

## **Six Principles of Individual Dignity and Rights**

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Throughout 1,500 years of history, the Catholic Church developed six major principles of individual dignity and rights now accepted by the majority of secular societies. In addition to Jesus, five major thinkers were involved in these important developments:

1. Saint Paul – particularly the development of the notion of conscience (integral to the natural law).
2. Saint Augustine – particularly the subordination of the positive law to justice.
3. Saint Thomas Aquinas – particularly the development of the natural law.
4. Bartolomé de Las Casas, O.P., particularly the assertion of universal personhood of all human kind.
5. Francisco Suarez, S.J., particularly the doctrine of inalienable rights and the prioritization of rights (life, liberty, pursuit of happiness, and property).

The six principles they developed are universal, justifiable through natural reason, and ground the legitimacy of all forms of government. If any government intentionally violates these principles and rights, they lose their legitimacy until the violation is corrected. They are as follows:

1. The principle of non-maleficence (Section I)
2. The principle of universal personhood (Section II)
3. The principle of unjust laws (Section III)
4. The principle of inalienable rights (Section IV)
5. The principle of the necessary hierarchy of rights (Section V)
6. The principle of the intrinsic limits of human freedom (Section VI)

It might be noted as a point of good rhetoric that trying to argue issues without appealing to higher principles is generally useless, because it forces both parties to assert their positions arbitrarily. That is why the Church and most secular governments have embraced the above principles and have *now* applied them to the issue of slavery. I would ask that any reader who is endeavoring to argue the life issues (abortion and assisted suicide) in the public square to make recourse to the above principles so that the truth and justifications of their positions might be evident, and the illegitimacy of governmental bodies who advocate the opposite may be exposed.

### **I. The Principle of Non-Maleficence**

The principle of non-maleficence dates back over 3,000 years, and 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, because 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.”

Many thinkers consider the principle of non-maleficence to be as fundamental to personal and social ethics as the principle of non-contradiction is to the rules of evidence. Why? Because its denial:

1. Entails the most fundamental form of injustice, and
2. Leads to an untenable social condition.

The moment we condone harming others unnecessarily, the fabric of community and society would unravel in theft, injury, violence, and even murder. Furthermore, interpersonal relationships would be impossible if we did not owe this duty to one another. We avoid people who say, “I really need to cause unnecessary harm to others in order to be fulfilled in my life,” because 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 people almost instinctively assent to this principle, because they realize that without it, their lives – and the lives of others around them -- would be, in Hobbes’ words, “brutish, ugly, and short.”<sup>1</sup>

One important corollary of this principle must be emphasized—namely, if one is in doubt as to whether a particular action will cause a harm—particularly an egregious harm—to others, that action too must be avoided, because acting in ignorance is no excuse for causing an unnecessary 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. On the occasion when he hears rustling in the bushes below him but cannot identify his prey with certainty, and 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 was decided that all avoidable harmful negligence was 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 these types of humorous examples, because the corollary to the principle of non-maleficence—that doubt is no excuse for causing avoidable egregious harm to others” is so obvious.

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 human genome, and will very probably develop into a unique, normal baby possessing the potential to have powers of rationality, conscience, and transcendent awareness (if allowed to develop within the mother’s womb), it is exceedingly difficult to deny that it is a living human being. Even if one does have doubts, they cannot justify violating the principle of non-maleficence by killing this being of human origin – for doubt is no excuse for causing an avoidable egregious harm to another “probable” human being.

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<sup>1</sup> Thomas Hobbes 1994, *Leviathan Chapter XIII* (Hackett Publishing) pp. 76-77.

Today, this kind of doubt can be completely redressed by DNA sequencing that would indicate a unique human genome. Dr. Jerome Lejeune was the first to testify to the capacity to definitively ascertain the presence of human life at conception in a U.S. court of law.<sup>2</sup> He showed that a single-celled zygote (even if it is not implanted) has a full unique human genome by using a DNA sequencer. Therefore, he claimed *objectively* that a single-celled zygote is 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 a very different being from both the mother and the father because of the genetic combination. He then claimed that, under normal conditions, this single-celled zygote would develop into 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 present at the stage of a single-celled zygote, but also a unique human being that would become fully actualized in the vast majority of cases.

## II. The Principle of Universal Personhood

The term “person” was introduced into the English language sometime prior to 1200, and was probably derived from the French “*persone/persoune*” which meant “human being.” “*Persone*,” in turn, was probably derived from the Latin “*persona*” with the same meaning -- “human being.”<sup>3</sup> 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” was 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 1865 (in the U.S.). This enabled slave traders to buy and sell beings of human origin without violating their natural dignity and the standards of minimum justice. Ultimately Abolitionist and the Emancipation movements throughout Europe and the United States rejected the spurious distinction between a person as “a being of human origin” and a person as “a being deserving protection under the law.”<sup>4</sup> Unfortunately, it took over 400 years of unnecessary pain, tragedy, torture, death and outrageous injustice—grotesque violations of the principle of non-maleficence -- for the collective 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.

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<sup>2</sup> See *New Jersey v. Alexander Loce* (1991) and *Davis v. Davis*, (1992) – in 842 S.W.2d 588, 597.

<sup>3</sup> Barnhart 1988, p. 780.

<sup>4</sup> See Scott Klusendorf 2009 *The Case for Life* (Crossway) pp. 44-53.

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 of Indians 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, indicating that they were “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-16<sup>th</sup> century – Bartolomé de las Casas.

Las Casas attempted to defend the Indians of the New World against the Spanish slave traders and the Spanish court, and his efforts were brought to a head in a famous debate with Juan Ginés de Sepúlveda. Las Casas (who held two degrees in canon law) made 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 the “just” enslavement by their conquerors. It should be noted here that this same rationale has been used in attempts to justify all forms of slavery and genocide throughout history.

Las Casas was not only horrified by the attempt of Sepúlveda to justify the killing of Indians who resisted “just” enslavement, he 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” – 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.<sup>5</sup>

Las Casas’ 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

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<sup>5</sup> las Casas 1992, p. 38.

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' 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 than human”) because of their degree of development, if they show 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 human *nature*. The fact that they had not yet reached their normal development was not an indication of less nature, but only an indication of accidents or occasions which may have prevented or delayed that normal development from occurring. It is erroneous to make a judgment about “nature” on the basis of mere accidents or historical occasion, for nature is indicated by the power or potential of something, not by the accidents or processes which occasion a particular achievement of that potential or power.
- (2) If a people is unjustifiably judged inferior (by erroneously judging accidents or historical occasions instead of potential or power), then the harm which arises out of that erroneous judgment is a clear violation of the principle of non-maleficence, and 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.

Though las Casas' reasoning would later prevail throughout Colonial Spain and Europe, the Spanish court was not in a mood to disappoint the greedy Conquistadores—and so they ignored las Casas' admonition to avoid a gross violation of the principle of non-maleficence by culpable ignorance, and gave the decision to Sepulveda leading to additional decades of slavery and injustice. Some of the consequences of this were fictionally portrayed in the movie *The Mission*.<sup>6</sup>

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

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<sup>6</sup> 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 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 who no longer had immunities to diseases because of their lives on the Missions. See James Schofield Saeger (1995) "The Mission and Historical Missions: Film and the Writing of History." *The Americas*, Vol. 51, No. 3, pp. 393–415. See also C. J. McNaspy, 1982, *The Lost cities of Paraguay: Art and architecture of the Jesuit reductions, 1607-1767*. Chicago: Loyola Press.

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 present in every ethnic group and even in a single-celled zygote) then this being must be considered a human being and considered thereby to be a person. Any exceptions to this risks gross violations of the principle of non-maleficence.
3. If another alien being were to be encountered, who possessed the powers – or the potential to have the powers-- of rationality, conscience, and transcendence (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 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 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 of non-maleficence.
5. If any governmental body 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 – never 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.

Most people have little difficulty assenting to these five guidelines as necessary for their own ethical conduct as well as the just and ethical conduct of any governmental or judicial body. Though the above justification of these guidelines used the example of slavery and aliens, their significance for the pro-life issues can be understood by almost anyone. Just as development of any human ethnic group towards its potential cannot invalidate the personhood of that ethnic group (because potential is sufficient to prove human nature), 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 stage of development is merely accidental to personhood while its potential to have the normal powers of human beings (rationality, conscience, and transcendent awareness) indicates its human substance and nature revealing its personhood deserving of protection under the law.

Recognizing that the specious dichotomy between “human being” and “legal person” was developed precisely to justify the unjustifiable – namely, slavery, Scott Klusendorf explains that the same specious distinction is now being used to justify discrimination against (and the killing of) preborn human beings:

In the past, we used to discriminate on the basis of skin color . . . , but now with elective abortion, we discriminate on the basis of size, level of development, location, and degree of dependency. We've simply swapped one form of bigotry for another.<sup>7</sup>

The majority of the Supreme Court overtly used the same specious distinction between “human being” and “personhood” in *Roe v. Wade*, and then promptly used its doubts about the “legal personhood of a preborn human being to justify not only discrimination, but the killing of an entire group of human beings:

[Section IX.A]

If this suggestion of personhood is established, the appellant’s case, of course, collapses, for the fetus’ right to life would then be guaranteed specifically by the Amendment. The appellant conceded as much on reargument. 51 On the other hand, the appellee conceded on reargument 52 that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment.

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All this [the exclusively post-natal use of “person” in the Constitution and related precedents], together with our observation, *supra*, that throughout the major portion of the 19<sup>th</sup> century prevailing legal abortion practices were far freer than they are today, persuades us that the word “person,” as used in the Fourteenth Amendment, does not include the unborn.<sup>8</sup>  
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Notice that the majority of the Supreme Court in *Roe v. Wade* first makes the specious distinction between human being and legal personhood without any justification. It then speciously argues from the silence of the *Constitution* about fetal personhood to a denial of fetal personhood, ignoring the dictum that silence in the law cannot be construed to be either “yes” or “no”<sup>9</sup> (making this conclusion specious as well). It then falsely concludes from these two specious premises that “person” as used in the Fourteenth Amendment, does *not* include the unborn.” As with Juan Sepulveda’s argument and the *Dred Scott* decision, the majority in *Roe v. Wade* has once again falsely justified the unjustifiable – the killing of the unborn.

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<sup>7</sup> Scott Klusendorf 2009 *The Case for Life* (Crossway) p. 66.

<sup>8</sup> *Roe v. Wade*, 410 U.S. 113, Sec. IX.A (1973).

<sup>9</sup> This reasoning goes against the centuries-old dictum (which has been embraced by American jurists from the beginning of this country) that silence has little probative value, because it literally provides no evidence in the affirmative or the negative. To construe silence to mean anything other than “nothing” is a disingenuous leaping non-sequitur. See Michael Martin, Daniel Capra, and Faust Rossi 2003, *New York Evidence Handbook: Rules, Theory, and Practice*. Second Edition. (New York: Aspen Publishers). p. 181.

### III. The Principle of Just Laws

As noted above, this principle goes back to Saint Augustine who declared that “an unjust law is no law at all.”<sup>10</sup> With this principle St. Augustine made two important advances in the philosophy of law. First, he showed that justice is higher than the law—it is the standard required for the legitimate 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 his/her due”<sup>11</sup>) then that law is illegitimate, and can never justify the use of State authority and power. As such, it need not be obeyed, and if necessary, actively resisted to re-establish the legitimate authority of justice.

Secondly, St. Augustine also showed that the positive law cannot justify itself, because its legitimacy lies outside itself in the higher standard of justice. Therefore, legal positivism will necessarily be an incomplete basis and use of the 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 the 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.

As with the other principles mentioned above, most people understand and assent to this. On the basis of the above three s, an air-tight case can be made for the intrinsic harm and injustice of abortion, and the judicial illegitimacy of sanctioning it. The next three principles will fill out the case against both abortion and assisted suicide—as well as their judicial illegitimacy.

### IV. The Principle of Natural (Inalienable) Rights

As noted above, one of the best known medieval tractates on natural law was written by Saint 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 that belongs to *individuals* (*jus*).

Suarez believed that “a right was something that a man had as his own, that he could exercise in his own name, and that could not be taken away from him without injustice.”<sup>12</sup> This was highly significant, because it meant that a state or governing body does *not* confer natural rights on individuals which would allow that state to take those rights away. Instead, Suarez noted, natural rights belong to human beings by their *very human existence*, 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,

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<sup>10</sup> Augustine, *On Free Choice of the Will*, Book 1, Section V.

<sup>11</sup> Plato, *Republic*, Book 2, 432b-434e.

<sup>12</sup> Tierney 1997, pp. 307-08. (Citing Suarez in *De statu perfectionis, Opera* 15:8.5.29, 571).

or even by a vote of a supermajority. The state (or the people constituting that state) cannot take away what does not belong to them without perpetrating an extreme injustice.

Suarez recognized not only the right to life (*preserving* human nature), the right to liberty (that he called “self-governance”), and the right to pursue happiness (that he called “*perfecting* human nature”), but also the right to property. These four rights, which belong to a human being by his or her very existence, are the grounds upon which all positive laws stand. If a state (or the executive, legislative, or judicial authorities of that state) enacts laws that undermine these natural and universal rights, then those positive laws are unjust, and the authority used to enact them, illegitimate.

Suarez’ 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 even to the international community as a whole.

As with the previous three s, most people assent to the principle of natural (inalienable) rights, and many see the implications for pro-life issues. The four most important implications are as follows:

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, it will have created an unjust law (egregiously violating the principle of non-maleficence) that delegitimizes its 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. However, the absence of *extrinsic* rights (e.g. declared by a constitution or

other state authority) can in no way justify the abrogation of a *natural inalienable* right which does not belong to the state but to the individual alone.

The majority of the Supreme Court violated all four of the above principles in *Roe v. Wade* when it used the specious distinction between “human life” and “legal personhood” to brush aside the inalienable natural right to life of the unborn (see above Section II). The way was then clear to reduce the unborn human being’s rights to merely *extrinsic* (declared) rights set out by the *Constitution* and its precedents.<sup>13</sup> The majority then violated the accepted rules of evidence by construing the silence of the *Constitution* on fetal personhood to mean that the *Constitution* denied those extrinsic rights.<sup>14</sup> Thus, the denial of fetal personhood 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.

## V.

### The Principle of the Necessary Hierarchy of Rights

We begin our discussion once again with the originator of natural rights – the Spanish Jesuit Francisco Suarez. Recall that Suarez believed that the ground and aim of law itself is “the due preservation and natural perfection or happiness of human nature”<sup>15</sup> 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 right to self-preservation corresponding to Jefferson’s right to life, Suarez’s right to self-governance corresponding to Jefferson’s right to liberty,<sup>16</sup> and Suarez’s right to happiness corresponding to Jefferson’s 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, either over his own property or with respect to that which is due to him.”<sup>17</sup>

The prioritization of rights becomes clearer in John Locke’s *Second Treatise on Government* where 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

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<sup>13</sup> See the explanation above referring to Section IX.A of *Roe v. Wade*.

<sup>14</sup> “The appellee conceded on reargument 52 that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment....[this] persuades us that the word “person,” as used in the Fourteenth Amendment, does not include the unborn.” *Roe v. Wade*, Section IX.A.

<sup>15</sup> Suarez *De Legibus*, 3:2.7.7, 118.

<sup>16</sup> 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.”

<sup>17</sup> Suarez, *De Legibus*, 1:2.5

preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men...<sup>18</sup>

As we saw above, 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; yet they seem to 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..." 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.

Evidently, the right to life is a condition necessary for the *possibility* of the right to liberty because 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 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, because 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. Sanford* and *Roe v. Wade*. Let us begin with *Dred Scott v. Sanford*. 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

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<sup>18</sup> Locke 1980, p. 46.

necessary for the possibility of...,” it would have had to resolve this conflict in favor of black people’s liberty rights, because 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, attempting to justify its decision by asserting that, since the Constitution did not explicitly include black people as being citizens, the founding fathers intended to exclude them from citizenship. In an astounding 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 of 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*.<sup>19</sup>

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

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<sup>19</sup> *Dred Scott v. Sanford*, [1] 60 U.S. (How. 19) 393 (1857).

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....<sup>20</sup>

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.

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.

## VI. 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

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<sup>20</sup> *Roe v. Wade*, 410 U.S. 113, Sec. IX.B (1973).

consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions...<sup>21</sup>

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....<sup>22</sup>

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, 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, 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. Such actions are fundamentally unjust and generally violate the principle of non-maleficence.

This principle 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 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 condition of their natural right to life. Again, the *Roe v. Wade* decision has violated a key universal principle – 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 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. "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?"

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

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<sup>21</sup> Locke 1980, p. 9.

<sup>22</sup> Montesquieu 1949, p. 153. See Book 11, Sections 3-6.

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. However, the moment it does exist, it leaves an opportunity for mal-intended relatives to both subtly and blatantly suggest this avenue as the “responsible thing to do.” “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).<sup>23</sup> More subtle pressures can be exerted on 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.<sup>24</sup>

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. However, if the option (freedom) does exist, 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.<sup>25</sup>

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<sup>23</sup> 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 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 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 1999 “Kate Cheney’s Oregon Death Illustrates Dangers” <http://www.nrlc.org/archive/news/1999/NRL1199/kate.html>.

<sup>24</sup> 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, Foley and Hendin 2002, pp. 4-5, 227f, 314f, 330f. See also Foley 1991, p. 290.

<sup>25</sup> 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

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.<sup>26</sup> I give a detailed description of these other groups in *Healing the Culture*.<sup>27</sup> 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.

## VII. Conclusion

Most effective rhetoricians recognize that it does little good to simply argue a difference of ethical judgement on the level of issues alone, because there is no basis on which to justify which position is better or worse. Our first obligation as rational ethical individuals having influence in the public square is to find *common ground* on a set of *principles* (higher viewpoints that can justify or negate the appropriateness of an ethical position). These principles provide the rational basis for civil agreement and compromise.

As noted above, Christian philosophy (based on natural reason) has provided six such principles on which virtually every educated person agrees, because negating them inevitably causes needless harm, fundamental injustice, and societal instability—and frequently worse—wholesale prejudice, slavery, and genocide: The principle of non-maleficence, the principle of universal personhood, the principle of unjust laws, the principle of inalienable rights, the

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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’” (“Washington’s Initiative 1000 is Modeled on Oregon’s Death with Dignity Act,” by Hal Bernton, *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, Ore., 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?’” (“Oregon Offers Terminal Patients Doctor-Assisted Suicide Instead of Medical Care,” by Dan Springer, *Fox News*, July 28, 2008).

<sup>26</sup> 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, 1992, p.4.

<sup>27</sup> See Spitzer 2000, Chapter 9.

principle of the necessary hierarchy of rights, and the principle of intrinsic limits to human freedom. As Christians we lose a huge opportunity to educate and influence the culture and to persuade the public of our position when we fail to show the veracity of these principles before we begin an argument.

We have an opportunity in classrooms—both religious and secular—to present these six principles and to give students the time to affirm them. If they do (and there is a very high probability that they will) affirm these s, then the debate is over—the illegitimacy and injustice of slavery, abortion, assisted suicide, and every other form of societal injustice based on prejudice, subordination of the personhood of particular groups, and a false prioritization of rights will be self-evident. There will no doubt be some individuals who will try to justify these practices by ignoring the above s, but we as Christians must persistently bring them out in the public square so that they can never be ignored. This is the first step to pursuing the common good. The next step is to learn the six principles of Catholic Social Teaching—presented in the accompanying article on this landing page.