra</i>
KA	<i>Kauṭīliya-Arthaśāstra</i>
MDh	<i>Mānava-Dharmaśāstra</i>
Medh	<i>Manubhāṣya of Medhātithi</i>
MNP	<i>Mīmāṃsānyāyaparakāśa</i>
NS	<i>Nārada-Smṛti</i>
PMādh	<i>Parāśara-Mādhaviya</i>
PMS	<i>Pūrva-Mīmāṃsā-Sūtras</i>
SC	<i>Smṛticandrikā</i>
VaDh	<i>Vasiṣṭha-Dharmasūtra</i>
YS	<i>Yājñavalkya-Smṛti</i>