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The American Constitution in the Cycle of *Kali Yuga*: Eastern Philosophy Greets Western Democracy

Shiv Narayan Persaud*

I. INTRODUCTION

To assume that any nation is on a constant course of progress or decline lacks factual support. Historical evidence abundantly shows that throughout human civilization, nations generally experienced cyclical periods of progress and decline.[1] To explain this pattern of ascendance and decline, early *Vedic* philosophers[2] perceived human civilization as the cyclical unfolding of four distinct, cosmic, ascending, and declining human social and behavioral transformations called *Yugas*.[3]

The earliest *Yuga,* which they termed *Krta (*or *Satya),* marked the beginning and prevalence of righteousness—an era of the highest manifestation of human moral and social conduct.[4] Following *Krta* are *Treta*, *Dwapara,* and *Kali Yuga*, each characterized by varying degrees of rise and decline in righteousness, human behavior, and societal harmony, with the

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1 Jacinta O'Hagana, *Conflict, Convergence or Co-Existence? The Relevance of Culture in Reframing World Order*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 537, 553–54 (1999) ("The relationship between civilizations is depicted as dominated by conflict. Difference, it is assumed, breeds conflict, while commonality engenders some measure of cooperation. Violent conflicts occurring on the 'fault lines' between different civilizations are seen as protracted, difficult to resolve, and having a strong potential to escalate. Their protractedness appears to derive from the sense that these disputes are ancient and primordial.")

2 Shiv Narayan Persaud, *Eternal Law: The Underpinnings of Dharma and Karma in the Justice System*, 13 RICH. J. L. & PUB. INT. 49, 49 (2009).

3 JOSEPH SELBIE & DAVID STEINMETZ, THE YUGAS 3 (2010).

4 *See* BANSI PANDIT, THE HINDU MIND: FUNDAMENTALS OF HINDU RELIGION AND PHILOSOPHY FOR ALL AGES 22 (1997) (ebook2017) (no page numbers on Kindle).

greatest and longest periods of decline occurring in the last *Yuga* (*Kali Yuga*).[5]

In its early stages, *Kali Yuga* (the last in the cycle of *Yugas*) is especially marked by the prevalence of human indifference, conflict, social-cultural disharmony, and societal disorder.[6] These conditions gradually begin to improve during the final stage of the cycle.[7] As *Kali Yuga* comes to an end, the cycle turns back onto its course toward *Krta Yuga* —a period in which humans seek to regain harmony and affinity with nature and the universe.[8] As the Indian polymath Rabindranath Tagore eloquently stated:

> Man can destroy and plunder, earn and accumulate, invent and discover, but he is great because his soul comprehends all. It is dire destruction for him when he envelops his soul in a dead shell of callous habits, and when a blind fury of works whirls around him like an eddying dust storm, shutting out the horizon. That indeed kills the very spirit of his being, which is the spirit of comprehension. Essentially man is not a slave either to himself or the world, but he is a lover. His freedom and fulfillment is love, which is another name for comprehension. By this power of comprehension, this permeation of his being, he is united with the all-pervading Spirit . . . Thus the state of realizing our relationship

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[5] *See generally* SELBIE & STEINMETZ, *supra* note 3, at 5. While there have also been different terms used in *Vedic* literature, these variations may have been consolidated into *Kali Yuga*. *See* Yajur Veda (*Taittiriya Sanhita*) Kanda IV Prapathak III iv. 3. (Arthur Berriedale Keith trans., 1914), https://www.sacred-texts.com/hin/yv/yv04.htm [https://perma.cc/79BY-GZJX].

[6] JUDITH E. WALSH, BRIEF HISTORY OF INDIA 28 (2006).

[7] *See* SELBIE & STEINMETZ, *supra* note 3, at 5. It should be emphasized that none of the *Yuga* are totally evil, or wholly righteous. These characteristics are believed to reside in every *Yuga* to varying degrees. The distinction, however, is made in accordance with the prevalence and predominance of good over evil, and vice versa. For example, *Krta Yuga* demarcates the highest degree and phases of righteousness and harmony, which then gradually decrease with the highest and longest phases of disharmonies occurring during *Kali Yuga*.

[8] *See* PANDIT, *supra* note 4, at 22.

> with all, of entering everything through union with God [is] . . . the ultimate end and fulfillment of humanity.[9]

While scholars today continue to debate the chronological dates and age of each *Yuga*, most often ending in disagreements, many posit that we are currently in the waning stages of *Kali Yuga*—an epoch in which societies tend towards the lessening of disharmony, disorder, and even chaos.[10] Given the fact that the stability of the country is predicated on upholding democratic and religiously tolerant principles that are grounded in constitutional edicts and the rule of law, this brings me to ask whether such predictions have any relevance for the American society.[11] As the bastion of democratic ideals, did the Constitution serve to save or contribute to devolving social-cultural disharmony, disorder, and degradation of the American society predicted in the era of *Kali Yuga*, and will it shepherd the nation on a course toward enlightenment similar to that foretold by *Vedic* philosophers?

This paper will explore the above-mentioned questions while taking into consideration the intent and overarching tenets of the Constitution in relation to the precepts of *Kali Yuga*. The hope is to generate discourse on some of the trappings of the Constitution and constitutional democracy in an ever changing and increasingly diverse and segmented society—a nation with a multiplicity of cultures with distinctive beliefs and moral systems.[12]

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[9] RABINDRANATH TAGORE, SADHANA 11 (2004).

[10] *See* Luis Gonzales-Reimann, *The Yugas: Their Importance in India and their use by Western Intellectuals and Esoteric and New Age writers*, RELIGION COMPASS, 357, 359 (2014).

[11] "Constitutionalism entails a sufficiently shared willingness to use law rather than force to resolve disagreements; to limit government power and to protect human rights through law and defined processes; to provide a reasonable degree of predictability and stability of law that people may rely on as they structure their lives; and to maintain a government that is legitimate and effective enough to maintain order, promote the public good, and control private violence and exploitation." Vicki C. Jackson, *What's in a Name? Reflections on Timing, Naming and Constitution-Making*, 49 WM. & MARY L. REV. 1249, 1254 (2008).

[12] "In America hostility among cultural groups is only part of the persistent problem of achieving national unity, but it is properly seen as a threat to that unity even when it does not reach the level of tribal warfare. Those who react to cultural differences with fear or anger generally espouse nativist policies designed to repress the differences by excluding

Emphatically stated, the intent is not to examine every article or amendment of the Constitution; this would be presumptuous. The intent is to foster an examination of the Constitution as the overall architectural framework of foundational principles that hold the U.S. together.

Why examine the Constitution in relation to the *Vedic* philosophy of *Yugas*, particularly *Kali Yuga*?[13] In part, the answer to this question can be found in Charles McCurdy Mathias, Jr.'s response to William E. Gladstone's statement that the U. S. Constitution was "the most remarkable work known to . . . have been produced by the human intellect, at a single stroke."[14] As Mathias eloquently enunciated:

> . . . Gladstone's statement does not reflect the experience of centuries of other societies and countries that has been woven into the Constitution. The historical and philosophical roots of the Constitution run very deep. We have been nourished by a long tradition of thought reaching back to the ancient Greeks.
>
> The founders of our country were familiar with the writings of Plato, Aristotle, Cicero, Locke, and Montesquieu . . . The principles of parliamentary practice were adapted from the British model. The doctrine of separation of powers was not only expounded by Montesquieu; it was practiced in the Republic of Venice. The concept of independence of judges was respected in ancient Persia before the birth of Christ . . . The intellectual creativity of the authors of the Constitution was not invention, but the application of historical lessons in the rational, coordinated, and successful system.[15]

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the 'others' from the country, by forcing them to conform to the norms of the dominant culture, or by relegating them to a subordinate status in society." Kenneth L. Karst, *Paths to Belonging: The Constitution and Cultural Identity*, 64 N.C. L. REV. 303, 311 (1986).

[13] *Id.* at 359.

[14] DAVID OSTERLUND, THE CONSTITUTION OF THE UNITED STATES OF AMERICA 85 (1995).

[15] *Id*. at 85–86.

In the above quote, Mathias made clear the links to, and the influence of, Ancient Greek and Vedic philosophical thought[16] on the Constitution.[17] This influence played an important role in the minds of the men who crafted the Constitution, namely James Madison, one of its primary architects.[18] Not only did Madison widely research ancient and modern political philosophies and histories of republics, he also studied Hume's utilitarianism.[19] Hume, it should be noted, is believed to be influenced by Ancient Eastern philosophy, especially Buddhist thought.[20] As author Nolan Jacobson pointed out in 1969,

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[16] "Long, before the advent of Islam, even as early as the third millennium BCE, India had cultural bonds with the Mesopotamian civilization, now the region of Iraq and Iran. As explained by N. N. Bhattacharya, there are plenty of references to establish a very close contact between India and the Islamic world. Actually, Iraq was an area that had been a part of the Vedic civilization at one time." Stephen Knapp, *Vedic Influence in Iraq and Iran*, DHARMA TODAY (Dec. 30, 2016), https://dharmatoday.com/2016/12/30/vedic-influence-iraq-iran/ [https://perma.cc/3F73-44ZK].

[17] *Id.* at 6; OSTERLUND, *supra* note 14, at 85–86.

[18] "James Madison was the first delegate to arrive in Philadelphia for the meeting to 'devise' alterations to the Articles of Confederation. During the preceding months, he had buried himself in books, reading widely in political philosophies and histories of republics and confederacies from ancient Greece to the current states of Europe . . . Swiss Confederation . . . United Provinces of the Netherlands . . . Not a single delegate arrived in Philadelphia after Madison who matched him in knowledge of the world's governments and constitution, or with equal determination to frame a new system . . . " PETER IRONS, A PEOPLE'S HISTORY OF THE SUPREME COURT 34 (2006).

[19] "The [conception of] utilitarian, [was] developed by Hume and later refined by [Jeremy] Bentham . . . Hume associated stability with possession . . . emphasiz[ing] stability of one's possessions as 'the most necessary to the establishment of human society.' Stability of possessions (which Hume did not confine to land) served a social rather than civic function—maintaining society by avoiding constant disorder and violence . . . Hume assumed that individuals had limited capacity to act in the public interest and that individual selfishness made justice and property necessary." Gregory S. Alexandera, *Time and Property in the American Republican Legal Culture*, 66 N.Y.U. L. REV. 273, 348 (1991).

[20] "Hume grappled with how to incorporate Buddhism into his understanding of religion in 1927 . . . [He] acknowledge[d] that Buddhism appears to be an exception to a theistic, belief-centered model of religion. He concedes that Buddhism was originally founded as a non-theistic 'system of ethical self-culture [that] was applied socially to the organization of a new order.'" Barbara Barnetta, *Twentieth Century Approaches to Defining Religion: Clifford Geertz and the First Amendment*, 7 U. MD. L. J. RACE RELIG. GENDER & CLASS 93, 99 (2007); *See also* Alison Gopnik, *Could David Hume Have Known about Buddhism*? 35 HUME STUDIES 5, 18–19 (2009).

"The conceptual links between the Buddha and David Hume have been observed by numerous scholars East and West . . . 1600 to 1789 . . . are the years when the Orient contributed most to Western thought, and they are the years when the very foundations of modern philosophy in the West were being laid."[21]

It is pertinent to point out that Buddhist philosophy itself emerged from *Vedic* philosophical precepts and practices, which guided Siddhartha's search for enlightenment through sacrifice and meditation, and in which his teachings of *Dharma* are deeply rooted.[22] Buddhist philosophy explains the cosmic changes in human civilization this way:

> In the human sphere there are periods of progress and decay; virtue advances and declines too, and life expectancy can vary from 80,000 years at the beginning of a new age (*Kalpa*) down to 10 years on the eve of nemesis . . . [T]hen a period of decline will set in and finally a dark age will descend when the [Buddhis] teaching, hopelessly undermined by corruption, is lost completely.[23]

Before rushing into a comparative analysis, it is necessary to have some understanding of the contextual foundation out of which the Constitution emerged, and the role it played in the coalescence of diverse groups of people into a national unity: a unity forged out of utilitarian principles and based on the expectations of equality under the rule of law and the promise of equal rights and justice.[24]

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[21] Nolan Pliny Jacobson, *The Possibility of Oriental Influence in Hume's Philosophy*, 19 PHIL. E. & W. 17, 17 (1969).

[22] JO DURDEN SMITH, THE ESSENCE OF BUDDHISM 35–50 (2004).

[23] JOHN SNELLING, THE BUDDHIST HANDBOOK 45 (1999).

[24] *See* THE FEDERALIST: ALEXANDER HAMILTON, JAMES MADISON, AND JOHN JAY (George Stade ed. 2006) [hereinafter Stade].

II. The Search for Unity in the Face of Autonomy and Divisiveness

It is widely and well documented that America became the preferred destination for Britain's Protestants fleeing religious persecution and victimization as a result of their denominational Judaic-Christian beliefs.[25] This exodus resulted in the establishment of religious settlements and plantation colonies in various parts of the undeveloped country.[26] In the process of adapting to the new homeland, it became evident that religious convictions did not automatically translate into the creation of order and stability among the newcomers.[27]

Constituted of fragmented groups of immigrant settlers, the newly established colonies found themselves in regular conflict with one another.[28] Each sought to fashion their own economic and political systems, and made every effort to preserve their own sovereignty.[29] In the process of

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[25] *See* Fernando Rey Martineza, *The Religious Character of the American Constitution: Puritanism and Constitutionalism in the United States*, 12 Kan. J. L. & Pub. Pol'y 459, 468 (2003).

[26] *See id*.

[27] "Seeking to live in accordance with what they understood to be authentic Christianity—as compared to what they had experienced under the authority of the Church of England—they set out for the New World to create political communities that would accomplish that end. For these settlers, the purpose of politics was not merely to provide citizens with material goods for their temporal flourishing, but to prepare human beings for the next life. This means that law and government existed for the sake of the church and its mission in saving and sanctifying souls. Although Puritan theocracy eventually vanished from North America, vestiges of its freedom-for-religion reflexes remain with us under a more generic . . . understanding of religion's good and the duty of our political institutions in protecting, and in some cases advancing, it." Francis J. Beckwith, *Now, I'm Liberal, But to a Degree: An Essay on Debating Religious Liberty and Discrimination*, 67 Clev. St. L. Rev. 141, 144 (2019).

[28] "For the colonists, then, the events of the years preceding the American revolution presented in sharp form a conflict between just representation and political sovereignty; and colonial advocates during these years consistently denied the claims of Parliamentary sovereignty over the colonies precisely on the grounds that such sovereignty violated the colonial right to proper representation." Jeremy Elkins, *Declaration of Rights*, 3 U. Chi. L. Sch. Roundtable 243, 245–46 (1996).

[29] Irons, *supra* note 18, at 28–29.

constructing independent colonies, many prominent settlers found themselves at odds with the imposition of British rule and resisted England's efforts to dominate their newly established territories and hard-earned independence.[30] Also by this time, several of the delegates to the Constitutional Convention[31] and many of the colonists had amassed large numbers of enslaved people, accrued great wealth, and acquired enormous influence and power within, and in some instances, across, their colonial-territorial boundaries.[32]

Out of these conflictive and sometimes antagonistic circumstances, some of America's early colonizers and political leaders attempted to forge the beginning of a national unity through the formation of a confederation of thirteen independent states.[33] This effort at unification resulted in the Declaration of Independence, followed by the Articles of Confederation and Perpetual Union.[34] The Declaration of Independence and the Articles of Confederation, however, produced little positive result, as each state continued to function and operate as independent colonies, sometimes in open hostility toward each other.[35] For example, the dispute over fishing rights in the Potomac resulted in hostilities among Maryland, Virginia,

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[30] *See id*. at 13–14.

[31] "Of the 55 delegates to the Constitutional Convention, about 25 owned slaves. Many of the framers harbored quals about slavery. Some, including Benjamin Franklin (a former slave holder) and Alexander Hamilton (who was born in a slave colony in the British West Indies) became members of anti-slavery societies." Steven Mintz, *Historical Context: The Constitution and Slavery*, GILDER LEHRMAN INST. AM. HIST., https://www.gilderlehrman.org/history-resources/teaching-resource/historical-context-constitution-and-slavery [https://perma.cc/Q562-4NZU].

[32] "Slavery became essential to the tobacco monoculture that provided the region's first export staple and that was the source of its colonial elite's wealth. By the American Revolution, Virginia had the largest slave population of the mainland colonies in absolute terms, and slavery permeated Chesapeake society in a way that it never had in New England." William M. Wiecek, *The Origins of the Law of Slavery in British North America*, 17 CARDOZO L. REV. 1711, 1747 (1996).

[33] IRONS, *supra* note 18, at 31.

[34] UNITED STATES CONSTITUTION AND OTHER AMERICAN DOCUMENTS ix (Fall River Press 2009).

[35] *See id.*

Pennsylvania, and Delaware, with each state taking actions that affected their commerce.[36] Irons explained the situation this way:

> No state, in fact, was required to abide by the decisions of Congress; they were, in effect, merely advisory, and states often rejected that advice. The Articles also did not provide for a national judiciary; there was no body to adjudicate conflicts between states or citizens of different states . . . Disputes over fishing and navigation rights along the Potomac River, down to its outlet in Chesapeake Bay, had created tensions between all four states-Maryland, Virginia, Pennsylvania and Delaware-bordering those waterways . . . The conflict over the "oyster war" dragged on for years, before and after the Revolution, and the Continental Congress did nothing to settle the dispute.[37]

The failure of the Articles of Confederation to unify the states led James Madison to "hatch plans for a new constitution" that would forge the autonomous states "into a real federal union."[38] Well aware of the detriment of factions to the establishment of a union, Madison saw the constitution as a cure and addressed the issue of factions forthright.[39] As he argued:

> Among the numerous advantages promised by a well-constructed union, none deserves to be more accurately developed, than its

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[36] OSTERLUND, *supra* note 14, at 89; John F. Harta, *Fish, Dams, and James Madison; Eighteenth-Century Species Protection and the Original Understanding of the Takings Clause*, 63 MD. L. REV. 287, 303 (2004) ("Not long before the October 1785 [Virginia's General Assembly] session, moreover, Madison took part in negotiating Virginia's compact with Maryland governing the use of the Potomac; the compact enumerated 'laws and regulations which may be necessary for the preservation of fish' as a matter reserved for future agreement.").

[37] IRONS, *supra* note 18, at 31.

[38] *Id.* at 33. "The Constitution assumed the national government under the Articles of Confederation and added to it. The national government was to have all of the powers under the Constitution that it had under the Articles of Confederation, plus more . . . 'The evils suffered and feared from weakness in Government,' Madison told Jefferson, 'have turned the attention more toward the means of strengthening the [government] than of narrowing [it].'" Calvin H. Johnson, *Homage to Clio: The Historical Continuity from the Articles of Confederation into the Constitution*, 20 CONST. COMMENT. 463, 473–74 (2004) (quoting 16 THE PAPERS OF THOMAS JEFFERSON 146, 150 (Julian Boyd ed., 1950)).

[39] *See generally* IRONS, *supra* note 18.

> tendency to break and control the violence of faction . . . There are two methods of curing the mischief of faction: The one, by removing its causes; the other by controlling its effects . . . If a faction consists of less than the majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views, by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the constitution.[40]

Madison's skills and ability to influence the disparate disputing bodies in support of a common cause cleared the path for the drafting and ratification of the Constitution.[41]

A. Actions Leading to the U.S. Constitution

Realizing the failures of the Articles to bridge the territorial and ideological divides that existed at the time, the Framers of the Constitution found it necessary to formulate homogenizing principles that would result in the unification of the divergent groups and interests, while promoting a collective consciousness in the crystallization of a centralized nation.[42] This meant that in crafting the Constitution, the Framers had to be sensitive to the socio-economic and political realities of independent states fiercely bent on

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[40] Stade, *supra* note 24, at 51–55.

[41] James S. Liebman & Brandon L. Garretta, *Madisonian Equal Protection*, 104 COLUM. L. REV. 837, 837 (2004) ("James Madison is considered the 'Father of the Constitution,' but his progeny disappointed him . . . At the Convention, Madison passionately advocated a radical structural approach to equal protection under which the 'extended republic's' broadly focused legislature would have monitored local laws and vetoed those that were parochial and 'unjust.'"); *See* CONSTANTINOS E. SCAROS, UNDERSTANDING THE CONSTITUTION 41–48 (2011).

[42] "For if our failures were truly the outcome of the breakdown of the original ideologies of the framers, then presumably we would see unstable modalities of interpretation as well; we would demand the original balance of modalities and reject assimilation or reduction as equally inconsistent with the initial ideological balance; and we would have held that constitutional structures of interpretation—reflecting a commitment to liberal and republican ideals—and not the vagaries of day-to-day politics ought to determine constitutional decisionmaking." Philip Bobbitt, *Is Law Politics?*, 41 STAN. L. REV. 1233, 1242 (1989).

safeguarding their autonomy and sovereignty, and assess these against the backdrop of the Declaration of Independence, and the failures of the Articles of Confederation.[43] As McCurdy Mathias, Jr. explained:

> Prior to 1776 there was no central colonial American government. Each colony had its own government that was answerable to the Crown. Within the framework of some general laws established by the mother country, each colony acted with autonomy from the others. The signing of the Declaration of Independence furthered the autonomy by making the colonies separate and independent nations. But to fight a common war against a great power, more than an assertion of independence was needed. The Articles of Confederation provided a loose arrangement for cooperation among the sovereign states . . . The promising beginning, symbolized by the bold words of freedom in the Declaration of Independence, seemed condemned to failure by the weaknesses in the Articles of Confederation. A hapless government floundered in the face of many challenges.[44]

Obvious in the above quote are the failures of the Declaration of Independence and the Articles of Confederation to unify the autonomous states into a collective force.[45] It also points to the weaknesses in states'

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[43] "[T]he Framers made the same three simple but important assumptions about human nature that economists make. These common assumptions make it possible to argue that the Constitution is an economic document. The three basic assumptions of the economic model are well known and need only be summarized here: (1) people can be expected to act self-interestedly; (2) when pursuing their own self-interest, people respond to incentives in a predictable fashion; and (3) in pursuing their own self-interest, people, by engaging in voluntary exchange, can benefit not only themselves but society because such voluntary exchange drives resources to their most highly valued uses." Jonathan R. Macey, *Competing Economic Views of the Constitution*, 56 GEO. WASH. L. REV. 50, 54 (1987).

[44] OSTERLUND, *supra* note 14, at 87–88.

[45] "The Constitution of the United States emerged as a result of a gradual constitutional evolution that lasted over the thirteen-year period between 1776 and 1789. This period began with the Declaration of Independence and continued through the convening of the first Congress. American ideas of constitutional government were nurtured in the five years of national experience without a formal written constitution from 1776 until 1781. These ideas matured from the time the Articles of Confederation entered into force in 1781 until the Constitutional Convention convened at Philadelphia to draft the present Constitution in 1787, as flaws in the Articles of Confederation surfaced with increased regularity.

preservation of autonomy and independence in the face of threats from a superior force.[46] In this regard, the failures lent support to the constitutional architects' convictions and ideology that the strength of the independent states resided in their unity.[47] Thus, promoting and fostering unity under the formation of a central government based on democratic principles emerged as the primary goal of the constitutional debates and formulations of acceptable articles.[48]

Therefore, the present Constitution of the United States was the second constitutional document drafted for the new republic." Robert N. Clinton, *A Brief History of the Adoption of the United States Constitution*, 75 IOWA L. REV. 891, 891 (1990).

[46] "Colonial central government was largely a product of power exercised at the local level. The American colonies essentially governed themselves under royal charters from England. This was a matter of necessity because England, of course, was far away in distance and time and the colonies became accustomed to making decisions and passing laws on their own. This established a pattern of political local autonomy in town and county governments throughout early colonial America. Thus, by the time of the Declaration of Independence in 1776, colonial central governments were politically weak and, for the most part, needed local government permission to act effectively. This localism carried over to the Articles of Confederation and later to the Constitution itself . . . In 1776, when union became a prime concern, the colonies viewed themselves as independent sovereign nations with strong preferences for local authority. The primary government unit was considered to be the state and not any union or continental government. The newly independent 'Americans' thought of their state and identified with their state first and foremost." James E. Hickey, Jr., *Localism, History and the Articles of Confederation: Some Observations about the beginning of U.S. Federalism*, 9 IUS GENTIUM 5, 9–11 (2003).

[47] "Under the Articles of Confederation, the term 'United States' was plural and not singular as a matter of grammar, meaning, and feeling. The U.S. Constitution that replaced the Articles of Confederation converted the plural 'peoples of the United States' to the singular. The implication of that semantic conversion, of course, is that the people are directly represented in the Constitution . . . The state sovereignty and state equality concerns reflected in The Articles of Confederation were carried over in several respects to the Constitution: in guaranteeing survival of the states as discrete sovereign legal personalities; in the scheme of representation; in the doctrine of enumerated powers for the central government; and in the reservation of powers in the states. The Articles of Confederation preserved the state sovereignty notion of an agreement among states. In addition, the Articles provided a new vehicle through which all the people of the country could agree to bestow certain powers directly on the federal government. Thus, state sovereignty (local power) was preserved in the Constitution and the states did not disappear as a source of power in the new 'United States of America.'" *Id.* at 11–14.

[48] *See id.*

III. Emergence of the Constitution in the age of *Kali Yuga*

To achieve the goal of unification, constitutional framers embarked on a project and course of right action that bridged divisions and discord, and transcended self and territorial interests.[49] Their efforts, according to the chronological order of *Yugas*, took place in the declining period of *Kali Yuga*.[50] *Kali Yuga*, described as the age of darkness, is characterized by a decline in humaneness, religiosity, and societal relationships.[51] It is also marked by the prevalence of pestilence, war, famine, enslavement, and other forms of human indignities and tragedies.[52] Despite disagreement as to the

[49] "The framers had to reach compromises between several competing groups, such as North and South, free and slave states, large and small states, creditors and debtors, and commercial and agricultural economies. These groups cemented their deals at the constitutional level. The framers bridged the divide that threatened the very future of the nation — the divide between large states and small states — by creating a Congress with a House elected by the population and a Senate representing the states. They solved another crisis by allowing state law to decide on slavery but giving Congress the authority to regulate the territories and to end the slave trade by 1808." Robert J. Delahunty & John Yoo, *Saving Originalism*, 1113 Mich. L. Rev. 1081, 1107 (2015).

[50] *See* Selbie & Steinmetz, *supra* note 3, at 5. Astrological calculations vary as to the date of the ending of *Kali Yuga* and the start of *Dwapara Yuga* with some astrologists believe *Kali Yuga* will last for 1000 years. Some claim transformations from *Kali Yuga* to *Dwapara Yuga* began between 2000 to 2030, others 2005. *See* The Apocalypse of the Aquarian Age: An Essay on the Cycles of Time, Albert Amao Soria (2021).

[51] *See* Pandit, *supra* note 4, at 20.

[52] "In the Kali age, the Brahmanas also abstain from sacrifices and the study of the *Vedas*, are divested of their staff and deer-skin, and in respect of food become omnivorous . . . And those sinful monarchs, addicted to false speech, govern their subjects on principles that are false . . . And men become short-lived, weak in strength, energy, and prowess; and endued with small might and diminutive bodies, they become scarcely truthful in speech. And the human population dwindles away over large tracts of country, and the regions of the earth, North and South, and East and West, become crowded with animals and beasts of prey . . . And men, unholy in deed and thought, take pleasure in envy and malice. And, O sinless one, the earth then becometh full of sin and immorality. And, O lord of the earth, he that becometh virtuous at such periods doth not live long. Indeed, the earth becometh reft of virtue in every shape. And, O tiger among men, the merchants and traders then full of guile, sell large quantities of articles with false weights and measures. And they that are virtuous do not prosper; while they that are sinful proper exceedingly. And virtue loseth her strength while sin becometh all powerful. And men that are devoted to virtue become poor and short-lived; while they that are sinful become long-lived and win prosperity. And in such times, people behave sinfully even in places of public amusements in cities and

starting date of this age, the ending of *Kali Yuga* subsequently indicates an easing of darkness and human miseries with a cyclical turn toward the beginning of human kindness and religiosity.[53] As described in an ancient text on Indian literature called the *Srimad Bhagavatam* regarding the age of *Kali Yuga*:

> [R]eligion, truthfulness, cleanliness, tolerance, mercy, duration of life, physical strength and memory will diminish . . . wealth alone will be considered the sign of man's good birth, proper behavior and fine qualities. And law and justice will be applied only on the basis of one's power . . . A person will be judged unholy if he does not have money, and hypocrisy will be accepted as virtue . . . The citizens will suffer greatly from cold, wind, heat, rain and snow. They will be further tormented by quarrels, hunger, thirst, disease and severe anxiety . . . As the earth thus becomes crowded with a corrupt population, whoever among the social classes shows himself to be the strongest will gain political power.[54]

The above-mentioned deteriorating human societal conditions that *Vedic* philosophers predicted is the result of a decline in *Dharma*.[55] *Dharma*, proclaimed as righteous action, refers to decisions and behaviors that are not

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towns. And men always seek the accomplishment of their ends by means that are sinful. And having earned fortunes that are really small they become intoxicated with the pride of wealth." THE MAHABHARATA, Sec. CLXXXVII, 378–79 (Kisari Mohan Ganguli trans., 1883–1896) (emphasis added), https://www.sacred-texts.com/hin/m03/m03187.htm [https://perma.cc/34NW-7YA6] (last visited November 2020).

53 *See* PANDIT, *supra* note 4, at 22.

54 A. C. Bhaktivendanta Swami Prabhupada, *Srimad Bhagavatam* FIRST CANTO-PART THREE 28–40 (1988).

55 "Conditions on Earth deteriorated ever since and in the present age, humans do not even follow their basic duties but have become each other's enemies and follow the 'law of the fish'. According to the 'law of the fish' (mātsya-nyāya), big fishes devour small fishes, a worldview similar to Hobbes' theory about humans ('homo homini lupus est') with the significant difference that this social disintegration emerged as a result of a long process of degeneration and was not an assumed initial situation. In such a world of chaos, a strong authority was needed in order to guarantee at least the basic functions of society and it is exactly what makes a state legitimate." Janos Jany, *Hindu Law*, 80 IUS GENTIUM 233, 239 (2020).

guised in self-interests;[56] regularly translated as right or transcendental behavior, it is that which is beyond selfishness. *Dharma,* "[o]n a larger scale . . . means the essential order of things, an integrity and harmony in the universe and the affairs of life that cannot be disturbed without courting chaos. Thus, it means rightness, justice, goodness, purpose rather than chance."[57]

In short, "*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."[58] To this end, *Vedic* philosophers proclaimed *Dharma* to be the fundamental principle in an understanding of the transformations of human consciousness, righteousness, and enlightenment which they claimed ascend and descend cyclically through the interlocking connections of four *Yugas*.[59]

As mentioned in the introduction of this paper, the four *Yugas* are *Krta* (or *Satya*), *Treta*, *Dwapara,* and *Kali Yugas*.[60] The diagram below[61] indicates the *Yugas* and their approximate unfolding timelines.

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[56] "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. 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, to discover and discern the boundaries and principles that govern a just society." Persaud, *supra* note 2, at 52–53 (emphasis added).

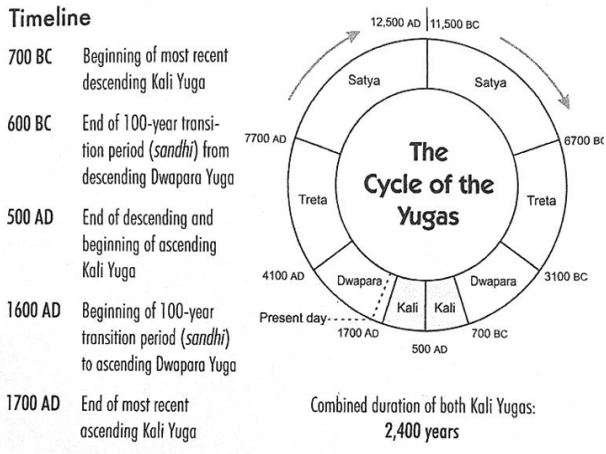
[57] EKNATH EASWARAN, THE BHAVAD GITA 31–32 (1985).

[58] Persaud, *supra* note 2, at 53.

[59] "The *Vedas* as sources of all relevant religious knowledge should therefore also be the starting point of legal knowledge, despite its overwhelmingly ritualistic content. This way of thinking also explains the elevated position of priests, a privileged group with the monopoly of ritual knowledge necessary to maintain the world order and to help both the individual and the community to achieve prosperity and well-being. But all this is too abstract and contains no milestones to everyday life understandable to all with clear cut rights and duties. After all, one should know what to do in order to maintain the cosmic order with his own deeds. Out of this necessity, the concept of *dharma* evolved to fill the normative gap." Jany, *supra* note 55, at 234–35 (emphasis added).

[60] *See* PANDIT, *supra* note 4.

[61] SELBIE & STEINMETZ, *supra* note 3, at 14.



The information in the above diagram, based on the calculations of a *Vedic* scholar, Sri Yukteswar, suggests that we are already in the path of *Dwapara Yuga* which began in the early 2000s.[62] There is, however, some disagreement among *Vedic* astrologers who claim that *Dwapara Yuga* begins its manifestation in 2025, bringing an end to the reign of *Kali Yuga*.[63] Whatever the controversy, it is perhaps safe to assume that we are either on the cusp, or transformation between two ages, of *Kali* and *Dwapara Yuga*, or in a transitional period in the ending-stage of *Kali Yuga*.[64] Presumably, there should be a gradual increase in morality during the age of *Dwapara*.[65] But, it is clear that at the time of the Constitution's creation, human civilization was still in the age of *Kali Yuga*.[66]

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[62] *Id.*

[63] *See* SUMMA DHARMALOGICA: A LINEAGE IN SPIRIT-LOGIC, MAIK SULMAYA PEHRSSON 46 (2014).

[64] *See* Yajur Veda (*Taittiriya Sanhita*), *supra* note 5, at Kanda IV Prapathak III iv. 3 (describing a several-fold path for each age).

[65] "In the Dwapara, sin and morality are mixed half and half; and accordingly, morality is said to have two legs only." *The Mahabharata*, Sec. CLXXXIX, https://www.sacred-texts.com/hin/m03/m03189.htm [https://perma.cc/3U77-6SAU].

[66] SELBIE & STEINMETZ, *supra* note 3, at 61.

It is well documented that the Framers conceptualized the Constitution during the period of colonial history when states considered themselves autonomous bodies and experienced regular conflict—sometimes violent—with one another as each sought to preserve their individual autonomy.[67] During this time, historical evidence indicates that numerous plantation owners had amassed large numbers of enslaved people who they considered chattel—commodities to be bought and sold for profit at the whim of owners.[68] As chattel, this plantation laboring sector not only received a life sentence of slavery upon arrival to the colonies, but they also experienced severe physical and mental abuses and were often deprived of the very basic necessities of human existence: food, adequate shelter, and clothing.[69]

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[67] "Popular violence was a driving force in the calling of a constituent assembly (America) or in the shaping of the document it produced (both countries). In America, the violence was predominantly rural . . . State violence also shaped the constitution-making in crucial ways. In the USA, the defeat of Shays' Rebellion by the army raised by the governor of Massachusetts was a close thing. Only lack of coordination prevented the rebels from seizing the federal arsenal at Springfield. Had they succeeded, they might have marched on Boston []. Some clauses in the 1787 Constitution can be traced back to the desire of the framers to have a more robust repressive machinery at their disposal." Jon Elster, *Constitution-Making and Violence*, 4 J. LEGAL ANALYSIS 7, 9 (2012).

[68] "In most contexts, they were treated as things—objects or assets to be bought and sold, mortgaged and wagered, devised and condemned. Sometimes, however, they were treated as persons—volitional, feeling, and responsible for their actions. In the words of the Supreme Court of Mississippi, '[i]n some respects slaves may be considered as chattels, but in others, they are regarded as men.' The second tension concerned the relationship between slavery and the rule of law. In many connections, courts and legislatures took the position that the control and discipline of slaves were primarily the responsibility of their masters and that the law ought not interfere with masters' exercise of their power." *See* William W. Fisher, III, *Ideology and the Imagery in the Law of Slavery*, 68 CHI.-KENT L. REV. 1051, 1054–55 (1993).

[69] "When one considers the modern day accounts of physical, mental, and sexual abuse that individuals inflict upon their family members and upon total strangers, it is not difficult to imagine the ability of an individual to inflict such horrors and more on a slave who was considered by law and by society to be merely a piece of property—the object of a contract. As a result, insanity after sale was not uncommon." Anthony R. Chase, *Race, Culture, and Contract Law: From the Cottonfield to the Courtroom*, 28 CONN. L. REV. 1, 20 (1995).

Deprived and disenfranchised, the daily existence of enslaved people depended on the whim of their owners.[70]

It is within such circumstances of conflict and oppression that the Constitution, forged by a group of men—most of whom either owned slave plantations[71] or descended from the plantocracy where enslaved people were exploited as the principal source of wealth and power[72]—found it necessary to forge a centralized form of government upon the failure of the Articles of Confederation.[73] "The Constitution came into being because of the failures of the Articles of Confederation, which were passed by the Continental

[70] For example, "[a] common justification for the rule that battery of a slave by a master (or hirer) is not a crime was that physical abuse of slaves was dishonorable behavior that would be condemned by the community, and that cruel (or potentially cruel) masters would succumb to such social pressure. Similarly, the pride many Southerners took in the ability of masters and overseers to deal with most instances of slave 'misconduct' on their plantations was based partly on their general suspicion of the legal system as a forum for the resolution of disputes—their conviction that honor entails, among other things, 'policing one's own ethical sphere.'" *See generally* Fisher, *supra* note 68, at 1077.

[71] *See* Paul Finkelman, *The Constitution and the Intentions of the Framers: The Limits of Historical Analysis*, 50 U. PITT. L. REV. 349, 374–77 (1989); *see also The Founding Fathers and Slavery*, BRITANNICA https://www.britannica.com/topic/The-Founding-Fathers-and-Slavery-1269536 [https://perma.cc/J8E8-N4GX].

[72] "The Founding Fathers, in establishing the framework of the new federal government, handled the question of slavery as an economic and political rather than a moral matter, particularly so in light of the sensitivity of Southern delegates, who would brook no interference with their institution." *See* DERRICK BELL, RACE, RACISM, AND AMERICAN LAW 37 (6th ed. 2008). *See also The Founding Fathers and Slavery*, BRITANNICA https://www.britannica.com/topic/The-Founding-Fathers-and-Slavery-1269536 [https://perma.cc/J8E8-N4GX].

[73] "[T]he Articles of Confederation were beyond repair, that a completely new constitution would have to be prepared . . . Another serious problem which disturbed the Federal Convention [of 1787] had to do with the status of slavery under the Constitution. How divisive this problem would be was apparent even before the Convention. A constant challenge to slavery was posed by the recognition in the Declaration of Independence that 'all Men are created equal.' What this meant, and what the consequences should be of such a principle, could not be satisfactorily decided before the Civil War. It is evident that the Framers of the Constitution were obliged to postpone indefinitely the full implementation of the equality principle of the Declaration." George Anastaplo, *The Constitution at Two Hundred: Explorations*, 22 TEX. TECH L. REV. 967, 971, 1007 (1991).

Congress in 1777 and ratified in 1781."[74] Despite their colonial roots and material successes, several of these constitutional framers harbored some moral qualms about man's indignities to their fellowman and supported antislavery causes.[75] However, given the North-South social and economic realities at the time, the Framers felt it necessary to compromise on the issue of slavery.[76]

Despite initial disagreement over slavery at the Constitutional Convention in 1787, the Framers once again demonstrated their commitment to

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[74] STEPHEN PROTHERO, THE AMERICAN BIBLE: WHOSE AMERICA THIS IS? HOW OUR WORDS UNITE, DIVIDE, AND DEFINE A NATION 109 (2012).

[75] "Before the 1840s almost all the states-North and South-recognized that freedom attached to slaves voluntarily taken into the North, although some northern states passed laws to modify this rule by granting southern masters a right of limited transit. By the 1850s this had changed. Most Southern states no longer accepted the idea that residence in a free state would emancipate a slave while most Northern states aggressively asserted the right to emancipate slaves who, with their masters' permission or acquiescence, set foot on free soil. Similar issues arose over the status of fugitive slaves and of northerners who helped fugitive slaves who had escaped to the North." *See* Paul Finkelman, *When International Law was a Domestic Problem*, 44 VAL. U. L. REV. 779, 780 (2010)); *see* https://www.britannica.com/topic/The-Founding-Fathers-and-Slavery-1269536 [https://perma.cc/9BBA-RZN3].

[76] "As northern states abolished slavery while southern states retained it, two conflicting legal systems emerged in the United States. This troubled slave holders. The legal effect of any state's law did not go beyond its territorial jurisdiction. A state that did not recognize slavery was under no obligation to give effect to the master's right in his slave, should either or both come within the state's jurisdiction. Nor were nonslaveholding states under any legal obligation to return runaway slaves to their owners in another state. Under the Articles of Confederation, then, the recapture of fugitive slaves who escaped from the state in which they owed labor or service to another state was a matter of comity among the states. The state to which a slave fled was free to emancipate her or to return her, as it saw fit. In adopting the Fugitive Slave Clause, therefore, the Founders expanded an ancient common law right of property to include property in slaves and elevated it into a new constitutional right that authorized slaveholders to pursue and to recover their slave property even when their slaves escaped to a state that did not recognize slavery. The significance of the Fugitive Slave Clause is that it conferred on slaveowners a new constitutional property right enforceable under the authority of the national government, independent of the states, and the states were prohibited from interfering with this right." *See* Robert J. Kaczorowski, *The Tragic Irony of American Federalism: National Sovereignty versus State Sovereignty in Slavery and in Freedom*, 45 U. KAN. L. REV. 1015, 1024–25 (1997).

maintaining the unity of the new United States by resolving to diffuse sectional tensions over slavery.[77] To this end, the Framers drafted a series of constitutional clauses acknowledging deep-seated regional differences over slavery while requiring all sections of the new country to make compromises as well.[78] The Framers granted slaveholding states the right to count three-fifths of their slave population[79] when it came to apportioning the number of a state's representatives to Congress, thereby enhancing Southern power in the House of Representatives.[80]

The issue of slavery was not the only compromise essential to the formation of a national unity.[81] Given other demographic, economic, and ideological differences, the Framers had to compromise on the issues of governance with equitable balance in decision making, relations of domination, and promotion of order against the excesses of liberty in the formation of a democratic and more just society.[82] This they did, as stated in the preamble to the Constitution: "in Order to form a more perfect Union,

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[77] *See id.*

[78] *See id.*

[79] U.S. CONST. art. I, § 2.

[80] "The three-fifths clause is more a way of measuring wealth than of counting human beings represented in government; wealth can claim to be the . . . basis for apportioning direct taxes. Given the limited importance of direct taxation, the provision was understood to be a bonus for the Southern slave states. That gives that common argument against the three-fifths clause an unusual twist. While it may be that the provision 'degrades the human spirit by equating five black men (more correctly, five slaves) with three white men,' it has to be noted that the Southerners would have been glad to count slaves on a one-for-one basis. The concession to slavery here was not in somehow paring the slave down to three-fifths but in counting him for as much as three-fifths of a free person." Peter Schotten, *Is the Constitution Still Meaningful? Public Reflections upon the Fundamental Law of the Land*, 33 S.D. L. REV. 32, 55–56 (1987) (citation omitted).

[81] *See* George Rutherglen, *In What Sense a Coup? A Review of the Framers' Coup: The Making of the United States Constitution by Michael J. Klarman*, 34 J. L. & POL. 117, 117, 122 (2018).

[82] "[T]he Constitution emerged from debate in this country over the nature of the republic and the best design of its government; it represents to a great extent a series of compromises in a continuous conversation rather than a set of agreements that ended discussion." Kevin F. Ryan, *Separation of Church and State: The Knotty Problems of Constitutional Interpretation*, 28 VT. BAR J. 6, 11 (2002).

establish justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty . . . and Posterity."[83]

To ensure the establishment and maintenance of a democratic society, the Framers placed emphasis on the balance of power and took steps not to concentrate power and authority in the hands of an individual or singular entity.[84] After much discussion, debate, and sometimes indifference, they crafted a constitution in which they enunciated the separation of powers and its authority.[85]

With its establishment in 1788, the Constitution began to gradually bridge the differences; this initially occurred among the thirteen states, and later with the others that joined the Union, enabling them to work towards a national unity based on democratic principles.[86] In formulating and imposing

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[83] OSTERLUND, *supra* note 14, at 19.

[84] "The most important aspect of the Constitution is the separation of powers, the establishment of three separate but equal branches, each with checks upon the other two, and balanced by powers vested in the other two. Keeping the branches separate in identity, but equal in power, is a necessary element of the stability of the government which rests upon those branches." Nick Badgerow, *Opinion: Don't Tread on Me: The Separation of Powers Doctrine and the Need for a Strong Judiciary*, 85 J. KAN. BAR ASS'N. 30, 31 (2016).

[85] "Again, while there is no express provision for the separation of powers in the United States Constitution, that separation is clearly implied by the relationship of the three independent branches. James Madison, writing in the Federalist No. 47, defended the work of the Framers against the charge that these three governmental powers were not entirely separate from one another in the proposed Constitution. He asserted that, while there was some admixture, the Constitution was nonetheless true to Montesquieu's well known maxim that the legislative, executive, and judicial departments ought to be separate and distinct." *Id.* at 33 (citations omitted).

[86] "The Framers could have had very little idea of whether the people of the United States existed as a unified political community before the Constitution was enacted, or of whether the Constitution itself gave shape to such a community. To the extent that these questions have answers today, it is not because they were settled by the history of the framing period, but rather because later events such as the Civil War destroyed any genuine vitality of the idea of state populations as truly independent sovereigns . . . Holmes once said that, while the Framers had 'created an organism' of some sort, 'it has taken a century and has cost their successors much sweat and blood to prove that they created a nation.'" *See* Daniel A.

democratic principles on the autonomous and sometimes warring states, the Framers took action that provided a constitutionally structured, somewhat flawed, path for the Union to gradually reduce societal atrocities prevalent in the age of *Kali Yuga*.[87] It is such thoughts and actions that Radhakrishnan refers to as *Dharmic*. As he explains in the following quote:

> While the pursuit of wealth and happiness is a legitimate human aspiration, they should be gained in ways of righteousness (*dharma*), if they are to lead ultimately to the spiritual freedom of man (*moksa*). Each one of these ends requires ethical discipline. Freedom can be obtained only through bonds of discipline and surrender of personal inclination. To secure the freedom to acquire and to enjoy we have to limit ourselves and bind our will in certain ways. The countries which are politically free are largely bound in thought and practice . . . Democracy is not the standardizing of everyone so as to obliterate all peculiarity. We cannot put our souls in uniform. That would be dictatorship. Democracy requires the equal right of all to the development of such capacity for good as nature has endowed them with.[88]

In *Vedic* philosophy, the age of *Kali Yuga* imbibes *Adharmic* (unbalanced) action that signifies going backwards then moving forward, instead of a

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Farber, *States' Rights and the Union: Imperium in Imperio, 1776-1876*, 18 CONST. CMT. 243, 256 (2001) (citations omitted).

[87] "More specifically, Justice Marshall faulted the original Constitution because, as he put it, the Framers 'did not have in mind the majority of America's citizens. The Preamble's 'We the People,' the Justice said, included only whites . . . Because the original Constitution was defective in this manner, Justice Marshall holds that 'while the Union survived the civil war, the Constitution did not' . . . For Justice Marshall, it is this new Constitution that we should celebrate; not the old one, which contains 'outdated notions of 'liberty,' 'justice,' and 'equality [but rather] the Constitution as a 'living document, including the Bill of Rights and the other amendments protecting individual freedoms and human rights' . . . When the Framers sought to protect in the Constitution the fundamental rights of man but failed to guarantee explicitly those rights to every individual, they introduced a self-contradiction that preordained struggles and conflicts we continue to confront today." William Bradford Reynolds, *Another View: Our Magnificent Constitution*, 40 VAND. L. REV. 1343, 1344–45 (1987) (citations omitted).

[88] SARVEPALLI RADHAKRISHNAN, THE HINDU VIEW OF LIFE 57–58, 83 (1969).

Dharmic expansion of the mind.[89] "[As a] deed contrary to *dharma*, *adharma* has a destructive effect for both the cosmos and the individual. It is important to note however, that *dharma* and *adharma* could not be understood simply as good and bad, concepts difficult to place within Hindu moral thinking."[90] For example:

> [T]o kill a living being is neither bad nor good in the Hindu understanding of *dharma*: to kill a living being for its own sake is certainly *adharma*, but if a lion kills an animal for his own nutrition it is not *adharma* since it is the very nature of the lion to kill for staying alive.[91]

Essentially, the Framers sought to shift the country further away from an *Adharmic* way of life and closer to *Dharmic* principles.[92] But were the Framers' efforts enough to pave the way for the transition and advancement into the *Dwapara Yuga* and guide the nation toward transitioning onto a course of equality and enlightenment as postulated by *Vedic* philosophers? I will examine this question in the remaining sections of this paper.

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[89] Jany, *supra* note 55, at 239.

[90] *Id.* at 234 (emphasis added).

[91] *See id.* (emphasis added).

[92] "Hindus believe that there will only be peace and harmony when everybody pursues *dharma*, or their righteous duty. In other words, they believe that the 'cosmic order [could be] sustained . . . by following *dharma*: through every individual's self-controlled behavior and conscious subordination of personal desires to higher concerns.' *Adharma*, which rejects righteousness and leads to conflicts, is the pursuit of the opposite path of dharma . . . Hindus believe that there was a golden age when everybody knew their *dharma* and actively pursued it. This is when the 'bull of *dharma* had four strong feet.' Now, however is the '*kaliyuga*,' which is 'the era of depravity and decay,' where '*dharma* only has one foot.'" *See* Aalok Sikand, *ADR Dharma: Seeking a Hindu Perspective on Dispute Resolution from the Holy Scriptures of the Mahabharata and the Bhagavad Gita*, 7 PEPP. DISP. RESOL. L. J. 323, 329, 330 (2007) (emphasis added) (citations omitted).

B. Post-Constitution Population Diversity and the Transition from Kali Yuga to Dwapara Yuga

Since its declaration as a constitutionally governed society over two centuries ago, the U.S. has undergone much change.[93] Among the many factors that contributed to the change are population growth and diversities of cultures, each with its own unique religious adherences and practices.[94] In the early stages of colonization, the majority of the colonists adhered to Christian beliefs and practices, brought primarily from Britain.[95] But, as the population gradually expanded due to Africans being imported as slaves and Europeans fleeing poverty, discrimination, and persecution, the American population began to exhibit a greater degree of social-cultural heterogeneity.[96] From the 1880s to the early 1920s, and with the advent of industrialization and urbanization, the immigrant population swelled as more Europeans—Irish, Polish, Germans, Italians—came in search of economic opportunities and a better life.[97] During this period, social scientists argued that America became a "salad bowl"—a nation of heterogeneous cultural

[93] *See generally* HERBERT G. GUTMAN & GREGORY S. KEALEY (EDS.), MANY PASTS: READINGS IN AMERICAN SOCIAL HISTORY, 1600–1876; 2 READINGS IN AMERICAN HISTORY 1865–PRESENT (1973). Since the publication of these volumes in 1973, the U.S. has undergone additional social, political, economic, and demographic changes, including changes in immigration and technological advances.

[94] *See Religion and the Founding of the American Republic*, LIBR. OF CONG., https://www.loc.gov/exhibits/religion/rel01.html [https://perma.cc/582H-GPT3]; *see* READINGS FOR DIVERSITY AND SOCIAL JUSTICE (Maurianne Adams et al. eds., 3d ed. 2013).

[95] *See* Joseph G. Jarret, *Laws from on High: Religious Displays on Public Property*, 79 FLA. BAR J. 40, 41 (2005).

[96] *See* Sylvia R. Lazos Vargas, *Deconstructing Homo[generous] Americanus: The White Ethnic Immigrant Narrative and its Exclusionary Effect*, 72 TULANE L. REV. 1493 (1998).

[97] "From 1880 to 1920, more than twenty million immigrants came to the United States, and the percentage of U.S. residents who were foreign-born rose to nearly 15%. Most of the new immigrants were Catholics and Jews from southern and eastern Europe, while most previous immigrants had been Protestants who had come from England, Ireland, and Germany." Jared A. Goldstein, *The Klan's Constitution*, 9 ALA. C.R. & C.L. L. REV. 285, 321–22 (2018).

groups of people living under a dominant culture.[98] Then, from 1924 through the 1950s, the immigrant population slowed to a trickle due to restrictions and economic hardships, only to bounce upwards in the late 1960s due to the uplifting of restrictions.[99] From then onwards, immigrants from Asia, Africa, Latin America, and the Caribbean flowed into the U.S.[100]

In coming to the U.S., the immigrant groups brought with them their language, culture, religious beliefs, and practices—all of which contributed to the diversity in the population and the pluralistic distinctions of the overall society.[101] This influx of diverse immigrant groups from varied social and cultural backgrounds found themselves protected under the principles of a national Constitution.[102] Given this population diversity and the changing

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[98] "The metaphor of America as a melting pot has been rejected in favor of a salad bowl in which the constituents retain their own identity. As the presence of minorities continues to grow, a conglomeration of separate cultural identities is developing." *See* Steven I. Locke, *Language Discrimination and English-Only Rules in the Workplace: The Case for Legislative Amendment of Title VII*, 27 TEX. TECH L. REV. 33, 34 (1996).

[99] "Immigration remained characteristically European throughout the first two-thirds of the twentieth century, but by the 1970s Latin America, Asia, the Caribbean, and Africa had begun to eclipse Europe. Where, for instance, Europeans accounted for 51 percent of all immigrants from 1921 through 1970, between 1971 and 2004 only thirteen percent of the 24,706,812 immigrants entering the country originated in Europe. By contrast, Asia, Latin America, and the Caribbean, accounted for thirty-four, thirty-three, and eleven percent of these immigrants." Milton Vickerman, *Post-1965 Immigration and Assimilation: A Response to Randy Capps*, 14 VA. J. SOC. POL'Y & L. 206, 208 (2007).

[100] *See id.*

[101] "A significant contribution to the prevention of stagnation in American culture is the constant wave and influx of immigrants from countries of varying cultures, religions, and languages." Peter D. Ross, *Beyond Law and Religion: The Liberated Conscience*, 27 TEX. TECH L. REV. 1303, 1315 (1996).

[102] *See, e.g.*, Shoba Sivaprasad Wadhia, *Business as Usual: Immigration and the National Security Exception*, 114 PENN ST. L. REV. 1485, 1526–27 (2010) ("In February 1942, then President Franklin D. Roosevelt issued Executive Order 9066 allowing the U.S. military to enact any policies necessary for the national security . . . By December 1942, nearly 120,000 [Japanese Americans] were detained in camps along the West Coast . . . While the Court found that the Executive Order violated the Equal Protection Clause and applied the higher 'strict scrutiny' standard, it nonetheless upheld the constitutionality of Executive Order 9066 . . . Even during the Cold War era, the political branches continued to create laws targeted at particular nationalities for scrutiny based on national security. In response to the 1979 Iranian hostage crisis, the INS promulgated a regulation that required students

demographic, social, political, and economic realities of the American society, can the Constitution, in its current articulation, continue to effectively serve as the catalyst toward the achievement of a more just, harmonious, and enlightened human existence, as predicted by *Vedic* seers in their explications of the transformation from *Kali* onto *Dwapara Yuga*? The answer to this question is still unfolding as the constitutional principles accommodate, in fairly and unbiased application, to facilitate recent immigrants' adaptation and integration into the dominant culture.

Then why study the transition toward the age of *Dwapara*? Because of the nature of the cosmic energy and the continual restoration of harmony in realizing one's connection with and to the universe.[103] To understand this nonlinear connection, it is important to take a moment and understand the underlying philosophical concepts behind the different ages. Adi Shankara[104] is considered one of the greatest *rishis* or sages in the Hindu philosophy of *Sanatana Dharma* or the Eternal Law,[105] and wrote about the illusion of the universe (*maya*) and the true Reality (*Brahman*)[106] as espoused in the ancient

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from Iran to report to INS in order to 'provide information as to residence and maintenance of nonimmigrant status' or else be subject to deportation. When the regulation was challenged on constitutional grounds, the D.C. Court of Appeals recognized that classifications based on nationality are consistent with due process and equal protection so long as they are not 'wholly irrational.' The court upheld the regulation . . . "). *Contra* David Fontana, *A Case for the Twenty-First Century Constitutional Canon: Schneiderman v. United States*, 35 CONN. L. REV. 35 (2002).

[103] *See* Persaud, *supra* note 2, at 51.

[104] While there is some debate as to the exact dates of his lifetime, it is generally thought of as somewhere between the 5th century BCE and 7th century CE. "Setting the date of S[h]ankara's birth is probably one of the most controversial problems in the history of Indian Philosophy . . . S[h]ankara . . . has usually been regarded as the greatest philosopher of India since P. Deussen praised his philosophy and compared it to those of Parmenides and Kant . . . S[h]ankara was indeed a metaphysician or theologian, but, like Gotama Buddha and other great religious teachers, he was primarily concerned with the salvation of people suffering in transmigratory existence here in the present world and not with the establishment of a complete system of philosophy or theology." A THOUSAND TEACHINGS: THE UPADESASAHASRI OF SHANKARA ix, 3 (Sengaku Mayeda trans., 1992).

[105] *See id.* at 57–58.

[106] "To a 'common' person, the world is real as long as he (or she) is in the grip of *maya* (nescience) and perceives the world through the mind and the senses alone. However, when

Indian texts known collectively as the *Vedas*.[107] He argued on the notion of non-duality[108] that there is no distinction between an individual identity and the true Reality.[109] The struggle to invest in and strive for these philosophical ideals becomes more pronounced in the *Dwapara* and *Kali Yuga*; therefore, it is becoming more so a necessity that we engage in these philosophical discussions in order to understand the current state of the world around us.[110]

Fundamentally, the further away from *Dharmic* thinking that an individual or society regresses, the closer they arrive toward an *Adharmic* way of life, resulting in a less harmonious collective consciousness.[111] Extrapolating from these concepts, while we transition through the cyclical path in the

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the mind and senses are transcended through direct spiritual experience, the world of things and beings vanishes altogether and what remains is *Brahman*, which is the only reality." PANDIT, *supra* note 4, at 68 (emphasis added).

[107] *See generally* INTERNET SACRED TEXT ARCHIVE, https://www.sacred-texts.com/hin/ [https://perma.cc/7AMN-FKV8].

[108] "*Advaita* [non-duality] *Vedanta* provides a complete unified theory of everything in the universe, a goal that modern science is striving to achieve . . . In the realm of matter, Einstein's equation E=mc2 confirms that the cosmic matter is actually cosmic energy. Since modern science has not yet accounted for consciousness in its scientific investigations, it cannot yet prove that the cosmic energy has actually arisen from the cosmic consciousness. Therefore, modern science cannot currently explain the unity of all things and beings in the world as Shankara did. For this reason, it is said that Shankara had already started where Einstein ended several centuries later." PANDIT, *supra* note 4, at 67 (emphasis added).

[109] "The body/world is only an illusion and is really the *Brahman* itself." ADI SHANKARA, A PHILOSOPHIC TREATISE ON ADVAITHA 10 (P.R. Ramachander trans.), www.advaita-vedanta.org/texts/aparokshanubhuti_eng.pdf [https://perma.cc/5972-X2DC] (emphasis added).

[110] In a famous philosophical debate with another philosopher, Mandana Mishra, who later became his follower, Mishra asked Shankara, "Where is *Sannyasa* [a religious ascetic] in *Kali-yuga*, and where is *Brahman* for a brutish fellow like you?" to which Shankara replied, "Where is *Agnihotra* [the ritual of placing clarified butter into a sacred fire] in *Kali-yuga*? And how can [liberation] be attained through the foul actions involved in ritualism? . . . The *Vedanta* is the only panacea for man's ills in *Samsara* [the cycle of death and rebirth]. It is a veritable moon for those suffering from the heat of worldly existence." MADHAVA-VIDYARANYA, SHANKARA DIGVIJAYA: THE TRADITIONAL LIFE OF SRI SHANKARACHARYA 84–85, (Swami Tapasyananda trans.), https://estudantedavedanta.net/Sankara-Digvijaya.pdf [https://perma.cc/5ABN-8E5M] (emphasis added).

[111] *See* Persaud, *supra* note 2, at 67–68.

illusory universe, we need to be cognizant that this notion of *Dharma* is not self-operating. Therefore, the transition from *Kali* to *Dwapara Yuga* may not be self-executing, but it still requires diligence and perseverance in seeking harmony and truth over *Adharma*. In other words, while philosophically we can argue that the current age should be undergoing a transition, it will not occur unless we, as a people, are willing to live righteously, as the timelines of these ages and their transitions within the ages are clearly not static. Likewise, while the wording of the Constitution may have created a government for the people, it is incumbent upon those people to follow their *Dharma* in order to form a more perfect union.[112]

C. From Kali to Dwapara Yuga and the Constitution

Ever since its establishment in 1788, the U.S. Constitution emerged to become sanctified as the primary instrument in solidifying divergent groups of settlers into a national unity, and the promotion of societal stability through law and order.[113] To this end, there is little doubt that in the lives of Americans, the Constitution reigns supreme in fostering social order and maintaining societal harmony and stability.[114] In *Vedic* philosophy, the law of *Dharma* plays a vital role in serving this constitutional function. Thus, it can be said that while the individual has control over his *Dharma,* it is the Constitution that has control over the individual. In this regard, the individuals in society are said to have control over their own behaviors while simultaneously being governed to abide by constitutionally mandated laws.[115] In short, the individuals in society must adhere to rules and

[112] "*Dharma* . . . is more than a set of rules, the aim of which is to maintain the cosmic order with its own means . . . *Dharma* originates from the root dhr meaning 'holding, containing', thus referring to the function of *dharma* to preserve world order." Jany, *supra* note 55, at 234 (emphasis added).
[113] Kenneth L. Karst, *The Bonds of American Nationhood*, 21 CARDOZO L. REV. 1141, 1147–48 (2000).
[114] *See generally* CONSTANTINOS E. SCAROS, UNDERSTANDING THE CONSTITUTION (2011).
[115] *See* Persaud, *supra* note 2, at 61.

regulations that are constitutionally sanctioned, which may or may not necessarily represent what they consider righteous or transcendental behavior.[116] With this in mind, let us examine a few of the constitutional trappings associated with the age of *Kali Yuga*.

Constitutional purists often argue as to the intent of the Framers without taking into consideration the changes in contextual realities in the late 1700s and today.[117] The Constitution is *grounded* in a particular epoch of history, one that was described earlier as the age of *Kali Yuga*[118] —an era in which the American society regularly experienced much strife and disharmony.[119] Out of such conditions, the Constitution served to guide the nation toward harmony and stability. To treat the Constitution as a static, or rigid, document

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[116] "Constitutions are written and changed in moments of extreme popular passion: revolution, civil war, and severe economic hardship are indispensable elements of American constitutional development. Moreover, as any regular viewer of the nightly news or social historian can attest, constitutional interpretation is inseparable from a political culture that is bathed in emotion. The Constitution serves as a focal point for individual and collective expressions of hope and fear, love and hate, and sympathy and disgust. Constitutional history and doctrine contain many remnants of dreams realized, deferred, and denied, along with the expired emotions that set those alternative visions of constitutional meaning into action." *See* Doni Gewirtzman, *Our Founding Feelings: Emotion, Commitment, and Imagination in Constitutional Culture*, 43 U. RICH. L. REV. 623, 630 (2009).

[117] "Two main approaches appear in the popular literature on constitutional interpretation: originalism and non-originalism. As classically defined, an originalist approach refers to some aspect of the framers' and ratifiers' intent or action to justify a decision. A non-originalist approach bases the goal of constitutional interpretation in part on consideration of some justification independent of the framers' and ratifiers' intent or action." R. Randall Kelso, *Contra Scalia, Thomas, and Gorsuch: Originalists Should Adopt a Living Constitution*, 72 U. MIAMI L. REV. 112, 114 (2017). "On one side of the scholarly argument over the interpretation of the Constitution are what (for lack of a better term) might be called traditionalists. These are scholars who, despite occasional differences over specific interpretations of the Constitution, nonetheless agree that it can be meaningfully interpreted primarily on its own terms . . . [The other] method of explaining the Constitution known as non-interpretivism (as opposed to the interpretivism practiced by the traditionalists). Although this concept admits some variation, essentially it means that judges are to interpret the Constitution by contemporary or personal standards found outside the document." Schotten, *supra* note 80, at 35, 36.

[118] *See* SELBIE & STEINMETZ, *supra* note 3, at 61.

[119] *See* IRONS, *supra* note 18, at 18–20.

in all instances is to dilute its effectiveness in addressing some of today's societal disharmonies,[120] issues, and problems that continue to generate discord, divisiveness, and sometimes violence, all of which affect the path leading into the higher *Yugas*.

For example, the Second Amendment to the Constitution provided citizens the right "to keep and bear arms," and that this right "shall not be infringed."[121] But, does that right naturally include the possession of arms such as automatic weapons with the capabilities of mass destruction? When this right is assessed against the backdrop of societal realities at the time when the Constitution was ratified and those of today, the question arises as to the type of arms that the Framers were referring to when they used these terms.[122] While handguns and long guns were the primary types of arms possessed in 1791, today's weapons are much more advanced with enormous

[120] "For a period in the 1990s, a new [originalist] approach of 'original understanding' emerged, which refocused the originalist inquiry on the understanding of ratifiers, as opposed to the intentions of drafters. Many contemporary originalists have again shifted originalism's focus - this time toward original meaning . . . The overarching aim of [the other approach to constitutional interpretation also known as] living constitutionalism is to protect and promote a constitution's legitimacy in contemporary society. To that end, it views constitutional law 'as the product of a continuing process of valuation carried on by those to whom the task of constitutional interpretation has been entrusted' . . . Many view originalism and living constitutionalism as polar opposites - but the two approaches can actually be harmonized. In some cases, the original meaning of a text by itself is sufficient to determine an outcome. In other cases, original meaning alone 'is not sufficiently determinate to dictate a unique application,' especially 'when the text employs abstract principles or vague standards.'" Joseph S. Diedrich, *A Jurist's Language of Interpretation*, 93-AUG WIS. LAW 36, 38–40 (2020).

[121] *See* U.S. Const. Amend. II, https://constitution.congress.gov/constitution/amendment-2/ [https://perma.cc/8TDN-74LX].

[122] "Stripped to similarly concise essentials, Justice Stevens's argument is that the Second Amendment's operative clause strongly suggests a military purpose, especially through its use of the term 'bear arms,' and certainly does not unequivocally identify an individual right to have and use weapons for such private purposes as self-defense. The exclusively military purpose of the Amendment is confirmed, according to Justice Stevens, by the prefatory phrase and the legislative history, which together establish that the Second Amendment was meant to protect only 'the right of the people of each of the several States to maintain a well-regulated militia.'" Nelson Lund, *The Second Amendment, Heller, and Originalist Jurisprudence*, 56 UCLA L. REV. 1343, 1348–49 (2009).

capabilities to disrupt the order and stability of the nation.[123] This points to the dilemma of ensuring the health, safety, and security of the masses, especially when the type of arms possessed by lay citizens are superior to those utilized by the law enforcement personnel tasked with the local maintenance of law and order. There is the probability that disgruntled individuals or groups could acquire and utilize the superior arms to threaten or disrupt societal stability, as evidenced in the alleged plot to kidnap and even kill the Governor of Michigan.[124]

In support of the rights of citizens to own and carry today's more sophisticated arms, some Supreme Court Justices claim to base their decisions on what they considered to be the intent of constitutional framers and not on current societal realities.[125] Among the Justices claiming to be constitutional originalists, the late Justice Scalia proved to be the most vocal advocate for supporting citizens' rights to possess and carry sophisticated arms, even when this potentially poses a danger to the order and stability of the nation and to the preservation of a democratic society.[126] Justice Scalia admitted to being wed to the originalist view of constitutional interpretation, which in fact ignores or sidesteps that societal conditions, circumstances, and

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[123] "While an armed citizenry continues to create some deterrent to federal tyranny, it is no longer possible for it to create as effective a deterrent as it could have created in the eighteenth century. No one could reasonably think that the Second Amendment requires that the ratio of federal military power to civilian (or state militia) military power remain fixed at its 1791 level, and no court could possibly impose such a requirement. In 1791, a citizenry armed with weapons typically kept for ordinary civilian purposes might fairly rapidly have organized itself into a reasonably credible military force." *Id.* at 1373.

[124] *See Gretchen Whitmer kidnapping plot*, WIKIPEDIA, https://en.wikipedia.org/wiki/Gretchen_Whitmer_kidnapping_plot [https://perma.cc/7VGS-3FMH].

[125] *See* Lund, *supra* note 122, at 1373–74.

[126] *See* Enrique Schaerer, *What the Heller? An Originalist Critique of Justice Scalia's Second Amendment Jurisprudence*, 82 U. CIN. L. REV. 795, 798 (2014).

relations of governance do change.[127] He explained his choice between originalist and non-originalist thought in the following excerpt:

> . . . I owe it to the listener to say which of the two evils I prefer. It is originalism . . . At an even more general theoretical level, originalism seems to me more compatible with the nature and purpose of a Constitution in a democratic society . . . The vast majority of my dissents from nonoriginalist thinking . . . will, I am sure, be able to be framed in the terms that, even if the provision in question has an evolutionary content, there is inadequate indication that any evolution in social attitudes has occurred.[128]

Isn't this a denial of the potential harm to democracy and an erroneous assumption that societal change and relations of governance are static? The stability of society is not assured by a singular, or individualized, interpretation of the Constitution, but by a collective understanding and application of the articles and amendments in the changing realities of human achievements and advances.[129] To use an example without being overly simplistic: Could it be that Justice Scalia was in denial that, until a few decades ago, women were not entitled to be elected to Congress or appointed

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[127] *See id.*; Lee J. Strang, *Originalism and the "Challenge of Change": Abduced-Principle Originalism and Other Mechanisms by which Originalism Sufficiently Accommodates Changed Social Conditions*, 60 HASTINGS L. J. 927, 927–29 (2009).

[128] Antonin Scalia, *Originalism: The Lesser Evil*, 57 U. CINCINNATI L. REV. 849, 862, 864 (1989).

[129] *See* Lund, *supra* note 122, at 1344–45 ("In recent decades, Antonin Scalia and other legal conservatives have used the principles of originalism as a powerful weapon for criticizing decisions that effectively amended the Constitution through judicial fiat. But this has provoked counterattacks alleging that originalism gets deployed primarily as a weapon for selectively attacking decisions that political conservatives find objectionable on policy grounds. This raises an important question: Can originalism truly offer a principled alternative to 'living constitutionalism'-one that constrains judicial willfulness and preserves the distinction between law and politics? In [D.C. v. Heller, 128 S. Ct. 2783 (2008)], the lawyers who initiated the litigation won their test case, but Justice Scalia flunked his own test. This was a near perfect opportunity for the Court to demonstrate that original meaning jurisprudence is not just 'living constitutionalism for conservatives,' and it would have been perfectly feasible to provide that demonstration. Instead, Justice Scalia's majority opinion makes a great show of being committed to the Constitution's original meaning, but fails to carry through on that commitment.").

to the Supreme Court due to the belief that women were considered inferior to men? It seems doubtful that he viewed women as less brilliant than men given his long friendship with the late Justice Ginsberg, who frequently articulated the resistance she received.[130] Justice Ginsberg, I may add, considered current societal realities in her judicial decisions —a contrast from Justice Scalia.[131]

Considering originalist thinking, can the principles of the Constitution alone steer the nation out of the trappings of *Kali Yuga*? In part, the answer to this question seems to reside in the words of Justice Scalia, who admitted that even originalist thinking is sometimes flawed when he said:

> Now the main danger in judicial interpretation of the Constitution—or, for that matter, in judicial interpretation of any law—is that the judges will mistake their own predilections for the law. Avoiding this error is the hardest part of being a conscientious judge; perhaps no conscientious judge ever succeeds entirely.[132]

Taking Justice Scalia's convictions into consideration, I posit that the originalist and living constitutionalism[133] ways of thinking and actions are

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[130] *See* Keith A. Call, *Appreciating Differences Through Personal Connection*, 33 UT. BAR J. 52 (2020).

[131] "Justice Ginsburg . . . underscored for the Senators . . . voting on her confirmation that she could be characterized as an originalist in a certain, limited sense, but not in the mold of Justice Scalia or Justice Thomas. Rather than regarding a judge as constrained by the original understanding (or original expected application) of a constitutional provision, she expressed her belief that the meaning of the Constitution changes over time, as each generation of Americans seeks to perfect constitutional ideals that were originally articulated by the Founders. They perfect these ideals in part by broadening the universe of beneficiaries- for example, by according women the respect and opportunities they are due as full-fledged members of the political community." Neil S. Siegel, *"Equal Citizenship Stature": Justice Ginsburg's Constitutional Vision*, 43 NEW ENG. L. REV. 799, 815 (2009).

[132] Scalia, *supra* note 128, at 863.

[133] "The theory of the living constitution, or noninterpretivism, has its own weaknesses. The judicial behavior it approves often looks like raw political activism that amounts to 'legislating from the bench.' That may be attractive when the Constitution is changed in ways that noninterpretivists find appealing. But what happens when courts invent new

circumscribed—they seek to preserve the past instead of utilizing the past to inform the present and guide the course towards the future. Such originalist thinking fails in the epistemological grounding of *Dharma*; that is, treading the informed, or enlightened, and the ability to take the right or righteous action in the upliftment of self and society. Given today's realities, constitutional purists cannot have it both ways—to interpret what *originalists think* the Framers meant, thereby laying claim to their rightness of the intent; and that it needs to be applied and upheld today—where current technological, socio-political, and economic advances and conditions are very different from the time of the Framers.[134] To this issue, Justice William Brennan Jr. explained the following:

> [T]he ultimate question must be: What do the words of the text mean in our time? For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs. What the constitutional fundamentals meant to the wisdom of other times cannot be the measure to the vision of our time. Similarly, what those fundamentals mean for us, our descendants will learn, cannot be the measure to vision of their time.[135]

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rights or powers that the proponents of this theory dislike, or begin to cut back on non-originalist precedents that they like?" *See generally* Nelson Lund, *Living Originalism: The Magical Mystery Tour*, 3 TEX. A&M L. REV. 31, 32 (2015).

[134] For example, "it is unclear whether there are good reasons for discriminating against men in child custody disputes, or in setting minimum drinking ages. It is also unclear whether there are good reasons for ignoring actuarial realities in setting social security benefits, or for ignoring physical differences between the sexes in setting rules for military service. The examples could be multiplied, and it is not an originalist answer to say, as Calabresi says in general about the capabilities of women, that 'we' know more than the enactors of the Fourteenth Amendment knew. Like the rest of us, Calabresi has opinions that do not constitute knowledge. And once one assumes that the original purpose of a constitutional provision can be set aside because of what 'we' merely believe, even the semblance of originalism will fade away." *Id.* at 40.

[135] William J. Brennan, Jr., *The Constitution of the United States Contemporary Ratification*, *in* IT IS A CONSTITUTION WE ARE EXPOUNDING: COLLECTED WRITINGS ON INTERPRETING OUR FOUNDING DOCUMENT 147, 151 (2009).

From the above quote, it is clear that Justice Brennan views the Constitution as a dynamic and not static document. Justice Brennan's views find support in the words of Justice Thurgood Marshall when he said the following:

> . . . I do not believe that the meaning of the Constitution was forever "fixed" at the Philadelphia Convention. Nor do I find wisdom, foresight, and sense of justice exhibited by the framers particularly profound. To the contrary, the government they devised was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government, and its respect for individual freedoms and human rights that we hold as fundamental today.[136]

To elucidate Justices Brennan and Marshall's claims, let us consider the "right to free speech" provided in the First Amendment. When the Founding Fathers ratified the Constitution, they took action to ensure that the people are given opportunities to express their opinions and even criticize their government through free speech in accordance with societal realities.[137] At that time, the printing press served as the major instrument in promoting the exercise of free speech.[138] Given the state of technology at the time, information was slow to permeate territories far and wide, whereas "the British crown [had previously] used three methods to suppress free speech: licensing, constructive treason, and seditious libel."[139] As such, hate speech and speech inciting violence became localized and seldom gained widespread support, or it generated disturbances and revolt, and was thereby slow to disrupt with societal disorder.[140]

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[136] Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, *in* IT IS A CONSTITUTION WE ARE EXPOUNDING: COLLECTED WRITINGS ON INTERPRETING OUR FOUNDING DOCUMENT 142 (2009).
[137] Jeremy S. Weber, *Political Speech, the Military, and the Age of Viral Communication*, 69 AIR FORCE L. REV. 91, 96 (2013).
[138] *See* Michael Kahn, *The Origination and Early Development of Free Speech in the United States*, 76 FLA. BAR J. 71, 72 (2002).
[139] *Id.*
[140] *See* Lauren E. Beausoleil, *Free, Hateful, and Posted: Rethinking First Amendment Protection of Hate Speech in Social Media World*, 60 B.C. L. REV. 2101 (2019).

Clearly the intent of free speech was to give the nation's population a voice in their governance—to mobilize, but not to incite violence.[141] It would be far-fetched to claim that the intent of free speech was meant for the instant spreading of hate; the peddling of lies or indifference; or to incite violence, as experienced today through technological advances in communication.[142] Such divisive activities call into question the true constitutional intent of free speech, which may require a new method of reasoning and constitutional interpretation, such as actions that promote social harmony and foster the stability of civil society.[143] To use the guarantee of free speech to promote hate, indifference, hostility, and even open violence through the numerous methods of technological media is likely to delay the transition from *Kali* to *Dwapara Yuga*—progress toward increasing societal harmony, humaneness, and enlightenment.[144]

The tenacious clinging to constitutional intent grounded centuries ago in a historical past, is to deny and disregard current societal realities that cry out for mandates and decisions that foster equality, and not promote or sustain inequalities and indifferences.[145] And, as the perpetuation of inequalities and

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[141] *See id.* at 2114–15.

[142] *See* Chris Demaske, *Social Justice, Recognition Theory and the First Amendment: A New Approach to Hate Speech Restriction*, 24 COMM. L. & POL'Y 347, 359 (2019).

[143] For a discussion on a suggested method of reasoning and constitutional interpretation, *see* Marc O. DeGirolami, *The Traditions of American Constitutional Law*, 95 NOTRE DAME L. REV. 1123, 1180–81 (2020).

[144] "In *Dwapara Yuga* the possibility certainly exists for widespread destruction and catastrophe, but these are not foreordained by the age . . . As *Dwapara Yuga* man's change of consciousness becomes fully established and matures, man will inevitably retreat from self-destruction and begin to realize the higher potentials of the age." SELBIE & STEINMETZ, *supra* note 3, at 63.

[145] "[O]ne cannot heal traumatic psychological injury that is hidden by repression and denial until one uncovers the origins in trauma, until one admits the injury has happened . . . We must know and confront our collective history because that history shapes our present circumstances. [American] history shapes the material and structural racism of separate and unequal schools, of segregated ghettos, of employment discrimination, of mass incarceration, police killings, border walls, and brown children held in cages. [American] history also shapes our continued infection with the ideology of white supremacy . . . When we know that none will heal until all are healed, and that there is no

indifferences intensify, the likely result is the mobilization of opposition with the potential for civil unrest.[146] This was evidenced during the Civil Rights Movement, which revealed weaknesses in the constitutional order.[147] Such societal reactions and indifferences that result in disharmonies and civil unrest weaken constitutional democracy and necessitate accommodative revisions that promote and foster societal harmony to facilitate the transformation from *Kali Yuga* into *Dwapara Yuga*. As noted earlier, the process of each *Yugaic* transformation is not automatic but results from the level of *Dharmic* prevalence in society.

IV. DISCUSSION AND CONCLUSION

Having guided the U.S. in the development of the world's most respected and envied democracy for over two centuries, the Constitution has recently appeared to experience increasing interpretive legal variances,[148] revealing slippages in the objectivization of societal realities.[149] As societal groups vie

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such thing as 'too much justice,' we will heal our nation and make this wounded world whole." Charles R. Lawrence III, *Implicit Bias in the Age of Trump,* 133 HARV. L. REV. 2304, 2357 (2020) (reviewing JENNIFER L. EBERHARDT, BIASED: UNCOVERING THE HIDDEN PREJUDICE THAT SHAPES WHAT WE SEE, THINK, AND DO (2019)).

[146] *See* Nantiya Ruan, *Corporate Masters & Low-Wage Servants: The Social Control of Workers in Poverty*, 24 WASH. & LEE J. C.R. & SOC. JUST. 103, 123 (2017).

[147] "[T]he civil rights movement of the 1960s unquestionably helped transform our understandings of constitutional principles, including most prominently rights to free speech and equal protection of the laws. The political and moral claims of the movement helped spur legislation that continues to raise foundational issues about our constitutional order." Cass R. Sunstein, *What the Civil Rights Movement was and wasn't (with notes on Martin Luther King, Jr. and Malcom X)*, 1995 U. ILL. L. REV. 191, 192 (1995); *see also* Anders Walker, *Shotguns, Weddings, and Lunch Counters: Why Cultural Frames Matter to Constitutional Law*, 38 FLA. ST. U. L. REV. 345 (2011).

[148] *See* Robert E. Riggs, *When Every Vote Counts: 5–4 Decisions in the United States Supreme Court*, *1900–90*, 21 HOFSTRA L. REV. 667 (1993).

[149] *See, e.g.*, Mario Q. Fitzgerald, *A New Voting Rights Act for a New Century: How Liberalizing the Voting Rights Act's Bailout Provisions Can Help Pass the Voting Rights Advancement Act of 2017*, 84 BROOK. L. REV. 223, 256 (2018) ("Americans have long regarded voting to be a core component of citizenship. Though the Fifteenth Amendment promised equal status and treatment as voters to all Americans, Congress needed to pass the Voting Right Act one hundred years after the amendment was passed to fulfill that

for representation, equal rights, and justice, the Constitution—upheld and sanctified as the objective arbiter in resolving disputes—has come under subjective interpretations by judges and Justices who promote themselves as the correct interpreters of constitutional principles. Constitutional law professor, Lawrence Tribe, pointed out that several concepts such as "freedom of speech," "liberty," "due process of law," "equal protection," "cruel and unusual punishment," and "unreasonable searches and seizures" are left undefined.[150] In the absence of clear meanings, judges and Justices are then free to subjectively interpret these concepts in accordance with their political or philosophical convictions. It is such subjective interpretations that have left some societal groups underrepresented and disenfranchised, thus calling into question the Constitution's supremacy as the solidifying instrument of societal harmony and constitutional democracy.[151] As Gerry Spence remarked:

> *We are told that our judges, charged with constitutional obligations*, insure equal justice for all. That, too, is a myth. The function of the law is to provide justice to keep those who hold power, in power . . . Our judges, with glaring exceptions known to all, loyally serve the New King, the corporate core, whose money and influence are responsible for their office . . .
>
> One is hard-pressed to find a judge these days who is not a former prosecutor of the people or a former corporate attorney who, as a

promise. In fact, the VRA fulfilled the promise so successfully that the U.S. Supreme Court ruled one of its most innovative protections—the coverage formula—as antiquated and unconstitutional. Despite the Court's ruling, states formerly covered by the VRA as well as states not covered by the VRA subsequently passed restrictive voting laws which disproportionately affected voters of color. A new law protecting the voting rights of all Americans is needed to fulfill the purpose of the VRA and strengthen the U.S. electoral system.").

[150] Laurence Tribe, *Foreword*, *in* IT IS A CONST. WE ARE EXPOUNDING: COLLECTED WRITINGS ON INTERPRETING OUR FOUNDING DOCUMENT 3, 7 (2009).

[151] *See* Shelby County v. Holder, 570 U.S. 529 (2013); *see also The Civil Rights Act of 1964: A Long Struggle for Freedom*, LEGAL TIMELINE, https://www.loc.gov/exhibits/civil-rights-act/legal-events-timeline.html [https://perma.cc/C3SQ-YBP2].

> judge, takes his experience, his loyalties, his training, and his prejudices with him when he is elevated to that high place . . .
>
> One judge has more power than all the people put together, for no matter how the people weep and wail, no matter how desperate, how depreciated and deprived, a single judge, wielding only the law, can stand them off . . .
>
> Judges can commit nearly every variety of injustice that satisfies their whim or caprice at the moment.[152]

The stability of the American society is not assured by subjective interpretations of the Constitution based on personal ideology[153] or political persuasion as evidenced in the case of Dred Scott.[154] As Martha S. Jones expressed:

> Invoking *Dred Scott* today should do more than provide an example of how courts have, from time to time, made bad decisions. It should also show how these bad decisions can be undermined, undercut, resisted and, ultimately, even overturned. We should remember *Dred Scott* as an example of how high courts can err, but it is most valuable as a primer on what can follow in the wake of a court's injustice and as a cautionary tale about what might await a nation that fails to respond to it.[155]

Societal stability depends on factors that include the unbiased, objective, and collective understanding and application of the constitutional principles grounded in and guided by the changing realities of human existence,

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[152] GERRY SPENCE, FROM FREEDOM TO SLAVERY: THE REBIRTH OF TYRANNY IN AMERICA 90, 92, 93 (1993) (emphasis added).

[153] *See* Daniel Farber, *A Fatal Loss of Balance: Dred Scott Revisited*, 39 PEPP. L. REV. 13, 14 (2011) ("Unlike some other judges of the time, [the Chief Justice of the Supreme Court in 1857] was untroubled by the moral dimensions of his judicial support for slavery . . . [He] went far out of his way to leap to the defense of slavery and racism.").

[154] Dred Scott v. Sandford, 60 U.S. 393 (1857).

[155] Martha S. Jones, *How to Resist Bad Supreme Court Rulings. What Dred Scott Teaches us about Thwarting Bad Law*, WASH. POST (July 6, 2018) https://www.washingtonpost.com/news/made-by-history/wp/2018/07/06/how-to-resist-bad-supreme-court-rulings/ [https://perma.cc/QQ79-Z4PB].

achievements, and advancements.[156] Interpretations of constitutional edicts oblivious to the dynamics of societal realities will likely be resisted, lead to divisiveness, and erode the social harmony in an ever-changing multicultural nation, as evidenced by the Civil Rights Movement[157] and resistance to the Vietnam war.[158]

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[156] "Constitutionalism is not mechanical, it is not mindless, and it is not value-free. It requires judges to exercise judgment. It calls upon them to consider text, history, precedent, values, and ever-changing social and cultural conditions. It requires restraint, humility, curiosity, wisdom, and intelligence. Perhaps above all, it requires intellectual honesty, courage, a recognition of the judiciary's unique strengths and weaknesses, and a deep understanding of our nation's most fundamental constitutional aspirations." Geoffrey R. Stone, *The Roberts Court Stare Deisis, and the Future of Constitutional Law, in* IT IS A CONSTITUTION WE ARE EXPOUNDING: COLLECTED WRITINGS ON INTERPRETING OUR FOUNDING DOCUMENT 204, 212 (2009).

[157] *See* Christopher W. Schmidt, *The Sit-Ins and the State Action Doctrine*, 18 WM. & MARY BILL RTS. J. 767, 797 (2010). The concurrences by Douglas and Goldberg, in which they argued that the right to nondiscriminatory service in public accommodations was constitutionally protected, laid out the terms of the problem. "The whole Nation has to face the issue," Douglas wrote. "Congress is conscientiously considering it; some municipalities have had to make it their first order of concern; law enforcement officials are deeply implicated, North as well as South; the question is at the root of demonstrations, unrest, riots, and violence in various areas. The issue in other words consumes the public attention. Yet we stand mute, avoiding decision of the basic issue by an obvious pretense." Douglas expressed as much concern with preserving order and law as his more conservative colleagues: "When we default, as we do today, the prestige of law in the life of the Nation is weakened."

[158] "[D]uring the Vietnam War, many Americans wanted to speak out against American policies. The Court decided several cases that raised First Amendment issues. The hardest cases involved 'symbolic' speech in which protest was expressed without words. For young men, the most visible symbol of the government's power over their lives was a small piece of cardboard. Federal law required men of draft age to carry their draft cards at all times. When the war heated up, some protested by burning their cards. Congress promptly made it criminal to 'destroy or mutilate' draft cards, but her law did not extinguish protests." *See* IRONS, *supra* note 18, at 418. It should also be noted that university students protesting the war were killed by National Guardsmen at Kent State. A few years after the Kent State shootings, President Nixon ended the Vietnam war. *See* Gregory P. Magarian, *Kent State and the Failure of First Amendment Law*, 65 WASH. U. J. L. & POL'Y 41, 51–52 (2021); *see generally Kent State Shootings*, WIKIPEDIA, https://en.wikipedia.org/wiki/Kent_State_shootings [https://perma.cc/NYF6-EEPK].

Since 1778, the Constitution, according to *Vedic* philosophical chronology, was conceived during the era of *Kali Yuga*.[159] Since then, it has proven to be a remarkable instrument in bringing about societal order and stability.[160] But can it continue in its original formulation to guide the nation onwards in its course of declining *Kali Yuga* into the higher *Yugas* of increasing tolerance, civility, harmony, and humaneness? In this regard, it may require, to some degree, a refinement of the rights and privileges of citizens in accordance with the radically changing national-global transformations and realities. "As the core values of a society change, the system must be able to adapt and reformulate its governing principles in order to compensate. When the system can no longer adapt to change and progress, it cries out for replacement."[161] To this end, the words of the late Chief Justice John Marshall may hold the answer to the constitutional challenges of the centuries ahead, as he wrote, "The people made the constitution, and the people can unmake it. It is the creature of their will, and lives only by their will."[162]

In continuing to perpetuate the principles of the Constitutional government, governmental officials need to take right action—*Dharmic* instead of *Adharmic* action—or action which promotes harmony in the collective consciousness.[163] Whether one believes in action that promotes

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[159] *See* SELBIE & STEINMETZ, *supra* note 3, at 61.

[160] *See generally* David Prescott Barrows, *The Constitution as an Element of Stability in American Life,* 185 ANNALS AM. ACAD. POL. SOC. SCI. 1 (1936).

[161] *See* Persaud, *supra* note 2, at 52.

[162] Cohens v. Virginia, 19 U.S. 264, 389 (1821).

[163] "A key role of constitutional norms is to keep partisanship within reasonable bounds so that the federal government can function more effectively and with greater stability—so that there is more bipartisan action by the federal government, as opposed to opposition-forced inaction or narrowly partisan action (often accompanied by a disreputable process) in order to overcome the opposition. Constitutional norms, while not in the Constitution, are properly called constitutional because they are deeply connected to the Constitution. And they are deeply connected to the Constitution because . . . law alone is not enough to sustain the American constitutional project." Neil S. Siegel, *Law is Not Enough*, 45 OHIO N. U. L. REV. 197, 205 (2019).

collective consciousness or whether societal action is representative of the cosmic energy of the universe, it is important to recognize that while our perceptions may differ, perception does not negate the nature of pure consciousness that permeates human existence.[164] As expressed by Adi Shankara:

> Consciousness being always the same.
>
> Differentiation does not suit it,
>
> And so like seeing a snake in a rope,
>
> It is not proper to identify it as *Purusha* [or the Cosmic Consciousness] . . .
>
> In some moments the rope appears as a snake,
>
> Due to the ignorance of its real nature,
>
> And without the rope changing its nature,
>
> Similarly pure consciousness also appears,
>
> To be the whole universe at such times.[165]

Within *Vedic* culture, Shankara is memorialized as the reviver of *Advaita Vedanta*;[166] he lifted the veil of ignorance by fleshing out the *inspired sanctity* in the teachings of the *Vedas* through an in-depth understanding of *Dharma* and *Karma* in the descending stage of the *Kali Yuga.*[167] These philosophical principles became the abiding inter-locking force that transformed the disharmonies of society during a period of discontent and discord.[168]

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[164] *Id.*

[165] SHANKARA, *supra* note 109, at 10.

[166] "*Advaita Vedanta* is the most famous Indian philosophy and is often, mistakenly, taken to be the representative of *vedantic* thought. The term *advaita* means 'Non-Dual' and refers to the tradition's absolute monism which, put simply, maintains the reality of the one over that of the many. The most famous *Advaita* thinker, and the most famous Indian philosopher ever to have lived, is S[h]ankara or S[h]ankaracharya." GAVIN FLOOD, AN INTRODUCTION TO HINDUISM, 239 (1999) (emphasis added).

[167] *See* PANDIT, *supra* note 4, at 70.

[168] Persaud, *supra* note 2, at 49.

By way of comparison, the Framers, after living through their own age of oppression, sought to promote civic virtue for the common good by members of society,[169] even though they may not have always personally lived these ideals.[170] While the Constitution sought to balance individual liberty and societal order, it is unclear whether its interpretation, then and now, provided for subscription and adherence to a collective citizenry and the formation of national unity through collective consciousness[171]—as enshrined in the preamble of the Constitution.[172]

Given the recent rise in hostilities and societal disharmonies,[173] it is prudent for our citizenry to begin discussions about true meanings of constitutional terms, not only on the aforementioned phrases, but also on equality, justice, and righteousness—*Dharmic* action—in America. In light of the current socio-cultural and political realities, and in order for *Dharma* to prevail over *Adharma*, it will necessitate a reexamination of the equitable balance of power, especially when that power resides in the hands of a single

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[169] "The 'founders' are a mythic construct. We can learn a great deal about James Madison, Thomas Jefferson, or John Marshall, including a great deal about their expressed opinions on political matters, but we can never learn anything about the 'founders' or 'framers' as some sort of collective model . . . Despite their disagreement with one another, many of these versions are of the view that the appropriate ideological framework is the 'republican' tradition that some of the Framers had, and which the other Framers were willing to mollify in order to get the Constitution adopted and accepted in practice. According to this version, the republican ideology believed in a virtuous citizenry that at times needed to check the abuses of constituted authority, including by rising up against it in arms." John Randolph Prince, *The Naked Emperor: The Second Amendment and the Failure of Originalism*, 40 BRANDEIS L. J. 659, 665, 677–78 (2002).

[170] *See* Mintz, *supra* note 31; Paul Finkelman, *The Founders and Slavery: Little Ventured, Little Gained*, 13 YALE J. L. & HUMANS. 413, 447–48 (2001); Tania Tetlow, *The Founders and Slavery: A Crisis of Conscience*, 3 LOY. J. PUB. INT. L. 1, 1–2 (2001).

[171] *See* William A. Aniskovich, *In Defense of the Framers' Intent: Civic Virtue, the Bill of Rights, and the Framers' Science of Politics*, 75 VA. L. REV. 1311, 1333 (1989) (quoting James Madison, "To suppose that any form of government will secure liberty or happiness without any virtue in the people is a chimerical idea.").

[172] *See* OSTERLUND, *supra* note 14, at 19.

[173] *See* Michael J. Klarman, *Foreword: The Degradation of American Democracy – And the Court*, 134 HARV. L. REV. 1 (2020).

individual (e.g., President of the Senate or Attorney General),[174] or in the collective opinion of nine non-like-minded men and women,[175] all of whom could stifle or facilitate progress towards a more just society of increasing tolerance, civility, social harmony, and humaneness.[176] In adhering to the preamble of the Constitution, our governing bodies should continue to build an inclusive and participatory constitutional democracy that uplift all Americans on the path referred to in this paper as achieving the higher *Yugas*. As Osterland put it, "The Constitution succeeded in solving the problems the young nation faced in 1787 . . . The future will depend on the ability of a self-governing nation of free men and women to find within this rich and living charter the way to confront the challenges of the centuries ahead."[177]

Will policy architects seek to operationalize constitutional adjustments that accommodate the rapid epochal shift toward a digitally dominated cultural future—a future which *Vedic* seers predicted to be a climb towards greater harmony and societal stability? *Is it perhaps worthwhile to consider expanding the number of Justices on the Supreme Court from its current nine members to one that truly reflects the social-cultural and political realities of the American population?* Undoubtedly, the current number of Justices has admirably served the nation when the heterogeneous nature was not very pronounced. However, the cultural plurality and socio-economic diversity of the nation is experiencing enormous growth.[178] These realities, coupled with the tremendous population changes and advances in the technological transformation of the society's citizenry, beg the question: can the

[174] *See id*.
[175] *See* Riggs, *supra* note 148, at 667.
[176] "Bad men need nothing more to compass their ends, than that good men should look on and do nothing." JOHN STUART MILL, INAUGURAL ADDRESS AT ST ANDREWS 36 (1867).
[177] OSTERLUND, *supra* note 14, at 8.
[178] Sandra L. Colby & Jennifer M. Ortma, *Projections of the Size and Composition of the U.S. Population: 2014 to 2060*, U.S. CENSUS 9, https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf [https://perma.cc/85MN-27ZQ].

Constitution, stuck in its 1787 formulations, adequately address the nation's changing demands and needs in a rapidly shrinking global divide?[179]

Furthermore, will policy makers, national-societal architects, and jurists of civil society heed the societal-global transformational realities, or will they deny these realities and tenaciously cling to political and philosophical convictions and practices that serve their interests and securities while eroding the stability of civil society? In seeking to address these questions, will *Dharma*[180] prevail to increase societal harmony and facilitate an ascending path into the higher *Yugas*; or will *Adharma*[181] linger, delaying the climb out of *Kali Yuga*? The answer awaits.

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[179] The Constitution was never meant to be an instrument to be used by a few like-minded judges and Justices to foist their will or socio-religious and political convictions on the larger society. Instead, it was meant to serve as a framework by which to bring about fairness in the establishment and fostering of a just society. For such to be accomplished, there must be a refinement in assessing and interpreting intent within the scope of, and grounded in, the changing realties of societal ongoing transformations. As Professor Laurence noted, "Literal readings tied to a term's original understanding . . . run the risk of freezing the Constitution in an earlier century and rendering it obsolete, as when the Supreme Court read the Fourth Amendment's stricture against unreasonable 'searches' and 'seizures' as wholly inapplicable to wiretapping and electronic eavesdropping simply because those techniques of information-gathering involved no trespass into a constitutionally protected physical space and thus did not precisely resemble the kinds of intrusions that the amendment's authors and ratifiers had in mind when they crafted the provision." *See* Tribe, *supra* note 150, at 7–8.

[180] "*Dharma* . . . [incorporates] the ideas of 'truth', 'duty', 'ethics', 'law' and even 'natural law.' It is that power which upholds or support's society and the cosmos; that power which upholds or supports society and the cosmos; that power which constrains phenomena into their particularity, which makes things what they are." *See* FLOOD, *supra* note 166, at 11.

[181] *See* Sikand, *supra* note 92, at 372.