Toward a Universally Engaging Pro-Life Rhetoric[*]

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ABSTRACT: This essay sets out seven principles intended to persuade non-pro-life students and uncommitted students to a prolife position by using principles and categories accepted by secular culture. It has been tested in a limited fashion, using a curriculum designed for high school students. The curriculum persuaded 71% of the students who were formerly non-pro-life or uncommitted, to change their minds and become pro-life. The first step is to provide the students with a self-motivating rationale to move them from a dominant ego-comparative identity to a dominant contributive-empathetic identity – a conversion of the heart that enables them to be open to the six principles of civility and civilization embraced by secular culture – the principles of non-maleficence, universal personhood, just law, inalienable rights, the necessary hierarchy of rights, and the intrinsic limits to human freedom. The encouraging results from our initial surveys indicate the effectiveness of this approach in helping the culture to recognize the goodness and civility of the pro-life position.

OVER THE LAST TWENTY YEARS I have been involved in a prolife organization called Healing the Culture,[1] to develop a prolife rhetoric

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[1] Camille Pauley, President of the organization, has focused on changing the attitudes of high school students through a curriculum called *Principles and Choices* that employs the seven essential principles of the universal prolife rhetoric addressed in this paper. See the two websites: http://www.principlesandchoices.com/explore/tested-and-proven/ and https://healingtheculture.com/.

that would be accessible, appealing, and engaging not only to high school and college students but also to young professionals who have been poorly "catechized" in the rationale for the prolife movement and a culture of life. These collaborative efforts have resulted in what might be called seven essential principles of civility and civilization. These principles have their sources in Judaism (in one case), Christianity (in five cases), and the secular culture (in one case), but they became universally accepted and promulgated by secular society by the late seventeenth century. They stand at the foundation of all secular codes of personal and social ethics as well as the legal and governmental systems of the free world.

When we tested the efficacy of these principles in high school classrooms, the students' response found these principles almost universally acceptable. When we subsequently applied them to the abortion issue, it caused a majority of the non-pro-life students to change their minds. After studying the first portion of our three-part *Principles & Choices* series, the percentage of students who agreed with the Church's teaching on respect for unborn human life increased from 51% (prior to taking our course) to 86%, a change of 35%.[2] This means that 71% of the students who were formerly non-pro-life changed their minds and became pro-life.[3] Only a small percentage felt that a consideration of the seven principles caused no change of their position. Even though these surveys were taken in a Catholic high school context, which may involve a predisposition to their becoming prolife, it is not clear that being in a Catholic high school had this effect. Furthermore, presentation of these principles in secular universities frequently obtains the response that it was the most persuasive presentation of the prolife case that the students had ever heard.

The seven principles may be divided into two major kinds: those of the heart (the first principle in our list) and those of the mind (the latter six principles). Given that the heart needs to liberate the mind and that the mind needs to guide the heart – each in their own way – all seven principles are needed for the prolife case, which is also the case for civility and civilization,

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[2] See Appendix 1, taken from http://www.principlesandchoices.com/explore/tested-and-proven/.

[3] The sample size for the test was 231 students. 49% of those students (113) were formerly non-pro-life. After the course, only 14% (32) remained non-pro-life. This means that 81 students out of 113 students who were formerly non-pro-life became pro-life – a percentage change of 71% (81/113=.71).

to be fully persuasive. We begin with the heart because it signifies the set of intuitions and capacities that probe the heights and depths of goodness, love, beauty, transcendence, and the spiritual life. If our hearts are closed to the goodness and truth of the prolife position, no principle of the mind will convince us. The closed heart will find an excuse to ignore or reject what it does not *want* to believe in. Once the heart is open and liberated, it will desire to know the truth and goodness of the other six principles. Once empowered, they can direct and guide the heart's intuitions, loves, desires, and feelings. The heart is not self-sufficient. It needs the mind's guidance – rational definitions, justifications, precisions, and practical applications. Without it, the heart is "all dressed up" but does not know how or where to go to actualize its desires. When the two complement each other, they recognize the most fundamental, rational ideals needed to govern justly, lovingly, and truthfully. These fundamental rational ideals are, I submit, the seven principles of civility and civilization, and they underly the prolife movement. So, what are these seven principles?

(1) The principle of contributive-empathetic identity.
(2) The principle of non-maleficence.
(3) The principle of universal personhood.
(4) The principle of just law.
(5) The principle of inalienable rights.
(6) The principle of the necessary hierarchy of rights.
(7) The principle of the intrinsic limit to freedom.

The most effective pedagogical approach is to teach these seven principles independently of the prolife issues. If the students recognize the truth of these principles in themselves and their necessity for civility and civilization, it is almost effortless to apply them to the two major prolife issues of abortion and assisted suicide. In all likelihood, the instructor will not have to show the students what position to hold about these issues. All that a teacher will need do is simply *to ask the students* what *they think*. The answer will be so obvious, that the students will surprise themselves about their latent prolife beliefs. Sometimes an instructor will have to fill in the context – for instance, to supply some information about the *Roe v. Wade* decision or the issues themselves – but the answer to the question "What do you think the principle of non-maleficence tells us about the ethics or legitimacy of abortion?" will be

obvious. There is no need to force the issue. If we have done our job well with our first principle of the heart, then the student will have to consider seriously the illegitimacy of abortion in all its forms. Let us now proceed to a brief explanation of each of the principles and their origin.

1. The Principle of Contributive-Empathetic Identity

I have addressed this topic in considerable detail in three other works: *Finding True Happiness,*[4] *Healing the Culture,*[5] and *Ten Universal Principles.*[6] I will focus on the core element that the students really need to hear: the difference between ego-comparative identity and contributive-empathetic identity. Although neither of these two fulcrums of identity is strictly speaking opposed to the other (in fact, they complement one another in many ways), they sometimes oppose one another radically. This means that when one of them becomes dominant in the psyche, the other will become recessive. The dominant one will have the power to control decisions, while the recessive one will be pushed aside, or at least contextualized by the dominant one. What kind of decisions do these two fulcrums of identity determine? All the important ones – decisions about success, quality of life, meaning of life, family, career, belief in God, adherence to moral principles, the kind of spouse one will marry, the kind of friends one will make, the kind of goals one will pursue, and the like.

Twenty-four hundred years ago Aristotle discussed the underlying reason for the power of these two fulcrums of identity in his *Nicomachean Ethics*. They are grounded in our various views of happiness. He observed that happiness is the one thing that we choose for itself. Everything else is chosen for the sake of happiness.[7] Our dominant view of happiness determines our meaning or purpose in life, and this in turn determines our dominant identity. We might say that contributive-empathetic identity is higher than ego-

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[4] See Robert J. Spitzer, S.J., *Finding True Happiness: Satisfying Our Restless Hearts* (San Francisco CA: Ignatius Press, 2015), chs. 1-4.

[5] See Robert J. Spitzer, S.J., *Healing the Culture: A Commonsense Philosophy of Happiness, Freedom, and the Life Issues* (San Francisco CA: Ignatius Press, 2000), chs. 1-3.

[6] See Robert J. Spitzer, S.J., *Ten Universal Principles: A Brief Philosophy of Life Issues* (San Francisco CA: Ignatius Press, 2011), ch. 4.

[7] See Aristotle, *Nicomachean Ethics*, bk. I, ch. 1.

comparative identity, because the former is more pervasive, more enduring, and deeper than the latter. This will become more obvious after we briefly explain the objectives of both fulcrums of identity.

Ego-Comparative Identity seeks ego gratification and comparative advantage. It wants to shift the locus of control from the outside world to the self. Hence, it asks: "Who is achieving more and who less? Who is more popular or less popular? Who has more status or less status? Who has more power or less? Who is more intelligent or less? More athletic or less? More beautiful or less? Who is a winner and who is a loser?" If we make this identity our dominant fulcrum, it will be difficult to enter into common cause with others, for the others will be envisioned as over-against us as setting points of comparison and as being competitors. Furthermore, we will have little concern for whether our lives make any positive contribution *beyond* ourselves. We will be satisfied simply with assuring ourselves that we are at the top of the heap and enjoying the fruits of recognition and adulation.

There is a downside to dominant ego-comparative identity – a panoply of negative emotions and states of mind. There are only three outcomes for competitions that someone with an ego-comparative identity undertakes: winning, drawing, and losing. "Losers" experience inferiority, jealousy, depression (from perceived lack of respect), self-pity, and resentment about life's inequities. "Drawers" experience fear of the loss of esteem and fear of failure as well as some of the feelings of "losers" (jealousy, resentment, and depression). One might suppose that "winners" get what they really want, and so must be happy, but they too experience negative emotional conditions, including depression and loss of meaning (when they have reached the top of the line and can go no further), ego-sensitivities arising out of perceived weaknesses (e.g., "Spitzer, you pronounced the word spectroscopy wrong three times and now everybody believes you don't know what you are talking about"). The loss of reputation and the loss of face are so difficult to handle that one may replay the tape a thousand times before going to bed and then have suicidal feelings! I have been there and done that! Furthermore, winners grow accustomed to adulation, so much so that they need it in order to feel fulfilled in life and being. When people withdraw adulation from them because they are tired of being viewed as inferior, the "winner" resents them terribly and seeks retribution. Since a "winner" cannot fail, he must blame everybody else, and in this way he gets locked into maintaining his façade and blaming others for downturns and problems.

In sum, dominant ego-comparative identity might be viewed as a perfect "self-created hell" with negative emotions ranging from jealousy, depression, inferiority, resentment, and dejection to fear of the loss of esteem, resentment at the withdrawal of adulation, ego-sensitivities, ego-rage, and depression. As if this were not enough, there is the pervasive sense of emptiness – that our lives really do not matter to the world – and that we have not really made the world a better place for our having lived – all in all, our lives had little positive effect and significance. It is a sad state of affairs that affects 70% of our population who have chosen ego-comparative identity as their dominant view of happiness and success.

The only way out of this self-created hell is to move to the higher level of identity, the *contributive-empathetic* identity, for it is more pervasive, more enduring, and deeper. This identity fulcrum does not attempt to shift the locus of control from the outer world to the self. It moves in precisely the opposite direction. It wants to invest its time, talents, and energy in making the outer world a better place. The more that we can contribute to the world around us, the more we will be filled with meaning, inspiration, dignity, and fulfillment. Hence, the contributive identity fulcrum is oriented toward a very different set of questions than the ego-comparative identity, e.g., "How can I make an optimal positive difference to my family, to my friends, to my community, to the organizations and institutions with which I am associated, to the Church, to the kingdom of God, to the salvation of the people around me, to the culture, and even to the greater society?" The more we begin to replace the questions of the ego-comparative identity with these questions, the more it becomes apparent that this is a higher, more pervasive, more enduring, and deeper meaning of life." We can begin to sense its significance and inwardly declare: "for this I came!"

I address ways to help individuals move from a dominant ego-comparative identity to a contributive-empathetic identity in two of my books,[8] but that is beyond the scope of this paper. For the moment, suffice it to say that once the transition to contributive-empathetic identity is made, our view of the seven categories of cultural discourse evolves and expands: quality of life, freedom, love, ethics, suffering, person, and common good.[9] In my experience, students readily move from ego-comparative identity to contributive-empathetic identity

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[8] See Spitzer (2015), chs. 3-4 and Spitzer (2000), chs. 3-4.

[9] See Spitzer (2000), chs. 4-7.

(at least initially) so as to extricate themselves from the misery of emptiness and the negative emotions of the comparison game. Applying this transition to the seven categories of cultural discourse, however, requires mentoring from teachers and other knowledgeable individuals. Normally, students do not resist moving their definition of these categories to a contributive-empathetic level, for it is simply a matter of being logically consistent with their dominant identity fulcrum.

If students make this transition successfully, we might say that they have come to a conversion of the *heart* that prepares them for the next stage – conversion of the mind. It must be stressed that this conversion of the heart is absolutely essential for moving to the six principles of civility and civilization that guides the conversion of the mind, for a dominant ego-comparative identity will make the six principles impenetrable to the heart. Students might understand the principles and how they have been applied to other ethical issues such as slavery, but they will not let the principles govern their conduct, because their hearts will have rendered the principles powerless to move their desires and wills.

With this in mind, we may now proceed to the six principles of civility and civilization. The order of presentation is significant because the first principles in the order of presentation are foundational to those that follow them. Thus, principle two builds on principle one, and principle three builds on principle two, and so on.

2. The Principle of Non-Maleficence

The principle of non-maleficence dates back over three thousand years. It can be found in virtually every nation and in all the world's major religions. It is considered to be the most fundamental of all ethical principles, for if it falls, then all other ethical principles fall as well. Thus, it is the foundation for all ethics. The principle is also called "the Silver Rule" and may be stated as follows: "Do *not* do unto others what you would *not* have them do unto you." This might be translated as: "Do no unnecessary harm to another, but if a harm is unavoidable, do everything possible to minimize it."

This rule is like the Golden Rule (the Principle of Beneficence), with one important exception. It is focused on *avoiding harm* while the Golden Rule is focused on *doing good* ("Do unto others as you would have them do unto you"). This is why the Silver Rule is considered to be ethical minimalism while the Golden Rule is a form of altruism – doing optimal good for others.

Many thinkers consider the principle of non-maleficence to be as fundamental to ethics as the principle of non-contradiction is to the rules of evidence. Why? Because its denial entails the most fundamental form of injustice and leads to an untenable social condition. Let us examine the first rationale.

It can fairly be said that no normal person (that is, someone who is not psychopathically masochistic) would like to suffer an unnecessary harm. But if one is not willing to fulfill this obligation toward others, one will commit the most fundamental form of injustice, namely, asking for something that one is not willing to extend to another. Justice, which is the condition necessary for humane community and society, is (as Plato already knew) grounded in giving each person what he or she is owed.[10] Now, if others are obliged not to harm us unnecessarily, then we are obliged not to harm them unnecessarily. We cannot justly demand for ourselves what we are not willing to extend to others.

Second, failure to observe the principle of non-maleficence is untenable. The moment we condone harming others unnecessarily, the fabric of community and society begins to unravel in theft, injury, violence, and even murder. Furthermore, interpersonal relationships would be impossible if we did not recognize that we owe this duty to one another. Normally, we avoid people who say "I really need to cause unnecessary harm to others in order to be fulfilled in my life," for we are likely to be the victims of that harm. Now if everyone is avoiding everybody else, there would be no relationship, community, or society.

Most of my students almost instinctively assent to this principle. They realize that without it, their lives – and the lives of others around them – would be, in Hobbes's words, "brutish, ugly, and short." Furthermore, if they have successfully reached dominant contributive-empathetic identity, they will have already implicitly assented to the Golden Rule ("do the optimal good for others"), thereby making ethical minimalism (avoiding unnecessary harm) non-problematic. As the students say, "this is a no-brainer."

One important corollary of this principle needs to be impressed on the students – namely, if one is in doubt as to whether a particular action will cause a harm, and particularly an egregious harm, to others, that action too must be avoided, because acting in ignorance is no excuse for causing an unnecessary

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[10] See Plato, *Republic*, bk. I at 331e, as translated by Benjamin Jowett (New York NY: The World Publishing Company, 1946).

egregious harm to others. Such an egregious harm is completely avoidable if one simply refrains from performing the questionable action when one is in doubt. The over-used example of the ignorant hunter will suffice to make the point. Imagine a hunter who hears rustling in the bushes below him but cannot identify his prey with certainty. No one will then be considered rational who thinks to himself: "I'm in doubt, so I will go ahead and shoot down there anyway." When the dead body of another hunter is discovered, the excuse "Well, I was in doubt" will not go very far in court. Can you imagine what would happen to the entire profession of plaintiff's attorneys if it were decided that all avoidable harmful negligence should be excused because of doubt? "Your Honor, I didn't know whether releasing these gasses would have the effect of poisoning thousands of people, so I went ahead and released them anyway in the hopes that they would not." The entire line of inquiry is open to examples of this sort, because the corollary to the principle of non-maleficence – that doubt is no excuse for causing avoidable egregious harm to others" – is so obvious. Most of my students, including some who are ego-comparative, agree with this view.

The application of this principle (and its corollary) to prolife issues is as obvious as the virtually self-evident truth of the principle itself. Is abortion an avoidable egregious harm to another human being? Given the fact that a single-celled human zygote that has mitochondrial DNA, a unique human genome, and (if allowed to develop within its mother's womb) will become a normal baby and develop the powers that it already possesses for rationality, conscience, and transcendent awareness, it is exceedingly difficult to deny that it is a living human being. Even if one does have doubts, these doubts cannot justify violating the principle of non-maleficence by killing this being of human origin, for ignorance is no excuse for causing an avoidable egregious harm to what is "probably" another human being.

Today, this kind of doubt can be completely redressed by examining the being's DNA sequencing. Doing so will indicate that the being has a unique human genome. Dr. Jerome Lejeune was the first to testify to the capacity definitively to ascertain the presence of human life at conception in a court of law in the U.S.A.[11] He showed that a single-celled zygote (even if it is not implanted) has a full human genome by using a DNA sequencer. Therefore, he

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[11] See *New Jersey v. Alexander Loce* (1991) and *Davis v. Davis* (1992) in 842 S.W.2d 588, 597.

claimed *objectively* that a single-celled zygote was a human being. He then went on to use the same instrument to establish that the single-celled zygote had genetic material from both the mother and father but was an entirely different being from both the mother and the father because the genetic combination in the zygote's genome differs from the maternal and paternal genomes. He then claimed that, under normal conditions, this single-celled zygote would develop as a unique, fully actualized human being on the basis of its genetic code. This enabled him to conclude that there was not only a human being already present at the stage of a single-celled zygote but also that this nascent human being would become fully actualized in the vast majority of cases.

If the students successfully assent to this fundamental principle and its corollary, they can proceed to the next principle: concern with personhood.

3. The Principle of Universal Personhood

The term "person" was introduced into the English language sometime prior to 1200, presumably as a word derived from the French "*persone*/*per-soune,*" which meant "human being." "*Persone*," in turn, was probably derived from a Latin term (*persona*) with the same meaning – "human being."[12] It is interesting to note that virtually every English dictionary today retains "human being" as the primary definition of "person." There is no linguistic evidence for contending that any being of human origin should *not* be considered a person.

The linguistic evidence shows that throughout its history the word "person" has had a primarily ontological meaning, which defines words according to the nature of things, that is, what a thing is. Thus, "person" is inseparable from "a living individual human being."

In the philosophy of law, "person" has the additional meaning of "deserving protection under the law." It seems that this addition was made to accommodate the slave trade in its modern resurgence (from 1425 to 1833 in England and to 1865 in the United States). This legal term enabled slave traders to buy and sell beings of human origin without violating their natural dignity and the minimal standards of justice. Ultimately abolitionists and the emancipation movements throughout Europe and the United States rejected the

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[12] Robert K. Barnhart, *Chambers' Dictionary of Etymology* (New York NY: The H.W. Wilson Company, 1988), p. 780.

spurious distinction between a person as "a being of human origin" and a person as "a being deserving protection under the law." Unfortunately, it took over four hundred years of unnecessary pain, tragedy, torture, death, and outrageous injustice – grotesque violations of the principle of non-maleficence – for the human community to come to its senses and return to the only definition of "person" that is able to avoid such grotesque violations of the principle of non-maleficence – namely, that *every* being of human origin is deserving of protection under the law. Any exception to this universal interpretation of personhood is arbitrary and risks grotesque violations of the principle of non-maleficence.

During the time of slavery in the New World (in both South and North America), attempts were made by slave-traders and governments to get around the "problem" of "universal personhood" – that is, the personhood of *every* human being – by claiming that some individuals who *appeared* to be human were really sub-human, and therefore not deserving of personhood. This came to the fore first in the slave-trade by the Spanish Conquistadores in the New World, where it was held that the Indians (and later the Black slaves), though they appeared to be human beings, were less developed than European human beings, and so "sub-humans," and could therefore be treated as chattel by "real" human beings (e.g.. Europeans).

This erroneous distinction was fiercely challenged by a Dominican friar working with the Indians in the New World in the mid-sixteenth century, Bartolomé de las Casas, who defended the Indians of the New World against the Spanish slave traders and the Spanish court. His efforts were brought to a head in a famous debate with Juan Ginés de Sepúlveda.[13] Las Casas, who held two degrees in canon law, attempted a valiant defense of the rights of the Indians against Sepúlveda, who claimed that because the Indians had not yet achieved an advanced culture (like that of the Europeans), they could be judged to be inferior barbarians (less than human), which, in turn, justified their enslavement by the Spanish conquerors. This justification extended to the killing of the Indians if they resisted their "just" enslavement by their

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[13] Bartolomé de las Cases, "The Defense of the Most Reverend Lord, Don Fray Bartolomé de las Casas, of the Order of Preachers, late Bishop of Chiapa, against the Persecutors and Slanderers of the Peoples of the New World Discovered across the Seas," in *In Defense of the Indians*, translated and edited by Stafford Poole (DeKalb IL: Northern Illinois Univ. Press, 1992).

conquerors. It should be noted here that this same rationale has been used in attempts to justify all sorts of slavery and genocide throughout history.

Horrified by the attempt of Sepúlveda to justify the killing of Indians who resisted "just" enslavement, Las Cases also recognized that the attempt to give this justification legal sanction in the Spanish court would undermine the mores and culture of Spain and other enslaving nations. Not surprisingly, he disputed the first contention of Sepúlveda, namely, that the Indians were inferior people ("barbarians" and thus less than human). He showed that although the Indians had not yet achieved the same degree of technological civilization and scientific knowledge of the Spanish, they showed the *potential* to achieve every bit as much if given the time and opportunity. Furthermore, most of the Indians displayed far more civilized moral conduct than the bloodthirsty conquerors, who oppressed, injured, and killed them. From this it could be reasoned that the Indians were every bit as human as the Spanish. They had simply not developed to the same degree in certain aspects of technological and scientific knowledge. Las Casas extended this analysis to people of every region of the world through the following reasoning:

> We find that for the most part men are intelligent, far-sighted, diligent, and talented, so that it is impossible for a whole region or country to be slow witted and stupid, moronic, or suffering from similar natural defects or abnormalities.[14]

Las Casas's logic is clear. Since human beings have been found to be "intelligent, far-sighted, diligent, and talented" in virtually every region of the world, we should presume that this is the case whenever a new group of people is discovered, even if that new group has not yet reached the state of technology or development attained by another group. It is our ethical obligation (in order to avoid a serious violation of the principle of non-maleficence) to presume what can be fairly inferred from the vast majority of humankind, that all groups, and the vast majority of individuals, will reach a naturally high potential of intelligence, far-sightedness, diligence, and talent if given the time and opportunity.

With las Casas's foundation, we can see two important consequences for the maintenance and progress of humaneness and civility:

(1) A people cannot be justifiably branded "inferior" ("barbarian" or "less

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[14] Las Casas (1992), p. 38.

than human") because of their degree of development, for they have the potential to achieve that development in the future. The potential to achieve a normal level of development is sufficient to establish the nature of the being. Thus, the Indians' potential to achieve a normal degree of human development is sufficient to establish their humanity. The fact that they had not yet reached the same degree of development was not an indication of some lesser nature, but only an indication of circumstances that seem to have prevented or delayed normal development from occurring. It is erroneous to make a judgment about "nature" on the basis of mere circumstances, for a thing's nature includes the its powers and potentials for a certain kind of action or operation, not the circumstances that are the occasions for the display of that potential or power.[15]

(2) If a people is unjustifiably judged inferior (by erroneously judging on the basis of circumstances that have damaged or limited the opportunities for actualizing these potentials), then the harm that arises out of such erroneous judgments is a clear violation of the principle of non-maleficence. If that violation of the principle leads to the enslavement or death of an innocent human being, then the violators can justifiably be held responsible for the injustice.

Even though las Casas's reasoning would later prevail throughout Colonial Spain and Europe, the Spanish court that heard the case was not in a mood to disappoint the greedy Conquistadores, and so they ignored las Casas's admonition to avoid a gross violation of the principle of non-maleficence by culpable ignorance and gave the decision to Sepúlveda, thereby leading to additional decades of slavery and injustice. Some of the consequences of this

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[15] It is impossible to prove that a being of human origin does *not* have the potential to have powers of rationality, conscience, and transcendent awareness. This is so because it cannot be shown that these three powers have their origin in physical processes (e.g., the brain) *alone*. Indeed, there is considerable evidence to suggest that they have their origin in a transphysical soul capable of surviving bodily death. See the evidence detailed in the whole of Spitzer, *The Soul's Upward Yearning: Clues to Our Transcendent Nature from Experience and Reason* (San Francisco CA: Ignatius Press, 2016). Therefore, even if the potential for the powers of rationality, conscience, and transcendent awareness cannot be actualized in physical embodiment, the potential may well be present in a transphysical way through a unique soul that cannot be fully actualized in the body to which it is united. Thus, if we are to avoid an egregious violation of the principle of non-maleficence, we must always assume that the potential to have powers of rationality, conscience, and transcendent awareness is present in *every* being of human origin.

were fictionally portrayed in the movie *The Mission*.[16]

What lessons can we draw from the linguistic history of "person" and las Casas's refinement of it? We might adduce five major guidelines about defining personhood that are needed to avoid egregious violations of the principle of non-maleficence:

(1) No governmental or judicial body should make a distinction between "person as human being" and "person as a being deserving of protection under the law." As explained above, there are no human beings that are *not* deserving of protection under the law, so this distinction is specious and can never be used to legitimate injustice such as slavery toward any human being.

(2) No governmental or judicial body should make a distinction between human beings and sub-human beings. If a being has mitochondrial DNA and a human genome (which are both present in every ethnic group and even in a single-celled zygote), then this being must be considered a human being and thereby a person. Any exceptions to this risks gross violations of the principle of non-maleficence.

(3) If an alien being were encountered that possessed the powers – or the potential to have the powers – of rationality, conscience, and spiritual awareness (the powers indicating specifically human nature), they too, should be treated as persons deserving of protection under the law irrespective of their different genome or their mechanism of heredity. Any exception to this risks a gross violation of the principle of non-maleficence.

(4) If there is any doubt about whether personhood is present in a being that *seems* to have the potential for using the powers of rationality, conscience, and transcendence (e.g., an alien without a human genome), that being should be presumed to have personhood lest there be a gross violation of the principle

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[16] The movie *The Mission* is a fictional account of two major battles that took place between the Guarani Indians (who had been educated and battle-equipped by the Jesuits) against the Spanish and Portuguese slave-traders. The Battle of Mborore in 1641 and the Guarani War from 1754-1756 was initiated by Spanish and Portuguese Conquistadores implementing the Treaty of Madrid. Though the Guarani were able to hold off the Conquistadores for a while, the Conquistadores ultimately undermined and destroyed many of the Missions, leading to the deaths of many Indians in the jungle, for they no longer had immunities to diseases because of their lives on the Missions. See James Schofield Saeger, "The Mission and Historical Missions: Film and the Writing of History," *The Americas*, 51 (1995): 393–415. See also C.J. McNaspy, *The Lost cities of Paraguay: Art and Architecture of the Jesuit Reductions, 1607-1767* (Chicago IL: Loyola Press, 1982).

of non-maleficence.

(5) If any governmental or judicial body is in doubt about whether personhood exists in a being of human origin (with mitochondrial DNA and a human genome) or a non-human being that seems to have the potential for the powers of rationality, conscience, and transcendence, then those bodies must presume that the beings in question are persons. If doubt exists about the personhood of such beings, the burden of proof must fall to those governmental bodies to establish beyond the shadow of a doubt that the beings in question do *not* have personhood. The burden of proof should never fall to the potential victims (whose personhood is doubted) to establish that they *do* have "personhood." The benefit of the doubt must favor the "personhood" of potential victims. They should never suffer at the whims of governmental and judicial bodies who are in doubt about the personhood of beings having the potential to have the powers of rationality, conscience, and transcendence. Any abrogation of this norm risks egregious violation of the principle of non-maleficence.

The vast majority of my students have little difficulty assenting to these five guidelines as necessary for their own ethical conduct as well as for the conduct of any governmental or judicial body. Although I explain the principle and guidelines through the example of slavery, their significance for the pro-life issues is fairly obvious to many. Some instructors may want to point this out right away. Just as development of any human ethnic group towards its potential cannot invalidate the personhood of that ethnic group (because one's already existing potential belongs to one's nature while the degree of one's development toward that potential can be affected by one's circumstances), so also the stage of development of a human embryo (having mitochondrial DNA and a human genome with the potential to have powers of rationality, conscience, and transcendence) cannot invalidate the personhood of that pre-born human being, because one's stage of development is contingent on one's circumstances while the potential to have the normal powers of human beings (rationality, conscience, and transcendent awareness) belong to human nature and thus are a mark of personhood that makes the being deserving of protection under the law.

I generally wait until I have presented all seven principles before explaining their significance for the pro-life issues, but some instructors may want to indicate immediately how the principle and guidelines apply to both slavery and the single-celled human zygote.

4. The Principle of Just Laws

This principle can be found in the writings of Augustine of Hippo, who argued that "an unjust law is no law at all."[17] What Augustine noticed was that even though an unjust law has the *extrinsic* authority of being mandated by governmental power, it has no *intrinsic* legitimacy because every genuine law has as its purpose the service of justice. Any law that undermines its own purpose negates itself and thus is no law at all.

With this principle Augustine made two important advances in the philosophy of law. First, he showed that justice is higher than the law, for it is the standard by which to judge the legitimacy of any use of state authority and power. If a law does not meet the minimum standards of justice (indicated by the principle of non-maleficence and the principle of equity, "to give every human being what is due"[18]), then that law is illegitimate and can never justify the use of state authority and power. As such, it need not be obeyed. If necessary, it may be actively resisted in order to re-establish the legitimate authority of justice.

Second, Augustine also showed that the positive law cannot justify itself, for its legitimacy lies outside itself in the higher standard of justice. Therefore, legal positivism will necessarily be an incomplete basis for understanding the morally normative character of law. Without a natural law standard (e.g., the minimum requirements of justice), all positive laws are merely arbitrary assertions of governmental or judicial authority having no intrinsic legitimacy. As philosophers throughout the ages have noted, the legitimate use of governmental authority is bound up in its capacity to serve the welfare of individuals and their common good within a state. The minimum standard of serving individual and collective human welfare is the minimum standards of justice – the principle of non-maleficence and the principle of equity.

Virtually every political philosopher has advocated the non-binding force of such unjust laws and the legitimacy of resistance and civil disobedience. The advocates include Thomas Aquinas,[19] Francisco Suarez,[20] John Locke,[21]

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[17] Augustine, *On Free Choice of the Will*, bk. 1, sec. 5, as translated by Thomas Williams (Indianapolis IN: Hackett, 1993).

[18] Plato, *Republic*, bk. 2, 432b-434e.

[19] "Laws may be unjust in two ways: first, by being contrary to human good, through being opposed to the things mentioned above – either in respect of the end, as when an authority imposes on his subjects burdensome laws, conducive, not to the

Thomas Jefferson,[22] Edmund Burke,[23] Mahatma Gandhi,[24] and Martin Luther King.[25] Perhaps the most detailed expositor of this doctrine was Henry David Thoreau who wrote in his essay, *On the Duty of Civil Disobedience*:

If the injustice is part of the necessary friction of the machine of government, let it go,

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common good, but rather to his own cupidity or vainglory – or in respect of the author, as when a man makes a law that goes beyond the power committed to him – or in respect of the form, as when burdens are imposed unequally on the community, although with a view to the common good. These would be acts of violence rather than laws; because, as Augustine says (*De Libero Arbitrio* I, 5), 'a law that is not just seems to be no law at all'." Thomas Aquinas, *Summa Theologica* I-II, q.96, a.4, as translated by the Fathers of the English Dominican Province (New York NY: Benziger Brothers, 1948).

[20] "For a law to be genuine law, it must...be just and reasonable, because an unjust law is not law." Francisco Suarez, *De Legibus* (Madrid: Consejo Superior de Investigaciones Cientificas, Instituto Francisco de Vitoria, 1971) at 3:22.1.6,84. He explicates this principle as follows: "[T]he human lawmaker...does not have the power to bind through unjust laws, and, therefore, were he to command unjust things, such prescriptions would not be law, because they have neither the force nor the validity necessary to bind." Suarez, *De Legibus*, 1:9.4.2,6).

[21] "As usurpation is the exercise of power, which another hath a right to; so tyranny is the exercise of power beyond right, which no body can have a right to. And this is making use of the power any one has in his hands, not for the good of those who are under it, but for his own private separate advantage. When the governor, however entitled, makes not the law, but his will, the rule; and his commands and actions are not directed to the preservation of the properties of his people, but the satisfaction of his own ambition, revenge, covetousness, or any other irregular passion." John Locke, *Second Treatise on Government*, ed. by C.B. MacPherson (Indianapolis IN: Hackett, 1980), ch. 18, sec. 199.

[22] A saying popularly attributed to Thomas Jefferson: "If a law is unjust, a man is not only right to disobey it, he is obligated to do so."

[23] "It is not what a lawyer tells me I may do; but what humanity, reason, and justice tell me I ought to do." Edmund Burke, *Second Speech on Conciliation*, 1775.

[24] "Civil Disobedience...becomes a sacred duty when the state has become lawless or, which is the same thing, corrupt. And a citizen who barters with such a state shares its corruption or lawlessness." Mahatma Gandhi, *Young India*, January 5, 1922.

[25] "One may well ask: 'How can you advocate breaking some laws and obeying others?' The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that 'an unjust law is no law at all'." Martin Luther King, Jr., *Letter from a Birmingham Jail* (April 16, 1963).

let it go: perchance it will wear smooth – certainly the machine will wear out. If the injustice has a spring, or a pulley, or a rope, or a crank, exclusively for itself, then perhaps you may consider whether the remedy will not be worse than the evil; but if it is of such a nature that it requires you to be the agent of injustice to another, then, I say, break the law. Let your life be a counter friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn.[26]

As with the other principles mentioned above, most of my students readily understand and assent to this principle. When they do assent, I indicate to them for the first time, that on the basis of the above four principles, an air-tight case can be made for the intrinsic harm and injustice of abortion, and the judicial illegitimacy of sanctioning it. Many of the students have seen this coming throughout the presentation. I tell them that the next three principles will fill out the case against both abortion and assisted suicide as well as their judicial illegitimacy, and so I ask them to be patient while I give them the principles needed to do that.

5. The Principle of Natural (Inalienable) Rights

Perhaps the best known medieval tractate on natural law was written by Thomas Aquinas in 1270. Like Plato and Aristotle, he saw the natural ground of law in the principle of justice (*iustitia*), which seeks a right relationship among human beings. Suarez moved the ground of law from a right *relationship* among individuals (justice) to a right belonging to *individuals* (*jus*). He believed that the "true, strict and proper meaning [of *jus*]...is a kind of moral power that every man has, either over his own property or with respect to what is due to him."[27] This interpretation of *jus*, according to John Finnis, "crossed a watershed" into the idea of objective natural rights.[28]

Suarez believed that "a right was something that a man had as his own, that he could exercise in his own name, that could not be taken away from him without injustice."[29] This was highly significant, because it meant that a state

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[26] Henry David Thoreau, *On the Duty of Civil Disobedience* (London UK: The Simple Life Press, 1903), p. 39.

[27] Suarez, *De Legibus*, 1:2.5.

[28] See John Finnis, *Natural Law and Natural Rights* (New York NY: Oxford Univ. Press, 1980), p. 207.

[29] Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Atlanta GA: Scholars Press, 1997), pp. 307-08,

or governing body does *not* confer natural rights on individuals. If it was the state that conferred such right, the state could take those rights away. Instead, Suarez argued, natural rights belong to human beings by their *very nature*, and these inherent possessions cannot be taken away without injustice. Thus, a state cannot take away a human being's natural rights by means of a court order or by its constitution, by a vote of the majority, or even by a vote of a super-majority. The state (or the people constituting that state) cannot take away what does not belong to them without perpetrating an extreme injustice.

Suarez did not arbitrarily assert this principle. He grounded it in two ways. First, like Locke and Jefferson after him, he appealed to divine authority, namely, that all human beings are endowed by the *Creator* with rights that are necessary for the preservation and perfection of their human nature. In addition, Suarez offered a second justification for inalienable rights that is grounded in the nature of law itself. He holds that all prescriptive laws (whether made by monarchs, legislatures, or courts) have the same end and purpose, namely, "the due preservation and natural perfection or happiness of human nature."[30]

Suarez recognized not only that there is a right to life (needed for *preserving* human nature) and a right to liberty and happiness (needed for *perfecting* human nature and happiness), but also that these three rights, which belong to a human being by his or her very existence, were the grounds upon which all other laws stand. If a state (the executive, legislative, or judicial authorities of that state) failed to protect these natural rights, then the prescriptive laws issued by that state (i.e., statutes and court rulings) would lose their *intrinsic* end and purpose. Prescriptive laws (positive laws) would then become the mere extrinsic arbitrary assertions of governmental authorities. They would be arbitrary because they would be devoid of intrinsic purpose. If a state fails first and foremost to protect the natural rights of *all* human beings, then that state undermines the intrinsic purpose of the law and gives itself the power to act in an arbitrary way by sheer dint of its authority.

Suarez's remarkable discovery of natural rights – and his justification for them – came almost immediately to the attention of Hugo Grotius whose works were read by John Locke. Locke's works, in turn, conveyed the central idea to our founding fathers and to the international community as a whole. A brief

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citing Suarez, *De statu perfectionis* in *Opera* 15:8.5.29, 571.

[30] Suarez, *De Legibus*, 3:2.7.7, 118.

summary of this progression may prove helpful to interested students.

Hugo Grotius (1583-1645) was a Dutch jurist and Christian apologist who is acknowledged to be the founder of international law. He was a contemporary of Francisco Suarez but wrote slightly later than Suarez.[31] Familiar with Suarez's *De Legibus*, he borrowed extensively from it, particularly with respect to natural law and natural rights. Though some scholars believe that the notion of natural rights originated with Grotius, mainstream scholarship shows that Grotius borrowed heavily from Suarez and adapted Suarez's reasoning to his own purposes (to establish a common ground of international law). Terence Irwin argues forcefully in favor of this, noting that since Grotius borrowed so heavily from Aquinas and Suarez, "he was no pioneer" in the field of ethics and natural law.[32]

Grotius adapted two aspects of Suarez's natural rights theory. Locke then used them as the foundation for the social contract theory, the universality of rights, and the right of people to revolt against the state. Grotius used Suarez's notion of rights as "a moral power owned by every individual by virtue of their human existence alone" to show that rights are "belongings" or "possessions." Locke, in turn, used to ground the commoditization of rights needed for his social contract theory. Suarez contended that natural (inalienable) rights belong to all human beings by nature, that is, in virtue of simply being human. For Locke, this had two important consequences: (1) rights are not restricted to citizens, but *belong* to all human beings insofar as they are human, regardless of whether they are citizens of a particular state, and (2) since no state confers rights upon people, no state can take them away from any individual who has not misused them to violate the rights of others.

Thomas Jefferson (and many other Founding Fathers) were familiar with the works of Locke and of Grotius. It was in this way that the ideas of Augustine, Aquinas, and Suarez about the reality of objective justice, natural law, and natural rights made their way into the *Declaration of Independence*, the *Federalist Papers*, and the *United Nations Declaration on Human Rights.*

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[31] Grotius's major work on jurisprudence, *On the Laws of War and Peace*, was written in 1625, thirteen years after the publication of Francisco Suarez's *De Legibus* (1612). Grotius studied Suarez's work and borrowed extensively from it (as well as from Aquinas's *Summa Theologica*). See Terence Irwin, *The Development of Ethics*, vol. II (Oxford UK: Oxford Univ. Press, 2008), pp. 97-98.

[32] Irwin, p. 98.

As with the other principles, most of my students assent to the principle of natural (inalienable) rights, and many see the implications for pro-life issues. Should the instructor want to present the four most important implications, I will state them here:

(1) Every human being (possessing mitochondrial DNA and a human genome), which includes every single-celled human zygote as well as all other pre-born human beings in every embryonic and fetal stage of development, solely by virtue of his or her human existence (and therefore personhood) owns an inalienable right to life, liberty, the pursuit of happiness, and property.

(2) This natural inalienable right obligates every human being to protect – and never to harm or destroy – the life of every pre-born (and born) human being.

(3) Since the inalienable right to life (as well as liberty, the pursuit of happiness, and property) *belongs* to each and every pre-born human being by his or her very human existence, the state has no authority to confer it or remove it arbitrarily. The state may only abrogate an inalienable right (protecting the minimum standards of justice) if an individual has violated the rights of another. The state's capacity to do this is limited by the degree to which others have been intentionally harmed by a particular individual. This caveat has no bearing on pre-born human beings, because they do not yet have the capacity to intentionally violate the rights of others. Therefore, no state (whether by executive, legislative or judicial order) has the right to sanction the killing of pre-born human beings that obviously violates their natural and inalienable right to life. If any state should attempt to do this, they will have created an unjust law (egregiously violating the principle of non-maleficence) that delegitimized their authority. This unjust law should be resisted.

(4) No state (whether by executive, legislative, or judicial order) can legitimately justify abrogating the natural and inalienable right to life by an appeal to the absence of extrinsic (e.g., constitutional) rights. Extrinsic rights are those declared into existence by the state (or the collective people) and are in some sense under the control of the state to justly administer. But the absence of extrinsic rights (e.g., rights declared by the Constitution) can in no way justify the abrogation of a natural inalienable right that does not belong to the state but to the individual alone. Thus the attempt to do this in *Roe v. Wade* is not an appropriate justification for violating the pre-born human being's natural and inalienable right to life. In view of this, the court's actions constitute an egregious violation of the pre-born human being's natural and

inalienable right to life.

One last point should be made concerning the justification used to deny Constitutional rights to pre-born human beings in the *Roe v. Wade* decision. In that decision, the majority attempted to justify the absence of Constitutional rights for the pre-born on the basis of the *silence* about such rights in the Fourteenth Amendment of the Constitution. As noted by Martin, Capra, and Rossi, silence can only justify silence. It cannot mean either "yes" or "no."[33] Therefore the majority's appeal to silence about the Constitutional rights of pre-born human beings in the Fourteenth Amendment to the Constitution is a violation of the common rules of evidence used in our legal system.[34] Notwithstanding this violation of its rules of evidence, the majority's appeal in *Roe v. Wade* to an extrinsic Constitutional right to sanction the violation of the pre-born human being's natural and inalienable right to life is wholly illegitimate and therefore an unjust sanction.

6. The Principle of the Necessary Hierarchy of Rights

As the originator of natural rights, Suarez believed that the ground and aim of law itself is "the due preservation and natural perfection or happiness of human nature,"[35] from which he derives his theory of rights. We can see the faint outline of Jefferson's three inalienable rights in this passage. Suarez's notion of the right to self-preservation corresponds to Jefferson's idea of the right to life. Suarez's notion of the right to the natural perfection of human nature corresponds to Jefferson's view of the right to liberty.[36] And Suarez's vision of the right to happiness corresponds to Jefferson's idea of the right to the pursuit of happiness.

In another part of *De Legibus*, Suarez includes property within the notion of natural rights: "[rights are] a kind of moral power which every man has,

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[33] Michael Martin, Daniel J. Capra, and Faust F. Rossi, *New York Evidence Handbook: Rules, Theory, and Practice*, second edition (New York NY: Aspen Publishers, 2003).

[34] See Martin, Capra, and Rossi, p. 181.

[35] Suarez, *De Legibus*, 3:2.7.7, 118.

[36] Jefferson's Enlightenment notion of liberty was unknown to the Scholastic era in which Suarez lived. The closest Suarez could have come to such a notion of liberty, given the conceptual structures of Scholasticism, was something akin to "natural perfection of human nature."

either over his own property or with respect to that which is due to him."[37] Even though there is an *implicit* priority of the right to self-preservation over the right to the natural perfection of human nature, there is no *explicit* prioritization of life over liberty or of liberty over happiness and/or property.

The prioritization of rights becomes clearer in Locke's *Second Treatise on Government* when he places the right to life ahead of the right to liberty, and the right to liberty ahead of the right to property:

> Man being born, as has been proved, with a title to perfect freedom, and an uncontrolled enjoyment of all the rights and privileges of the law of nature, equally with any other man, or number of men in the world, hath by nature a power, not only to preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men.[38]

The prioritization becomes even clearer with Thomas Jefferson who changes Locke's right of property ownership back to Suarez's right to happiness:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Suarez, Locke, and Jefferson do not attempt to justify the prioritization of rights in an explicitly formal way. They do, however, assume that life precedes liberty, and liberty precedes other natural rights. Why did they assume that this truth was evident? The answer probably lies in their implicit application of a well-known technique in philosophy termed "the condition necessary for the possibility of [something]." How does this apply to natural rights? If the right to life is a condition necessary for the possibility of the right to liberty (but not vice-versa), then the right to life must be a higher right than the right to liberty. Similarly, if the right to liberty is a condition necessary for the possibility of the right to own property, then the right to liberty must be a higher right than the right to own property.

The right to life is evidently a condition necessary for the *possibility* of the right to liberty, for if one is dead, one's right to liberty is truly a moot point. Similarly, the right to liberty must also be a condition necessary for the

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[37] Suarez, *De Legibus*, 1:2.5

[38] Locke, p. 46.

possibility of the right to own property, for if person A can own another person B, then person A owns all of person B's property along with him. Person B's property rights are truly a moot point. Therefore, it can be said *objectively* (that is, by the criterion of necessity, which is not a mere matter of subjective assertion) that the right to life is a higher right than the right to liberty, and the right to liberty is a higher right than the right to property.

This principle is important in the resolution of rights conflicts, for it gives an *objective* (necessary) way of resolving those conflicts. In order to respect not only the natural rights of human beings but also the necessary hierarchy of those natural rights, we must hold the objectively higher right to be the more important right in resolving rights conflicts. This is the only way to respect the principle of non-maleficence because a violation of a higher right leads to a greater harm than the violation of a lower one. For example, if a court must choose between person X's right to life and person Y's right to liberty, the court is obligated to act in favor of person X's right to life because his death would be a greater harm than person Y's loss of liberty.

As might now be obvious, the U.S. Supreme Court failed to apply this objective criterion of the necessary hierarchy of rights in two major cases: *Dred Scott v. Sandford* and *Roe v. Wade*. Let us begin with *Dred Scott v. Sandford*. In that case the U.S. Supreme Court had to make a decision about which rights were more fundamental – the liberty rights of black people or the property rights of white people. If the court had used the objective criterion of "condition necessary for the possibility of [something]," it would have had to resolve this conflict in favor of black people's liberty rights, for liberty rights are a condition necessary for the possibility of property rights. Doing so would have prevented the court from doing greater harm to one party over another. In fact, the court acted in the opposite way by attempting to justify its decision when it asserted that, since the Constitution did not explicitly include black people as being citizens, the founding fathers intended to exclude them from citizenship. In a unanimous ruling, the Supreme Court confidently declared:

> The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who...form the *sovereignty*, and who hold the power and conduct the Government through their representatives.... The question before us is, whether the class of persons described in the plea in abatement [people of African ancestry] compose a *portion of this people*, and are constituent *members of this sovereignty*? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the

Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to *citizens of the United States*. On the contrary, they were at that time considered as a *subordinate and inferior class of beings*, who had been *subjugated by the dominant race*, and, whether emancipated or not, yet remained subject to their authority, and *had no rights or privileges but such as those who held the power and the Government might choose to grant them*.[39]

This fallacious justification of the denial of Constitutional rights to black people (based on the Constitution's silence, which means neither "yes" nor "no") led to the sanctioning of slavery and the subordination of black people's liberty rights to white people's property rights. Evidently, the Supreme Court is not infallible when it departs from its own rules of evidence, the principle of natural and inalienable rights, and the necessary hierarchy of rights, it can sanction gross violations of the principle of non-maleficence, which is unjust and unconscionable.

At this point, some instructors may want to show the relevance of this principle to the life issues, particularly abortion. If so, they might want to share the following fallacious rationale used by the majority in the *Roe v. Wade* decision. In some ways, it is a more egregious violation of the principle of the necessary hierarchy of rights than the *Dred Scott* decision, because it justifies a violation of the indisputably higher right to life. The majority in the *Roe v. Wade* decision explicitly proclaimed its prioritization of the woman's right to privacy (liberty) over the unborn human being's right to life:

State criminal abortion laws, like those involved here, that except from criminality only a life-saving procedure on the mother's behalf without regard to the stage of her pregnancy and other interests involved violate the Due Process Clause of the Fourteenth Amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. Though the state cannot override that right....[40]

The majority indicated here that it is permissible to violate the higher right to life of the unborn child in order to protect the mother's lower right to privacy (liberty). This caused the Court to sanction the wholesale killing of millions of unborn human beings, thereby violating their natural and inalienable rights to life.

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[39] *Dred Scott v. Sandford*, [1] 60 U.S. (How. 19) 393 (1857).
[40] *Roe v. Wade*, 410 U.S. 113, Sec. IX.B (1973).

As noted above, uncertainty about whether a human being (or a person) is present is no excuse for sanctioning the killing of innocent possible human beings, because such an egregious harm is clearly avoidable. Today, it is no longer reasonable and responsible to contend that a single-celled human zygote (with mitochondrial DNA and a unique human genome) is not a human being, and it is a violation of the principles of non-maleficence and universal personhood to contend that any human being is not a person. Since the court's decision and rationale in *Roe v. Wade* contradicts contemporary scientific findings and violates the principles of non-maleficence, universal personhood, and the necessary hierarchy of rights, we must hold that they have unjustly sanctioned the killing of millions of persons deserving protection under the law. An unjust law is no law at all and an unjust sanction is likewise devoid of legitimate legal authority.

Most students understand the principle of the necessary hierarchy of rights as exemplified in *Dred Scott v. Sanford* and find it probatively applicable to the majority's illegitimate sanction of abortion in the *Roe v. Wade* decision.

7. The Principle of the Intrinsic Limit to Human Freedom

This principle is an extension of natural rights. Francisco Suarez did not mention it because the Scholasticism of his day had not yet developed an Enlightenment view of freedom or liberty. However, Locke was aware of this notion of freedom and put it in a very important place in his theory of rights. Even though he believed that liberty should be given the widest possible space in which to operate, he hastened to add in several critical passages in the *Second Treatise on Government* that one person's liberty stops where another person's rights begin. In one such passage (from chapter 2 of the *Second Treatise on Government*) he notes:

> But though this be a state of liberty, yet it is not a state of licence; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of Nature has a law of Nature to govern it, which obliges every one; and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions....[41]

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[41] Locke, p. 9.

Baron de Montesquieu (1689-1755) interprets rights as liberties more than powers inhering in an individual human being. Even though, like Locke, Montesquieu believed that liberty should be as uncontrolled as possible in every human being, he also believed that one person's liberties cannot harm or threaten the safety of other persons, and so he writes:

> The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another....[42]

Notice that Montesquieu not only believes that one person's liberties should not cause undue burdens on another person but also that the government is responsible for assuring that this does not occur. He even advocates that governments be constituted according to this principle, and so he develops the theory of checks and balances among the branches of government that influenced our founding fathers and became the bedrock of our Constitution.

Inasmuch as all legitimate governments are responsible for actualizing this principle, we may infer that governments should not grant freedoms to one group of individuals that will likely create undue burdens for others or threaten the safety of others.

At this point, some instructors may want to indicate how this principle applies to the life issues. It has a very obvious application to the abortion issue, and a more subtle but more significant application within the issue of assisted suicide. Let us begin with abortion. In that regard, there is the obvious problem that in order to grant a new freedom to mothers to abort their fetuses, the courts have to impose an undue burden on unborn children to die. Even though these victims cannot speak for themselves, they still have natural rights (which belong to them in themselves, and are present by virtue of their human existence alone). Being able to speak for themselves is not a qualification of their natural right to life. Again, the *Roe v. Wade* decision has violated a key universal principle by imposing undue burdens on one group in order to give greater freedom to another group.

Let us now turn to the issue of assisted suicide. Some states have recently

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[42] Baron de Montesquieu, *The Spirit of the Laws* (New York NY: Hafner Publishing Company, 1949), p. 153. See bk. 11, sections 3-6.

passed legislation permitting physicians to prescribe lethal pharmaceuticals for the purpose of patients' assisted suicide. At first glance, one might think that this should not be a problem, because if somebody wants to commit suicide by means of a lethal dose of medication, it should be his or her own business. One can imagine the reasoning thus: "Why should the state get involved in preventing this? Why not give people the option (freedom) to kill themselves or have themselves killed if they really want it?"

It is important to recall that governments do not have the right to simply grant freedoms. They can only grant freedoms when those freedoms do not impose an undue burden on other groups, and it is incumbent upon governments to do due diligence in identifying any potential undue burdens that may arise in this process.

Now, on the surface, it does not seem that there are any groups that would experience undue burdens from granting certain individuals the freedom to kill themselves or have themselves killed; but this initial judgment is quite deceptive. When one looks below the surface, we can see that giving an *option* for assisted suicide or lethal injection can create a large number of burdens to those who may be pressured to choose death when they really do not want it. This pressure can come from external parties who may purposely or accidentally suggest or propose assisted suicide. Let us examine just a few particularly vulnerable groups.

The first vulnerable group consists of persons who are likely to be pressured to commit assisted suicide by relatives or others who may have something to gain. This pressure cannot be exerted if the option for assisted suicide does not exist. The moment it does exists, however, it leaves an opportunity for mal-intending relatives to both subtly and blatantly suggest this avenue as the "responsible thing to do." The reasoning here might take this form: "Your medical expenses sure are getting high," or "Your medical expenses are drawing down your net worth," or "You are depriving the world of medical resources which could be used for much better purposes" (that is, for people who would live longer).[43] More subtle pressures can be exerted on

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[43] This has already occurred in many publicized cases in both Washington and Oregon. For example, the case of Kate Cheney, an elderly cancer patient with growing dementia who was being pressured by her daughter Erika to request assisted suicide. Kate's physician believed that she was not mentally competent to do this and was being pressured by her daughter, and so refused to write the prescription. A second physician was engaged by her daughter who also refused to write the prescription. She was then

potential victims, but the effect is the same – an undue duty to die for one group of people that did not exist before the freedom for assisted suicide was given to another much smaller group of people. This pressure should be considered an *undue* burden to die because the vast majority of people want to live, and most of those who make suicide requests reverse them when their pain and depression are treated properly.[44]

A second group of potential victims are those with limited financial resources. If the option for assisted-suicide does not exist, these individuals will receive treatment either from Medicare, Medicaid, charities, insurance companies, or other sources. If the option (freedom) does exist, however, it may come to pass that government and insurance agencies may choose to curb payment for end-of-life treatments in favor of paying for assisted-suicide, and if this occurs, people with limited financial resources will suffer discrimination because they will be pressured to avail themselves of it merely because of their financial condition. This future has already come to pass in the state of Oregon.[45]

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referred to a psychiatrist for further diagnosis of mental competence, but he too declared her incompetent. Her daughter sought and found another opinion, this time from a psychologist who admitted she had cognitive impairment and was being pressured by her family but nonetheless declared her to be competent. This was sufficient for the health management company to prescribe assisted suicide, which occurred shortly thereafter. See National Right to Life Committee, "Kate Cheney's Oregon Death Illustrates Dangers" (1999), available at: http://www.nrlc.org/archive/news/1999/NRL1199/kate.html.

[44] According to Kathleen Foley, the vast majority of suicide requests are reversed when pain and depression are properly treated. These pain and depression protocols are widely available in the United States today. See, for example, Kathleen Foley, M.D., and Herbert Hendin M.D., eds., *The Case Against Assisted Suicide: For the Right to End-of-Life Care* (Baltimore MD: The Johns Hopkins Univ, Press, 2002), pp. 4-5, 227f, 314f, 330f. See also Kathleen Foley, M.D., "The Relationship of Pain and Symptom Management to Patient Requests for Physician-Assisted Suicide," *Journal of Pain and Symptom Management* 6 (1991): 290.

[45] After assisted-suicide had been legalized in Oregon, the *Seattle Times* reported the story of one of its victims: "Barbara Wagner, a Lane County woman suffering from lung cancer, was turned down by the state's Oregon Health Plan for a new drug called Tarceva. In a letter sent by a company that administers one of the state's insurance plans, Wagner was informed of the 'physician aid in dying' option that could include lethal prescriptions as well as visits to doctors required to obtain the drugs. 'I was absolutely hurt that somebody could think that way,' said Wagner. 'They won't pay for me to live but they will pay for me to die'." Hal Bernton, "Washington's Initiative 1000

There are many other vulnerable groups who are already subject to the new pressure to die arising out of the new "freedom" for assisted suicide – such as those with clinical depression, temporary depression (coming from a diagnosis of terminal illness), low self-esteem, and inadequate management of pain.[46] I give a detailed description of these other groups in *Healing the Culture.*[47] The conclusion will by now be obvious: since the new freedom for assisted suicide causes an unjust and unnecessary pressure to die on a large segment of the world's population, it must be considered a violation of the principle of the intrinsic limit to freedom and the principle of non-maleficence. It does not matter that the group subject to this onerous burden is much larger than the group desiring the new freedom for assisted suicide, because this is relevant only within a utilitarian calculus. Instructors, however, may want to share it with students who are inclined toward utilitarian consequentialism and quantitative harms-benefits analysis.

Is Modeled on Oregon's Death with Dignity Act," *Seattle Times* (October 13, 2008). An account of another victim was reported by *FOX News*: "Some terminally ill patients in Oregon who turned to their state for health care were denied treatment and offered doctor-assisted suicide instead, a proposal some experts have called a 'chilling' corruption of medical ethics. Since the spread of his prostate cancer, 53-year-old Randy Stroup of Dexter, Oregon, has been in a fight for his life. Uninsured and unable to pay for expensive chemotherapy, he applied to Oregon's state-run health plan for help. Lane Individual Practice Association (LIPA), which administers the Oregon Health Plan in Lane County, responded to Stroup's request with a letter saying the state would not cover Stroup's pricey treatment, but would pay for the cost of physician-assisted suicide. 'It dropped my chin to the floor,' Stroup told FOX News. '[How could they] not pay for medication that would help my life, and yet offer to pay to end my life?'." Dan Springer, "Oregon Offers Terminal Patients Doctor-Assisted Suicide Instead of Medical Care," *Fox News* (July 28, 2008).

[46] Most pain from terminal illness can be adequately controlled by physicians. According to the 1992 manual produced by the Washington Medical Association, *"*adequate interventions exist to control pain in 90 to 99% of patients. Therefore, pain is no longer an adequate reason to justify assisted suicide, and inadequate pain management can be remedied by taking patients to other more qualified health care facilities or to Hospice." See Albert Einstein, "Overview of Cancer Pain Management" in *Pain Management and Care of the Terminal Patient*, ed. Judy Korenell (Washington State Medical Association, 1992), p.4.

[47] See Spitzer (2000), Ch. 9.

8. Conclusion

As might be adduced from the above, the seven essential principles of civility and civilization are not a huge stretch for today's high school and collegiate students. The principles are probative and engaging (even to those inclined toward materialism and utilitarianism) and they are embraced by secular culture (meaning that students do not have to be cultural non-conformists to affirm them). Moreover, they require only logical consistency to be applied to the life issues of abortion and assisted suicide. Thus, if students make the transition from a dominant ego-comparative identity to a dominant contributive-empathetic identity (a conversion of the heart), it is highly probable that they will not only assent to the remaining six principles themselves, but also to their simple application to the prolife issues. This inference is validated by the initial studies and tests of the *Principles and Choices* curriculum (that implements these principles) by the associates of *Healing the Culture* (see the statistics below in the Appendix). In my view, we are coming quite close to developing a very persuasive universal prolife rhetoric for our times.

APPENDIX: THE TRANSFORMATION OF VIEWPOINTS AFTER USING UNIVERSAL RHETORIC

• Our Principles & Choices high-school curriculum is now in 57 schools in 27 different states.
• More than 12,000 students have enrolled in a P&C class. Nearly 100% of these students will go on to attend college and impact the culture in meaningful ways.
• After studying part one of our three-part Principles & Choices series, the percentage of students who agreed with the Church's teaching on respect for unborn human life increased from 51% prior to taking our course, to 86% afterward. Those who chose "loving God and others" as the meaning of true happiness over "sex, money, power, and success" increased from 56% to 91%. And the percentage of students who agreed with Church teaching on assisted suicide rose from 54% to 66%

Highlights from *Principles & Choices*. Pre- and Post-Test Comparative Surveys

The following results reflect attitudinal changes among students after they completed only Book 1 of our 3-book pro-life philosophy curriculum for high schools, *Principles & Choices.*

Testing Date: Spring 2014
Sample Size: 231 high school students
Sample Field: One high school in California, and one high school in Nebraska
Respondent demographics: Ages 14-17; male-female ratio = 51%-49%.