

Sovereignty and Dharma: The Role of Justice in Classical Indian Political Thought

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Abstract of

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This thesis draws attention to the tension between the binding claims of *dharma* and the obligations of the king (qua state) to protect the material interests of his subjects. I argue that a significant part of the *Mahābhārata* can be understood as a response to this dilemma, and that a developed political philosophy and theory of justice is found therein. The picture of justice delineated within the *Mahābhārata* emphasizes the *ceteris paribus* priority of *dharma* when the king or other functionaries of the state consider how they should act. When *dharmas* conflict or the demands of certain *dharmas* conflict with the king's fundamental obligation to defend his subjects against violence and deprivation however, he reserves the right to decide how to act in such an instance. To prevent abuse in such situations, the king must be virtuous. In the context of the *Mahābhārata*, this means acting for the sake of the kingdom and his subjects, rather than for his own interest. The king demonstrates his virtue by his prior willingness to submit to the demands of *dharma* even when they are contrary to his material interests, while a king who shows himself to value his own flourishing over that of his subjects may find himself justly deposed by a more righteous king.

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Introduction

The aim of this thesis is to demonstrate that the ostensibly ethical portions of the *Mahābhārata* may be understood in fact as an attempt to reconcile tensions between the obligations of the regal state and the demands of *dharma*. This is accomplished by examining classical Indian theorists' justifications for the kingly state and the development of the idea of *dharma* which can apply at the level of the state. If we are to recognise and understand such a political conception of *dharma* when we see it however, we must also have some understanding of the conceptions of *dharma* to which it is likely to be formulated as a response.

Why choose an analysis of the *Mahābhārata* for this task? One reason is that the *Mahābhārata* itself claims to be a compendium of all things relating to *dharma* and its maintenance: 'What is found here concerning *dharma*, the proper making of wealth [*artha*-D.S.], pleasure [*kāma*-D.S.] and final release [*mokṣa*-D.S.] is to be found elsewhere, too . . . but what is not found here is to be found nowhere' (1.56.36-9, Smith). Another reason is that the tension between *dharma* as a transcendent ideal and *dharma* as praxis – the subjects of the first and second chapters of this thesis, respectively – is a recurring issue throughout the epic. This was a perennial problem not only for theorists in Classical India, but for reflection on the role of the state and the obligations of political actors in a contemporary setting. While Gurcharan Das has focused on the relevance of the *Mahābhārata* to the latter in *The Difficulty of Being Good*, the purpose of this thesis is to come to a clearer understanding of the aim of the creators of the text, and the questions and contentions likely to have been present in their minds during the period of composition. This in turn can inform, and be informed by, readings of the epic for the purpose of contemporary applications (cf. Das, 290ff.).

This topic is worth pursuing not only to gain a fuller understanding of the *Mahābhārata* in its own right, but also because it gives us deeper insight into the complexity and subtlety of the political thought contained within this text, and in Classical India as a whole. While the study of Ancient Greek political thought is now an established field of inquiry, and there has been growing interest in political theory in Imperial China, analytical studies of political theory in Classical India are still relatively lacking. In addition, as will be shown in this thesis, theorists in Classical India wrestled with the problem of how to reconcile the need for a sovereign state with the desire to uphold a coherent set of principles. It is worthwhile as well to understand *dharma* as a political concern as this can aid our own understanding of approaches to reconciling the pragmatic and ideological dimensions of political power. In contemporary debates, there are similar issues at stake when discussing pluralism and toleration. An awareness of the successes and failures of various approaches by Indian theorists could be helpful not only in contributing to our understanding of the development of political thought around the world, but also providing those of South Asian descent with a clearer picture of the answers to such questions from their own tradition, and would serve as a challenge to reactionary responses which equate secularism, toleration and pluralism explicitly with Western imperialism.

In addition to these factors, while there has been recent interest in examining the ethical dimensions of the *Mahābhārata* – or at least the *Bhagavad Gītā* – section, recent works have often failed to consider the broader, political context within which the ethical debates of the *Mahābhārata* are taking place. This has been the case in recent articles by Amber Carpenter, Jonardon Ganeri, and Amartya Sen. While each of these philosophers draws out pertinent aspects of the ethical dimensions of the text, each fails to ask the question of why the moral dilemmas of the particular characters discussed are so important. It is significant after all that the moral dilemmas recurring throughout the *Mahābhārata* epic are

ones facing either the king or his subordinates in situations where they must reconcile their obligation to defend the integrity of the state with their obligation to follow *dharma*. While one may still ask – as Carpenter et al do – whether the dilemmas found therein are resolved with a concern for virtue or social context versus a deontological focus, the implications for such an answer transcend the merely ethical within the context of the *Mahābhārata*. They are instead intended as discussions about the obligations of the king and his officers, and to educate future officeholders. The aim of this thesis is to examine these political dimensions of the Pāndavas’ dilemmas throughout the *Mahābhārata* and to draw parallels between these and other, more familiar approaches to similar problems. Before approaching the *Mahābhārata* itself however, I first examine the answers to questions of political power and obligation provided within texts from Classical India considered to be part of the standard canon of political and legal thought of the era.

Works on political theory in Classical India fall into two broad camps: pragmatic and ideological. The pragmatic texts have as their primary focus the consolidation and maintenance of political power, with a *Realpolitik* approach to both foreign and domestic relations. Kautilya’s *Arthaśāstra* is the paradigm example of this type of text, as well as the collection of fables in the *Pañcatantra*. The ideological approach permeates the legal texts, which focus more on an idealized form of social order, governed by laws which are generally taken to predate the political order. Texts in this group includes various *Dharmasūtras* and *Dharmaśāstras*, the most prominent of which is *Manu’s Code of Law*. The *Arthaśāstra* is generally associated with the court of Candragupta Maurya and dates from the fourth century B.C. to the third century A.D. (Mabbett, 167), while the final compilation of *Pañcatantra* is estimated to be around 300 A.D. (Olivelle: Introduction to the *Pañcatantra*, xii). The *Dharmasūtras*, with the exception of the slightly later Vasiṣṭa *Dharmasūtra*, originate during the late third to middle of the second century (Olivelle: Introduction to the *Dharmasūtras*, xxxiv). *Manu* is dated to

between the second century B.C. and the second century A.D. and predates all of the other major *Dharmaśāstra* texts (Olivelle: Introduction to *The Law Code of Manu*, xxiii). As has been noted, the designations of these texts as ‘ideological’ and ‘pragmatic’ are only broad categorizations: Kautilya is not unconcerned with *dharma*, and practical considerations are frequently addressed by Manu. One who was a partisan of one text over the other would in most cases prefer the general approach associated with it however.

The *Mahābhārata* stands out from these other texts on politics because it includes elements of both the pragmatic and ideological approaches to political power, yet it does not come down clearly in favor of one over the other. Instead, much space in the the *Mahābhārata* is dedicated to questioning a strict dedication to either approach. The probing of two extremes is situated within a dramatic context of two rival factions competing for rulership of an ancient, world-encompassing empire. The Kaurava faction, led by Duryodhana, represents a regime dedicated to the pragmatic aspects of governance, but which understands the importance of the appearance of following *dharma*. The Pāṇḍavas, led by Yudhiṣṭhira, are initially dedicated to ruling strictly in accord with *dharma*, even at the expense of losing the kingdom itself. By the conclusion of the epic, Yudhiṣṭhira has learned the value of compromising his personal *dharma* for the sake of the kingdom, and that knowing when such violations of *dharma* are necessary is itself a form of regal *dharma*. By examining these aspects of the *Mahābhārata*, we gain a better understanding of how the conflict between political ideology and political reality was mediated in Classical Indian thought.

To understand these lines of thought within the *Mahābhārata*, I have approached the text with some sensitivity to the problems it is intended to address. This awareness is informed primarily by the study of Indian texts on political theory and *dharma* found in the second and third chapters of this thesis. As for approaching the *Mahābhārata* as intending to answer a particular set of questions, I am following a similar approach suggested by Collingwood for understanding the significance of archaeological discoveries:

[Y]ou cannot find out what a man means by simply studying his spoken or written statements . . . In order to find out his meaning you must also know what the question was . . . to which the thing he has said or written was meant as an answer.

(Collingwood 31)

Identifying how a concept such as *dharma* has developed requires precisely an approach such as this. Classical Indian texts on *dharma* often do not directly reveal their milieu or their intended interlocutors. In addition, the authors of the various *dharma* texts often engage in writing techniques which obfuscate a text's origins in order to enhance the text's authority and prestige. Such practices include assigning the authorship of a text to a mythical figure – this practice holds for nearly all of the *dharma* texts – and the insertion of retroactive attributions, i.e., a reference to a newer text contained in an older one, no doubt as a means for the older text to retain some of the authority ceded to the new text. Therefore, recognising innovation in the development of *dharma* cannot be very heavily dependent upon the chronology of texts but requires sensitivity to the contexts in which the rules of *dharma* are meant to be applied. Some understanding of the questions these texts are intended to answer is essential to such contextual sensitivity. Such awareness however is essential when approaching the *Mahābhārata*'s answers to questions of political power, as these may not be so apparent to a reader who is not anticipating them.

Much of the existing work on political theory in Classical India provides only a catalogue of various approaches to questions about the relationship between political power and *dharma*. These often do not explore in great depth the distinctly political problems the Classical Indian theorists may have been trying to solve, nor do they offer more than a cursory examination of the political dimensions of the *Mahābhārata*. Scharfe's *The State in Indian Tradition*, published in 1989, is a paradigm example of this approach. While Scharfe's work has been of great value in my research, he shows little interest in political theory in Classical India in terms of its merits as political theory, although he does provide a helpful overview of many of the questions and disputes arising within Indian texts on

political theory. While Scharfe notes that the *Mahābhārata* has much to say about the nature of the state, and that this is a theme which permeates the text, he provides limited analysis of an examples from the text, and focuses on the fables contained therein rather than the discursive sections dealing explicitly with political matters when he does provide such examples.

In his *Political Theory of Ancient India*, Spellman undertakes a limited analytical study of political theory in Classical India. The major shortcoming of his approach however is that his comparisons are very narrow – mainly only Hobbes – and he therefore fails to explore other ways of understanding Indian political theory from the perspective of the Western philosophical tradition. Because of this, he finds the insights of political theorists in Classical India to be less valuable than he might, had he taken the time to draw further parallels with other philosophers. While this failing may be primarily a product of the time in which he was writing – political philosophy was largely moribund in 1964 – Spellman’s project is worth revisiting and expanding. This is one of the tasks I have set to achieve in the present thesis.

Another source on political theory in Classical India is texts on the law (i.e., *dharma*) originating during the same period. While these of course touch on many other matters as well, delineating the powers of the state is an important feature of law. Lingat’s *The Classical Law of India* and Davis’s *The Spirit of Hindu Law* have been most useful in this regard. While his primary concern is not with political theory per se, Lingat puts significant effort into drawing out the implications of various laws and legal standards from the period, giving us a better understanding of precisely what the laws were intended to accomplish. Davis explains some concepts from Indian law in terms of contemporary comparisons, but he also offers a limited comparison with aspects of contemporary political theory. He of course finds Classical Indian theory to fall short in its consideration of justice in comparison with

that of Rawls, but he also identifies its consonance with the conservative political tradition in the West. While Davis's comparison of Indian law with the conservative tradition is not fully explored in this thesis, it is a topic I intend to take up in later research.

There are a number of factors which motivated me to take up this topic. I first became interested in the question of a generalised *dharma* after a conversation with Richard Sorabji, during which he had asked the question: Is it possible for a non-Hindu to attain *mokṣa*? My initial work on this topic eventually became the dissertation for my Master's degree at the University of Liverpool, *Is the Sanātana Dharma Truly Sādhāraṇa Dharma?: The Status of Mlecchas in Hindu Ethics*. The dissertation argued that there is a theological trend within the brahminical – and later Hindu – tradition which focuses on the relationship between God and the individual supplicant, and that this might mirror a similar theological turn following the Reformation in Modern Europe. Near the end of that degree, the supervisor for my Master's, Christopher Bartley, suggested looking at Jayanta Bhaṭṭa's *Āgamaḍambara (Much Ado about Religion)* for another approach to the question of the status of those outside the pale of brahminism. My doctoral thesis was originally intended to be on Jayanta's argument for toleration, and a comparison of this with Modern European arguments for toleration, such as those given by John Locke and Pierre Bayle. I realized however that this task would require further research into the metaphysical arguments of the *Mīmāṃsaka* theorists to whom Jayanta was responding, and that I was not yet prepared to take on the task of explicating these works in order to put Jayanta's work within its proper context. I discovered within Julius Lipner's analysis of the humiliation of Draupadī in his *Hindus: Their Religious Beliefs and Practices* that a discussion similar to that at the beginning of Plato's *Republic* was taking place within the *Mahābhārata*. This served as significant impetus for the present thesis, which I hope will prove useful as well for further work on Jayanta Bhaṭṭa's argument for toleration.

A brief note on methodology in the choice of sources for the *Mahābhārata*. As Gurcharan Das has said, 'I have been promiscuous in my readings' (312). As in Das's case, this is partly attributable to the lack of a full, modern translation of the entire *Mahābhārata* into English. Of the translations cited in this thesis, Fitzgerald and Smith make use of the Sanskrit Critical Poona Edition, while Ganguli's translation is based upon the 'vulgate *Mahābhārata*' of Pandit Nilakantha Chaturdhara. The most notable difference between these two, at least for present purposes, is that the latter version of the text contains much material not found in the former, as the Critical Edition purposely excludes elements of the text not found across multiple renditions in India. That two versions of the original text are used in this thesis should not be cause for any concern, primarily for two reasons. The first is that the issue of translatability of conceptual terms is the same in the case of either text, as both make use of largely the same terms and concepts in their designations, and it can be taken for granted that matters of comparison and elucidation of Sanskrit terms in this thesis apply equally well to either rendition. Another reason this should not be considered problematic is that the focus of this thesis is not the minutiae of particular incidents depicted in the epic, but the general aim or 'spirit' of the text. That various renditions of the epic contain elements contributing to the theme argued for in this thesis is supporting evidence in favour of my argument of certain underlying principles in the epic as a whole, and the differences between the two versions references herein are rarely thematic in nature. Finally, and relevant to the previous point, the *Mahābhārata* likely saw use as a vehicle for the promotion of political views during the period of its early formalisation, from the middle of the first millennium B.C. to 400 A.D.:

Somewhere around the time of the Gupta Empire (from Candragupta I in A.D. 320 through Budhagupta in A.D. 497 . . .), a written Sanskrit text of the *Mahābhārata* became the basic archetype of all Sanskrit manuscripts of the *Mahābhārata* throughout India for the next 1,500 years, probably as the result of a major effort of redaction and promulgation, perhaps with direct imperial support.

(Fitzgerald, xvi n. 2)

A note is called for as well on the use of “Classical” to contextualize the period discussed. The purpose of the use of “Classical” here is not ideological – that is, intended to exclude certain non-Hindu traditions from being part of Indian tradition – but for temporal and linguistic purposes. The Classical, or Middle, Period of Indian history encompasses the decline of the Mauryan Empire in the late third century BCE to the decline of the Chola Empire and the establishment of the Delhi Sultanates in the thirteenth century CE. In addition to using “Classical” to periodise the focus of this thesis, this also indicates a restriction to focusing on Sanskrit texts. As Sanskrit served as the lingua franca during this period, these are the texts which would have been most widely available throughout the subcontinent. Furthermore, the introduction of states external to the Sanskrit tradition results in a significant change in political thought throughout India. While political thought following the Classical period is often more regional in scope than before, an understanding of the Sanskritic tradition is an important precondition for understanding the significance of later changes in political thought in the subcontinent.

I have provided below an outline of the major chapters of this thesis, in order to provide the reader with a clearer picture of the threads of my argument. Each chapter has a primary focus: the sovereignty of the state, the scope and foundations of *dharma*, and finally the attempt to resolve the tension between these two in the *Mahābhārata*.

Chapter 1: The Origins of the State in Indian Thought

This chapter focuses on the pragmatic aspects of political theory in Classical India, and attempts to defend the legitimacy of the state on such grounds. Before pursuing this thread however, an argument in favor of Indian theorists having a concept of the state consonant with current usage is given, addressing the objections to their having such a concept offered

by Weber and Spellman. I conclude that Weber's notion of the state as an institution having a legitimate monopoly on the use of force is applicable to the idea of the state found in the work of Indian theorists, and that their emphasis on the priority of *dharma* does not militate against this fact.

I then trace out various accounts of the origins of kingship and the state. The first considered is *mātsyanyāya*, or state of nature theories. It is mentioned that fear of a return to a state of nature animates much political thought in classical India. The *mātsyanyāya* theory is then compared and contrasted with state of nature theories given by Hobbes, Locke and Rousseau. Like Hobbes, the Indian theorists consider the state of nature to be one where basic social concepts such as property are inapplicable. They share with Locke however a belief that people in a state of nature can still be bound by obligations beyond pursuit of brute self-interest. While the Indian theorists have in common with Rousseau a belief in the goodness of pre-social humanity, the former believe such is due to humankind's prior perfection and proximity to the gods, rather than due to people's innate goodness. They consider current humanity to be sufficiently depraved such that the threat of force is required to maintain order and stability.

Some space is then devoted to the possibility of inferring the presence of rights in classical Indian thought, given that the value placed upon life and property is conceptually prior to social organization. In addition, the priority of caste distinctions to the state is made explicit, as well as political necessities which may mitigate them.

I then outline additional theories about the origins of kingship and organization of the state, such as appointment theories and the organic and sacrificial states. I defend the thesis that there exist a variety of social contract theories in classical Indian thought against an objection from Scharfe, who relies only upon the lack of explicit endorsement in the legal texts as reason to doubt such theories were widely accepted. The awareness of a social

contract understanding of the state and its subjects is clarified by a discussion of the right of subjects to emigrate in response to a king considered oppressive or unrighteous, and that such emigration was a realizable and practised fact in Indian history.

The importance of this chapter is that it provides insight as to how theorists in Classical India conceived the problem of politics itself. As one might expect from texts with a more realist or pragmatic focus, they have a high regard for stability. In addition to this however, it is significant that many different texts from the era make mention of social contract theories, which are often considered to have become prominent in early Modern Europe. The wide promotion of social contract theories in Classical India, along with the power of subjects of a king to emigrate as a rebuke, provides fertile ground for examining the presence of an idea of natural rights within political thought from the era. While only a cursory exploration is made of the issue of rights in Classical Indian political thought in Chapter 1, this is an issue I expect to pursue in further research.

Chapter 2: The Role of *Dharma* in Justice

Having examined the more practical aspects of Indian political theory, the focus then turns to the role of ideology, in the form of political *dharma*. The primary argument of this chapter is that *dharma* can be understood to encompass a notion of proper political order, akin to that envisioned by Plato in the *Republic*. I first explain the condition of the circumstances of justice, focusing on accounts from Hume and Rawls. While Indian theorists take self-interested attempts to prevent personal harm as a primary reason for the establishment of laws, they also tend to understand *dharma* as a broad, metaphysical concept as well. If *dharma* is to have any relation to the idea of justice considered by Rawls and Hume, it must have some basis in political consensus.

To examine this possibility, I trace the etymology of *dharma* and its various intended applications. We see a move from *dharma* as cosmic order – upheld by the king and ritual – to law and ethical obligation. It is noted that the orthodox ritualists make a much stronger connection between metaphysical conceptions of *dharma* and the idea of *dharma* as law than theorists more focused on the domain of the state. The former continue to consider *dharma* primarily as a matter of ritual performance and purity, even as that conception becomes archaic, as the regal state has become more focused on order and stability rather than adherence to ritual tradition.

As *dharma* becomes its own branch of study, beyond the scope of what is found in the Veda, conceptions of it comes from a larger variety of sources, and pragmatic considerations are incorporated into decision-procedures regarding *dharma*. Some commonalities between the king and the renouncer are explained: both are, in their own ways, exempt from certain aspects of *dharma* which others are obligated to follow. Most important for our purposes, the king is exempted in order to allow him sovereignty, but he is subject to his own *dharma* – *rājadharma* – under which he is required to fulfil certain essential functions for his subjects.

The point is then made that, contrary to Davis, *dharma* can sometimes be understood as justice, particularly in the sense of being a proper political order, with the focus being on the structure itself rather than on its aims. Kauṭilya's *Arthaśāstra*, focusing on the practical aspects of governance, offers the possibility of *dharma* being understood as political in nature; that is, as something pursued by the king for the benefit of his subjects and relying, at least in part, upon their consensus. It is noted however that, like many other social contract theories, this one has at best only a thin sense of justice and cannot easily explain why the worst exploited within it would consent to such a system, given other options.

Davis suggests *vyavahāra*, or the procedure of a legal dispute, as a better approximation of Rawlsian justice than *dharma*. If, as Davis claims however, *dharma* should

be understood as a teleology of fair conflict, it could be a form of justice akin to Hampshire's as found in his *Justice Is Conflict*. That it is the *dharma* of the king to follow local tradition in adjudicating disputes means that the connection between metaphysical and political understandings of *dharma* is attenuated. While the conceptions of *dharma* found throughout the law books may not provide any fully realised theories of justice, these do provide the impetus for applications of *rājadharmā* to novel situations, and the development of an institution of kingship with concerns much broader than the fulfilment of limited ritual obligations. One example of such a conception of *rājadharmā* is found in the *Mahābhārata*.

The significance of this chapter is that it offers a serious consideration of *dharma* – or, at least, political *dharma* – as justice. As Davis and others note, such a form of justice is far removed from those conceptions occupying the egalitarian plateau which are of contemporary concern. Such divergence from modern ideals of equality and liberty do not prevent useful information being gleaned from political thought of the ancient and medieval West however, so approaching issues of political *dharma* as matters of justice is still a worthwhile pursuit. In addition, we can learn as well from the ways in which theorists in Classical India failed to appreciate particular aspects required for a broad theory of justice, or if they failed to see that their unwillingness to apply certain rights universally as being based on arbitrary reasons. These are problems which plague any attempt at a coherent theory of justice, and understanding how others failed to come to terms with them can inform our own attempts to do so.

Chapter 3: *Dharma* and Justice in the *Mahābhārata*

This chapter considers a direct conflict between the practical considerations of governance and the claims of *dharma*. It argues that the king is vested with the authority to adjudicate between competing *dharmas*, violating one of them in the course of upholding his own

dharma. To ensure that the king does not act capriciously or out of self-interest in situations requiring him to choose one obligation over another, the king must show himself to be conscientious and virtuous.

I first argue that earlier work focusing on the ethical content of portions of the *Mahābhārata* is too narrow, in that it fails to take into account the political nature of such discussions within the text. One prominent case is the dispute as to whether the *Bhagavad Gītā* promotes a deontological ethic or else one focusing on virtue and the context of action. An important – and often overlooked factor – of this portion of the epic is that the warrior Arjuna is not acting on his own behalf, but as a servant of his brother the king, so that the dilemma facing Arjuna is as much a political as an ethical one.

Given the importance of the character of the king, the character of prominent personae of the epic is explored, particularly those of Yudhiṣṭhira and Duryodhana. It is then shown that the claims regarding *dharma* made by the Kauravas during the humiliation of Draupadī mirror arguments made by Thrasymachus at the beginning of the *Republic* (i.e., the idea of *dharma* as an absolute standard is a consoling myth; *dharma* is in fact simply the means by which the powerful exert their desires). As this event is a pivotal moment in the epic, raising issues which will not be resolved until after the Pāṇḍavas have militarily defeated the Kauravas, this provides good reason to accept that the relationship between *dharma* and power is a significant concern throughout the *Mahābhārata*.

After examining various reasons given in the epic for when it is acceptable for *dharma* to be violated, it is argued that such exceptions to *dharma* depend by and large upon the requirements of *rājadharmā*, or the obligations of the king. While Duryodhana, under duress, maintains that his actions have never directly harmed his subjects and that they have prospered under his rule, his failure to show concern for the *dharma* of his actions, and his disregard for the rights of Draupadī, makes his rule illegitimate. Because he has made

explicit that he acts solely for his own benefit, any decision Duryodhana makes to violate some standard of *dharma* is prima facie not for the benefit of the kingdom or his subjects, as *rājadharmā* requires.

An outline of a plausible theory of justice to be inferred from the *Mahābhārata* is then given. An obvious component of this theory is the authority of the king to violate certain strictures of *dharma* because two or more of them conflict, or conflict with his obligation to protect his subjects. It is noted that, while caste considerations play an explicit role in the social structure of the society to which this theory is intended to apply, these are not essential to the theory. The conservatism of the theory makes such changes unlikely however, as the king's authority to modify *dharma* is limited to a significant extent by the customs of his subjects.

This chapter is important not only because it considers discussions of *dharma* at the political level within the *Mahābhārata* as offering an account of justice, but also because it treats much of the discussion of *dharma* throughout the text as coherent. That is, the various threads of *dharma* stretching throughout the text can be found to often interrelate – despite their apparent tension and even seeming irrelevance to one another – in establishing a common theme regarding the power of the king in relation to *dharma*. While my interpretation of the *Mahābhārata* as aiming toward a political account of *dharma* is novel, its strength is that it explains many of the ethical dilemmas found in the text in a more satisfying way than accounts which focus strictly on their ethical dimensions. In addition, the fact that the compilers of the epic saw fit to include so many disparate elements within the whole is good reason to think that they saw an underlying theme which is not obvious to us now. My suggestion is that the reconciliation of regal sovereignty and the demands of *dharma* is a theme that unifies the text.

Conclusion

The conclusion of this thesis brings together the various threads pursued throughout the other chapters. I reiterate that the *Mahābhārata* provides a plausible solution to the problem of reconciling political power and the demands of *dharma* as well as a coherent theory of justice. I also explore the significance of my findings and how they might inform future research on topics in Indian political theory.

The Origins of the State in Indian Thought

Before we focus on the *Mahābhārata*, we should consider the intellectual context within which the arguments therein take place. There are however two caveats to be made. The first is that, while we can point to discussions about issues in political theory in texts from classical India, there are relatively few texts purporting to be on political theory as such. While some of texts we will discuss here clearly deal with political or legal issues, such as the *Arthaśāstra* and the various texts which purport to delineate *dharma*, others are focused on cosmology, the performance of ritual or else serve as epic histories. While discussions of issues of kingship and legitimacy in these latter texts may not always be strictly discursive, they are still theory-laden. That is, they typically presuppose a certain conception of the nature of political authority and what makes it legitimate. This fact shall become apparent through the course of this chapter. Furthermore, it is reasonable to assume that these texts played at least some role in the ideas of political theorists in classical India, as they were texts with which any educated Indian of the period would be assumed to be familiar, making them live options for theorists throughout the period.

The second caveat is that statements of significance for Indian political theory may often be isolated fragments or follow from tangents within other texts. On the one hand, this can make it difficult for those unfamiliar with the Indian intellectual tradition to recognise their significance. On the other, recognising their significance may also require a fair amount of exegesis, which may have implications which can be assumed to be contrary to what the author or authors intended. It is hoped that, when this occurs, it may be reasonably seen not as the result of mere eisegesis on my part but as following from an informed understanding of

the larger theory or tradition to which the authors considered subscribed, in conjunction with a present understanding of related issues in political philosophy.

1. Weber and the Monopoly on Force

What we are here concerned with are indigenous theories on the nature and power of the state and from whence it derives its legitimacy. It is however fair to ask whether the concept of the state, as understood by us, was operative for those discussing political theory in ancient and classical India. Spellman claims that it is 'obvious that the connotation of the word "state" used in reference to a twentieth-century political phenomenon cannot apply to the ancient period' (132). To make a point such as this, one must have in mind some definition of the concept 'state' which is peculiar to the modern world. One influential, modern definition of the state is that given by Weber:

[A] state is a human community that (successfully) claims the *monopoly of the legitimate use of force* within a given territory. Note that 'territory' is one of the characteristics of the state. Specifically, at the present time, the right to use physical force is ascribed to other institutions or to individuals only to the extent to which the state permits it. The state is considered the sole source of the 'right' to use violence.

(Essays 78)

The picture provided by Weber is on the one hand that of the ideal, modern state. Although he indicates here that his definition of the state is peculiar to the concept's contemporary manifestations, elsewhere Weber stresses that this definition is expressed 'in terms which abstract from the values of the present day' (Theory 156). Given this indication of general applicability, let us for the moment proceed with the assumption that Weber's definition is abstract enough to be suited to our present purpose.

Is the concept of the state as defined by Weber present in political theory in classical India? In *The Religion of India*, his book on the sociology of religion in the subcontinent, his answer appears to be divided. On the one hand, he claims that in classical India 'The concepts "state" and "citizen," even that of "subject" did not appear' (Religion 145). On the

other hand, Weber has the following to say about the nature of princely power in the same period:

As patron of the *rayat* (client), the Kshatriya had the ascribed *dharma* of “protection” essentially in the sense of defence against the outside. The Kshatriya was also responsible for the administration of justice and integrity of trade and related matters. . . . The struggle against anti-Brahman heterodoxy is clearly required and it did occur. But this in no way altered the place of the prince, and politics retained their autonomy in a peculiarly significant manner.

(Religion 145)

The latter quote, which indicates that the prince is autonomous and singularly responsible for defence, justice and the regulation of trade, suggests that the Indian ideal of princely prerogative would meet Weber’s criteria for a state. It is puzzling then that he would initially deny that the Indians had a concept of the state. This however is not a point that need be belaboured. The issue at hand is not whether Weber thought that the Indians had a concept of the state consonant with his own, but if they in fact had such a concept.

In the *Dharmasūtras*, it is clear that the king reserves the right to maintain social order by force:

The word “punishment” (*danda*), they say, is derived from “restraint” (*damana*); therefore, he should restrain those who are unrestrained.

(GDh 11.28)

Manu also extols the significance of the power of *danḍa*, the meting out of punishment, being relegated to the king:

Punishment [*danda*] disciplines all the subjects, Punishment alone protects them, and punishment watches over them as they sleep—Punishment is the Law [*dharma*], the wise declare.

(Manu 7.18)

Both of these texts, which are fundamental to classical Indian political theory, indicate that the king alone should be empowered to use force to protect his subjects from both internal and external threats. Although such texts by themselves do not tell us whether this idea was ever actualised, they do make it clear that Classical Indian thinkers were at least presupposed of the notion of a sovereign with the exceptional power to punish violators of *dharma*, and this is analogous to the concept of the state defined by Weber.

Returning to Spellman, he confirms that there is at least an Indian concept of the state, one indicated for instance by the Sanskrit term *rājya* (cf. Spellman 133). He seems however to consider the contemporary or modern idea of the state as being a ‘supreme power unrestrained by law’ (Spellman 132), an idea which ‘would obviously not hold valid in a society in which Dharma and not the State was considered supreme’ (132). It is clear that Spellman is referring here to Hobbes’ commonwealth as the paradigm example of the modern concept of the state. One can however see an inkling to an idea like Hobbes’ sovereign in statements such as the following:

A king, though a mere child, must never be treated with disrespect, thinking he is just a human being; for it is a great deity who stands here in human form. When approached recklessly, a fire burns only that single man, but the fire that is the king burns his family, together with all his livestock and wealth.
(Manu 7.8-9)

Furthermore, there are different ways in which a power may be superior to the king. While the king may not have power over *dharma*, he is not generally answerable for the actions he might take in its defence. Numerous texts indicate the king to be *adaṇḍya*, or unpunishable – at least by men (Scharfe 222), and there is a distinction made between the *dharma* of the king and that of everyone else in some of the earliest discussions of *dharma* (Horsch 435-6).

Even were the Indian king not unrestrained by law, the claim that the Modern concept of the state could not have been present in India due to the primacy of *dharma* is still dubious. This may be shown first by considering the following delimitation of the power of the magistrate by Locke:

I think it will be easily granted that the making of laws to any other end but only for the security of the government and the protection of the people in their lives, estates and liberties, i.e. the preservation of the whole, will meet with the severest doom at the great tribunal, not only because the abuse of that power and trust which is in the lawmaker’s hands produces greater and more unavoidable mischiefs than anything else to mankind . . . but also because he is not accountable to any tribunal here . . .
(ET 142)

As we shall see shortly, the power of *dharma* to compel the king is often much like the judgement of God in Locke: appeals to it are a means of guaranteeing that the king will fulfil

his obligations when no earthly power may do so. If we are to believe that classical Indian conceptions of the state are entirely discordant with our own because the laws of *dharma* are superior to those of the state, then we are also led to the absurd conclusion that Locke's own theory is not sufficiently Modern because it elevates the judgement of God above that of the magistrate. If there is a clear distinction to be made between classical Indian and modern conceptions of the state, it is not to be found in the state's subordination to some higher principle.

It should be clear that, like any of the other states of antiquity, those of India do not resemble the state familiar to those of us in the modern world in their forms and functions. The fact that kingdoms in ancient India were administered in a manner distinct from that of the modern nation-state is not one of philosophical import, except insofar as such administration can be shown to have been informed by principles of political philosophy. There are of course some important conceptual differences between Indian and modern theorists when it comes to the state. For example, Indian theorists often considered the ally of the state as a constituent part and in their conceptualisations, 'static aspects . . . appear side by side with dynamic aspects' (Scharfe 2). Such differences however do not indicate a lack of the concept of the state on the Indians' part. Furthermore, too much should not be concluded from a theoretical picture that puts allies on a par with constituents of what we think ought to be differentiated as the state. As Scharfe points out, despite these various apparent equivalencies, 'policy between states was regarded as secondary to internal affairs' (202).

In the end, it should simply be recognised that 'state' is an ambiguous term, denoting many institutions and social phenomena across history. Scharfe relies on a distinction between 'state' and 'government' to navigate this ambiguity, as 'The modern differentiation of state and government offers a practical solution that brings the stages of development into bolder relief' (Scharfe 2). To this end, he prefers the use of 'government' to describe the

various institutions that arose and were conceived in India. As our purpose here is not to trace the stages of development of Indian systems of government but only to analyze conceptions of the state, we need not follow this practice. We would still do well to keep this recommendation by Scharfe in mind:

We must constantly remind ourselves that the definition of “state” shall be no more than a convenient device that allows us to investigate the historical continuum which eventually evolved into the modern Indian state.

(3)

In this Scharfe, like Weber, recognises some variability between the ideal type of the state and its possible instantiations.

Weber is clearly mistaken when he claims that the concept of the state did not appear in classical Indian thought, for both the concept of an entity with a monopoly on the use of legitimate force and indigenous terms denoting it were prevalent within Indian tradition. Spellman in turn is mistaken to make an essential distinction between modern and classical Indian concepts of the state. Although the elements of the Indian state may have differed significantly from those of the modern state (cf. Spellman 132), this is not sufficient to establish that the *concepts* understood in each case are substantially different. In fact, as Spellman himself shows, questions regarding the origins of the state and the basis of its legitimacy preoccupied those concerned with political philosophy in ancient India just as they have philosophers in the modern West. Attempts to locate an essential difference between the two are liable only to result in the absurdity of excluding certain Modern, Western thinkers from being legitimately *Modern*. Our understanding of Indian political philosophy is better served if we recognise that Indian political theorists had a concept of the state roughly consonant with our own, and if we focus on investigating both what is peculiar to their thought about the concept and what it has in common with our own.

2. The Origins of the State

There are various theories on the origins of the state and its legitimacy within the Indian tradition. Spellman addresses these in what is, roughly, the chronological order of their presentation in the preserved literature and we shall follow his lead.

The origin of the institution of kingship is first expressed in legends found in the Vedas literature. In these early legends, the king is invariably praised as both divine and a great warrior:

Of one accord they made and formed for kingship Indra, the Hero who in all encounters overcometh. Most eminent for power, destroyer in the conflict, fierce and exceeding strong, stalwart and full of vigour. Bards joined in song to Indra so that he might drink the Soma juice, the Lord of Light, that he whose laws stand fast might aid with power and with the help he gives.

(RV 8.86.10-11)

Heroes of one accord brought forth and formed for kingship Indra who wins the victory in all encounters, for power, in firmness, in the field, the great destroyer, fierce and exceeding strong, stalwart and full of vigour.

(SV 4.2.4.1)

Other legends include a desire on the part of the gods to preserve their society in the face of attack. This is seen in the fight between the *devas*, the gods from whom the righteous might seek supplication, and the *asuras*, divine beings who merely lust after power. In the *Aitareya Brahmana*, the gods place themselves under the authority of Varuṇa, the deity of order and law (*ṛta*), allowing them to drive off the asuras (cf. AB 1.24). A similar story, replacing Varuṇa with Indra, is recounted in the *Śatapatha Brāhmaṇa*:

[W]e are in an evil plight, the Asura-Rakṣasas have come in between us: we shall fall prey to our enemies. Let us come to an agreement and yield to the excellence of one of us! They yielded to the excellence of Indra; wherefore it is said, 'Indra is all the deities, the gods have Indra for their chief.'

(ŚB 3.4.2.2)

Some later texts also describe the king as an amalgamation of the gods or their powers, with their accompanying responsibilities:

for when people here were without a king and fleeing in all directions out of fear, to protect this whole world the Lord created the king by extracting eternal particles from Indra, Wind, Yama, Sun, Fire, Varuṇa, Moon and the Lord of wealth.

(Manu7.3-4)

There is not yet much of theoretical interest which we are prepared to draw from these accounts, although there are still some connections. Spellman points out for example that 'It is reasonable to suppose that the same qualities that were attributed to Indra for his kingship were the qualifications on the human level' (Spellman 2). Still, these legends serve as an informative precursor to many of the later accounts of the origins of the king's power and its legitimacy, and they play an explanatory or demonstrative role in many of the theories to be discussed here.

2.1. The State of Nature

State of nature views are prominent in Indian political thought, wherein 'the fear of anarchy was almost pathological' (Spellman 4). The basis of this fear most likely lies in the ancient Indians' cognizance of the limits of civilisation and thus temporal power. The Vedas express general concern for the welfare of travellers, while later texts stress that at times the king himself is not safe even on roads in his own dominion (Scharfe 173). Texts on politics throughout the ancient era in India therefore reflect an awareness of the precariousness of the stability provided by the state.

As for the state of nature itself, it is not the original position of man but one he finds himself in due to his fallen nature. According to the legend related by Bhīṣma in the *Mahābhārata*, men were originally righteous and thus 'There was no government and no king; no rod of force, and no one to wield the rod' (MBh 12.59.10, Fitzgerald). As their virtue gradually declined however, the world became such a dangerous place that even 'the Gods were terrified' (MBh 12.59.20, Fitzgerald). Thus did the king become necessary and in turn subdue chaos and injustice.

2.1.1. The Doctrine of *Mātsyanyāya*

This view is captured in the *mātsyanyāya* or 'rule of the fish,' the natural order wherein a larger fish eats a smaller one. The state of this condition is expressed thus in the *Mahābhārata*: 'When there is no king in the human world, the weaker are oppressed by the stronger, and no one has any control over his own possessions' (MBh 12.49.60, Fitzgerald). The idea of *mātsyanyāya* is 'the central theme of political philosophy' in classical India and it is prevalent in both the epic literature and the law codes (Spellman 5). In one early case, when it is claimed that 'whenever there is drought, then the stronger seizes upon the weaker, for the waters are the law' (ŚB 11.1.6.24), an analogy is made between the social order brought by law and that brought by rain. Spellman analyses this metaphor accordingly:

In this passage, water appears as the cause of justice, the guardian against *mātsyanyāya*. If there is rain, then all is well; if there is an absence of rain, anarchy prevails. . . . If there is law, justice and prosperity prevail; if there is anarchy, injustice and hardship will be the lot of all. When the rains are sufficient and produce a plentiful harvest, the situation is one of prosperity. When the rain does not fall, the people must

endure hardship and this gives rise to avarice and quarrels. Thus, the effects of rain are the same as those of law. Therefore, rain equals law.

(216)

Horsch provides a similar analysis:

dharmā (=waters) is here no longer to be understood as foundation and 'support' of the earth, but rather as 'law', as 'right', since the waters, that is to say the rain, determine prosperity and fecundity.

(Horsch 435)

The connection between the forces of nature, and the quality and legitimacy of a king's rule, is a common theme for many of the theorists examined here. This relationship will be examined more fully in the next chapter, on *dharmā*.

Legal and political texts also express a fear of *mātsyanyāya* and how easy it can be to return to such a state. Manu stresses the terrible state of things prior to the establishment of kingship, as well as the importance of efficient rule in preventing a return to it:

[F]or when people here were without a king and fleeing in all directions out of fear, to protect this whole world the Lord created the king . . .

(7.3)

If the king fails to administer punishment on those who ought to be punished, the stronger would grill the weak like fish on a spit; crows would devour the sacrificial cakes; dogs would lap up the sacrificial offerings; no one would have any right of ownership; and everything would turn topsy-turvy.

(7.20-21)

Kauṭilya also expresses fear of *mātsyanyāya*, saying that the lack of enforcement on the part of the king 'gives rise to the law of the fishes' (1.4.13).

Despite their divergence on matters such as the legitimacy of the king's power, toleration and other issues regarding proper polity, Indian political philosophers returned again and again to the well of *mātsyanyāya* to justify the need for a state. Even given the potential of one man so empowered to abuse his power and rule arbitrarily – potentialities also generally recognised by Indian theorists – the concentration of power in the hands of a king was seen as 'a regrettable, but very necessary institution' (Spellman 6).

There is much in common that may be noted between the doctrine of *mātsyanyāya* and the various state of nature theories proposed by early Modern theorists in the West. Hobbes for example describes life without a state as being in 'a time of Warre, where every man is Enemy to every man' and 'the life of man, solitary, poore, nasty, brutish, and short' (Lev. 13.62). Like the Indian theorists, Hobbes postulates that in a state of nature neither life nor property is secure (cf. Hampton 60). This insecurity is due to the fact that 'in such a condition, every man has a Right to every thing; even to one anothers body' (Lev. 14.64). Furthermore, such insecurity cannot be alleviated by strength alone, for 'the weakest has strength enough to kill the strongest, either by secret machination or by confederacy with others' (Lev. 13.60). The condition of war results from men's natural exercise of their right of self-preservation, wherein a man may do 'any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto' (Lev. 14.64). This is echoed by the *mātsyanyāya* theorist's fear that men in such a state will be guided by self-preservation at any cost rather than *dharma*.

Locke is more sanguine than Hobbes when it comes to the conditions of the state of nature. According to Locke, the state of nature is one of perfect freedom and equality (ST 2.2.4), a condition of 'Men living together according to reason, without a common Superior on Earth, with Authority to judge between them' (ST 2.3.19). Although men in such a state may live without a sovereign over them, reason, that 'Law of Nature,' still tells them 'that all being equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions' (ST 2.2.6). With the lack of a final arbiter in such a state, each individual is responsible for the punishment of those who violate the Law of Nature. In a case where an individual is a victim of the aggression of another and exercises his 'Right to destroy that which threatens [him] with Destruction' (ST 2.3.16), a state of war ensues. It may be possible for the victim to overpower the aggressor and subject him to his due punishment. When this is not possible, and given that there is no arbiter or final authority in the state of nature, it is often the case that '*the State of War once begun, continues*' (ST 2.3.20). It is in response to this that men form a civil society and quit the state of nature.

The picture provided thus far by the *mātsyanyāya* theorists indicates that they are more inclined toward Hobbes' view, wherein it is inherently a state of perpetual fear and conflict. There are however occasional hints that a peaceful *mātsyanyāya* situation is possible. The legend related in *Mahābharata* 12.295 for example discusses men who have 'obtained their proper natures' despite the lack of a sovereign. Of course it is recognised within this legend that an ideal state cannot be sustained without the threat of punishment, so a king is duly instituted. There is still here some recognition that men can live peacefully – at least for a while – without a ruling power. Although there is a momentary vacuum of authority in this legend, the situation is not described in the text as being one of *mātsyanyāya*, and perhaps it is not. After all, when men have been cured of all human failings such as desire, wrath and covetousness, as the legend relates, it is reasonable to expect that they

won't easily move from a Lockean state of nature to a state of war. In that case, it would not be correct that they are in a situation where the strong devour the weak, which is what we are told the state of *mātsyanyāya* is like. Although this may be incompatible with the assertion that men without a king inevitably dwell in fear and conflict, it is important to recognise that Indian tradition generally held that humanity was proceeding through various eras (*yuga*) of decline, with the era where men uphold *dharma* without compulsion coming first (MBh 3.189). On this view, men in the first or *kṛta* age are motivated by *dharma* in a way similar to how men in Locke's state of nature are originally motivated by reason. Unfortunately for us, we do not reside in the *kṛta* age and cannot be assumed to be motivated merely by *dharma*. Buddhist and Jaina traditions relate a similar story of decline. Thus, to the extent that there are similarities between Locke's state of nature and that of *mātsyanyāya*, Indian theorists would not have considered them to be similarities that could inform contemporary concerns. Whether that conclusion was arrived at via observation or tradition, the Indian consensus was that human nature at the time that they were considering it was such that a sovereign force was necessary to maintain order.

The final state of nature picture considered for comparison is that of Rousseau. Rousseau's picture of the state of nature is distinct from that of Hobbes and Locke, as Rousseau considers Hobbes' account to fail to be sufficiently pre-social. For Hobbes 'improperly included in the savage man's care of self-preservation the need to satisfy a multitude of passions which are the product of society and which have made laws necessary' (Ineq. P. 3.153). We must instead consider man before he ever lived socially. Original man, according to Rousseau, is still sentient prior to socialisation and so will naturally 'never harm another man or even any sentient being' except out of self-preservation (Ineq. P. 10). This is due to the 'internal impulsion of commiseration' (ibid.), which is inherent to pre-social and pre-rational sentience. This sentiment, also called pity, 'in the state of Nature, takes the place

of Laws, morals, and virtue' (Ineq. 1.38), and no one in such a state is tempted to violate it. Like Hobbes, Rousseau's state of nature is subject to violence and the rule of the stronger over the weaker, but it differs in that it is not a state of war of all against all. This is because men in a state of nature were so sparsely distributed that they rarely met. Thus it was that 'Everywhere the state of war prevailed, yet the whole earth was at peace' (Languages 9.6). Man in the state of nature is self-sufficient and through his 'perfectibility' (Ineq. 1.17), or power of development, may be maintained in that state.¹

The distinct feature of Rousseau's state of nature is that he assumes man in such a state to be naturally good. Men in the state of nature are not good because they lack ferocity or viciousness, but because they are only self-regarding and self-sufficient:

They are not wicked or vindictive for the same reason that they are not just or magnanimous: their sense of self is not dependent on how others perceive them and, unlike men in Hobbes' state of nature, they are therefore not bent on besting anyone, let alone everyone.
(Gourevitch xxi)

As growing social and technological complexity render individuals incapable of actualising their natural freedom in tandem with that of others, the goodness and equality of the state of nature are lost (cf. SC 1.6). This loss cannot be remedied by a return to the state of nature, which has now become impossible, but only by the institution of a civil order:

What is good and conformable to order is so by the nature of things and independently of human conventions. All justice comes from God, he alone is its source: but if we were capable of receiving it from so high, we would need neither government nor laws. No doubt there is a universal justice emanating from reason alone; but this justice, to be admitted among us, has to be reciprocal. Considering things in human terms, the laws of justice are vain among men for want of natural sanctions; they only bring good to the wicked and evil to the just when he observes them toward everyone while no one observes them toward him. Conventions and laws are therefore necessary to combine rights with duties and to bring justice back to its object.
(SC 2.6.2)

There are but a few congruencies between Rousseau's account of the state of nature and the picture provided by Indian theorists regarding *mātsyanyāya*. Both Rousseau and the

¹ It should be noted at this point that Rousseau actually has two accounts of the state of nature: a naturalised account in the *Second Discourse* and a normative one in *Of the Social Contract*. The current focus is on the naturalised account. Merely an overview of the normative account, for comparison's sake, will suit our present purposes.

Indian theorists have a primarily deteriorationist view of the progress of pre-political society. That is, both posit an initial state of natural goodness, although they differ on the characteristics that make the initial state 'good.' For Rousseau, it is the natural inclination of man in that state towards self-sufficiency and self-regard, while it is man's natural tendency to follow the dictates of *dharma* for the Indian theorists.

This natural state antedates the *mātsyanyāya* period, and their goodness precludes the need for a king to govern them. Rousseau associates the move from the state of nature to that of political society to begin with agriculture and the formation of cities (Languages 9.18). The authors of some of the early *Dharmasāstra* texts were also dubious about cities, sometimes going so far as to state the impossibility of anyone who dwelt in them obtaining *mokṣa* (BDh2.6.33). Their concern with cities was the role they played in compromising ritual purity, but it is important to recognise as well that the basis of the resulting ritual impurity was seen to be the mixing of individuals for commercial and political purposes (cf. Scharfe 168). Much as reliance upon exchange with others results in entrenched inequalities for Rousseau, it results in a general compromise of *dharma* for the authors of the *Dharmasūtras*.

The cause of this state of affairs for the Indian theorist is the converse of that suggested by Rousseau. For the latter, a political order becomes necessary to sustain the common ends of men, and thus needs to suppress the desires they would be free to act upon in a state of nature (SC 2.7.3). For the former, the political order becomes necessary because the metaphysical and moral nature of men has degraded. As in Rousseau, the desires they would be free to act upon in *mātsyanyāya* must be suppressed. This however is not merely because they are antithetical to an organised project to realise the needs of all, but because men's desires in such a state inevitably become depraved. This still parallels Rousseau's account to some extent, for he also takes the dominance of some men over others in the pre-

political but post-state of nature state to necessitate a political order. The primary difference between the two accounts is where each locates the source of the failure in the state of nature. For Rousseau, it is simply a conflict which has arisen because some men have developed or discovered a means by which they can exploit others to their own benefit. While the *mātsyanyāya* theorists are also concerned about this, they consider the problem to be rooted in the fallen nature of man, who no longer strives to actualise or act in accord with *dharma*.

While *mātsyanyāya* most clearly resembles the state of nature for Hobbes, a comparison with Rousseau is still fruitful because it allows for recognition of how the Indian theorists believe humanity to have arrived at such a state. Both Rousseau and the *mātsyanyāya* theorists see it as resulting from a degradation of a prior state. While Rousseau however sees the problem as a systematic failure to recognise certain rights of individuals, the Indian theorists see the problem as following from the decline of a particular moral order. In either case, the prior state is no longer a live possibility for people to live in. From the Indian perspective, this means that all theorising about the political order must take into account the human being as he now is. It is contended by many however that we still possess fragments or inklings of pre-*mātsyanyāya* society in *śruti* literature, i.e., the Vedic corpus, and that this ought to inform the structure of the political order in the contemporary era. This sentiment is prevalent in the arguments of proponents for the sacrificial theory of the state, discussed in section 2.3 of this chapter. Further elaboration of this position can also be found in chapter 3, on *dharma*.

2.1.2 Rights in *Mātsyanyāya*

The focus on rights on the part of the Modern philosophers may lead one to conclude that this is where the similarity between their concepts of the state of nature and that of *mātsyanyāya* end. Indian political thinkers after all do not focus on rights, but rather on obligations: the

obligations of the king towards his subjects, and the obligations of his subjects towards him. Rather than thinking of people's place vis-à-vis the state as determined by rights, the matter that concerned them 'was one of responsibility and obligation' (Spellman 7). Even if were it to be conceded that 'all rights carry with them correlated obligations' (Martin), to use this semantic equivalency to establish the existence of rights in Indian political theory would neglect the significant 'political consequences in considering a thing to be an obligation rather than a right' (Spellman 7). Spellman's point here is probably to stress that Indian theories of justice tend to be of the right order variety rather than those which focus on the rights of individuals. While this position would be clearly correct, it is in tension with certain pictures of a state of nature or *mātsyanyāya* situation. The implications of this for Indian political theory are drawn out in section 3.

Although Spellman may be correct in his observations when it comes to an evaluation of the relationship between the Indian state and its subjects, there could still be a matter of rights at issue in *mātsyanyāya*. In a situation where there is no state, a semantic equivalence between correlated rights and obligations would be enough clarify whether there were such a thing as natural rights in Indian political thought (cf. Wolterstorff 34). That is, if A has obligation x toward B, then B has a right to the provision of x by A. Unfortunately for our purposes, the discussions of a state of nature in Indian texts tend only to discuss how terrible the situation is because the strong dominate the weak, rather than what rights or obligations people may have when they are in such a condition. As such, our understanding of men's rights in the state of *mātsyanyāya* is best informed by an analysis of the concept *artha*, the preservation of which is a significant purpose of the state. One definition of *artha* provided by Monier-Williams describes the term as meaning 'substance, wealth, property, opulence, money' (STD). Dumont defines '*artha*' in the context of Indian political theory as meaning 'interested' or 'rational' action (Dumont 303). A better elaboration of the concept may be

'the acquisition of wealth and power' (Menski n.45). Biardeau in turn understands Indian literature on kingship to show that 'concern for one's artha is for every man an occasion for using force and violence' (Biardeau 53). If the king is obligated to provide for the *artha* of his subjects, then his subjects have a right to this *artha*.

To some extent, individuals' concern for their own *artha* in a state of nature approximates the causes of a state of war for Hobbes. He identifies such causes to be competition, diffidence and glory:

The first, maketh men invade for Gain; the second, for Safety; and the third, for Reputation. The first use Violence, to make themselves Masters of others mens persons, wives, children, and cattell; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other sign of undervalue, either direct in their Persons, or by reflexion in the Kindred, their Friends, their Nation, their Profession, or their Name.

(Lev. 13.62)

While this process is not made explicit in the stated concerns about *mātsyanyāya*, it is easy to see how men's natural desire for wealth, power and the preservation of their own lives could, absent a secure and stable means of enforcement, lead to continual conflict. The various references to *mātsyanyāya* tend to focus on the threat men pose to one another merely through physical prowess. There is more than mere physical prowess to Hobbes' notion of power however, which he states to be a man's means 'to obtain some future apparent Good' (Lev. 10.41). Some of these means include an individuals reputation, friends, and luck. A similar recognition of a confederacy of the weak against the strong is however also recognised on the Indian side, such as this later warning to the king in the *Mahābhārata*:

When upstanding citizens of his country, such as brahmins, regularly go begging, such men slay the king because their begging is his fault.

(MBh 12.92.20, Fitzgerald)

Bhīṣma warns Yudhiṣṭhira as well that, though men may all be relative equals in strength, some will be greater than others in their ability to inspire other men to follow them in revolt (MBh 12.90.19-21).

While they may disagree about who is most likely to dominate in a state of nature and why, what the Indian theorists still have in common with Hobbes is the assumption that brute force or physical domination is not sufficient for the legitimacy of a ruler, and that people are reasonable to fear a state where power is distributed according to such means.

There is no explicit elaboration of natural rights, or what Hobbes elsewhere calls our 'blameless liberty of using our own natural power and ability' to defend ourselves 'with all the power [we] hath' in a state of nature (Elements 14.6), to be found in the texts on *mātsyanyāya*. It is proper however to infer at least two natural rights in such a condition. For example, if the institute of kingship was established to preserve both the lives and property of the weak, there must be something wrong with the loss of either of these even under *mātsyanyāya*. If an act which is wrong both from the standpoint of the state and when there is no state, it is appropriate to say that a person has a natural right not to have such an act done to or against him. Indian theorists can thus be said to recognise at least a natural right to life and of property.

A distinction between the natural rights found in Hobbes' state of nature and those found in *mātsyanyāya* should already be apparent, for Hobbes considers the 'Right of Nature' to reduce merely to our right to defend ourselves '*By all means we can*' (Lev. 14.64).

Hobbes however thinks that there can be no legitimate claim of injustice in a state of nature:

To this warre of every man against every man. this also is consequent; that nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power. there is no Law; where no Law, no Injustice. Force, and Fraud, are in warre the two Cardinall vertues.

(Lev. 13.63)

Although Indian theorists may agree with Hobbes that conflict in a state of nature is an inevitable result of individuals exercising their right to preserve their own lives, they do not agree that there is no right or wrong, or justice and injustice, in such a state. This is due to the fact that, despite the prevalence of the individual demands of *artha*, the universal

demands of *dharma* are higher still. Manu's complaint about *mātsyanyāya* is not only that the strong overpower the weak and that property is non-existent, but also that that which is sacred will be treated profanely and the order of the world itself will be in jeopardy.

Universal *dharma* therefore precedes human law.

In this regard, *dharma* resembles the Law of Nature described in the *Second Treatise* by Locke, 'which obliges every one' even in a state of nature (2.2.6). The Law of Nature is equivalent to reason, which 'teaches all Mankind . . . that being all equal and independent, no one ought to harm another in his Life, Health, Liberty or Possessions' (ST 2.2.6). Although the Indian theorists may recognise some sort of brute, physical equality among people in a state of nature, they do not recognise that all are rightly equal and independent. They of course divide people by natural kind (*jāti*) according to their ancestry, a phenomenon known to us as the caste system. In theory however, this division and subordination is not so extreme that it 'may Authorize us to destroy one another, as if we were made for one another's uses' (ST 2.2.6). It is not permitted to kill members of the lowest caste, even if the punishment for doing so is less than that for killing a member of a higher caste (See Manu 11.127). Although *dharma* may limit the liberty and property of a *śūdra*, these restrictions would be unenforceable in *mātsyanyāya*. Hence the need for the state.

Natural rights might also be derived from a contrast of *mātsyanyāya* with an ideal state. That is, the rights people ought to have can be inferred from what is required for a person to be virtuous. To perform the rituals and sacrifices we have mentioned requires a social context, and access to certain resources – education, raw materials, etc. – is dependent upon a well-ordered society. Since, in a state properly embodying *dharma*, these would be readily available to those both able and desiring to perform their *dharma*, a right to these things may be inferred independently of any contractual agreement on the part of the society's members.

2.1.3. The Priority of Caste and *Dharma*

Similar to the divergence between Hobbes and Locke, that between the former and Indian theorists on the state of nature is primarily attributable to the respective understanding of human nature on the part of each, particularly the role of theology in shaping such understanding. *Leviathan* begins with the provision of a materialist account of the human constitution and human nature. This serves as the foundation for Hobbes' later account on the origins of society and the state, the latter being the human being writ large or 'but an Artificiall Man; though of greater strength and stature than the Naturall' (Introduction 1). There is little room for any theological speculation in such an account, which assumes that 'to understand religion and politics, we need not understand anything about God; we need only understand man as we find him, a body alone in the world' (Lilla 76). It is furthermore made apparent in Chapter 12 of *Leviathan* that religious concerns should not trump the interests of the state. Thus it is clear that, for Hobbes, there is no law either human or divine which may compel men in a state of nature, and that there can also be no such law which may compel the state.

The situation is markedly different for theorists in classical India. Like Hobbes, they recognise that the state of nature is a fearful condition that people are reasonable to seek to avoid. In such a condition however it will also be reasonable for those who wish to benefit at the expense of others to do so, even if it violates the requirements of *dharma*. A commonly feared violation is that of the mixing of castes. Such a sentiment is apparent in the *Bhagavadgītā* when Arjuna explains why he is reluctant to wage war against his cousins. The annihilation of all men in the royal family is only the beginning of what he fears will result from partaking in the battle. Once the law is destroyed, 'The women of the family are corrupted' (BhG1.41, Edgerton), and from this the 'Mixture of caste ensues' (BhG1.41, Edgerton). The corruption of caste means that no one will be fit to perform the rites

necessary for the propitiation of his ancestors and that for all men 'Dwelling in hell certainly Ensues' (BhG 1.44, Edgerton). For the brahminical orthodoxy, the afterlife of one's ancestors is forever dependent upon the proper performance of the rituals. This obligation is prior to the state and is in no way vitiated by the state's failure to function. Thus may be seen another reason for classical Indian theorists' fear of *mātsyanyāya*.

The fear expressed by Arjuna may simply be hyperbole, for the legal texts do not elevate caste mixing above all other things to be feared in a state of nature. Manu's worry that dogs and crows would eat and profane sacrificial offerings has already been noted, although he seems to consider this travesty equivalent to the general loss of life and property in *mātsyanyāya*. Nārada similarly fears that 'the śūdra would be more distinguished' than all the other castes in such a condition (18.15). He expresses this fear however at the same time as his fear that the other castes would neglect their respective duties. Nārada also seems to consider the perpetual dominance of the weak by the strong in such a condition to be worse than the empowerment of the śūdra. Although this may indicate that there are worse things than caste mixing to be found in the state of *mātsyanyāya*, the legal texts do not provide an adequate account of why caste mixing is to be feared. For the authors of the legal texts, belief in the necessity of the performance of Vedic rituals for the sake of the afterlife of one's ancestors is no longer prevalent. Even by the end of the *Bhagavadgītā*, it is understood that liberation (*mokṣa*) is achieved through individual devotion (*bhakti*) rather than through the fulfilment of one's ritual obligations and such continued fulfilment by one's descendants. There must therefore be some reason other than the propitiation of one's ancestors that necessitates the observance of the caste system (*varṇāśrama-dharma*), even prior to the state.

Although such reasoning is not made explicit by the authors of legal texts and political treatises, it is clear that concerns about ritual purity still permeate their fear of caste mixing. The relationship between caste status and purity is apparent in the sacrifice of the

cosmic man (*puruṣa*) in the *Puruṣasūkta* from one of the later verses of the *Ṛg-Veda*, which describes the origins of the four *varṇas*:

When they divided Puruṣa how many portions did they make?
What do they call his mouth, his arms? What do they call his thighs and feet?
The Brahman was his mouth, of both his arms was the Rājanya made.
His thighs became the Vaiśya, from his feet the Śūdra was produced.
(RV 10.90.11-12)

What can be seen here is a hierarchy of purity with the brahmins at the top and śūdras at the bottom, as well as an association of each of the *varṇas* with bodily organs of respective purity, assigned in this metaphor according to their relationship to the Vedic ritual. Even if the rituals are no longer necessary to promote a good afterlife for one's ancestors, they are still useful for obtaining such an afterlife for oneself.

In the representations of Indian society given in classical texts, two portrayals of contemporary life predominate. The first is that of the renouncer, which ranges from a yogi possessing great powers to the wandering mendicant who eats only from a begging bowl. The second is that of a strictly enforced, endogamous social hierarchy with the brahmins in the superior position. In either case, attention to purity as it concerns the performance of ritual is emphasised:

The first picture is summed up by the word *mokṣa*—release from the seemingly endless round of death and rebirth. Release, in this picture, is realized by purifying oneself of the pollution created by one's previous births. The second picture is of the caste system guided by law books and is also very concerned with keeping pure. Purity, then, is a fundamental dimension of all Hindu experience: that of the yogi, the renouncer, and that of the worldly householder.
(Coward 9)

Whether one is a renouncer seeking liberation from rebirth or a householder undertaking rituals for various purposes, one will be concerned about purity and the maintenance of the family's caste identity is an integral part of such purity. As such, everyone of middling caste status and higher – especially brahmins, whose livelihoods are dependent upon their perceived purity – has a vested interest in maintaining the division of society according to castes. There is generally understood to be no underlying explanation for this state of affairs,

at least from the standpoint of the legal texts. It is simply the way the cosmos is structured and it would be *adharma* to act contrary to the natural order.

Given that the injunction to perform the Vedic rituals precedes the establishment of the state, the division of society into castes according to their purity in relation to the ritual must precede the state as well. Thus the maintenance of the caste system is one of the reasons why men might come together to form a state, even if its failure is not the worst thing that could happen in a state of nature. What is recognised in this however is not the importance of maintaining the caste system simpliciter, but that doing so is in accord with *dharma*. As we saw in the discussion on *mātsyanyāya*, the laws of *dharma* are universal and eternal, and therefore prior to those of the state. Whatever is dictated by *dharma* cannot be rescinded by the state, and the state is always obliged to enforce it. This is further elaborated in the following chapter.

2.2. *The Organic State*

One theory which easily accommodates the co-existence of disparate and unequal groups is an organic one. On this view, the state is analogous to an organism and made up of a number of distinct yet interdependent parts:

Each organ is concerned with a special function of the organism and superiority can often be dependent upon a particular threatening condition of the moment, with one organ, i.e. the head, usually being the most important and in a position of control.

(Spellman 8)

Manu and Kaṭilya provide authoritative lists of the ‘organs’ of the state as ‘The king, the minister, the country, the fortified city, the treasury, the army and the ally’ (AŚ 6.1). The enemy may also be included in such lists at times.

The details of an organic theory can be difficult to analyze, as ‘organic’ is a multiply ambiguous term. When the organic view is attributed to Plato, for example, ‘it is not always clear what theory is being attributed (organisms take too many forms)’ (Neu 243). An

organic view of the state is not unknown in the Modern West, either. We have already seen that Hobbes compares the state to the body, with the various functionaries of subjects serving as constituent parts. The body and a tree are the two popular analogies for the state in Indian tradition. An analogy of the state with a tree is made in the *Matsya Purāṇa*, wherein the king as root of the tree is 'the source of well-being to his subjects' (219.34). The same analogy is found in Somadeva's *Nītivākyaṃṛta* (Scharfe 3). Elsewhere, the king Amoghavarṣa makes an analogy of the state with the body, comparing 'the king to the soul, the ministers to the mind, and the servants to the senses' (Scharfe 3).

Spellman indicates that there has been some debate regarding whether there in was in fact an organic theory of the state in ancient or classical India. Verses such as those from the *Matsya Purāṇa* however show that 'The organic theory of the State was therefore certainly known and held in ancient India' (Spellman 9). Scharfe provides some possible background to the debate:

Both these allegories of the body and of the tree must have remained popular through the centuries because they were taken up and developed in the *Sukranīti*, a work of the early nineteenth century Neither allegory is elegant in this elaboration and there is no indication that either played a major role in Indian political thought.

(Scharfe 3)

If analogies of the state with an organism did not play a major role in Indian political thought, it is easy to see why some might deny that there was an organic theory of the state to be found therein. The opponent Spellman has in mind however denies that there is an organic theory of the state to be found in classical India because such a state, which 'withheld the liberty of a large segment of the population on the ground that they were inferior' (8), would be inherently immoral. Spellman attempts to address this portion of the objection by pointing out that the organic theory is an instrumental concept rather than a moral one and that there is further a distinction to be made between political organisation and social morality. This analysis seems to be correct, as it will be observed that an organic theory of organisation is

compatible with other theories of legitimacy. The same could be said to be true of Hobbes' analogy of the state with the body: While the comparison clearly suits his purposes, one needn't accept Hobbes' theory in its entirety in order to accept the applicability of the analogy.

Scharfe implies that, as an object of political theory in India, the organic theory was not influential. According to Spellman however, some of the verses and commentary of Nārada would suggest otherwise:

The power of kings is the edict. It is based on their word: whatever they say, right or wrong, is the *dharma* for litigants.

Bhava says that the *tejas* [power, authority—D.S.] of the king is so great that whatever he decrees, good or bad, is *dharma* for the people.

(NS 18.19)

Whatever a king does is authoritative, because of his responsibility for protection, his authority, and his vigilance for the welfare of creatures.

(NS 18.21)

The first verse is similar to a statement Hobbes makes about the role of divine law in those of the state:

I conclude therefore, that in all things not contrary to the Morall Law (that is to say, the Law of Nature,) all subjects are bound to obey that for divine Law, which is declared to be so, by the Lawes of the Commonwealth.

(Lev. 26.149)

In both cases, the absolute power of the state is being expressed. Hobbes indicates that this power is still limited by natural law, but we do not see a similar, explicit concession of such on the part of Nārada. That the king's power still has certain limitations is however implied in the second verse, which declares that the king has certain responsibilities toward his subjects. What is left unanswered is the source of those responsibilities. Normally, one would say that it is *dharma*, but the first verse declares that the king has the power to decide what constitutes *dharma*. On the one hand, this could mean merely that the king has the power to determine how to go about the performance of his responsibilities towards his subjects, or to determine when action on his part is necessary. On the other, Nārada could be

using *dharma* in a more restricted sense, in the same way that the terms 'justice' or 'law' might refer to a general social order or to a specific institution. This is further addressed in the later section on *dharma*.

If Spellman is correct in his claim that Nārada is opposed to a contractualist theory (Spellman 16), then the picture provided by Nārada above must suggest an organic theory of the state. Scharfe's concession that 'Nārada denied even the moral right of the people to revolt' (Scharfe 226) lends further credence to this conclusion. Nārada's use of analogies with family relationships place the king in a similar position to that which he occupies in the organic analogies:

Just as wives must always worship their husband even if he has no redeeming qualities, so, too, a king must be revered by his subjects, even if he has no redeeming qualities.

(NS 18.22)

Bhava says that a king's subjects must look upon his pronouncements as they would upon their own fathers', otherwise the law of the jungle would prevail.

(NS 18.23)

The idea of the king's role in these analogies is the same as that in those of the body and the tree: the role of final decision-making falls to the king, and all of his subjects are obliged to obey and respect his orders, regardless of their content. Although Nārada uses the analogy of a husband and his wife or a father and his children rather than that of the relationship among the parts of an organism to describe the balance of power between a king and his subjects, his concept of the state is still an organic one. This must be the case because none of the other theories of the state found in classical India are compatible with Nārada's position if one assumes that it is intended to be part of a particular, substantive theory.

It is possible however to read the views expressed by Nārada in the verses above as instrumental statements about the respect and deference which ought to be accorded to the king, similar to how one might read the preceding organic analogies. This is at least a plausible reading of Nārada (see Lariviere 1), which would make his views compatible with a

contractualist picture, as can be seen in section 2.5. (Spellman suggests that Nārada in fact believes in the divine appointment of the king by *karma*; this view is addressed in section 2.4.1 of this work.) Spellman may therefore be mistaken to identify Nārada as an anti-contractualist, but this identification makes it possible to see the role of an organic theory of state organisation in Nārada's thought. It is relevant in this regard to consider the details of Nārada's view and their relationship to other theories, as Nārada is not a figure of insignificant influence:

The fact that the Nāradaśmṛti is cited by later writers in the Indian legal tradition testifies to its importance. There is some evidence which indicates that the Nāradaśmṛti may have even influenced monarchs and their governments: when the great ruler of the Malla dynasty in Nepal, Jayasthiti, designed his legal and social reforms, he may well have consulted the Nāradaśmṛti.

(Lariviere 1)

While Scharfe is likely correct that the analogies of the state to the body or to a tree did not play an explicit role in political thought in India, this does not mean that the concept demonstrated by such analogies was not influential. It may only have been the case that these analogies were a popular manifestation of a view held by more prominent thinkers and writers.

Given in the end that the organic theory is only an instrumental concept, some further explanation as to why the king should be vested with almost absolute power is necessary. Bhava's commentary on Nārada suggests that such empowerment is necessary because the people's failure to heed the king's every command would lead to *mātsyanyāya*. This however is not a defence of so empowering the king as it is an indication that there are worse things than a king with unlimited authority. How it may come to such a state of affairs that the king is vested with unlimited authority, and rightly so, is addressed by reference to either the purpose of the state or the indisputable origins of the authority of the king. While these are not provided by the organic theory in itself, they are provided by the following theories concerning the origins of the king and state.

2.3 The Sacrificial State

The concept of the sacrificial state is defined thus: 'the State exists as a sacrifice itself and as the agent in securing *mokṣa* or salvation for the people' (Spellman 9). While Spellman notes that it is not unusual for the monarch to have an important religious role in many societies, the ruler of the sacrificial state in India had a role more significant than this, being furthermore 'the foundation upon which all religious activities rested' (9). The sacrificial state is structured in the following manner:

Just as a priest regulated the details of a sacrifice, the king regulated the duties of the people. Thus, the State itself may be considered as a sacrifice. Each part of the State has its particular function and duties in this sacrifice, the purpose of which is a better future life.²

(Spellman 9-10)

This theory finds expression primarily in the *Śatapatha Brāhmaṇa*:

Now this is only a single (brick): he thus makes the nobility (or the chieftaincy) and (social) distinction to attach to a single (person). And what second (such brick there is) that is its mate.--a mate, doubtless, is one half of one's own self, for when one is with a mate then he is whole and complete: (thus it is laid down) for the sake of completeness. With a single formula he lays down many bricks he thereby endows the nobility pre-eminently with power, and makes the nobility more powerful than the peasantry. And the other (bricks) he lays down singly, with separate formulas: he thereby makes the peasantry less powerful than the nobility, differing in speech, and of different thoughts (from one another).

(SB 8.7.2.2.1)

The view is further elaborated in Book IX, wherein the social and political structure is intimately tied to the preparatory visualisation of the sacrifice by the performing priest (SB 9.4.3.1-3, 9). Manu, referring to the *Puruṣasūkta*, or cosmic sacrifice, also delineates the role of each caste in the sacrificial rite writ large:

For the protection of this whole creation, that One of dazzling brilliance assigned separate activities for those born from the mouth, arms, thighs, and feet. To Brahmins, he assigned reciting and teaching the Veda, offering and officiating at sacrifices, and receiving and giving gifts. To the Kṣatriya, he allotted protecting the subjects, giving gifts, offering sacrifices, reciting the Veda, and avoiding attachment to sensory objects; and to the Vaiśya, looking after animals, giving gifts, offering sacrifices, reciting the Veda, trade, moneylending and agriculture. A single activity did the Lord allot to the Śudra, however: the ungrudging service of those very social classes.

(Manu 1.87-91)

² While the pursuit of a better future life is not properly *mokṣa*, as the latter entails a liberation from future lives, the sacrificial state also has the aim of material benefits for its members, which is still relevant here.

The four classes thus come together in the sacrificial state in order to fulfil the grand sacrifice, which contributes to the liberation of all.

Support for the sacrificial state is not only dependent upon contrasting it with *mātsyanyāya* but also by pointing out that the repercussions of a world with no ruler extend beyond the human realm:

The gods, men, *Pitris*, *Gandharvas*, *Uragas*, and *Rakshasas*, all depend upon sacrifices for their support. In a country destitute of a king, there can be no sacrifice.

(MBh12.72, Ganguli)

The existence of the state, on this view, prevents chaos not only on earth but in the heavens and beyond. If one were to accept such a picture, it would then be reasonable to conclude that ‘what was, was right, and that treason was blasphemy’ (Spellman 12). The legitimacy of the state is therefore established by the necessity of the sacrifice.

As the cosmic view of the sacrifice became less prevalent or was reduced to requiring merely mental performance of the ritual, this view of state was sapped of much of its strength. It became instead either a metaphysical appeal, i.e. the state should be structured in such-and-such a way because that is the way it was originally intended to be structured, or else a traditional appeal: because it has been that way from time immemorial. In such cases, some further justification for the legitimacy of the state and its power must be given, as continued dependence of the natural world and beyond upon the performance of the ritual is not only no longer apparent, but is also considered by many to be false (See Halbfass 5, 366; Collins 56-7). Further justifications for organising the state in line with the principles originally given in the sacrificial theory are addressed in the following sections.

Although the picture provided by the sacrificial state is not organic in a strict sense, as it does not involve justification via analogy with some kind of organism, it offers the same interpretation of the relationship of individuals to the state. That is, it denies – or, more accurately in this case, does not even consider – the primacy of the individual in the

constituting of the state. Where the sacrificial theory differs from that of the organic however is in providing a reason, in addition to mere fear of anarchy, for empowering certain persons or groups at the expense of others. As we have seen, this reason is the necessity of the sacrifice either for preserving the continued order of the cosmos or promoting liberation for those living under the state's protection. The sacrificial theory therefore provides a teleological picture of the state, in contrast to the instrumental one suggested in the organic theory. This is the explanation for why the former also subsumes the interest of individuals.

Understanding of the teleological aspect of the sacrificial state may be further illuminated by a comparison to Aristotle, for whom politics also serves a teleological function:

Every state is a community of some kind, and every community is established with a view to some good: for everyone always acts in order to obtain that which they think good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims at good in a greater degree than any other, and at the highest good.

(Politics 1.1.1252a1-6)

As in the sacrificial state, Aristotle's polis also subsumes the interests of all of its members. While the end of the polis however is the good or flourishing of itself and its constituents, the end of the sacrificial state is the performance of the sacrifice. The sacrifice is performed not only out of duty however, but also because it facilitates *mokṣa* for the inhabitants of the state. From the perspective of the proponent of the sacrificial state, the attainment of *mokṣa* would be an unmitigated good. What makes this good distinct from Aristotle's idea of the good is what constitutes it and how it is discovered. For Aristotle, the individual good is *eudaimonia*, or human flourishing, which is facilitated by the flourishing polis. This can be known through consideration of and reflection upon man's nature, which is inherently political (Politics 1.2.1252b28-1253a6). In this regard, Aristotle's political theory is naturalistic. For the sacrificial theorist, on Spellman's account, what is good for humans is facilitated by the state's actualizing *dharma* through the proper observance of Vedic ritual. This is known to

us both through the *Vedas* themselves and through the traditions aimed at preserving them and the ritual observances contained therein. Both Aristotle and the sacrificial theorists reject the notion of a state's origins resulting from a contract, and the sacrificial theorist would no doubt agree with Aristotle's claim that 'political society exists for the sake of noble actions, and not of living together' (Politics 3.9.1281a2).

While the sacrificial theorist would likely consider *dharma* to be as natural an object or property as man, what distinguishes him from Aristotle on this account is that the source of human good is external to man as such. We do not come to understand the good for man by understanding human nature, which is now depraved. We instead come to understand this by testimony from and emulation of those superior to us who have come before. The account of the *Puruṣasūkta* explains both man's origins and his purpose in this regard, and thus serves as the proper foundation for the state according to the proponent of the sacrificial theory.

Returning to further distinctions between the sacrificial and organic theories, each differs in the degree to which they respectively empower the king. According to the organic theory, the rule of the king is absolute and incontrovertible. The sacrificial theory, relying as it does upon the *Puruṣasūkta* legend in order to explain the basis of its social distinctions, places the authority of the brahmins higher than that of the king and ruling class. Although these two positions are theoretically distinct, they may also be combined such that the sacrificial theory provides a justification for the absolute power of the king. While the king, according to the sacrificial theory, is obligated to ensure that brahmins perform their duties, the brahmins themselves are also exempt from taxes and entitled to basic welfare from the king. They might also be entitled to other benefits from the king, even if 'these were probably largely the prerogative of seers and saints' (Spellman 187). It is easy to see then how some brahmins might integrate the sacrificial and organic theories by stressing that they themselves are rightly independent from the king, whose power is otherwise unlimited.

That the two theories are distinct can also be seen when the overthrow of the king is called for on the basis of him either mistreating or failing to protect his subjects. According to the organic theory, an existential challenge to the king's authority would be akin to attack on oneself. From the perspective of the sacrificial theory however, it may be that a king fails to uphold *dharma* and must be replaced for the good of his subjects. It is for this reason that Kṛṣṇa considers the execution of the king Duryodhana to be a moral act: 'Even this is great transgression, of which all the elders of the Kuru race are becoming guilty, for they do not forcibly seize and bind this wicked king in the enjoyment of sovereignty' (MBh 5.128, Ganguli). When a wicked king is not overthrown, the historian Kalhaṇa sees either the sinfulness of his subjects or the protection of the gods at work (Kalhaṇa 1.324, 7.959, 1140). Therefore, while the sacrificial theory of the state may combine the king's religious and secular functions such that opposition to the state may itself be a form of blasphemy, it is still possible under this system that the king himself may end up opposing the state.

There is a significant potential failing of the sacrificial state, which is exploited often by its heterodox opponents. While for later proponents of the sacrificial state, the state ostensibly exists for the benefit of all to realise *ātman* and attain *mokṣa* (cf. Scharfe 216), there is one recognised group who clearly does not benefit: the *śūdra*. Noting the restricted ethical and soteriological role of the *śūdra* in the *dharma* literature, Halbfass indicates that what is given is more a *karman* of the *śūdra* than a *dharma* (359-60). That is, while the *śūdra* is given a servile role within the grand scheme of things, there are no positive qualities attached to this station. In other words, the *śūdra* does not benefit himself (except perhaps prudentially) by doing his duty; he remains forever ritually impure and incapable of improvement in this regard. While the *śūdra* might fulfil his duty qua *śūdra* in an exemplary fashion (i.e., be a 'good' *śūdra*), 'his caste-bound achievements could not help him to attain the peculiar ethical potential that belongs (i.e., is "innate") to the brahmin' (Halbfass 360).

He remains 'on the boundary of what is human, where there is nothing to hope for him but a better rebirth' (Biardeau 36-7). Even this may be impossible however, as a nineteenth century *paṇḍit* proposes in response to such a query 'whether a mule, no matter hardworking he is (i.e., who performs his functions as a mule as perfectly as he can) can ever become a horse' (Halbfass 360).

It should be clear how, even if a proponent of the sacrificial theory is happy to acknowledge that little benefit accrues to the *śūdra* in his system, the ingrained bias against the *śūdra* and the perceived lack of permanent liberation offered by the ritual system lend themselves to exploitation by opponents of the sacrificial state. While the orthodox philosophers opposing the ritualists focused on the reasons to consider *mokṣa* to be a permanent state, they were relatively unconcerned with the soteriological status of the *śūdra* and were generally content with the status quo which neglected him. Some of the unorthodox traditions, such as Jainism and Buddhism, were at times concerned with both the soteriological and material status of the *śūdra* in tandem with that of others, at least in theory. Whether orthodox or heterodox, these opponents suggest a proposition devastating for the sacrificial theorist: that *mokṣa* is attainable outside of or despite the state. The consequence, in the view of the proponent of the sacrificial theory, is that the authority of the state is undermined.

Despite its perceived shortcomings, deference to the sacrificial theory is found throughout Indian texts on political theory. Even if the king is no longer explicitly required to maintain and perform the Vedic sacrifices, it is still seen as necessary to show that he fulfils their function via other means, much as the renouncer may claim to perform the sacrifice – via mental rehearsal – in meditation. Thus it is that Kauṭilya, though not himself a proponent of the sacrificial theory, still makes a parallel between the king's obligations as ruler and as a sacrificer in the ritual:

For the king, the (sacrificial) vow is activity, sacrifice the administration of affairs ; the sacrificial fee, however, is impartiality of behaviour, (and) sacrificial initiation for him is the coronation.
(AŚ 1.19.33)

That homage to the sacrificial theory can be found – even in texts by those generally opposed to it – is testimony to its continued influence. The sacrificial theory of the state eventually becomes one of the prevalent views among classical Indian theorists, particularly those who identify with the orthodox or ritualist philosophical schools.

2.4 *Kingship by Appointment*

The theories of kingship by appointment all follow a similar pattern. First, there is a being or class of beings, or else some transcendental force, whose authority exceeds those of any human. One or some of these choose to vest the power of kingship in a particular individual. It should therefore be clear to all that the power of kingship is rightly vested in the one who possesses it.

2.4.1 *Kingship by Karma*

The basic picture suggested by the view that the king holds his position by virtue of *karma* is that the man who is now king has performed some great deeds, usually in a previous life, which have now resulted in his becoming king. *Karma* is understood to be the doctrine that 'deliberately performed actions generate a residue which stays with the agent until future circumstances are appropriate for its fruition in their experience' (Bartley, 'karma'). The present king on this view should be understood to have certain *karmic* dispositions which make him fit to rule. Although the impersonal force of *karma* is not some authoritative person who directly appoints the king, the process by which the just fruits of individual merit and demerit are doled out to each person is invariably impartial and fair. This is known to be true because the impersonal, mechanical process by which *karma* is resolved will eventually

result in those who are wicked suffering for their misdeeds and those who are virtuous eventually being rewarded for the good they have done.

The view that the king's legitimacy may be derived from his *karma* is expressed in the *Mahābhārata* with the statement that 'they that are kings, and those others that are householders born in high families, have all become what they are only in consequence of their penances' (MBh 12.296, Ganguli). Nārada offers a similar sentiment, saying that 'The king has purchased his subjects through austerities, therefore he is their master' (NS 18.23). Such *karma* may also be earned through the acquisition of metaphysical knowledge:

For as long as Indra did not understand this self [*atman*-D.S.], the demons were prevailing over him. But when he came to know it, he smashed the demons, conquered them, and secured the supremacy, sovereignty, and lordship over all the gods. A man who knows this, likewise, wipes off all evils and secures the supremacy, sovereignty, and lordship over all beings—yes he does, when a man knows this.
(KU 4.20)

Whether he has attained his station via action or knowledge, there is something inherent to the king's nature, established by a reliable and just process, which provides legitimacy for the power that he wields over others.

2.4.2 Divine Appointment

The notion that the king is divinely appointed to his station is common to Vedic literature, such as in the latter portion of the *Rig Veda*:

BE with us; I have chosen thee: stand steadfast and immovable.
Let all the people wish for thee let not thy kingship fall away.
Be even here; fall not away be like a mountain unremoved.
Stand steadfast here like Indra's self, and hold the kingship in the grasp.
This man hath Indra stablished, made secure by strong oblation's power.
(RV 10.173.1-3)

The *Śatapatha Brāhmaṇa* similarly claims that the god of the sun, Sūrya, 'assigns its place to everything here, now under a good, now under a bad (king)' (ŚB 2.6.3.8). The *Aitareya Brāhmaṇa* attributes the king's appointment to the god of the heavens and order, Varuṇa (AB 8.13). The *Bṛhadāraṇyaka Upaniṣad* relates that *brahman* created kingship, 'a form superior

to and surpassing itself' (BU 1.4.11), as part of its own self-development. So great is the power vested in the king by *brahman* that a brahmin bows to the king at the latter's anointing. This is an honour the brahmin supposedly extends 'only to the ruling power' (BU 1.4.11). A lengthy explanation of the divine origin of kings is given in the *Mahābhārata*, following Yudhiṣṭhira's question to Bhīṣma: 'for what reason does one man, viz., the king, govern the rest of the world numbering many men possessed of great intelligence and bravery?' (MBh 12.59, Ganguli). Bhīṣma relates a *mātsyanyāya* legend wherein the gods ask Viṣṇu to appoint a man worthy to rule over all others. Following a few abortive attempts the great Pṛthu, the first consecrated king, is produced, whose righteousness was such that no ill befell his subjects and no power could obstruct his rule. His power is furthermore enhanced by divine status:

The eternal Vishnu himself, O Bharata, confirmed his power, telling him. 'No one, O king, shall transcend thee.' The divine Vishnu entered the body of that monarch in consequence of his penances. For this reason, the entire universe offered divine worship unto Prithu, numbered among human gods.
(MBh 12.59, Ganguli)

This kind of story however is not restricted solely to the legendary Pṛthu:

A person upon the exhaustion of his merit, comes down from heaven to earth, and takes birth as a king conversant with the science of chastisement. Such a person becomes endued with greatness and is really a portion of Vishnu on earth. He becomes possessed of great intelligence and obtains superiority over others. Established by the gods, no one transcends him. It is for this reason that everybody acts in obedience to one, and it is for this that the world cannot command him.
(MBh 12.59, Ganguli)

There are other hints in later literature of the king's legitimacy deriving from divine appointment, such as when Manu says that the king was created from various particles taken from the gods in order to end the state of *mātsyanyāya* (7.3-7). Nārada similarly indicates the king in fact to be Indra in human form (18.20). The implications of these latter texts however appear to be more about the divine status of the king rather than whether the legitimacy of his station is established thereby. The idea that the king is appointed by deities and the idea that he is instead a deity himself are of course not entirely unrelated. If the king were a god, or

descended from gods, then his legitimacy would be inherent rather than derived from God.

The power to determine legitimacy would however still be relegated to the level of deity, as it is with the theory of divine appointment.

There are a plethora of potential relationships which might exist between the king and divinity (see Spellman 28), some of which we have seen already. Only some of these have any have significance for determining the king's legitimacy, however. Such relationships are primarily those wherein the king is equated with a god, or assigned a general divine status, and those wherein the king is claimed to be descended from gods. At other times, the claim is that the king is only divine at certain times, such as when his rule is righteous or when he performs the sacrifice. Other views also place the divinity within the institution of kingship rather than with the king himself. By themselves, these views generally underdetermine any particular theory of legitimacy, as the allegedly divine status of the king also plays a subsidiary role in some theories or else as a necessary façade in others. The emphasis of theorists in classical India is not on the absolute divinity of the king but 'the extent of divinity claimed for the king in relation to other men' (Spellman 27). Popular belief of course may have held the king to really be a deity in human form, but it is important to consider here that 'Divinity was cheap in ancient India' (Basham 86). By comparison, the emphasis on the king's divinity by political theorists often mirrors that of Hobbes' analogy of the state to a mythical creature of awesome power. In both cases, the significance of the analogy is the immense power wielded by the sovereign over individuals and that the scope of retribution for wrongdoing against him is greater than what one might expect from a mere human.

Returning to the divine appointment theory in particular, the idea gleaned from this theory, appropriately enough, is that the king's authority is derived from divine appointment. The argument that might be offered in favour of this view is fairly clear: God has inherent authority over human affairs and is entitled to decide how and by whom men should be ruled.

His decision in favour of the king is therefore legitimate and cannot be validly challenged by any human authority.

This is one way to understand the idea that the king's authority is made legitimate, i.e., it is so merely by divine fiat. Another is encapsulated in the legend of Pṛthu. Before his reign, many kings both just and unjust are said to have ruled, although none of them are understood to have had legitimacy. Pṛthu, we are told, was not only just but also exceptionally wise and powerful and thus able and willing to fulfil the obligations required of a king. It is on this basis that he is granted legitimacy by Viṣṇu, rather than being empowered and made legitimate with merely a hope for the best, as appears to be the case in some of the other legends. Although in the case of Pṛthu, the legitimacy of the king is still dependant upon his being divinely appointed, the apparent priority of him establishing a just monopoly on the use of force may be seen as a precursor to contract theories of legitimacy.

2.4.3 Appointment by Ṛṣis

Ṛṣis are those pre-historic, great sages who composed the *Vedas* in accord with their mystical insights, or else served as conduits for the divine message to humanity. The appointment of the king by ṛṣis is therefore a 'semi-divine' theory of how the legitimacy of the king is established (Spellman 16). The *Atharva Veda* indicates that the ṛṣis created royalty, strength and force to secure what is excellent and blissful (19.41). According to the *Mahābhārata*, the ṛṣi Markaṇḍeya claimed that 'The *Rishis*, fearful of sin, entrusted (the temporal) power to the Kshatriyas' (MBh 3.184, Ganguli). The role of the ṛṣis is shown in the role they play, along with the gods, in the selection of the earthly king Nahuṣa as ruler of the gods following Indra's abdication due to Brahmanicide (MBh 5.10-11). Elsewhere in the *Mahābhārata*, we see the ṛṣi Kaśyapa appointing rulers at the earth's request (MBh 12.50). In another legend,

the ṛṣis are the inheritors of the sword used by Rudra in his battle against the Dānavas. They duly pass it on to Manu, with the following admonition:

Thou art the lord of all men. Protect all creatures with this sword containing religion [*dharmā*-D.S.] within its womb. Duly meting out chastisement unto those that have transgressed the barriers of virtue for the sake of the body or the mind, they should be protected conformably to the ordinances but never according to caprice. Some should be punished with wordy rebukes, and with fines and forfeitures. . . . These punishments, consisting of wordy rebukes as their first, are regarded as so many forms of the sword. These are the shapes that the sword assumes in consequence of the transgressions of persons under the protection (of the king).

(MBh 12.166, Ganguli)

The final legend from the *Mahābhārata*, which promotes the view that the king is legitimately appointed by ṛṣis, comes after a period of *mātsyanyāya*. Although Śiva has destroyed the Asuras of desire, wrath and greed which were corrupting men on earth, the kingship has not yet been re-established. Fortunately, the destruction of the Asuras now means that men have 'once more attained their proper natures' (MBh 12.295, Ganguli), and thus are not in immediate need of a king. The groundwork however must be laid for when this will no longer be the case:

Then the seven ancient Rishis came forward and installed Vasava as the chief of the gods and the ruler of heaven. And they took upon themselves the task of holding the rod of chastisement over mankind. After the seven Rishis came king Viprithu (to rule mankind), and many other kings, all belonging to the Kshatriya order for separately ruling separate groups of human beings.

(MBh 12.295, Ganguli)

The view that the legitimate king is appointed to his position by ṛṣis has both commonalities with and divergences from the theory of divine appointment. The similarity is that, like the deities, the ṛṣis possess indisputable authority over spiritual matters and thus over how these should be adjudicated. They can therefore be considered to have made a reliable choice when they entrust the power over the enforcement and adjudication of *dharmā* to a particular man who is made king.

The significant difference this theory has with the theory of divine appointment is that the authority of the ṛṣis to confer legitimacy on a ruler is not always inherent, but is sometimes dependent upon the gods. This authority, even when inherent, is also exercised

primarily following a calamity which has weakened the gods along with human institutions. Where this authority is derived from the gods, it can be seen as subsidiary to the theory of divine appointment of the king. When the authority of the ṛṣis is said to be inherent, then the theory of appointment by them can be seen as distinct from the former.

Spellman sees the empowerment of ṛṣis to confer legitimacy on the king as part of a general historical trend where power has moved from smaller to larger groups (16). There is however no linear history to be found in the Indian tradition (if anywhere else), as the growth of the established state in India was also accompanied by a diminishment in democratic procedures for choosing leaders (Scharfe 58). Aside from its historical progressivism, Spellman's view is also mistaken on numbers. First, there are more gods accounted for than ṛṣis, so the move from the former to the latter would mean decisions were made by a smaller number. Second, the ṛṣis are themselves mythical beings. To be sure, they are mythical beings who happen to be human, but their powers and exploits clearly exceed those of any ordinary human being. Thus it may be assumed that their role in the deliberative process of organising the state is the same as that of the gods and similarly minimal in the view of the authors of the legal texts.

While Spellman may be mistaken about the details, he is still correct to note an important historical break demonstrated by the view that the king's legitimacy is based upon appointment by ṛṣis rather than gods. This break however is not part of a progressive move from despotism to democracy so much as it is a recognition of the fragility of the state by the ancient Indians, and that this fragility is a threat even when the state is divinely instituted. The theory of the appointment of the king by ṛṣis could be read as a theoretical concession that the gods cannot always be relied upon to maintain order and stability in the face of crisis, and thus that an additional, human authority is needed to guarantee the regime's sovereignty. There is however little talk of the ṛṣis awaiting a wise, powerful and just king to arise who

might be worthy of their bestowal of legitimacy. The texts which speak of the *ṛṣis*' authority as the basis for a king's rule, which appear rather late in the contexts in which they occur, instead present a picture of a world recovering from significant turmoil and upheaval, wherein both gods and men have failed in their duties to maintain order. While the legends involving the *ṛṣis* maintain the tie between *dharma* and stability by identifying as dharmic those early kings whom they appointed, it appears that this theory puts more emphasis on stability rather than *dharma*.

It is significant in this final picture offered that the power of the *ṛṣis* exceeds that of the gods, at least when it comes to the domain of political authority. It must also be observed however that the authority of the *ṛṣis* relative to the political order is much like that of the gods, so that it does not transfer to other human beings after the authority to rule has been vested in the king. This move however only has the appearance of placing the power to determine legitimacy with human authorities, as no mere mortal of the present age is entitled to challenge the wisdom and authority of the *ṛṣis*.

Now turning to consider the appointment theories more broadly, these are not always considered to be exclusive. That is, the same text may promote more than one means by which the king came to be appointed. While a combination of theories may have had a rhetorical advantage of overdetermining the legitimacy of the king's power, it does pose a problem analytically. After all, either the king's authority is derived from the gods or else from his own *karma*. Similarly, the *ṛṣis*' power must either be inherent or derived from the gods. Attempting to clearly identify which theory of appointment was the real theory promoted by a particular text would be to miss the point however. The location of the authority to determine the legitimacy of the king – and by extension the state – outside of the human realm is the main feature of the appointment theories of legitimacy. The appointment theories all rely upon authorities which are superior to human judgement and thus render

individual attempts to critique the state as inherently misguided. It is this aspect of the appointment theories that it is significant to recognise when any of them are invoked.

There are of course various and interesting possible combinations of the appointment theories of legitimacy with other theories of the state. Combined with the organic theory of the state as an instrumental concept for example, the appointment theories of legitimacy could easily justify suppression of dissent, regardless of the nature and success of an individual king's rule. This combination may be largely hypothetical however, as such absolutism is not characteristic of political theorists of the classical period, with the possible exception of Nārada. Considering more common possible combinations, early proponents of the sacrificial theory would likely be more satisfied with the king's appointment relying upon *karma* or *ṛsis*, given the rejection of a creator god by the orthodox (Bartley, 'Purva Mimamsa'). Forms of divine appointment which depend only on the authority of the divine appointer however, rather than suggesting his omnipotence, would also be compatible with the views of the ritualists.

While the authority which results in the appointment of the king at least guarantees the value of the institution of kingship however, it does not guarantee the integrity of every king. As Spellman notes, the king whose position is due to his *karma* may also find that he has, through his actions, forfeited that position (12). This concession is similar to another made in the epics, which is that the king who has been granted divine status may see it withdrawn if he fails to uphold *dharma* (Scharfe 97). The general view may therefore be said to be that, whatever the source of the king's appointment, his power is not thereby made absolute. The consequence which follows from this is not a contractual theory, for the king's legitimacy is still not considered to be derived from his subjects. Instead, it is only instantiated through those brahmins who, through their understanding of the *Vedas*, are qualified to discern the intent and desires of the appointing agent or principle. When the king

consistently fails to meet the standards of these brahmins, it may be legitimate to overthrow him and replace him with another. Despite such power being vested in the brahmins, the power to bestow legitimacy upon the king remains forever outside human hands, or at least beyond those humans not invested with divine authority.

2.5 *Social Contract Theories*

2.5.1. 'Orthodox' Accounts

In simplest terms, the idea behind a social contract theory is that people come together to empower a ruler and give up some rights in exchange for equal protection. Some of the earliest instances we have of people choosing their rulers in the Indian context come from the *Vedas*. The following verse for example is found in the *Atharva Veda*, in a benediction for the election of a king:

The tribesmen shall elect thee for the Kingship, these five celestial
regions shall elect thee.
Rest on the height and top of kingly power: thence as a mighty
man award us treasures.

(3.4.2)

Elsewhere, we see that the kingship is awarded to an individual by certain nobles or holders of certain offices (eg., *ratnin*). Although such accounts are indicative of the operation of an election principle in choosing leaders in certain strains of Indian political thought, they are not yet accounts approaching a contract theory. In the verse cited above for example, the members of the tribe are choosing an individual to rule over them primarily for the purpose of material gain, but they do not appear to be surrendering any rights in this agreement. Similarly, there appears to be no expectation that the king is obligated to do anything for those who have appointed him other than to provide them with wealth.

A more developed conception of contractual is found in the *Aitareya Brāhmaṇa*, wherein the king takes the following oath before the priest who consecrates him:

From the night of my birth to that of my death, for the space between these two, my sacrifice and my gifts, my place, my good deeds, my life, and my offspring mayest thou take if I play thee false.
(4.8.15)

Although we are lacking here a clear indication of the exact nature of the king's obligations to his subjects and the position of the priest vis-à-vis the people as a whole, there is at least an indication that the subjects are entitled to punish the king in certain fashions should he fail to uphold his duties. While not yet fully developed into a theory of social contract, this should be recognised as an 'embryonic form' of the concept (Spellman 20).

In the *Mahābhārata*, Bhīṣma provides a history of the social contract, with its origins in a state of *mātsyanyāya*:

It hath been heard by us that men, in days of old, in consequence of anarchy, met with destruction, devouring one another like stronger fishes devouring the weaker ones in the water. It hath been heard by us that a few amongst them then, assembling together, made certain compacts, saying, 'He who becomes harsh in speech, or violent in temper, he who seduces or abducts other people's wives or robs the wealth that belongs to others, should be cast off by us.' For inspiring confidence among all classes of the people, they made such a compact and lived for some time.
(12.67, Ganguli)

Even bound by such a compact, the men are not able keep anarchy at bay. They therefore require, so they think, a single executive to lead them. They thus appeal to the god Brahma to appoint a king for them. Brahma in turn chooses Manu to take up the position of king, but the latter refuses. The basis for Manu's refusal is indicated to be his fear that, should he find himself ruling over 'men who are always false and deceitful in their behaviour' (12.67), he will take on their sins and thus endanger his own liberation in the afterlife. To assuage his fears, the men assure him that 'sins that men commit will touch those only that commit them (without staining thee in the least)' (Manu 12.67). In return, the men promise the king a portion of their resources and income, the most beautiful of their daughters who wish to marry, the loyalty of men skilled in warfare and one quarter of all their merit. Given these concessions, Manu agrees to become the king of all men and sets out with a great host to punish the wicked and set the world aright.

According to Spellman, the first part of this legend from the *Mahābhārata* does not depict a social contract, as 'Only a small group of the many inhabitants are concerned and no leader is selected' (21). In his view, the initial agreement depicted here would better be described as a compact rather than a contract. It is not clear however what work is being done by this distinction. "Compact" is after all an ambiguous term which is often synonymous with "contract." Furthermore, while there are numerous Sanskrit terms for "contract," Monier-Williams indicates there to be only a few words which mean "compact." Most of these are general terms, such as *upayoga*, which literally means "to join together." The word *samaya* is used for "compact" in the selections from the *Mahābhārata* cited immediately above, but it is also indicated to be a synonym of "contract." There is therefore no clear distinction to be made between these two terms in Sanskrit, either. Spellman's stated reason for making such a distinction is that the initial agreement depicted is 'merely a group of people enforcing greater discipline among themselves by the use of punishment against violators of their code' (21). The implication therefore is that a social contract can only consist in the appointment of a sovereign who is not party to the contract, à la Hobbes. What is missing in Spellman's objection to describing this agreement as a contract is an explanation as to why all social contracts must fit the Hobbesian model as opposed to other possible models. Without this, there is not much reason to take seriously Spellman's objection to considering this legend to be depicting an idealised social contract.

Spellman raises a number of objections to considering the second part of the legend – wherein Manu is made king, subdues the wicked and puts everyone on the path to righteousness – to being anything more than an 'embyronic development' (Spellman 21).

These objections may be most easily addressed by first stating them verbatim:

There is an offer to Manu by the people and although we are not told expressly that he accepts it, his actions pursuant to the offer imply that he does. But would Manu have had the power to act independently of this offer? Did he derive his power from the people? What did they surrender to him? In the usual sense of the social contract, the leader derives not only his right, but his power as

well, from the people. It is not clear that this was the case with Manu. They surrendered a certain amount of their property and they agreed to worship him. But is this a surrender of natural rights? It is sometimes tempting to call what in fact is a mere exchange, a theory of social contract.

(Spellman 21)

On the one hand, it is odd that the first agreement should be considered to be less of a social contract because it is the product of an agreement among a small subset of all men, whereas that problem and all the others indicated by Spellman are supposedly present in the second agreement. On the other hand, some of Spellman's questions are clearly – even if implicitly – answered in the text. Given that his virtues in leadership and warfare precede his being chosen to rule as king, there is a sense in which Manu does have the power to act independently of the offer he is given. If Manu however expresses reservations about taking responsibility for the sinfulness of those he rules through agreement – and it is implied in the legend that this responsibility can only be relieved through agreement – this is a concession that power obtained independently of the agreement of the people would be illegitimate. This is a unique feature of the Indian approach which should be noted: If the king rules without the consent of the people, he is responsible for their failing as well as for his own. Such a king might be able to rule effectively and even protect his subjects, but he is not immune to punishment for the *adharma* actions (e.g., non-military use of force) necessary for a king to secure the peace. An example of this principle can be seen elsewhere in the *Mahābhārata*. At Duryodhana's death, when he complains that he and his brothers have been defeated by unfair means, Kṛṣṇa lists the many sins of which Duryodhana is guilty and for which he is deserving of punishment in this life, despite the fact that he is a king (cf. MBh 9.61). Being a king offers no immunity from punishment for Duryodhana, because he came into possession of his kingdom through wicked means.

As for whether a surrender of natural rights takes place, pace Spellman, one of the rights clearly given up by the people in the second agreement is the right to punish, which

they held under the first agreement. That the people possess such a right and willingly surrender it to the king is made clear in another version of the same legend:

All men used to protect one another righteously. As they thus lived, O Bharata, righteously protecting one another, they found the task (after some time) to be painful. Error then began to assail their hearts. Having

become subject to error, the perceptions of men, O prince, came to be clouded, and thence their virtue began to decline.

(MBh 12.59, Ganguli)

The right to punish is surrendered to the king, who provides order and enforces *dharma* in exchange. The king is also exempted from punishment – both human and divine – for the actions necessary to carry out of his duties. That there are few natural rights for the people to surrender in the second agreement is accounted for by the fact that many of those rights were already surrendered under the first agreement.

There are two essential components to a social contract: ‘a characterization of the initial situation . . . and a characterization of the parties to the contract, particularly in terms of their rationality and motivation to come to agreement’ (Cudd). We have seen in this legend from the *Mahābhārata* and elsewhere in the Indian tradition a characterisation of the initial situation such that ‘there is some scarcity or motivation for competition in the initial situation and there is some potential for gains from social interaction and cooperation’ (Cudd), a picture which is crucial for any contract theory. Just as it is according to the contract theories with which we are more familiar, this initial situation is meant to set the stage for a fair and impartial agreement among the contractors.

As for the characterisation of the parties to the contract, they are presented to us as both rational and having sincere motivation for leaving their position in the initial situation. Their rationality is made clear by a number of factors. First, they recognise that theirs is a position of penury and that some means is needed to escape it. Second, they recognise that leaving the initial situation requires limits on their own behaviour and responsibility on their

part to endorse the meting out of punishment to those who transgress those limits. Finally, they recognise that a system entirely dependent upon collective responsibility has become unstable and does not serve its purpose, meaning that they are pressed to find another means of securing order and safety. It is thus assumed within the Indian tradition of political thought that individuals are at least rational when it comes to their self-interest, and that this can serve as the basis for a social contract. Self-interest on the part of the contractors should also be tempered by at least some of the rules of *dharma*, the details of which are discussed in the next chapter. It should merely be recognised at this point that *dharma* serves a function analogous to Hobbes' laws of nature or Locke's Law of Nature.

A significant question remains to be answered regarding the social contract described in the *Mahābhārata*: Who are the contracting parties in the final contract? According to the legend, the people first approach Lord Brahma and ask him to appoint a king over them. He chooses Manu for the position, but Manu refuses. The people then negotiate with Manu in order to attenuate his reasons for refusing the offer of kingship. Finally, Manu agrees to their conditions and becomes king. Are the people in this legend contracting with Brahma, Manu or both?

Brahma is not giving up anything according to this account, so the people cannot be making a contract with him. He does however agree to appoint a suitable king for the people, so he still has an obligation towards them in respect to the creation of their government. If the king were unsuitable, then Brahma would have failed in fulfilling his obligation. There must therefore be a binding relationship between the people and Brahma which is captured by some concept other than that of a contract. The concept of a covenant, 'an initial promise and a promise in response, a mutual pledge, taken as an oath (*shevu'ah*) by each side' (Novak 31), borrowed from Jewish theology, might help to illuminate this relationship. Novak

describes the relationship between contract and covenant in Jewish tradition in the following manner:

Historically, any contract presupposes that there is a covenant already in place. Ontologically, the covenant already in place is always more foundational than the contract related to it. Teleologically, a contract is ultimately for the sake of the very covenant that made it possible.

(31)

If there is a covenant between Brahma and the people, it is not to be found in the account on the origins of the social contract given in the *Mahābhārata*. It might still be assumed or inferred from Brahma's status as the creator of humankind, in that such a role entails certain obligations toward those he has created. For Indian theorists however, such a relationship would be defined by the rules of *dharma*. As shall be clear in the following chapter, the *dharma* that applies to an individual is typically not a result of a covenant between two parties (i.e., God and humanity).

If there were any covenant between Brahma and the people, the authors of the *Mahābhārata* would likely understand it to be predicated upon *dharma*, which does not fit Novak's definition of a covenant. In addition, in the terms of the contract that the people make at the end of the legend, there is no indication that it is made for the sake of any covenant held between the people and Brahma. (That does not mean that the contract is not predicated on such a covenant of course, but such a reading of the legend would be almost entirely eisegetical.) There would therefore be no teleological connection between the contract made by the people and their hypothetical covenant with Brahma. The best application of the idea of covenant to the social contract legend from the *Mahābhārata* is to understand *dharma* itself as being analogous to a covenant. That is, the prior place of *dharma* in the pre-contractual condition could indicate certain rights claims that people have in this condition, and obligations that they and Brahma have toward others. Any contractual agreement must therefore fulfil these prior, *dharma*-based expectations in order to be legitimate. While the rules of *dharma* may or may not be predicated upon any covenant, the

primitive requirements of *dharma* fulfil the historical, ontological, and teleological role that the covenant fulfils in Novak's account.

If the other party to the social contract with the people is not Brahma, then it must be Manu. This is confirmed by the fact that the final negotiation and agreement about the contract take place solely between Manu and the people. Brahma must still be playing some role in the account as a whole however, or else there would be no need to mention his involvement at all. The best explanation for Brahma's role in the social contract is that of an enlightened advisor or ideal observer. The people have decided for themselves what form of government they would prefer, but they do not have the means for deciding which man among them is best suited for the position of king. Brahma, as a being of superior intellect and insight, is capable of identifying Manu as the person best suited for the position, and the results of the legend confirm the wisdom of his choice.

While this legend provides a social contract account for the origins of kingship, the role played by Brahma suggests that divinity still also plays a role in such a substantial agreement, even if it is only among men in the end. Scharfe understands this as a critique of Buddhist social contract theories, as 'the people could not keep their voluntary agreements and had to rely on divine help to impose order from above' (61). The brahmins no doubt are assumed to take on the role of Brahma after the establishment of the state and in policing the actions of the king. Presumably, as it is with Hobbes' sovereign, once the decision about who is to be king has been finalised, there is little concern with further entertaining the express will of the people. The king's designated duty is to uphold *dharma*, not the desires of his people.

Despite the consolidation of power by the king from the ancient to medieval period, belief that the kingship was the result of a social contract remained popular. We are told in the *Agni Purāṇa* for example that 'Whatever belongs to the king, O Brahmana, be it wealth,

prosperity or the sovereignty of the world, belongs to him by the sufferance and the good will of his subjects' (AP 225.31-33). Kauṭilya suggests testing the subjects' loyalty by having two *agents provocateurs* publicly debate the character of the king and the necessity of the kingship. The one defending the institution is to explain that 'Those who do not pay fines and taxes take on themselves the sins of those (kings) and (kings) who do not bring about well-being and security (take on themselves the sins) of the subjects' (AŚ. 1.13.8). Kauṭilya is however less concerned with the truth of these claims and their implications than he is with using such a debate as a means to 'restrain the common people' (AŚ 1.13.13). Although Scharfe maintains that 'claims of medieval court poets that their king was chosen by popular acclaim of the citizenry are suspect as self-serving hyperbole' (65), the fact that poets looking to shore up the king's authority would claim that the king was chosen by the people rather than appointed by or descended from the gods serves as some evidence for the continued popularity of a social contract theory.

Belief in a foundation of popular sovereignty, even if misplaced, can still have serious consequences for a ruler if the population has reason to believe that their will has been intentionally thwarted. Potential rebellion against unpopular rule was often mitigated by enhancing the king's mystique, such as by keeping technical knowledge secret (cf. Scharfe 37), preventing people from becoming personally familiar with the king, stressing the king's divinity or 'divine' lineage and by economic consolidation on the part of the government (cf. AŚ 5.1). While the movement to justify the state on divine grounds or to encourage faith in the omniscience of the king may be explained by referring to the needs of an increasingly complex bureaucracy, such justifications also historically coincided with the growth of kingdoms under newly 'Hindu' monarchs. These kings from new lineages would have had little use for the limitations placed upon the king by the system of Vedic kingship, but would find it easier to justify wielding absolute power on the basis of a theoretical social contract –

at least so long as they remained moderately popular with their subjects or else had a well-maintained army and constabulary. This would explain why the popularity of the social contract theory increased alongside the growth of the medieval Indian state and the power of the individual monarch (cf. Scharfe 66, 143, 226-227).

2.5.2 Buddhist Accounts

The accounts discussed so far have broadly fallen under the category of 'orthodox' political theory, i.e., those authors who consider the *Vedas* to be authoritative (even if in the end they not do treat them as having much relevance to the administration and structure of the state). The unorthodox or heterodox theories would then be those in which the *Vedas* are not considered to be authoritative, and instead rely on either some other textual tradition or some other Vedic means to justify the authority of the state. The two prevalent and heterodox approaches to political thought in ancient India that have come down to us today are those of the Buddhists and Jainas. Buddhists offer their own version of a social contract theory, and some of their views would continue to have an influence even on orthodox thought about politics and state administration. (Such influence could also be in the form of reactions *against* Buddhist views, but that such reactions were deemed necessary is testament to the fact that they had intellectual currency.) This is partly attributable to the political influence had by Buddhists for a significant portion of ancient Indian history, initially under Aśoka during the Mauryan Empire, and later under a plethora of Buddhist or Buddhist-influenced kingdoms. Although Jainas also put forward theories on the origins and purposes of the state, these were not of the same wide-ranging influence as those of the Buddhists, and often fell either in between or on one side of the disagreements between the Buddhists and their orthodox opponents (cf. Scharfe 23, 100, 214 fn. 77). Given that the present focus is on those theories which would be represented in the *Mahābhārata*, and that the theories of the Jainas

are largely encompassed by the orthodox or Buddhist traditions, these will not be discussed in-depth here.

To understand where the Buddhist theorists are coming from, a brief history of the early Buddhist movement would be helpful. The doctrines of Buddhism are the product of 'the debate going on in the oral culture of renouncers and brahmins . . . in the upper Ganges plain in the fifth century B.C.' (Gombrich 13). Taking their cue from teachings attributed to the Supreme Buddha, Siddhārtha Gautama, the Buddhists rejected both the authority of the brahmins and the metaphysics upon which their authority depended. While the Buddhists still emphasised brahminical values, these were generalised rather than caste-specific, and Buddhist reference to caste distinctions was ethical rather than social (i.e., being a brahmin is a matter of how one acts, not one's lineage). It was in addition a proselytising religion, seeking new converts both from areas under the influence of brahminical culture and those without:

Buddhism subsequently competed with Brahmanism in the spread of what we now call 'Indian religion' over the southern half of the sub-continent and surrounding areas of South-east Asia. and its intellectual tradition accommodated itself and its theorising in a quite specific way to its socially and culturally wider setting.

(Collins 33)

Despite the competition of Buddhism with brahminical orthodoxy and its assimilation of traditions external to the latter's influence however, we shall see that there are also significant similarities to be found between the two when it comes political theory.

One of the earliest accounts of a Buddhist perspective on the origins of the state is found in the *Aggañña Suttanta*, a dialogue from the *Dīgha Nikāya* on the genesis of the earth and social order. In this dialogue, the Buddha explains to his disciple Vāsetṭha that the earth arose when some radiant beings from a previous cycle of the universe became greedy and desirous for things that were solid, and so became human. After various iterations of the same process of decline, some also came to hoard more than was necessary for their survival

and some of these began to covet the food which had been cultivated by others. When some of these began to steal, others took it upon themselves to punish them violently, with little effect. The people finally recognise that, given their fallen state, they are unfit as a collective to identify the guilty and punish them suitably for their transgressions:

Then, Vāsetṭha, those beings went to the being among them who was the handsomest, the best favoured, the most attractive, the most capable and said to him: Come now, good being, be indignant at that whereat one should rightly be indignant, censure that which should rightly be censured, banish him who deserves to be banished. And we will contribute to thee a portion of our rice.

And he consented, and did so, and they gave him a portion of their rice.

(DN 3.93)

The being chosen by the people to become their ruler is known by the title *Mahā Summata*, or Great Elect.

Spellman considers this legend to be 'clearly a theory of social contract' (22), as the *Mahā Summata* 'draws his authority from those who chose him and is paid for fulfilling the terms of the contract' (Spellman 22). While he is correct in this conclusion, this legend from the *Dīgha Nikāya* tells us less about the terms of the contract between the people and their ruler than the legend from the *Mahābhārata* does, so it is curious that he would consider the former to be clearly an example of a social contract and the standing of the latter to be questionable. The only duty assigned to the ruler in the Buddhist legend is protection of the people from within, what is elsewhere called 'the eradication of thorns' (Manu 9.252). There is no reference to the *Mahā Summata*'s obligation to defend the people from external enemies, although this may be inferred from the following discussion in the text on the how the term 'Khattiya' (*ksatriya*), the term given to those of the ruling caste who are obligated to protect others, came to be applied to him.

There are further elaborations on Buddhist political ideas to be found in the *Jātaka* tales, stories about the Buddha's prior births in the form of fables. One such story is that of the election of the king of the birds found in the *Ulūka Jātaka*. Although the election nearly

fails, with humorous results – the owls and crows have been killing each other, and one crow proclaims the owl is unfit to be king because he scowls even when he is happy – the story ends with a rightful king, the Golden Goose, installed by election (Jatakas 2.270).

Additional *Jātakas* stress the role played by the people in the choosing of their king and the maintenance of his power. In the *Saccamkira* and *Padakusala Jātakas*, the king is overthrown by his subjects when they learn that he has performed a wicked deed (Jātakas 1.73, 3.432). Such stories make it apparent that the Buddhists often had more regard for *dharma* than for stability, whereas the opinion of the orthodox theorists was more ambivalent between the two. This split on the emphasis of *dharma* vs. *artha* will be further explored in the following chapters.

As might be expected, with their emphasis on the moral power of the people over the king, the Buddhists commensurably reject attempts to assign divine status to the monarch:

Buddhists and Jainas admitted at the most a limited divinity of kings: the Buddhists did not accept their divine ordination but postulated a mandate of the people In the Buddhist canon, only the king's officers address him as *deva* ['a god' – D.S.], while the Buddhist monks call him *mahārāja* ['Great King' – D.S.].

(Scharfe 100)

It is clear that the early Buddhist community took the social contract story of the *Mahā Summata* seriously and so were more willing in their texts to support popular sovereignty over the power of the king than their orthodox opponents. Later Buddhists eventually succumbed to the popular influence orthodox practice of making the king divine, such as when they declare kings to be 'gods by convention' (Jātakas 1.132). For Buddhists theorists however, this convention occurs within a context where 'gods represent rather than embody *dharma*' (Tambiah 19), so the divinity of the king is of more limited import than for the orthodox. It was not only the case that orthodox political perspectives had an influence on the Buddhists; at times the influence flowed in the other direction. We have previously seen that belief in the social contract between the king and his subjects remained popular into the

medieval period in India, and that orthodox authors found it necessary to incorporate the social contract into their own explanations of the origins of the state. Political theory in India after the ancient period was a confluence of competing views, with the Buddhist emphasis on the social contract and the priority of *dharma* over practical considerations playing a significant part.

2.5.3 Emigration as Rebuke

While Buddhist and orthodox theorists may have disagreed on the right of the people to revolt against a corrupt or oppressive king, the latter had their own way of addressing the implied rights of the people contained in the social contract. This was accomplished by allowing the people to rebuke such a king by emigrating to another land which was more to their liking. Instances of this may be seen in the *Mahābhārata*, when some of the citizens of the kingdom express their desire to go into exile along with the *Pāṇḍavas* (MBh 1.147, 3.1).

Bhīṣma instructs Yudhiṣṭhira to rule fairly, lest the same fate befall his own kingdom:

Take care, O king, that the traders in thy kingdom who purchase articles at prices high and low (for sale), and who in course of their journeys have to sleep or take rest in forest and inaccessible regions, be not afflicted by the imposition of heavy taxes. Let not the agriculturists in thy kingdom leave it through oppression; they, who bear the burthens of the king, support the other residents also of the kingdom.

(MBh 12.89, Ganguli)

Kauṭilya suggests that the king should lure subjects from other kingdoms to settle and work in his realm if he wishes to be successful (AŚ 2.1.1, 13.1.20).

The power of emigration as a rebuke is also mentioned once within Buddhist texts (Jatakas 520). That the Buddhists did not stress this power of the subjects perhaps may be explained by the fact that they were more likely to encourage the overthrow of the king by the people. Removing the king might be preferable to removing themselves.

In addition to providing a means for a king's subject to rebuke harsh rule, the Indian theorists' allowance of emigration for one and all provides a rebuttal to Hume's argument against the reasonableness of appeals to tacit consent:

Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives, from day to day, by the small wages which he acquires? We may as well assert that a man, by remaining in a vessel, freely consents to the dominion of the master: though he was carried on board while asleep, and must leap into the ocean and perish, the moment he leaves her.

(OC 500-1)

Hume's point is that given the cultural, linguistic and geographical barriers that exist between nations (and the limits poverty can impose on overcoming such barriers), it is absurd to say that an individual's consent to be ruled by the government of his land can be inferred by his continued residence there. While such barriers may have been prevalent in Modern Europe however, they were not so in ancient and medieval India. Scharfe stresses that arable land remained available in India for settlers who wished to take advantage of it up until the 19th century, and that there are records indicating prominent use of the power to emigrate as a rebuke (Scharfe 14 fn. 74, 171). Emigration often presented an opportunity of upward mobility for those of low status (Srinivas 42), and the relative cultural homogeneity of neighbouring kingdoms in ancient India meant that this did not pose a barrier. (Linguistic differences still existed, of course, but these persisted even among various classes in the same kingdom and so would not have been seen as an insurmountable problem.) It should be recognised however that the right of emigration was not one expected to be exercised strictly by individuals, but rather by a group practising a particular profession, so the analogy with the point made by Hume is inexact.

While Indian theorists do not present the power of people to emigrate as a reply to an argument such as Hume's, they still recognise the necessity of some form of popular rebuke for an unjust king. An argument like Hume's would be inapplicable in conditions where people can move freely among territories and easily adapt. While it is not only

contract theorists who recognise the right of people to emigrate, they are in a better position to explain why the people should have such a right than theorists promoting any of the other views we have examined so far.

The right or power of the people to emigrate is at odds with the concept of the ideal ruler, the *cakravartin* (lit. 'wheel-turner') or world conqueror (the 'world' of course being only the subcontinent). It is furthermore assumed however that a ruler could only reach the position of *cakravartin* if his rule were fully dharmic, and no Indian king ever achieved such mastery (cf. Scharfe 51). While the achievement of such a state would have made the problem raised by Hume more pressing for Indian proponents of the social contract, those of the classical period were never faced with this prospect. A few empires may have come briefly close to attaining the goal of instating a *cakravartin*, but kingdoms remained localised and absolute throughout most of Indian history.

3. Conclusion

We have seen in this chapter that the concept of a state was present in ancient Indian political discourse, and that a variety of theories abounded to explain its origin. The idea of an initial state of *mātsyanyāya*, or a state of nature, played some part in all of these theories, even those which rejected any contractual understanding of the nature of the state. We may take this as an indication that, regardless of the moral theory which may underlie any particular justification of the state's authority, pragmatic considerations also have an important role to play in such justifications, as well.

What we see in the history of the state in India is that such pragmatism can determine what theory is appealed to in order to justify the state's authority. It may be a contract theory when the king is popular, appeals to his divinity when he is not, or attempts to inculcate a fear of the potential of *mātsyanyāya* should all else fail. In spite of such pragmatism on the part

of most rulers however, many theorists continued to stress the importance of *dharma* as an indicator of how the state should be structured. In addition to tensions between consideration for *dharma* and for what is practical, there was also continued disagreement among *paṇḍits* about the nature of *dharma* itself. While the disagreement between the orthodox brahmins and heterodox sects such as the Buddhists some of the most pronounced, those who claimed to accept the authority of the *Vedas* often disagreed about which versions or portions of the text ought to be considered to be binding, as well as over more metaphysical yet politically significant issues such as the priority of caste distinctions.

Some of these concerns about *dharma* are addressed in the following chapter. While such concerns are also relevant to issues raised in the present chapter, our present purpose was to provide an overview of the various theories of the state's origin and justification, as such accounts are an essential part of political legitimacy, as we shall see when we turn to focus more closely on the *Mahābhārata*. Our purpose in the next chapter will be to provide an overview of political *dharma*, particularly, as there is a tension between the practical concerns which explain the origins of the state and the ideology of an eternal, all-encompassing socio-cosmic rule structure such as *dharma*.

The Role of *Dharma* in Justice

In this chapter, we will seek to develop an understanding of *dharma*, qua political *dharma*, as it relates to justice. That is, we will come to appreciate how the word '*dharma*' can – and in the case of many of the texts referred to in the course of this work, does – refer to a concept of proper political order. We may take it for granted that *dharma* embraces the natural order as well as social and religious duties (cf. Bartley, 'Dharma'; Radhakrishnan and Moore 25 ff.). What we are concerned with at present is how the concept of *dharma* extends into the political order and the extent to which a political conception of *dharma* is related to other such conceptions.

To suggest that political *dharma* is in some way related to justice is not to suggest that the opinions of Indian theorists on the nature and status of such *dharma* are monolithic. Just as Western discourses on justice run the gamut from Plato's *Republic* to the work of John Rawls, so too should we expect to see disagreement on issues of political *dharma* among Indian authors. We may take it for granted however that such differences are not likely to be as extreme as the difference between these two philosophers, not least of which because the Indian texts we will be examining are not separated chronologically, geographically and culturally to the extent that these two are. On the other hand, neither Plato's nor the Indian theorists' visions of proper political order occupy the egalitarian plateau, while Rawls's does. Like Plato, theorists in classical India also typically derived much of their understanding of proper political order from a prior, comprehensive metaphysics, wherein people's social role is determined largely by factors beyond their control. If political *dharma* is understood in fact as an element of justice however, we should expect to see some similarities between elaborations on it, and classical and modern theorists', on the nature and origins of justice. To this end, we shall begin with an examination of the conditions under which questions

about justice arise, before moving on to consider reactions to such conditions within Indian texts.

We must also consider in this instance the application of the various conceptions of justice available to us, particularly distributive justice and procedural justice, to those employed by classical Indian theorists. Although both may be intertwined within a comprehensive theory, the former is concerned with the proper allocation of goods; the latter with fair process. While consideration for both of these conceptions of justice is found in classical Indian political texts, the emphasis is more heavily upon procedural justice, which has consequences for how Indian theorists then treat issues of distributive justice.

1. The Circumstances of Justice

The earliest, explicit treatment of the notion of the circumstances of justice is found in Book III of Hume's *Treatise of Human Nature*. In the *Treatise*, Hume indicates justice to arise out of 'concern for our own, and the public interest' within the context of an already existing society (Treatise 3.2.2.20). We find ourselves living within a society due to its concentrated force, the enhanced ability for labour that it provides, and its power to regulate and protect the ownership of property. An arrangement to protect our possessions is necessary because our material possessions are 'both expos'd to the violence of others, and may be transferr'd without suffering any loss or alteration; while at the same time, there is not a sufficient quantity of them to supply every one's desires and necessities' (Treatise 3.2.2.7). It is the scarcity of material wealth, and its easy transferability, which necessitate the organisation of society for its individual members. The circumstances of justice are therefore to be derived from '*the selfishness and confin'd generosity of man, along with the scanty provision nature has made for his wants*' (Treatise 3.2.2.18). To make use of a more contemporary description, 'the circumstances of justice obtain whenever persons put forward conflicting

claims to the division of social advantages under conditions of moderate scarcity' (Rawls, Theory 110).

Despite these conditions, co-operation is still possible due to the nature of human beings. Even before they have a concept of 'justice' – which Hume takes to arise alongside society and property – humans by nature still have 'some notion of moral distinctions' (Treatise 3.2.2.25). We have a natural sense of fairness, and an affection for those whom we know, which initially makes co-operation possible. Human co-operation is necessary because there are not enough resources available to be distributed to everyone according to their needs and desires, and individuals will tend to allocate these limited resources according to their self-interested desires or in the interest of those closest to them. Justice is the social means by which people insure that they will not be injured by the avarice of others. Therefore '*self-interest* is the original motive to the *establishment* of justice' (Treatise 3.2.2.24), and it is out of self-interest that people 'are naturally induc'd to lay themselves under the restraint of such rules, as may render their commerce more safe and commodious' (Treatise 3.2.2.24).

Taking his cue from Hume, Rawls gives a similar account of the circumstances of justice:

The circumstances of justice may be described as the normal conditions under which human cooperation is both possible and necessary. . . . There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to try to live solely by his own efforts. There is a conflict of interests since men are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share.

(Theory 109)

The role of justice – understood by Rawls as 'the first virtue of social institutions' (Theory 3) – in these circumstances is to provide principles that can determine the allocation of the benefits of collaboration and to provide the foundation for any agreement on their proper distribution. If people however did not live in circumstances of moderate scarcity and a

conflict of interests, 'there would be no occasion for the virtue of justice, just as in the absence of threats of injury to life and limb there would be no occasion for physical courage' (Rawls, Theory 110).

The various pictures provided by Indian theorists depicting the situation in which present humanity finds itself are in line with the circumstances of justice described by Hume. We have seen that, whenever the present state of humanity is discussed by Indian theorists, the precariousness of ownership and livelihood are recognised along with the role that social institutions may play in ameliorating the causes of people's anxiety. This is apparent from the role that *mātsyanyāya* legends play in so many accounts of the origins of the state, and how the period of *mātsyanyāya* ends with the establishment of some form of government. While Hume does not that believe that such state of nature theories can tell us much that is useful about our present circumstances – indeed, the idea of a state of nature is itself 'a mere fiction' (Treatise 3.2.2.15) – he also considers it be irrelevant whether men are naturally virtuous or vicious when considering the origins of society. People's inherent virtue or viciousness is irrelevant to such an issue because, either way, self-interest will lead them to seek a means to restrain the power of others to harm them: 'For whether the passion of self-interest be esteem'd vicious or virtuous, 'tis all a case; since itself alone restrains it' (Treatise 3.2.2.13). Hume and the *mātsyanyāya* theorists still remain in agreement to the extent that the latter also see individual self-interest as the initial motivator for establishing laws. Those theorists who do not take either a primeval, 'Golden Age' period or one of *mātsyanyāya* to have normative implications for the structure of present society would certainly be of this type (e.g., Kauṭilya, possibly Manu). Even so-called Golden Age accounts may still provide some details regarding the circumstances of justice, as the tranquillity imagined in them tells us that:

if men were supply'd with every thing in the same abundance, or if *every one* had the same affection and tender regard for *every one* as for himself: justice and injustice wou'd be equally unknown among mankind.

(Treatise 3.2.2.17)

Therefore, at least some political theorists from classical India can be said to recognise the circumstances of justice, even if they do not refer to them by that name. This does not mean however that those Indian theorists who recognise the circumstances of justice would therefore recognise *dharma* as equivalent to Hume's virtue of justice, which is 'primarily the sort of honesty which respects what are regarded as the rights of property' (Mackie 77). The scope of *dharma*, encompassing issues such as ritual obligation and the maintenance of purity alongside more familiar rules such as the disposal of personal possessions, is certainly wider than that of justice as understood by Hume, Rawls and other modern theorists. If we are to show that political *dharma* has a role to play in a modern conception of justice, it is necessary either to demonstrate that religious concerns may be properly incorporated into the latter, or that the former may be shorn of such concerns.

Finally, most Indian theorists would part ways with Hume's characterisation of the circumstances of justice when it came to the status of *dharma simpliciter*. Whether orthodox or heterodox, nearly all Indian theorists are agreed that the dictates of *dharma* are eternal and precede any human agreements. Hume on the other hand denies any metaphysical basis for our principles of justice, saying instead that such principles '*are not natural to the mind of man, but arise from artifice and human conventions*' (Treatise 3.2.2.21). What Hume means by this is that we come to accept any principles of justice we may hold, not on the basis of instinct or natural inclination but through human influence and socialisation. While there are good reasons to reject his strict distinction between 'natural' and 'artificial' virtues (see Larmore 70-1), Hume has correctly recognised that an 'artificial' virtue such as justice has a scope which is distinct from that of other, 'natural' virtues such as courage or benevolence. That is, while natural virtues directly benefit the person they are directed at and are approved

of out of sympathy, justice is a matter of rules which are impartial, universal and concerned with the proper ordering of other virtues (cf. Mackie 82; Larmore 71 ff.). If *dharma* is to be considered as an element of justice, taking these factors into consideration, we should find instances where the basis and nature of political *dharma* is explained in terms of social or human necessity, rather than metaphysical obligation. We should also see in such instances that it strives to be impartial and universal in scope and some recognition that it entails the proper ordering of competing goods. That is, the conception of justice which incorporates *dharma* as an element should be based upon a consensus 'which is political and not metaphysical' (Rawls, PL 97).

2. The Many Meanings of *Dharma*

What we will need first however is a proper demarcation of political *dharma*. We have already noted that *dharma* can encompass not only social and religious duties, but the natural order as well (and is generally assumed to subsume the former as a constituent of the latter). As such, more detail is required on the nature of *dharma* and how it can be so broad in scope, as well as to what extent it can be limited to a primarily political form, before a genuine analysis of '*dharma* as justice' may be undertaken.

2.1 *Dharma as Cosmic Order*

Our analysis might best begin with the definition of the term '*dharma*,' or at least some of its earliest forms. According to Horsch:

The original meaning of the term is determined etymologically: from the root *dhr* -, 'to hold [*halten*]', 'to support [*stützen*]'. an action noun [*Nomen actionis*] *dhárman*, 'hold'. 'support', is formed when it is neuter, and an agent noun [*Nomen agentis*] *dharmān*, 'supporter', when it is masculine.

(Horsch 424)

As Horsch indicates, the earliest catalogued uses of '*dharma*' are mythological, involving the gods (usually Indra) supporting the celestial bodies and heavenly firmament on the newly-

formed earth. In this usage, *dharmā* is generally equivalent to another concept: *ṛta*, meaning ‘truth’ or ‘cosmic order.’ Horsch highlights that, while such creation myths are found throughout the world in various cultures and with various explanations:

Nevertheless in India it is essentially a question of the maintenance of the world order: the collapse of the cosmos and with that the return to chaos should be prevented. For this reason the original act is at the same time important for the creation of the world: by this act order, lawfulness, permanence were created, light and fertility were gained for humanity.

(Horsch 426)

One can see in this a connection to the role played by the king in the post-*mātsyanyāya* era. There, the role of the king is to protect the social order, or *dharmā*, which supports the flourishing of his subjects. In these mythological accounts however the ‘support’ aspect of *dharmā* is also intended literally. This literal aspect of supporting also has analogues in the political realm. Much like the post-*mātsyanyāya* king, whose authority arises from establishing a monopoly of force and upholding *dharmā*, so does the wind god Vāyu come to rule the world through his *dharmā*, or support, of it (RV 1.134.5-6).

The understanding of ‘*dharmā*’ as ‘support’ carries over into early Vedic discussions of the function of ritual activity, wherein the ritual performance is equated with creation, and the kindling of its fires a demonstration of the supports (*dharmāṇi*) of the cosmos (Horsch 429). The Vedic ritual comes to represent not only creation, but the entire structure of the world and human life (cf. Collins 56).

Following this conceptual evolution, ‘*dharmā*’ as ‘law’ also comes to be synonymous with earlier notions of law and (cosmic) order, and thereby supplants them:

It is the generalization of *dharmā* into ‘law’, which absorbed the notion of a comprehensive order, foundation and image of eternal ‘truth’, and with that displaced the older term [*ṛta*-D.S.].

(Horsch 431)

As Horsch further elaborates, *dharmā* as social law beyond ritual obligations easily translates into individual duty. So it is that we see the Vedic declaration that a man has offspring in order to provide support for himself and to preserve his lineage reconceived as a duty for

every man to reproduce (RV 6.70.3), or the elevation of the marriage vows ('By rule and law [*dharma*-D.S.] thou art my wife: the master of thy house am I') into a statement which mandates a husband's control over his wife's affairs (AV 14.1.51).

While there was a trend toward conceiving of *dharma* as a socially imposed, individual duty, the term still retained many of its mythological and metaphysical meanings. Horsch suggests that the tie between the two pictures of *dharma* was severed not only because the term became 'separated even more emphatically from the cosmic-ritual level, in so far as it was transferred to the juridical-ethical realm' (Horsch 432), but via a morphological change in the word itself. That is, the word '*dharman*,' which also often took a verbal form ('supporting'), was replaced by the entirely abstract substantive '*dharma*.' Formerly an organising action performed by one of the gods, *dharma* 'changes into an independent, impersonal force, which will soon stand over the gods' (Horsch 434). This transformation of the word's meaning was complete by the time of the *Upaniṣads*. As we shall see however, the association of *dharma* with mandated, ritual action remained, particularly when it came to the *dharma* of the king.

2.2 Ethical Dharma

In the *Śatapatha Brāhmaṇa*, '*dharma*' comes to refer to moral characteristics and rights or privileges (cf. Horsch 436). The Brahman who performs his duty (*dharma*) of studying the *Vedas* is said to receive thereby numerous benefits, such as an increase in knowledge. This increase in knowledge generates eight *dharmas* – four of two different types – for the Brahman (ŚB11.5.7.1). The first type of *dharmas* are virtues of the Brahman: the knowledgeable Brahman gains recognised, brahminical status, a means of making a living, fame and power to exert religious influence over social affairs. While these might also be understood as entitlements, the *Śatapatha Brāhmaṇa* presents them as moral qualities of the

Brahman who knows and understands the Veda. The second type of *dharma*s are rights or entitlements: respect of his position, entitlement to gifts, and protection from theft and death (the latter extending even to from capital punishment by the king).

While *dharma* may take on a more strictly ethical and social dimension in the later *Brāhmaṇas*, its role in the *Upaniṣads* is more complex, as the early Vedic, ‘mythically cosmological ideas still reverberate’ (Horsch 436). Instead of the gods supporting the world however, *dharma* itself becomes the world’s hypostasis or support. This developed, cosmological understanding of *dharma* has consequences for the ethical and social meanings of the term, as *dharma* so understood takes precedence even over the sovereignty of the king:

[*Brahman*] still did not become fully developed. So it created the Law (*dharma*), a form superior to and surpassing itself. And the Law is here the ruling power standing above the ruling power [i.e., the king-D.S.]. Hence there is nothing higher than the Law. Therefore, a weaker man makes demands of a stronger man by appealing to the Law, just as one does by appealing to a king.

(BU 1.4.14)

This ethical form of *dharma* comes to have some synonymy with ‘truth’ and to be in turn conceived as a virtue of those who follow (Horsch 437).

This conception of *dharma* sets the stage for the *Dharmaśāstra* literature which catalogues principles of jurisprudence. In the epics and *Purāṇas* which follow this conception, *Dharma* becomes a deity who metes out justice in the afterlife, overlapping at times with the god of death, Yama. In addition to this mythological imagining of *dharma*, the concept still retains aspects of its cosmological origins, as the presence or lack of *dharma* in the world is taken to have significance for natural events, such as bountiful harvests or natural disasters. In other words, ‘the development of the ethical *dharma* determines the world process’ (Horsch 438), such that maintenance of *dharma* is necessary to sustain the order of nature. In Buddhism, the term (and its Pali equivalent, *dhamma*) retains much of its metaphysical meaning, and some usage as ‘law,’ but it primarily comes to mean ‘doctrine’ or

later to refer to atomic, metaphysical units. These latter meanings however are not recursive to the prior, brahminical conceptions of *dharma*.

2.3 *The Significance of the Relationship Among Dharmas*

Before turning to consider the conception of *dharma* as law, some explanation of the relevance of the former elaboration on the meaning of '*dharma*' is in order. While it should be obvious that a culture's conception of something such as 'law' must have some significance for that same culture's conception of justice, the connection of the latter to the overview of mythical and metaphysical conceptions of *dharma* is less clear. One reason the metaphysical understanding of *dharma* is relevant is because, for orthodox political theorists in classical India, it is an integral part of their understanding of all forms of *dharma*.

Orthodox theorists maintain that the revelations contained in the Veda should be understood as the ultimate source of all *dharma*: 'every rule of *dharma* must find its foundation in the Veda' (Lingat 7). Given these theorists' belief in the eternity of the Veda, which was in turn variously 'heard' by the multitude of *ṛṣis*, 'To affirm that all *dharma* is to be found in Revelation amounts to an affirmation that the rule of *dharma* has a transcendent character' (Lingat 8). It is to be expected then that much of what is said by classical Indian writers on *dharma* as it pertains to law and politics will entail assumptions about the metaphysical nature of *dharma*.

If *dharma* is nearly always considered as a metaphysical doctrine first and a political one much later however, this militates against any attempt to understand *dharma* as justice, or at least according to a Humean (or later, e.g., Rawlsian) conception of justice. This brings us to a second reason why an account of the metaphysical and mythological understandings of *dharma* is necessary, which is in order to understand any form of *dharma* which is elaborated in political terms. This is because any attempt at promoting the latter is likely to be

formulated as a response to the former, given the noted ubiquity of metaphysical conceptions of *dharma*. If we are to recognise and understand a political conception of *dharma* when we see it, we must also have some understanding of the conceptions of *dharma* to which it is likely to be formulated as a response.

It may be taken for granted that the primary question which all *dharma* texts seek to answer is: What is *dharma*? The answer each provides to this question however is also an answer to other questions, such as: How should the nature or obligations of *dharma* be determined? Who should have the authority to answer the previous questions, and to enforce the rules of *dharma*? What are the notable exceptions to the proper application of these rules? We can identify the conception of *dharma* held or promoted by the *dharma* texts by considering their proposed answers to these questions. In the course of examining the texts in this way, we will no doubt find many instances of appeals to metaphysical doctrines to justify the answers given to these questions, or assumptions about the metaphysical nature of *dharma* which underpin such answers. Approaching these texts as answers to such questions will help to make it more apparent when they are providing alternative justifications for their respective understandings of *dharma*.

Fortunately for our purposes, it is not necessary to explore in detail most texts' elaboration on any particular metaphysical conception of *dharma* and its relation to a strictly political form. The norm may be safely assumed to be just as previously described by Lingat. That is, the normal assumption for the orthodox, brahminical theorist is that *dharma* is grounded in the rules of the Veda and that these rules themselves have a metaphysical basis (i.e., at the very least, they should be followed strictly because they are given in the Veda and cannot be empirically observed or derived from reason). Parsing the details of this relationship and its consequences for the social aspect of *dharma* is the speciality of the *Mīmāṃsā* hermeneutical tradition, which is largely contiguous with brahminical orthodoxy.

The *Mīmāṃsakas* however do not play a very large role in discussions about the enforcement or proper ordering of the rules of *dharma* as found in the *Dharmaśāstras*, or at least not as exponents of the application of *Mīmāṃsā* principles to that domain. What we see on their part instead is, as Davis indicates, extolment of 'the stricter view of *dharma* associated with *Mīmāṃsā* in which *dharma* must deal with matters unknown by other means and with transcendental results' (Davis 32-3). That they do not often address matters of politics or justice is a natural consequence of this understanding of *dharma*. Still, as the defenders of orthodoxy, we can expect the *Mīmāṃsakas* to at times act as a foil for those offering innovative understandings of *dharma*. Rather than elaborate the details of the *Mīmāṃsā* understanding of the relation of ritual *dharma* to other, social forms however, we need only to explore the details of *Mīmāṃsā* when they are relevant to understanding a particular aspect of innovations in the political understanding of *dharma*. With this allowance, we may now turn to consider *dharma* as law.

2.4 Dharma as Law

'Law' is the broadest meaning of the term '*dharma*,' and certainly the meaning the authors of the *Dharmaśāstra* texts have in mind when they are discussing the meaning, nature and authority of *dharma*. The understanding of *dharma* as law arises originally as a practice ancillary to the study of ritual, as a defence of the social efficacy of ritual practice (cf. Lingat 28). What arises from this innovation is a focus on *dharma* for its own sake and a perception of its role in enabling the flourishing of society.

2.4.1 Sources of Dharma

Kane describes *dharma* in the *Dharmaśāstras* as being:

the privileges, duties and obligations of a man, his standard of conduct as a member of the Āryan community, as a member of one of the castes, as a person in a particular stage of life.

(Vol. I, p. 3)

We see in this an emphasis on privileges, duties and obligations over rights or principles; the exclusion of women as independent legal entities; and that the application of *dharma* to an individual is determined by that individual's status (e.g., caste, age, life stage and special circumstances) within a wider, dharmically-regulated community (cf. Davis 16-17). This understanding of *dharma* is significantly removed from any metaphysical commitments, although it does not aim to discard them entirely:

It is worth noting, too, that none of these elements refers to or relies upon a supernatural source or a particular sense of morality. *Dharma* in *Dharmaśāstra* thus connects primarily to socially determined

statuses, duties, and institutions, and only secondarily to the fixed, transcendent source of the sacred Vedas of the Hindu tradition . . .

(Davis 17)

The implication of this is that, while the *Dharmaśāstras* point to the revelation of the Veda to as the original source of *dharma*, the study of the subject of *dharma* inevitably takes on a life of its own, dependent upon other sources. This is because the *Vedas*, the extant record we have of the complete, perfect knowledge of the cosmos in the Veda, are incomplete and 'it is this incompleteness that allows other sources of *dharma* to exist at all' (Davis 26). In addition to the *Vedas* then, there are also *smṛti*, or collected traditions, and *ācāra*, the customary practice of law which prevails at any given time. In addition to attempting to supplement the *Vedas* of course, some of these sources can be downright hostile towards them. Lingat notes for example that the *Mahābhārata* 'aims to broaden sacred learning, to free it from the monopoly of the Vedic schools, and to render it accessible to every educated Hindu' (95). The same also holds true for Manu and Nārada. This is significant for our purposes because, as Lingat also indicates, these and the other *Dharmaśāstra* texts are significantly focused on the rules and concerns which govern the king (cf. Lingat 73).

The importance of the shift from the *Vedas* to *smṛti* as a source of law cannot be overstated. The end result was the widening of participation in the shaping of *dharma* beyond the small circle of ritual specialists to every householder of the upper castes. If Lingat is correct in saying that, for India, interpretation 'offers society the means whereby it can rediscover itself in fact' (Lingat 144), a form of interpretation which includes more participants, of more varied interest, is going to deliver a different, 'rediscovered,' picture of the society in question than one restricted to a select group of specialists with a more narrow range of interests. This move has real consequences for a society in which legal power is not traditionally subject to consolidation:

... Hindu jurisprudence names the household, and not the state, as the primary institutional location of law. More broadly, we can say that the Hindu legal tradition maintains that the main authority over, and responsibility for, law occurs at the level of community, not state polity, and that the paradigmatic community is the household or family, especially the household of an educated Brahmin male.

(Davis 25)

As kings and the bureaucracy of the state attempted to consolidate power, they might make use of innovative commentaries or digests in order to gain an authoritative interpretation of *dharma* and its implementation. We see hints of such concessions toward a consolidated monarchy in Nārada's 'accent on the personal power of the king whose will should encounter no obstacle' (Lingat 103). Any such move would still be subject to limitations on the official interpretation, i.e., those established through inherited tradition and established legal procedures shared in common at the time of its adoption. The king who attempted to fix interpretation in this way would still retain a large measure of autonomy vis-à-vis *dharma*:

... the digests and commentaries have no more value than an *opinion*, and no one, starting with the king himself, could be held to follow the proposed solutions from the moment when other solutions seemed better or more appropriate to his circumstances.

(Lingat 230)

We now have a general picture of the development of the sources of *dharma*, from the *Vedas* to ritual specialists, educated householders and finally the administration of the king.

The ritual specialists are represented by the Mīmāṃsā tradition. The viewpoints of the householders and the state were represented in the various *Dharmaśāstra* texts and the Sanskrit epics. These sources of *dharma* of course would have been competing for authority at any given time, leading to a dynamic understanding of the concept throughout the classical period in India. Let us now turn to the general content of *dharma*.

2.4.2 The Content of *Dharma*

The content of *dharma* within the *Dharmaśāstras* pertains primarily to the regulation of the life of the twice-born, upper-castes in relation to both caste status and period of life. This is also known as *varṇāśramadharmā*. The male, brahmin householder is the archetype of the system of duties outlined for all groups (Davis 78). The archetype for the duties of the brahmin householder is the fulfilment of the triple debt as outlined in the *Taittirīya Saṃhitā* and the *Śatapatha Brāhmaṇa*. The three debts are studentship to a guru, performance of ritual sacrifice and having a son to continue his lineage.

Manu indicates that a man should seek release or liberation (*mokṣa*) from this life only after having fulfilled these three debts (6.35-6). In this allowance for one who has fulfilled his debts to become a renouncer, ‘the triple-debt presents a man with the requirements necessary to become fully human’ (Davis 73). He then lives beyond the law, finally as an essential person. This is not to say that the renouncer has no *dharma*, but that he is relieved of all prior obligations and debts to others (e.g., his family and ancestors) as a result of his status. Prior to this point, he would have existed primarily as a ‘person-in-role’ (Davis 85), subject to social and legal pressures to conform to traditional social norms.

There is in fact a common *dharma* for all people (or, at least, all people subject to *dharma* as a form of law), the *sādhāraṇa dharma*. Manu’s list of the *sādhāraṇa dharma* includes ‘Abstention from injuring [*ahimsa*-D.S.], truthfulness, refraining from anger,

purification, and mastering the organs' (10.63).³ Despite the various mentions of the *sādhāraṇa dharma*, there is however little discussion of its implications, and 'few, if any, means of bringing such values into judicial contexts' (Davis 174). This entails that there were few attempts to understand the intentions and implications of these principles, making them significantly ignored in the course of Indian law. While the *sādhāraṇa dharma* thus plays little role in any political understanding of *dharma*, it is still worth noting here because this term also appears in the *Mahābhārata*.

Another category of person possessing a measure of autonomy similar to that of the renouncer is the king. The king is portrayed as another type of householder (cf. Davis 81), with the important difference being that his household is the state (Davis 36). Lingat takes this portrayal to be strictly literal:

... [*kṣatra* (power-D.S.)] is conceived not as a sovereignty in the modern sense of that word, but as a real right over territory. Of the same nature as property, it implies a direct power over the soil. That is why the king is also called *svāmin*, a word which can be applied equally to a proprietor as to a husband or a chief, and which denotes an immediate power over a thing or over a person.

(Lingat 212)

Given however that the state in classical India was not feudal in structure (cf. Spellman 164-5), texts indicating the king's ownership of the land should instead be read as in fact being more about his sovereignty than providing the king with tangible property rights over his kingdom. In fact, placing the king into the role of a householder is a means of establishing the rights of his subjects in relation to him, much as is done with the members of a household vis-à-vis the householder in other legal contexts:

[W]hile the ideal legal subject is the individual proprietor, the theologically ideal context for the existence of property is the joint family (*kula*). The individual's capacity and right to ownership is never denied, but it is almost always subordinated to the claims and the goals of the joint family to which that individual belongs.

(Davis 95)

Thus, the significance of establishing the relationship of the king to his kingdom as being one between householder and household is that it makes the use of an established, archetypical

³ Similar lists are found at *Yājñavalkya Smṛti* 1.122 and *Arthaśāstra* 1.3.13

conception of *dharma* and applies it to a new form. In other words, casting the king as a householder provides a conceptual means whereby *dharma* may be applied to the actions of the king, the form known as *rāja-dharma*.

There are of course good reasons for those who have the power to determine and interpret *dharma* to seek some measure of control over the king. As Bhīṣma relates in the *Mahābhārata*: ‘the king is all-powerful and master of the lives and the wealth of all, and therefore, like unto a snake of virulent poison’ (MBh 12.1.82, Ganguli). Even though its origins may be glossed with other explanations, such as *karma* or a form of divine right, in the end the king’s authority is due ‘solely to the force at his disposal’ (Lingat 215). To prevent the abuse of this monopoly on power, the king’s unique function needs to be brought into a domain where it can be regulated by *dharma*, even if the king himself remains immune to earthly punishment. Thus it is that the *Dharmaśāstra* texts regulate the daily activities of the king and require that he take on counsellors with expertise in various fields, including *Dharmaśāstra* (cf. Manu 7.54ff.). He must take a brahmin as his primary advisor and chaplain (*purohita*) and act in policy or strategy only ‘after reaching a decision jointly with him’ (Manu 7.59). By these means, it can be assured that the king remains ‘only the servant of *dharma* and the Brahmins’ auxiliary’ (Lingat 66). The ruler is granted sovereign power so that he may enforce *dharma*, which leaves him as the primary means of its enforcement.

The *dharma* particular to the king, *rāja-dharma*, is that he must devote himself to ‘the eradication of thorns’ (Manu 9.252), viz. the elimination of criminals and others who threaten social stability. The king is also responsible for enforcing the rules of *dharma* as determined by the kingdom’s adjudicators and serving as a final means of appeal for private and corporate disagreements. Although the king is not allowed to initiate complaints (Manu 8.43) (Nārada also provides a few exceptions to this rule in 18.1-2), he is obligated to resolve those which come before him in accordance with *dharma* and prevailing custom (*ācāra*). In an era

(*yuga*) of moral decline, the king's enforcement of *dharma* in the form of a legal system and punishment (*daṇḍa*) serves as a replacement for the performance of the Vedic rituals and the inability of the individual to maintain *dharma* on his own (cf. Davis 113).

To fulfil the obligations of *rāja-dharma*, the king must institute a system of punishment for violations of *dharma*. In fact, 'punishment in the Hindu view is what makes law possible at all' (Davis 138). (This is not intended as a positivist position, but rather a recognition that law without punishment is law in name only.) Although the king's obligation to chastise those who harm the community seems to require that he violate the *sādhāraṇa dharma* rule of non-violence, he is exempted from taking on any impurity thereby. This follows from the analogy of the ruler's prerogative with that of the ritual sacrificer. One performing the ritual must sacrifice and consume an animal in accordance with the injunctions of the *Vedas*. One does not commit a sin or take on any impurity thereby because the sacrifice is commanded in the *Vedas*, and any injunction found therein is obligatory. The king is immune to impurity as a result of his use of *daṇḍa* in the same way:

The stain of impurity does not affect kings, as well as people performing vows and sacrificial sessions, for they are always seated on the throne of Indra and become one with Brahman.
(VDh 19.48)

The king, in the sacred role of defender of *dharma* initially held by Indra, performs a scriptural obligation in meting out punishment to violators of the law and thus cannot be subject to either earthly or spiritual punishment for doing so. This further confirms the king's monopoly on the use of legitimate force discussed in the previous chapter.

Finally, as the promoter and defender of *dharma*, the king must conquer new territories and establish *dharma* there. This is the ideal of the *cakravartin*, the universal and benevolent ruler. Given that the king is meant to consult with and continue the implementation of the customs and traditions of the territories he conquers (cf. Manu 7.203), *dharma* may mean something other than contents of the written *Dharmaśāstra*. What Manu

has in mind is likely in line with what Gautama has to say about the authority of non-scriptural sources of *dharma*: 'The Laws of regions, castes, and families are also authoritative if they are not in conflict with the sacred scriptures' (GDh 11.20). The king's conduct of warfare thus has two consequences for *dharma*. First, it expands the territory in which *dharma* and Vedic culture has a hold. For no matter the nature of their relationship to Vedic practice, a people's submission to the ideals of *dharma* means that they are no longer of *mleccha* (barbarian) status (Lingat 205-6). The second consequence of the king's conduct of warfare is that he maintains a well-trained military to defend *dharma* and that his potential heirs will also be able to demonstrate their suitability to take on the responsibility of doing so in due course.

We should have now a general picture of the sources and content of *dharma*, and the position of the king and the state in relation to it. Although far from comprehensive, this overview should be sufficient to provide the background to understanding the possible status of *dharma* as justice.

3. *Dharma* and Justice

It should be apparent at this point that *dharma* is presented at least as a form of justice akin to that which Plato offers in the *Republic*, wherein justice is achieved when each person does what he is best fit for (*svadharma*). While Plato holds that justice cannot prevail 'until political power and philosophy entirely coincide' (Rep. 473c-d), the *Dharmaśāstras* call for the proper combination of *dharma*/Veda and political power. Plato thinks the proper combination of knowledge and power to be best achieved in the form of the philosopher-king, while Indian theorists find it best achieved by having the king dependent upon brahmins for his education and formulation of policy. The earliest understandings of *dharma*,

conceived as proper order, feed into this conception, and this is no doubt the *Mīmāṃsaka* view on the proper relationship between *dharma* and the king.

The views of both Plato and the ontological, proper order of certain Indian theorists are predicated upon the application of a particular, metaphysical understanding to the social order. While Plato considers the Noble Lie as a possible means of convincing people to accept his proper, merit-based order, the Indian theorists who accept this right order view generally consider the stratification of society according to genealogy to be based upon eternal truths revealed in the Veda.

A different, proper order understanding of *dharma* is found in another of Bhīṣma's admonitions in the *Mahābhārata*:

The duties in respect of all the four modes of life . . . and the customs relating to the conduct of men in general, are all included in kingly duties. All these acts . . . occur in Kshatriya duties. If the functions of royalty are disturbed, all creatures are overtaken by evil.

(MBh 12.64, Ganguli)

The understanding to be gleaned from this verse is that 'all dharmas are comprised in the *rājadharmā*' (Lingat 208). Davis interprets this and related views as showing that 'The flourishing of the ruler's *dharma* is what enables or makes possible the flourishing of the entire system of *dharma* and the *dharma* of individuals' (120). A sentiment similar to that expressed by Bhīṣma is echoed in Aristotle's comments in the opening of the *Politics*:

[T]he state or political community, which is the highest of all [communities], and which embraces all the rest, aims at good in a greater degree than any other, and at the highest good.

(I.1.1252 a5)

Aristotle's idea of the polis is ambiguous between that of a state and a society, so he may not intend to place the burden of producing the good life entirely upon the state, as Bhīṣma does with the king. The aspect of Aristotle's approach to which attention should be directed here however, and which is consonant with Bhīṣma's remarks, is best summarised by the following:

Virtuous states, then, are virtuous because their rulers are virtuous (or, what is the same thing, rule virtuously, with the common interest in view); states are deviant because their rulers are deviant, or rule selfishly.

(Johnson 70)

The verse from the *Mahābhārata* can be said to elevate the power and prestige of the state in defining *dharma*, at the expense of other, competing interpretations.

Kauṭilya expresses a similar view, declaring that *artha* ('prosperity' [of the state]) is superior to both *dharma* and *kāma* (pleasure)(AŚ 1.7.6-7, brackets mine), because the latter two are dependent upon the former. Although Kauṭilya still advises the king to enforce *dharma* as understood by tradition, it is telling that he says only that doing so is 'beneficial' (*aupakārika*) rather than necessary (AŚ 1.3.4).

To the extent that a concept of justice is present in the *Arthśāstra*, it must then be presumed to be a rather thin one, as Kauṭilya's primary advice to the king in this regard is to do whatever is necessary to guarantee the stability and safety of his kingdom. To the extent that there is a *rāja-dharma* for Kauṭilya, it consists only in this. Lingat speculates that this is probably Yājñavalkya's view as well (Lingat 225-6), and that those who take this position on the king's role with respect to *dharma* are less concerned with him promoting *dharma* than with preserving the social space in which *dharma* can be actualised. For example, the king should not enforce a precept of *dharma* which might lead to public disorder, even if his subjects have a contrary practice. Thus, the thin concept of justice being promoted by Kauṭilya and his fellow-travelers – if they are operating with such a concept at all – may be conceptually distinct from *dharma* itself.

While he may not be concerned with justice much beyond the obligation of the king to enforce order and stability, Kauṭilya's approach to *dharma* is a general and comprehensive moral conception, which described as the following:

A moral conception is general if it applies to a wide range of subjects, and in the limit to all subjects universally. It is comprehensive when it includes conceptions of what is of value in human life, and

ideals of personal character, as well as ideals of friendship and familial and associated relationships, and much else that is to inform our conduct, and in the limit to our lives as a whole.

(Rawls, PL 13)

Kauṭilya's concern however is to promote a limited, political conception of justice, although his intended audience is only the king (or future king) and his ministers. This move on the part of Kauṭilya and others, to facilitate the management of the early Indian empires, has some similarities with developments in political theory in Modern Europe following Hobbes. Most significantly perhaps is that, like Hobbes, he takes religious concerns to be secondary to political ones. While the king may have pragmatic reasons for respecting and following the orthodox *dharma* traditions for example, he is permitted to deviate from these when political necessity calls for him to do so.

The approach taken by Kauṭilya in the *Arthasāstra* can be said to be a form of justice incorporating *dharma* which meets the conditions stated in section 1 of this chapter. That is, it is a system predicated upon human rather than metaphysical necessity, and which seeks to meet that necessity through a consensus among the ruled peoples to accept the king's rule over them. Kauṭilya shows little concern for the circumstances of justice however; he appears to take the legitimacy of the king's power for granted. It is instead only in Manu and portions of the *Mahābhārata* that we see any attention given to the circumstances of justice.

3.1 Reconciling Contract Theories with Justice

We find as well in the various *mātsyanyāya* accounts an assumption that men are not naturally inclined to be political, but are instead brought into a contractual political arrangement out of fear. If not for the need of the state to provide protection, the *mātsyanyāya* theorists would presumably hold that people in the state of nature are relatively equal in power and ability, and that political circumstances are not essential to men's flourishing (cf. Nussbaum 85-8). Even while the Indian theorists in this case might have a

thin conception of justice, there is still a difficulty in making a direct connection from

mātsyanyāya to that conception:

[S]ocial contract theories insist that the whole point of getting together to form political principles is mutual advantage, where that good is understood in a way that separates it analytically from the constraints of justice and reciprocity the parties agree to respect.

(Nussbaum 89)

The problem with relying upon a state of nature theory to justify the state is that it entails that parties to the contract are rational – or even entitled – to violate the contract when it is to their advantage to do so. Not only that, but those who are not able to consent for whatever reason to the contract are simply dominated by those who are able to consent to it at the contract's initial framing (cf. Nussbaum 61).

This is not a problem that any Indian theorist appears to have anticipated. Outside of some of the Buddhist accounts of the move from *mātsyanyāya* to the state, we see little account of who the parties to the initial contract are. This is problematic for us, because one would like to see some explanation for why the *śūdras* consent to move from such a state to one of continual servitude, for example. As it is, they are seemingly excluded from any role in the initial contract, and are dominated by the 'twice-born' castes. We will need to look elsewhere if we hope for a clearer picture of the relationship between *dharma* and justice. Such a picture may be found in the perspective that human life is inherently social and intertwined with tradition, with *dharma* as means of regulating conflict.

3.2 *Dharma and Dikē*

As with *dharma*, *dikē* is both a virtue of individuals and at times synonymous with world order and with a particular deity. While *dharma* conceived in this way is however self-supporting or the basis of the gods' – and king's – power, *dikē* depends upon the authority of Zeus: 'He is the champion of Dike, the order of the universe. That means first that he defends his rule against any challenge from the other gods' (Lloyd-Jones, 87). The failure of

men to recognize their subordination to Zeus, like with the failure of upholding the rituals for *dharma*, can lead to a collapse in the world order:

Zeus' justice requires not only that men be just in their dealings with one another, but that they remember their subordinate station, and do not try to obtain a share in the privileges of the immortals. . . . Zeus benefits men by forcing them to be just to one another, but at the same time his justice keeps them in their proper station.

(Lloyd-Jones, 35)

Lloyd-Jones notes as well that *dikaosyne* ('justice' or 'righteousness') was considered to be a co-operative virtue, as opposed to competitive virtues such as *arête* (2). Within the Indian tradition, adherence to individual *dharma* was, at least initially, taken to be consistent with the upholding of universal *dharma*. That is, one contributes to the maintenance of the world order by adhering to one's own, individual *dharma* (*svadharma*), and one's individual obligations are never in conflict with maintaining a decent system of order. As we shall see in the next chapter however, there is a tension between individual and social virtues which is more explicit within the Greek tradition, but is brought out in the Indian context within the *Mahābhārata*.

3.3. Dharma, Justice and Conflict

There are reasonable grounds for doubting the synonymy of *dharma* with justice. Davis states succinctly that '*dharma* is not justice' (109), although the concept of justice he considers is restricted to that outlined by Rawls in *A Theory of Justice*. Davis suggests that instead of *dharma*, *vyavahāra*, or the dispute between a plaintiff and a defendant in a legal proceeding, is a better approximation of justice in the Indian tradition. *Vyavahāra* encompasses *dharma* but is wider in scope: 'legal procedure operates both *in accordance with dharma* and *to produce dharma*' (125). The Indian jurisprudence Davis outlines arrives at justice by mediating the competing forms of *dharma* in the context of *vyavahāra*:

. . . Hindu jurisprudence speaks constantly of *dharma* as the teleological end of human life, but *dharma* is simultaneously the reflection of the Veda, the result of legal procedure, and the primary political

good to be protected by a ruler. Legal procedure plays a necessary intervening role between an ultimate ethical end and a worldly fairness.

(Davis 126)

Discussions of *vyavahāra* are first noted in commentaries on the later law texts, or *smṛtis*, such as the *Parāśara-mādhavīya* of Mādhava, which is placed within the fourteenth century A.D. (Lingat 114) and Medhātithi's commentary on Manu, which dates to the late ninth or early tenth centuries. In Davis's view, justice is not found in or as a part of *dharma* but is 'embedded within other concepts such as *dharma* and *vyavahāra*' (126). That is, *dharma* is neither equivalent to justice, nor is justice merely a component of *dharma*. The teleology of *dharma* is to ensure fair conflict, which means that *dharma simpliciter* cannot be a form of justice akin to Rawls's two principles (cf. Davis 124 ff.).

While *dharma* may fall short of the Rawlsian conception of justice, its implementation bears some resemblance to the picture of justice provided by Stuart Hampshire in *Justice Is Conflict*:

Only the one most general feature of the process of decision is preserved as the necessary condition that qualifies a process, whatever it happens to be, to be accounted as an essentially just and fair one: that contrary claims are heard.

(Hampshire 16-7)

In addition to allowing for the hearing of contrary claims, Hampshire holds that the other necessary condition for a procedure to be just is that there must be institutions with 'recognized rules of procedure' in which such contrary claims can be heard (Hampshire 17). We can see both of these conditions actualised in *vyavahāra*. This procedure allows both for the input of reason, in the hearing of contrary claims and the input of tradition and *dharma* through the institutionalised procedures within which dissenting claims are allowed to be heard.

Hampshire maintains that achieving this form of justice requires 'the recognition of polymorphous ideals and of diverse conceptions of the good, tempered by respect for the

local conventions and rules of conflict resolution' (Hampshire 52). This requirement is easily met within the Indian legal tradition. Kauṭilya for example stresses that the king should take heed of local custom when implementing his policies. Bṛhaspati provides more detail about the prudence of such a policy:

The time-honoured institutions of each country, caste, and family should be preserved intact; otherwise the people would rise in rebellion; the subjects would become disaffected towards their rulers; and the army and treasure would be destroyed.

(2.28)

These remain strictly policy considerations however. The fact that the ruler has a prudential interest in protecting traditional customs and maintaining their institutions does not mean that those customs are not contrary to *dharma* (Lingat 200 ff.). There may still be religious sanction for violations of *dharma*, but these are not meted out by the king. It remains however the king's *dharma*, as well as his *artha*, to protect and enforce established customs, even if they are contrary to *dharma*.

Hampshire tells us that, for a society to be properly liberal, it must be the case that 'Open debate about competing values is itself a value' (Hampshire 66). By modern standards, Classical Indian society would not be open, as many possible participants are intentionally excluded from the deliberative process. There exists between the inclusivist *dharma* of the state and the idealised form in the *Dharmaśāstras* however a mandated space for debates about the social and political order to take place. It would of course have excluded a number of possible contributors to the discussion, but various historical shifts also meant that who was included and who was excluded could change over time. Such open debate about competing values was necessitated by the socially constructed component of *dharma*, as explained by Davis:

[T]he individual, or better the householder, must look back and forth between at least two opposing horizons, one in which justice, for which I find no clear term in Sanskrit, is subsumed under the ideological good of *dharma* (or Veda) and one in which justice is subordinated to a procedural

substitute that constructs the *dharma* it promotes. In terms of Hindu jurisprudence, legal procedure operates both *in accordance with dharma* and *to produce dharma*.

(125)

Davis stresses the priority of fair conflict about the nature of *dharma* over considerations of justice. While this would exclude classical Indian political thought from being just according to Rawls's approach, it can meet the standard of justice outlined by Hampshire.

Contrary claims are heard through the continuing, dynamic pull among *dharma*, tradition and reason. The king is responsible for maintaining the institutions through which these competing claims may be heard. What makes this form of justice distinctly Indian is that a dominant component of it – the *dharma* tradition – has as its ideal a certain recovery of the past. These are the 'activities of the imagination' woven into the legal process to allow the voices of past to continue to be heard (Hampshire 20), and against which the participants define their place and origins within the system. In short, the proper, *dharmic* system is one of reflective equilibrium with competing traditions and reason. The downside of this, from the perspective of the *dharma* tradition, is that even the *dharmic* society will, over time, find itself further and further from the ideal. It is the genius of this tradition that, despite its general conservatism, it recognises that these competing strands will not be reconciled with any consensus in this world, and thus that it is futile to look to the state for much beyond security and the common welfare.

For reasons such as these, Davis suggests that an understanding of the Indian tradition is best achieved by a comparison with the conservative, sociological tradition, represented by Burke, Tocqueville, Durkheim and others (Davis 162-3). Such a comparison does draw out a number of similar emphases on the part of Indian theorists, such as a distrust of the expanding state deriving from a fear of its abuses of power, and faith in the power of communities and tradition to sustain social order. Both the Indian and conservative traditions

see the march of history as moving humanity further and further 'away from a primordial, transcendent ideal' (Davis 163).

While Davis is correct to see the *Dharmaśāstra* tradition to be conservative in this way, this interpretation favours the orthodox perspective on *dharma* too much. While they might see the Indian legal tradition as a means of reconciling the competing claims of the *Vedas* and social reality, the orthodox position can become reactionary once communities with an alternative source of transcendent values are integrated into the state. This becomes the case not only when classically heterodox communities such as Buddhists and Jains are incorporated into the Indian state, but also with the incorporation of theistic movements such as forms of *bhakti* and Tantrism. While some of these groups maintain the traditionalism of the *Dharmaśāstra* legal codes, they have their own understandings of *dharma* and thus herald the unraveling of the Vedic consensus on *dharma*.

As for what this says about the relationship between *dharma* and justice, the splintering of the Vedic consensus in the medieval period gives way to a period of moderately centralised, bureaucratic and pluralistic states. The people of the various, competing traditions mentioned above understand their own traditions to be *dharmas* and are afforded that recognition under the law (Davis 153-4). While it may be the case that these and the *varṇāśrama-dharma* never came into conflict because the latter is operative 'at the level of ideas, approaches, and reasoning to be used in practical contexts' (Davis 154), the fact that what was once a substantive, monolithic picture of social organisation evolves into an established means of resolving legal disputes in diverse, pluralistic Indian societies is an indication that the concept has undergone significant transformation. This new picture may then come to differ from the orthodox conception in other, fundamental ways, while the change continues to be unrecognised by the orthodox.

4. Conclusion

Davis is right to identify the ongoing contest between reason and tradition as the site of justice in Indian jurisprudence, as we can see through a comparison with Hampshire. It is a mistake however to see *dharma* as always being entirely, conceptually distinct from both reason and tradition. While the orthodox theorists who composed many of the texts we rely upon for a picture of Indian political and legal theory present the two as distinct, it would be odd at the very least for a society which conceives of *dharma* as an integral principle of social organisation to discount the duty of the king in protecting the various interests represented in his kingdom as being outside the realm of *dharma*.

Due to the commentaries on *vyavahāra* coming much later than the texts we have thus far considered in the course of this thesis, let us set it aside for the time being. It was worth addressing at this point as a counterpoint to Davis's claim that a more comprehensive view of justice was lacking in the Indian tradition. The operation of *vyavahāra* is not an issue that the *Mahābhārata* seeks to address however, but is an expected aspect of a developed legal system of the functioning, post-*mātsyanyāya* state. As such, further discussion of the role it plays in the furthering of justice in order must wait.

Returning to the relationship between the circumstances of justice and *dharma* discussed earlier in this chapter, we have seen that the *Dharmaśāstras* generally take *dharma* to be predicated upon social necessity rather than mere metaphysical obligation, even if their conception of *dharma* is not completely divorced from the latter. The proper ordering of competing goods, if not accomplished by *dharma* itself, is left to its ancillaries such as *rāja-dharma* or *vyavahāra*. *Dharma* falls short of a full theory of justice when, it neglects the incorporation and development of the common *dharmas*, even while *vyavahāra* attempts to incorporate fairness for litigants into the process of conflict resolution. We see in the *Mahābhārata* however some novel attempts to resolve the tension between the traditions of

dharma and reflective analysis of it, foremost among these a new conception of humankind's relationship to God. Such an approach may be more successful at demonstrating some synonymy of *dharma* and justice, as we shall see in the following chapter. While *dharma* and justice may otherwise remain relatively distinct, the principles of social organisation and conflict resolution which are a focus for the champions of *dharma* are also the concern of those who have considered problems of justice in the West. If we are to gain an understanding of ideas of justice in India, either ancient or contemporary, it will not be without a significant understanding of the concept of *dharma*.

Dharma and Justice in the Mahābhārata

The goal of this chapter is the proposal and defense of the thesis that aspects of the *Mahābhārata* which have traditionally been understood as dealing with individual morality or ‘the ethical’ more properly fall within the domain of political philosophy, and that many of the ‘ethical’ dilemmas occurring within the text are better resolved with this understanding. More precisely, the point is to argue that the purposes of the apparently ethical portions of the *Mahābhārata* are 1) to defend the necessity of the state, and 2) to explain that while it exists for the purpose of promoting *dharma*, it is sometimes acceptable for those acting on behalf of the legitimate state to engage in acts apparently contrary to *dharma*, 3) that these apparent violations of *dharma* are in accord with *rājadharmā*, or the *dharma* of the king and, by extension, that of the state, and 4) that these iterations of *dharma* in fact represent a theory, or various theories, of justice.

1. Competing Dharmas

We have already seen that much of Book Twelve of the *Mahābhārata* is dedicated to demonstrating the necessity of investing the king with largely unlimited sovereignty. The necessity of kingship is justified therein by his protecting people from a *mātsyanyāya* condition, and the legitimacy of his rule is established by his being chosen by the people over whom he rules to be their king, and his adherence to *dharma*. While these sections of Book Twelve are easily recognised to concern matters of political theory, there are also sections of the *Mahābhārata* which are reasonably assumed to deal with ethics, distinct from a political context. Foremost among these is the *Bhagavad Gītā*, which makes up a portion of Book Six. Serving as a focal point of some of the moral issues at stake in the text, recent attention

has been given to the theme of the *Gītā*, and what type of ethical theory it is promoting or assuming. Sen argues that the *Gītā* is best understood as promoting a deontological ethic – that is, that one should act strictly in accord with one’s antecedently determined duty or obligation – while conceding that this may be at odds with the ethical tone of the *Mahābhārata* as a whole (Sen 480-2). Ganeri and Carpenter, reacting to Sen, claim that the *Gītā*, along with the *Mahābhārata* as a whole, assumes an ethic based around character and context. Given that our aim is to suggest a political interpretation of these points, we shall begin with the *Bhagavad Gītā* and ethical readings of it. As some of these readings depend upon an overall interpretation of the ethics of the *Mahābhārata*, it is essential to address them in the course of offering an alternative interpretation.

Before delving into a discussion about the moral issues at stake in the *Bhagavad Gītā* however, a brief summary of the morally salient aspects would be helpful. The text is a dialogue between the prince Arjuna and his charioteer, Kṛṣṇa – who is also an *avatāra* of God – on the eve of a great battle with the foes of Arjuna and his brothers. Immediately before the battle, Arjuna requests that Kṛṣṇa take him to the middle of the battlefield, so that he may survey the opposing side. Upon seeing so many of his friends, teachers, and relatives arrayed against him, Arjuna, ‘overcome with compassion’ (BhG 2.1, van Buitenen), foresees that fighting in the battle will destroy his family and have devastating consequences for everyone involved. The *dharma* system upon which Arjuna’s duty depends, and his family tradition upholds, would be in jeopardy. Even were he to win, Arjuna claims he would find no comfort in worldly pleasures, because it is also for the good of those whom he loves that he pursues them. Thus he concludes: ‘It were healthier for me if the Dhārtarāṣṭras, weapons in hand, were to kill me, unarmed and defenceless, on the battlefield!’ (BhG 1.46, van Buitenen). The thrust of Arjuna’s argument then is that if he fights, all possible outcomes are bad. He takes this to undercut his initial assumption that he ought to fight.

Kṛṣṇa's first line of argument against the supposition that Arjuna ought not to fight is that, because the *ātman* is not identical to the body, and since it is the *ātman* which constitutes one's true identity, it is impossible in fact to kill anyone. Thus Arjuna should not mourn the deaths of those whom he loves. Second, Arjuna has been given a once-in-a-lifetime chance to fulfill his duty qua *kṣatriya*, his *svadharma*, and doing so can only have a positive outcome for him: Either he will enjoy the fruits of victory if he wins, or he will attain heaven if he dies. If he fails to fulfil his *svadharma* however, Kṛṣṇa indicates that Arjuna – hitherto lauded as a great and noble warrior – will come to be ridiculed and maligned. Thus, 'Holding alike happiness and unhappiness, gain and loss, victory and defeat' (BhG 2.38, van Buitenen), Arjuna should take to the field.

Arjuna is not so easily convinced however, as he soon wants to know: 'If you hold that insight is superior to action, Janārdana, why then do you urge me on to fearful action?' (BhG 3.1, van Buitenen). If it is impossible to slay the *ātman* in battle, then there is no discernable reason why Arjuna should choose to fight rather than not. Not only would Kṛṣṇa's argument justify inaction in Arjuna's case, but it could justify any manner of action, and so does not offer a clear indication of how to act. In addition, Kṛṣṇa's admonition against Arjuna choosing not to fulfil his *svadharma* fails to address Arjuna's earlier concerns about destabilizing the *dharma* system and the fact that he is concerned with more than his own personal welfare.

One may question here why Kṛṣṇa, who is an *avatāra* of God, would present such troubling arguments in favour of the use of force. Amartya Sen reasons that Kṛṣṇa is pushing a 'high deontology,' saying that one should simply do one's duty (as described in the *Dharmaśāstras*) regardless of the consequences (Sen 481). Amber Carpenter points out that this is contrary to what Kṛṣṇa himself says (83). Kṛṣṇa claims instead that the wise man, like God, acts in order to preserve the world and those who dwell in it (BhG 3.25, van Buitenen).

Rather than saying that a moral action is one that is undertaken with no notice of the consequences, as Sen takes him to be, Kṛṣṇa is instead saying that a moral action is one which is not performed for the sake of personal advantage (cf. Carpenter 83). One still ought to be concerned with the states of affairs brought about by one's actions, including the act of renunciation.

It is worth considering that Kṛṣṇa is not presenting these flawed arguments for his conclusion in the name of any simplistic moral theory. Roy Perrett suggests that Kṛṣṇa offers these implausible arguments in accordance with the guru tradition (Perrett 13-4), in order to test Arjuna. Both the idea that it is impossible to kill and that one should not be attached to the consequences of moral action have some initial plausibility, and each at first glance provides an apparent solution to Arjuna's dilemma. These solutions are however too easy, particularly the one that it is impossible to kill. If that were the case, one could not help but fulfil one's duty. Arjuna has shown Kṛṣṇa however that he is not merely interested in how the outcome affects him alone, and that he is willing to weight the competing demands of *dharma* against one another. Thus, through 'persistence and intellectual acumen' (Perrett 14), Arjuna has seen that Kṛṣṇa's proposed solutions fall short, meaning that he is ready to receive the true lesson.

The first part of Kṛṣṇa's final lesson is that action cannot be avoided. Though Arjuna might seek to avoid negative consequences by refusing to act, this is in fact impossible: 'For no one lives even a moment without doing *some act*' (BhG 3.5, van Buitenen). One must act simply in order to maintain oneself, or even to make a choice about whether to act. Although this part of Chapter 3 relies upon a Sāṃkhya theory of human nature – we are all compelled by our physical nature or substance to be active creatures – one need not accept the metaphysics of this theory to find the critique plausible. This is made apparent when we understand it as a critique of the ritualistic view of action:

[In the ritualistic interpretation of action] it is argued that only purposeful and intended action that yields fruits is *karman*. From a Sāṃkhya point of view this is an illusion, because thinking, feeling, eating etc. also count as *karman* and have consequences, and it is not easy to rid oneself of this aspect of *karman*, since the ever-active senses and cognitive faculties are difficult to control.

(Malinar 80)

Though Arjuna might hope to escape his dilemma by retiring to the woods and becoming a mendicant, this too is an action, one that would result in the opposing side's victory. It would therefore be as though Arjuna acted to ensure his brothers' loss. Second, one must focus on *svadharma*: 'It is more salutary to carry out your own Law [*svadharma*-D.S.] than another's law well' (BhG 3.35, van Buitenen). Carpenter properly characterises *svadharma* as the obligations determined by one's 'particular family, social status and history' (Carpenter 93). This contrasts with Sen's interpretation, which is that Kṛṣṇa focuses on abstract principles at the cost of situational evaluation; that is, Kṛṣṇa fails to recognise that Arjuna cannot accept the conclusion to fight detached from the consequences of doing so (Sen 485). The third and final concern of Kṛṣṇa's lesson is *niṣkāma karma* ('desireless action').

Most of the third chapter of the *Gītā* is devoted to explaining *niṣkāma karma*. The concept is explained in terms of an analogy: God does not act out of necessity, but in order to provide an example to the world (BhG 3.22-3, van Buitenen). Similarly, we should act in accordance with *svadharma* and without attachment to the consequences of our actions. By doing this, we limit one of the deleterious effects of *karma*, which leads to acting merely from habit or disposition (*saṃskāra*):

That is, we cannot evade the direct causal consequences of our actions, but we can control our tendencies to repeat such deeds in the future. Or in other words, we can regulate our habit-forming tendencies and liberate ourselves from the vicious circle of action and reaction.

(Perrett 23)

Living in accordance with *svadharma* and *niṣkāma karma* is to lead a life of active response rather than passive reaction. It also reinforces the integrity of the self, as one does not then find one's identity and moral integrity bound up with phenomena outside of one's own control (Ganeri 155-6).

Returning to Arjuna's situation, we may ask how the concerns on which Kṛṣṇa has focused tell Arjuna whether he should fight. Although he resolved to do so by the end of the *Gītā*, there is no clear path to show how he arrives at that conclusion. It is possible however to see how Arjuna is resolved to fight through the application of *svadharma* and *niṣkāma karma* to his particular case.

Kṛṣṇa tells Arjuna repeatedly throughout the *Gītā* that it is desire, particularly base desires such as greed and wrath which can lead 'a man to commit evil . . . as though propelled by force' (BhG 3.36), and that these arise from the interaction of natural forces (*guṇas*) making up the individual. As such, Kṛṣṇa enjoins Arjuna to eliminate his desire, 'that evil which destroys insight and knowledge' (BhG 3.41, van Buitenen). As a *kṣatriya*, Arjuna has an obligation to fight against unrighteousness, but his *svadharma* also requires that he protect the members of his family and the vulnerable. Kṛṣṇa reminds Arjuna however that he is not a mere *kṣatriya*: He is a noble prince and a great warrior, one who has been given weapons by the gods themselves, to aid him in his avowed pursuit of the kingdom rightfully belonging to him and his brothers. His choices up until now have indicated him to be a man of action, who stands up for what is just. For him to resign himself to death, despondent and defenceless, would be a betrayal of everything he has done up to this point.

Even after seeing how one's integrity clearly demands it however, one might still find something unsavory about killing members of one's own family, and destabilizing the current social order, in the name of *dharma*. It is at this point that we should think back to how competing obligations can fight against one another. Kṛṣṇa is well aware of Arjuna's sympathy for those dear to him. One must however recognize that such sympathies can extend beyond their concomitant obligations. You have gone beyond their extent when you take yourself to be obliged to aid those who have 'wronged you, humiliated you, dispossessed and tried to assassinate you' (Carpenter 90), especially when those wrongs call for

punishment and authority to mete it out lies with you. Not only have those on the opposing side treated Arjuna in this way, but they have done so unlawfully, out of greed and lust for power. Arjuna has made the mistake of assuming that his familial and social obligations cannot be rescinded under any circumstances. There is already precedent in the *Mahābhārata* for exceptions to one's general obligations to others. When Yudhiṣṭhira asks the dying Bhīṣma whether it is ever acceptable to lie, Bhīṣma tells him that 'the truth should not be spoken and that falsehood should be spoken, where falsehood would be truth, or truth falsehood' (MBh 12.110.6, Fitzgerald). The example he gives to illustrate his point is that of a man who has sworn to always tell the truth, and who one day sees some people fleeing a group of bandits. When the bandits ask where the people have fled, the man readily tells them, and they are duly killed by the bandits. The right thing to do, Bhīṣma indicates, would have been to not answer the bandits' question.

Ganeri infers from this that it is then wrong to 'give somebody something of value (a truth, a piece of wealth) to which they have no rightful entitlement' (Ganeri 171). In the case which Ganeri is considering here, when Droṇa demands the truth from Yudhiṣṭhira so that he might defeat him and his brothers, a further implication is that it is wrong to give something good to those who would use it for wicked purposes. Although Arjuna has seen that his family's adherence to *dharma* might falter if were he to fight, he has failed to consider the consequences of actualizing a world in which those who have a chance to fight injustice refuse to do so because they feel they owe something to those who are undeserving. If even the greatest of warriors gives up hope that his actions can be beneficial, there is no hope for those who seek to act justly with knowledge that is even more imperfect than his own. If he will not fight to preserve *dharma*, he cannot expect that it will be upheld within his own family.

Considering the *Bhagavad Gītā* on its own, it is not proposing to resolve a contest between deontology and consequentialism, viz. whether Arjuna should act out of duty or else concern for the consequences of his actions. The point of the text is not to compel the reader to accept either of these possibilities, but to lead the reader to understand the importance of virtue and character. Given his position and circumstances, Arjuna ought to act, and fight against his family and former friends for the sake of *dharma*. One result we may infer from this is that the dilemma facing Arjuna at the beginning of the *Bhagavad Gītā* is no ethical dilemma at all. Whichever means of evaluation Arjuna might use to resolve the question of whether he should fight, the result is the same. What is relevant in this process is that it provides a demonstration of how the king should approach decision-making, and the various, *dharmic* reasons for and against certain solutions. As Ganeri summarizes Kṛṣṇa's lesson:

Kṛṣṇa's advice to Arjuna is that he must act instead according to his particular duties and obligations, but remain detached from any self-interest in the results of his actions. To act in a way that is true to one's self is what it is to act well, and the consequences, as prescribed by the principle of karma, can then only be good. But to be motivated to act by those consequences would be to lose sight of who one is . . .

(156)

As we shall see with the character of Yudhiṣṭhira, it is this focus on duty and obligation without concern for personal benefit which defines the just king, and good consequences for the entire kingdom are an anticipated result of such a king's rule.

One aspect of the colloquy neglected by the writers mentioned so far is its theodical nature, or how to account for apparently divergent moral obligations, having a purported divine origin. In this case, any conflict between deontological and consequentialist considerations is here resolved through what Larmore calls a '*reconciliation ranking*' (136). That is, Kṛṣṇa's arguments are at best ones in favour of a form of indirect consequentialism, 'the doctrine that whereas actions must be *justified* consequentially, they may have to be *motivated* by nonconsequentialist considerations' (Larmore 136). Sen is correct to see the

emphasis on deontological considerations in Kṛṣṇa's arguments. The following statement by Kṛṣṇa goes unchallenged for example: 'All the world is in bondage to the *karman* of action, except for action for the purposes of sacrifice: therefore engage in action for that purpose, disinterestedly' (BhG 3.9, van Buitenen). Kṛṣṇa does not argue that Arjuna should act with regard to the consequences of his actions in mind, but only that he need not worry about the consequences, as God (Kṛṣṇa) will guarantee a good outcome. On the other hand, Ganeri and Carpenter are right to bring in the virtue-based exceptions to general rules given elsewhere in the *Mahābhārata*, and that these are rooted in the particulars of the concerned agent's circumstances.

That being said, a particular aspect of Arjuna's character is downplayed here in order to emphasise the personal nature of his conflict in the *Bhagavad Gītā*. This is his obligation, as brother of the king and a warrior in his service, to obey his brother's dictates and enforce his interpretation of *dharma*. While it is understandable that this aspect of Arjuna's situation may be (somewhat) put aside when considering only the arguments within the *Bhagavad Gītā*, it is significant throughout the remainder of the *Mahābhārata*, where it is the king – Arjuna's brother Yudhiṣṭhira – who is deliberating about his obligations in the face of an unprecedented moral and political situation. A recurring theme is that Yudhiṣṭhira must reconcile his obligation to uphold *dharma* with the fact that doing so may require him to act in ways that appear contrary to *dharma*. Our aim here then is to place these debates about *dharma* within the *Mahābhārata* in the context of political theory and the nature of justice.

Another factor brought to light through the discussion in the *Bhagavad Gītā* is a variant understanding of *mātsyanyāya*. The sources considered in the first chapter of this thesis focus on *mātsyanyāya* as a pre-theoretical condition, whereas Arjuna's concern is with the post-theoretical occurrence of a state of *mātsyanyāya*. That is, he worries that the battle between the Pāṇḍavas and Kauravas will result in a general collapse of *dharma*, and that he

will be responsible for this result should he participate in it. As we have seen, one response Kṛṣṇa has to the dilemma presented by Arjuna is to critique Arjuna's attachment to the personal consequences of performing his duty. Arjuna is concerned about the role he may play in creating a new *mātsyanyāya* situation not because that situation is undesirable, but because he will be punished for helping to bring it about (BG 1.44). Kṛṣṇa's other response is to clarify that the battle will take place regardless of Arjuna's participation in it, and the ignominy he will face once his brothers have been defeated will be no better a fate than the hollow victory he fears. Kṛṣṇa is not discounting the importance of avoiding a re-creation of a *mātsyanyāya* situation in the *Bhagavad Gītā* however so much as indicating to Arjuna that, should he act appropriately, good consequences will follow (cf. Ganeri 156). In fact, there is good reason to think that, by the time the battle takes place at Kurukṣetra, the kingdom is already in a state of *mātsyanyāya*. This is further explained in section 7 of this chapter, which discussed precisely what is unjust about Duryodhana's rule.

2. Interpreting the Text

The theme of reconciling power and obligation highlighted in the *Bhagavad Gītā* relates back to issues of sovereignty and legitimacy highlighted by Manu and others, as mentioned in the earlier chapter on the origins of the state. The responses to this problem found within the *Mahābhārata* can be accurately described as discussions about the nature of justice. While there is no obvious word for 'justice' to be found in the *Dharmaśāstra* texts examined in the previous chapter (except as a characteristic of legal procedure [e.g., *nyāya/nyāyā*]), certain forms of the word *dharma* are best rendered as 'justice' in the *Mahābhārata*. This is how Smith understands it for example when it is said of Yudhiṣṭhira that 'his government was just [*dharmatas*-D.S.]' (MBh 2.30.2, Smith). Fitzgerald also indicates 'Justice' and 'Just' to at times be proper renderings of the term (Fitzgerald 643). Yet the fact that terms which are

best translated as 'justice' occur in the *Mahābhārata* is not on its own sufficient reason to conclude that any theory of justice is contained therein. This can be shown however with a comparison of relevant portions of the *Mahābhārata* with texts that are already accepted to provide accounts of justice, and seeing that the *Mahābhārata* addresses the same issues. Unlike the law codes on *dharma* however, the *Mahābhārata* is not primarily a discursive text, but rather a dramatic one. Given this, we can glean the merit the positions delineated therein are intended to have according to the depictions of the parties holding them.

There are two primary factions involved in the central dispute in the *Mahābhārata*: the Pāṇḍavas and the Kauravas. The Pāṇḍavas are led by a group of five brothers, with the eldest, Yudhiṣṭhira, as their king and head. Yudhiṣṭhira, we are told, is 'the best upholder of *dharma*' (MBh 1.114.7, Smith), 'ever devoted to *dharma* and free from cruelty' (MBh 4.65.21-2, Smith). This is only fitting, as he is also the son of the god Dharma, the embodiment of *dharma* itself. The remaining brothers are Bhīma, Arjuna, and the twin brothers Nakula and Sahadeva. The twins have a minor role in the narrative, but Arjuna is the foremost warrior of his brother's kingdom, while Bhīma is renowned for his strength and wrestling ability and for being the most impetuous of the five. This impetuosity is a key part of the brothers' relationship with Draupadī, the common wife of all five brothers. In addition to being the wife of the Pāṇḍava brothers, Draupadī also represents the claims of those abused by the powerful, demanding justice and vengeance for the wrongs that she has suffered. In such situations, Yudhiṣṭhira and Arjuna ask Draupadī to bide her time, while Bhīma is vociferous on the need for an immediate response.

The Kauravas dispute with the Pāṇḍavas over the rulership of a world-spanning kingdom, which culminates in an apocalyptic battle between the two forces. The major antagonist of the Pāṇḍavas is their cousin Duryodhana, 'Averse to *dharma* and seeing wickedness everywhere' (MBh 1.119.25, Smith). Duryodhana's wickedness is found not in

any direct oppression of his people – we are to understand that he manages his kingdom efficiently – but in his lust for power and his disregard for any limits upon his desires. While the Pāṇḍavas see martial power as something to be harnessed to serve the purposes of *dharma*, Duryodhana holds ambition and conflict as things to be pursued for their own sake. So long as he knows that anyone has more power and prestige than him, Duryodhana ‘will either obtain that prosperity of theirs, or lie down having perished in battle’ (MBh 2.54, Ganguli).

3. The Gambling Match

The following exposition should be helpful both in elaborating the context in which the arguments found within the *Mahābhārata* take place, and to establish the nature of the relevant characters. This is important for understanding the positions that they represent in arguments about power, *dharma* and proper governance elsewhere in the text. One of the problems with analyzing the concept of *dharma* in the *Mahābhārata* however is that the term is used therein ‘in various, non-univocal ways that usually take the word for granted, or are unclear, or not completely developed’ (Fitzgerald 106, n.112). While we should therefore be aware of such ambiguous usage of the term, our purpose here is to discern instances in the text where a concept of justice presents itself, not to clarify the precise meaning of every instance of *dharma*. It is relevant of course if *dharma* is being used to mean ‘justice,’ and that phenomenon we aim to explore more fully below.

Having a brief sketch of some of the characters most relevant to the political dimensions of the *Mahābhārata*, let us now proceed to the first major conflict of the story: the gambling match and the humiliation of Draupadī. The background of this event is that the Pāṇḍavas’ uncle, the blind king Dhṛtarāṣṭra, has ruled the Hastināpura kingdom in their stead until Yudhiṣṭhira comes of age. Dhṛtarāṣṭra is not without ambition for his own line

however, and regularly indulges the demands of his eldest son, Duryodhana. To placate his son, he has split the kingdom and given the less desirable portion to his nephews. From their kingdom based at Indraprastha however, the Pāṇḍavas expand their power through conquest and alliance, and bring all kingdoms of the world (other than their uncle's) under their influence. Yudhiṣṭhira then performs the *Rajasuya*, a consecration sacrifice proclaiming himself to be emperor and obviating any questions which may be raised about his legitimacy (cf. Lipner 396, n.4). Being both envious of his cousins' accomplishments, and embarrassed at their treatment of him within their palace – he walks into clear glass doors, mistakes interior ponds for glass floors and glass floors for ponds, much to the mirth of the observing Pāṇḍavas – Duryodhana and his paternal uncle Śakuni develop a scheme to strip the Pāṇḍavas of their kingdom.

To this end, and knowing that they cannot presently defeat the Pāṇḍavas in battle, Duryodhana and Śakuni propose a dicing match with Yudhiṣṭhira. As Śakuni notes:

Kuntī's son is fond of gambling, but he does not know how to play. If the lord of kings is challenged, he will not be able to refuse: and I am skilled at playing – I have no equal on earth, none in the three worlds. So challenge Kuntī's son to a match. Thanks to my skill at dice, bull-like king, you may be sure that I shall take for you his kingdom and his splendid fortune!

(MBh 2.44.18-23, Smith)

Duryodhana and Śakuni implore Dhṛtarāṣṭra to arrange the match. When Dhṛtarāṣṭra indicates that he first intends to consult his chamberlain and half-brother Vidura, who 'respects *dharma* and is far-sighted' (MBh 2.45.41-42, Smith), Duryodhana protests that he will die of despondence, as the chamberlain will surely prevent the match from taking place. Dhṛtarāṣṭra relents and orders a great gambling hall to be built, and sends Vidura to call for Yudhiṣṭhira to take part in the match.

Upon arriving in the Pāṇḍavas' hall, Vidura informs Yudhiṣṭhira that his uncle King Dhṛtarāṣṭra has called for him to attend a match in his new hall, filled with gamblers, 'cheats that they are' (MBh 2.52.9, Smith). While Yudhiṣṭhira recognises that participating in the

match will lead to dissension, he cannot refuse the request of his uncle. He therefore agrees to participate, and duly loses much of his wealth to Śakuni, who wins each game without fail.

The lead-in to the gambling match develops some of the major themes of the *Mahābhārata*. First, we get a glimpse not only into the character of Duryodhana, but an elaboration of the passionate, egoistic ethic which motivates him. As he explains the cause of his malaise to his father, Duryodhana realizes that it is not just wealth and power that he wants, but the abject defeat of his enemies:

The unforbearing man who, to free himself of his enemy's vexations, would destroy his own kingdom if it fell to his enemy – he is truly a man! Contentment destroys good fortune, heir of Bharata, and so do self-regard, compassion and fear; the one whom these affect will obtain nothing great.

(MBh 2.45.13-15, Smith)

One observation of political import here is that Duryodhana has no concern for the preservation of his kingdom; it is valuable not in itself, but only when it is his. The furtherance of a kingdom with a ruler such as Duryodhana is therefore dependent upon its contribution to his own perceived self-interest. This notion of self-interest is not simply material, however; it is achieved through a Nietzschean struggle with oneself and others, 'whether this involves *dharma* or *adharma*' (MBh 2.50, Smith). Duryodhana realizes that his success depends upon cultivating the proper resentments and harnessing them to defeat the Pāṇḍavas:

He that paineth another is, O king, to be regarded a foe by him that is pained. Discontent is the root of prosperity. Therefore, O king, I desire to be discontented. He that striveth after the acquisition of prosperity is, O king, a truly politic person. Nobody should be attached to wealth and affluence, for the wealth that hath been earned and hoarded may be plundered.

(MBh 2.54, Ganguli)

We see then in Duryodhana a king who separates his own prosperity from that of his kingdom, and so will sacrifice the latter to enhance the former. While a king of this demeanour may sometimes still be a successful ruler, Duryodhana is ever-ready to risk the kingdom for a mere chance at proving his own superiority. Vidura notes the imprudence of Duryodhana's single-mindedness: 'Duryodhana, crazed with wagering dice . . . does not look

about him: he ignores a precipice as he antagonizes these mighty chariot-fighters' (MBh 2.55.5-6, Smith). We can readily infer from the fact that these characteristics are assigned to the ostensible villain of the epic that these are unfit qualities for a king to have.

Let us now contrast Duryodhana's actions in the prologue of the gambling match with those of Yudhiṣṭhira. The latter acquiesces to participate in a gambling match he knows to be fixed, blaming fate for his predicament: 'as people say, this whole world is under the sway of what fate ordains, and today I have no option but to gamble against cheats' (MBh 2.52.14-5, Smith). Such bad faith on someone's part in the *Mahābhārata* nearly always precedes their taking an action with predictably negative consequences. This instance is no exception. In addition to blaming fate for his decision, Yudhiṣṭhira also says that he must attend the match because his uncle has commanded it, and that he will not refuse a match even with the duplicitous Śakuni, should it come to that, for 'if I am challenged, I shall never refuse, for such is the eternal vow that I have sworn' (MBh 2.52.17-8, Smith). In addition, Yudhiṣṭhira cannot admit to being an inferior gambler to Śakuni, the condition the latter establishes as sufficient to show that he is engaging in any deception:

When a Vedic scholar competes against one without such scholarship . . . or a learned man against men without learning, that is deception, Yudhiṣṭhira, though people do not call it so. If you think it deception to compete with me here, or if you are afraid, then refuse the wager!

(MBh 2.53.11-12, Smith)

When Duryodhana indicates that Śakuni will play on his behalf, Yudhiṣṭhira is still cowed into letting the match proceed:

'For one person to gamble by means of another seems to me unfair,' said Yudhiṣṭhira, 'and with all your learning, you too must know that this is so. But let play proceed nevertheless!'

(MBh 2.53.16-7, Smith)

While Duryodhana acts purely out of self-regard, Yudhiṣṭhira's failing here is his inability to admit to any naiveté, even when it means avoiding a desultory result, and hewing a meticulous adherence to his own understanding of *dharma*. While Yudhiṣṭhira is not so wicked as Duryodhana – he still aims above all else to uphold *dharma* – his single-minded

devotion to that ideal is just as imprudent in this case as Duryodhana's own myopia. This episode therefore implies a point that is expressed more clearly in a later portion of the epic: concern for consequences is an important feature in the successful king's decision-making.

As Yudhiṣṭhira proceeds to lose all of his wealth, Vidura appeals to the one person who may exercise authority over the disputants: the blind regent Dhṛtarāṣṭra. Vidura warns the regent that his son is acting without regard for the consequences of his actions, and that Dhṛtarāṣṭra should abandon Duryodhana to the judgement of the Pāṇḍavas:

Give up one member for the sake of the family; give up one family for the sake of the village; give up one village for the sake of the kingdom; give up the earth for the sake of yourself!

(MBh 2.55.10-2, Smith)

To allow this gambling match to proceed, simply because his son at present seems to be winning, is to sacrifice the future of the kingdom to fulfil his present desires. The king should not surrender his judgment even to the whims of his own son, for 'the man who violates his own judgement to follow another's inclination is like someone who puts to sea in a boat steered by a child' (MBh 2.56.4-5, Smith). The regent would do better to make friends of the Pāṇḍavas, who are powerful and kind to their friends.

At this point, Duryodhana challenges Vidura, saying that his praise for his enemies reveals him to be their friend, rather than a friend of his father. Duryodhana says that he does not care for Vidura's advice, and reveals that he is compelled, not by what is best for him, but something else:

There is but one ruler; there is no other; that ruler rules a man before he is ever born. Ruled by him, like water down a slope, I flow wherever I am directed! If someone breaks a rock with his head, or offers food to a snake, it is the ruler's rule that he carries out. But the man who tries to exert his own rule by force in this world makes enemies for himself. Those who are learned should only tolerate a person who follows the way of friendship; but the man who starts a blazing fire and fails to run in haste from it is left with nothing, heir of Bharata, not even ash.

(MBh 2.57.8-11, Smith)

Duryodhana disingenuously appeals to the power of fate to justify his own passions and therefore refuses any attempt to check them.

Vidura understands Duryodhana's threat well enough, but says that there is no reason to desire the friendship of one who easily spurns it. While there are always many men at court willing to tell the king what he wishes to hear, 'a king's best companion is the one who, trusting in *dharma* and putting aside his master's likes and dislikes, speaks unwelcome truths' (MBh 2.57.18, Smith). Vidura reiterates that he wishes Dhṛtarāṣṭra and Duryodhana well, and that he seeks only to counsel them on what is best. Nevertheless, the match continues.

4. The Humiliation of Draupadī

Yudhiṣṭhira proceeds to lose what little property he has left. Then, now that he has none, he begins wagering his brothers, one by one, as stakes in the match and losing each in turn. He then stakes himself and loses his own freedom to Duryodhana as well. Śakuni informs him that it is 'a most sinful thing' for Yudhiṣṭhira to have lost himself, if he still had other wealth to lose (MBh 2.58.19, Smith). Śakuni indicates that Yudhiṣṭhira in fact still has something left to wager: his queen Draupadī. After describing her beauty, Yudhiṣṭhira promptly wagers her as well. At this, a clamour breaks out in the hall. The Kauravas are elated, while others in the hall are overcome with sorrow. Śakuni again throws the dice and wins Draupadī.

Duryodhana orders Vidura to fetch Draupadī, saying that she 'shall sweep the house, and then hurry away to enjoy her life with our other slave-girls' (MBh 2.59.1, Smith). Vidura refuses, saying that Draupadī is still free, because 'King Yudhiṣṭhira was not his own master when he wagered her' (MBh 2.59.4, Smith). He again calls for Dhṛtarāṣṭra to stop Duryodhana, but to no avail. Duryodhana sends a page to the Pāṇḍavas' residence to fetch Draupadī.

The page enters her residence and informs Draupadī that Yudhiṣṭhira 'is overcome by the intoxication of gambling' (MBh 2.60.3, Smith), and that she is now a servant in the Kaurava household. Incredulous, Draupadī asks if he had nothing else to wager besides her.

The servant tells her how Yudhiṣṭhira first lost his brothers, then himself, then her. At this, Draupadī demands that the page first inquire of Yudhiṣṭhira whether he had lost himself before losing her, and whether he could be her master, having already lost himself.

The page returns to the hall and announces Draupadī's reply, but Yudhiṣṭhira gives no answer. Duryodhana then proposes that Draupadī come before the court to question Yudhiṣṭhira – a suggestion intended to debase her and humiliate the Pāṇḍavas, for women of noble standing are never presented in public. The page returns to Draupadī and tells her that she has been summoned. He also tells her that he fears for the Kaurava household on account of Duryodhana's recklessness. Draupadī agrees with the page that the end of the Kauravas is at hand:

This, for sure, is what the ordainer ordained. The wise and the foolish are touched alike by both good and ill, but a single *dharma* has been declared paramount in this world which will, if protected, maintain us in peace.

(MBh 2.60.13, Smith)

Draupadī goes before king Dhṛtarāṣṭra to lament her plight, but Duryodhana still demands that she speak before the court. When his page hesitates, he sends his brother Duṣṣāsana to do so. When Duṣṣāsana demands that she come to the hall, she attempts to flee to the women's quarters. Duṣṣāsana seizes her by the hair and begins to drag her to the assembly hall, responding mockingly to her protest that she should not be taken before men while she is on her period and in a single garment. Draupadī is then delivered before the court in disarray.

No sooner is Draupadī brought before the men of the court however when she berates everyone present for failing to observe *dharma*:

'The men here in this hall expound learned texts and perform the rituals; all of them are warriors like Indra; all of them are my elders or as good as my elders. I cannot stand before them like this! You are acting cruelly and ignobly. Do not strip my clothes from me! Do not drag me! The princes could never forgive what you are doing, even if the very gods with Indra were to take your side!

'King Yudhiṣṭhira is the son of Dharma and abides by *dharma*, and *dharma* is subtle, requiring skill to understand it. I would not wish even a word of mine to deviate from virtue and bring my lord the least atom of blame. But for you to drag me into the midst of the Kuru heroes in the midst of my period is ignoble; and nobody here shows me any respect! Clearly they all approve your way of

thinking. A curse upon you! The *dharma* of the Bhāratas is destroyed, and so is adherence to the Kṣatriya way, for every one of the Kurus in this hall is watching whilst the limits of Kuru *dharma* are being breached. Droṇa has no mettle, nor Bhīṣma, nor, for sure, noble King Dhṛtarāṣṭra here, for they, the seniormost of the Kurus, take no notice of this savage violation of *dharma*!

(MBh 2.60.29-34, Smith)

The substance of Draupadī's complaint is that the mere act of bringing her before the court is a violation of *dharma*. She claims in addition that, since no one present is protesting her treatment, they must then tacitly approve of it. All of those present at the assembly are therefore guilty of endorsing this breach of *dharma*. It is worth noting as well that Draupadī uses *dharma* with two different meanings here. When she describes *dharma* as something which can be understood only with skill, she is referring to *dharma* as a procedure for adjudicating disputes. When she mentions the *dharma* of the Kurus and Bhāratas, she means it as a property of the groups, defined by their adherence to the application of the prior principle.

The elder Bhīṣma is the first to reply to her charge, saying that he cannot decide the issue because of its complexity. On the one hand, Yudhiṣṭhira cannot have waged Draupadī if he were already Duryodhana's property. On the other, a woman is attached to her husband, so it is possible that ownership of her might come to anyone who takes possession of her husband. Furthermore, Yudhiṣṭhira gambled of his own choice, and did not previously indicate Śakuni's call for him to wager Draupadī to be based upon deceit.

Draupadī is incredulous at Bhīṣma's reasoning. Yudhiṣṭhira cannot be said to have had free choice when he was playing against someone with skill at gambling and he does not understand how they might cheat at the game. She reiterates that it was only at Śakuni's insistence that Yudhiṣṭhira attempted to wager her after he had already been won, and that this was part of the former's deceit. Since Bhīṣma will not answer her, she calls for all the men assembled to consider her case.

Duryodhana's brother Vikarṇa responds to her call, telling the assembly that they are obligated to decide the case before them. If the elders refuse to answer her, Draupadī's question must be decided by the men of the court. Despite this, no one present indicates an opinion on the matter. Since no one else will answer, Vikarṇa offers his own opinion. Kings are said to be subject to four vices: 'hunting, drinking, dicing and excessive sexual indulgence' (MBh 2.61.20, Smith). A man in thrall to these vices is not one who is capable of engaging in proper decision-making: 'The man who is dedicated to these lives his life shunning *dharma*, and the world holds the deeds of such an unfit person to be of no account' (MBh 2.61.21, Smith). Yudhiṣṭhira 'was utterly given over to one such vice' when he was challenged to wager Draupadī by men who were cheating him (MBh 2.61.22, Smith), so his action should be disregarded in this instance as it would be in the general case. Due to this, as well as the fact that Yudhiṣṭhira was no longer his own person at the time he wagered Draupadī, and only did so at Śakuni's suggestion, Vikarṇa's opinion is that Draupadī has not been won by Duryodhana.

Duryodhana's ally Karṇa – also the estranged brother of the Pāṇḍavas – points out that Yudhiṣṭhira staked all of his possessions in the match, so he must have lost Draupadī as well. He assented when Śakuni called for her to be wagered, and the Pāṇḍavas did not object at the time, so she must have been fairly won. As for the clamour about Draupadī being brought before the court in only a garment:

The gods ordain only one husband for a woman . . . yet she submits to several: thus she is clearly a whore, and in my judgement it is not remarkable that she should be brought to the hall, or that she should be wearing a single garment, or, indeed, none at all!

(MBh 1.61.35-6, Smith)

Karṇa then orders Duṣṣāsana to strip Draupadī and the Pāṇḍavas. Duṣṣāsana attempts to forcibly remove Draupadī's garment, but another covering instantly appears in its place. Duṣṣāsana continues trying to strip her, to no avail, until Bhīma vows that he will kill

Duḥśāsana and drink his blood. Swayed now to sympathy with Draupadī, the assembly bemoans the fact that the Kaurava elders still have not answered her question.

At this point, Vidura reiterates the right of one who comes before the assembly in distress to have their question answered, dispassionately, by experts in *dharma*. Failure to do so is itself a violation of *dharma*:

For if a member of an assembly who understands *dharma* will not decide such a question, half the guilt of lying is his; and if a member of an assembly who understands *dharma* gives a false answer, the full guilt of lying is his, for sure!

(MBh 2.61.52-3, Smith)

Vidura relates the story of the demon king Prahlāda, who was willing to judge against his own son for the sake of the truth; so must the assembled Kauravas be willing to rule against Duryodhana for the sake of *dharma*.

When Karṇa responds by again ordering Duḥśāsana to take Draupadī into the house, she again turns to the assembly for succour. She laments that she has failed to greet the assembled elders properly, but does so now. She protests that she has only been seen in public before at her *svayaṃvara*, but now she must endure being presented before the entire assembly. The kings and princes must all have abandoned *dharma*, for even base women are not subjected to such humiliation. Draupadī's final appeal rests not upon her status as a woman however, but upon her right to consideration as a person. If the assembly will not judge her case out a sense of obligation, then she must assert her right to such a judgement. Draupadī therefore declares herself to be 'the wife of Yudhiṣṭhira lord of *dharma*, and equal to him by birth' (MBh 2.62.11, Smith), and demands that the Kaurava assembly ascertain whether she has been won by Duryodhana or not.

Bhīṣma responds to this demand by once again lauding her devotion to *dharma*, but tergiversates on the merits of her complaint. The difficulty of determining precisely what *dharma* demands in this situation leads him then to express scepticism about its very possibility:

And in this world whatever a powerful man regards as *dharma* is said by others to be *dharma*, even if it falls within the limits of *adharna*. I cannot judge this question of yours with certainty, because of the subtlety, profundity and seriousness of the issue.

(MBh 2.62.14-16, Smith)

Nevertheless, Bhīṣma laments that the Kurus are all ‘devoted to greed and folly’ (MBh 2.62.17, Smith), and bring shame to their house by refusing to answer Draupadī’s question. She on the other hand is to be praised for promising to follow *dharma* even if it should result in a judgement unfavourable to her. Bhīṣma then indicates that, in his judgement, Yudhiṣṭhira should be the one to determine whether Draupadī has been won by Duryodhana.

Duryodhana mockingly points out the dilemma in which this places Yudhiṣṭhira, who must say either that he is not Draupadī’s master or that he was lying when he proclaimed that she was his to wager. Her freedom must come at the cost of his honour: ‘Let them all make the lord of *dharma* a liar, and you will escape slavery!’ (MBh 2.62.26, Smith). Duryodhana also proposes a competing account for why the men of the assembly are so reluctant to answer her question: it is simply because they are in sympathy with her, and are distraught at Yudhiṣṭhira’s potential perfidy.

His speech greeted predominantly with cheers from the assembly, Duryodhana exposes himself to Draupadī before the assembly, a humiliating indication that he already considers her to be his. This results in a promise from Bhīma to ‘smash that thigh’ (‘thigh’ serving as a euphemism) (MBh 2.63.10, Smith), while Vidura warns that the assembly risks its legitimacy by failing to demonstrate any interest in a matter of *dharma*. The Kauravas, he says, should not be enticed by the accordance of Duryodhana’s claims with their own desires, but should judge the issue before them strictly on its own merits.

Despite this, Duryodhana says he will abide by the word of the Pāṇḍavas, if only they will admit that Yudhiṣṭhira was not their lord and master. Arjuna admits that Yudhiṣṭhira was their master when he wagered him and his brothers, but it remains an open question

whether he was Draupadī's master when he wagered her. That matter, Arjuna indicates, must yet be decided by the Kurus.

The assembly is finally brought to an end by the howling of a jackal inside the house, which causes an uproar among the livestock. Brought out of his enchantment by the commotion, Dhṛtarāṣṭra rebukes his son for his treatment of Draupadī, and annuls the enslavement of the Pāṇḍavas at her request. This moment of lucidity on his part soon passes however, as he accedes to Duryodhana's request for a final gambling match: to prevent the Pāṇḍavas taking revenge upon him, he has proposed as a wager an exile of thirteen years for the losing party. Knowing that the Pāṇḍavas will lose, he can use this time to consolidate power, so that they will be unable to take the kingship from him when their exile has ended. Yudhiṣṭhira, again unwilling to refuse the command of his uncle, gambles and loses. Thus is the stage set for the eventual war between the Pāṇḍavas and Kauravas, which will destroy the kingdom.

5. *Dharma* and Power

A significant aid in understanding the conflict underlying the gambling match and subsequent humiliation of Draupadī is to be found in Bhīṣma's statement to her regarding the source of *dharma*: 'whatever a powerful man regards as *dharma* is said by others to be *dharma*' (MBh 2.62.14, Smith). In his voice – Bhīṣma, we are told, is 'dedicated to truth and *dharma*' and will later tutor Yudhiṣṭhira on the *dharma* of kingship (MBh 1.94.83, Smith) – this is perhaps more a lament than an attempt to justify the view that *dharma* is simply an expression of power. (Karṇa is less circumspect about the primacy of power when he tells Arjuna in a prior context that '*dharma* defers to strength' [MBh 1.126.20, Smith].) Bhīṣma's statement is nevertheless, within the context of the assembly hall, a profession of the circumstances in which all present have found themselves. Having taken everything that was once the

Pāṇḍavas' and added it to his own kingdom, Duryodhana can amply reward – or severely punish – members of the assembly according to how they rule upon Draupadī's plaint. This is especially true of many of the respected elders of the assembly, such as Bhīṣma and Droṇa, who are financially dependant upon the Kauravas. Given however that they also fear to speak against what is clearly *dharma*, their incentive is merely to maintain the status quo and to let the pleas of the powerless go unheeded. Thus what is to be considered *dharma* is left to the discretion of whoever holds the most power.

Bhīṣma's characterisation of the nature of *dharma* closely tracks the account of justice given by Thrasymachus in Plato's *Republic*: 'justice is nothing other than the advantage of the stronger' (338c1-2). Thrasymachus' notion is that what is properly called justice is the imposition of a regime strictly for the benefit of those who rule:

In Thrasymachus' view, a just order does not exist simply because one person or group of people happens to be physically stronger than another; domination by the stronger person or people is actually injustice if it is not prescribed by laws enacted by some recognized ruler or ruling body.

(Irwin 174)

This is similar to Duryodhana's understanding of the place of the kingdom in the king's esteem: that is, as a vehicle for his own achievement. His concession to any other authority is predicated upon the power it brings to him:

A man such as I should bow only before *dharma* and before Brahmins, with no thought for anyone else, and should behave so as long as he lives. This is the *dharma* of the Kṣatriyas, and this has always been my opinion.

(MBh 5.125.21-2, Smith)

Since Duryodhana's notion of *dharma* is maximizing of his own power, bowing before *dharma* is something he may do with ease, much as the wicked king Jarāsaṃbha earlier praised Kṣatriya *dharma* as meaning 'to act at will, showing valour and gaining mastery over others' (MBh 2.20.22, Smith). Kṛṣṇa notes as well that this is just how Duryodhana understands it when he notes that the latter 'regards that to be righteous [*dharma*-D.S.] which he intends to do' (MBh 5.29, Ganguli). The acquiescence of the assembly gives

Duryodhana's actions the imprimatur of *dharma*, which is sufficient in his view to make them such. In saying that *dharma* is determined by the strong, Bhīṣma is conceding that the assembly has become merely a legitimization of Duryodhana's superiority. In this instance, Duryodhana is much like Thrasymachus' unjust person, whom he considers to be virtuous in comparison with one who is just:

You consider unjust people, then, Thrasymachus, to be clever and good?
Yes, those who are completely unjust, who can bring cities and whole communities under their power.
(Republic 348d3-5)

Duryodhana also resembles this unjust person in his understanding of *kṣatriya dharma* as the pursuit of glory and power, and being motivated primarily by a desire to achieve more than any of his peers:

What about an unjust person? Does he claim that he deserves to outdo a just person or someone who does a just action?
Of course he does; he thinks he deserves to outdo everyone.
Then will an unjust person also outdo an *unjust* person or someone who does an *unjust* action, and will he strive to get the most he can for himself from everyone?
He will.
(Republic 349c3-9)

The resemblance in attitude can be seen when Duryodhana later explains why he will never concede any portion of his kingdom to the Pāṇḍavas:

"One should strive, one should not submit," said Mātāṅga, "for manliness consists in striving; when evil times come, better even to break than to bend before anyone." These words are prized by men who pursue their own welfare.
(MBh 5.125.18-21, Smith)

It is fair then to consider Bhīṣma's characterisation of the nature of *dharma* under the Kauravas as analogous to Thrasymachus' account of justice, and Duryodhana to embody the ideally unjust man contained therein.

We may take it for granted that an argument regarding justice is to be found in the *Republic*. It is not obvious however that there is any exploration of the concept of justice taking place at this point in the *Mahābhārata*. When Bhīṣma says that *dharma* is simply whatever the strongest decrees to be *dharma*, it is possible that 'justice' is the intended term.

It could however also mean 'law' or 'right.' Despite the ambiguities of the term *dharma*, there is still good reason to think that the nature of justice is an integral part of this dispute. After all the dispute about *dharma* in the gambling hall is a dispute about proper political order and the obligations the ruler and ruled have toward each other, as well as the obligation each has to respect *dharma*. That this is a dispute about justice can best be made clear by returning to Draupadī's statements before the assembly.

Draupadī's first words before the assembly are to condemn everyone present for having no regard for *dharma*. When she says the men of the assembly of are disregarding *dharma* and that '*dharma* is subtle, requiring skill to understand it' (MBh 2.60.32, Smith), she is in effect challenging the legitimacy of their rule. We have seen in the *mātsyanyāya* accounts that the basis of the ruler's authority, in addition to a monopoly of force (*daṇḍa*), is dedication to upholding *dharma*. By this account, rulers who show a lack of concern about the nature of *dharma*, or no skill in discerning it, are violating the terms of the post-*mātsyanyāya* agreement. This is why Draupadī tells the assembly that 'The *dharma* of the Bhāratas is destroyed, and so is adherence to the Kṣatriya way' (MBh 2.60.33, Smith). 'Bhāratas' serves here as a generic term for the rulers of the Indian kingdoms; in saying that their *dharma* is destroyed, Draupadī means here that the legitimacy of all the rulers who would follow Duryodhana's lead is in jeopardy as well. The kṣatriya way, or kṣatriya *dharma*, is the protection both of *dharma* and of the weak and defenceless (the ruler [*raja*] is the epitome of the kṣatriya class). The men of the assembly have abandoned this *dharma* for the sake of their own enrichment. This is why she declares them to be equally culpable with Duryodhana and his associates for not responding to her query.

Draupadī's complaint is in the first place one regarding procedural justice: as Vikarṇa and Vidura repeatedly indicate, one who raises a question of *dharma* before the assembly is entitled to an answer. The Kuru house brings shame upon itself not only by refusing to

answer her petition, but by mocking and humiliating her even as she places herself at the mercy of the assembly. Despite this, Draupadī reiterates that she is willing to follow the decision of the assembly regarding the *dharma* of her situation, if only they are willing to answer her question. For this reason, she earns the following praise from Bhīṣma: ‘Your conduct, Pāncāla princess, is proper and befitting, for though you have met with misfortune, you still maintain your regard for *dharma*’ (MBh 2.62.24-5, Smith). Draupadī is lauded by Bhīṣma because she has not abandoned her faith in the integrity of the established system of justice, even though it is now in the hands of her husbands’ opponents. By indicating that she is still willing to submit to their judgement at this juncture, her stand resembles that of Socrates in the *Crito*, when he says the following regarding the law of one’s country:

You must either persuade it or obey its orders, and endure in silence whatever it instructs you to endure . . . To do so is right, and one must not give way or retreat or leave one’s post . . . one must obey the commands of one’s city and country, or persuade it as to the nature of justice.

(51b3-c2)

Draupadī echoes this sentiment when she submits herself before the assembly the final time: ‘Whether you consider me won or unwon, kings, I want your answer; I shall abide by what you say, O Kauravas!’ (MBh 2.62.13, Smith).

The second component of Draupadī’s complaint is a failure of virtue. That is, both Duryodhana and the assembly have surrendered their concern for reasoned adjudication of dispute, and self-evaluation, to their desires. Draupadī has shown herself willing to engage with her opponents to resolve a dispute about *dharma* even if it may not be in her favour, yet they are unwilling to engage her claim – despite their obligation to do so – for fear that the resultant ruling may not be to their benefit. Hence Duryodhana, his brothers and Karṇa continually disrupt the proceedings by abusing Draupadī and attempting to shift the burden of judgement onto the now powerless Pāṇḍavas. In this, Draupadī serves as an example of the *dhārmika* (virtuous) individual, who seeks out *dharma*, as opposed to the others present, who seek to resolve or avoid the dispute simply in accord with their desires.

Draupadī's case before the assembly is ultimately unresolved, but it is clear that we are to understand that her position is in the right. That her garments are continually, supernaturally replaced when Duṣṣāsana attempts to strip her before the assembly tells us that *dharma* is upheld and she remains virtuous, despite Karṇa's argument that she is not so due to her polyandry. Similarly, Bhīṣma's praise of her continued dedication to *dharma* tells us that her case is a legitimate one, and confirms her right to demand a fair judgement from the assembly. It also serves as a poignant counterexample to Duryodhana's picture of the king's *dharma*. In this episode, Draupadī, Vidura and Bhīṣma must either mean 'justice' by the term *dharma*, or else they are saying that Duryodhana is disregarding the law. As Duryodhana is the de facto ruler in this scenario, the latter interpretation would still be a matter of justice. We can therefore reasonably conclude that the dispute surrounding Draupadī's ordeal before the assembly is one about justice.

Returning to Duryodhana, his conception of *rājadharmā*, the duty of the king, is that it is a kind of will to power. He must also suspect that even the Pāṇḍavas share his vision of the king's *dharma*, but only entertain a more expansive view of it as a pretext for holding power – much as he would in their position. Thus does he take even the merest slight from them – such as the Pāṇḍavas' mirth at his inability to navigate their glass halls, or even Bhīma's bullying of him as a child – as intentional gestures on their part to demonstrate their own power over him, and therefore his own impotence. When we are told that Duryodhana is guilty of 'seeing wickedness everywhere' (MBh 1.119.25, Smith), the implication is that he sees his own drives as being shared by everyone else. Wicked as he may be depicted in the *Mahābhārata* however, the position attributed to Duryodhana is a serious critique of the ideology and practice of kingship in classical India.

Having made them his slaves in the course of the gambling match, Duryodhana is in an ideal position to test the Pāṇḍavas' dedication to *dharma*. They have thus far expressed

dedication to it when the power of the kingdom was in their hands, but now *dharma* has become an obstacle to their continued rule, which Duryodhana deftly exploits to his advantage before the assembly. When he offers Draupadī and the Pāṇḍava brothers the option of condemning Yudhiṣṭhira as a liar in order to escape slavery, the choice they have is that of a now-tainted kingship under an acknowledged, untrustworthy fool, or else a public admission that Duryodhana's newfound possession of them is entirely in accord with *dharma*. Either choice on their part is to his benefit.

The Pāṇḍavas can of course reject either option and resort to force to resolve the dispute. This however would only confirm Duryodhana's implication that their virtue is merely a façade to maintain power, and make as much clear to everyone else. Even the warlike Bhīma resists this temptation, though not without some physical assistance from his brothers: 'Bound as I am by the snares of *dharma*, I start no trouble: respect prevents me, and Arjuna is restraining me' (MBh 2.62.36, Smith). He accepts that the brothers are now subject to 'the *dharma* of slaves' (MBh 2.63.8, Smith) and are therefore not entitled to use force to achieve their ends. Thus do they put their hope in the assembly's willingness to answer Draupadī's question regarding *dharma*.

The Pāṇḍavas' adherence to *dharma* redounds to their benefit when the assembly is finally abandoned, and they are rewarded by having their freedom returned to them. This development of the story is in accord with the notion that following *dharma* will eventually be to the benefit of those who do so. Instead, the expectation that Yudhiṣṭhira's naïve devotion to *dharma* will be rewarded is soon thwarted: Duryodhana, angry that his father has given away the kingdom he has put all his effort into obtaining, deceitfully convinces Dhṛtarāṣṭra that the Pāṇḍavas are already seeking revenge against the Kauravas, and were seen donning armour and weapons. He manages this despite the recent proclamation of Arjuna that 'Virtuous folk remember only the kindnesses they have been shown, not the acts

of hostility; they have the self-confidence to distinguish between the two' (MBh 2.64.9, Smith). Giving in to the fear Duryodhana has inspired in him, Dhṛtarāṣṭra calls for a second gambling match to take place, and summons the Pāṇḍavas back to the hall. Yudhiṣṭhira, once again maintaining that it is a matter of *dharma* that he answer his uncle's challenge, returns and wagers a period of exile against his lost kingdom and wealth. Devotion to *dharma* does not pay off for the Pāṇḍavas here, as they are promptly sent into exile.

This part of the story has the following significance as an instance of political philosophy. That those who rule consider following *dharma* to be to their benefit only reiterates the suggestion that *dharma* is merely the name given to the legitimation of those who rule. Draupadī's situation is not fully analogous to that of Socrates in *Crito*, for she still had a reasonable hope that the situation might be resolved to her present, material benefit. No such hope awaits the Pāṇḍavas however after they have lost the second gambling match. Once they have returned from exile, Duryodhana will be more powerful than ever, and impossible to defeat using direct and obvious means. By the end of the destructive war between the two factions, honest Yudhiṣṭhira will have lied so that Droṇa may be killed, the noble Arjuna will have killed Karṇa while he is defenceless, and Bhīma will have slain Duryodhana with a debilitating strike to the groin. If devotion to Yudhiṣṭhira's idealized form of *dharma* is insufficient to overcome Duryodhana, and the Pāṇḍavas resort to *adharmā* measures to do so, then the notion of a *dharma* which is independent of power will be shown to be hollow.

As we have seen with the analyses of the situation in the *Bhagavad Gītā* at the beginning of this chapter, attempts to reconcile the *adharmā* actions of the Pāṇḍavas with their purported exemplary status have appealed to various forms of ethical reasoning to justify the brothers' occasional disregard for *dharma*. The issues at stake in these situations are however as much political as moral: if the Pāṇḍavas lose, the kingdom will remain in the

hands of Duryodhana, and this is to be avoided both due to his general nature as well as his abuse of the brothers and Draupadī in particular. While Carpenter, Ganeri and Matilal all appeal to consequentialist justifications of the Pāṇḍavas' violations of *dharma*, each situates his or her appeal within a particular moral framework. For Ganeri, it is the virtue of the person committing the *adharmā* act which justifies consequentialist reasoning about when to observe *dharma* (Ganeri 172 ff.). Matilal understands the reasoning about *dharma* to ultimately be about justice (Matilal 104 ff.), and Carpenter suggests that the outcome of such reasoning to be determined both by the virtues of the characters involved and their situation within 'the moral-social climate which prevails' in the *Mahābhārata* (Carpenter 97). Unfortunately for our purposes, none of these provides a developed account of the political context in which the disputes are situated. While Matilal points out the priority of justice over the scrupulous observance of *dharma*, he notes only that, given a consequentialist understanding of justice, we 'cannot answer affirmatively' that it was achieved with the defeat of Duryodhana (Matilal 106). A justification for the Pāṇḍavas' violations of *dharma* that fully incorporates the issues raised during the humiliation of Draupadī – i.e., justice and power – is still required.

6. Making *Adharma* into *Dharma*

It can have been no trivial cause that led the righteous Pāṇḍavas to slay so many who should not be slain, and to be praised by men for doing so!

(MBh 1.56.4, Smith)

The justifications for violating *dharma* in the *Mahābhārata* come most often from Kṛṣṇa, although there are a few instances where others offer such justification. These fall into five categories. The first category is pragmatic justification. That is, *adharmā* means are sometimes needed to defeat an enemy because they are the only feasible, or sometimes simply the most practical, means available. This is Kṛṣṇa's first defence when Jarāsaṃdha,

who has been imprisoning defeated rulers and using them in human sacrifices, complains that he and the Pāṇḍavas entered his palace deceitfully: ‘We shunned your door because the virtuous always enter a friend’s house through the proper door, but an enemy’s house improperly’ (MBh 2.19.49-50, Smith). Among other instances, this justification is also used by Kṛṣṇa to explain why it is necessary to lie to Droṇa about the death of his son, and why Bhīma should violate the rules of duelling to strike Duryodhana below the waist. Unlike Duryodhana’s self-serving justifications for violating *dharma*, the pragmatic justifications for doing so, in the case of the Pāṇḍavas, largely depend upon some other, higher-order conception of *dharma*. This is Kṛṣṇa’s point when he says that even the gods relied upon ‘deceit and stratagems’ to defeat the demons who outnumbered them (MBh 9.60.62, Smith), and that so may the Pāṇḍavas, since ‘a path trodden by the virtuous may be trodden by all’ (MBh 9.60.63, Smith). Kṛṣṇa’s statement does not mean simply that anyone may violate *dharma* to achieve their ends (because the gods once did so), but that doing so may be necessary in order to achieve some other end, more in accord with *dharma*. The pragmatic justifications are therefore in the end reducible to one of the other justifications listed below.

The second justification, which also seems not to be a final one, is that of appealing to the fallen age in which the violation takes place. This justification involves an appeal to the doctrine of *appad-dharma*, or the rules of *dharma* in times of distress. Yudhiṣṭhira appeals to this doctrine to explain why he must wage war against Duryodhana, even if it appears to be *adhharma*. It is widely accepted that people may deviate from the rules of *dharma* when it is impossible for them, in their present circumstances, to fulfil their obligations. Given that the circumstances in which the Pāṇḍavas find themselves are unusual, and have no established set of rules governing them, they must instead seek the advice of one who is recognised as virtuous. He therefore accepts Kṛṣṇa’s urging of war, as Kṛṣṇa ‘seeketh the welfare of both sides’ (MBh 5.28, Ganguli). This instance therefore relies upon the virtue of the one making

the judgment to violate *dharma*. Kṛṣṇa makes a similar appeal to his brother, the weapons master Balarāma, who protests that Bhīma's killing of Duryodhana was contrary to *dharma*. In the Kali Yuga, Kṛṣṇa argues, such breaches of *dharma* are to be expected. In addition, a final result of Bhīma's action was for him to 'free himself from both feud and oath!' (MBh 9.59.22, Smith). So the appeal to a time of distress or corruption ultimately requires an appeal to other factors, such as ending the war or the fulfilling of a sworn vow.

Appropriately enough, the third suggested justification for violating *dharma* is that it is the product of some immovable force, such as fate, a vow on the part of the violator, or a previous curse against the one suffering the violation. When Bhīma humiliates Duryodhana at the time of the latter's death by placing his foot upon Duryodhana's head, Yudhiṣṭhira says that this must be the unravelling of his fate, due to his evil actions (MBh 9.58.18 ff.). Arjuna justifies killing those whom he is not fighting directly in the Kurukṣetra battle by appealing to a vow he has made to never let an ally fall within his sight (MBh 7.118.22 ff.), while Kṛṣṇa points out that Bhīma both swore 'to break Duryodhana's thighs with his club' and that Duryodhana was cursed by a seer that such would happen to him (MBh 9.59.14-5, Smith). On the one hand, such impersonal justifications seem as well to be parasitic on some other justification. Presumably, the fulfilment of Bhīma's vow would not have been any kind of justification if his position and Duryodhana's were to be switched. So the virtue of the person acting to fulfil the vow, or the vice of the person suffering as a result of its fulfilment, is most relevant to assessing the appropriateness of doing so. In addition, relying upon such justifications would be contrary to Kṛṣṇa's exhortations elsewhere that the most important consideration for the king is that he must act: 'action is more important than anything else; it is action that maintains everything in the world' (MBh 5.29, Smith). The same message is found in the *Bhagavad Gītā*. Without some other, ethical component, appeals to fate or some other, insurmountable force are not accounts as to why someone should act, but mere

explanations. In fact, any justification which appeals merely to fate or outside compulsions mirrors one of Duryodhana's own justifications for his *adharma* actions. When he describes himself as inexorable as water flowing down a hill (MBh 2.57.8, Smith), he is appealing to the inevitability of his actions as justification, yet we are meant to reject the soundness of his argument. Such proffered justifications therefore cannot adequately account for why it is acceptable to violate *dharma* in some cases, or else they presuppose already some other justification for doing so.

The fourth justification for violating *dharma* is that there is some other, higher-level *dharma* which is satisfied by doing so. Bhīma appeals to this standard when he argues that, despite their vow to live in poverty in the forest, the Pāṇḍavas should seek to overthrow Duryodhana. For he took their kingdom and wealth through *adharma* means, and wealth is essential to carry out *dharma*. Violating their vow, though *adharma*, would allow them to fulfil their own *dharma*, and 'the person who throweth away like seeds a little of his virtue in order to gain a larger measure of virtue, is regarded as wise' (MBh 3.33, Ganguli). The higher *dharma* appealed to here is *rājadharmā*, the obligations of the king. The priority of this form of *dharma* over other, personal forms is made explicit throughout the *Mahābhārata*. Arjuna for example chooses to enter the room where Yudhiṣṭhira and Draupadi are sleeping, despite it being a violation of *dharma*, because it is necessary to aid a brahmin in recovering his stolen property (MBh 1.205, Smith). Arjuna argues that *rājadharmā* is higher than his *svadharmā*, and so he must violate *dharma* in this case but thereafter submits to the required punishment for doing so. In Book 12 Bhīṣma, referring to the teachings of Bṛhaspati, says that the king may be deceitful – a violation of his *svadharmā* to be truthful – if he does so in order to protect his kingdom:

When the king says things in secret, when he restrains his people for the sake of gaining victory, when there may be guile in his heart, when he may be a certain way for the sake of some cause, when he has some devious project, it is supported by his rectitude. He may perform the most Meritorious rite in order to deceive people.

(MBh 12.58.19-21, Fitzgerald)

So individuals acting on behalf of the state may violate *dharma*, under two conditions: 1) They are doing so for the benefit of the state, i.e. the promotion of *rājadharmā*, and 2) Those who undertake to violate *dharma* must be virtuous; that is, they must have a reputation for endeavouring to uphold *dharma*, rather than one of seeking to secure their own benefit, and they must be acting upon that virtue in the given instance. This justification appears to be neutral between deontological and consequentialist reasoning about what to do. While one can easily imagine consequentialist justifications for promoting *rājadharmā* over other obligations, such as when the integrity of the state depends upon it, the case of Arjuna helping the brahmin is not justified by such an appeal.

The fifth and final justification for violating *dharma* found in the *Mahābhārata* is that doing so is necessary to punish someone who is deserving of it. When Kṛṣṇa confronts the king Jarāsaṃdha, who has been imprisoning defeated kings in order to offer them in a human sacrifice, he offers a pragmatic justification for him, Arjuna and Bhīma entering the king's residence incognito, but justifies this pretence on their part because '[they] practise *dharma* and are strong in *dharma*'s defence' (MBh 2.20.10, Smith). The wickedness of Jarāsaṃdha's actions, and the necessity of punishing him for them, justifies violating the personal obligation of declaring oneself openly when entering the residence of the king. Kṛṣṇa explains to Yudhiṣṭhira as well that he descends to earth in order to punish the wicked when they have grown strong: 'I then take my birth in the families of virtuous men, and assuming human body restore tranquillity by exterminating all evils' (MBh 3.188, Ganguli). Given that, as previously noted, Kṛṣṇa is often the impetus for the Pāṇḍavas' violations of *dharma*, it is significant for understanding when such violations are justified that his stated mission is to punish those who are deserving of it. When Arjuna laments the deception used to kill Droṇa, Bhīma reminds him of the various wrongs the Kauravas have committed against

them, and that if it is permitted for them to violate *dharma* to preserve the kingdom, then it must also be permitted for them to do so to save themselves: ‘A person is called a *Kshatriya* because he rescues others from wounds and injuries. Being such, he must save himself from wounds and injuries.’ (MBh 7.198, Ganguli). The Pāṇḍava general Dhṛṣṭadyumna points out as well that Droṇa was a brahmin yet followed the *kṣatriya dharma*. While he was obligated to uphold the truth, he relied upon illusions to defeat his enemies: ‘Professing himself to be a Brahmana, he was in the habit of using irresistible illusion. By an illusion itself hath he been slain today.’ (MBh 7.198, Ganguli). Kṛṣṇa claims similarly that it is a form of retributive justice to violate *dharma* when killing Duryodhana, who has used a magical illusion to conceal himself when he faces defeat, as ‘those who make use of illusion should be slain by means of illusion’ (MBh 9.30, Smith).

The justification of violating *dharma* in order to carry out punishment depends however on the authority and virtue of the one carrying it out. That is, it is dependent upon *rājadharmā*. Otherwise, this justification is available to Duryodhana as well. In fact, in this conflict, ‘each side regards the other as the aggressor’ (Malinar 38), and we have previously noted that Duryodhana takes his humiliation at the hands of the Pāṇḍavas to justify any manner of *adharma* action he may take to defeat them. While Duryodhana is mistaken on the facts in this matter: that is, the Pāṇḍavas’ actions do not merit any legal sanction, his actions would be completely inappropriate even if they did. The authority and virtue of the person carrying out the punishment must therefore play a role in justifying the use of any *adharma* measures to do so. Duryodhana has neither of these, so he is not entitled to punish the Pāṇḍavas, whatever wrong he thinks they may have done to him.

This point will be further explored in the next section, after a short example demonstrating the relevance of *rājadharmā* to situations where *dharma* is violated to carry out punishment. The one time where Kṛṣṇa does not approve of violating *dharma* for

punishment, at least initially, is when Bhīma places his foot upon Duryodhana's head in a final act of humiliation. Before doing so however, Bhīma reminds Duryodhana of the humiliation of Draupadī, and how the Kauravas had insulted the Pāṇḍavas when they were at his mercy. He reiterates the fact that, unlike Duryodhana, they are willing to own the consequences of their actions, and face their enemies directly. When Kṛṣṇa asks Yudhiṣṭhira why he permits Bhīma to perform an act clearly contrary to *dharma*, he gives the following reply:

'Kṛṣṇa, it does not please me,' replied Yudhiṣṭhira. 'that the wolf-belly should have touched the king's head with his foot in his fury, any more than I rejoice at the destruction of the Kuru lineage. But always we have been cheated by the trickery of Dhṛtarāṣṭra's sons, who insulted us repeatedly and exiled us to the forest. Bhīma's grief weighs heavily upon his heart, and so, lord of the Vṛṣṇis, I overlooked his act. He has slain a man without wisdom, a greedy man in thrall to his desires, so now let the Pāṇḍava have his own desire, whether what he did was *dharma* or *adharma*.

(MBh 9.59.31-4, Smith)

Even when an act of punishment coincides with one of vengeance, the virtues and authority of the one seeking revenge are relevant to assessing the permissibility of the act. When carried out by a virtuous person entitled to do so, such vengeance is given the form of righteous retribution. The extent of Duryodhana's crimes, particularly the humiliation of Draupadī and the Pāṇḍavas, make it understandable that even a virtuous man may seek retaliation. While the achievement of vengeance is not in itself something to be celebrated, the vice of the person suffering the retaliatory humiliation mitigates the shamefulness of the act. With some reluctance, Kṛṣṇa agrees with Yudhiṣṭhira's reasoning.

The possible confusion of vengeance with justice still troubles Yudhiṣṭhira at times however, leading him to question whether the Pāṇḍavas are truly pursuing the latter when they breach *dharma*. This will be further explored in the following section, on Yudhiṣṭhira's *dharma*. What is important to note at this point is how so many of the justifications for violating *dharma* rely in the end upon *rājadharmā*. It is the legitimacy of those deciding to violate some aspect of *dharma*, in the furtherance of the welfare and *dharma* of the kingdom,

which justifies their decision to violate some lesser-order instance of *dharma*. In most of the cases we have examined, the final justification is that the Pāṇḍavas, as the legitimate rulers of the kingdom, are entitled to violate *dharma* when doing so is necessary to punish those who threaten it. It is this legitimacy which differentiates their violations of *dharma* from those of Duryodhana.

7. Duryodhana's *Adharma* Rule

It remains yet an open question exactly why Duryodhana's rule is illegitimate. Much like the Pāṇḍavas, Duryodhana also understands his violations of *dharma* to be a necessary part of securing his rule. His understanding that 'enemies who prosper must be destroyed' (MBh 2.50, Smith) is echoed by Kṛṣṇa when he says that 'when enemies become too numerous and powerful, they should be slain by deceit and strategems' (MBh 5.60.62, Smith).

Duryodhana's rule is therefore not rendered illegitimate merely due to his Machiavellian approach; such *Realpolitik* has a role even in the government of a legitimate ruler. There must then be something in the nature of Duryodhana's rule, or his own character, which prevents his kingship from achieving the status of legitimacy.

There is of course a significant problem with Duryodhana's rule, in that he has achieved it through crooked means and refuses to surrender it at the time he had previously agreed to do so. Still, even the Pāṇḍavas rely on crooked means to achieve their ends when the situation calls for it. When Kṛṣṇa and the Pāṇḍavas discuss going to war with him, their justifications for waging war focus not so much on Duryodhana's violations of *dharma*, but on his character. This they test one final time before undertaking war against the Kauravas. Although Yudhiṣṭhira desires the return of his kingdom, he also wishes to avoid the destruction of his family and the ruling class. When negotiating with the Kauravas prior to the war, he therefore agrees that he will rescind his claim to the kingdom if Duryodhana will

only return the Pāṇḍavas' ancestral city of Indraprastha to them, so that they need no longer live in poverty (MBh 5.26, Ganguli). He sends Kṛṣṇa as his emissary to make this offer, but as Kṛṣṇa predicts, Duryodhana will cede nothing to the Pāṇḍavas. When Vidura stresses to Kṛṣṇa prior to the negotiations that Duryodhana seeks only to be a ruler with no rival and will countenance no compromise with the Pāṇḍavas (MBh 5.90, Smith), Kṛṣṇa stresses that the consequences of the war at least will lie solely at the feet of Duryodhana, as he sincerely seeks a peaceful resolution to the dispute (MBh 5.91, Smith).

We have already spoken of Duryodhana's understanding of ambition as the sole, proper concern of a king. We endeavour in this section to give a more explicit account of his understanding of *rājadharmā*. There are three kinds of obligation, or *dharmas*, in conflict within the *Mahābhārata*. We have already mentioned *rājadharmā*, and will have yet more to say about it. The two other *dharmas* at issue are *kuladharmā*, or law regarding family relations, and *kṣatriyadharmā*, or the duties of warriors. A clash between the latter two *dharmas* generates much of the drama of the *Mahābhārata*: 'ideally, the duties of a warrior should not be in conflict with family law; yet is precisely such a conflict that is at the centre of the *MBh*' (Malinar 44). A recurring instance of such a conflict in the *Mahābhārata* is of course whether it is acceptable for a warrior to kill his own family members in the course of duty. As Malinar notes, Duryodhana easily privileges *kṣatriyadharmā* over *kuladharmā*, and that is why he is unwilling to entertain any terms of peace with his cousins. He has no scruples about killing even members of his own family, if that is the price he must pay to rule without contention. Not only does Duryodhana emphasise the priority of *kṣatriyadharmā* however, but he also considers *rājadharmā* to be nothing more than that. We see this for example when he says that he desires the kingdom in order to test his own abilities against those of others, and his desire either to die as the most powerful man on earth or else in pursuit of that goal.

In addition to being entirely self-regarding, Duryodhana has little concern for *varṇadharmā*, or the organisation of society according to caste. Thus does he rely upon those whose actions do not fit with their caste, such as the brahmin-warrior Droṇa and the belligerent sūta Karṇa. Not only does he rely upon those who fall outside the prescribed social norm, but he continually heeds the advice of those who flatter him and indulge his spitefulness, despite their inexperience and lack of achievement, over the circumspect opinions of his father's long-serving advisors (cf. MBh 5.48). Duryodhana's flouting of social convention and undermining of the expertise and prestige of his courtiers, while reflecting his disregard for even pragmatic compromises to achieve his goals, are also another demonstration of his attempt to harness the kingdom to his passions. These further reflect his dismissal of any conception of *rājadharmā* outside that of *kṣatriyadharmā*.

Despite his depiction throughout the epic as 'uncompromising, self-confident, and determined not to show any weakness' (Malinar 45), oppression of his subjects is not characteristic of Duryodhana's rule. As he himself says, 'All my subjects, again, are devoted to religion [*dharma*-D.S.] and are never subject to calamities of season' (MBh 5.61, Ganguli). Following the battle at Kurukṣetra, when Dhṛtarāṣṭra speaks of the history of his lineage, the people explicitly maintain that Duryodhana has never done them any wrong (MBh 15.14-5). Given that, among other obligations, 'the eternal Lawful Duty of kings is to delight their people' and ensure their prosperity (MBh 12.57.11, Fitzgerald), Duryodhana has at least not failed in this regard. That his rule is characterised by such tumult, yet he still earns the esteem of his people, confirms that 'the epic narrators make Duryodhana a figure not only to condemn or to make fun of, but also to reflect upon' (Malinar 47). The problem with even this success however is that it is surely only an accident. If he had felt it necessary to achieve his ends, Duryodhana would readily have exploited his subjects. Before retiring into the

forest, even his father Dhṛtarāṣṭra admits his sons to have been ‘of restless understandings, stained by cupidity, and ever acting as their desires prompted’ (MBh 15.9, Ganguli).

The illegitimate nature of Duryodhana’s rule is shown not simply according to the means by which he came into it, but by the character of the ruler himself. We have seen already that he is depicted as arrogant, greedy, and entirely self-regarding. Duryodhana also represents the theology of the Vedic ritualism, proclaiming himself to be ‘the overlord of all beings, who is capable of dealing with matters human as well as divine’ (Malinar 47). He praises his own might in reply to the argument that the Pāṇḍavas cannot be defeated by a mortal such as himself, because the gods aid them as well. To this argument, he responds that the gods can only maintain their power so long as they remain detached from worldly affairs, and that they are subject to the demands of any priest of patron who performs the right rituals (MBh 5.60). Given his unlimited power and wealth, Duryodhana can ensure that even the gods will bend to his will. Thus does he take the theology of Vedic ritualism to its most hubristic extreme.

The indication we are given then is that Duryodhana wishes to rule for entirely selfish reasons, and that he rejects any possibility of checking his power, regardless of the source. As we have noted, one reason to avoid the kingship coming into the hands of a person so in thrall to his desires is that he will have little regard for caste. The same courtiers of Duryodhana who do not live according to their *dharma* serve as mentors to the Pāṇḍavas however, and the Pāṇḍavas respect for them never diminishes. The *Dharmaśāstra* connection between upholding *varṇadharmā* and a successful harvest is also severed under Duryodhana, as harvests remain bountiful under his rule. The main fault of Duryodhana’s rule is that it results in a reassertion of *mātsyanyāya* within the kingdom. Rule in a state of nature cannot be called legitimate however, as it consists only of power. While it is possible

that, for a time, people may continue to prosper under such rule, this is still only by accident rather than by design:

The constant taking of life in the state of nature troubles those who are devoted to Law [*dharma*-D.S.]; so too when Laws are cut off from the Lawful Deeds of a king—people then neglect their proper Law in every instance.

(MBh 12.63.30, Fitzgerald)

The first part of this verse simply reiterates that those concerned about *dharma* are keen to avoid a state of nature. The second part tells us that the continued presence of *dharma* requires both knowledge of it and a king who seeks to enforce it, and that a king who neglects *dharma* will see his kingdom descend into a state of nature as well.

Duryodhana is unjust as a ruler not in the sense of managing the kingdom poorly, but as a poor regulator of himself. This may be best demonstrated by a comparison with Plato's conception of justice as a personal virtue. In this regard, Plato considers justice to be the internal regulator of a person, such that reason controls the other parts of the soul:

And in truth justice . . . isn't concerned with someone's doing his own externally, but what is inside him, with what is truly himself and his own. One who is just does not allow any part of himself to do the work of another part or allow the various classes within him to meddle with each other. . . He binds together those parts and any others there may be in between, and from having been many things he becomes entirely one, moderate and harmonious. . . . And when he does anything . . . he believes that the action is just and fine that preserves this inner harmony and helps achieve it, and calls it so, and regards as wisdom the knowledge that oversees such actions.

(Rep. IV.443c-e)

One of the desires of reason is 'the desire to regulate desires, both of itself and the other parts of the soul' (White, 194). We have seen already that Duryodhana has no desire to regulate his desires, and this leads to his disregard for *dharma* when Draupadī is brought before the assembly. The point of the comparison here is that it is the disorder within Duryodhana, the lack of control with himself, which radiates throughout his kingdom to sow discord there.

The kingdom enters a state of *mātsyanyāya* as soon as Duryodhana takes control of it following the gambling match with Yudhiṣṭhira. This can be seen not only in his public

proclamations at the time that *dharma* is simply the means by which the powerful – namely him – are able to get what they want, but also in the humiliation of Draupadī. When Draupadī invokes an established procedure for determining the merit of her question, Duryodhana disrupts the operation of *dharma*. He exercises his power tyrannically, coercing and cajoling the assembly to turn their backs on the right of the afflicted to have their case heard. So does his neglect of *dharma* lead to neglect of it by others. At this point, having publicly expressed his view that *dharma* is akin to *mātsyanyāya*, and acted upon that position, Duryodhana's rule is illegitimate, and a ruler dedicated to *dharma* is within his rights to dethrone him.

8. The *Dharma* of Yudhiṣṭhira and the Priority of Virtue

The natural replacement for Duryodhana is Yudhiṣṭhira, the prior king ostensibly dedicated to upholding *dharma*. While Duryodhana's error is to privilege *kṣatriyadharmā* over all other concerns, Yudhiṣṭhira initially makes the mistake of privileging *kuladharmā* over even his obligations as king. So does he fail to prosecute his family when they attempt to have him killed (MBh 1.129-37), and also submits to his uncle's will to attend the rigged gambling match. Like Duryodhana, Yudhiṣṭhira also equates *rājadharmā* with *kṣatriyadharmā*, as he holds the fulfilling the latter *dharma* will satisfy the obligations that come with being king. It is only when Kṛṣṇa makes clear to him that strict adherence to *kṣatriyadharmā* will result in him losing the war, and thus continued rule of the kingdom by Duryodhana, that he recognises a distinction between the two.

While he does not seek kingdom to enrich himself, Yudhiṣṭhira initially fulfils his kingly obligations due to the merit which will accrue to himself and his family as a result (MBh 3.32), resulting in their reaching and being maintained in the celestial realms. A similar attitude can be seen on the part of Arjuna immediately prior to battle, as he declares

the family and elders assembled against him to be ‘The very men for whose sake we want kingship, comforts, and joy’ (BhG 1.33, van Buitenen). Each of the two brothers is perplexed by his situation, because he has no available means for adjudicating between conflicting *dharmas*. The *dharma* of the family tells them that they should not act against other family members or their elders, while the *dharma* of warriors tells them that they should not shrink from enemies who deserve to be defeated.

There are two proposed solutions to this dilemma within the *Mahābhārata*. The first, given by Kṛṣṇa in the *Bhagavad Gītā*, is that a person should act in accord with duty, but be detached from the consequences for himself. That is, the action should be performed for its own sake, rather than any benefits which might accrue to the one performing the action. In this way, the one who acts emulates Kṛṣṇa, who acts not out of any necessity on his part, but because the world would stop functioning if he ceased to act, and others would follow his lead (BhG 3.22-9). The virtuous king therefore pursues the interests of the ruled:

The god Kṛṣṇa appears in the world and protects it because he cares for it and, as a consequence, his followers should care as well – they should love the world and take care of it, especially when they find themselves in positions of responsibility, as, for example, is the case with kings.

(Malinar 145)

As Malinar elsewhere notes (89), the attitude of detachment is primarily important for final liberation of the actor; the king’s duty to pursue order and benefit for his subjects remains strictly a political virtue.

The second solution to the problem of competing *dharmas* is similar, although not tied in with the Kṛṣṇa-focused theology of the *Gītā*. Bhīṣma indicates that the virtuous king will be dedicated to protecting all who are under his rule, so that should be the measure by which he adjudicates among competing duties:

What is Right and Lawful was declared for the purpose of augmenting beings, to the Right and Lawful would be whatever involves doing no harm to beings; that is the settled conclusion.

(MBh 12.110.10-11, Fitzgerald)

The two examples he gives of this are of a hunter who unwittingly kills an ascetic seeking to destroy all creatures and thus attains heaven, and an ascetic sworn to tell the truth who does not lie when bandits ask him the location of people fleeing from them and thus is sent to a terrible hell. Bhīṣma's point here is that it is the consequences of an act with regard to the flourishing of the king's subjects which matter in evaluating it, since this is the purpose of *dharma* to begin with. Given that this is the general aim of all *dharma*, one is still right to follow it when duties do not conflict. When there is a conflict between *dharmas* however, the proper choice is that which best promotes flourishing.

Both of these solutions resolve the problem of conflicting *dharmas* without equating *dharma* to power. They do this by replacing the concept of *dharma* as a thing pursued for personal benefit with a notion of *dharma* as either a duty pursued for its own sake or because of the benefits it has for everyone. This is in contrast with Duryodhana's understanding of *dharma*. Even though the people flourish under Duryodhana's rule, his rule fails to meet the standards of *dharma* because their flourishing is not his aim.

What makes Yudhiṣṭhira's rule legitimate is his dedication to upholding *dharma*, even though he does not do so initially with the right intentions. By submitting to the demands of *dharma*, even when they are not to his benefit however, Yudhiṣṭhira has demonstrated that his interest is not simply his own empowerment. This is why he concedes to accept the results of his gambling loss, and to refrain from attacking his cousins while the terms of their agreement are still operative. In addition to his sovereignty, this submission to the procedures of *dharma* is another of the reasons why Yudhiṣṭhira is entitled to violate the *dharma* of truth-telling in order to defeat Droṇa. Droṇa attempts to trade on Yudhiṣṭhira's honesty in order to secure the latter's testimony against himself, with the consequence that Duryodhana's faction will win if Yudhiṣṭhira is honest (cf. Ganeri 172 f.). Being dedicated to

upholding *dharma*, and having a reputation for doing so, provides one some leeway when it comes to adjudicating difficult choices such as the one of lying to Droṇa.

In addition to adhering to *dharma* however, Yudhiṣṭhira is also aware of the pragmatic aspects of reputation. This is why he refrains from acting rashly, and does not seek to defeat Duryodhana immediately upon losing the gambling match against him. If he is to successfully defeat Duryodhana and reign as king, he must not give the appearance of being dishonest. This conflict is also internal for him, however: Yudhiṣṭhira often ponders, when both duty and self-interest compel him toward the same action, which of the two is his true motivation (Malinar 39). It is this willingness to subject his own actions to scrutiny – especially the scrutiny of others – which marks Yudhiṣṭhira as a virtuous ruler. A theme reiterated throughout the epic is that the effective ruler must exercise restraint of his own desires and passions, a virtue in which Duryodhana is sorely lacking.

Yudhiṣṭhira's dedication to both *dharma* and to the betterment of others is shown through a series of tests that occur throughout the epic, some of these involving the god Dharma in disguise. When Dharma appears to him as a Yakṣa, or nature spirit, after having slain Yudhiṣṭhira's brothers for failing to heed his warning, Dharma poses a series of questions to him. Once Yudhiṣṭhira has answered all of the questions to Dharma's satisfaction, he is allowed to revive only one of his brothers. Yudhiṣṭhira chooses to revive Nakula, the son of his father's second wife (Yudhiṣṭhira's mother was Pāṇḍu's first wife), because he does not wish to show favouritism toward the sons of his own mother. This earns the following praise from Dharma: 'Since abstention from injury is regarded by thee as higher than both profit and pleasure, therefore, let all thy brothers live' (MBh 3.311, Ganguli). Two other instances demonstrating Yudhiṣṭhira's altruism occur after the battle against Duryodhana, when he has surrendered the throne to Arjuna's grandson Parikṣit. In the first instance, he refuses to abandon a dog who has accompanied him to the height of

Mount Meru in order to enter heaven, despite Indra's telling him that the animal is unclean, and that no merit can accrue to one who owns it. Yudhiṣṭhira insists that it would be wrong to abandon one who was devoted to him, on a par with the worst sins. The dog is finally revealed to be Dharma himself, and Yudhiṣṭhira is allowed into heaven as a reward for his loyalty (MBh 17.3.5-22). A final demonstration of his general altruism is when he, after having descended into hell to find his brothers, opts to remain there to offer solace to those who are comforted by his presence there (MBh 18.2.30-6). These turn out to be the voices of his family, though he is not aware of it when he elects to remain in hell to comfort them. These episodes as a whole demonstrate Yudhiṣṭhira to be an ideal king because he is dedicated to the welfare of others even over the strictures of *dharma*.

The virtue of the ruler is the primary determinant of legitimacy because this is the best way to ensure all other aspects of *dharma* are upheld. In this, he is much like Aristotle's man who uniquely possesses civic virtue, and 'all should joyfully obey such a ruler' (1284b32-3). On the one hand, the king is obligated to uphold the proper order of *varṇadharmā*, and people's designated duties therein:

The king must guard the Laws of the Four Orders. The eternal Duty of kings is guarding against the mixing up of Laws.

(MBh 12.57.15, Fitzgerald)

On the other hand, the king must always consider the consequences of his actions, particularly when it comes to maintaining the security of the kingdom and protecting the rights of his subjects (MBh 5.34). Like Aristotle's virtuous deliberator, he does this without regard for his own pleasure, but in the pursuit of what is right: 'perhaps the good man differs from others most by seeing the truth in each class of things, being as it were the norm and measure of them' (1113a32-3). The king must be attentive to extenuating circumstances when it comes to upholding *dharma*:

But what is Lawful and Meritorious may be Unlawful when it is applied at the wrong time or in the wrong place; and tradition teaches that stealing, lying, and doing injury to others are Lawful in some specific circumstances.

(MBh 12.37.8, Fitzgerald)

In addition to influencing his subjects to follow *dharma* according to his example, the virtuous king is able to balance the demands of both consequences and proper order. When new situations requiring novel solutions arise, the virtuous king can be relied upon to decide them according to the interests of his subjects, rather than according to his own interest. Knowing that the king is virtuous provides his subjects with confidence that novel solutions to problems are in their own interest, for 'People trust the virtuous more even than they trust themselves' (MBh 3.281.41, Smith). Knowing both *dharma* and the worldly sciences, the virtuous king is able to grant to his subjects what Bhīṣma calls the greatest of gifts: 'freedom from fear to all creatures, kindness to those in distress, and fulfilling the wants of needy supplicants' (MBh 13.58, Smith).

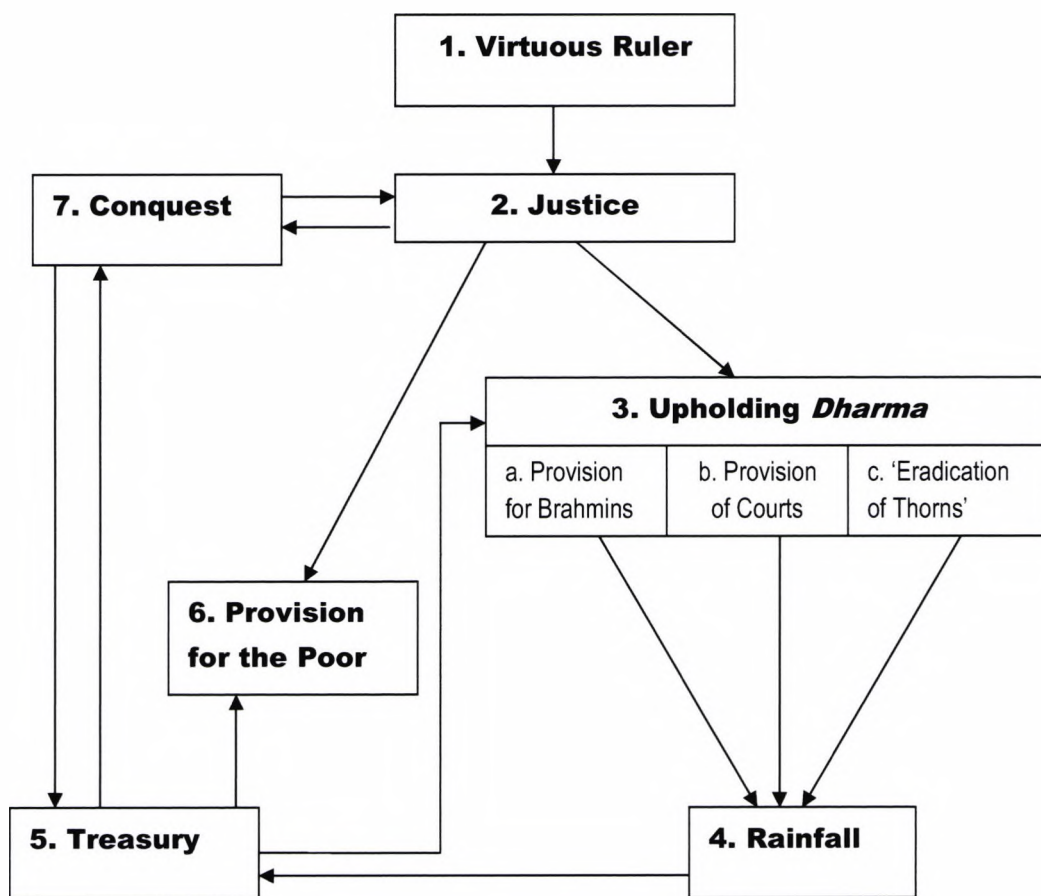
9. The Form of Justice in the *Mahābhārata*

We have seen that the virtue of the king is the primary determinant of legitimacy, and that the virtuous king can balance the demands of both *varṇadharmā* and his subjects' security. There is however an idea of proper order given within the *Mahābhārata*, which is presumed to follow from the rule of a virtuous king. This is best explained with the following schema and explanation. While there is no clear outline of such a theory of justice given in a single portion of the *Mahābhārata*, there are statements and indications that many of the features identified here are essential to the just kingdom, and some suggestion of their relationship to other aspects of the kingdom.

1. The Virtuous Ruler

That the king is the linchpin of the justly governed kingdom is elaborated in the section of this chapter immediately prior. The metaphor of a linchpin is appropriate as well because one of the titles of the virtuous, world-conquering king is *cakravartin*, or ‘turner of the wheel.’

Table 4.1



2. Justice

This part of the schema of justice in the *Mahābhārata* is primarily a placeholder, but with good reason. While justice flows from the rule of the virtuous king, it is not the action of conquest which makes him virtuous, but his virtue which makes conquest just. Because the rule of law (i.e., *dharma*) must be imposed on newly-conquered territories, it is the process of

justice which is then reiterated, not the virtue of the king, which is established antecedent to justification of conquests.

3. Upholding Dharma

This component of the schema is made up of three parts: a) Provision for brahmins b) Provision of Courts, and c) Eradication of Thorns. These three are perhaps best expressed by the ascetic Vyāsa, who informs the distraught Yudhiṣṭhira that ‘According to Law a king should kill, make gifts, and protect his subjects’ (MBh 12.32.8, Fitzgerald) *Dharma* is upheld when all three of these occur together, and their occurrence in conjunction with each others results in other consequences associated with the just kingdom.

3a. Provision for Brahmins

As the preservers of tradition and the content of *dharma* – ‘[The Brahmin] is the teacher of all the Orders of society’ (MBh 12.73.12, Fitzgerald) – the king is obligated to protect, honour, and materially provide for brahmins. The king ‘should give them riches as [he] is able, and is appropriate to their deserts, addressing them warmly and guarding them well’ (MBh 12.72.23, Fitzgerald). The king must give ‘All that is best or most highly preferred’ (MBh 12.74.31, Fitzgerald) to brahmins, so that both they and he may mutually benefit. The benefit which accrues to the brahmins is that they are able to fulfil their study and performance of ritual without interruption, and the benefit accruing to the king is that the success of his endeavours is ensured by such study and performance. Similar to the two swords doctrine of *Unam Sanctam*, the king and brahmins work together to serve the kingdom’s subjects: ‘That country thrives happily where the *brahman* quiets the subjects’ fear of the unseen, and the king quiets their fear of what is seen’ (MBh 12.75.2, Fitzgerald).

The priority of brahmins is at some points taken to be metaphysical and therefore antecedent to the kingdom. This can be seen for example in the reiteration of the *Puruṣasūkta* at MBh 12.73.4ff. The consensus elsewhere in the *Mahābhārata* however appears to be that brahminhood is an ethical quality, rather than a strictly metaphysical one. Yudhiṣṭhira answers the question – correctly, we are told – ‘Who is a Brahmin?’ with the following reply: ‘a Brahmin is someone who lives a virtuous life, rather than someone born in a particular line’ (MBh 3.177, Smith). We are informed elsewhere ‘that originally all men were created as Brahmins, but that they had come to be divided into classes on the basis of their behaviour’ (MBh 12.181, Smith). The unresolved aspect of these accounts is whether there is a genetic aspect to brahminhood or if it is solely based upon behaviour. In either case, pragmatic or social justifications are available for the privileged status of brahmins, rather than merely metaphysical ones.

3b. Provision of Courts

To gain merit and avoid demerit, the king must establish ‘Lawful judicial procedures’ (MBh 12.72.25, Fitzgerald). To maintain fairness in judicial proceedings, the king should hold public hearings on judicial matters; hearings held in secret are dubious (MBh 12.86.12). In addition to the king, the court should be made up of four virtuous brahmins, three honest śūdras and a learned and elderly sūta. These should not be susceptible to bribery or cajoling by the king: they must ‘all be free of the seven hideous vices’ (MBh 12.86.10, Fitzgerald). The king should also provide representation for those who are poor or unfamiliar with judicial procedures in cases against powerful opponents (MBh 12.86.17)

3c. Eradication of Thorns

The punishment of those who threaten the property or livelihoods of the king's subjects is a duty elsewhere called 'the eradication of thorns.' As can be seen in the *mātsyanyāya* section in Chapter 2 of this thesis, it is a primary reason for establishing the kingship. As Bhīṣma tells Yudhiṣṭhira: 'This is the supreme Law: That the king be dedicated to the policy of administering punishment' (MBh 12.70.33, Fitzgerald), as 'the rod of punishment is the one thing in this world upon which everything depends' (MBh 12.121.8, Fitzgerald). The king should restrain or execute 'Any man in the thrall of error, who would make what is not the standard into the standard' (MBh 12.32.6, Fitzgerald).

4. Rainfall

If a king mistreats brahmins, especially his household priest, the kingdom will be afflicted with drought (MBh 3.110.20ff). Elsewhere, the proper functioning of the kingdom, including the rain necessary for crops, depends upon the king properly administering punishment (MBh 12.70.7ff). This also appears to include the provision of courts: 'He should not mete out punishment before careful examination' (MBh 12.71.7, Fitzgerald). While the connection between the king upholding *dharma* and rainfall relies on metaphysical conception of *dharma*, one implication of this is that the king is then responsible for redressing losses suffered by his subjects due to natural disasters: 'kings in this world accumulate stores for times of distress' (MBh 12.88.21, Fitzgerald).

Kauṭilya draws a similar conclusion when he notes that, although 'A calamity of a constituent [element of the state], of a divine or human origin, springs from ill luck or wrong policy' (AŚ 8.1.2). Whatever the origins of such calamities however, the king still has the power to obviate them, and is therefore obligated to do so. Sometimes these are practical, as in the case of drought and famine, where the king is required to provide food and water to his

people, seek allies if he cannot, or else submit to the rule of a king who is able to do these things for his people (AŚ 4.3.17-20). Other solutions involve public sacrifices to specific deities or the employment of magicians. In the case of both the *Arthaśāstra* and the *Mahābhārata*, the salient fact is that the king ultimately bears responsibility for obviating or alleviating these calamities; the virtuous king does not refrain from doing this, and abdicates his authority to another who can do so if he is incapable.

5. *Treasury*

While the *Mahābhārata* notes that it is *artha*, or wealth, which the king must possess, *koṣa* (treasury) is the term used by Kauṭilya for the same concept (although *koṣa* is also found in MBh, such as at 14.3). As the ṛṣi Devasthāna informs Yudhiṣṭhira, Manu has indicated ‘that wealth was decidedly the most important part of Law’ (MBh 12.21.12, Fitzgerald). Without wealth, rituals – including the rituals of kingship – cannot be performed. This is the crux of Bhīma’s point before the Pāṇḍavas’ exile, when he calls for Yudhiṣṭhira to wage war against the Kauravas, as lack of wealth impedes ‘*the proper practice of dharma itself*’ (MBh 3.34, Smith). Similarly, when Yudhiṣṭhira wishes to perform the *Aśvamedha* to establish the legitimacy of his rule after the defeat of Duryodhana, this is prevented initially by a lack of wealth. A well-maintained treasury is therefore essential to the functioning of the *dharmic* kingdom. It is worth noting as well here that the need for wealth does not justify conquest, although a kingdom with a virtuous king which expands through conquest will also see an increase in wealth.

Additionally, as part of his obligation to eradicate thorns, the king is entitled to levy taxes. Though these must not be onerous – ‘the country which has been overmilked cannot do much work’ (MBh 12.88.19, Fitzgerald) – he may also levy additional taxes during emergencies, following public justification. So for taxation to be beneficial, the economy

must be functioning efficiently, which means that farmers must be able to produce crops. To those who would object that their money is intended only for their family, the king must reiterate that, without the king, private wealth would be destroyed (MBh 12.88.28-32).

6. Provision for the Poor

The obligation to provide for the poor is not explicitly stated in the *Mahābhārata*, but it is regularly connected with the flourishing of the ideal state. In Yudhiṣṭhira's kingdom, prior to the war, we see that 'prosperity was shared, for *dharma* held sway' (MBh 1.102.7, Smith). Bhīṣma later informs him that the greatest gift the king can give is 'granting freedom from fear to all creatures, kindness to those in distress, and fulfilling the wants of needy supplicants' (MBh 13.58, Smith). The king also has pragmatic reasons for helping the dispossessed:

As he is able, let him show compassion to all who live in the city and in the countryside who take refuge with him or depend upon him, even all those who are closely related. Having smashed an outlying people, the people in between may be exploited easily. Gladdened and afflicted in this way, people do not get all fired up in anger.

(MBh 12.88.22-3, Smith)

Provision for the poor appears to depend upon both the largesse of the king, and the generosity of his subjects when the kingdom is flourishing. It therefore flows both from the justly governed kingdom, and from the treasury of the virtuous king.

7. Conquest

The successful king is obligated to extend his power:

The kṣatriya who understands the policy for administering punishment and always puts it first should try to win realms not already his and guard well those that are.

(MBh 12.70.29, Fitzgerald)

While military might plays a role in this, the notion of conquest found here involves the expansion of the rule of *dharma*, rather than mere domination. The *Mahābhārata* shares this

conception in common with the Mauryan Empire under Aśoka when Bhīṣma informs Yudhiṣṭhira: 'The king should make his victory greater by not using warfare. King, they say the victory won by war is the worst kind' (MBh 12.95.1, Fitzgerald).

10. Conclusion

In this chapter, we have seen the subjects of the two previous chapters – the nature of the state and the place of *dharma* within it – in tangible conflict with one another. As should now be clear, this dilemma is best understood by considering it within a more comprehensive frame which includes political concerns, rather than understanding the portions of the *Mahābhārata* discussed here as strictly ethical in nature. The dilemma initially presented within the text is one between preserving the integrity of the state and upholding *dharma*. The solution offered is that the governing of the state has its own requisite *dharma*, and that this depends upon the virtue of the king. A vicious king may maintain the integrity of the state but he will be incapable of balancing competing *dharma* claims and thus will fail to uphold *dharma*. This is significant because, in addition to protecting people from *mātsyanyāya*, the promotion of *dharma* is also an essential obligation of the state. A king who refuses to consider questions of *dharma* with deliberation and without regard for his self-interest will rightly find himself vulnerable to dispossession of his kingship by a virtuous king who understands properly which *dharmas* have priority over others. Finally, we have offered a possible schema for distributive justice in the *Mahābhārata* and a demonstration of how some of the prominent aspects of the regal state conceived therein might interrelate. These give us good grounds for understanding the *Mahābhārata* as presenting a picture of the just state, how to recognise it and options for responding to a state which is unjust.

Conclusion

This thesis has shown that the *Mahābhārata* resolves a perennial problem facing political theorists in Classical India: How to reconcile political necessity with the obligations of *dharma*. The solution offered therein is to empower the king to adjudicate between competing *dharmas* when there is limited precedent for action, but that the king must have a reputation for virtue in order for such exceptions made by him to be justified. Given as well that this political interpretation of the *dharma* aspects of the *Mahābhārata* better resolves the purported ethical dilemmas contained within it, it is reasonable to infer as well that resolving the tension between practical and ideological aspects of political power was an intended purpose of the text by its creators.

A number of insights have been suggested throughout the course of this thesis which are worth revisiting. The first of these is that political theorists in Classical India devoted significant thought into understanding the role of the state. While it has been noted that their idea of the state was not entirely consonant with contemporary conceptions, Indian theorists have in common with their European counterparts, both ancient and modern, an attempt to come to terms with the idea of sovereignty and the basis of locating it within the state. It is particularly significant here to recognize that the robust nature of Indian state of nature theories, or *mātsyanyāya*, have been recently undervalued and are worth considering as part of the history of social contract theories generally. I have made my own contribution to this effort with the publication of the section of this thesis dealing with *mātsyanyāya* in *Asian Philosophy*, entitled '*Mātsyanyāya: The State of Nature in Indian Thought.*'

It is noted as well that if the king has certain obligations toward his subjects, these can also be seen as rights subjects possess with respect to the king's actions. While caste considerations permeate even the picture of the state of nature envisioned by Indian theorists,

basic, universal rights to life and property are widely recognized. Although it is not explored in depth here, further work on conceptions of rights and who possesses them is integral to gain a fuller understanding of political theory in Classical India, and that is an avenue of research I intend to take up at some point in the future.

I have also examined a number of appointment theories of kingship, although the theoretical strength of these is somewhat lacking. That is, while a king with the means to remain in power might have a basis to appeal to appointment by the gods, karma, or *r̥sis*, the power explicitly left to brahmins to rebuke the king and to others to emigrate in order to show their displeasure with his rule is indicative of certain limits upon even a divinely appointed king. Contract theories are ancient and found in texts serving various functions. These therefore run the gamut from accounts of elections of leaders in tribal, warlike groups – with such elections being projected onto the gods as well – to explicit contracts made between the people and a king for the purposes of protection. That is, the king provides the people with security from threats both internal and external, and in exchange the people surrender a portion of their wealth in the form of taxes. In addition to brahminical theorists, Buddhist political theorists also found in social contract theories a satisfying explanation for the sovereignty of the regal state.

From considerations of the practical aspects of governance, a turn was then made to consider the ideological aspects, particularly the provenance of *dharma*. To analyze the political application of *dharma*, comparison has been made between it and the Humean circumstances of justice. I then noted that, despite the general metaphysical assumptions they may have had, political theorists in Classical India largely took people to be driven to be concerned with questions of *dharma* out of self-interest, and that social institutions mitigate the destructive aspects of excessive pursuit of self-interest.

I then briefly trace the historical development of the concept of *dharma*, from a ritual-cosmic to an ethical one. To identify the transition to ethical-political forms of *dharma*, I have indicated attention to those elaborations of *dharma* either challenging or rejecting a largely metaphysical conception of it. It has been noted that the ethical conception of *dharma* is mainly concerned with the privileges, duties and obligations of the male householder, and that these in turn are generalized in many cases to apply to the king. The notion of a *dharma* with general applicability, to all persons, although noted as being occasionally present in the law books, does not play much role in establishing any rights or principles in the realm of politics. The king is however compared to the renouncer, as both in their own ways exist outside the traditional purview of *dharma*. The responsibilities of the king vis-à-vis his subjects – i.e., *rājadharma* – is however modeled on the duties of the husband and father toward other members of his household. Unlike the traditional male householder, the power of the king is predicated upon his ability to use force to carry out his wishes. Potential abuse of the king's position is mitigated by maintaining a ritualized structure around the king's practices, requiring him to consult with scholars before making decisions, and restricting him from exercising legislative power.

I have noted as well that, while a political concept of *dharma* may not compare favorably with those forms of justice occupying the egalitarian plateau, there are some instructive parallels to be drawn with political theory found in the works of Plato and Aristotle. We see as well moves among the more realist political theorists in Classical India to place emphasis on the king's duty to protect his subjects, or *rājadharma*, over strict enforcement of the ritualistic or codified versions of *dharma*. One result of this is that the realists are open to accepting traditional practices contrary to brahminical orthodoxy, at least when such exceptions better contribute to stability than attempts to force strict interpretations of *dharmic* practice onto new peoples.

We see within Indian theorists of both pragmatic and ideological persuasions however an emphasis on fair procedure for resolving disputes. Davis has suggested that we look to this notion in the Indian legal tradition, *vyavahāra*, as the locus of any possible theories of justice. As I have already noted, there is much relevant to justice to be found within *dharma* as well. Davis is right however to see aspects of procedural justice at play in *vyavahāra*, and I have suggested Hampshire's argument for a form of justice based on fair procedure rather than fair distribution to be consonant with such a picture.

Having examined both questions of whence the king obtains his sovereignty, and the basis for the limits of his power within *dharma*, I then turned to examine the treatment of the tension between the two within the *Mahābhārata*. What I glean from the *Mahābhārata* is that the obligations of the king entitle him to make exceptions to *dharma* in circumstances where either traditional *dharma* provides no clear path on how to proceed or when two claims of *dharma* are in conflict. Only a virtuous king is justified in making such exceptions however, as he is likely to make them only for the sake of the kingdom and not to serve his own, personal ends. Since the role of the king requires such adjudication of *dharma* and its limits, it therefore follows that only a virtuous man should be allowed to remain as king.

After first considering Arjuna's dilemma in the *Bhagavad Gītā*, I showed that previous attempts to categorize Kṛṣṇa's solution as either deontological or consequential neglect important aspects of the text and its context. Most importantly for present purposes, these fail to fully consider the fact that Arjuna is an agent of his brother's kingdom and the obligations incumbent upon him due to the nature of that position.

I have then provided a brief overview of the competing factions in the *Mahābhārata* and the dramatis personae of each. I identified the gambling match and the humiliation of Draupadī as putting into play conflicts about the nature of *dharma* and justice which are resolved only following a destructive battle waged between the two sides. Those who side

with the Kaurava faction are largely of the view that *dharma* is something which is defined by those who hold power, and that any means are justified in order to usurp that power from someone else who holds it. At this point in the epic, the Pāṇḍavas are unwilling to engage in any act which has even the appearance of being contrary to *dharma* and so acquiesce to years of exile as a consequence.

The approach to *dharma* taken by the Kauravas – and as expressed by Bhīṣma in Book II – is shown to mirror that of Thrasymachus at the beginning of the *Republic*. That is, *dharma* or justice is simply a tool the powerful use to compel the weak to do their bidding. Draupadī is the first representative in the text of the view that *dharma* is not something which can be decided *a priori*, but which demands fair adjudication by experts who do not have a direct stake in the outcome. While her faith in the justice of adhering to *dharma* has a short-term benefit for her – her virtue is protected from further harm and abuse – it will be many years before her suffering is vindicated. In this case, the *Mahābhārata* also provides a case study in the possible consequences of justice gone awry. Had the assembly been willing to impartially consider Draupadī's case, and dismissed the interference of Duryodhana and his brothers, an explicit use of force would not have been necessary to ensure the continued maintenance of *dharma*.

When the time comes for the Pāṇḍavas to reclaim their kingdom, they find themselves in a seemingly hopeless situation: either they must accept defeat, or else they must violate *dharma* in order to secure the kingdom. The decision is made in the end to violate *dharma*, and this is in turn justified by an appeal to a higher-order *dharma* which is incumbent upon those who rule, over and above their own, personal *dharmas* (*svadharmas*). The king and his officers are obligated to protect the regal state and to punish those who would threaten it. Once again, this is only an option available to the virtuous, as the vicious will abuse such sovereignty to serve themselves rather than their subjects.

The virtue of the king is established by his willingness to submit to the demands of *dharma*, even when they conflict with other, personal interests he may have. Unlike the householder, who pursues his own, domestic *dharma* for the sake of ritual and material benefits, the king must pursue the *dharma* of kingship for its own sake, disregarding the *dharma* of warriors when it conflicts with his obligations toward his kingdom and subjects. The virtuous king recognizes the value of prudential considerations, but he also values *dharma* for its own sake and as a contributor to the stability and security of his subjects. So it is that, though a successful king must sometimes deceive in the course of protecting his kingdom, this is not something a virtuous king will do without necessity, as a king who has a reputation for being deceptive will then no longer be thought to value the upholding of *dharma*. When the king is virtuous and has this reputation however, he can provide novel solutions to intractable problems with the people's trust. As the purpose of kingship is itself to secure people from certain kinds of uncertainty, the inculcation of respect for this limited form of executive liberty ensures that the institution continues to provide such security when unanticipated circumstances arise

Having shown that the question of justice is of significant concern within the *Mahābhārata* epic, I then provide a visual overview of how justice is portrayed in the *Mahābhārata*, with accompanying explanations of each component. What is significant about the theory of justice uncovered within the *Mahābhārata* is how limited it is in terms of metaphysical commitments. While there is a clear intent to make metaphysical connections between proper kingship and rainfall, this can also be seen as a means of clarifying the king's obligation to aid his subjects when hardship befalls them due to natural disasters. Similarly, the king's obligation to honour brahmins may be understood as a means of preserving the values of scholarship and tradition for informing the king's decision-making. While the

picture I provide is somewhat cursory, it will serve as a good foundation for further work on justice in the *Mahābhārata*.

To summarize the argument of this thesis, I have shown that a dispute regarding the demands of political reality and those of an ostensibly eternal system of *dharma* are reconciled in the *Mahābhārata* epic. I have shown as well that questions of justice are an abiding concern within the *Mahābhārata*, and that the epic addresses the tension between power and ideology with a plausible theory of justice. Finally, the theory of justice found within the *Mahābhārata* is shown to be sufficiently comprehensive such that it is reasonable to interpret the presence of this theory of justice within the text as an intention of the epic by its creators.

Given the findings of this thesis, it is fair to conclude that some aspects of political theory in Classical India are worthy of serious consideration alongside their Greek and Chinese counterparts as contributors to our understanding of political thought, both historical and contemporary. Further research is still required on the presence and nature of the idea of justice within the *Mahābhārata* and other Classical Indian texts on *dharma* and political theory, as well as later texts in languages other than Sanskrit, many of which focus on the practicalities of rule. Research on the structure and justifications of power used by the elite of the Mughal Empire, and the relationship of these to prior subcontinental accounts, is also warranted. I also intend to pursue further research on the role the tension between political power and *dharma* plays in the work of Jayanta Bhaṭṭa, particularly the argument for toleration within his *Āgamaḍambara*, and to both situate his arguments within their context as a response to orthodox positions and in comparison with Modern, European arguments for toleration.

Abbreviations

AB	<i>Aitareya Brahmaṇa</i>
AŚ	<i>Arthaśāstra</i>
AV	<i>Atharvaveda</i>
BDh	<i>Baudhāyana Dharmasūtra</i>
BhG	<i>Bhagavadgītā</i>
BU	<i>Brhadāranyaka Upaniṣad</i>
DN	<i>Dīgha Nikāya</i>
Elements	<i>The Elements of Law Natural and Politic</i>
GDh	<i>Gautama Dharmasūtra</i>
Ineq.	'Discourse on the Origin and Foundations of Inequality among Men'
KU	<i>Kauṣītaki Upaniṣad</i>
Lev.	<i>Leviathan</i>
Manu	<i>Manu's Code of Law</i>
MBh	<i>Mahābhārata</i>
NS	<i>Nāradaśmṛti</i>
OC	<i>Of the Original Contract</i>
PL	<i>Political Liberalism</i>
Rep.	<i>Republic</i>
RV	<i>Hymns of the Rgveda</i>
ŚB	<i>Śatapatha Brāhmaṇa</i>
SC	'Of the Social Contract'
SV	<i>Hymns of the Sāmaveda</i>
ST	<i>Second Treatise of Civil Government</i>
STD	<i>Sanskrit and Tamil Dictionaries</i>
Theory	<i>A Theory of Justice</i>
Treatise	<i>Treatise of Human Nature</i>

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