


Fall 2009

Eternal Law: The Underpinnings of Dharma and Karma in the Justice System

Shiv Narayan Persaud

Florida A&M University College of Law, shiv.persaud@famu.edu

Follow this and additional works at: <http://commons.law.famu.edu/faculty-research>

 Part of the [Criminal Law Commons](#), [Hindu Studies Commons](#), [Law and Philosophy Commons](#), [Religion Law Commons](#), and the [Religious Thought, Theology and Philosophy of Religion Commons](#)

Recommended Citation

Shiv Narayan Persaud, *Eternal Law: The Underpinnings of Dharma and Karma in the Justice System*, 13 *Rich. J. L. & Pub. Int.* 49 (2009)

This Article is brought to you for free and open access by the Faculty Works at Scholarly Commons @ FAMU Law. It has been accepted for inclusion in Journal Publications by an authorized administrator of Scholarly Commons @ FAMU Law. For more information, please contact linda.barrette@famu.edu.

ETERNAL LAW: THE UNDERPINNINGS OF DHARMA AND KARMA IN THE JUSTICE SYSTEM

*Shiv Narayan Persaud**

INTRODUCTION

In our emerging global society, conditions and relations of existence are increasingly influenced and guided by diverse religious philosophies articulated and grounded within legal frameworks of national and international policies and practices.¹ Be it Vedic² or Islamic, Judaic or Christian, Buddhist³ or Unitarian, religious philosophies and doctrines have permeated nearly every sector of society and enclave of human existence, converging or diverging in complex arrangements and relations of societal concord and discord.⁴ Given the nature of this rapidly shrinking world into a global community of differing philosophical persuasions, it is crucial to develop a better understanding of how religious philosophies influence and legitimize the promulgation, codification, and enforcement of policies governing human conduct and

* Visiting Professor of Law, Florida Agricultural and Mechanical University, 2008; J.D. Florida State University, 1997.

1. Throughout history, religious philosophies have influenced and guided legal policies within states and nations. *See, e.g.*, Daniel Philpott, *Has the Study of Global Politics Found Religion?*, 12 ANN. REV. POL. SCI. 183, 196–98 (2009) (discussing the influence of religion on politics within various twentieth century nations). Once considered the uniqueness of individual nation states, these religious-legal canons have increasingly penetrated their national boundaries through the shift toward a global community and the emergence and growth of complex multicultural societies. *See, e.g.*, Veit Bader, *Taking Religious Pluralism Seriously: Arguing for an Institutional Turn, Introduction*, 6 ETHICAL THEORY & MORAL PRAC. 3, 3 (2003) (stating that there has been an increase in religious diversity due to immigration and globalization).

2. Primarily the philosophy of India, Vedic teachings are found in the Sama, Atharva, Yajur, and Rig Veda, as well as in the Upanishads and the Bhagavad Gita. *See generally* BANSI PANDIT, *EXPLORE HINDUISM* 21 (2005) (discussing the Vedic philosophy).

3. *See generally* M. K. SHARAN, *DHAMMAPADA* (2006) (analyzing the Dhammapada, which captures most Buddhist teachings through a collection of vivid practical verses).

4. *See, e.g.*, Courtney Campbell, *Meaningful Resistance: Religion & Biotechnology*, in *CLAIMING POWER OVER LIFE: RELIGION AND BIOTECHNOLOGY POLICY 1* (Mark J. Hanson ed., 2001) (discussing religious influence in the field of biotechnology and biomedicine).

societal relations, while shaping and reshaping the system of justice.⁵ With this in mind, this article discusses and analyzes the Hindu philosophy of Eternal Law to show the underpinnings of Dharma and

5. “Religious discourse may have influence on the *process* of formulating law and policy, but the authorization or *warrant* for a specific law ultimately rests (or should rest) on nonreligious [secular] grounds.” *Id.* at 4 (emphasis in original). The Supreme Court has:

recognized that government cannot, without adopting a decidedly *anti*-religious point of view, be forbidden to recognize the religious beliefs and practices of the American people as an aspect of our history and culture [For example], the text of Abraham Lincoln’s Second Inaugural Address which is inscribed on a wall of the Lincoln Memorial need not be purged of its profound theological content.

Marsh v. Chambers, 463 U.S. 783, 810–11 (1983) (Brennan, J., dissenting) (emphasis in original). The Seventh Circuit followed this reasoning in holding that “exhibiting the Ten Commandments in a comprehensive display along with other historical texts and images . . . consider[ed] to be important influences in American legal and political tradition” was for a secular purpose. *Books v. Elkhart County*, 401 F.3d 857, 869 (7th Cir. 2005). The Seventh Circuit reasoned:

[T]his display tells viewers that the American founders were inspired by a religious tradition that includes the Ten Commandments and that those values influenced the development of our law and government. A public acknowledgment by the government that the founders were religious people whose faith influenced the creation of this nation, its laws, and its institutions of government is far different from saying that the government itself endorses their religion. Only the latter message is prohibited by the Establishment Clause. The Establishment Clause is not violated when government teaches about the historical role of religion. In a pluralistic society, reasonable people can usually tell the difference between preaching religion and teaching about the role of religion in our history “There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789.” Because we “are a religious people whose institutions presuppose a Supreme Being . . . [o]ur history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders.”

Id. at 868–69 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 674–75 (1984)); *see also* *Van Orden v. Perry*, 545 U.S. 677, 683–92 (2005). The Seventh Circuit also recognized in dicta:

The right to exercise one’s religion free of government interference is an instrument for achieving the goal of religious freedom. That freedom is impaired by practices that do not, as well as by practices that do, infringe the constitutional right itself Religions that have strong support among influential people have enough influence in the political process to be able to make sure that legislation is not passed that will inadvertently burden the observances required or encouraged by the religion. It is not an accident that we have Sunday closing laws rather than Thursday closing laws. Religions that have fewer members, especially if those members are drawn from the margins of society, do not have sufficient influence over the legislative process to avoid being flailed by the dinosaur’s tail of legislation of general applicability, legislation not motivated by any animus toward minor sects but merely insensitive to their interests—possibly even oblivious to their existence. The formal right of the members of these sects to the free exercise of their religion may have little practical value if observance is made onerous by general-purpose legislation.

Sasnett v. Sullivan, 91 F.3d 1018, 1021 (7th Cir. 1996), *vacated on other grounds*, 521 U.S. 1114 (1997).

Karma in the justice system.

Referred to as the Eternal Law or *Sanatana Dharma*,⁶ Hindu philosophy denotes an understanding of a universal spiritual existence entwined in a conscious awareness of the Universal Truth.⁷ Inherent in the revelation of this Truth are the two fundamentally interlocking principles of Dharma and Karma.⁸ While many scholars note the difficulty in arriving at a proper English translation of these terms from their original Sanskrit, the consensus is that conduct which upholds or supports cosmic harmony is Dharma, while Karma entails attaining the effects of one's actions.⁹ Both of these concepts have incipient and flexible qualities in their translations, given our continually evolving understanding of their application to social relations as they become integrated into the fundamental legal principles of the justice system.¹⁰ Although many have adapted these concepts as expressions of spirituality, they are not religious or spiritual canons but conceptualizations of interpreting and comprehending the world around us while enabling us to embrace every expression of human existence.¹¹

6. PANDIT, *supra* note 2, at 5.

7. Gandhi described the Universal Truth:

[Truth] is what the voice within tells you [S]eeing that the human mind works through innumerable media and that the evolution of the human mind is not the same for all, it follows that what may be truth for one may be untruth for another, and hence those who have made these experiments have come to the conclusion that there are certain conditions to be observed in making those experiments. Just as for conducting scientific experiments there is an indispensable scientific course of instruction, in the same way strict preliminary discipline is necessary to qualify a person to make experiments in the spiritual realm. Everyone should, therefore, realize his limitations before he speaks of his Inner Voice.

M. K. GANDHI, TRUTH IS GOD: GLEANINGS FROM THE WRITINGS OF MAHATMA GANDHI BEARING ON GOD, GOD-REALIZATION AND THE GODLY WAY 14 (1955) [hereinafter TRUTH IS GOD].

8. See EDITORS OF HINDUSIM TODAY, WHAT IS HINDUISM? 46, 47 (2007).

9. See *id.*

10. See, e.g., Quinn v. Phipps, 113 So. 419, 425 (Fla. 1927) (“The law of every country is the outcome and result of the economic and social conditions of that country as well as the expression of its intellectual capacity for dealing with these conditions; the causes which modify the law are usually to be sought in changes which have passed upon economic and social phenomena. When new relations between men arise, or when the old relations begin to pass into new forms, law is called in to adjust them. Legal doctrines are predicated on reason and custom, mark their growth from rude beginnings, and, like the order of the universe, are constantly changing to adjust the new relations of society.”). This evolution can also be seen in the works of various scholars and philosophers, including Sri Adi Shankaracharya (dates uncertain between 500 BCE and the Eighth Century), Sri Ramakrishna Paramahansa (1836–1886), Swami Vivekananda (1863–1902), Sri Aurobindo (1872–1950) and Swami Nikhilananda (1895–1973).

11. See, e.g., SARVEPALLI RADHAKRISHNAN, THE HINDU VIEW OF LIFE 58 (1961) (“The Hindu

To understand a social system, it is important to have some knowledge of the structure and principles governing that system.¹² The principles, when applied to the system, help in arriving at a better understanding of the underlying forces that operate dynamically to hold the system together.¹³ As the core values of a society change, the system must be able to adapt and reformulate its governing principles in order to compensate.¹⁴ When the system can no longer adapt to change and progress, it cries out for replacement.¹⁵ In light of the foregoing, this article further seeks to examine the universal principles of Dharma and Karma as inherent principles within our social system. The hope is to bring about a better understanding of their influences and impact on our justice system by focusing the discussion on the utilization of these concepts by Mohandas Karamchand Gandhi and Martin Luther King, Jr. in their struggles for justice and equality in two distinct social realities.

PART I

A. Dharma in Criminal Philosophy

Since Hinduism does not have a codified text on standardized explications of Dharma, the search for harmonious interpersonal connection with the universe is left to the individual to specifically interpret and negotiate.¹⁶ To a society which is structurally governed by codification and enforcement of laws, the boundless implications of Dharma may not be readily cognizable. However, for centuries, philosophers have struggled, through some form of innate cognition,¹⁷

Dharma says, Man does not live by bread alone, nor by his work, capital, ambition or power or relations to external nature. He lives or must live by his life of spirit.”).

12. See SCOTT APPELROUTH & LAURA DESFOR EDLES, *SOCIOLOGICAL THEORY IN THE CONTEMPORARY ERA* 26–27 (2007).

13. See *id.* at 27.

14. TRAILOKYANATH MITRA, *THE LAW RELATING TO THE HINDU WIDOW* 70 (1881).

15. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (“Prudence [] will dictate that Governments long established should not be changed for light and transient causes But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.”).

16. Although there are several treatises regarding *Sanatana Dharma*, the system is not institutional or centralized; instead, the final interpretation is left to the reader. See Austin B. Creel, *The Reexamination of Dharma in Hindu Ethics*, 25 PHIL. E. & W. 161, 163–64 (1975) (“There is no central point of authority in Hinduism for expressing a position on even the simplest issues *Dharma*, for the most part, is treated not as code or laws but instead as a value, to be interpreted in relation to other values, or as an ideal that is reflected in and expressed by various norms.”).

17. SEAN Ó NUALLÁIN, *THE SEARCH FOR MIND: A NEW FOUNDATION FOR COGNITIVE SCIENCE* 84

to discover and discern the boundaries and principles that govern a just society. These attempts went beyond the concrete conditions constructed and reconstructed by individuals.

By way of extrapolation, the notion of a legal mind analyzing a particular problem presupposes the notion that there are embedded concepts waiting to be unveiled which might dictate and guide the analysis.¹⁸ This appears more palatable because it lessens the burden on the society for malfeasance. Nonetheless, some method of analysis is necessary for human progress. For instance, our system of justice has difficulty understanding *mens rea* without an analysis of the effect of criminal action.¹⁹ In other words, we do not truly know what is going on in an offender's mind without understanding the act that was committed.

20

Dharma, which encompasses moral and social order, requires a constant search by the individual for a balance between work, home, and spiritual life with adherence to duty in the search for enlightenment.²¹ To understand the application of this philosophical concept to criminal action, we must first disengage the precepts upon which the criminal justice system was founded, as it is based on certain presumptions being true. These presumptions further serve to maintain a cohesive foundation that allows the system to operate. In order to maintain a workable theory on which to impart justice due to the actions of an offender, the system has had to endure an imposition of required objectives, such as imposing the firm rule of hearsay only to rely on

(1995) (“[I]nnatism contends that acquisition of a concept on the basis of experience alone (claimed by empiricism as valid) cannot actually occur. Innatists insist that the concept must already be there in some germinal form. In other words, it is impossible logically to derive a whole plethora of abstract concepts . . . from experience. They must be innate. It will be noticed that most of these abstract concepts are handled by Kant in his notion of categories The knowledge corresponding to categories is learned through interaction with the environment, but this interaction is inevitable.”).

18. *See id.*

19. C.M.V. CLARKSON, UNDERSTANDING CRIMINAL LAW 14 (4th ed. 2005) (“These two elements [*mens rea* and *actus reus*] must coincide in time. The defendant must have the necessary *mens rea* at the moment he or she commits the *actus reus*; it is not sufficient that he or she had *mens rea* before or after the *actus reus* The law is, however, prepared to adopt a flexible approach in this regard by holding that in certain cases there can be a ‘continuing *actus reus*’ and all that is necessary is that *mens rea* exist at any stage during this extended *actus reus*.” (emphasis in original)).

20. 1 MATTHEW HALE, HISTORIA PLACITORUM CORONAE: THE HISTORY OF THE PLEAS OF THE CROWN 13 (1847) (“Man is naturally endowed with these two great faculties, understanding and liberty of will The consent of the will is that, which renders human actions either commendable or culpable And because the liberty or choice of the will presupposeth an act of understanding to know the thing or action chosen by the will, it follows that, where there is a total defect of the understanding, there is no free act of the will”).

21. EDITORS OF HINDUSIM TODAY, *supra* note 8, at 47.

enacted exceptions,²² preventing improper arguments under the “golden rule,”²³ or allowing an officer’s reasonable tactics during a seizure.²⁴ The ultimate objective of the system is to seek harmony for the society in which it serves.²⁵ This is the supreme objective despite the contradictions that may arise. For example:

Inasmuch as no juror has a right to engage in [jury] nullification [and nullify the law by acquitting a defendant]—and, on the contrary, it is a violation of a juror’s sworn duty to follow the law as instructed by the court—trial courts have the duty to forestall or prevent such conduct, whether by firm instruction or admonition or, where it does not interfere with guaranteed rights or the need to protect the secrecy of jury deliberations... by dismissal of an offending juror from the venire or the jury. If it is true that the jury’s “prerogative of lenity”... introduces “a slack into the enforcement of law, tempering its rigor by the mollifying influence of current ethical conventions,”... then, as part and parcel of the system of checks and balances embedded in the very structure of the American criminal trial, there is a countervailing duty and authority of the judge to assure that jurors follow the law. Although nullification may sometimes succeed—because, among other things, it does not come to the attention of a presiding judge before the completion of a jury’s work, and jurors are not answerable for nullification after the verdict has been reached—it would be a dereliction of duty for a judge to remain indifferent to reports that a juror is intent on violating his oath. This is true regardless of the juror’s motivation for “nullification,” including race, ethnicity or similar considerations. [The system]... may not ignore colorable claims that a juror is acting on the basis

22. FED. R. EVID. 802, 803.

23. This rule prevents an advocate from asking the jury to step into the “shoes” of the victim. *See, e.g., Barnes v. State*, 58 So. 2d 157, 158–59 (Fla. 1951); *Lucas v. State*, 335 So. 2d 566, 567 (Fla. Dist. Ct. App. 1976).

24. “[T]he Fourth Amendment requires that a seizure must be based on specific, objective facts indicating that society’s legitimate interests require the seizure of the particular individual, or that the seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers.” *Brown v. Texas*, 443 U.S. 47, 51 (1979).

25. *See SEC v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 457 (1940) (“Good sense and legal tradition alike enjoin that an enactment of Congress dealing with [a particular subject] should be read in harmony with the existing system of equity jurisprudence of which it is a part.”).

of such improper considerations.²⁶

Essentially, two theoretical approaches guide our perspectives of substantive criminal law: the theory of retributivism—that punishment must be proportional to the act²⁷—and the theory of utilitarianism—that punishment must have a deterrent effect.²⁸ While retributivism is normally considered effective under measures which can be contemplated and controlled,²⁹ the justification for utilitarianism requires convincing an offender to rehabilitate his behavior or not to recidivate.³⁰ What these conceptual frameworks lack is harmony between the former’s retrospective presumptions of justice and the latter’s prospective expectations. By understanding human behavior, we can attempt to maintain a justifiable balance of punishment between an offender who commits a homicidal act on a whim or as a result of a specific catalyst. For the retributivist, seeking to impose an effective means of punishment assuages the offense or its resultant effects.³¹ For

26. *United States v. Thomas*, 116 F.3d 606, 616 (2d Cir. 1997) (quoting *United States v. Dougherty*, 473 F.2d 1113, 1133 (D.C. Cir. 1972)); *United States v. Adams*, 126 F.2d 774, 776 (2d Cir. 1942)).

27. IMMANUEL KANT, *THE SCIENCE OF RIGHT* 129 (W. Hastie trans., Forgotten Books 2008) (1790) (“[J]uridical punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or to civil society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime The penal law is a categorical imperative; and woe to him who creeps through the serpent-windings of utilitarianism to discover some advantage that may discharge him from the justice of punishment, or even from the due measure of it, according to the Pharisaic maxim: ‘It is better that one man should die than that the whole people should perish.’ For if justice and righteousness perish, human life would no longer have any value in the world.”).

28. JEREMY BENTHAM, *AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION* 170 (Clarendon Press 1876) (1789) (“The general object which all laws have, or ought to have, in common, is to augment the total happiness of the community; and therefore, in the first place, to exclude, as far as may be, everything that tends to subtract from that happiness: in other words, to exclude mischief. But all punishment is mischief: all punishment in itself is evil. Upon the principle of utility, if it ought at all to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil.”).

29. *Tison v. Arizona*, 481 U.S. 137, 180–82 (1987) (Brennan, J., dissenting) (“Retribution . . . has been regarded as a constitutionally valid basis for punishment only when the punishment is consistent with an ‘individualized consideration’ of the defendant’s culpability . . . and when ‘the administration of criminal justice’ works to ‘channel[]’ society’s ‘instinct for retribution’ Without such channeling, a State could impose a judgment of execution by torture as appropriate retribution for murder by torture One such principle is that the States may not impose punishment that is disproportionate to the severity of the offense or to the individual’s own conduct and culpability.” (quoting *Lockett v. Ohio*, 438 U.S. 586, 605 (1978); *Furman v. Georgia*, 408 U.S. 238, 308 (1972))).

30. *See United States v. Hawkins*, 380 F. Supp. 2d 143, 148, 150 (E.D.N.Y. 2005) (“Utilitarians, in their various manifestations, suggest that penalties need to be viewed more globally by measuring their benefits against their costs A rehabilitative design takes into account the fact that a person’s actions may reflect genetics, social advantage, and deprivation as well as free will, merit and culpability. In evaluating how best to approach reformation of a defendant, some appreciation of the causes of criminal behavior is desirable. The disadvantage, dysfunction, and toxicity of a defendant’s development is substantially causative.”).

31. EDWIN H. SUTHERLAND ET AL., *PRINCIPLES OF CRIMINOLOGY* 307 (11th ed. 1992).

the utilitarian, in the event an offender understands the potential punishment for the offense, he may choose to avoid the cause.³² In sum, both theories attempt to deal with the disruption in harmony caused by criminal actions.³³

Retributivists contend that ‘just deserts’ are to be imposed for a crime committed. Utilitarians, in their various manifestations, suggest that penalties need to be viewed more globally by measuring their benefits against their costs. The debate between the desert justification and the various utilitarian justifications such as deterrence, incapacitation, and rehabilitation has continued to divide criminal law thinkers. Implied in this debate are questions about our basic values and beliefs....” It may be more likely that the person with a deprived background will fall into crime. Under a purely retributive or general deterrence model, a person whose identity has been shaped by a poor environment through no fault of her own should be punished in the same manner and to the same extent as a person who has been afforded every privilege, wants for nothing, and turns her advantage to criminal efforts.³⁴

The notion of a hybrid theory, bridging the two theories, seems to fall prey to contradictory claims and difficulties in application.³⁵ While the retributive theory’s imposition of punishment based on the proportional culpability of the offender may not be a sufficient form of punishment, the difficulty with the primary aspect of the utilitarianism theory, or the societal implications of punishment, has not been clearly

32. BENTHAM, *supra* note 28.

33. SUTHERLAND ET AL., *supra* note 31, at 88 (“Scientific explanations of criminal behavior may be stated in terms of either the processes operating at the moment of the occurrence of crime or the processes operating in the earlier history of the criminal. In the first case, the explanation may be called ‘situational’ or ‘dynamic’; in the second case ‘historical’ or ‘developmental.’ Both types of explanation are desirable. The situational type has been favored by physical scientists, and it probably could be the more efficient type of explanation of criminal behavior. However, criminological explanations of the situational type have been, for the most part, unsuccessful because they have been formulated largely in connection with attempts to isolate personal and social pathologies among criminals. Still, work from this point of view has resulted in the conclusion that the immediate determinants of criminal behavior lie in the person-situation complex.” (internal citations omitted)).

34. *Hawkins*, 380 F. Supp. 2d at 148, 151 (quoting *United States v. Blarek*, 7 F. Supp. 2d 192, 200 (E.D.N.Y. 1998)).

35. RICHARD EDNEY & MIRKO BAGARIC, AUSTRALIAN SENTENCING: PRINCIPLES AND PRACTICE 10 (2007) (“Hybrid theories are unpersuasive because they lack doctrinal coherency and are ultimately unstable, thereby providing little guidance on critical matters.”).

demonstrated.³⁶ The retributivist argument is that a society cannot maintain order without a measure of proportional justice, nor can it endeavor to excel as a group of individuals unless it places the population on notice regarding the potential punishment for unacceptable behavior.³⁷ Similar viewpoints can be gleaned from the following principle: harmony is the honey of all people.³⁸ This being the case, societal equilibrium is due to the actions of its people. The corollary of the principle is that everyone is the “honey” of societal harmony.³⁹ From this perspective, any societal behavior that is righteous is due to the balance within each individual. This dynamic becomes an important consideration in the apportionment and application of punishment.

The harmony which is created adds to the lives of the people in that society, and allows them to progress as humans. In this state of harmony, much of the effort utilized in curbing criminal behavior can now be redirected to focus on higher achievements and developments. Such a situation presents a problem of how to determine proportionality for the retributivist and a problem of notification for the utilitarian. A strict retributivist approach presupposes individual and societal harmonies.⁴⁰ Likewise, a strict utilitarian approach may not adequately or justly punish the offender for his misdeeds.⁴¹ Thus, both approaches create barriers in the restoration of harmony. Understanding these barriers is necessary because society is not an event or a reason, but a fluid network of interactive relations and desires. Hence, this societal harmony, past and present, must be considered in establishing proper forms of punishment. The offender, through his actions, creates a hindrance to a society. Societal progress is thus hindered when individual actions violate the harmonious well being of the rest of the society.

Turning to the dharmic, we find that with its emphasis on *duty to a higher law*, it incorporates one’s social duty and moral obligations as integral constituents to one’s realization and adherence to the Eternal Law.⁴² Thus, within Dharma, the tenets of utilitarianism and retributivism are constituted as dynamics of a singular social reality since

36. *Id.* at 10–12.

37. SUTHERLAND ET AL., *supra* note 31.

38. MAX MÜLLER, THE UPANISHADS, PART 2: FIFTH BRĀHMANA, para. 11 (1879), <http://www.sacred-texts.com/hin/sbe15/sbe15062.htm> (last visited Jan. 5, 2010).

39. *Id.*

40. SUTHERLAND ET AL., *supra* note 31.

41. See EDNEY & BAGARIC, *supra* note 35, at 54.

42. See *supra* notes 9, 21 and accompanying text.

both approaches attempt to lift the veil of human ignorance through the designation of specific types of punishment.⁴³ By molding punishment to fit the crime, a past disharmony is granted reprieve. In this fashion, the maintenance of harmony is seen as part of the dynamic process in which punishment is delivered to the nonconformist for his *misdeeds* to society. However, from the retributivist viewpoint, harmony may not be restored if the punishment imparted is not severe enough to balance the wrong. And yet, merely causing harm to the offender to inflict punishment may not circumvent the disruption in harmony which was caused by the offender's actions. Similarly, the utilitarian principle could disrupt the harmony of the society by not individualizing its method of deterrence. For punishment to adequately address the disruptive consequences to society as a result of a particular crime, it must first attest to the standards of universal harmony.

In fleshing out the above issue, it may be appropriate to look at the most serious punishment of all—state sanctioned termination of an offender's life. A society may decide that capital punishment is a necessity, especially where harmony is so disrupted that the offender cannot maintain his existence without seriously endangering the lives of others. In this sense, the societal consciousness may dictate that harmony cannot be maintained without such a harsh sentence.⁴⁴ However, the debatable question remains whether society is justified in taking the life of another thereby invoking a moral dilemma.⁴⁵ The collective conscience could alternatively affirm that society cannot maintain harmony through capital punishment and that it must seek to understand the effects the offender caused in order to preserve balance. Determining a standard of harmony is not the equivalent of a policy implication over a particular statute, but an analysis as to the hindrance which is caused by the offender's actions. For example, neither the retributivist nor the utilitarian is likely to find a proportional or

43. *United States v. Rausch*, 570 F. Supp. 2d 1295, 1303 (D. Colo. 2008) (“Punishment is unpleasant and inflicted on an offender because he has committed an offense. It is not merely the inevitable consequence of a person’s voluntary action, but rather the union of the individual’s conduct with the recognition by society that its rules have been violated. Punishment is imposed by an agent authorized by the system, the rules of which have been violated. It is imperative that the agent act within the scope of the authority designated to him to reflect the societal mandate rather than personal preference or caprice.”).

44. *See Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

45. There are people today who oppose the death penalty on moral and religious grounds, while others have campaigned to abolish the death penalty altogether arguing that it is an inhumane form of punishment. *See, e.g.*, Ian Urbina, *In Push to End Death Penalty, Some States Cite Cost-Cutting*, N.Y. TIMES, Feb. 25, 2009, at A1; John Wagner, *Md. Panel Hears Views on Death Penalty*, WASH. POST, Aug. 20, 2008, at B1.

deterrent sentence for an offender whose ultimate motive is to protect his family. Such an offender may not care about imprisonment if he steals to benefit a loved one, or has a record of lawlessness in opposition to the culture of a community he considers resentful and oppressive.⁴⁶ In considering a harmonious balance, an offender's cognitive abilities warrant consideration. Treatment programs tailored to assist the offender with accommodating to acceptable behavior, such as giving up alcohol or drugs, must also concern themselves with social harmony and the collective consciousness.⁴⁷ This, in essence, is the honey of a society:

The death penalty is said to serve two principal social purposes: retribution and deterrence of capital crimes by prospective offenders.

In part, capital punishment is an expression of society's moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs.... Indeed, the decision that capital punishment may be the appropriate sanction in extreme cases is an expression of the community's belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response may be the penalty of death. Statistical attempts to evaluate the worth of the death penalty as a deterrent to crimes by potential offenders have occasioned a great deal of debate. The results simply have been inconclusive....

Although some of the studies suggest that the death penalty may not function as a significantly greater deterrent than lesser penalties, there is no convincing empirical evidence either supporting or refuting this view. We may nevertheless assume safely that there are

46. See ROBERT K. MERTON, *SOCIAL THEORY AND SOCIAL STRUCTURE* 153–54 (1968) (arguing that in the pursuit of economic success some people may resort to illegitimate means, such as criminal acts, when they perceive society's legitimate means to be a hindrance to their success).

47. Most treatment programs today focus concern on one or a few issues affecting the deviant individual instead of the whole person. In recent years, however, criminologists, through a system of restorative justice, began seeking a broader approach to the understanding of criminal behavior, one that takes into consideration the individual in relation to his environment, the larger community. See Eugene McLaughlin et al., *Introduction: Justice in the Round—Contextualizing Restorative Justice to RESTORATIVE JUSTICE: CRITICAL ISSUES* 1, 1–2 (Eugene McLaughlin et al. eds., 2003).

murderers, such as those who act in passion, for whom the threat of death has little or no deterrent effect. But for many others, the death penalty undoubtedly is a significant deterrent. There are carefully contemplated murders, such as murder for hire, where the possible penalty of death may well enter into the cold calculus that precedes the decision to act. And there are some categories of murder, such as murder by a life prisoner, where other sanctions may not be adequate.

The value of capital punishment as a deterrent of crime is a complex factual issue the resolution of which properly rests with the legislatures, which can evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts....

....

.... [However, t]here is no question that death as a punishment is unique in its severity and irrevocability.... It is an extreme sanction, suitable to the most extreme of crimes.⁴⁸

Undoubtedly, social harmony is the collective consciousness of all people. The inverse of this relationship is that everyone is the collective consciousness of social harmony. In utilizing a theory for justifying punishment, one that focuses simply on the offender’s criminal action will likely produce unequal results, such as granting leniency to the privileged and punishment to the socio-economically disadvantaged.⁴⁹ This is counter to the notion of a collective consciousness. The realization of consciousness stems from the foundation of society’s ideals.⁵⁰ Our democratic society is based on quantifiable freedoms and the ability to aggressively accumulate wealth which serves to boost an individual’s social and economic standing.⁵¹

48. *Gregg*, 428 U.S. at 183–87.

49. See generally JEFFREY REIMAN, *THE RICH GET RICHER AND THE POOR GET PRISON: IDEOLOGY, CLASS, AND CRIMINAL JUSTICE* (7th ed. 2004).

50. According to Emile Durkheim, the collective consciousness emerges over time as people interact with each other to produce ideas, beliefs, and feelings that are common to the members of the society. See KENNETH ALLAN, *EXPLORATIONS IN CLASSICAL SOCIOLOGICAL THEORY* 108–09 (2005).

51. As stated by Henry Clay:

The present social system in regard to economic activities is based on two institutions, *property* and *freedom of enterprise*. By the institution of property (or private wealth) society allows a person the exclusive use and control, and even

Both ideals propagate inequality and indifference. The dharmic philosophy teaches that every individual has the ability to realize and transcend these disharmonies, along with race, religion, and gender differences. While Dharma may be viewed as the guardian of cosmic harmony at a universal level,⁵² it is also acknowledged as an individual's responsibility to his own well being and that of society.⁵³ As such, the reasoning behind a particular punishment should focus on the offender's action as well as the level of social disruption caused by the action.

The concept of Dharma bears similarities to our current system which emerged out of common law. Our system follows the reasoning that some type of enforcement is necessary to maintain order and effectuate justice.⁵⁴ Under *Sanatana Dharma*, as with the common law, the governing authority is bound by the law and must honor the law of society, either within a particular community or internationally.⁵⁵ This is consistent with the notion of a democratic society which emphasizes principles of self-governance.⁵⁶ The second similarity is the adherence to customs and acceptable patterns of behavior. Custom symbolizes trustworthiness in common law and in dharmic tradition. Initially the comprising the practices of people of varying communities, it

the disposition after death, of any wealth that person may acquire; by freedom of enterprise society allows a person to seek wealth in any way that person chooses.

HENRY CLAY, *ECONOMICS: AN INTRODUCTION FOR THE GENERAL READER* 357 (1918).

52. See RIG VEDA BOOK 1: HYMN I. AGNI, text 8 (Ralph T.H. Griffith trans., 1896), <http://www.sacred-texts.com/hin/rigveda/rv01001.htm> (last visited Jan. 5, 2010).

53. See *supra* note 21 and accompanying text.

54. Shortly after the American Civil War, the Supreme Court of the United States stated:

We admit that the acts of the several States in their individual capacities, and of their different departments of government, executive, judicial, and legislative, during the war, so far as they did not impair or tend to impair the supremacy of the National authority, or the just rights of citizens under the Constitution, are, in general, to be treated as valid and binding. The existence of a state of insurrection and war did not loosen the bonds of society, or do away with civil government, or the regular administration of the laws. Order was to be preserved, police regulations maintained, crime prosecuted, property protected, contracts enforced, marriages celebrated, estates settled, and the transfer and descent of property regulated precisely as in time of peace. No one that we are aware of seriously questions the validity of judicial or legislative acts in the insurrectionary States touching these and kindred subjects, where they were not hostile in their purpose or mode of enforcement to the authority of the National government, and did not impair the rights of citizens under the Constitution.

Horn v. Lockhart, 84 U.S. 570, 580 (1873).

55. See YAJNAVALKYA SMRITI, BOOK I: THE ÂCHÂRA ADHYÂYA 6 (Srisa Chandra Vidyârnav trans., 1918) (describing the sources of Hindu law and stating that all individuals of society should abide by them).

56. DALE T. SNAUWAERT, *DEMOCRACY, EDUCATION, AND GOVERNANCE: A DEVELOPMENTAL CONCEPTION* 69 (1993).

eventually rises in significance to become integrated into codified laws.⁵⁷ The rules passed along from one generation to the next are those least detrimental to the individual's subscription to legitimate authority or religion under the common law,⁵⁸ or to individual and societal harmony under dharmic philosophy. The custom of common law flows from the nearly unanimous approval of laws considered fair to the people.⁵⁹ Similarly, laws which flow from the dharmic are those practiced by a virtuous heart and created by those free from desire and hatred.⁶⁰ This dispassionate outlook on the theory of justice is also in line with our modern administration of codified laws.⁶¹ For example, the Second Circuit found the International Society for Krishna Consciousness ("ISKCON") to be a religious organization protected by the First Amendment because the members practiced their version of Sankirtan, which included religious singing and distributing Indian treatises.⁶² In fact, the religious commitment of the group molded the collective conscience that served as the instrument in the solicitation of funds to support a member's search for spiritual enlightenment.⁶³ The Second Circuit had to determine whether ISKCON's solicitation of funds constituted a religious practice protected by the First Amendment.⁶⁴ To do so, the court looked to the sincerity of the devotees who practiced Sankirtan and solicited funds:

Sincerity analysis seeks to determine the subjective good faith of an adherent in performing certain rituals. The goal, of course, is to protect only those beliefs which are held as a matter of conscience. Human nature being what it is, however, it is frequently difficult to separate this inquiry from a forbidden one involving the verity of the underlying belief. People find it hard to conclude

57. See MATTHEW HALE, *THE HISTORY OF THE COMMON LAW OF ENGLAND* 21–22 (6th ed. 1820); DANIEL E. HALL, *CRIMINAL LAW AND PROCEDURE* 30 (5th ed. 2009).

58. Sociologists have long held that norms of acceptable behavior are passed on from one generation to the next in the form of customs and traditions, including subscription to some form of worship and recognition of authority the people consider as legitimate. See, e.g., Christine Horne, *Sociological Perspectives on the Emergence of Social Norms*, in *SOCIAL NORMS* 3, 3–5 (Michael Hechter & Karl-Dieter Opp eds., 2001).

59. See HALE, *supra* note 57, at 23.

60. See LAWS OF MANU: CHAPTER II, text 1 (George Bühler, trans.), <http://www.sacred-texts.com/hin/manu/manu02.htm> (last visited Jan. 5, 2010).

61. See *Int'l Soc'y for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 447 (2d Cir. 1981) ("The unpopular traditions, practices, and doctrines of alien religions need not receive our approval or support, but must be tolerated if our freedoms are to be preserved.")

62. *Id.* at 432–33.

63. *Id.* at 442–43.

64. *Id.* at 441.

that a particularly fanciful or incredible belief can be sincerely held. Therefore, this analysis is most useful where extrinsic evidence is evaluated. For example, an adherent's belief would not be "sincere" if he acts in a manner inconsistent with that belief...⁶⁵

Despite evidence of fraudulent solicitations, the Second Circuit found the solicitations to be a religious practice and held a New York rule prohibiting solicitations to be unconstitutional under the First Amendment.⁶⁶

The dharmic notion of justice is unlike other legal philosophies, such as natural law, where the law is set by nature, and legal positivism, where individuals create the law without a connection to ethics or morality.⁶⁷ Dharmic law equates more with the notion of sincerity offered by the Second Circuit in the *Barber* decision.⁶⁸ The harmony of society relies on the internal duty of the individual, a duty bounded in sincerity. Given this individual-societal connection, the promulgation of laws must take into consideration the regulation of societal disharmony and fairness if it is to contribute to the development of a collective consciousness. The application of fairness in the law is an exercise in the delivery of true justice. The justice system strives to be fair, while resting on the belief of human sincerity. The individual, as well as the State, has a stake in preserving the system to maintain justice or risk destroying the community.⁶⁹ As Aristotle stated:

Both the lawless person and the greedy and unfair person seem to be unjust. Obviously, then, both the lawful person and the fair person will be just.... The laws have something to say about everything, their aim being the common interest.... So, in one sense, we call anything just that tends to produce or to preserve happiness and its constituents for the community of a city. Law requires us to do the acts of a courageous person.... Justice in this sense, then, is complete virtue, not without qualification, but in relation to another person.... It is complete because he who possesses it can exercise

65. *Id.* (internal citations omitted).

66. *Id.* at 442–43, 447.

67. WILLIAM A. WINES, *ETHICS, LAW, AND BUSINESS* 34–35 (2006).

68. See *supra* note 65 and accompanying text.

69. See LAWS OF MANU: CHAPTER VIII, text 15 (George Bühler, trans.), <http://www.sacred-texts.com/hin/manu/manu08.htm> (last visited Jan. 5, 2010).

his virtue in relation to another person, not only himself.⁷⁰

The harmony of a society is disrupted or destroyed in instances “[w]here justice is destroyed by injustice, or truth by falsehood” while the justice system watches.⁷¹

Our notion of justice stems from the principle of preserving happiness and the political society.⁷² In this regard, the concept of sincerity should not be confused with a set of moral beliefs or a particular political system. Instead, an investigation of sincerity and harmony may begin with a model that accommodates the realistic and flexible patterns of human conduct. Such an exploration into the collective consciousness must begin with an understanding of the law of cause and effect. The collective consciousness relies on adherence to self-control, which in turn is based on a conception of the law dictated by individual and societal conscience. It is this internal-external societal harmony that the dharmic principle establishes its coexistence with the conscientious action located in the individual’s karmic bonds.

B. The Karma of a Crime

The definition of a crime is usually equated with *mens rea* (guilty mind) plus *actus reus* (guilty act), along with other pertinent attending circumstances.⁷³ Without direct evidence of a person’s intent to perform an act, a fact-finder is left attempting to infer the intent by examining the effect of the actions. Without evidence of an offender truthfully answering questions regarding his thought processes, determining the severity of punishment on the offender, or the extent of his culpability, may objectively be ineffectual. In order to seek harmony in a society, the hindrances and enemies of the Truth must be driven away so that the individual remains thornless, or free from desire.⁷⁴ Depending on what the society is seeking to define as a criminal offense, it is important to determine whether the legal definition of the violation sufficiently regulates the behavior. As harmony requires the individual to utilize personal introspection as a means of self-regulation, an effective legal system will require effective

70. ARISTOTLE, *NICOMACHEAN ETHICS* 82–83 (Roger Crisp ed. & trans., 2004).

71. See *LAWS OF MANU: CHAPTER VIII*, *supra* note 69, at text 14.

72. See ARISTOTLE, *supra* note 70, at 82.

73. See *supra* note 19 and accompanying text.

74. See *RIG VEDA BOOK 1: HYMN XLI. VARUNA, MITRA, ARYAMAN*, text 4 (Ralph T.H. Griffith trans., 1896), <http://www.sacred-texts.com/hin/rigveda/rv01041.htm> (last visited Jan. 5, 2010).

legislation, but must also rely on the population to self-regulate its behavior. We normally seek guidance through our cultural values and religious beliefs. However, the application of values and beliefs often overlook the forces of desire that pervades these ideals, thereby resulting in unintended effects caused by our choices and circumstances. In short, the intent of a guilty mind exists within the context of its own desires. We see this in the law of Karma.

“[T]he self is identified with desire alone. As is its desire, so is its resolution; and as is its resolution, so is its deed; and whatever deed it does, that it reaps.”⁷⁵ This is the Eternal Law of Karma,⁷⁶ the ultimate principle of cause and effect. Like a principle in physics, this theorem is simply that for every cause, there is an effect; likewise, for every effect, there is an underlying cause.⁷⁷ Whether or not the offender intends the action, there is a result.⁷⁸ Karma does not mean that a criminal is meant to commit a crime, nor that there is an equal punishment to the cause of the crime.⁷⁹ The law of Karma holds that each individual is born with innate conditions as a result of prior disharmony.⁸⁰ These conditions compromise the tendencies which are part of our person.⁸¹ As we grow and learn, these tendencies interact with the social environment and the

75. BRIHADARANYAKA UPANISHAD, pt. 4, ch. 4, para. 5, http://www.vedantaiowa.org/Upanishads_PDF/BrihadaranyakaUp.pdf (last visited Jan. 5, 2010).

76. Those who act through offering attain transcendence. See RIG VEDA BOOK 1: HYMN CXXV. SVANAYA, text 6 (Ralph T.H. Griffith trans., 1896), <http://www.sacred-texts.com/hin/rigveda/rv01125.htm> (last visited Jan. 5, 2010).

77. EDITORS OF HINDUSIM TODAY, *supra* note 8, at 46.

78. At death, one’s actions attach to the immutable soul as it comes together with another body. See RIG VEDA BOOK 10: HYMN XIV. YAMA, text 8 (Ralph T.H. Griffith trans., 1896), <http://www.sacred-texts.com/hin/rigveda/rv10014.htm> (last visited Jan. 5, 2010).

79. In the spiritual sense, it should be noted that Karma does not mean if you kill someone, you will simply be reborn in a species or life appropriate to your prior actions, nor is there is such a thing as good or bad Karma. Karma is not equivalent to retribution or consequential justice, as these assume a conscious sense of inevitability for each action. People can act “good” and “suffer” (as we commonly know these terms), while others act “bad” and not “suffer.” Karma further does not create action nor does it mean that due to prior action, future action is preordained. These are misunderstandings of the concept under a one-dimensional analysis that presupposes a universal moral law and imparts a religious connotation. Rather, when considering the issue of transmigration, the soul enters the physical world in a life which was created, due in part, according to the actions of its previous life. Every action in this life contributes to the conditions in the transmigrated existence, whether in this context or some other-worldly context. The individual may suffer or benefit due to these conditions in light of the cause and effect of the universe. This law of cause and effect also does not occur according to linear time, even though we may want to believe certain consequences are due to our past experiences. It is nearly impossible for us, without attaining a higher level consciousness, to determine every cause which has previously occurred to affect our current state of being.

80. RAM DASS, PATHS TO GOD: LIVING THE BHAGAVAD GITA 43–44 (2004).

81. See *id.*

tendencies of others resulting in the collective consciousness.⁸² An individual can change the circumstances due to his Karma through an understanding of the principle and a conscious release of the desires that created the effect.⁸³ In relation to the justice system, Karma is the effect of tendencies that have become habits. In a literal sense, if someone believes that he is a violent person, then he will be a violent person.⁸⁴ The karmic effect influences our ability to change our habits and tendencies through our own sense of individual understanding. In other words, only we know how difficult it is to change ourselves. As such, our individual actions (Karma) affect both our individual and collective consciousness (Dharma).

By way of extrapolation, the karmic effect could lead the police to arrest an innocent person, a jury to convict that person, and the judge to overturn the verdict, all actions performed with consequences.⁸⁵ An argument can be made that this timeline of events occurred due to an anthropomorphic universe conscientiously balancing cause and effect.⁸⁶ The argument could be made that each party in the scenario acted in accordance with his habits and tendencies, which in turn affected others. The overall harmony among living beings is affected by all living beings, as the effects caused by an individual contributes to the karmic effect of the society. Karma as a principle does not inherit customs and does not operate to benefit a particular society. An individual's decisions are based on free will and guided by chances some of which are conditioned by habits and tendencies.⁸⁷ Simply stated, there is always a consequence to every act:

When an apple falls from a tree, gravity causes the fall of the apple itself. However, not only the law of

82. *See id.* at 44, 70–72.

83. *Id.* at 70–72.

84. *See supra* note 75 and accompanying text.

85. *Cf. Herrera v. Collins*, 506 U.S. 390, 415 (1993) (“It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible. But history is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence Recent authority confirms that over the past century clemency has been exercised frequently in capital cases in which demonstrations of ‘actual innocence’ have been made.”).

86. For example, in the interest of fairness and seeking balance, the Supreme Court has presumed a continuing collateral consequence (such as the danger of a penalty enhancement in a subsequent criminal proceeding based on a prior wrongful conviction) in wrongful convictions for jurisdictional purposes when the defendant completes his sentence with a pending challenge to that conviction. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

87. Those who act through offering choose brightness. *See RIG VEDA BOOK 1: HYMN CXXV. SVANAYA, supra* note 76.

gravity, but also the law of conservation of energy, determines the consequences of this event. In just the same way, the overall consequences of human actions are determined by the doctrine of karma as well as the doctrine of free will. The negative *samskaras* [or an impression left by a previous action or thought] of past karma can be overcome by human will.... The Law of Karma has a parallel in physics. Just as the energy gained by a moving body is a function of the mass of the body and its velocity, the karma acquired by an individual is a function of the type of act and the goodwill or bad will put by the ego in the act itself.

When a crime is committed, two possibilities exist. Either the person is creating a brand new karma... by misusing his free will, or his action is motivated by the negative *samskaras* of his past karma. In either case, he is fully responsible for his actions. He could have been helped if his free will had been strengthened by yoga, meditation,... [and] positive thinking....⁸⁸

When an individual dwells on the accumulation of material objects, such as wealth, artifacts, or even emotional enjoyment, this creates attachment.⁸⁹ When the desire for the object is unfulfilled, the individual grows angry, from which flows delusion and the loss of understanding.⁹⁰ No longer able to adhere to the impositions of the collective consciousness or its fundamental requirements,⁹¹ he turns to

88. PANDIT, *supra* note 2, at 75 (emphasis in original); see also RADHAKRISHNAN, *supra* note 13, at 54 (“The cards in the game of life are given to us . . . , but we can call as we please, lead what suit we will, and as we play, we gain or lose.”).

89. See GITA BHASHYA: CHAPTER 2—THE PATH OF KNOWLEDGE, text 62–63 (Swami Gambhirananda trans.), http://www.sankaracharya.org/gita_bhashya_2.php (last visited Jan. 5, 2010).

90. *Id.*

91. Emile Durkheim, one of the main proponents of the collective consciousness, described the collective consciousness as “[t]he totality of beliefs and sentiments common to average citizens of the same society [that] forms a determinate system which has its own life . . . independent of the particular conditions in which individuals are placed” EMILE DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* 79–80 (George Simpson trans., 1964). Durkheim argued:

[I]ndividual representations were a result of individual consciousness (individual minds), while collective representations were a result of a *collective consciousness* (or social mind) Each and every subject has two consciousnesses: a “personal” one which defines his/her personality, and another one which is common to all society. Social cohesion is based upon the conformity of the personal consciousness to the collective consciousness.

Augustin Echebarria Echabe & José Luis Gonzalez Castro, *Social Memory: Macropsychological Aspects*, in *THE PSYCHOLOGY OF THE SOCIAL* 91, 93 (Uwe Flick ed., 1998).

deviance and crime.⁹² The source of the criminal violation can then be traced to the desire which created the conflict between the society, the collectiveness, and the offender. Thus, the desires should conform to the principles of a harmonious society. Hence, the justification for society's rules is the prevention of illegitimate material accumulation and the restraint on individual anger due to the lack of accumulation or the deliberate disruption of another individual's happiness.⁹³ The acquisition of wealth and gratification of desires, if opposed to the harmony within the collectivity through society's lawful acts, must be avoided if it causes such pain.⁹⁴

The disruptive nature of criminal activity may be lessened if each offender understands the negative effects of his actions on the harmony of the collective consciousness. From the behaviorist point of view, an analysis of the greater experiences that contributed to the actions of the offender may assist in determining the cause of a crime, while the justice system is likely to assess the possibilities of rehabilitation and future criminal action. Furthermore, the offender's loved ones may look to blame societal forces for the cause of criminal activity. Unlike these traditional viewpoints, the karmic philosophy looks for explanations within and without the individual's sense of collective consciousness. Rather than focusing on rehabilitation or deterrence, which is difficult to assess or determine, the karmic principle of punishment is directed towards correcting each behavioral action that is correctable. While Karma may situate the individual in a particular role, taking responsibility for that role is the dharmic. Thus, the two principles work in conjunction to provide a holistic approach to the justice system.

Dharma is the effect produced by a society's action under a karmic interplay of prior actions.⁹⁵ These are effects which are already engendered. Dharma is the guide of an individual's action through which karmic laws manifest themselves by way of individual behavior.⁹⁶ In essence, Dharma is both the cause and effect of the collective conscience.⁹⁷ If an offender steals from a store, the system can look to the effect and may impose a set of theft sanctions. If a person kills the clerk in the store, the offender may attempt to mitigate a penalty based

92. See KENNETH THOMPSON, EMILE DURKHEIM 77–78 (1982).

93. See LAWS OF MANU: CHAPTER IV, text 176 (George Bühler, trans.), <http://www.sacred-texts.com/hin/manu/manu04.htm> (last visited Jan. 5, 2010).

94. See *id.*

95. See DASS, *supra* note 80, at 58.

96. See *id.* at 58–61.

97. See *id.* at 58–59.

on the actions of his individual life which led to the crime. The system can look to the balance between the harm caused and the harm effectuated. In practice, the collective consciousness may rectify the harm caused under a penalty guideline as well as incidental remedies to alleviate the harm effectuated. The justice system, however, desires only a formal justification for its application of sanctions under its presumptive operating principles of impartiality and objectivity. While the legislature may enact laws, the enforcement measures seek to individualize the infliction or mitigation of the punishment. The system may then aggravate an offender's sentence for a particular crime through additional circumstances, in the event the offender was acting with malice or specific intent,⁹⁸ or circumstances which may constitute moral turpitude.⁹⁹ These standards may be beneficial in structuring a sentence, but they fail to focus on the underlying cause of the societal behavior.

The disingenuous motive for material accumulation, such as that of a theft offender, fuels a desire which denigrates the harmony of society.¹⁰⁰ Yet, rather than viewing the offender as separate from society due to the action, Dharma and Karma offer an explanation of the behavior in the context of harmony and societal realities. The karmic principle requires that the effect of each system, where possible, be first traced to the underlying cause,¹⁰¹ the most immediate determinable cause for our purposes. These causes must further contribute to the harmony of the society under the dharmic principle. For example, our society does not want to punish the indigent offender more severely or in a different manner than the rich and powerful offender,¹⁰² even though there seems

98. See *Lowenfield v. Phelps*, 484 U.S. 231, 246 (1988).

99. See, e.g., *State v. Hollingsworth*, 146 So. 660, 661 (Fla. 1933) ("Moral turpitude involves the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society. It has also been defined as anything done contrary to justice, honesty, principle, or good morals, though it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated." (internal citations omitted)); *Pullman Palace-Car Co. v. Cent. Transp. Co.*, 65 F. 158, 161 (E.D. Pa. 1894).

100. In today's society, some people seek to become wealthy by stealing from others. Ranging from the neighborhood robber to corporate executives, all seek material accumulation by fraudulent means with varying negative impacts on the collective conscience and the maintenance of societal harmony. See SHRINIVAS TILAK, UNDERSTANDING KARMA: IN LIGHT OF PAUL RICOEUR'S PHILOSOPHICAL ANTHROPOLOGY AND HERMENEUTICS 143 (2006) ("Karma is understood as an interpenetrating, intersubjective, and intertemporal process. An action does not necessarily remain confined to one life or one time frame; it cannot be restricted to one agent alone. Effects of action can be wide ranging with clear implications to others.").

101. See *id.*

102. See *Lynce v. Mathis*, 519 U.S. 433, 440 (1997) ("In both the civil and the criminal context, the Constitution places limits on the sovereign's ability to use its lawmaking power to modify bargains it has made with its subjects. The basic principle is one that protects not only the rich and the powerful,

to be a propensity for bias in the system towards arresting and sentencing poor offenders.¹⁰³ The difficulty in defining and classifying the collective consciousness of a society can be traced to the disparity of economic and social inequality. Dharma and Karma require that each section of the society endeavor to enhance the harmony of the society as a whole, even if this means a willingness to sacrifice an individual's income or societal standing.¹⁰⁴ The justice system, therefore, must not only assess criminal acts or societal violations objectively, but also enforce punishment equitably.¹⁰⁵ A system which enforces punishment inequitably not only affects the moral fabric of the society, but is more likely to generate conflict and thereby disrupt the collective consciousness. Any imbalance created by injustice can be circumvented by the individuals who constitute the society, through conscious decision-making based on both the dharmic and karmic principles.

In our democratic process, we subscribe to the notion that important laws are established from the outgrowth of public concern and that the State enforces these laws through its police power.¹⁰⁶ For example, laws prohibiting driving under the influence of alcohol evolved over time after the moral outlook of drunkenness eroded, and these laws became the impetus to legislate morality as a form of public protection.¹⁰⁷ This also led to various changes to achieve effective punitive results, such as requiring the offender to voluntarily submit to a breath test, sanctioning the offender's driving license for a refusal, relying on expert testimony regarding the chemical analysis of an offender's breath test, or assuming impairment against an offender for a particular result.¹⁰⁸ While these initiatives have resulted in a decrease in alcohol-related fatalities in some

but also the indigent defendant engaged in negotiations that may lead to an acknowledgment of guilt and a suitable punishment." (internal citations omitted)); *see also* *Roesch v. State*, 633 So. 2d 1, 3 (Fla. 1993) (Kogan, J., dissenting) ("While the poor are not entitled to all that the rich might afford, both rich and poor alike nevertheless are entitled to access to the same remedy on an equal footing.").

103. *See generally* DEBORAH L. RHODE, *ACCESS TO JUSTICE* (2004).

104. *See supra* note 87 and accompanying text.

105. *See* *Simmons v. W. Haven Hous. Auth.*, 399 U.S. 510, 514 n.2 (1970) (Douglas, J., dissenting) ("[W]hile most of the cases extending equal protection to the judicial process have involved criminal proceedings, the constitutional mandate that there be no invidious discrimination between indigent and rich litigants is being recognized in civil cases as well. 'The equal protection clause applies to both civil and criminal cases; the Constitution protects life, liberty and property.'" (quoting *Lee v. Habib*, 424 F.2d 891, 901 (D.C. Cir. 1970)).

106. "The police power of a state extends beyond health, morals and safety, and comprehends the duty, within constitutional limitations, to protect the well-being and tranquility of a community. A state or city may prohibit acts or things reasonably thought to bring evil or harm to its people." *Kovacs v. Cooper*, 336 U.S. 77, 83 (1949).

107. *See* PHILIP J. COOK, *PAYING THE TAB: THE ECONOMICS OF ALCOHOL POLICY* 65 (2007).

108. *See* *Ransford v. District of Columbia*, 583 A.2d 186, 188-89 (D.C. 1990).

states, they have failed to assure the public that the problem is being curbed.¹⁰⁹ In the 1980's, the formation of national organizations clamored for change based on moral outrage at alcohol-related deaths on the highways and the lack of an effective means of punishment.¹¹⁰ This led to overwhelming changes in state laws, even though the evidence continues to be unclear whether the current methods of punishment (mandatory jail time, periods of license suspension, or alcohol programs) have a serious deterrent effect.¹¹¹

The effect of the collective consciousness on reckless drunken behavior may be clear, but the underlying cause of the offender's actions should be analyzed within the context of individual and societal disharmonies. The offender who decided to drive under the influence of alcohol did not weigh the potential of his actions affecting another individual to be more serious than the ability to safely operate a vehicle. Whether the problem is due to the lower cost of alcohol,¹¹² the location of bars necessitating transportation by a vehicle, or the cultural phenomena of male pressure to consume large quantities of alcohol,¹¹³ no definitive research exists that identifies specific underlying causes. Some have argued that this difficulty in identifying the underlying causes is due to the varying set of circumstances that are indigenous to a particular local community.¹¹⁴ Given the separate sense of harmony from one community to another, the subscription to identical societal norms and their sanctions cannot be applied from one location to another.¹¹⁵ Nonetheless, the importance of an individual's self-control must be integrated into the moral framework of each society's alcohol consumption habits. This is possible not only in this nation, but in countries all over the world, with strong consideration given to the effects of the collective consciousness on the individual.¹¹⁶ As one scholar concluded:

The consumption and abuse of alcoholic beverages has been and continues to be a social problem the world over.

109. See COOK, *supra* note 107, at 99.

110. *Id.*

111. See *id.* at 100.

112. *Id.*

113. JAMES B. JACOBS, DRUNK DRIVING: AN AMERICAN DILEMMA 51 (1989).

114. See, e.g., *id.* at 53.

115. See *id.*

116. See Simran K. Maxwell, *Alcohol*, in A COMPARATIVE PERSPECTIVE ON MAJOR SOCIAL PROBLEMS 153, 155-82 (Rita J. Simon ed., 2001).

The history of various countries reflects the important cultural component involved in drinking or abstaining. Most cultures are gradually changing to emphasize moderation and advocate sensible drinking for their population, with particular focus on youth. It is interesting to note, however, that cultures that consider drinking a normal part of their lives from child rearing through their adult years see less alcohol abuse than cultures that condemn alcohol. Legal measures have had an impact in some countries, while in others alcohol-related laws are not sufficiently enforced and therefore not an effective means to control criminal activity. This appears to be a complex issue that can only be effectively addressed by... communities working together.¹¹⁷

Many offenders do not consider the societal consequences of their actions, but in actuality these effects remain, whether or not they are considered. At the same time, the collective consciousness of the society should consider consequential action on the individual before and after a criminal offense. An offender may serve the punishment intended to deter future criminal activity, but he must still return to his particular community where criminal behavior is encouraged or discouraged. The justice system must contemplate these effects as well as the underlying causes, such as whether the individual acts are beneficial to the harmony or contribute to the disharmony of that society.

PART II

A. The Justice of Mohandas Karamchand Gandhi

In our modern times, there is no greater practical example of living according to the principles of Dharma and Karma than that of the life of Mohandas K. Gandhi. Gandhi's principle of nonviolent active resistance—which he termed *Satyagraha*¹¹⁸—became the catalyst for

117. *Id.* at 182.

118. Gandhi wrote:

Satyagraha is literally holding on to Truth and it means, therefore, Truth-force. Truth is soul or spirit. It is, therefore, known as soul-force. It excludes the use of violence because man is not capable of knowing the absolute truth and,

India's struggle for independence from the colonial shackles of British domination and system of injustice. Living his life as any ordinary humble human being and dressing in simple loin cloth he wove himself,¹¹⁹ Gandhi not only received the respect and admiration of all who came in contact with him, but he also harnessed the collective conscience of his people into a formidable force.¹²⁰ He searched for the Truth in life by tapping into the consciousness of humankind. This he did with the firm conviction that there exists in all of us an inherent harmony, an eternal law that governs our existence.¹²¹ Through the principle of *ahimsa* (nonviolence), Gandhi believed that the individual could be free from passion in thought, speech, and action and could rise above hatred, selfishness, and violence.¹²²

Gandhi's search for justice began in South Africa where apartheid, subjugation, and unequal justice were the laws of the land. In the beginning minutes of the motion picture portraying his life, Gandhi, a young practicing attorney, was traveling in South Africa when he was forcibly thrown off a train simply because he had acquired a seat in the first class section.¹²³ Instead of anger, resentment, or hate, he paid less attention to his individual suffering and focused more on the disruption of the collective conscience and the perpetuation of injustices in the society.¹²⁴ He would later write:

[While on the train, a passenger] saw that I was a "coloured" man. This disturbed him. Out he went and came in again with one or two officials. They all kept quiet, when another official came to me and said, "Come along, you must go to the van compartment." "But I have a first class ticket," said I.... "I refuse to get out voluntarily." The constable came. He took me by the

therefore, not competent to punish. The word was coined in South Africa to distinguish the nonviolent resistance of the Indians of South Africa from the contemporary "passive resistance" of the suffragettes and others. It is not conceived as a weapon of the weak.

M. K. GANDHI, NON-VIOLENT RESISTANCE (SATYAGRAHA) 3 (Bharatan Kumarappa ed., Dover Publ'ns 2001) (1961) [hereinafter NON-VIOLENT RESISTANCE] (providing a compilation of Gandhi's writings and articles published by Gandhi in a weekly newspaper and journal).

119. MAHATMA GANDHI—HIS LIFE IN PICTURES: GREAT SOUL IN BEGGAR'S GARB (4th ed. 1987), http://www.mkgandhi-sarvodaya.org/bio_5000/bio5.htm (last visited Jan. 5, 2010).

120. See *infra* notes 133–44 and accompanying text.

121. See M. K. GANDHI, AN AUTOBIOGRAPHY: THE STORY OF MY EXPERIMENTS WITH TRUTH 291–92, 419–20 (Mahadev Desai trans., 1996) [hereinafter GANDHI'S AUTOBIOGRAPHY].

122. See *id.* at 343–44, 419–20.

123. GANDHI (Columbia Pictures 1982).

124. See GANDHI'S AUTOBIOGRAPHY, *supra* note 121, at 94.

hand and pushed me out. My luggage was also taken out. I refused to go to the other compartment and the train steamed away.... It was winter, and winter in the higher regions of South Africa is severely cold. Maritzburg being at a high altitude, the cold was extremely bitter.... I began to think of my duty. Should I fight for my rights or go back to India, or should I go on to Pretoria without minding the insults, and return to India after finishing the case? It would be cowardice to run back to India without fulfilling my obligation. The hardship to which I was subjected was superficial—only a symptom of the deep disease of colour prejudice. I should try, if possible, to root out the disease and suffer hardships in the process. Redress for wrongs I should seek only to the extent that would be necessary for the removal of the colour prejudice. So I decided to take the next available train....¹²⁵

The following day in reaching his destination, Gandhi also traveled by stage-coach, but rather than being allowed to sit inside the passenger section, the conductor forced him to sit outside near the coachman.¹²⁶ During the trip, the conductor asked Gandhi to again move so that he could smoke a cigarette outside, and Gandhi politely refused.¹²⁷ This refusal angered the conductor, who then proceeded to push and beat Gandhi.¹²⁸ While holding onto the rail to keep his seat at the risk of breaking his wrists, Gandhi took a heavy beating.¹²⁹ The other passengers watched until they finally begged the conductor to stop.¹³⁰ These incidents shaped Gandhi's philosophy of *Satyagraha*, which he applied at the national level to bring freedom and justice to his countrymen.¹³¹ While helping India gain its freedom from the oppressive colonizers, Gandhi also advocated the importance of self-independence and duty, taught children to read, and took his turn cleaning the latrines.¹³² Through such display of strength in humility, Gandhi began the convergence of the karmic and dharmic in the systematic crumbling of colonial injustice.

125. *Id.* at 93–94.

126. *Id.* at 95.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 174.

132. *Id.* at 187–88, 280–81.

Gandhi's harmony with a system of civil justice tapped into the consciousness of his people despite their linguistic, religious, and moral diversities. Through an understanding of *ahimsa*, he successfully shaped a social and moral integration between society and the individual, bringing about a collective consciousness entirely focused on India's freedom.¹³³ His nonviolent methods of passive resistance also penetrated the collective consciousness of the British and exposed the forced legitimization of injustice for the world to see.¹³⁴ This Gandhi did while maintaining the harmony of his people to the point that even his enemies and the defenders of the unjust judicial system eventually came to respect him.¹³⁵ For example, when he lived in South Africa, Gandhi was arrested and released several times for fighting to end unjust laws and seeking change.¹³⁶ Because he realized a few years earlier to not react to the injustices he received, Gandhi successfully assisted his countrymen to regain a sense of harmony in the African nation by preserving his fight, not for his individual gain, but for restoring civility in an unjust society.¹³⁷ By the time Gandhi returned to India, he had gained a friend in one of his adversaries, General Smuts, the Colonial Secretary and

133. MAHATMA GANDHI—HIS LIFE IN PICTURES: MAHATMA AND THE MASSES (4th ed. 1987), http://www.mkgandhi-sarvodaya.org/bio_5000/bio5.htm (last visited Jan. 5, 2010) (“Many Indians renounced their titles and honours, lawyers gave up their practices, students left colleges and schools, and thousands of the city-bred went into the villages to spread the message of non-violent non-cooperation with the ‘satanic’ government and to prepare the masses of [sic] defy the law. The somnolent people woke up in a frenzy of courage and self-sacrifice. Bonfires of foreign cloth lit the sky everywhere and the hum of the spinning wheel rose like a sacrificial chant in thousands of homes. Women, secluded for centuries, marched in the streets with men and incidentally freed themselves from age-old shackles. In speech after speech, article after article . . . , Gandhi poured forth his passionate utterances which electrified the people.”).

134. GANDHI'S AUTOBIOGRAPHY, *supra* note 121, at x; VED MEHTA, MAHATMA GANDHI AND HIS APOSTLES 129 (1993).

135. *Id.* at 144. In 1922, Gandhi pled guilty to the charge of promoting disaffection toward the Government established by British law in India. *Id.* at 143–44. In his plea, he told the judge:

In my humble opinion, non-cooperation with evil is as much a duty as is cooperation with good I am here, therefore, to invite and submit cheerfully to the highest penalty that can be inflicted upon me for what in law is a deliberate crime and what appears to me to be the highest duty of a citizen. The only course open to you, the Judge, is either to resign your post and thus dissociate yourself from evil, if you feel that the law you are called upon to administer is an evil and that in reality I am innocent; or to inflict on me the severest penalty if you believe that the system and the law you are assisting to administer are good for the people of this country and that my activity is, therefore, injurious to the public weal.

Id. at 144. While the judge sentenced Gandhi to six years imprisonment, of which Gandhi only served twenty-two months, the judge added: “no one would be better pleased than I’ if the government later saw fit to reduce the sentence.” *Id.*

136. *Id.* at 128.

137. *See id.* at 129.

South African Administrator.¹³⁸

The [South African] Government tried repression and even shooting, and many lives were lost. “In the end,” as an American biographer [] put it, “General Smuts did what every Government that ever opposed Gandhi had to do—he yielded.” Gandhi was released and, in January 1914, a provisional agreement was arrived at between him and General Smuts and the main Indian demands were conceded. Gandhi’s work in South Africa was [] over and, in July 1914, he sailed with his wife for England.... Before sailing, he sent a pair of sandals he had made in jail to General Smuts as a gift. Recalling the gift twenty-five years later, the General wrote: “I have worn these sandals for many a summer since then even though I may feel that I am not worthy to stand in the shoes of so great a man.”¹³⁹

With each non-violent action that Gandhi initiated, he took great pains to map a harmonious path to the development of the societal collective conscience. Thus, through his actions, he emphasized the karmic without any attachment or expectation of personal rewards.¹⁴⁰ “According to Gandhi, that action alone is just, which does not harm either party to a dispute. This idea of justice is the very heart of... [*S*]atya*graha* and conflict resolution.”¹⁴¹ Gandhi did not fully accept the retributivist notion of justice, due to the difficult determination of proportionality, or the utilitarian method, which advocated justice for the greatest number of individuals in a distinctly divided culturally complex society.¹⁴² His sacrifices under *Satyagraha* meant that any action performed was fully for the public good.¹⁴³ “He was not prepared to do any work that was not good for the society, for the nation and for humankind.”¹⁴⁴

Under Gandhi’s view of criminal behavior, the reasons for punishment should focus on remedying harm to society as well as the life of the

138. *Id.*

139. MAHATMA GANDHI—HIS LIFE IN PICTURES: EMERGENCE OF MAHATMA (4th ed. 1987), http://www.mkgandhi-sarvodaya.org/bio_5000/bio5.htm (last visited Jan. 5, 2010).

140. B.N. GHOSH, GANDHIAN POLITICAL ECONOMY: PRINCIPLES, PRACTICE AND POLICY 134 (2007).

141. *Id.* at 135 (emphasis in original) (internal citations omitted).

142. *Id.* at 137.

143. *Id.*

144. *Id.*

offender whose troubles reside within the society.¹⁴⁵ The victim of a crime should neither retaliate nor submit to the offender, but rather seek to win his reform through selfless service.¹⁴⁶ The victim cannot penetrate the offender's conscience if, at the same time, the offender is facing criminal action under a system that is not concerned with his rehabilitation.¹⁴⁷ True rehabilitation is directing the offender toward a course of honest living without fear of being incapacitated by the judicial system.¹⁴⁸ A society that tries to understand the true karmic nature of the offender is better prepared to fashion a proper remedy. A society cannot maintain an adequate balance of harmony under the dharmic principle when the society itself has created an imbalance in the lives of its individuals. For example, a villager, injured by thieves who had broken into his house, asked Gandhi for advice on how to deal with the thieves.¹⁴⁹ Gandhi stated that there were three ways to deal with the thieves: (1) report the thieves to the police and provide no relief to the victim; (2) passively acquiesce in the behavior and allow crime to flourish in the face of cowardice; or (3) turn to *Satyagraha*.¹⁵⁰ Gandhi commended the third option and explained:

[*Satyagraha*] required that we should regard even thieves and criminals as our brothers and sisters, and crime as a disease of which the latter were the victims and needed to be cured. Instead of bearing ill-will towards a thief or a criminal and trying to get him punished they should try to get under his skin, understand the cause that had led him into crime and try to remedy it. They should, for instance, teach him a vocation and provide him with the means to make an honest living and thereby transform his life. They should realize that a thief or a criminal was not a different being from themselves. Indeed, if they turned the searchlight inward and closely looked into their own souls, they would find that the difference between them was only one of degree. The rich, moneyed man who made his riches by exploitation or other questionable means, was no less guilty of robbery than the thief who picked a pocket or broke into a house

145. NON-VIOLENT RESISTANCE, *supra* note 118, at 350–51.

146. *Id.* at 351–52.

147. *Id.*

148. *Id.* at 350.

149. *Id.*

150. *Id.*

and committed theft. Only the former took refuge behind the facade of respectability and escaped the penalty of law. Strictly speaking... , all amassing or hoarding of wealth, above and beyond one's legitimate requirements was theft. There would be no occasion for thefts and, therefore, no thieves, if there was a wise regulation of riches and absolute social justice prevailed. [If India was independent], there would be no thieves and no criminals, or else it would be [independence] only in name. The criminal was only an indication of the social malady and since nature cure... included the triple cure for body, mind and soul, they must not be satisfied with merely banishing physical illness... , their work must include the healing of the mind and soul, too, so that there would be perfect social peace in their midst.¹⁵¹

Inherent in every individual, society, and custom is the concept of unity. The struggle for social integration, cultural understanding, and equality is a reflection of the composition of the collective consciousness. In such a state, the spontaneous reflection of an individual's ethical actions becomes the fundamental basis for apportioning justice. Believing in the unity of individual and societal action, Gandhi helped create an ashram (small community) where he sought to rejuvenate this pattern of integration and inward reflection to solve communal problems.¹⁵² Ultimately, he found that the most difficult problem was self-purification—attempting to attain individual purity by being free from passion in thought, speech, and action.¹⁵³ He understood that conquering the subtle passion of desire was harder than conquering the world through physical force.¹⁵⁴ Gandhi was also alert to the connection between the internal and external forces, for his sense of Dharma necessitated that every individual share the responsibility of maintaining the harmony in society; that is, the entire Indian population had the responsibility to cooperate in the sacrificial movement of non-violence for independence to be a reality and for justice to prevail over injustice.¹⁵⁵

An incident in his ashram conveys Gandhi's adherence to the Eternal Law and its triumph of justice over injustice. Within a few months of

151. *Id.* at 350–51.

152. *See* GANDHI'S AUTOBIOGRAPHY, *supra* note 121, at 331.

153. *Id.* at 420.

154. *Id.* at 265–66.

155. *Id.* at 230–31, 291–92.

the ashram's existence, Gandhi received a request from a family seeking to join the ashram.¹⁵⁶ Gandhi and the members welcomed the family, and the family began adhering to the ashram's rules.¹⁵⁷ Due to the family's social class, however, the landlord of the property refused to allow the family to use the water-well on the premises.¹⁵⁸ Gandhi told everyone to continue using the well without retaliating against the landlord or other friends outside the ashram who also rejected the family.¹⁵⁹ Soon, some of Gandhi's supporters began withholding monetary assistance as well.¹⁶⁰ In the end, the admission of the family showed there were individuals who transcended the idea of social degradation and caste affiliations.¹⁶¹ The foundation of the community, based on the ideals that Gandhi and his friends established, served to further the goals of the ashram, proving that harmony can rectify injustice.¹⁶² In Gandhi's belief, *ahimsa*—the adherence to the notion of collective consciousness—promotes harmony over disharmony:

Ahimsa [nonviolence] is a comprehensive principle. We are helpless mortals caught in the conflagration of *himsa* [violence]. The saying that life lives on life has a deep meaning in it. Man cannot for a moment live without consciously or unconsciously committing outward *himsa*. The very fact of his living—eating, drinking and moving about—necessarily involves some *himsa*, destruction of life, be it ever so minute. A votary of *ahimsa* therefore remains true to his faith if the spring of all his actions is compassion, if he shuns to the best of his ability the destruction of the tiniest creature, tries to save it, and thus incessantly strives to be free from the deadly coil of *himsa*. He will be constantly growing in self-restraint and compassion, but he can never become entirely free from outward *himsa*.

Then again, because underlying *ahimsa* is the unity of all life, the error of one cannot but affect all, and hence man cannot be wholly free from *himsa*. So long as he continues to be a social being, he cannot but participate

156. *Id.* at 331.

157. *Id.*

158. *Id.*

159. *Id.* at 331–32.

160. *Id.*

161. *Id.* at 332.

162. *Id.* at 331–32.

in the *himsa* that the very existence of society involves. When two nations are fighting, the duty of a votary of *ahimsa* is to stop the war. He who is not equal to that duty, he who has no power of resisting war, he who is not qualified to resist war, may take part in war, and yet whole-heartedly try to free himself, his nation and the world from war.¹⁶³

By distinguishing between *ahimsa* and *himsa*, Gandhi sought to address the contradictory nature of humans which leads to harmony and disharmony, justice and injustice.¹⁶⁴

By attempting to tap into the internal connection we share with all living creatures, Gandhi became an ardent advocate for harmony over disharmony.¹⁶⁵ This view also resides in modern day legal affairs which indicate a trend away from litigation in an adversarial setting and toward embracing the dispute resolution process.¹⁶⁶ Justice takes on an almost retributivist perspective because the individual is considered good when conducting action which creates good or likewise bad through bad action.¹⁶⁷ Justice also takes on an almost utilitarian perspective with the notion that if an individual speaks the truth, then he speaks what is just.¹⁶⁸ The conservation of the State's principles is upheld by the duties which are individually imposed for the public good. In contrast, the dharmic notion of justice is encompassed by the causal effect of the universe and the maintenance of societal harmony through the forging of a collective consciousness.¹⁶⁹ Dharma emphasizes the individual's regulation of his personal conduct in the maintenance of the larger social order. The purpose of justice is therefore not to enforce the will of the sovereign State, but rather to maintain social control through a scientific understanding of the collective consciousness.

Gandhi understood the collective consciousness of the Indian society. Through conscientious action, he diligently guided his people through a long standing traditional path to victory over injustice, and when the country finally gained independence, he suffered by fasting to atone the effects of violence which was threatening to thrust the country into civil

163. *Id.* at 291–92.

164. *Id.*

165. *Id.*

166. Michael L. Moffitt, *Customized Litigation: The Case for Making Civil Procedure Negotiable*, 75 GEO. WASH. L. REV. 461, 464, 488 (2007).

167. See BRIHADARANYAKA UPANISHAD, *supra* note 75, at pt. 3, ch. 2, para. 13.

168. See *id.* at pt. 1, ch. 4, para. 14.

169. See *supra* notes 9, 91 and accompanying text.

war between Hindus and Muslims.¹⁷⁰ Gandhi understood the principles of Dharma and Karma in Eternal Law and knew that Truth takes different and difficult paths.¹⁷¹ And, while some disparage his principles or how he lived his life, he showed a world in disharmony how to address inequities and injustice to restore harmony through the convergence of the individual and collective conscience. For this, he received the recognition as a great soul.

B. The Justice of Martin Luther King, Jr.

Gandhi's philosophy exerted an enormous influence over many people, but none so significantly as Martin Luther King, Jr.¹⁷² On April 16, 1963, while in solitary confinement in a Birmingham jail, King wrote to his fellow clergymen:

One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.¹⁷³

Essentially, King was seeking to tap into the collective consciousness to bring about societal changes. His firm belief in the nonviolent method is quite evident when he emphasized the following:

From the beginning there has been a basic philosophy undergirding our movement. It is a philosophy of nonviolent resistance. It is a philosophy which simply says we will refuse on a nonviolent basis to cooperate

170. MAHATMA GANDHI—HIS LIFE IN PICTURES: FREEDOM AND MARTYRDOM (4th ed. 1987), http://www.mkgandhi-sarvodaya.org/bio_5000/bio5.htm (last visited Jan. 5, 2010).

171. GANDHI'S AUTOBIOGRAPHY, *supra* note 121, at xiii–xiv.

172. According to King:

“Gandhi was probably the first person in history to lift the love ethic of Jesus above mere interaction between individuals to a powerful and effective social force on a large scale. Love for Gandhi was a potent instrument for social and collective transformation.” M.L. King later adapted Gandhi's principles when he worded his own [principles] for nonviolent societal change and individual transformation.

SIGLIND BRUHN, SAINTS IN THE LIMELIGHT 413 (2003) (quoting Martin Luther King, Jr., *Pilgrimage to Nonviolence*, in MAHATMA GANDHI & MARTIN LUTHER KING, JR.—A REAPPRAISAL 33, 42 (1999).

173. MARTIN LUTHER KING, JR., WHY WE CAN'T WAIT 72 (2000) [hereinafter WHY WE CAN'T WAIT].

with the evil of segregation. In our struggle in America we cannot fret with the idea of retaliatory violence. To use the method of violence would be both impractical and immoral.¹⁷⁴

Like Gandhi's nationwide hartal (protest),¹⁷⁵ King's Montgomery bus boycott showed the importance of temperance when utilizing the power of nonviolence.¹⁷⁶ Both knew that their nonviolent protests carried dire consequences. King learned this after a bomb was thrown in his home while his wife and child were inside;¹⁷⁷ Gandhi learned this after a massacre at Amritsar.¹⁷⁸ Yet, the courage of both individuals in not retaliating with violence strengthened their resolve and diminished the strength of their oppressors.¹⁷⁹

In 1944, at the age of fourteen, King represented his school, Booker T. Washington High, in a speaking competition and won first prize.¹⁸⁰ As he and his teacher rode the bus home, the driver instructed them to give up their seats to whites.¹⁸¹ King initially refused the order, but eventually acquiesced at his teacher's request.¹⁸² King later wrote, "We stood up in the aisle for ninety miles to Atlanta. That night will never

174. Martin Luther King, Jr., Address at the Forty-Seventh Annual NAACP Convention: The Montgomery Story (June 27, 1956), in 3 THE PAPERS OF MARTIN LUTHER KING, JR.: BIRTH OF A NEW AGE, DECEMBER 1955–DECEMBER 1956, at 299, 305 (Clayborne Carson et al. eds., 1992).

175. In 1919, the Rowlatt bill was passed authorizing British authorities to imprison any Indian suspected of terrorism without a trial. JOHN H. MORROW, JR. THE GREAT WAR: AN IMPERIAL HISTORY 313 (2005). Gandhi responded to this denial of civil liberties by planning a national hartal. MAHATMA GANDHI—HIS LIFE IN PICTURES: MAHATMA AND THE MASSES (4th ed. 1987), http://www.mkgandhi-sarvodaya.org/bio_5000/bio5.htm (last visited Jan. 5, 2010). "The hartal was observed all over India, by Hindus and Muslims alike, with an enthusiasm which surprised every one. Even Gandhi had not realized how great was his hold on the imagination of the Indian masses." *Id.*

176. ADAM FAIRCLOUGH, MARTIN LUTHER KING, JR. 17–19 (1995).

177. JESSICA MCEL RATH, THE EVERYTHING MARTIN LUTHER KING JR. BOOK 79–80 (2007). This incident may have been the beginning of King's practical belief in nonviolence as the best course of action. *Id.* at 80 ("According to [King's wife, his] belief in . . . nonviolent resistance really took root on that evening. Prior to the bombing, King had tried to obtain gun permits for his bodyguards, and in [an] interview, he had stated that perhaps the federal government would intervene if whites shed some blood.").

178. Due to the hartal, Gandhi and other leaders were arrested, and as a result, a riot occurred. MAHATMA GANDHI—HIS LIFE IN PICTURES: MAHATMA AND THE MASSES (4th ed. 1987), http://www.mkgandhi-sarvodaya.org/bio_5000/bio5.htm (last visited Jan. 5, 2010). Although Gandhi suspended the hartal, "British General Dyer ordered the massacre of unarmed and peaceful citizens attending a meeting in Jallianwala Bagh at Amritsar. Later, even [though] the official report admitted that 400 people had been killed and between 1,000 and 2,000 wounded, [] the unofficial inquiry conducted by the [sic] Gandhi himself estimated 1,200 dead and 3,600 wounded." *Id.*

179. GHOSH, *supra* note 140, at 35; MCEL RATH, *supra* note 177, at 49–53.

180. MARTIN LUTHER KING, JR., THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR. 9 (Clayborne Carson ed., 1998) [hereinafter KING'S AUTOBIOGRAPHY].

181. *Id.* at 10.

182. *Id.*

leave my memory. It was the angriest I have ever been in my life.”¹⁸³ Ironically, King’s speech was entitled “The Negro and the Constitution” and spoke out against the injustices suffered by blacks.¹⁸⁴ This bus ride after the speech became his initiation into the Civil Rights Movement and indicated that he was able to redirect his frustration through nonviolence.¹⁸⁵

While King’s method of nonviolence in its application was somewhat different from *Satyagraha*,¹⁸⁶ the effectual change in the structure of society was set in motion by individuals attempting to integrate into the collective conscience of the country.¹⁸⁷ These individuals ranged from volunteers assisting in voter registration campaigns to students across the country sitting at “whites only” counters while the owners continually refused to deliver services.¹⁸⁸ Students did not resort to violence at sit-ins even after whites attacked them “with ketchup, lit cigarettes, and bottles of ammonia.”¹⁸⁹ King realized that nonviolent resistance was not a method for the fainthearted, but a method “based on the conviction that the universe is on the side of justice... [and] works to bring the disconnected aspects of reality into a harmonious

183. *Id.*

184. *Id.* at 9–10.

185. *See id.* at 10.

186. JOHN J. ANSBRO, MARTIN LUTHER KING, JR.: THE MAKING OF A MIND 134 (1982) (arguing that the differences in the nonviolent method employed by Gandhi and King resulted from the fact that Gandhi sought independence for his country from a foreign system, while King sought an alteration of the current system within his country); cf. DENNIS DALTON, MAHATMA GANDHI: NONVIOLENT POWER IN ACTION 243 n.68 (1993) (“While it is true that even during the Montgomery boycott, King’s understanding of Gandhi was elementary, it developed and deepened especially during and after his visit to India in February–March, 1959.”).

187. King wrote:

American Negroes must come to the point where they can say to their white brothers, paraphrasing the words of Gandhi: “We will match your capacity to inflict suffering with our capacity to endure suffering. We will meet our physical force with soul force. We will not hate you, but we cannot in all good conscience obey your unjust laws. Do to us what you will and we will still love you. Bomb our homes and threaten our children; send your hooded perpetrators of violence into our communities and drag us out on some wayside road, beating us and leaving us half dead, and we will still love you. But we will soon wear you down by our capacity to suffer. And in winning our freedom we will so appeal to your heart and conscience that we will win you in the process.”

MARTIN LUTHER KING, JR., STRIDE TOWARD FREEDOM: THE MONTGOMERY STORY 213 (Clayborne Carson ed., 1968). Thus, King’s own “Christian Satyagraha” became “the inspiration for the black nonviolent struggle for justice in the United States.” A. L. HERMAN, COMMUNITY, VIOLENCE, AND PEACE 121 (1999).

188. MCEL RATH, *supra* note 177, at 107–08, 126.

189. THOMAS F. JACKSON, FROM CIVIL RIGHTS TO HUMAN RIGHTS: MARTIN LUTHER KING, JR., AND THE STRUGGLE FOR ECONOMIC JUSTICE 112 (2007).

whole.”¹⁹⁰ This harmony was attained by encouraging friendship in the opponent through the mobilization of a community that adheres to nonviolence and strikes at the heart of disparity.¹⁹¹ King, in his application of resistance, realized that social harmony required the integration of blacks and whites.¹⁹² The utilitarian might have justified racial segregation with a modicum of integration for the greater good, while the retributivist might have justified ending it with violence. However, the collective consciousness, under the karmic principle, requires that the cause of behavioral patterns in society be assessed to determine the harmonious effects on the population. And, the dharmic principle could be utilized in the disruption of racial segregation since it does not embrace an attachment to hatred or a desire for separation.

For King, the struggle against injustice began around 1954, when the Supreme Court of the United States signaled that the detrimental effect of continuing racial segregation in the public school system necessitated an adjustment by legal action.¹⁹³ The intended effect was to transform the collective consciousness and build a just society. The Court saw that education was an important function in society:

[Education] is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.... Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.¹⁹⁴

However, the consequence of legally enforced integration by federal troops in Arkansas may have proved to be an undermining consequence to the harmony of the nation.¹⁹⁵ Although this was a starting point for the Civil Rights Movement, it also impeded the progression of social harmony in the absence of attentiveness to the collective consciousness.¹⁹⁶ While social change was legislated, the changes were

190. Martin Luther King, Jr., Address at the General Assembly of the National Council of Churches: The Christian Way of Life in Human Relations (Dec. 4, 1957), in 6 THE PAPERS OF MARTIN LUTHER KING, JR.: ADVOCATE OF THE SOCIAL GOSPEL, SEPTEMBER 1948–MARCH 1963, at 322, 325 (Clayborne Carson et al. eds., 1994).

191. *Id.* at 324–25.

192. *Id.* at 324.

193. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

194. *Id.*

195. See CHARLES J. OGLETREE, JR., ALL DELIBERATE SPEED 11–12 (2004).

196. FAIRCLOUGH, *supra* note 176, at 41–42 (“To assume that social change flows from litigation is to abstract the legal process from political reality. In theory, virtually any individual or group could institute a lawsuit against some aspect of segregation; in theory, the federal courts would rule that

not harmoniously integrated into the collective consciousness of the masses. As a result, some individuals preferred not to integrate and sought to preserve ingenious forms of segregation through economics or complete privatization of services.¹⁹⁷ Similar to Gandhi's experience on the train in South Africa,¹⁹⁸ King also suffered the indignity of this veil of separatist ignorance during public transportation.¹⁹⁹ While on a train, King was forced to sit in the back of a dining car with a curtain partition between him and the other white passengers.²⁰⁰ Even though segments of the country consensually supported integration, the individual and collective consciousness did not immediately converge and necessitated further consideration by the judicial system and executive branch before the veil was to be cast off entirely.

In 1944, prior to starting college, King took a summer job on a tobacco farm to earn money for school.²⁰¹ King learned during this time that the North treated blacks differently than the South.²⁰² There was no discrimination and were no "colored only" or "white only" signs in the North.²⁰³ King later wrote:

I had never thought that a person of my race could eat anywhere, but we ate in one of the finest restaurants in Hartford. After that summer in Connecticut, it was a bitter feeling going back to segregation. It was hard to understand why I could ride wherever I pleased on the train from New York to Washington [D.C.] and then had to change to a Jim Crow car at the nation's capital in order to continue the trip to Atlanta. The first time that I was seated behind a curtain in a dining car, I felt as if the curtain had been dropped on my selfhood.²⁰⁴

King's experiences helped him develop his own philosophy of justice

segregation violated the Fourteenth Amendment; in theory, when a court so ruled, southern whites accepted the result. In practice, however, [this] strategy worked nothing like this and proved far less effective than anticipated In the case of the Montgomery bus boycott, mass direct action had generated *effective* litigation. The successful suit originated in the boycott, and the urgency of the crisis speeded up the judicial process, making for an early, favorable decision by the federal courts." (emphases in original)).

197. See OGLETREE, *supra* note 195, at 14.

198. See *supra* notes 123–25 and accompanying text.

199. See HERMAN, *supra* note 187, at 119.

200. See *id.* at 120.

201. KING'S AUTOBIOGRAPHY, *supra* note 180, at 11.

202. See *id.*

203. *Id.*

204. *Id.* at 11–12.

and version of harmony in the idea of a “beloved community.”²⁰⁵ A beloved community consisted of individuals dedicated to the love for humanity and a conceptualization of progress grounded in religious values.²⁰⁶ King believed that the State could assist in the creation of the “beloved community” indirectly by creating conditions leading to racial integration and directly through the redistribution of wealth to eliminate poverty.²⁰⁷ The progress of this community depended on the natural kinship and dependency shared by individuals, community organizations, and religious institutions.²⁰⁸

The development of social consciousness was inextricably associated with the moral values of certain religious convictions.²⁰⁹ Such reasoning ultimately led to confusion between politics and religion, even though religious thought seemed to have guided the political actions and opinions of certain members of the community. King wrote:

[I]f a man sins against you, you must treat him with love and kindness. If he admits his wrong, you are to forgive him. If he fails to admit his offence, you must not lose your temper with him, lest he becomes poison by your temper, and you become guilty of a double sin. In such a case, the offender, even though he denies his guilt, when he is reprovved will feel a sense of shame, or he will not. If he feels this sense of guilt he will repent. If he will not repent for his wrongdoing, he must be left to God.²¹⁰

King further incorporated his religious views into a system of justice,²¹¹ in accordance with an almost rehabilitative-utilitarian analysis

205. See MICHAEL G. LONG, *AGAINST US, BUT FOR US: MARTIN LUTHER KING, JR. AND THE STATE* 119–20 (2002).

206. *Id.*

207. *Id.* at 120.

208. *Id.* at 121–24.

209. See, e.g., Martin Luther King, Jr., *Advice for Living*, EBONY, Sept. 1958, at 68, reprinted in 4 THE PAPERS OF MARTIN LUTHER KING, JR.: SYMBOL OF THE MOVEMENT, JANUARY 1957–DECEMBER 1958, at 471, 472 (Clayborne Carson et al. eds., 2000) (“God reveals Himself in all religions . . . and there is some element of truth in all religions. This does not mean, however, that God reveals Himself equally in all religions. Christianity is an expression of the highest revelation of God. It is the synthesis of the best in all religions.”).

210. Martin Luther King, Jr., *The Ethics of Late Judaism as Evidenced in the Testaments of the Twelve Patriarchs* (Nov. 30, 1948–Feb. 16, 1949), in 1 THE PAPERS OF MARTIN LUTHER KING, JR.: CALLED TO SERVE, JANUARY 1929–JUNE 1951, at 195, 206–207 (Clayborne Carson et al. eds., 1997).

211. King wrote:

I do not think God approves the death penalty for any crime—rape and murder included. God’s concern is to improve individuals and bring them to the point of conversion. Even criminology has repudiated the motive of punishment in favor of the reformation of the criminal. Shall a good God harbor resentment? Since

of punishment: “A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law.”²¹² He saw religion as the “conscience” of the State, something necessary for the transformation of individuals toward successful integration.²¹³ For King, social justice and religion were inseparable.²¹⁴ “[He] concluded that a just law should be obeyed because there was a moral obligation, whereas an unjust law could be disobeyed using the long-established tradition of civil disobedience.”²¹⁵ His ultimate “purpose of punishment [was] to improve the character and life of the person punished, rather than pay him back for something that [was] done to society.”²¹⁶ Arguably, these notions of justice could have been conveyed without religious overtones, as spiritual mandates are summarily individual internal determinations. In the search for harmony, every person embodies the voice of a society, irrespective of the individual’s religiosity.²¹⁷ The use of civil disobedience is based on the inner voice of each individual realizing that there are certain human conditions which can be observed through a discriminating analysis of the individual’s personal conscience and societal collective harmony.²¹⁸ King’s misidentification of harmony with religious thought may have detracted from his belief in nonviolence and allowed the opposing beliefs of violence advocated by the Nation of Islam, which was also seeking to

the purpose of jailing a criminal is that of reformation rather than retribution—improving him rather than paying him back for some crime that he has done—it is highly inconsistent to take the life of a criminal. How can he improve if his life is taken? Capital punishment is against the best judgment of modern criminology and, above all, against the highest expression of love in the nature of God.

Martin Luther King, Jr., *Advice for Living*, EBONY, Nov. 1957, at 106, *reprinted in* 4 THE PAPERS OF MARTIN LUTHER KING, JR.: SYMBOL OF THE MOVEMENT, JANUARY 1957–DECEMBER 1958, at 305, 305 (Clayborne Carson et al. eds., 2000).

212. WHY WE CAN’T WAIT, *supra* note 173, at 70.

213. Martin Luther King, Jr., Message for Race Relations Sunday: For All . . . A Non-Segregated Society, *in* 4 THE PAPERS OF MARTIN LUTHER KING, JR.: SYMBOL OF THE MOVEMENT, JANUARY 1957–DECEMBER 1958, at 123, 124 (Clayborne Carson et al. eds., 2000).

214. ALBERT J. RABOTEAU, A FIRE IN THE BONES: REFLECTIONS ON AFRICAN-AMERICAN RELIGIOUS HISTORY 67 (1995).

215. MCEL RATH, *supra* note 177, at 42.

216. Letter from Martin L. King, Jr. to G. W. Sanders (June 15, 1959), *in* 5 THE PAPERS OF MARTIN LUTHER KING, JR.: THRESHOLD OF A NEW DECADE, JANUARY 1959–DECEMBER 1960, at 228, 229 (Clayborne Carson et al. eds., 2005).

217. See TRUTH IS GOD, *supra* note 7, at 12–13.

218. MAHATMA GANDHI, ALL MEN ARE BROTHERS 58 (2005) (“[Gandhi believed] that all the great religions of the world are true more or less . . . because . . . everything that the human hand touches, by reason of the very fact that human beings are imperfect, becomes imperfect. Perfection is the exclusive attribute of God . . . [T]herefore, . . . even the Vedas, the Koran and the Bible are [the] imperfect word of God and, imperfect beings that we are, swayed to and fro by a multitude of passions, it is impossible for us even to understand this word of God in its fullness.”).

unite the black community, to rise in power.²¹⁹ The collective consciousness of a society can only be solidified without a specific religious precondition or divine appreciation and intercession; any religious implications should be left to the collective unconsciousness, which eventually delineates the common principles prevalent in religious doctrines.²²⁰

As a whole, King's dream of unity was a cry for justice, a plea for the "fellowship of all humanity."²²¹ Integrated into the collective unconsciousness, it may one day reach fruition with its universal principles becoming part of the collective consciousness. As he lamented in his famous speech in 1963 at the Lincoln Memorial, "the authors of the Declaration of Independence and the U.S. Constitution had issued a 'promissory note' of freedom and liberty for all Americans but when blacks had tried to cash their note, it came back marked 'insufficient funds.'"²²² Perhaps King was attempting to articulate reconciliation between whites and blacks in the most acceptable manner possible, through a spiritual authority.²²³ For this, he was a dynamic visionary, who reminded the country of its promises to equality, freedom, and justice for all people.²²⁴

219. See JEFFREY O. G. OGBAR, *BLACK POWER: RADICAL POLITICS AND AFRICAN AMERICAN IDENTITY* 43–45 (2004).

220. Seth D. Kunin, *Psychological and Phenomenological Theories of Religion*, in *RELIGIOUS STUDIES AND THEOLOGY: AN INTRODUCTION* 31, 41 (Helen K. Bond et al. eds., 2003). Carl Jung described the collective unconsciousness as:

the repository of the "whole spiritual heritage of mankind's evolution." The collective unconscious somehow stands outside and is shared by all human beings, with each individual and community drawing on it and contributing to it. The collective unconscious particularly includes the non-rational aspects of human experience, a non-rational aspect that is essential to individual growth and at its heart is the basis of religion. The fact that all human beings share this common source of religious inspiration and experience underlies . . . the commonalities that are shared by all human religions.

Id.

221. MICHAEL J. NOJEIM, *GANDHI AND KING: THE POWER OF NONVIOLENT RESISTANCE* 197 (2004).

222. *Id.* at 196.

223. DAVID A. BOBBITT, *THE RHETORIC OF REDEMPTION: KENNETH BURKE'S REDEMPTION DRAMA AND MARTIN LUTHER KING, JR.'S "I HAVE A DREAM" SPEECH* 103 (2004).

224. See *id.*; NOJEIM, *supra* note 221, at 196–97.

CONCLUSION

Dharma and Karma are philosophical principles that are readily applicable to our system of justice. Unlike the retributivist and utilitarian theories, Dharma focuses both on the individual's relation to society and society's relation to the individual in order to achieve a harmonious balance.²²⁵ The law of Karma recognizes that, for each effect, the underlying cause must be determined in order to maintain societal harmony.²²⁶ By understanding the disharmonies in their respective societies, Gandhi and King acted to change the collective consciousness to achieve harmony and rectify the detrimental effects of colonialism, segregation, and injustice.²²⁷

In his struggle for India's independence, Gandhi realized the causal effects in the use of *himsa* (violence) and the lasting consequences it could inflict on global harmony; thus, he opted for *ahimsa* (nonviolence) in his pursuit of justice.²²⁸ King would later apply similar principles in his nonviolent campaign for civil rights.²²⁹ His efforts solidified the movement for racial harmony into the collective consciousness, one that continues to resonate in our system of justice. Both Gandhi and King presented society with the opportunity to scrutinize discord while instituting approaches for correcting the fundamental issues in a manner that promoted harmony. And through their actions, neither Gandhi nor King sought to punish or seek retribution against anyone, even if they were brutally mistreated by their oppressors.²³⁰ They understood that punishment against the offender alone cannot remedy the disharmony in societal balance.²³¹

The ancient principles of Dharma and Karma may seem abstract, but

225. See *supra* notes 9, 21 and accompanying text.

226. See *supra* notes 75–83, 101.

227. See *supra* Part II.

228. See *supra* Part II.A.

229. See *supra* Part II.B.

230. See GANDHI'S AUTOBIOGRAPHY, *supra* note 121, at 159–60; MCEL RATH, *supra* note 177, at 79. When Gandhi landed in Natal after a visit to India, a mob "pelted [him] with stones, brickbats and rotten eggs," believing that while he was in India, he made malicious and exaggerated statements about whites. GANDHI'S AUTOBIOGRAPHY, *supra* note 121, at 159–63. Gandhi later told the Secretary of State, "I do not want to prosecute anyone If they believed these reports, it is no wonder that they were enraged I am sure that, when the truth becomes known, they will be sorry for their conduct." *Id.* at 162–63. Likewise, after the bombing of his home, "King immediately came home from [a] meeting. As the police and hundreds of black onlookers surrounded the home, King took the opportunity to speak to the angry crowd. He emphasized that while violence was being used in an attempt to stop the boycott, to retaliate with violence was wrong." MCEL RATH, *supra* note 177, at 79.

231. See *supra* notes 149–51, 190–92.

do have profound legal applications as they lend themselves to a vast array of perspectives, from the individual to societal and from the universal to the spiritual, all of which converge in the formation of a collective consciousness and system of equitable justice. True justice can be realized by initiating the search for harmony within the individual and society in accordance with the principles of Dharma and Karma. As President Obama declared, “The law is... a long-running conversation, a nation arguing with its conscience.... The answers I find in law books don’t always satisfy me—for... I find a score of cases where conscience is sacrificed to expedience or greed.”²³² Whether applied during the enactment of laws, enforcement of justice, or delineation of punishment, the justice system can benefit from the philosophical underpinnings and practical applications of Dharma and Karma in the maintenance of a state of harmony in accordance with the Eternal Law.

232. BARACK OBAMA, DREAMS FROM MY FATHER 437–38 (2005).