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# MAKING SENSE OF THE RIGHT TO TRUTH IN EDUCATIONAL ETHICS: TOWARD A THEORY AND PRACTICE THAT PROTECT THE FUNDAMENTAL INTERESTS OF ADOLESCENT STUDENTS

ANJA MATWIJKIW, PH.D. \* & WILLIE MACK, PH.D. \*\*

## *I. Introduction*

In this article, we address the theoretical issues, both ethical and purely philosophical, of truth as a human right for adolescent students in public secondary schools.<sup>1</sup> As for the purely philosophical aspect, this concerns ontology which raises the question how can truth exist, while epistemology asks how can people acquire the truth. While the right to truth can also be substantiated by ethics, it would not make sense to advance this right unless “truth” referred to a reality that humans have access to. On our premises, the right to truth is a right to know all education-relevant facts which at the same time constitute enabling conditions for the purpose of actualizing one’s potential as an individual and, with this, securing self-actualization. Analytically, the enabling conditions overlap with the fundamental interests of adolescent

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<sup>1</sup> The distinction between “ethical” and “purely philosophical” should be treated with some caution. This is to say that we acknowledge that ethics is a philosophical discipline akin to ontology and epistemology. However, for the specific purposes of this article it is important to keep ethics separate to the extent that human rights claims are not reduced to claims within ontology and epistemology.

students. Furthermore, on our premises, the right to truth is an integral part of quality education. It is unfortunate, therefore, that only international law expressly recognizes the right to education. Whereas certain international conventions include the right of access to education, they do not bind ratifying States to a specific educational structure. Notwithstanding, in the context of ethics we lament violations because these are symptoms of a larger problem. For example, grade inflation is not just about giving a grade that is higher than the student deserves, it is also first and foremost about treating adolescent students as equal members of humanity.

Regarding the conceptual and normative framework, we advance a mixed theory. This theory draws partly from Immanuel Kant's deontological ethics, while at the same time, derives the concept of a right from ethical principles, going beyond Kant's criteria for humanity.<sup>2</sup> Like Kant, we argue that there are duties owed to right holders but, unlike Kant, we do not ground these rights on rationality and autonomy. Furthermore, by applying these ethical principles in a hypothetical case, we consider the consequences that affect efforts to prevent serious harm.<sup>3</sup> In this manner, this proposed mixed theory departs from the rigid absoluteness of Kant's beliefs of the duty to deliver the truth that corresponds to the right to truth. Certain exceptions to telling the truth should be acknowledged and accommodated in the context of adolescent students. In particular, the right to truth should be limited by exceptions that constitute violations of the rights to life and health. As a result, this mixed theory presents itself as a version of qualified absolutism. However, moral strictness is still maintained by, for example, dismissing references to consequences that give rise to a conflict on the basis of maximum efficiency perceptions that are indistinguishable from

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<sup>2</sup> The most prominent characteristic of Kant's version of deontological ethics is its emphasis on intentions as opposed to consequences. For an account of this, *see infra*, at 351 and note 71.

Because Kant's ethics disallows consideration of consequences, it contrasts sharply with utilitarianism, which is a form of teleological ethics. For a definition of utilitarianism, *see infra* note 70.

<sup>3</sup> In this way, we support a version of consequentialism. However, because consideration of consequences is with a view of harm to individuals, our theory must be kept separate from utilitarianism.

*laissez-faire* policies. The right to truth would trump utilitarian approaches that emphasize a production-like form of education, which sacrifices the good of individual adolescent students. The duty to deliver the truth is neither voluntary, nor can it be denied by the primary duty-bearers, the teachers of adolescent students, who may try to use the prevalence of a bad truth climate as an excuse for non-compliance.<sup>4</sup> One strategy for improving the state of affairs, so we argue, is to introduce Educational Integrity Committees. If successful, these entities would enhance the part of the teachers' character, which adolescent students depend upon for their self-actualization and, with this, their full introduction into humanity. Teachers are models, good or bad.

The prerequisite means for reaching self-actualization are basic needs. While we are indebted to Abraham H. Maslow for the purpose of defining self-actualization and the needs that are tied to this concept, such as food, shelter, belongingness, respect and love, our list of basic needs encompasses all of Maslow's needs as well as the so-called special needs of adolescent students to things like quality education and paternalistic guidance.<sup>5</sup> According to our

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<sup>4</sup> It should be noted that throughout the article we use the notion of an excuse in the moral sense. Accordingly, an excuse contrasts with a justification. An excuse is a statement of the form "I am sorry that I did X" thus admitting to wrong-doing (otherwise I would not have a reason to make an excuse) "but" (so the excuse continues) "... in the circumstances X was unavoidable or necessary." A justification, on the other hand, entails that no wrong was committed in the first instance. Hence, it holds that "It was right to do X... in the circumstances." This definition creates an analogy with positive criminal law where a justification removes the stain of illegality, whereas an excuse may just obviate punitive sanctions.

Because we, unlike Kant, acknowledge that conflicts of duties may occur, we attempt to balance different requirements within morality in a way that applies the notion of an excuse as more than a sacrifice of what should be done. Thus, it holds that while truth-telling is the ideal, withholding the truth may be necessary for reasons that also derive from morality and which, in the circumstances, should be prioritized so as to make possible truth telling at a later point in time. Therefore, such an excuse does not compromise what should strictly be done. Instead it expresses reverence. In contradistinction, an excuse which sets aside all considerations on the basis of morality, counts as a morally bad one.

<sup>5</sup> Abraham H. Maslow (1908-1970) is an American psychologist and philosopher and one of the most famous need theorists in our own modern era. On

theory, basic needs exist as objective and universal facts that can be accessed through particular truth-recognition methods. Drawing on Felipe Fernández-Armesto's theories, we are able to demonstrate that there is no room for nihilism and skepticism in connection with the existence of basic needs, for which harm functions as a bridge concept, thus linking reality and morality.<sup>6</sup> If basic needs go unmet, serious harm will necessarily follow. That said, we use Neil McCormick's work to show that the necessity for rights-recognition is the Kantian notion of respect whereby rights presuppose treating people as ends in themselves, and not merely as means. However, the implied absolutism is limited to the class of basic needs and corresponding human rights. Only basic needs count as absolutely objective and universal facts.<sup>7</sup> Furthermore, absolutism is precluded in the case of description. This is to say that description cannot be absolutely objective, neutral, and impartial. Description is also prescription, as in the expression "Perception is reality." This, in turn, suggests that qualified absolutism applies not only to ethics, but also to ontology and epistemology. Furthermore, ethics, ontology, and epistemology work together in cases where, for example, feelings matter by virtue of being causal components of adolescent students' self-judgment. In terms of theory, both subjectivism and relativism presuppose that reality and morality are belief-dependent, and qualified absolutism accommodates both to the extent of giving consideration to subjectivist statements like, "It is true that without X, I will suffer harm" and relativist statements such as, "It is true that X is an absolute necessity for members of group P." At the same

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his account of needs, Maslow distinguishes between "basic" *cum* physiological needs (to food, water, sleep, etc.) and "higher level needs" (to safety, security, belongingness, self-esteem, respect by others, love, etc.). Foundationally speaking, the various types of needs are ordered so as to constitute a pyramid with basic needs at the bottom and self-actualization at the top. Furthermore, the higher the need is placed in the pyramid the more distinctly human it is. *See* ABRAHAM H. MASLOW, *TOWARD A PSYCHOLOGY OF BEING* 23 (1962).

<sup>6</sup> In this article, we use "morality" and "ethics" interchangeably.

<sup>7</sup> The term "hard" refers to their independent reality invoking realism. This entails that the existence of basic needs, or ontology, does not vary in accordance with the beliefs of particular individuals or groups. In terms of epistemology, need facts can be accessed by empiricism and rationalism as truth-recognition methodologies. *See infra*, at 368.

time, a functionalistic reading of needs serves as a filter that separates needs that are derived from the general norm for humanity, as opposed to wants.<sup>8</sup> In contradistinction to wants, basic, absolute needs do not vary in accordance with subjective and/or relative beliefs. As an integral component of qualified absolutism, universalism trumps both subjectivism and relativism. Given that human rights are at stake, this has to be.

## *II. International and U.S. Domestic Law*

Under pertinent international treaties, education is expressly recognized as a human right. More precisely, article 13 of the U.N. International Covenant on Economic, Social and Cultural Rights (“ICESCR”)<sup>9</sup> requires States Parties to the Covenant to recognize that everyone has the right to education<sup>10</sup> and that education “shall be directed to the full development of the human personality and the sense of its dignity.”<sup>11</sup> Under the ICESCR, primary education is to be free and compulsory.<sup>12</sup> Secondary education shall be accessible and available to all.<sup>13</sup>

While education is recognized in terms of a human right, it is not fully enforceable under international law. The right to education is merely a “second generation” right and therefore subject to the progressive realization by States parties to the ICESCR.<sup>14</sup> Further,

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<sup>8</sup> The general norm for humanity is factual in that it describes the facts that apply to the majority of *homo sapiens*, such as the needs for food, water, sleep, etc.

<sup>9</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

<sup>10</sup> The International Covenant on Economic, Social and Cultural Rights has not been ratified by the United States; therefore, the United States is not obligated under international law to recognize the rights included in this Covenant, including the right to education.

<sup>11</sup> ICESCR, *supra* note 9, art. 13(1).

<sup>12</sup> *Id.* art. 13(2)(a).

<sup>13</sup> *Id.* art. 13(2)(b).

<sup>14</sup> The first international instrument to present a comprehensive list of human rights was the Universal Declaration of Human Rights in 1948. When States chose to develop binding agreements protecting the human rights delineated in this aspirational document, the rights in the Universal Declaration on Human Rights

the listed rights in the ICESCR are non-justiciable rights and are only enforceable through the state reporting procedure to the Committee on Economic, Social and Cultural Rights. The Committee on Economic, Social and Cultural Rights was created to review state reports to the ICESCR and provide non-binding recommendations to States parties on how to implement and interpret the rights contained within the Covenant. Unlike the International Covenant on Civil and Political Rights (“ICCPR”), the ICESCR has no complaint mechanism for individuals to allege violations of their rights. It also lacks an inter-state complaint mechanism for States to allege that other States are not complying with their obligations under the ICESCR.

The right to education is unqualified by any truth prescriptions. Furthermore, it is recognized with a specific view to public education, although the third paragraph of the article states that schools “other than those established by the public authorities”

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were divided into two categories. Civil and political rights were placed in one category. Economic, social, and cultural rights were placed in the other. Civil and political rights were considered first generation rights because they involved the negative obligations of States to avoid interference with these rights. For example, the right to life may be ensured through a State’s agreement not to kill individuals within its jurisdiction. Civil and political rights were codified in the International Covenant on Civil and Political Rights. See Allan Rosas & Martin Scheinin, *Categories and Beneficiaries of Human Rights*, in *AN INTRODUCTION TO THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 49-65 (Raija Hanski & Markku Suksi eds., 2000) (1997) for a history of the development of generations of human rights.

Economic, social, and cultural rights, on the other hand, were considered second generation rights because they required states to take positive steps to ensure enjoyment of these rights. For example, the right to education requires schools, teachers, books and other facilities. To ensure the right to education, a State party to the ICESCR would have to provide the necessary components for the right to be enjoyed. Since economic, social and cultural rights require action on the part of the State, they are subject to progressive realization. In other words, these rights are to be developed according to the means available to the State. Therefore, poorer states will not be bound to obligations that are beyond their economic capacity. See ICESCR, *supra* note 9, art. 2. See Tara Melish, *Rethinking the “Less as More” Thesis: Supranational Litigation of Economic, Social and Cultural Rights in the Americas*, 39 *NYU J. INT’L L. & POL.* 1 (2006) for more information on the justiciability of economic, social and cultural rights.

constitute permissible choices for parents or legal guardians in accordance with their religious or moral convictions on condition that the alternative private schools accord with “such minimum educational standards as may be laid down or approved by the State.”<sup>15</sup> Regardless, the object of the right is limited to primary education which is the only level that “shall be compulsory and available free to all.”<sup>16</sup> As for the subjects or holders of this right to education, they are named in the most general terms as “persons.” The rationale for the non-application of an age-specific terminology owes, at least in part, to the fact that persons “who have not received or completed the whole period of their primary education” may be adults.<sup>17</sup> That granted, the right to education cannot be construed as an activity only for its own sake.

Another international human rights document which has been signed but not ratified by the U.S. is the U.N. Convention on the Rights of the Child (“CRC”).<sup>18</sup> The CRC, it should be stressed, sets forth civil and political rights, in addition to economic, social and cultural rights. However, in the case of the right to education, there are several important overlaps between the two documents in question.

Setting aside the fact that the right to education is limited to “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier,” the CRC encompasses the same three main kinds or stages of education as the ICESCR.<sup>19</sup> However, unlike the ICESCR, the CRC makes specific provisions for regular school attendance, reduction of drop-out rates, and discipline consistent with the child’s human dignity.<sup>20</sup> Again, unlike the ICESCR, the CRC makes explicit reference to the development of the “fullest potential” which is a notion that

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<sup>15</sup> ICESCR, *supra* note 9, art. 13.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

<sup>19</sup> Thus, it encompasses (1) primary, (2) secondary (technical and vocation), and (3) higher education. *Id.* art. 28. For the age specification, *see id.* art. 1.

<sup>20</sup> *Id.* art. 28.



primarily addresses that particular child's "talents and mental and physical abilities."<sup>21</sup> Furthermore, the CRC highlights "preparation" for, as opposed to participation in, a free, democratic society.<sup>22</sup> The change of terminology accommodates the fact that the child is not a fully developed individual, thus recognizing the child's immaturity and, consequently, the child must first learn to be a responsible agent.<sup>23</sup> Concerning development, the CRC includes a number of areas that are not self-directed such as "development of respect for the child's parents" and "development of respect for the natural environment."<sup>24</sup> Self-respect can be subsumed under "respect for human rights and fundamental freedoms."<sup>25</sup>

In light of this, the CRC uses immaturity or, more positively, the need to develop in accordance with one's fullest potential as a basis for rights. In turn, this gives rise to special protections that are owed to the child. While the child matures and eventually comes of age, it is assumed that defining characteristics such as "his or her own cultural identity, language and values" will be respected by everybody.<sup>26</sup> Otherwise, the child's proper functioning and development would be impaired. While this advances the right to education, the ICESCR and CRC do not use truth to qualify that right. Finally, the primary duty-bearers under the ICESCR and CRC are States Parties, yet there is no mention of how the parties will fulfill their duties. The responsibility for fulfilling these rights are

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<sup>21</sup> *Id.* art. 29. It should be noted that one commentator, Arlene Bowers Andrews, describes the expression "fullest potential" as "bolder language" in comparison with the typical terminology used in the relevant document, namely "adequate" and/or "necessary" which implies the minimal as opposed to the optimal. See Arlene Bowers Andrews, *Securing Adequate Living Conditions for Each Child's Development*, in *IMPLEMENTING THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: A STANDARD OF LIVING ADEQUATE FOR DEVELOPMENT 7* (Arlene Bowers Andrews & Natalie Hevener Kaufman eds., 1999).

<sup>22</sup> CRC, *supra* note 11, art. 29. For the democratic specification, see art. 15. It should be noted that the CRC requires that the preparation accords with individualism in that it holds that "the child should be fully prepared to live an individual life in society." See *id.* pmbl.

<sup>23</sup> *Id.* art. 29.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* art. 29.

conditional on the right to safety, the right to health or, more generally, the right to “a standard of living adequate for the child’s physical, mental, spiritual, moral, and social development.”<sup>27</sup> However, this befalls explicitly on “the parent(s) or others responsible for the child... within their abilities and financial capacities” and with states assisting the parents while they act in the best interests of their child, “particularly with regard to nutrition, clothing, and housing” and in “the recovery of maintenance.”<sup>28</sup>

Although one expert on the CRC, Asher Ben-Arieh, classifies education, together with health, as belonging under “the traditional areas of concern regarding the state of children,” U.S. domestic law does not recognize education as a right.<sup>29</sup> In a 1973 ruling, the U.S. Supreme Court held in *San Antonio School District v. Rodriguez* that public education is not a fundamental right protected by the U.S. Constitution.<sup>30</sup> However, the Court made it clear that a fundamental right does not need to be at issue in order for the parties to bring action under the auspices of the Equal Protection Clause of the 14<sup>th</sup> Amendment. Therefore, under the Equal Protection Clause of the 14<sup>th</sup> Amendment, states would be compelled to offer a public service

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<sup>27</sup> *Id.* art. 27.

<sup>28</sup> *Id.* art. 27. According to Francis E. Rushton and Robert E. Greenberg, “the parent(s) or others responsible for the child” are therefore considered “primary” dutybearers. See Francis E. Rushton & Robert E. Greenberg, *The Relationship Between Standard of Living and Physical Development*, in IMPLEMENTING THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: A STANDARD OF LIVING ADEQUATE FOR DEVELOPMENT 60 (Arlene Andrews & Natalie Kaufman eds., 1999). See also *id.* at 149, for Allen Parkman’s agreement with this interpretation. It should be noted that the ICESCR recognizes “the right of everyone to an adequate standard of living...including adequate food, clothing and housing, and to the continuous improvement of living conditions.” ICESCR, *supra* note 9, art. 11.

<sup>29</sup> Asher Ben-Arieh, *The International Effort to Measure and Monitor the State of Children*, in IMPLEMENTING THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD, *supra* note 28, at 37.

According to Barbara Morrison-Rodriguez: “School performance and educational attainment are frequently used indicators of the social development of children...” See Barbara Morrison-Rodriguez, *Twenty-Six Steps to Article 27: The Example of African American Children in South Carolina*, in IMPLEMENTING THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD, *supra* note 28, at 203.

<sup>30</sup> *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973).

like education to everybody within that state. However, the U.S. Supreme Court actually rejected the Equal Protection argument presented by the plaintiffs because the plaintiffs based their action on the low quality of their school district's public education and argued this was a result of that district's low tax base. The Court conceded that the public education of the district in question was of a significantly lower quality than the education in more affluent neighborhoods, but rejected the Equal Protection argument by holding that differences in wealth: 1) do not create a suspect class and 2) any disparities in the quality of the education will be determined under the low standard of rational review.<sup>31</sup>

Perhaps more enlightening for the purposes of this paper's argument is Justice Thurgood Marshall's dissent. Using as examples the rights "to procreate," "to vote in state elections," and "the right to an appeal from a criminal conviction," he challenged a majority opinion that claimed that fundamental interests had to be written into the text of the U.S. Constitution.<sup>32</sup> By offering quality education,

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 100-104. Justice Marshall also stated:

Only last Term, the Court recognized that "[p]roviding public schools ranks at the very apex of the function of a State." *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972). This is clearly borne out by the fact that in 48 of our 50 States the provision of public education is mandated by the state constitution. No other state function is so uniformly recognized as an essential element of our society's well-being. In large measure, the explanation for the special importance attached to education must rest, as the Court recognized in *Yoder*, *id.* at 221, on the facts that "some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system...." and that "education prepares individuals to be self-reliant and self-sufficient participants in society." Both facets of this observation are suggestive of the substantial relationship which education bears to guarantees of our Constitution.

Education directly affects the ability of a child to exercise his First Amendment rights, both as a source and as a receiver of information and ideas, whatever interests he may pursue in life. This Court's decision in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957), speaks of the right of students "to inquire, to study and evaluate, to gain new maturity and understanding..."

Justice Marshall reasoned, teachers would avoid actions that discourage student attendance.<sup>33</sup>

However, in another seminal ruling, *Plyler v. Doe*, the U.S. Supreme Court held that while education is not a fundamental right it acknowledged that education is an important government interest.<sup>34</sup> In this case, Mexican children who were brought by their parents into the United States illegally sought declarative and injunctive relief against their exclusion from public schools. The Court ruled for the children allowing them access to the school system explaining, “In addition to the pivotal role of education in sustaining our political and cultural heritage, denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause.”<sup>35</sup> The Court also stated that, “Education is not a ‘right’ granted to individuals by the Constitution. But neither is it merely some governmental ‘benefit’ indistinguishable from other forms of social welfare legislation.”<sup>36</sup>

Establishing that education is an important government interest, the U.S. Supreme Court applied the stricter standard of intermediate scrutiny and made clear the importance of education and its impact on children:

Today, education is perhaps the most important function of state and local governments. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity

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Thus we have not casually described the classroom as the “marketplace of ideas.”

San Antonio School District v. Rodriguez, 411 U.S. 1, 112-113 (1973) (Marshall, J., dissenting).

<sup>33</sup> Relating quality education to the dropout issue, the Court indicated that the quality of education offered by schools may influence a child’s decision “to enter or remain in school.” *Gaston County v. U.S.*, 395 U.S. 285, 296 (1969).

<sup>34</sup> *Plyler v. Doe*, 457 U.S. 202 (1982).

<sup>35</sup> *Id.* at 221.

<sup>36</sup> *Id.*

of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.<sup>37</sup>

However, despite the U.S. Supreme Court recognizing the importance of education in a number of cases even to the extent where it has been perceived as “the very apex of the function of a State,” education is still not recognized as a right.<sup>38</sup> Thus, in comparison to international law, federal laws in the U.S. do not express the “value” of education in the concept of “rights.”<sup>39</sup>

A survey of state constitutions shows that two states do mention education either as a “goal” or a “fundamental goal”, which are Louisiana and Illinois, respectively.<sup>40</sup> Whereas most state constitutions refer to various “systems,” “institutions,” or “schools” of free public education, only two states, Florida and Virginia, explicitly make provisions for standards of education. The Florida Constitution states: “[a]dequate provision shall be made by efficient, safe, secure, and *high quality* system of free public schools. . .”<sup>41</sup> The Virginia constitution expresses: “[t]he General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age . . . and shall seek to ensure that an educational program of *high quality* is established and continually maintained.”<sup>42</sup> Like Virginia, Florida refers to “children,” and the same is true of New York, New Jersey, Oklahoma, North Dakota, South Dakota, and Alaska. Other states, such as Arizona, Arkansas, Missouri and Colorado, tend to prefer a different terminology,

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<sup>37</sup> *Id.* at 222, 223 (1982) (quoting *Brown v. Board of Ed. of Topeka*, Shawnee County, Kan., 347 U.S. 483, 493 (1954)).

<sup>38</sup> See *supra* note 31.

<sup>39</sup> One theorist who links values and rights is Herbert L.A. Hart, who claims “[W]hat is first needed is some more radical and detailed consideration of the ways in which rights relate to other values pursued in society.” See HERBERT L. A. HART, *ESSAYS IN JURISPRUDENCE* 195-96 (1983).

<sup>40</sup> La. CONST. art.VIII, pmbl. See also Ill. CONST. art. X, § 1. It should be noted that the state of Wyoming recognizes the right of opportunities for education. See Wyo. CONST. art. I, § 23.

<sup>41</sup> Fla. CONST. art. IX, § 1.

<sup>42</sup> Va. CONST. art. VIII, § 1.

respectively, “persons” (Arkansas, Missouri), “pupils” (Arizona), and “(all) residents” (Colorado). In one state, Wisconsin, “children and youth residents” are accommodated, so as to apply an age criterion. However, Wisconsin’s criterion is relatively open in comparison to seven other states that explicitly list the specific ages of children to be served or, more correctly, to be given compulsory education.<sup>43</sup> Another set of seven states guarantee a minimum number of months of school attendance per year.<sup>44</sup>

While Florida and Virginia mention “quality education,” it is not qualified by truth prescriptions. Only the North Dakota constitution *mentions* truthfulness: “In all school instruction shall be given as far as practical in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of. . .”<sup>45</sup> It appears that “truthfulness” is perceived as a moral virtue encompassing honesty and integrity. As such, it implies the duty to convey the facts about a particular matter. But, as an integral part of education, it belongs under moral and civic education to prepare students for appropriate relationships with fellow citizens. The essential point is that “truthfulness” is not solely for the sake of the students.

In addition to North Dakota, Vermont and Rhode Island

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<sup>43</sup> “6-21” (Arizona, Arkansas, Missouri); “6-18” (Colorado); “5-18” (New Jersey); “8-16” (Oklahoma); “4-20” (Wisconsin). *See* Ariz. CONST. art. 11, § 6; Ark. CONST. art. 14 § 1; Mo. CONST. of 1974 art. IX, § 1 (1976); Colo. CONST. art. IX, § 11; N.J. CONST. art. VIII, § 4; Okla. CONST. art. XIII, § 3; and Wis. CONST. art. X, § 3.

<sup>44</sup> “9 months” (North Carolina); “8 months” (Missouri); “6 months” (Arizona, Nevada); “3 months” (Colorado, Oklahoma, Wisconsin). *See* N.C. CONST. art. IX, § 2; Mo. CONST. art. IX, § 3; Ariz. CONST. art. 11, § 6; Nev. CONST. art. 11, § 2; Colo. CONST. art. IX, § 2; Okla. CONST. art. XIII, § 4; and Wis. CONST. art. X, § 5.

It should be noted that Florida refers to “children” and/or “students” for whom a lower limit of 4 years old is mentioned, but not an upper limit. *See* Fla. CONST. of 1968 art. IX, § 1(b) (2002).

<sup>45</sup> N.D. CONST. art. VIII, § 3.

It should be noted that North Carolina also adds “good government and happiness of mankind” as a goal. *See* N.C. CONST. art. IX, § 1.

expressly integrate “virtue” as a goal for education.<sup>46</sup> As for other goals, the Constitution of the State of Louisiana refers to “human development.” More precisely, the constitution says, “The goal of the public educational system is to provide learning environments and experiences, at all stages of human development, that are humane, just, and designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential.”<sup>47</sup> In this manner, North Dakota is the only state that replicates international law’s link between education and the development of one’s fullest potential.

In what follows, we will use the main premises of international law, pertaining to both rights-recognition and rights-protection, as axioms. As will be made clear, the axioms in question are necessary for the purpose of providing an adequate account of the right to truth.

### *III. A Claim about Truth-Telling*

We claim that adolescent students have the right, in the first instance the moral right, to know the truth. By this right, we mean that the group of people in question, adolescent students between the ages of thirteen and eighteen, deserve or are inherently entitled to be informed about all education-relevant facts which, at the same time, provide them with the kind of knowledge that enables them to reach the highest level of Maslow’s pyramid of needs which is self-actualization.<sup>48</sup>

Placing self-actualization at the top of his pyramid, Maslow states that, “[t]he self-actualized person is in a state of good

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<sup>46</sup> Vt. CONST. ch. II, § 68; R.I. CONST. art. XII, § 1.

It should be noted that in California moral improvement is considered a general goal for the Legislature. *See* Cal. CONST. art. 9, § 1.

<sup>47</sup> La. CONST. art. VIII, Pmb1.

<sup>48</sup> The age of an adolescent student accords with the standard legal definition of a minor. *See* BLACK’S LAW DICTIONARY 1017 (8<sup>th</sup> ed. 2004). For Maslow’s pyramid of needs, *see supra* note 5.

psychological health; his basic needs are satisfied. . .”<sup>49</sup> He adds that “all self-actualized people have a cause they believe in, a vocation they are devoted to.”<sup>50</sup> One example is the lawyer which, in Maslow’s opinion, does what he does “for the sake of ultimate, final values, which is for the sake of principles which seem intrinsically worthwhile.”<sup>51</sup> To claim that self-actualization is only tailored to the labor market would miss the essential point. Ultimately, self-actualization is about “becoming fully human, the development of the fullest height that the human species can stand up to or that the particular individual can come to.”<sup>52</sup> Treating an adolescent student as an individual, the logical implication would be to look at education and the role of teachers as truth “helpers,” that is, as the parties who transmit the facts about “what is he good for, not good for, what we can build upon, what are his good raw materials. . .”<sup>53</sup> In order not to thwart the part of the adolescent student’s self-actualization that concerns good psychological health, helpers must “supply an atmosphere of acceptance of the child’s nature which reduces fear, anxiety, and defense to the minimum possible.”<sup>54</sup> Consequently, that particular individual’s potential should not be judged as being of an inferior kind because its actualization will not satisfy the conventional norm for successfulness within a stratified society. It is, in one very important sense, “good enough” to become, for example, a receptionist rather than a lawyer if becoming a receptionist coincides with using the well-founded building blocks of that particular individual in a way that is meaningful for him or herself, thus establishing good reasons that go beyond explanations of the form “I am a receptionist because that’s the only job I could get.” Instead, the successful individual is expected to argue that: “As a receptionist, I am able to apply all my people skills and thereby make a difference, which is what I am called on to do.” That granted,

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<sup>49</sup> ABRAHAM H. MASLOW, *THE FARTHER REACHES OF HUMAN NATURE* 192 (1971).

<sup>50</sup> *Id.* at 192.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 169.

<sup>53</sup> *Id.* at 189. It should be noted that the term “helpers” is Maslow’s own. *See id.*

<sup>54</sup> *Id.* at 189.



if a particular individual, Peter, with the potential to become a lawyer actually becomes a receptionist because he is misled by teachers who withheld the necessary nurturing and cooperation by not informing him about the fact that “Peter’s grades are primarily the outcome of positive reactions to his pleasant personality and not his academic performance,” Peter’s self-actualization is replaced by other-inflicted disablement.

To know the truth about “where I stand” is, in the context of educational ethics, a necessary condition for obtaining the best possible match between one’s own potential and the objective academic parameters. For example, national standardized tests carry the judgment that, in practice, determines what kind of higher education will be available “for me” as a particular adolescent student, what type of job I will be qualified for, and so forth. Truth-telling, therefore, is a way of recognizing that “knowledge is power.”<sup>55</sup> Adolescent students who come to know the truth about themselves are granted the freedom to make choices that, if the truth is told in good time, can make a difference.

It follows that there is a need in adolescent students to know the truth in order to avoid premature failure. Without the truth, these students are faced with an unfair disadvantage because they cannot function properly being who they are—adolescent students who were supposed to be in the process of becoming in their own image, that is, in accordance with their potential.

For the purpose of definition, the right to truth covers all facts that have a bearing, whether directly or indirectly, on a particular student’s progress in school or, as the case may be, lack of progress, so as to help facilitate success pertaining to self-actualization. This definition is specific enough to summarize that the practical possibility of self-actualization is proportionate to truth-telling. This is general enough to accommodate the various variables that may render self-actualization more or less practically impossible.<sup>56</sup>

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<sup>55</sup> The British philosopher, Sir Francis Bacon, can be credited with this. SIR FRANCIS BACON, *MEDITATIONES SACRAE DE HAERESIBUS* (1597).

<sup>56</sup> The proportionality thesis may seem radical. In the final analysis, it reflects a certain view of adolescent students as agents and their relationship with adults.

For example, if a highly intelligent student in a class of low-performing students, José Estoban, believes that “I am an excellent English student because I am the best in my class,” the necessity for correcting this belief is obvious. Nevertheless, nobody may be willing to disappoint José, who attends a sub-par school, in comparison to other public schools in the regional district, not to mention all private schools in the state. If José continues his education without having access to the fact that, “comparatively speaking, I don’t measure up,” it is easily predictable that, by the time José comes to learn the truth, he is not able to proceed as he himself had hoped while believing what he believed. Because he was ignorant about how his performance could not realistically translate into a future position as an English professor because his school allowed low expectations, José’s dreams may never be realized. English was a subject that came easily to this highly intelligent student and yet, in a relative sense, it is possible that nothing can become of him as a result of this deficiency. The main point is that even with an optimum of natural talent, self-actualization may still be seriously and perhaps even irreversibly impaired because the truth was withheld.

If the right to truth were made into a legal right, it could radically improve the structures of the educational system. As pointed out by M. Cherif Bassiouni in connection with an analysis of the function of accountability-securing mechanisms in international human rights law, the right to truth has the power “to shake people from a sense of complacency, one that bureaucracies, including military and police bureaucracies, tend to foster in a climate of silent conspiracy; the *omertà* of these bureaucracies must be eliminated.”<sup>57</sup>

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We assume that minors depend not only on instruction (education) but also on direction, that is, the willingness to give individual advice, which includes academic warnings as in “You are slipping!” so as to get/keep students on the right track. Adults know what the expectations are, more precisely, teachers know that national standardized tests measure competency and that competency translates into merit in higher education and in the labor market. If they do not prepare their students for this reality, they fail them. As a minimum, they put their students at risk --- by not telling them the truth (in good time) about where they stand and, consequently, what they can expect in the future if nothing is done.

<sup>57</sup> M. Cherif Bassiouni, *Searching for Peace and Achieving Justice: The Need*

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for Accountability, 59 LAW & CONTEMP. PROBS. 23 (1996).

It should be noted that Bassiouni is one of the most prominent contemporary figures in the area of human rights, international criminal law and jurisprudence and, inter alia, a co-architect of the International Criminal Court (ICC) and former U.N. Independent Expert to Afghanistan. For an account of his position on accountability-securing measures for human rights, see Anja Matwijkiw, *The Right to Accountability: A General Jurisprudence Approach to International Criminal Law*, 5 GLOBAL COMMUNITY YILJ 2005 (2006). See also Anja Matwijkiw, *Humanity and Revenge: The Case of the Failed State*, 6 GLOBAL COMMUNITY YILJ 2006 (2007).

The concept of *omertà*, which originates in the Sicilian Mafia's honor code, denotes an extreme form of loyalty which is based on the insiders' mutual commitment (to the code as a form of life), in addition to their fear of retaliation in the event of disloyalty through disclosure of information to those who do not belong as members to the organization. More precisely, *omertà* prescribes that the members should always remain silent, however serious the crime in question is. Being bound by honor, the members refuse to cooperate with outsiders (read: authorities) for the purpose of securing accountability --- which is not in the interest of the organization as a whole. Instead, an anti-transparency policy makes it (more) possible to get away with the wrong-doing. For a scholarly account of the *omertà* as it functions within the Mafia, see HENNER HESS, *MAFIA & MAFIOSI: ORIGIN, POWER AND MYTH* 11, 31, 55 (1996). For a Mafioso's own exposition of the strict *cum* absolute duty-rules of obedience that underpin the *omertà*, see BILL BONANNO, *BOUND BY HONOR: A MAFIOSO'S STORY* ix-xvii, 111, 257 (1999).

Within the area of education, the president of the Texas Federation of Teachers and vice president of the American Federation of Teachers reports that in many cases there is "a conspiracy of silence" among school board members and superintendents and that there is "no way to blow the whistle on it" because there is no "objective way to compare student achievement across schools and districts." See John Cole, *Keeping Score*, AM. EDUC. (2005), [http://www.aft.org/pubs-reports/american\\_educator/issues/spring05/cole.htm](http://www.aft.org/pubs-reports/american_educator/issues/spring05/cole.htm).

Glen Sacks, author, talk radio host, and columnist, writes that educators have a code of silence and that this "serves to keep failing teachers in the classroom, to the detriment of hundreds or thousands of students per teacher." See Glenn Sacks, *The Teachers' 'Code of Silence,'* (Dec. 2, 2001), [http://www.glensacks.com/the\\_failing\\_teacher.htm](http://www.glensacks.com/the_failing_teacher.htm).

Analyzing the conspiracy thesis at the *meta-theoretical* level, Noam Chomsky highlights a particular kind of backwards causality: "It's not that it's a conspiracy;" it's just that the system gives schools the purpose of turning "people into submissive, atomized individuals who don't interfere with the structures of power and authority but rather serve those structures. That's the way the system is set up, and if you started deviating from that, those with real power, the institutions with real power, would interfere to prevent that deviation." In other words, obedience and passivity, reproduction of the *status quo* can be understood by

Although high schools, the public institutions that educate adolescent students, differ in many respects from military and police bureaucracies, they are in fact comparable to the extent that they, too, constitute a hierarchical system, where instructions flow from above to the lower ranks, and where mechanisms for security are implemented as a part of their larger commitment to the community.<sup>58</sup> More concretely, there is an alliance with the state and the federal governments through funding and law enforcement, and, for this reason alone, high schools are legally expected to cooperate in an amicable atmosphere.<sup>59</sup>

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analogy to the ghost that proves that there was, prior to the ghost, a living person. See NOAM CHOMSKY, *CHOMSKY ON DEMOCRACY & EDUCATION* 396 (C.P. Otero ed., 2003).

<sup>58</sup> For a comparison, Kenneth J. Saltman mentions the following: “Military generals running schools, students in uniform, metal detectors, police presence, high-tech ID car dog tags, real time Internet-based surveillance cameras, mobile hidden surveillance cameras, security consultants, chainlink fences, surprise searches—as U.S. public schools invest in record levels of school security apparatus they increasingly resemble the military and prisons.” See Kenneth J. Saltman, *Introduction*, in *EDUCATION AS ENFORCEMENT, THE MILITARIZATION AND CORPORATIZATION OF SCHOOLS 1* (Kenneth J. Saltman & David Gabbard eds., 2003).

Furthermore, W.E.B. Du Bois observes that: “College women are put in uniforms in a day when we reserve uniforms for those who are organized to murder, for lackeys and for insane asylums and jails.” See W.E.B. DU BOIS, *THE EDUCATION OF BLACK PEOPLE: TEN CRITIQUES 1906-1960* 47 (Herbert Aptheker ed., 1973).

<sup>59</sup> Schools must give military recruiters the same access to secondary school students as they provide to postsecondary institutions or to prospective employers. Schools must also provide students’ names, addresses, and telephone numbers to military recruiters, if requested. Schools that do not comply jeopardize their receipt of ESEA funds. See U.S.C. § 7908 (2001) (requiring local education agencies (LEA) receiving funds under this act to provide armed forces recruiters access to students and student recruiting information). See also U.S.C. § 503 (2004) (subjecting LEAs which deny recruiting access to specific interventions).

In today’s public schools, the mechanisms for security present themselves as analogies to necessities for the purpose of fighting terrorism. The National School Safety Center (NSSC) states that common elements include: surveillance activities prior to attack, access to the targeted facility, access to weapons or means of attack (guns, explosives, chemicals), a strategy requiring intense discipline, planning, patience and optimal timing, and the staging of rehearsals of trial runs.

Hereafter, the question is whether the right to truth is ignored in a way that constitutes a valid analogy to the kind of oppression that a conspiracy thesis implies. Certainly, if systematic under-education of, for example, minority students, cannot as a fact be separated from the government's political will, a foundation for such a thesis exists, as indeed suggested by various leading scholars.<sup>60</sup> Furthermore, the more associates involved, in particular, teachers, the poorer the truth climate will be. Therefore, conspiracy and omertà turns all parties into puppets for a system whose main interest is maintaining the status quo thus negating the content of the right to truth. That same right will only stand a chance in its transition from theory to practice if it is correlated with an enforceable duty to transmit education-relevant facts to their rightful recipients.<sup>61</sup>

Here it should be observed, that there is a potential conflict between two central notions which are being "bound to honor" the right to truth and "deliverability." According to Kant, the duty to tell

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NSSC was established by presidential directive in 1984 to address the growing problem of violence in U.S. schools and to focus national attention on cooperative solutions to problems that disrupt the educational process. The U.S. Departments of Education and Justice share the responsibility of securing enforcement. See NATIONAL SCHOOL SAFETY CENTER, *THE ROLE OF SCHOOLS IN HOMELAND SECURITY*, 1 (2007) [http://www.schoolsafety.us/The\\_Role-of-Schools-in\\_Homeland-security-p-11.html](http://www.schoolsafety.us/The_Role-of-Schools-in_Homeland-security-p-11.html).

<sup>60</sup> See, *supra* note 44.

It should be noted that one of the most prominent contemporary theorists on American education, Jonathan Kozol writes as if a conspiracy thesis is superfluous on account of the fact that the distribution of power and privilege has always been in favor of white people and their children. Nevertheless, his subtle analysis of the continuation of segregation in public schools discloses the way that officials side with and therefore "shelter the recipients of privilege from the potential wrath of those who are less favored." See JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* 122 (1991).

Furthermore, for the purpose of describing the condition of black schools, Kozol uses the expression "socially and economically enforced apartheid." JONATHAN KOZOL, *THE SHAME OF THE NATION: THE RESTORATION OF APARTHEID SCHOOLING IN AMERICA* 9 (2005).

<sup>61</sup> An "enforceable duty" is not automatically equivalent with legal measures of rights protection. If left as a moral duty, it can be enforced, for example, in an ethics code that establishes an *Educational Integrity Committee*. For our account of this, see *infra* pp. 348-9.

the truth is absolute. In his book, *Education*, he writes that “there is no single instance in which a lie can be justified.”<sup>62</sup> Furthermore, he explains that: “A man who tells lies has no character. . . .”<sup>63</sup> Making these statements, Kant focuses on students and their moral development. It appears that it is the parents who should instill, in their own children, the values and virtues that are character-building, such as self-control.<sup>64</sup> Character is crucial. It is the peculiar quality of good will, and the rational person who possesses character is governed by the supreme moral law, the so-called categorical imperative. This commands: “Act only in accordance with that maxim through which you can at the same time will that it become a universal law.”<sup>65</sup> On Kant’s premises, making false promises is one example of a maxim that fails the categorical imperative’s consistency test.<sup>66</sup> What is required, therefore, is to be truthful in promise-making. More generally, “thou shalt not lie” is a so-called “perfect” duty—a duty of omission that binds all rational beings unconditionally or, as Kant states, with “absolute necessity.”<sup>67</sup> As such, truth-telling conforms with morality as grounded in reason, thus describing and indeed prescribing the action as derived solely “from duty,” meaning that the motive of duty has produced the action unmediated by any other motives that introduce conditions.<sup>68</sup>

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<sup>62</sup> IMMANUEL KANT, *EDUCATION* 104 (Annette Churton trans., The University of Michigan Press 2004) (1960).

<sup>63</sup> *Id.* at 90.

<sup>64</sup> *Id.* at 91.

<sup>65</sup> IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* 31 (Mary Gregor, ed. & trans., Cambridge University Press 1997). It should be noted that the law is, according to Kant himself, equivalent to “the law of nature.” *See id.* Thus, in terms of jurisprudence, the categorical imperative is an instance of natural law theory.

<sup>66</sup> *Id.* at 32.

<sup>67</sup> *Id.* at 2-3, 31. In addition to lying, perfect (narrow) duties of omission include avarice and servility which the person, as a moral being, owes to himself “regarding self-perfection.” So-called imperfect (wide) duties of commission to others “regarding their happiness,” on the other hand, include beneficence, gratitude, sympathy, and respect for others as ends in themselves. *See* MARK TIMMONS, *MORAL THEORY: AN INTRODUCTION* 159-61 (2002).

<sup>68</sup> KANT, *supra* note 65, at 11, 15. This means that action in accordance with the law is both a necessary and sufficient condition for morality.

In his analysis, Roger J. Sullivan concludes that: “The essential evil of lying therefore lies in the maxim itself, regardless of motives for and consequences of telling lies.”<sup>69</sup> In this manner, Kant’s theory, which is commonly defined as a version of deontological ethics, emphasizes pure duty-intentions.<sup>70</sup> It is not good enough to do the right thing. Truth-telling, the right thing to do, must be done only for the morally right reason, namely for the sake of duty.<sup>71</sup> Thus, a

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It should be noted that Kant has a distinction between, on the one hand, objective ends, “which depend on motives, which hold for every rational being,” and, on the other hand, subjective ends, “which rest on incentives,” which are grounded on inclinations and therefore only give rise to hypothetical imperatives. *Id.* at 13,14, 36. However, conducive to one’s own happiness or the happiness of other people, such subjective ends may be, they are morally irrelevant. “Thus the moral worth of an action does not lie in the effect expected from it and so too does not lie in any principle of action that needs to borrow its motive from this expected effect” *Id.* at 14.

Given that utilitarianism prescribes that (1) agents should consider the consequences of actions with a specific view to (2) promoting the common good or the well-being or happiness of the majority, Kantian ethics clashes with a position that has many followers and defenders. Because utilitarianism focuses on consequences as means for reaching a final and supreme end-goal, it can be defined as a version of teleological ethics. For an outline of different versions of utilitarianism such as act-utilitarianism, rule-utilitarianism, etc., see WILLIAM K. FRANKENA, *ETHICS* 34-43 (2<sup>nd</sup> ed. 1973).

<sup>69</sup> ROGER J. SULLIVAN, *AN INTRODUCTION TO KANT’S ETHICS* 58 (1994).

<sup>70</sup> According to Frankena, Kantian theory is, typologically speaking, a monistic kind of rule-deontological ethics whereby the standard of right and wrong consists of one rule, which is valid independently of whether or not it promotes the good of oneself (egoism) or others (utilitarianism). As a “non-teleological” standard, the rule is basic in the sense that it is “not derived by induction from particular cases.” In fact, judgments about what to do in particular cases are always to be determined in the light of this rule. Assessing Kant’s theory, Frankena concludes that his argument against false or, *per* Frankena, deceitful promise-making is entirely consistent. “In other words, he is arguing, not that the results of everyone’s always acting on the deceitful promise maxim are bad, but that the results are self-defeating, since if that maxim were universally acted on, we could not even have the institution of promise making which that maxim presupposes.” As points against Kant’s theory, Frankena refers to various conflicts of duties between promise-keeping and benevolence, exceptions that in his opinion should be accommodated (so as to be able to break a promise), as well as the fact that “it does not actually rule out immoral maxims, e.g., the maxim of never helping anyone.” See FRANKENA, *supra* note 68, at 17, 25-8, 30-3.

<sup>71</sup> “To be truthful (honest) in all declarations is, therefore, a sacred and

person of character or good will is principled in the sense that s/he tells the truth out of respect for the law.<sup>72</sup> No matter how necessary a particular lie may seem, the constraint against lying allows no exceptions. According to Kant, a principled person will not attempt to step outside the domain of morality by appealing to irrelevant motives and consequences.

Unlike Kant, however, we advocate a compromise. This is to say that we acknowledge that, in reality, there may be compelling reasons for withholding the truth either partly or fully. Although such exceptions to truth-telling often amount to excuses, there may be no viable alternatives.<sup>73</sup> Therefore, reality and morality should be balanced. At the same time, this does not necessarily testify to defeatism. As a human right, the right to truth always stands and

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unconditionally commanding law of reason that admits of no expediency whatsoever.” Immanuel Kant, *On a Supposed Right to Lie Because of Philanthropic Concerns*, in IMMANUEL KANT: ETHICAL PHILOSOPHY 164 (James W. Ellington, trans., 2<sup>nd</sup> ed. 1994).

“[L]ying vitiates the source of [civil] law,” and, therefore, “Kant held that it must be ranked among the worst moral evils, wronging ‘mankind generally.’” See SULLIVAN, *supra* note 69, at 58.

It should be noted that Mark Timmons offers a critical analysis of the alleged wrongfulness of lying. In the case of Kant’s example with the murderer who is hunting his victim, whom I am hiding (thus presenting me with the problem of whether I should tell the truth to the murderer), Timmons argues that there is a “problem of relevant maxims” in so far as “one can use Kant’s tests to derive inconsistent moral verdicts about the same action.” The inconsistency entails that Kant’s theory cannot provide a useful decision procedure, which is “the main practical aim of a moral theory.” See TIMMONS, *supra* note 67, at 172-4.

<sup>72</sup> KANT, *supra* note 65, at 13. It should be noted that a good person (*i.e.*, a person of character) follows his/her conscience as a guide for morality. According to Frankena, this is another defining feature of deontological ethics. See FRANKENA, *supra* note 68, at 17.

<sup>73</sup> Thus, truth-telling can be deemed wrong as a matter of principle while, at the same time, recognizing that an excuse may be a good one for moral reasons, that is, references to the Principle of Consideration and the Harm Principle which apply in the cases of conflict which we allow for in this article, first and foremost the conflict between truth-telling and health and/or life. The Principle of Consideration requires “Equal consideration of fundamental interests.” According to the Harm Principle, it holds that “People ought not inflict serious harm on fellow human beings... who therefore have a right not to be subjected to such harm.” See *infra* pp. 351-2 and note 145.



continues indefinitely to emit normative stimuli. The wider point is that we, as agents, can make things possible in the real world. Therefore, the right to truth always entails a minimum duty to at least try to change the circumstances here and now, that is, to try to improve the present circumstances with a view to securing rights-fulfillment in the future.<sup>74</sup> If, for example, a student, Nina Smith, is currently unable to cope with the truth about herself because her mother's death has traumatized her, the party or parties responsible for communicating the relevant information ought to intervene with the use of strategies that will foster the climate, environment, maturity, or development that is needed in order for Nina to come to know the truth without negative consequences in the form of what might be described as truth shocks. Such shocks consist of counterproductive reactions. In the case of Nina, she may, for example, experience a mental breakdown as a consequence of her vulnerability in the circumstances, or become depressed, engage in self-mutilation, or even commit suicide. If truth-telling results in

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<sup>74</sup> This *meta*-duty, which is, like Kant's perfect duty, absolute *cum* unconditional enters into force, if and only if, the first duty to deliver the truth cannot be fulfilled. In the context of justice, the *meta*-duty accords with the general and progressive goal of John Dewey's philosophy of education, namely to create a better society. See JOHN DEWEY, *DEMOCRACY AND EDUCATION* 20 (The Free Press 1966) (1916).

The notion of always being "bound to honor" the duty to tell the truth also has an analogy in international law, which presents so-called "programmatic obligations" which are linked with the class of economic, social and cultural human rights and which entail --- if the resources for their fulfillment are not currently available --- that something be done about the state of affairs, if only step-by-step. See David M. Trubek, *Economic, Social, and Cultural Rights in the Third World: Human Rights Law and Human Needs Programs*, in *HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES* 209 (Theodor Meron ed., 1984).

It should also be noted that the CRC accommodates the programmatic nature of duties correlative to economic and cultural human rights. See CRC, *supra* note 11, at art. 4. Pertaining to rights-protection, we adopt the programmatic nature of duties as an axiom.

Because truth delivery as a matter of duty is conditional on the availability of means, measures and methods that make truth-telling safe (as opposed to harmful) for the right-holder, it can be construed as programmatic. As a non-absolute *cum* conditional duty, it is also comparable to Kant's concept of an "imperfect" duty in so far as this can be described as a duty of commission.

unnecessary and avoidable harm, it cannot be said to be for Nina's sake, which it should be. Interestingly, this requirement for rights-recognition is compatible with Kantian axioms.<sup>75</sup> At the same time, truth-telling for her sake can also be told more caringly or, as already suggested, delay delivery until the conditions for a successful transmission exist.

In schools, the teachers must be considered the primary duty-bearers on account of their special relationship with students.<sup>76</sup> As such, the burden of weighing the action of truth-telling and the consequences of this in particular circumstances surrounding particular students also befall the teachers. Therefore, it is the teachers who first and foremost are obligated to select the means, measures, and methods that fulfill the right to truth. If certain students cannot receive and respond to this in an appropriate manner, that is, without interrupting their self-actualization as a consequence of truth shocks, teachers should commence a truth-preparation process that eventually is going to result in truth telling. While it is paramount to avoid counterproductive reactions, truth-telling is still morally required. In one important sense, nothing except rights-

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<sup>75</sup> The second formulation of the categorical imperative reads, "Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means." KANT, *supra* note 71, at 36.

A neo-Kantian rights-theorist, who not only integrates this principle as a necessary component of the very definition of fundamental rights, but also establishes an analytical link between rights and immunities to further strengthen the argument against utilitarianism, is Neil MacCormick. He invites us to "[c]onsider the oddity... of saying that children have a right to care and nurture lest they become a charge on the taxpayer." Furthermore, consider the oddity of suggesting "as a reason why children ought to be cared for, nurtured, and loved, that that would be the best way of getting them to grow into plump and contended creatures fit to enhance the national diet. Or again, one could argue that a healthy society requires healthy and well-nurtured children who will grow up into contended and well-adjusted adults who will contribute to the GNP and not be a charge on the welfare facilities or the prison service." See NEIL MACCORMICK, *LEGAL RIGHTS AND SOCIAL DEMOCRACY: ESSAYS IN LEGAL AND POLITICAL PHILOSOPHY* 159 (1982). For the purposes of this article, we adopt MacCormick's account of rights. See *infra* p. 360.

<sup>76</sup> We specify "in schools" because parents typically are not physically present to provide the relevant protections.

fulfillment is good enough. Hence, if teachers fail, third parties are hooked into a replacement position as duty-bearers in accordance with their ability to do something. It holds, as a matter of principle, that “ought implies can.” Deliverability may be delayed by, say, a scarcity of resources. But, because it is always possible to do something, duty bearers should at least begin to take steps in the right direction, toward fulfillment of the right to truth. In this way, they would still honor the right. If third parties turn out to be unwilling by making excuses in the form of statements like, “Some students are going to remain vulnerable regardless of what we do,” then they make themselves morally blameworthy. Therefore, accountability in terms of culpability encompasses passive omissions in addition to actions or commissions.

We will first present the main ethical principles that generate the right to truth. Thus, the focus is on the right itself. Thereafter, we will look at the notion of truth with a view to explicating its framework as far as ontology and epistemology are concerned.

#### *A. The Right to Truth: A Defense*

The clearest way of substantiating the claim that adolescent students have a right to know the truth is by invoking the various formulations of the categorical imperative.<sup>77</sup> As a version of

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<sup>77</sup> On analysis, there are three formulations of the categorical imperative: (1) “Act only in accordance with that maxim through which you can at the same time will that it become a universal law, (2) “So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means, and (3) “So act that you think of yourself as legislating universal laws through your maxims.” According to one Kant expert, Christine M. Korsgaard, the three formulations “are equivalent.” They can be referred to as, respectively the Principle or, *per* Korsgaard, Formula of Universal Law, the Principle/Formula of Humanity, and the Principle/Formula of Autonomy or the Kingdom of Ends. Christine M. Korsgaard, *Introduction to KANT*, *supra* note 52, at xxii-xxv:

In this article, we adopt (2) for the specific purpose of generating or recognizing fundamental rights. Furthermore, while our revisions are incompatible with Kant’s link between being a rational and autonomous agent and having rights, we still embrace the equality and universality that the categorical

deontological ethics, Kant's theory is not just a theory about duties. Following his own premises, it is also possible to derive rights from the categorical imperative. Examples include the right to life, the right to freedom, and the right to privacy.<sup>78</sup> Furthermore, to the extent that the implied reasoning focuses attention on concepts like "humanity," "respect" and "dignity," Kant's theory has been closely associated with human rights, as advanced in modern international law. One prominent philosopher, Jürgen Habermas, explicitly calls human rights "the Kantian project."<sup>79</sup> While we acknowledge this debt without any hesitation, we also believe that certain revisions are necessary in order to provide a more adequate account.

The cornerstones of modern human rights theory consist of principles of rights recognition, that is, principles that explain how and why human rights come into existence, the way in which they are generated and/or conferred and, *ipso facto*, recognized. Because human rights are restricted to *homo sapiens*, the first cornerstone, if not the very foundation, prescribes speciecism.<sup>80</sup> The relevant principle states that, "All human individuals ought to be recognized as possessing inherent value or worth." Traditionally, this principle has often (and, in our opinion, too often) been interpreted along the lines of Kant's philosophy, which precludes speciecism.<sup>81</sup> Focusing on the notion of personhood, Kant believes that the value or worth of individual persons is determined by rationality and autonomy.<sup>82</sup> Thus, it holds that, "if there is no rationality and autonomy, then there are no rights." It follows that children cannot be recognized as right holders because they only possess potential rationality and

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imperative entails. In the context of fundamental *cum* human rights, this has to be.

<sup>78</sup> *Id.* at 38.

<sup>79</sup> Jürgen Habermas, *The Kantian Project of the Constitutionalization of International Law. Does it Still Have a Chance?* in *LAW AND JUSTICE IN A GLOBAL SOCIETY* 115 (M. Escamilla & M. Saavedra eds., 2005).

<sup>80</sup> We interpret speciecism as the claim whereby humans deserve special consideration on the basis of their membership of *homo sapiens*. It should be noted that the expression *ex ante* implies that it would be logically impossible to extend human rights to members of non-human species.

<sup>81</sup> KANT, *supra* note 65, at 3.

<sup>82</sup> *Id.* at 37, 41.

autonomy. As far as reality is concerned, the link between such capacities and membership of the moral community has dominated, historically speaking, the formulation of the official paradigm. Even members of adult groups have been deprived of rights, such as women and members of minority populations, either on the basis of the unfounded fact that they possessed too little rationality and autonomy, or, alternatively, because they were deemed less developed.

As criteria, which determine rights recognition, rationality and autonomy have unacceptable implications. For the purpose of conferring and/or withholding rights, these implications, together with the high risk of abuse in practice, are sufficient grounds for dismissing rationality and autonomy. Furthermore, international law disconfirms any assumption that rationality and autonomy are analytically linked with the concept of a right-holder. Instead, we endorse humanity *simpliciter*. This is to say that we do not interpose rationality and autonomy between humanity and rights, as if humanity presupposes rationality and autonomy. The human being or individual possesses inherent value or worth simply because s/he belongs to the human species or simply because s/he is a member of "the human family," as stated in international human rights law.<sup>83</sup> It is important to note that although the relevant part of international law continues that human rights derive from the inherent dignity of the human person, the definition of the concept of personhood does not go beyond the speciesist concept of family membership.<sup>84</sup> The logic is that rights recognition is unconditional. Therefore, mentally disabled individuals, people who are brain damaged as a result of accidents or injuries, or individuals with Alzheimer's, or other conditions or disorders that seriously impair rationality and autonomy qualify as human right holders. If it were decided that such individuals should be poisoned to death, the killing would be wrongful, thus constituting a violation of the right to life regardless of the advantage that may result for the decision makers. However,

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<sup>83</sup> ICESCR, *supra* note 9, at pmb. See also the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (*entered into force*, Mar. 23, 1976) [hereinafter ICCPR]. See also CRC, *supra* note 11, at pmb.

<sup>84</sup> *Id.*

despite any shortcomings, people such as the mentally disabled still belong to humanity. Fundamentally, humanity is not about facts in the form of capacities, it is about compliance with certain norms such as respect and dignity. The described form of killing is disrespectful and, for this reason, criminal, in that it reduces fellow human beings to the “status” of means merely, say, for the purpose of securing care, assistance, and resources for people who are deemed more worthy. Furthermore, while the victims are subjected to discrimination, they are assumed to be of an inferior kind. However, that assumption is incorrect. Human worth or value is a non-relative or invariant constant, as opposed to rationality and autonomy.

In light of this, all human beings deserve to be treated with “minimal decency,” a notion that Bassiouni introduces as a way of summarizing the main rationale for human rights.<sup>85</sup> Minimal decency entails that all human beings should be treated with dignity and respect on the basis of humanity *simpliciter*. This means that all human beings should be treated as ends in themselves, and not merely as a means. It should be observed that, while imposing these limits as meta-rights, Bassiouni’s humanity *simpliciter* criterion is indispensable for a correct reading of international human rights as equal and universal norms, which presuppose the doctrine of worth egalitarianism.<sup>86</sup>

Excepting the first and speciecist principle of inherent value, the two additional ones, namely the principle of dignity and respect and the ends/means principle are Kantian axioms, although revised so as to better accord with the law. However, the law only counts as law in the strict and proper sense, according to Bassiouni, if it incorporates, as a minimum for decency, the rights to life, liberty,

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<sup>85</sup> M. CHERIF BASSIOUNI, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW 693-4 (2003). For a detailed account of Bassiouni’s position on human rights, see Anja Matwijkiw, *A Philosophical Perspective on Rights, Accountability and Post-Conflict Justice. - Setting up the Premises*, in POST-CONFLICT JUSTICE 155 (M. Cherif Bassiouni ed., 2002).

<sup>86</sup> Worth egalitarianism is the position whereby it holds that the worth or dignity of everybody everywhere is equal on the basis of humanity and *ipso facto*, everybody everywhere ought to be recognized as (equal) human rights-holders.

personal security, and physical integrity.<sup>87</sup> Without recognition of these, the law is disqualified as the “law of humanity,” which is inseparable from the natural law of morality.<sup>88</sup> Furthermore, Bassiouni states that, comparatively, the right to life is more fundamental because deprivation of life is the ultimate denial of human dignity.<sup>89</sup> Concerning accountability-securing mechanisms, therefore, the death penalty is precluded beforehand. Justice requires equality, and if the death penalty were to be perceived as a necessary way of restoring balance or order, as is indeed the case with Kant, Bassiouni would resort to a progressive concept of civilization as the appropriate standard for the body of penal norms. This is to say that he would preclude the death penalty to secure that humanity does not reverse its path.<sup>90</sup>

Endorsing these three principles, we also subscribe to methodological individualism. This is to say that we believe that the most fundamental human rights, such as the right to life, liberty, personal security, and physical integrity belong to human beings in

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<sup>87</sup> M. CHERIF BASSIOUNI, *THE PROTECTION OF HUMAN RIGHTS IN THE ADMINISTRATION OF CRIMINAL JUSTICE: A COMPENDIUM OF UNITED NATIONS NORMS AND STANDARDS* xxvi (1994).

<sup>88</sup> BASSIOUNI, *Searching for Peace and Achieving Justice: The Need for Accountability*, *supra* note 57, at 25.

<sup>89</sup> BASSIOUNI, *supra* note 85, at 680.

<sup>90</sup> Bassiouni’s progressive concept of civilization encompasses the utilitarian goals of prevention and deterrence, in addition to retribution. Furthermore, he assumes that the death penalty is ineffective as a deterrent. *See* M. Cherif Bassiouni, *The Philosophy and Policy of International Criminal Justice*, in *MAN’S INHUMANITY TO MAN: ESSAYS ON INTERNATIONAL LAW IN HONOR OF ANTONIO CASSESE* 74, 100, 113 (Lal Chand Vohrah et al. eds., 2003). *See also* M. Cherif Bassiouni, *Combating Impunity for International Crimes*, 71 *U. COLO. L. REV.* 420 (2000).

It may appear paradoxical that two natural law theorists arrive at two mutually exclusive positions on the issue of capital punishment. However, the explanation lies in their different starting premises. Whereas Bassiouni believes that a ban on the death penalty follows logically from the claim that human dignity does not differ in kind or degree, Kant’s defense follows equally logically from his link between dignity, rationality and morality.

For Kant’s strict law of retribution in the form of the death penalty and as an instance of the *Lex Talionis* Principle, *see* KANT, *THE METAPHYSICS OF MORALS* 2, 8, 106 (Mary Gregor ed. & trans., 1996).

their individual capacity.<sup>91</sup> Furthermore, such rights should be protected in the event of a conflict with the good of other individuals who come to benefit at their expense or groups of individuals who favor exclusivist and oppressive policies to maintain power and control, or with the good of society as a whole which may be so utilitarian and intolerant toward the numerically few and different as to re-call so-called minority rights from its political agenda.<sup>92</sup> In this manner, we embrace the assumption that human rights are equal and universal.<sup>93</sup> Unlike Bassiouni, however, we do not commit ourselves to a particular political ideology. As an advocate of liberalism, he accepts the ideological implications that follow in the form of ascribing primacy to civil/political human rights and, in general, viewing social/economic/cultural human rights as rights that cannot qualify as inalienable rights. For the same reason, they are not on the list of fundamental rights. Another politicizing feature is the fact that the right to life is not discussed in the context of the things that are necessary for human subsistence, such as adequate food, shelter, and clothing. In as much as these things are necessary for life, as well as for health, our account must include them, for the sake of logical consistency, as opposed to ideological preference. Our normative neutrality also extends to the discussion of inalienable and natural rights in the context of natural law theory. While it can be argued that human rights count as natural rights, the claim of natural right does not commit theorists to a notion of natural law, as advanced by

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<sup>91</sup> Methodological individualism is neutral in respect to political ideology. In the context of rights, it is merely the claim that, for the purpose of analysis, the subjects of rights are reducible to individuals even in the case of so-called group rights.

<sup>92</sup> In the case of public schools, there may be a strong assumption in favor of utilitarianism simply because the schools are what they are, namely public. However, there is no necessary link between being good public servants in a democracy and setting aside the rights of members of so-called underrepresented groups. To the contrary, there is an expectation of maintaining/restoring balance.

<sup>93</sup> See Universal Declaration of Human Rights, G.A. Res. 217(III)A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948). While the Universal Declaration of Human Rights is a Declaration and therefore not binding, it illustrates the aspiration of the international community to establish universal human rights, including the right to education. *Id.* pmb., art. 26.



Bassiouni.<sup>94</sup> A naturalistic account would be fully compatible with rights that are based on facts about humanity like needs. This point is important because the right to the truth, which we add to the list of fundamental and human rights, involves needs. However, because our argument is not directly from needs to rights, there is no risk of inferring from “is” (needs) to “ought” (rights).<sup>95</sup> As shown by Neil MacCormick, the reason for this is that the Kantian axioms are necessary in order to establish or generate fundamental rights. In other words, the Kantian axioms are not principles of expediency, that is, principles that serve the course of human rights for reasons that are not formally compelling. Instead, the axioms are integral parts of the very concept of fundamental rights.

Following MacCormick’s revised version of the classical Benefit Theory of Rights, it holds that fundamental legal or moral claim-rights are ones which (1) are analytically linked with benefits, defined as goods which promote well-being, (2) exist logically prior to other-directed correlative duties and powers, (3) typically result in legally and/or ought to result in morally other-directed correlative duties and powers according to the relevant circumstances, and (4) include by definition immunities because the benefits are of a particularly important kind.<sup>96</sup> It follows not only that it is in the right

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<sup>94</sup> Citing Cicero, Bassiouni stresses that: “True law is right reason in agreement with nature.” See Bassiouni, *The Philosophy and Policy of International Criminal Justice*, *supra* note 90, at 116.

It should be noted that some rights-theorists have a distinction between the theory of human rights and the theory of natural rights. For example, Joel Feinberg writes that: “The theory of natural rights asserts not only that there are certain human rights, but also that these rights have certain further epistemic properties and a certain metaphysical status. In respect to questions of moral ontology and moral epistemology, the theory of human rights is neutral.” See FEINBERG, *supra* note 68, at 85.

In as much as Feinberg’s distinction is the outcome of an analysis of historical rights-documents, such as the American Declaration of Independence (1776), its validity is limited.

<sup>95</sup> For a thought-provoking and critical examination of the naturalistic fallacy, see ALAN GEWIRTH, *REASON AND MORALITY* (1978).

<sup>96</sup> Jeremy Bentham is a utilitarian exponent of the classical Benefit Theory of Rights. According to this, the right-holder, X, is the intended beneficiary of the performance of Y’s duty. While MacCormick adopts the concept of a benefit for

holder X's own interest to receive that which constitutes such benefits, but also that X is and should be granted normative protection in order to be recognized as a full right-holder. MacCormick's so-called test case concerns children's right to be nurtured, cared for, and, if possible, loved. Under British legal and positive law, children are perceived as having a claim to the things without which they cannot function and/or develop properly and, pertaining to the provision of the things that the right is a right to, as having a claim against, first and foremost, their own natural parents, Y, and, in the case of "death, incapacity, [or] fecklessness," legal guardians who stand *in loco parentis*.<sup>97</sup> On a formula, a children's

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his definition of rights, he dismisses the assumption that there must exist a duty-bearer, Y, in order to generate a right for X. This is also part of his criticism of what otherwise counts as the alternative to the Benefit Theory, namely the Choice Theory of Rights. According to one exponent of the Choice Theory, Hart, the right-holder, X, is the recognized sovereign over Y's duty. As a minimum, X, is a small-scale sovereign who has (i) a bilateral liberty to waive the primary duty or leave it in existence as he chooses (discretionary powers). Furthermore, in the typical case, X may (ii) --- if the primary duty is breached --- waive the secondary duty or enforce it, *e.g.*, by suing for compensation (remedial powers) just as X may (iii) waive the secondary obligation. Such a sovereign, asserts Hart, has a right in the "fullest" sense which is tantamount to the lawyer's (and so to Hart's own) strict and proper sense. See Hart, *Bentham on Legal Rights*, in OXFORD ESSAYS IN JURISPRUDENCE 192 (A.W.B. Simpson ed., 1973). For a comparative analysis of Bentham, Hart and MacCormick which includes references to all the significant primary sources, see Matwijkiw, *Rights for the Sake of the Individual as an End in Himself*, in 3/4 TIDSSKRIFT FOR RETTSVITENSKAP [J. LEGAL SCI.] 738-76 (2000) (Nor.).

It should be noted that MacCormick's theory is consistent with international human rights law in all important respects, including its position on the nature of the relationship between rights and corresponding duties. Because rights are logically prior to duties, rights-recognition is a separate issue from the one about the consequences of rights, namely duties. This point is significant for a number of reasons, including the distinction between good and bad excuses. For example, it does not follow from "We cannot fulfill rights" that "No rights exist in the first instance." Rights-recognition is unconditional, which is also the premise or axiom in international human rights law.

<sup>97</sup> MACCORMICK, *supra* note 75, at 163. It should be noted that children's rights, as defined by Neil MacCormick, closely resemble the special entitlements of childhood under the CRC, to care and assistance, and love. Consequently, there is an overlap between national (British) law and international law. In adding happiness, the CRC qualifies its notion of well-being beyond the framework that

right entails that (a) Y has a duty to provide the means necessary for satisfaction of X's needs, (b) Y has a disability to mistreat X, and (c) Y has a disability to change the relation (a) and (b) even with X's consent or with the consent of a representative of X. Furthermore, X or a representative of X has a disability to (i) waive Y's duty, (ii) the relevant immunities, (iii) the primary right (correlative to Y's duty) and, (iiii) the secondary remedial right.

By making immunities, both self- and other-regarding, necessary components of rights, MacCormick emphasizes the fact that fundamental claim-rights exist for the sake of the individual.<sup>98</sup> The law wills paternalism as opposed to liberalism.<sup>99</sup> That granted, a child's right to be nurtured, cared for, and, if possible, loved is a moral right in the first instance.<sup>100</sup> And, as such, it cannot be recognized without presupposing, "A belief in respect for persons . . ."<sup>101</sup> In the case at hand, Kantian respect is on the basis of children as sentient beings.<sup>102</sup> Respecting children in this capacity means that their needs are satisfied without, at the same time, having ulterior motives that result in undignified (mis)treatment, such as planning to use them as cheap labor. Therefore, rights are restricted to benefits or goods that are not allocated and cannot be removed in a

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MacCormick outlines, thus introducing a non-basic component since human functioning is not necessarily harmed. Finally, by adding understanding, the CRC can be construed as embracing Maslow's notion of acceptance. *See* CRC, *supra* note 11, at pmb1.

<sup>98</sup> MacCormick, *Rights in Legislation, in* LAW, MORALITY AND SOCIETY: ESSAYS IN HONOR OF H.L.A. HART 195 (P.M.S. Hacker ed., 1988).

<sup>99</sup> This conclusion also extends to the right to security and the right to freedom. Paradoxically, Hart, who defends liberalism, cannot accommodate the right to freedom, as pointed out by MacCormick. *See id.* at 196.

<sup>100</sup> Using the expression *mutatis mutandis*, MacCormick intends to establish a singular notion of rights. However, the supremacy of morality (over positive legal law and indeed political ideology) is an assumption that MacCormick takes seriously.

<sup>101</sup> MACCORMICK, *supra* note 75, at 161.

<sup>102</sup> *Id.*

It should be noted that without respect for children as sentient beings, they cannot reasonably be expected to develop their potential for rational agency and autonomy, which is a condition for Hart's right-holder (who is making choices about other people's duties).

way that reduces the intended beneficiary to a means only for another individual's personal ends or for general utility, regardless of the advantage in so doing.<sup>103</sup>

Habermas undoubtedly captures the essence when he calls human rights "the Kantian Project." That granted, Kant himself relegates needs, together with desires and interests, to the subjective domain.<sup>104</sup> As we will show later, basic needs, the needs that are involved in children's right belong, contrast with subjective and relative notions of needs, desires and interests. On our account, basic needs belong to the territory of objective and universal morality.

Although the right to truth is not currently recognized as a legal right, it is, on Kantian premises, a strong candidate. As pointed out by Roger J. Sullivan, lying, under the auspices of Kant's theories, "must be ranked among the worst moral evils, wronging mankind generally."<sup>105</sup> In the words of Peter A. French, lying constitutes the kind of immorality that pushes Kant's theory away from worth egalitarianism because "[l]ying is the throwing away and, as it were, the obliteration of one's dignity as a human being."<sup>106</sup> This is

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<sup>103</sup> Unlike Bentham, MacCormick claims that there is a significant difference between asserting, respectively, that "X has a right to T" and "X ought to have T." Whereas we can advance the rights-proposition as a specific kind of justification for the ought-proposition ("Because X has a moral right to T, X ought to have T") or a justification for conferring a legal right ("Because X has a moral right to T, the right to T ought to be made a legal right"), we cannot necessarily do the opposite. The reason for this is that the normative ought-proposition may or may not also be a moral proposition. *E.g.*, if "X ought to have T" because and only because X's well-being is a means for Y's own ends, the principle of Kantian respect immediately disqualifies the ought-proposition as a justification for a rights-proposition ("Because X ought to have T, X has a 'moral right' to T"). Unlike the ought-proposition, the rights-proposition makes sense if and only if the intended beneficiary is seen as an end in himself. Thus, propositions like "X has a right to T lest X becomes an economic burden" do *not* count as rights-propositions on MacCormick's analysis.

<sup>104</sup> KANT, *supra* note 65, at 10-13, 36, 42,43.

<sup>105</sup> SULLIVAN, *supra* note 69, at 58.

<sup>106</sup> Kant, *On a Supposed Right to Lie Because of Philanthropic Concerns*, *supra* note 71, at 90-1.

According to Peter A. French, the alternative view to worth egalitarianism is the view that human worth depends on moral merit. See PETER A. FRENCH, THE

particularly so in the case where lying is an instance of deception. “Deception typically aims at manipulating others by treating them merely as tools for the liar’s purposes, even if the deception is done for a benevolent motive.”<sup>107</sup> On closer analysis, deception is a form of coercion because the deceitful liar is disrespecting other people’s freedom to make their own decisions about their life and actions. As Christine M. Korsgaard explains, “we must tell the truth so that others may exercise their own reason freely—and that means that, in telling the truth, we are inviting them to reason together with us. . . .”<sup>108</sup> In turn, this means that the ideal moral community, Kant’s so-called kingdom of ends, cannot come into existence unless truth-telling is recognized as a matter of duty with a correlative right.

By analogy to MacCormick’s right for children, we argue that adolescent students have a right to know the truth because they, typically, benefit from receiving all education-relevant facts about themselves. Again, by analogy, the right to truth is, using standard human rights-terminology, a group-right.<sup>109</sup> This is to say that the needs that are characteristic for adolescent students, in one sense, constitute variations from the point of view of the general norm for being human, thus making the needs in question special. In another sense, they describe that what is normal within the species. In other words, the special needs that adolescent students have, being who they are, describe a set of facts for everybody everywhere who are undergoing that particular stage of human development. The needs of adolescent students are special because and only because the general norm for humanity uses adulthood as the criterion.

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VIRTUES OF VENGEANCE 188-89 (2001).

<sup>107</sup> SULLIVAN, *supra* note 69, at 58.

<sup>108</sup> Christine M. Korsgaard, *Introduction to KANT*, *supra* note 65, at xxiii.

<sup>109</sup> In addition to “children’s rights,” “women’s rights” and the “rights of indigenous peoples” are recognized in international law.

According to Alison Dundes Renteln, the possible “[R]eluctance to grant such rights may stem from a fear that such rights are merely expressions of utilitarian goals.” However, as she herself points out, there is no necessary conflict between individual rights and group rights. See Alison Dundes Renteln, *International Human Rights: Universalism Versus Relativism*, in 6 *FRONTIERS OF ANTHROPOLOGY* 46 (H. Russell Bernard ed., 1990).

The special needs we emphasize are: quality education, paternalistic guidance, and constructive advice during the formative stages where self-identity is established, in addition to the needs which form part of Maslow's pyramid, namely love, belongingness, self-esteem, safety and security, and subsistence and survival. Thus, the special needs that are involved in children's right to be nurtured, cared for and, if possible, loved, as advanced by MacCormick, can also be included, especially because this right, in terms of time, applies until children become "capable of caring for himself or herself," which typically happens at the age of eighteen.<sup>110</sup>

At this point, however, we have to be careful not to put the cart before the horse. Besides stating that the right to truth is a right to know all the education-relevant facts, we have not yet defined what is assumed and implied philosophically. More precisely, we have not stated the ontological and epistemological premises that are necessary in order to explain that the right to truth is linked with the existence of an independent and knowable reality. In the next section we present Felipe Fernández-Armesto's theory of truth because this provides yet another cornerstone for our type of human rights ethics.<sup>111</sup>

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<sup>110</sup> MACCORMICK, *supra* note 75, at 154-55.

It should be noted that, together, the two rights give rise to a notion of shared responsibility and, if things go wrong, shared accountability. Teachers are not obligated to love other people's children. However, they do have a duty to nurture and care for school children with a view to their self-actualization.

It should also be noted that the CRC uses the special needs-terminology, but restricts this to the needs of the disabled child. *See supra* note 11, art. 23(3).

<sup>111</sup> Felipe Fernández-Armesto is a historian at Oxford University, U.K. Concerning truth, his main thesis is that humanity must find an alternative to the current and common ways of post-modernism. If allowed to prevail, their truth-trashing creed will not only make a (constructivist) mockery of (realist) ontology and (rationalist and empiricist) epistemology, but also undermine morality because there is, according to post-modernism, no singular foundation for judgment and adjudication. Together with radical pluralism and deconstructivism, post-modernism is a continuation of subjectivism and relativism.

*B. The Truth: An Explanation*

Without the distinction between truth and falsehood, we cannot talk meaningfully of a right to the truth. Furthermore, according to Fernández-Armesto, we cannot draw and maintain certain other central distinctions, such as the distinction between right and wrong and the distinction between subject and object.<sup>112</sup> If this were so, morality itself would be lost. Consequently, we would not be able to recognize the right in the first instance. So, we come full circle. The “right to truth” would be conceptually and normatively void and empty without the distinction between truth and falsehood.

Concerning morality, the loss of the right to truth is fundamental, again according to Fernández-Armesto, to the extent that it is instrumental for trust which, in turn, is instrumental for “mutual respect, adhesion to contracts, obedience to laws, [and] devolution of individual strength to the community”—virtues that the social order depends upon for its proper functioning.<sup>113</sup>

Without truth, therefore, human beings are in need of a reason to relate and interact, to form groups, to be together, and to be good. Why should people commit to (virtuous) citizenship if other people dismiss considerations about right versus wrong because they have a skeptical mindset and, for this reason, do not even perceive themselves as being obligated by, for example, the proscriptions against murder, assault and robbery. The implementation of skepticism, in effect, the loss of the distinction between truth and falsehood, is at the expense of law and morality.<sup>114</sup> This is a tragedy

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<sup>112</sup> FELIPE FERNANDEZ-ARMESTO, *TRUTH: A HISTORY AND GUIDE FOR THE PERPLEXED* 3, 164-66, 194 (2001).

As will become clear, the distinction between subject and object translates into the distinction between, on the one hand, subjectivism and relativism and, on the other hand, objectivism.

<sup>113</sup> *Id.* at 3. Note the distinction between instrumentality and conditionality. Truth is not necessarily a condition for trust. Truth may undermine trust, especially in cases where beliefs depend more on faith than fact-based knowledge, such as “(It is not true that) Santa Claus exists” (*Id.* at ix-x). The world of a child may collapse upon being told that Santa Claus is not real.

<sup>114</sup> The distinction between truth and falsehood is lost because it is perceived

of course, especially if being human is also being social, as Aristotle maintains.<sup>115</sup> Without truth, “a diminution of humanity” is bound to occur, Fernández-Armesto states.<sup>116</sup> In an educational ethics context, all the things we presented in the previous sections are thus cast into doubt, beginning with the claim that there is a special relationship between teachers and adolescent students. The argument for this is that teachers act in the place of parents and, at the same time, they are professional educators. Typically, it is professional educators who are entrusted with the education of adolescent students. This is to say that teachers are responsible for the academic development of other people’s children. It is this responsibility of care and nurture that creates a special relationship. As far as the duties to educate and protect are concerned, there is no interdependency. The students rely on their teachers but the teachers do not rely on the children. The teachers have the upper hand because they are assumed to be rational and autonomous agents who have completed their self-actualization.<sup>117</sup> However, if teachers take advantage of the vulnerability of students, say, by attempting to “inspire” them to choose certain vocations that benefit their own interests, then humanity is set aside in favor of selfishness.<sup>118</sup> Therefore, it can be

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as invalid. In his analysis, Fernández-Armesto shows that this amounts to a self-contradiction. The belief that there is no distinction, therefore, is one that can only be “substantiated” by ideological assumptions, thus translating “invalid” into “oppressive.” See *id.* at 164, 206, 228.

<sup>115</sup> ARISTOTLE, *THE POLITICS* 4 (William Ellis trans., Prometheus Books 1986).

<sup>116</sup> FERNÁNDEZ-ARMESTO, *supra* note 112, at 225.

<sup>117</sup> This feature is replicated by the reality of children *vis-à-vis* their natural parents. It should be noted that MacCormick makes natural parents the primary duty-bearers in connection with children’s right to be nurtured, cared for, and, if possible, loved because the relationship between them is a special one by virtue of being natural. By analogy and extension, it could be argued that the relationship between teachers and adolescent students is a special one because teachers stand *in loco parentis*. See MACCORMICK, *supra* note 75, at 163.

<sup>118</sup> For example, there may be a lack of nurses which instills fear in aging teachers, who are therefore trying to create a better world for themselves by having their students become nurses and, as a consequence, secure access to medical care for themselves. It should be noted that Fernández-Armesto equates subjectivism with egoism. See FERNÁNDEZ-ARMESTO, *supra* note 112, at 165. As self-realization is perceived as an instance of self-satisfaction, Maslow’s highest need



argued that the expectation is to accomplish equality in respect to agency, if only with time. Thus, the right way of ending paternalism is by securing that adolescent students become fully rational and autonomous agents.

For these reasons, truth recognition is paramount. In the past, so Fernández-Armesto's historical hypothesis goes, the pursuit of truth was universal. Furthermore, the beliefs, which resulted from the pursuit, can be fitted into the following typology of truth-recognition methods: (1) emotivism, that is, the position that emotions or feelings give access to the truth, (2) authoritarian transcendentalism whereby the many are told the truth by the few, who possess special powers to access supernatural facts, thus, making religious authorities like priests paradigm examples of truth-tellers, (3) rationalism according to which all kinds of different people can come to know the truth through the use of reason, and (4) empiricism which is data based on sense perception providing all people with the knowledge of truth about the world.<sup>119</sup>

However, in our own modern era the pursuit of truth has decreased dramatically to the point where we must be said to exist in an anti-truth climate. This means that the pursuit is deemed unworthy, primarily as a consequence of official and popular "classroom programs." These programs teach either the subjectivist theory that the individual is the sole authority on reality and morality or the relativist theory that reality and morality vary from one culture, society or group to another, so as to trash truth and replace it with opinion.<sup>120</sup> As for morality, the price is high. According to Fernández-Armesto, both subjectivism and relativism lead to permissiveness and vice as opposed to virtue.<sup>121</sup> Furthermore, the duty to show "tolerance and respect" implies a *laissez-faire* attitude that silences criticism, however appropriate.<sup>122</sup> Because subjectivism

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and goal is not exactly a virtuous one, according to Fernández-Armesto's opinion. See *id.* at 167.

<sup>119</sup> *Id.* at 5-6.

<sup>120</sup> *Id.* at 165-66.

<sup>121</sup> *Id.* at 180.

<sup>122</sup> *Id.* at 165.

and relativism presuppose an equal right to be free to be me/you or us/them, the positions in question are unable to scan, filter, or weigh mutually exclusive beliefs. They cannot choose between X and non-X, even if the choice concerns the most fundamental interests of humanity such as being for or against the Holocaust. Therefore, in one important sense, it is a contradiction in terms to be a subjectivist or relativist and, at the same time, function as a moral agent. As Fernández-Armesto himself explains:

In a society of concessions to rival viewpoints, in which citizens hesitate to demand what is true and denounce what is false, it becomes impossible to defend the traditional moral distinction between right and wrong, which is relativized in turn. Unless it is true, what status is left for a statement like “X is wrong” where X is, say, adultery, infanticide, euthanasia, drug-dealing, Nazism, pedophilia, sadism, or any other wickedness due, in today’s climate, for relativization into the ranks of the acceptable? It becomes, like everything else in Western society today, a matter of opinion; and we are left with no moral basis for encoding some opinions rather than others, except the tyranny of the majority.<sup>123</sup>

As a champion of democracy, Fernández-Armesto is not opposed to diversity and/or dissent. Rather, he reacts against the idea of making all of morality depend upon the beliefs of particular individuals or particular groups or classes. As a political ideology, democracy makes room for both subjectivism (the rights to freedom of religion, freedom of artistic expression, and so forth) and relativism (minority rights), but this does not translate into the skepticism and “anything goes” nihilism which are the implications of subjectivism and relativism. Trashing the truth, subjectivism and relativism are consistent with the “might makes right” axiom because, unlike democracy, they do not appeal to a substantive moral foundation. In a democracy, the term “might” is restricted for measures of enforcement for that which accords with justice, such as human rights. For example, if a strong and powerful elite in South

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<sup>123</sup> *Id.* at 165-66.

Africa were to reintroduce apartheid based on a belief about their own superiority as white people, democracy would cancel the relevant set of prerogatives as democratic non-rights, and do so with a reference to the fact that all citizens are equal before the law or, as the argument in substantive morality would go, that it is unfair or unjust to discriminate (for the purpose of rights-recognition) against other people on the basis of facts, traits, or characteristics that these other people have no control over, such as skin color, gender, or age.<sup>124</sup>

For Fernández-Armesto, the most essential point is that tragedy can be replaced with triumph if we realize that, “The man who tells you truth does not exist is asking you not to believe him. So don’t.”<sup>125</sup>

The truth exists, so Fernández-Armesto argues. It is not a myth that a suspect branch of philosophy has fabricated. It is not a construct that only “exists,” that is, prevails as long as its believers subscribe to it. The truth exists as a link between objectivity and reality.<sup>126</sup> In terms of ontology, Fernández-Armesto is an exponent of realism, defined as the position that the world exists independently of the subject, that is, a particular individual or group of individuals and their beliefs, capacities, and faculties that may be used to access the truth. That granted, the truth can be accessed through rationalism and/or empiricism. It is possible, therefore, to come to know the truth by using reason and/or sense perception, just as it is possible to transmit that same knowledge to other people; and for these to assent or agree to it objectively and universally. In the case of democratic dialogue, it is reason that is the way of determining the truth value of statements, whereas experimental testing, experience, and observation make it possible to verify and describe the real facts about something or somebody.

Together, realism, rationalism, and empiricism offer a double advantage. They give ontological and epistemological direction that

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<sup>124</sup> Feinberg refers to this principle in terms of “The Fair Opportunity Requirement.” See FEINBERG, *supra* note 68, at 108-9.

<sup>125</sup> FERNÁNDEZ-ARMESTO, *supra* note 112, at 203.

<sup>126</sup> *Id.* at 164, 181, 190, 194, 206, 216-17.

confirms the distinction between truth and falsehood while also empowering the people because Fernández-Armesto's theory steers clear of any assumptions about the truth as something that is monopolized by particular individuals or groups. Here it should be noted that he seems to place more faith in empiricism than in rationalism. Although not perfect and infallible as a truth-recognition method, it is Fernández-Armesto's hope that evolution may improve sense-perception in the future.<sup>127</sup> If so, the probability of consensus would be optimized, leaving either little or no margin for error. The same argument could be extended to reason in that this capacity or faculty is as natural as the apparatus that receives data from the senses.<sup>128</sup> Irrespective of whether further development is possible or not, both reason and sense perception offer protections in the normative sphere, ranging from a guarantee of having a common foundation for morality and ethics, namely objective and universal truths *cum* facts, to safeguards against indifference in the event of crimes that violate the Principle of Minimal Decency, such as crimes against humanity, genocide, ethnic cleansing, systematic rape, and similar actions that, according to Bassiouni, count as *jus cogens* crimes under modern international criminal law.<sup>129</sup> Furthermore, Fernández-Armesto's link between truth and virtue can be translated into his notion of right reason, as adopted from Cicero.<sup>130</sup>

### C. Basic Needs: A Formula

Although truth trashing is chic and it is trendy to replace truth with opinion, especially among exponents of Postmodernism, radical pluralism and deconstructionism, we treat Fernández-Armesto's

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<sup>127</sup> *Id.* at 80, 91, 223.

<sup>128</sup> It could also be extended further, to include human feelings.

<sup>129</sup> Bassiouni, *The Philosophy and Policy of International Criminal Justice*, *supra* note 90, at 89. It should be noted that *jus cogens* crimes are prohibited by the norms that hold the highest position within the international criminal law hierarchy. Because *jus cogens* means "the compelling law," the norms in question are non-derogable. See Bassiouni, *Accountability for Violations of International Humanitarian Law and Other Serious Violations of Human Rights*, *supra* note 85, at 18.

<sup>130</sup> See *supra* note 94.

theory as an axiom for our own purposes. The main rationale for this is that within the realm of human rights, there is a sub-class of fundamental rights which are founded, at least in part, on truths and facts. The facts in question are basic needs.

Basic needs exist as absolute *cum* objective and universal facts. As such, they are knowable by their own possessors. Furthermore, they constitute conditions for proper human functioning, enabling conditions that apply independently of any beliefs about the realness or status of basic needs. By putting the criteria for credentials checking on a formula, the ontological and epistemological parameters can be further explicated as follows:

If X is a basic need, then X is something which the need-holder, Y, cannot be or do without, without at the same time, suffering serious harm. Furthermore, it holds that (if X is a basic need) X is something which Y, or anybody else for that matter, is unable to change merely by changing the way s/he thinks or feels about X.<sup>131</sup>

In light of this, it is unproblematic to claim that the general norm for humanity encompasses all the things that the majority of the members of *homo sapiens* cannot be or do without simply because they are who they are. Paradigms include needs for food, clean water, unpolluted air, sleep, and similar physiological needs that fit into the bottom of Maslow's pyramid.<sup>132</sup> Other examples, which qualify as needs that are just as basic, belong to the class of what might be called "developmental human needs."<sup>133</sup> For example,

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<sup>131</sup> For these criteria, we draw on David Wiggins' notion of "absolute" need. See DAVID WIGGINS, *NEEDS, VALUES, TRUTH* 10 (Oxford University Press 1998) (1987).

<sup>132</sup> In international law, no human right to sleep or similar necessities (*e.g.*, excretion) has been recognized. By the same token, there exists no qualified human right to unpolluted air or, for that matter, clean water.

<sup>133</sup> The developmental needs have a higher degree of generality than those which characterize some elderly people, such as the need for a walking stick, a wheelchair, etc. We could call these "transitional needs" or "third-age needs" since they apply to the late stages of life. Contrary to developmental needs, however, such transitional needs depend upon a wide range of societal and individual factors (work conditions, life style, environment, etc.) and, for the same reason, they must

most human beings are born with the capacity to develop into rational and autonomous agents, which is what we take to be part of the concept of the adult, and, consequently, children and adolescents have a need to receive the things that facilitate the process that ultimately places them within the norm. The various special needs, which are included in the right to truth, encompass, as previously explained, nurture and education for the purpose of proper functioning with a view to normal development. Without such development, self-actualization is not practically possible.

The truth about humanity is that its members cannot function properly unless their basic needs are met. If these needs are not met, proper human functioning will either be impaired temporarily or discontinued entirely, resulting in death. Regardless of the temporal aspect, the dysfunction constitutes serious harm.

The definition of basic needs is empirically optimized. It is the closest approximation to reality. Any alleged need can be tested, respectively, verified or falsified as a fact. For example, if sixteen-year old Henry Watts is hospitalized in shock on account of diabetes, not administering insulin to him will suffice as a test to prove the link between need and harm. Empirically, the need for insulin stands regardless of what Henry or other people believe. Another example is thirteen-year old Natasha Kline, whose parents cannot pay the electrical bill. Imagine that Natasha claims, "I don't need the light to do my homework." The relevant facts about the human organism, more precisely, the eyes, are bound to prove the statement false unless, of course, Natasha has a non-electrical solution in mind, such as sun light or candle light, in which case her statement is true.

It is important to note that subjectivism and relativism have no application in the case of basic human needs. Subjectively, if food were an individual preference subject to choice, people who are starving could save themselves simply by replacing their food preference with a no-food preference, something which they do not have the power to do being who they are. If people are starving, they

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be relative to the same factors. This is not the case with developmental needs. They apply to everybody everywhere, that is, every child or adolescent regardless of time, place, and circumstances.

need food regardless of their preferences which may be masochistic or otherwise self-defeating. Furthermore, individuals may set fellow human beings up for failure, albeit unintended. For example, followers of Christian Science believe that, "It is wrong to give the diabetes patient Henry insulin." They only permit one form of treatment, prayer. Insulin, therefore, is "a sinful measure." However religiously authoritative, the relevant description is false to the extent that it does not capture the link between bodily harm and the lack of insulin, which can be accommodated in a prediction: "Without Insulin, Henry's human functioning will be adversely affected." Relativism, too, can be refuted on behalf of any group that conforms to a belief system which conflicts with facts about humanity.<sup>134</sup> More generally, if it were true that basic human needs vary from one belief system to another in accordance with time, place, and circumstances, then the human species itself must be shown to vary accordingly. To prove this, relativists would have to demonstrate, as a minimum, that people exist who do not eat, drink, or sleep without suffering any harm. In other words, relativists would have to prove the impossible.

Concerning basic needs, absolutism is linked with objectivism and universalism. That granted, there are individual and absolute needs, as well as cultural or social and absolute needs.<sup>135</sup> Both types of needs are either less basic or non-basic. But, because they comply with the requirements of the functionalistic formula, they should be recognized. In other words, there are things without which that particular individual cannot function properly being who s/he is just as there are things that constitute necessities for people in order to be able to function properly such as members of a particular culture or society. For example, it may be true that, "the violinist Tina has an urgent need for a new violin or she will suffer harm in her individual capacity." Similarly, it may be true that American

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<sup>134</sup> Another example of a group with a belief-system, which includes references to truths that, for them, "trump" basic human needs, is the Jehovah's Witnesses who refuse blood transfusions. The Bible is used as the ultimate proof of the absolute no-need (as they see things within the group) to receive medical care that involves blood transfusions.

<sup>135</sup> Wiggins accommodates these types of absolute needs. See Wiggins, *supra* note 131, at 11.

households need a television because that is what society prescribes. If people do not have a television, they are perceived as outsiders, poor or rich.

To accommodate non-basic needs, absolutism only has to qualify one aspect. Like basic needs, non-basic needs apply objectively but not universally. In other words, individual and/or cultural and social needs stand regardless of what the need-holders or, for that matter, other people think. They can be verified empirically (objectively) as either true or false. Pertaining to description, however, another qualification has to be made across the distinction between basic and non-basic needs. Absolutely objective, that is, absolutely impartial and neutral description is not possible because, as Karl R. Popper points out, description, as well as the observation that precedes it, is always made in light of this theory.<sup>136</sup> The wider point is that being human is being somebody who reflects, relates and interacts and, therefore, develops specific beliefs about the world in a specific context. The full truth about cognition is that facts are subjected to interpretation and sometimes even manipulation or distortion. There is no “pure description,” that is, description without any element of prescription. This means that the distinction between fact and value or, alternatively, that which “is” and that which “ought to be” is not a practical dichotomy. At the same time, it should also be emphasized that prescription is a wide phenomenon, covering all conceptualizing, analyzing, systematizing, and theorizing about reality and the facts that exist, including empirical accounts of basic needs because the terms used are carriers of parameters or scientific norms. But, although the choice of terminology for the purpose of description does color the truth that is conveyed, the truth itself is not being invented or constructed for that reason. Reality still stands regardless of how it is perceived by a subject and, as a result of that particular perception, described in

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<sup>136</sup> According to Karl R. Popper, “truth is correspondence with the facts or with reality.” But, because description and observation is theory-impregnated, objectivity is inter-subjectivity. See KARL R. POPPER, *CONJECTURES AND REFUTATION: THE GROWTH OF SCIENTIFIC KNOWLEDGE* 39, 44, 361 (1963). See also POPPER, *OBJECTIVE KNOWLEDGE: AN EVOLUTIONARY APPROACH* 71, 73 (1972).



language. Furthermore, to the extent that reality is captured accurately in description, it is also possible to distinguish between beliefs which are well-founded (that is, founded on facts) and those that are ill-founded.<sup>137</sup>

Description and terminology should not be underestimated. One of the leading philosophers who influenced our account, David Wiggins, accuses economists of conflating needs and wants. He even sees this as a “standardized professional reaction.”<sup>138</sup> Therefore, the distinction should be made clear.

Unlike needs, wants, together with desires and preferences, fail to satisfy the harm condition as well as the immunity condition whereby needs withstand the possible disbeliefs of their holders. In other words, if a person merely wants X, then X is something s/he can do or be without, without, at the same time, suffering harm, although this “is not true” for him/her. Also, the want-holder can exercise control or power to the extent where the very existence of the want is discontinued. For example, I may want a new car for Christmas. If I do not get it, I will become frustrated and unhappy. Undoubtedly, this is an uncomfortable state to be in, but it does not constitute (serious) harm, especially because I am able to do something about things. I may sit down and talk with a friend and discover that I can, in fact, do well without the car. All I have to do is to acknowledge and appreciate my alternatives. I could, for example, take the train or ride my bike, which I may even need to do because I gained a lot of weight during the holiday season. Making these discoveries are therapeutic steps toward the cure since they provide me with the tools that can unlock my own mindset, how I believe or think about X or, less rationalistically, how I feel for or against X. In both cases, I, the individual, can free myself from the illusion that I depend on X. The fact that wants, together with desires and preferences, are something that come and go in accordance with the beliefs, opinions, or feelings of particular individuals entails that

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<sup>137</sup> The history of the discovery of needs shows how description is often one step behind reality. In illustration of this, see K. J. CARPENTER, *THE HISTORY OF SCURVY & VITAMIN C* (1988).

<sup>138</sup> WIGGINS, *supra* note 131, at 5.

subjectivism and emotivism apply to this category.<sup>139</sup> As groups are also in a position to determine what they want, relativism, too, has a pull. On the other hand, from the link between wants, desires, and preferences and, conversely, beliefs, opinions, or feelings it follows that “truths” are superfluous or, according to Fernández-Armesto, trashed. However, the skepticism that he infers from the lack of distinction between truth and falsehood does not necessarily hinder subjectivists and relativists from using theoretically adapted models of truth references. As long as exponents of the two positions in question relativize their statements, so as to claim, “It is true (for me) that I want X” and/or “It is true (for us) that we want X,” there is, on our account, no problem therewith. Furthermore, we extend the same conclusion to the case of needs. Statements that involve needs can only be said to be fraudulent or deceptive if they are deliberately elliptical, as in, “It is true that I need a coat,” when in reality, the full truth is: “It is true for me that I need a new coat.” Once the reference to that particular individual and his/her beliefs or feelings has been explicated, the individualistic or subjectivist parameters are in place. With these, listeners know who the authority is. It takes another subjectivist to accept that the individual, X, is allowed to function in that capacity alone if X is a child or an adolescent student. Although some listeners may ascribe more credibility to statements that are sanctioned by a whole group, as in, “It is true for us that ‘we don’t need education,’” relativism may only mean that the majority of the members of a particular group are in error.

A critical approach is also paramount for reasons to do with the very nature of needs as opposed to wants.

Many wants are so superfluous that they clash or conflict with needs in ways that, in reality, render a certain choice self-

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<sup>139</sup> It does not follow that emotivism or subjectivism has no application within the context of educational ethics. Feelings are useful in as much as they function as a directional guide in the relationship between teachers and adolescent students. For example, the (feeling of) disappointment that is expressed in, “I feel that I deserve better grades” constitutes a platform for discussion about performance and merit which, in an open and truth-seeking environment, should compel teachers to take appropriate action by informing the relevant student about grades as judgments, in essence, about how they are given.

evident. For example, it may be true here and now that I want to smoke. However, once I learn about the harm involved, I change my mind. Smoking is no longer an activity that attracts me. In fact, I will probably begin to feel disgusted. My new knowledge, the hard facts, the horrible statistics about lung cancer, the truth about smoking convert me, however difficult it may be to kick the bad habit. I may be so addicted that I believe I *need* the cigarette although I do not want it anymore. Nothing could be further from the truth. What I need is to *not* have the cigarette. In further illustration of the link between reality and need, I may want to drink the juice that the waiter just brought the lady sitting next to me in the café until I discover that she is the target of an assassin, then I no longer want to consume the juice because it contains poison.

These few examples suffice to explain another aspect of want, namely that want should give way to need if the holder or subject is rational.<sup>140</sup> Need functions as an incentive for un-wanting which, in turn, provides the empirical escape from harm because the individual needs to avoid the things s/he mistakenly wants. That said, the “knowledge is power” component must be invoked again. In the context of needs, especially basic needs, their holders cannot come into a position where they understand what the best choice is unless they possess all the relevant information. If adolescent students are not being properly informed about the absence of nutrients in junk food, they do not have the “power tool” that makes it possible for them to avoid the harm that results from abnormal development or, more precisely, under-development of the mental capacities which provide the key to learning. Bad food translates into substandard education. Thus, adolescent students need to know the truth for it is something that can protect them. That granted, there is room for shared responsibility pertaining to reactions to the truth. For example, if adolescent students declare, “I do not want to know!” this is, in one important sense, a rejection of morality, together with rationality. Therefore, they do not have the right not to know the truth to the extent that not knowing this is a violation of a

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<sup>140</sup> More precisely, pertaining to ends and means, the subject is able to use reason self-critically.

fundamental principle. For example, if students live in a highly polluted area, they ought to listen to the instructions about how to secure protection against the relevant environmental dangers.

The question is whether we can draw a distinction between needs and interests by analogy to the one between needs and wants. As we see it, this depends upon the definition of “interest.” Some theorists conflate wants and interests, yet, others put needs and interests in the same category. From our perspective, we agree more with the latter. This is because if basic needs are satisfied, then it is tantamount to acting in the best interest of people as human beings, be they children, adolescents, adults, or elderly people. To qualify this further, basic need satisfaction is an objective interest which ought to be promoted and protected as a First Priority Principle. For the same reason, paternalism is justified, even required. However, this is certainly not true of wants, desires, or preferences. In this case, agents may or may not comply with the humanity norm on behalf of the individual or group of individuals in question. Male adolescents may want to imitate their heroes, despite their engaging in risky behaviors, and this may be exactly what attracts the adolescents because the behaviors are perceived as, say, proof of manhood. Nevertheless, the real need is to not “star” by jumping from the eighth floor in order to avoid (serious) harm. Consequently, the non-professional adolescents are typically prohibited from such things, by schools as well as parents, although the adolescents have perceived it as an intervention into their private sphere.

The only feature that needs and wants share is their instrumentality. The human person needs X in order to Y where Y may stand for health. Similarly, people want what they want for a specific reason which may be either good or bad for them. Knowing all the information about X as a want is also the key to answering test questions, such as, “Do I really want X now that I have learned the truth about it?” This points to the difficulty with the category of want. I may start out with a specific purpose or intention and this, upon acquiring knowledge, may then be defeated in more than one sense. By imitating the risky behavior of my hero, I may have wanted to become famous and rich.. In reality, however, the risky behaviors cripple me for life, which is something I never wanted.

Worse still, my chance of fame and wealth has been strongly diminished through my physical handicap. Thus, fact-based knowledge is the strongest antidote to irrational wants. If wants do not respect, as a minimum, the basic vulnerability and mortality of humanity, then paternalism should be backed up with prohibitions on behalf of adolescent students.<sup>141</sup> As Alan Gewirth explains, “maturity and having a secure sense of self” presupposes not only wants that are ordered in accordance with ends and means, but also in accordance with capacities.<sup>142</sup> In order to embark on this task of rank ordering, one has to, first, know oneself. For Gewirth (and we concur), self-knowledge also involves knowledge about “one’s prime values.”<sup>143</sup>

The distinction between needs and wants is important for the purpose of practical application of human rights ethics. It provides a general guideline for what might be called a forum of contending ideas, a place where teachers and other parties assemble with a view to discussion, dialogue, and adjudication.<sup>144</sup> If rational, the participants recognize that needs demarcate an area that should be taken seriously and as a matter of first priority. Furthermore, while relativization should be accommodated, participants have to also recognize that, ultimately, social and cultural needs are belief-dependent and, for this reason, basic needs trump. Using human rights terminology, dignity is the norm, legally or morally, for decision-making. Of course, if the issues that are debated are not even recognized in terms of rights, as is the case with secondary education and truth, the platform or foundation is not yet in place. In international law, the link between education and dignity is an integral part of the recognition of the right to education, but where the state of affairs is so backwards or primitive so as to not embrace

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<sup>141</sup> Such wants can be described as “bad” to the extent that they are irrational. Furthermore, “bad” is linked with morality through the fact that the wants are self-defeating.

<sup>142</sup> ALAN GEWIRTH, *SELF-FULFILLMENT* 25, 40 (1998).

<sup>143</sup> *Id.* at 25.

<sup>144</sup> In this way, we are suggesting one way of responding to Siegfried Wiessner’s call for solutions within the area of human rights. See Siegfried Wiessner, *Dedication*, 1 *INTERCULTURAL. HUM. RTS. L. REV.* 3 (2006).

this, the discussion must begin with values, with the question, “Should education matter?” If the standardized professional reaction among public policy-makers is in the affirmative, the conspiracy thesis must be said to have been disconfirmed unless nothing is done in practice.

#### *D. Basic Needs and the Right to Truth*

Basic needs are cofounders of fundamental human rights in that the Harm Principle links these hard facts with norms that prescribe that they should be fulfilled on account of the serious harm that would otherwise result.<sup>145</sup> Following MacCormick’s premises, it holds that harm is not a sufficient condition or criterion for rights recognition. This is to say that if and only if a benefit, B, is for the sake of the intended recipient as an end in himself/herself, is it correct to state that B constitutes a right. This point is crucial. For the purpose of critical reasoning, it entails that agents must be aware when need statements are made. For example, if school administrators announce that, “Our adolescent students need sex education,” they may and may not have the right intentions. To test whether they do or do not, we have to ask the question, “For whose sake will you provide sex education?” for the answer has not yet been given. It may turn out that the school administrators are merely motivated by prejudice. They may agree to advocate sex education in order to “try to stop this kind of people from propagating,” in

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<sup>145</sup> A general definition of the Harm Principle says that “You should not inflict serious harm on self or other people... who therefore have a right not to be subjected to such harm.” *See supra* note 73.

The philosopher, John Stuart Mill, has presented the most influential liberty-limiting definition of harm. According to this, each individual has the right to act as he wants, if his/her action does not result in harm to others. If the action is self-regarding, that is, if it only directly affects the person undertaking the action, then society has no right to intervene with prohibition or regulation, even if the common perception is that the individual is harming him- or herself. Exceptions are those who are “incapable of self-government,” such as young children. Furthermore, giving offence does not count as harm. In other words, an action should not be restricted because it violates conventional morality. *See generally* JOHN STUART MILL, ON LIBERTY (John Gray ed., Oxford University Press 1991) (1859).

which case no right follows on behalf of the students. A reference to a good state that promotes their well-being for their sake is required, as in teenage parents are unable to concentrate on their own self-actualization. Other seemingly well-intended statements may also belong outside of the domain of rights. For example, public officials may proclaim, as part of their political campaign, that, "All poor students should be served a free and nutritious lunch." On scrutiny, that food may not hold up in terms of a recognized right because the end-goal is to secure the vote of the students' parents, rather than proper physiological preparation for the learning process. In this case, the harm *to them* gives way to a benefit *for us*. However, if the benefit is for their sake, the public officials may not refer directly to needs. For example, they may argue that, "In education, we want to take equal opportunity seriously," something which entails nutritious food for all students, rich or poor.

The above examples also show that there is another principle in operation, one that comes into force prior to the Harm Principle. This is the Principle of Consideration, construed along the lines of Bernard Williams, as a willingness to care about other people and to at least choose to give equal consideration when fundamental interests are at stake.<sup>146</sup> Without this willingness, the rest of morality cannot be activated, including the Kantian principles that we treat as axioms.

The right to truth involves basic needs which, instrumentally speaking, constitute enabling conditions for self-actualization or, like Maslow's theories, full humanity. Self-actualization is intrinsic to humanity. Furthermore, it is the aspect that best describes what "being human" means because self-actualization is peculiar to *homo sapiens*. It characterizes the members of the species in an exclusivist manner which is emphasized by the fact that it takes rationality to know and become oneself.

Regarding an adolescent student, the individual must first come to know the truth about him/herself before s/he is able to become in accordance with his/her potential. Empowering the

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<sup>146</sup> BERNARD WILLIAMS, *MORALITY: AN INTRODUCTION TO ETHICS* 9-13 (1972).

individual by securing access to facts about his/her being, capacities, and skills is a precondition for the kind of becoming that entails the individual's own embrace of actualization. The individual has to discover himself epistemologically, in one sense, has to look in the mirror until s/he utters, "I know myself," in order to make authentic choices pertaining to the sum of possibilities that that particular individual's potential offers. Possessing a talent for carpentry may yield for another in physics, which that particular individual finds "more appropriate for me" and, therefore, "more gratifying" in that physics realizes a larger part of his/her potential which may include an ability to synthesize complex theorizing with creativity, imagination, and innovation. Unlike carpentry, physics can "make use of all of my talents." Consequently, it makes sense for that particular individual to make "becoming a physicist" something s/he wants to pursue. If so, every step s/he takes toward his/her goal will also be part of an identity-forming process.<sup>147</sup>

The primary duty-bearers, the teachers, are obligated to deliver advice and paternalistic guidance while complying with the core of the right to truth, namely adolescent students' need to know all the education-relevant facts that facilitate self-actualization. They serve as developmental helpers *vis-à-vis* individuals as students and that capacity limits their role as truth-tellers. Morally speaking, the right to truth binds them to disclose or share information about the academic progress or lack of this, as the case may be, which describes a particular student. This duty is consistent with transparency as a democratic policy. If people do not know what is really going on in their lives, they are victimized because they are unable to take action by resolving the problem. Because students *ex ante* belong to their teachers' constituency, it is not possible to ignore students as right holders or, alternatively, treat certain right holders with more consideration than others, without committing a moral wrong.<sup>148</sup> Furthermore, opposition to truth telling using references to

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<sup>147</sup> One's identity cannot be reduced to a profession, as in "I *am* a professor."

<sup>148</sup> In politics, there is a tendency to perceive "my constituency" as "the group of people who voted for me," although democracy ideally requires equal representation. In practice, the people "who didn't help elect me" are treated as-if they are owed less (respect and protection), which is wrong.



the very large number of students they teach every year is entirely unacceptable. Truth is an integral part of quality education which is the object of each and every adolescent student's right. To disrespect this is tantamount to reducing education to a production-line phenomenon. While this may be consistent with utilitarianism, our type of human rights ethics disallows it. For the same reason, it requires a pro-active attitude and engagement, on behalf of teachers. For example, they should always be on the lookout for so-called at risk students. They should identify them as early as possible, summon the students and, if necessary, their parents with a view to cooperation, and, of course, communicate the truth. It is arrogant to simply assume that the students already know. They may but, then again, they may not. Certainly, there is no good reason to passively await that fateful moment where complete and irreversible failure has become a reality. Diagnosing the pre-failure situation and circumstances, it may even turn out that the problem relates to the lower part of Maslow's pyramid, where the basic needs for subsistence and survival, love, and belongingness are placed. For example, that particular students' self-actualization may be in jeopardy because his/her vegetarian lifestyle has resulted in a serious protein deficiency. Another student may not be able to function properly because his/her family has no medical insurance and, s/he goes without the prescription glasses that are otherwise a need for academic success. Yet, other scenarios may be about emotional deprivation. Without their parents' love, students are neither happy nor do they thrive as students. Parental love benefits them so much that it is true to say that if it is not the capacity to learn which is directly affected, it definitely is the will to be a good student.<sup>149</sup> Later in life, when adolescent students become adults, the dependency on their parents reduces and they realize that they should do things for their own sake. Unfortunately, their fully developed rationality and autonomy may open a painful chapter of grief and regret because, for example, they may also realize retrospectively that it is now too late to get the education that they, as younger

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<sup>149</sup> According to Maslow, love is an integral part of human motivation. See ABRAHAM H. MASLOW, *MOTIVATION AND PERSONALITY* 20-1, 40-1, 62, 106 (1970).

persons, threw overboard as part of a rebellion against parents who did not care, showed no interest, no feelings, perhaps not even indignation when education was replaced with criminal gang activities, violence, or drinking. Such a policy is a bad choice, rationalistically and pragmatically, be it at the individual or the societal level. Things must begin right, under the auspices of Maslow and MacCormick, with love or, regarding Williams, with care.

Concerning belongingness, the right to truth comprises several knowledge components that correspond to different memberships. In addition to the school, adolescent students belong to other stakeholder constituencies like an ethnic minority. This presupposes knowledge about their own kind of people. In the context of educational ethics, it can, for example, be argued that black students need to know the truth about slavery, that is, the facts about its history and its function as a social institution, together with the African continent's pre-slavery contributions to the rest of the world in order to come to know who they are in their capacity as African-Americans.<sup>150</sup> They come to know these things as members of a particular group or class, but this membership not only satisfies their need for belongingness, it also serves as a mirror for the individual student's identity while in the process of situating himself or herself existentially, asking questions like, "How do I fit in?" That granted, the mirror must be a clean one, especially because the relevant facts cannot be separated from American school's history classes. This is to say that there must be truth in the curriculum, more precisely, the students must be taught using materials that convey the relevant facts as objectively as possible. That sounds trivial. However, it is hardly controversial to claim that the "might makes right" perception has too often undermined truth telling. History has too often been taught as a discipline that ascribed legitimacy to the victorious party at the expense of those individuals or groups that were subjected to the rule of the new masters. For example, Native American students have not been spared the insult of having to read

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<sup>150</sup> Outsiders, that is, people who are not members of the group of African-Americans share the need to know the truth about slavery, etc. to the extent that their group has, using stakeholder terminology, been affected by or has affected the institution of slavery.

text books that, for the purpose of “description,” present Christopher Columbus’s “discovery” of America in 1492 as the historical beginning of civilization in America. That is not the truth. It is, at best, political propaganda, and, at worst, a deliberate intention to deceive other people.<sup>151</sup> Therefore, any program of instruction that conveys that type of misinformation must be disqualified as quality education. If it is tolerated, it can only be seen as proof of a bad will. In other words, deception is a means for the purpose of maintaining an unfair advantage for the already mighty, in the case at hand, white people.

Other types of belongingness which, using Henry Shue’s terminology, count as concentric-circle memberships, encompass the family, peer groups, various social clubs, and neighborhood clubs all of which have particular expectations of and make particular demands on adolescent students.<sup>152</sup> This multidimensional belongingness may contain both positive and negative components. Generally, memberships of criminal gangs are obstructed, as much as is possible, by school personnel. Yet, other memberships are

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<sup>151</sup> According to Maslow, “propaganda, indoctrination, and operant conditioning all disappear with insight. Take advertising, for example. The simplest medicine for it is the truth.” By “the truth,” Maslow means the actual facts in terms of harm about a given product. *See* MASLOW, *supra* note 49, at 181. Examples of more factual materials would be ones that “link different historical events so as to gain a clearer understanding of reality” with the specific aim of creating a balance that avoids presenting history as a “simple-minded morality play.” Donald Macedo, *Introduction*, in NOAM CHOMSKY, CHOMSKY ON MISEDUCATION 6-8 (Donald Macedo, ed., Rowan & Littlefield Publishers, Inc. 2004) (2000).

Macedo complains that historical accounts of law that provided monetary reward for the scalps of dead Indians or antislavery President Lincoln’s views on the superiority of the white races or the impact of military invasions into foreign lands such as Panama, the Turkish invasion of northern Cyprus, etc. are either untruthful or incomplete in terms of truthfulness. *Id.*

<sup>152</sup> For the purpose of general normative theory, the circle-concentric perception uses closeness to self or one’s own group as a criterion for belongingness which, in turn, determines rights and correlative duties. The idea is that the further away from the first circle a person is, the less is owed to him or her. Thus, closeness regulates the definition of “first-circle stakeholders,” “second-circle stakeholders,” and so forth. *See* HENRY SHUE, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY 134-39 (2d. ed. 1996).

encouraged, such as a good relationship with family and getting involved in things that are considered character building such as sports.

In principle, the right to truth extends to any membership that is also a contribution to becoming fully human. Because being human is also being a social being, self-actualization is mediated, at least in part, by other people. That particular individual's identity formation cannot be separated from the so-called socialization process. As pointed out by, among others, Williams and Lewis Yablonsky, even feelings are taught within the environment, thus making "who I am" the product of nurture, rather than nature.<sup>153</sup> Dysfunctional families socialize children to become suspicious, distrustful, hostile, and indifferent toward other people. It is an education to crime by teaching a "way out" of society, not a "way in." According to Yablonsky, the only effective antidote to the sociopath is a humanization program, that is, a program that develops the human potential for positive feelings.<sup>154</sup> Without the capacity to care, to show consideration toward other people, the individual is unable to function as a moral agent in the first instance.

It should be observed that qualified absolutism puts a limit on the link between knowledge-components and memberships. The memberships that fall under the public school's authority and jurisdiction are subject for rights-based claims to truth telling. Roughly, the school's correlative duty covers two main realms, namely the academic curriculum such as reading, writing, mathematics and the non-academic co-curriculum like photography, chess. The duty to inform adolescents about things that pertain to non-school circles or groups, befall other agencies which have the remedies, as well as the authority to resolve this task. In some instances, however, responsibility is shared. These show where the distinction between public and private is or ought to be drawn. In illustration of the modern perception of this, the issues of school

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<sup>153</sup> WILLIAMS, *supra* note 146, at 7. *See also* LEWIS YABLONSKY, *GANGSTERS: FIFTY YEARS OF MADNESS, DRUGS, AND DEATH ON THE STREETS IN AMERICA* 105 (1997).

<sup>154</sup> YABLONSKY, *supra* note 153, at 150.

lunch and sex education suffice to show the movement away from a dichotomy. This is to say that the issues in question are not just considered to be private but also public. If schools were made the sole decision makers, this would be consistent with their in *loco parentis* status, although such a new policy might alienate many parents who have more traditional beliefs about parenting. More to the point, they would feel that, “The job isn’t mine anymore.” If so, we would have to warn against a monopolization of the power to determine what students should eat, whether they should receive sex education, who should teach this, etc.<sup>155</sup>

Some theorists have so much faith in the school and its teachers as truth-tellers that they are willing to extend their duties beyond the scope of the right to truth as we have defined it. For example, Carter G. Woodson, who acknowledges that the absence of truth in education defeats the very purpose of quality education, goes so far as to say that the society that surrounds the school, including non-school institutions like the media, the church, and the family, cannot be trusted to tell the truth about the social and economic reality that students must otherwise live with. The school’s duty and accountability commands greater educational interventions than we have heretofore assumed.<sup>156</sup> More precisely, Woodson maintains that

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<sup>155</sup> In return, parents should concede that education is a comprehensive phenomenon which, for its success, requires their on-going interest and participation.

<sup>156</sup> CARTER G. WOODSON, *MIS-EDUCATION OF THE NEGRO* 135 (AMS Press 1977) (1933). Carter G. Woodson (1875-1950) is an American historian, author, journalist and founder of *Negro History Week*. He is considered a pioneer in conducting scholarly research that recognizes the contributions of blacks. He received his Ph.D. degree from Harvard University in 1912.

Unlike Woodson, Chomsky feels distrust to the extent that “...schools avoid important truths.” He also states that: “It is the intellectual responsibility of teachers-or any honest person, for that matter- to try to tell the truth. That is surely uncontroversial. It is a moral imperative to find out and tell the truth as best one can, about things that matter, and tell the truth to the right audience.” See CHOMSKY, *supra* note 151, at 20-21.

As for our own position on the trustworthiness of the family, we think that this depends on both ability and willingness, and that the last-mentioned is often the more problematic one. Parents tend to want to protect their children against truths that are hurtful and consequently children are sheltered although it is not in

teachers should shoulder the burden of transmitting the facts that explain why their students are placed or, more specifically, misplaced and mistreated as a consequence of the institutionalized power structures. Writing in the area of black education, he believes that students are entitled to be made to understand the reasons for their invisible and inferior place within society, namely racism. In turn, racism explains segregation and poverty-infliction as public policies.

If teachers accept Woodson's task, the causal in-depth analysis they would share with their students cannot but be said to function as politicized or so-called counter-revolutionary education. It is education with a view to emancipation.<sup>157</sup> To the extent that the education is intended to instill, in the students, a particular ideological concept of justice, it is anything but impartial. However, the question is whether it is necessarily disassociated from reality for this reason. In our opinion, it can be argued that education which opposes and, as a result, denies the "fact" that slavery is the natural station for black people is truthful. It takes a democratic mindset to agree, but in our society such a mindset is already a requirement for just placement, as well as good citizenship. Morally speaking, racism counts as a vice. For the same reason, people are expected to be against it. Therefore, Woodson's task may be nothing more than a demand for consistency to secure that theory (democracy) and practice (non-racism) match. If not, people who tolerate this state of affairs are hypocrites, people lacking in integrity, including the parents who may be trying to protect their children from the hard facts.<sup>158</sup>

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their own best interest to be kept in a state of ignorance about matters that will in fact come to affect them one day, such as the truth about racism.

<sup>157</sup> According to Du Bois, a race that self-imposes deceptions, instead of promoting truth and growth is "not fit to be freed." See DU BOIS, *supra* note 58, at 29. More generally, he states: "What we Americans want is freedom to know the truth and the right to think and to act as seems wisest to us under the democratic process..." *See id.* at 156.

<sup>158</sup> Referring to 'Jim Crow' laws and "the effects of disenfranchisement, personal and persistent insults," Du Bois writes: "You cannot teach these [black] children honesty as long as you dishonestly deny these truths which they know all too well." *See id.* at 50.

The wider point is that Woodson is indifferent about the distinction between public and private as long as there exists an anti-truth climate that, in effect, functions as a strategy for the protection of the interests of the status quo. He, along with many other critics of the American system, analyzes education in terms of basic and equal rights.<sup>159</sup> Furthermore, in making truth an integral part of education, Woodson is hoping that society will be improved, which is the primary purpose of education according to John Dewey.<sup>160</sup> Looking at modern education, eighty-eight years after Dewey wrote his book *Democracy and Education*, it could be argued that given the absence of a public policy in favor of education as a matter of right, one plausible conclusion is that the conspiracy against progress is ongoing. Dewey himself expresses agreement with Woodson to the extent that membership of society as a whole should not be ignored. Education should, in his opinion, aim at developing the capacity to participate in democracy as a way of life. In addition to assuming the role as factual truth-tellers, teachers must also teach students how to transcend the structures by moving from a lower to a higher place within society, thus adding the development of leadership skills to obedience as a capacity that is also needed in a democracy. This is done for the purpose of complying with the law which, in turn, is equal for everybody, as opposed to feudalism. As for the link between slavery and absolute (feudal) obedience, Frederick Douglass observes that an educated slave is a ruined slave, who is on his/her way to freedom. For the same reason, "Education being among the menacing influences and perhaps the most dangerous is therefore the most cautiously guarded against."<sup>161</sup> The withholding of education from one or more classes of people is not just undemocratic by virtue of being exclusivist, but is also a sign of the primitiveness that follows from refusing (empowerment as a way) to improve the society as a whole.

Unfortunately, we do not seem to have taken more steps toward a more civilized state of affairs. As previously discussed,

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<sup>159</sup> CARTER G. WOODSON, *THE EDUCATION OF THE NEGRO* 106 (1919).

<sup>160</sup> DEWEY, *supra* note 74, at 20.

<sup>161</sup> PHILIP S. FONER, *FREDERICK DOUGLASS: SELECTED SPEECHES AND WRITINGS* 168 (Philip S. Foner, ed., 1950).

education is not even recognized in terms of a right in U.S. domestic law. Regarding the right to truth, the case is even weaker, treating the right as something which, at best, is made part of an academic handbook or a code of ethics or, at worst, a pseudo-right that is confirmed by democracy (as in “The public has a right to know”). On the other hand, it is treated, in practice, as a prerogative in order to protect the so-called “higher interests” in, say, national security or other explanations that make use of political expediency. If public schools, by virtue of being democratically sanctioned institutions, were obligated to tell their students the truth about the “right” to truth, about how it is required by democratic transparency and, at the same time, something “which ordinary people don’t need to know,” teachers would probably have to either become spies or be well-connected within the system to get access to the facts that would make it possible to determine if (1) the political climate is against truth-telling or (2) truth-telling puts democracy at a serious risk. In the case of (1), unauthorized truth telling by teachers would be perceived as a subversive activity analogous to treason. However, in the case of (2), truth telling should be withheld to protect the values that are necessary in order to secure a foundation for the right to truth in the first instance.

Strictly speaking, morality requires telling the truth. Furthermore, the principles that found truth telling as a matter of right give rise to a singular notion of morality and, therefore, it accords with Dewey’s so-called one-conduct theory whereby no distinction should be made between moral principles during life in the school and life outside of the school.<sup>162</sup> That granted, the distinction between rights recognition and rights protection makes room for a compromise that, in reality, permits non-fulfillment and non-enforcement that teachers do not deliver the truth in certain circumstances.

This compromise points to the double role that the Harm Principle plays. On the one hand, self-actualization of adolescent students depends on truth telling in the process of developing full

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<sup>162</sup> JOHN DEWEY, *ON EDUCATION: SELECTED WRITINGS* 108 (Reginald D. Archambault ed., University of Chicago Press 1974) (1964).



humanity. On the other hand, truth telling may lead to harm, so as to interrupt self-actualization. Our argument is that if truth telling results in harmful consequences, then there is no duty to deliver the truth. Instead there is a duty to consider the well-being of the students and to try to create the conditions that would make truth telling possible at a later point in time. It follows that the absolutism that is entailed by the Kantian notion of unconditional duties must be qualified. Unlike Kant, we believe that conflicts in duty are possible, and that the resolution of these involves consideration of the consequences of actions. To focus on consequences, with a specific view to harm, is tantamount to focusing on the right holders as opposed to focusing on the intentions of actions, which puts the emphasis on the correlative duty bearers.<sup>163</sup>

We agree with Jerome Bruner in his theory that students deserve an environment where they can “experience success and failure not as reward and punishment, but as information.”<sup>164</sup> However, in a subsection of the next part of this article, we will present a case that shows that grade distortion, which may include grade inflation as well as grade deflation, is a form of deceptive or misleading information, thus adversely affecting the student’s knowledge component. Furthermore, the case demonstrates that teachers can ascertain the school related proficiency of any student in

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<sup>163</sup> For Kant, consideration of consequences is really a way of misleading agents in morality. Once agents begin to focus on consequences, good *versus* bad consequences of actions, they have already lost sight of their duty, which is absolute. Furthermore, it is not possible to predict the consequences of actions, according to Kant.

While we acknowledge that predictions, in general, are impossible, probability statements based on fundamental interests, such as human life, may reach a level of certainty that make the issue somewhat rhetorical, *e.g.*, “No intake of fluids will (certainly) result in harm for humans (dehydration).” More importantly, without a sincere will to protect the agents who, in one sense at least, maintain morality, morality itself seems to be treated with less respect than it should if considerations to do with consequences in terms of harm are not allowed.

<sup>164</sup> Jerome Bruner is an American psychologist and one of the key figures in the so-called cognitive revolution, but his influence is particularly strong within the field of education. The citation is by Alfie Kohn, who uses it as a platform for a discussion on the value of grades. ALFIE KOHN, *THE SCHOOLS OUR CHILDREN DESERVE* 191 (1999) (*quoting* Jerome Bruener).

comparison to the expected grade level standard. In addition, it makes it clear that teachers have the opportunity to disclose that truthful information to students in a timely and supportive manner so that they (with the assistance of the students' parents) can improve their proficiency, the aspect of performance that is compared to an objective standard. Finally, it shows why in spite of these opportunities, some teachers choose to withhold the truth about students' progress or lack thereof.

#### *IV. The Ideal Versus the Real World: A Practical Application Case*

We wish to devote the last part of this article to a practical application of the main principles that we presented in the previous sections. Once again, these are (1) the Principle of Consideration, (2) the Principle of Recognition of Value, (3) the Principle of Decent Treatment, (4) the Respect and Dignity Principle, (5) the Means/Ends Principle, (6) the First Priority Principle, and (7) the Harm Principle. Our aim is to apply all the enumerated moral axioms or premises to a case that is hypothetical but nevertheless common and widespread in practice.<sup>165</sup> More precisely, we will attempt to connect the principles with an analysis of wrongs. In the process of doing this, we will show that one of the challenges is the truth climate. It is important to note here that the reasons for this extend beyond the hypothetical. In an empirical context, the following hard facts should be mentioned. Within the current school system, fraud and deception thrive at both ends of the relationship between school personnel and students. Various documentations illustrate the sad state of affairs pertaining to the truth climate. One observer, Lydia G. Segal, connects students' academic failure with corruption:

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<sup>165</sup> N. Gerry House, a former superintendent, president and CEO of the Institute for Student Achievement, writes about a meeting with the parents of a student: "The parents were distraught. Their hardworking dedicated student had a 4.0 grade point average but a score of 15 (out of 36) on the ACT exam used for admission decisions at colleges and universities... The school had not prepared that child for a higher level of education. The system had failed her—as it fails millions like her. N. Gerry House, *Reclaiming Children Left Behind*, 62 THE SCH. ADMIN. 10 (2005), available at <http://www.aasa.org/publications/saarticledetail.cfm?ItemNumber=918&snItemNumber=950&tnItemNumber=1995>.

Although poor pupil performance on tests has many causes, there are many ways in which corruption and waste could plausibly harm learning. Theft and fraud deplete resources and libraries, often hitting hardest those districts that can least afford them. Payroll padding siphons millions of dollars a year from the classroom. Kickback schemes involving textbook companies have resulted in children receiving dated, discarded books. Fraud has contributed to dilapidated buildings where children sit in broken chairs under gaping holes in the ceiling and go without basic supplies like toilet paper. In Chicago, some schoolchildren had to learn in decrepit hallways and bathrooms during a decade of unbridled extortion, theft, and bribery by central school facilities administrators and contractors. Meanwhile, dedicated teachers and principals become demoralized and eventually leave, draining districts of talent they desperately need.<sup>166</sup>

Therefore, in the case of school personnel, the lack of truthfulness translates into acts of fraud and deception which is tantamount to corruption. In turn, corruption deprives students of the resources that otherwise should have been spent on education. As Segal states, “[T]he consequences of fraud and waste on learning can be devastating.”<sup>167</sup> For the same reason, there is ample room for skepticism about the good intentions of school personnel and teachers. Another observer, Armand A. Fusco, laments the additional fact that, “Unfortunately, the public learns most of what they know about corruption from the news media and little of it from the professional community of educators.”<sup>168</sup>

The National Association for Prevention of Teacher Abuse, basing their findings on information supplied by teachers, concludes that: “Lying is embedded deeply within school culture today.”<sup>169</sup>

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<sup>166</sup> LYDIA G. SEGAL, *BATTLING CORRUPTION IN AMERICA’S PUBLIC SCHOOLS*, xxii, xxiii (2004) (quoting Mary Mitchell, *Ex-School Aide Sentenced for Extortion*, CHICAGO SUN-TIMES, April 23, 1995 at 7).

<sup>167</sup> *Id.* at xxii.

<sup>168</sup> ARMAND A. FUSCO, *SCHOOL CORRUPTION: BETRAYAL OF CHILDREN AND THE PUBLIC TRUST*, xvii (2005).

<sup>169</sup> The National Association for Prevention of Teacher Abuse, *Liar, Liar, Pants on Fire*, <http://www.endteacherabuse.org/liarpant.html> (last visited Mar. 19,

Apparently, teachers lie about a wide range of things, from their sexual involvement with students, economic abuse of the system, initial employment procedures, curricula, testing, and grade distortion.<sup>170</sup> NAPTA comments that, “[S]chools have had the upper hand knowing that they could conceal information and not be held accountable.”<sup>171</sup> In other words, teachers can lie and get away with it.

The above documentations conform to Thomas Sowell’s thesis that teachers are not trustworthy, as a group. Among other

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2007) [hereinafter NAPTA].

<sup>170</sup> For sexual involvement, see David Kupelian, *What’s Behind Today’s Epidemic of Teacher-student Sex?* [http://worldnetdaily.com/news/article.asp?ARTICLE\\_ID=49389](http://worldnetdaily.com/news/article.asp?ARTICLE_ID=49389) (last visited Mar., 2007). For economic abuse, see SEGAL, *supra* note 166, at 95. For grade distortion, see FUSCO, *supra* note 168, at 160. Concerning testing scandals, Fusco notes that: “Tampering with standardized tests is now one of the more common areas for cheating by adults and it’s happening with schools border-to-border and ocean-to-ocean” *id.* at xvii. SEGAL, *supra* note 166, at 33, 89, 94 (*regarding* unethical employment practices). See also FUSCO, *supra* note 168, at 17, 149. See JAMES W. LOEWEN, *LIES MY TEACHER TOLD ME* 6, 17 (1995) (providing examples of curricula distortion).

<sup>171</sup> The National Association for Prevention of Teacher Abuse, *Liar, Liar, Pants on Fire* <http://www.endteacherabuse.org/liarpant.html> *supra* note 156. Concerning grading, the schools’ upper hand can be explained by the fact that the law is unsettled in the relevant area. See BRIAN A. BRAUN, *ILLINOIS SCHOOL LAW SURVEY* 94 (8<sup>th</sup> ed. 2004).

The Sixth Circuit indicated in a P-12 case that “grades must be given by teachers in the classroom, just as cases are decided in the courtroom...teachers therefore must be given *broad discretion* to give grades...” *Settle v. Dickson County Sch. Bd.*, 53 F. 3<sup>d</sup> 152, 155 (6<sup>th</sup> Cir. 1995).

Grade complexity is demonstrated by examples that include: comparisons to objective criterion-referenced standards; comparisons to students’ past performance; to present discipline or behavior; to teachers’ subjective feelings; comparisons to other students’ progress within the classroom (*e.g.*, grading on a curve); the district, state, or nation (norm-referenced standards). Thus, grade complexity is related to grade distortion, which is broader than grade inflation.

It should be noted that unless the school board policy limits the scope of the possible meanings of grades, the teachers are free to use a variety of criteria. Irrespective of whether there is such a policy or not, the teachers’ should disclose the criteria, as well as the meanings of the grades. Otherwise, there is no accountability for them. In the hypothetical case with Mr. Mott (*infra*, at 399), the flexibility factor, together with the absence of a good truth climate, can therefore easily lead to deceptive disclosures.

things, Sowell writes:

Perhaps nothing so captures what is wrong with American schools as the results of an international study of thirteen-year-olds which found that Koreans ranked first in mathematics and Americans last. When nearly one-third of American seventeen-year-olds do not know that Abraham Lincoln wrote the Emancipation Proclamation, when nearly half do not know who Josef Stalin was, and when about thirty percent could not locate Britain on a map of Europe, then it is clear that American educational deficiencies extend far beyond mathematics.<sup>172</sup>

Diagnosing the causes, Sowell identifies five main components: “The responses of the educational establishment to the academic deficiencies of their students today include (1) secrecy, (2) camouflage, (3) denial, (4) shifting the blame elsewhere, and (5) demanding more money.”<sup>173</sup>

Summarizing his position, Sowell also confirms the link between corruption, poor student performance and/or failure, and grade distortion. About the scope of the teachers’ accountability, it holds therefore that: “They have taken our money, betrayed our trust, failed our children, and then lied about the failures with inflated grades and pretty words.”<sup>174</sup>

Shifting the perspective to adolescent students and the type of fraud and deception that describes their role in the relationship with teachers, the 2004 “Report Card on the Ethics of American Youth” found that sixty-two percent of the 25,000 students surveyed within a

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<sup>172</sup> THOMAS SOWELL, *INSIDE AMERICAN EDUCATION: THE DECLINE, THE DECEPTION, THE DOGMAS* 3 (1993).

<sup>173</sup> *Id.* at 8.

<sup>174</sup> *Id.* at 296. For further clarification of Sowell’s position, see also *id.* at 8, 26, 32, 69. As a conservative theorist, Sowell’s main problem in reaching a solution is his ideological pre-commitment to dismissing the idea of repressive tolerance, to be critical of a link between that which is public and that which is good, and to disregard proposals for institutional changes that are more than reformist in nature. For him, being conservative, maintaining the status quo is the highest virtue.

twelve month period reported that they had lied to teachers.<sup>175</sup> Another survey, conducted in 2006, based on 34,000 students, showed that sixty-two percent of the high school students admitted to lying to their teachers multiple times.<sup>176</sup> Comparing the most recent statistical data to those compiled in 2002, the conclusion is that the “alarming, decade-long upward spiral” which was noted in, 2002, concerning lying, as well as “cheating and stealing” by students constitutes the continuing and, it should be stressed, unethical trend.<sup>177</sup>

Looking at these implications, Michael Josephson, President of the Josephson Institute of Ethics, says, “The evidence is that a willingness to cheat has become the norm. . . The scary thing is that so many kids are entering the workforce to become corporate executives, politicians, airplane mechanics and nuclear inspectors with the dispositions and skills of cheaters and thieves.”<sup>178</sup> We might add that some become teachers.

Philosophically and ethically, that which is “the norm,” according to relativism, describes the majority’s choice of action, thus making lying normal. This is the meaning that Josephson’s statement captures. However, given that it is the group that determines what is right and wrong or, alternatively, permissible and impermissible, the action in question is also, according to a consistent application of relativism, being prescribed normatively, meaning that that which the majority does is also that which ought to be done, because that is the opinion of that same majority. This is the

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<sup>175</sup> Josephson Institute of Ethics, *2004 Report Card on the Ethics of American Youth*, [http://www.josephsoninstitute.org/Survey2004/2004reportcard\\_pressrelease.htm](http://www.josephsoninstitute.org/Survey2004/2004reportcard_pressrelease.htm) (last visited Mar. 22, 2007) (original survey data with authors).

<sup>176</sup> Josephson Institute of Ethics, *2006 Report Card on the Ethics of American Youth* <http://www.josephsoninstitute.org/reportcard/>(last visited Mar. 22, 2007) (original survey with authors).

<sup>177</sup> Josephson Institute of Ethics, *2002 Report Card on the Ethics of American Youth*,<http://www.josephsoninstitute.org/Survey2002/survey2002-pressrelease.htm> (last visited Mar.22, 2007).

<sup>178</sup> Michael Josephson, *Survey Documents Decade of Moral Deterioration: Kids Are More Likely To Cheat, Steal and Lie Than Kids 10 Years Ago* <http://www.josephsoninstitute.org/Survey2002/survey2002-pressrelease.htm> (last visited Mar. 22, 2007).

reason why Fernández-Armesto calls relativism “the tyranny of the majority.”<sup>179</sup> Josephson addresses the challenge that relativism poses to the extent that he is, for example, in favor of protections of minority rights. Thus, he dismisses unethical consensus however democratically arrived at.<sup>180</sup>

From an analytical perspective, there is a distinction between a statement like, “I would lie to get a job” and “I should or ought to lie to get a job.” But, while this is true, lying stands as a reality—a norm the majority believes is permissible. People may lie of course for other reasons than those having to do with morality, say, because they find it necessary in the circumstances. Irrespective of personal motivations, numbers ultimately determine morality, and, formally, relativism shares this feature with utilitarianism. Worse still, although the number of people who belong to a subgroup, such as adolescent students, cannot be said to represent the majority of the larger group, in the case at hand, the U.S., the legitimacy of their subgroup is not jeopardized merely because it is a comparatively smaller group. In relativistic terms, it still has a mandate to determine what is permissible for us. If something important is at stake, we may resort to measures such as lying to reach that particular end.

Looking at right and wrong in and of itself (deontological theory), it can be argued, with Kant, that lying is unethical regardless of the consequences. As previously pointed out, it ought to be avoided as a matter of duty. But, if the consequences are made to matter, then it can be argued with Dewey that consequences should be included impartially for the purpose of full ethical consideration. While it is true, for example, that lying may save a man’s life and, for the same reason, contribute to morality in an individual context, it is equally true that lying per se has broader consequences, such as “tampering with good faith,” which may undermine the social expectations that otherwise contribute to utility through mutual trust.

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<sup>179</sup> See *supra* note 123.

<sup>180</sup> “Of course, the will of the majority never should be allowed to trample basic human rights of a minority.” Michael Josephson, <http://www.charactercounts.org/knxwk350.htm> (last visited Mar. 22, 2007).

<sup>181</sup> Therefore, if students use a relativistic permit to lie, then they create an anti-social order that is not compatible with common good considerations (utilitarianism). What is left, in terms of ethics, is a version of egoism. Another question is, however, whether the students also undermine relativism per se? If lying, cheating, and similar anti-transparency policies is the norm or the way within the group, then the members may not be able to function as norm-givers in the first instance, because they cannot determine as a group what should prevail within the group. Who is to know? For example, members may be selfish but not truthful when they vote for or against a particular issue. As a consequence, the group suffers a serious loss of social cohesion which is the foundation for morality (according to relativism).

#### *A. The Case*

By administering a pretest, Mr. Mott, a high school teacher of mathematics, discovers that, without exception, the class needs to learn how to manipulate fractions at the basic level. Furthermore, they know nothing about higher mathematics, be it decimals, algebra, or similar complex concepts. Based in part on the results of the pretest, he decides that what he first and foremost ought to teach is how to manipulate fractions correctly. Thus, Mr. Mott links his norm directly with needs that describe the knowing-component of the students.

According to the academic standards across the nation, the teaching of fractions is introduced as a requirement at the fifth grade level. The norms, as defined by the professional experts in the realm in question, express uniformity or general consensus on the good of doing things this way. However, Mr. Mott's class, who have attended eight years of elementary school and one year of high school, have not developed a mastery of fractions. They cannot consistently add, subtract, multiply, nor divide fractional numbers with more than seventy percent accuracy.<sup>182</sup> In contrast, only one individual student,

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<sup>181</sup> DEWEY, *supra* note 74, at 74.

It should be noted that for our purposes the expression, "tampering with



Miss Sue, consistently solves between ninety percent and ninety-five percent of the problems correctly.

After four quarterly assessments and a final exam, Mr. Mott gives Miss Sue an “A” for the whole course. Upon receipt of the highest mark in mathematics, she concludes that she is performing very well. Later, however, she is forced to arrive at the exact opposite conclusion. After taking her national standardized examinations, she learns that instead of scoring high, as would have been expected, she, in fact, scores below the thirtieth percentile. Miss Sue is devastated feeling that she is a failure. Now, in one sense, it is true that Miss Sue was in fact doing well, namely on the fifth grade level. However, more importantly, she was not doing well as a tenth grade student.<sup>183</sup> However, she was (mis)led to believe that she was. Furthermore, she trusted her high school teacher because she assumed that her grade was indicative of her appropriate performance level. As a consequence of what she sees as a betrayal, Mr. Mott’s authority is completely undermined which, in turn, interrupts a meaningful educational relationship. Because of Miss Sue’s developmental stage, the impact of the betrayal, which can be

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good faith” primarily describes the kind of good faith that is invested in a social contract. If people cannot expect to be able to rely on other people, say, because they are lying, then the social arrangement collapses, just as it must be deemed unfair or unjust.

<sup>182</sup> Cole reports that: “There were many places where kids took the same remedial math course four years in a row under different names. They never got to algebra, never got beyond arithmetic.” See Cole, *Keeping Score*, *supra* note 57.

<sup>183</sup> Falling behind begins early for some students. For example, Kozol describes a fifth grade classroom, in which the children are doing a homework lesson:

On a board at the back of the room the teacher has written a line of letters in the standard cursive script. The children sit at their desks and fill entire pages with these letters. It is the kind of lesson that is generally done in second grade in a suburban school...It’s all a game...Keep them in class for seven years and give them a diploma if they make it to eighth grade. They can’t read, but give them the diploma. The parents don’t know what’s going on. They’re satisfied.

See KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA’S SCHOOLS*, *supra* note 60, at 46.

formulated in terms of Mr. Mott lying, is bound to be amplified. As an adolescent high school student, Miss Sue is likely to transfer qualities or, negatively, lack of qualities from her relationship with her own parents or guardians. In this manner, her perception of the relationship with her teacher is primarily a personal one, whereas the professional qualities of her teacher are taken for granted. Miss Sue has been socialized to believe that Mr. Mott knows best because he is the teacher. Not being yet fully capable of separating the outside world from her own individual entity, she is likely to interpret her disappointment as a catastrophe. This defeat impacts directly and causally on the needs for, respectively, security and safety, recognition, self-esteem, and belongingness all of which are aspects of humanity. From her perspective, the teacher-student relationship is based on her logical or even natural expectation that the teacher is there for her. With this expectation, Miss Sue not only believes that Mr. Mott is analogous to a father figure that will protect her, but also that the teacher will help find her place in the world.<sup>184</sup> In other words, Miss Sue believes that Mr. Mott is somebody who offers guidance and support so she can prepare for entering adulthood. Irrespective of whether Miss Sue's expectations are logical or not, they can all be subsumed under a wide application of the Principle of Consideration.

By receiving her "A," Miss Sue thought it reflected positively about herself as a person, how she fitted in, and how Mr. Mott perceives her. More to the point, receiving her "A," she falsely believed she has what it takes to succeed. Therefore, she felt justified in entertaining further expectations, equally logical or natural, that she would ultimately become a successful participant in a competitive world. However, the results of the national standardized test prove otherwise. Unfortunately, from Miss Sue's perspective, it turned out that there was no foundation for her future expectations. Feeling like a failure, her loss of self esteem is self evident.<sup>185</sup>

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<sup>184</sup> To the extent that it is true that teachers have a duty to stand *in loco parentis*, Miss Sue's expectation must be said to be well-founded.

<sup>185</sup> This shows (in our opinion) the importance of having regular testing programs in every school district.

Demoralized, she stops coming to class, doing her homework, and instead begins to hang out with her friends in the streets.<sup>186</sup> Within the year, she may become a mother of an unplanned pregnancy.<sup>187</sup> Given that her mathematical skills are only at the fifth grade level, she cannot realistically achieve her preferred position of employment, namely to become a banker. This does not mean that Miss Sue does not have sufficient inherent potential for achieving that same goal. The point is that her becoming-component is never realized. In comparison with students from other school districts who possess better math skills, Miss Sue's dream is dashed against the sharp edges of life.

The analysis shows that while it is not difficult for teachers to determine the mathematical progress of students in relationship to expected standards, it may pose a challenge for them to fulfill their duty of disclosing the truth, thus making themselves guilty of grade

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<sup>186</sup> Related to the impact of dropping out, a report from the Educational Testing Service indicates that:

More than half the students who drop out leave by the tenth grade.

Eight percent spent time in a juvenile home or shelter.

Twelve percent of dropouts ran away from home.

Dropouts make up nearly half the heads of households on welfare.

Dropouts make up nearly half the prison population.

See Focus Adolescent Services (FAS), *Youth Who Drop Out* (2000) <http://www.focusas.com/Dropouts.html>.

FAS also states that:

The Los Angeles County Office of Education identifies truancy as the most powerful predictor of delinquency. Police departments across the nation report that many students not in school during regular hours are committing crimes, including vandalism, shoplifting, and graffiti. Absenteeism is detrimental to student's achievement, promotion, graduation, self-esteem, and employment potential.

See *id.*

<sup>187</sup> Research has been conducted to test whether high school dropout status influences the likelihood of school-age pregnancy among white, black, and Hispanic teens. The research concluded that selected teen dropouts were more likely to have a school-aged pregnancy, net of other family and educational factors. See generally Jennifer Manlove, *The Influence of High School Dropout and School Disengagement on the Risk of School-Age Pregnancy*, 8 *J. RES. ADOLESCENCE* 2 (1998).

distortion, information that may have complex and unforeseen consequences for students. In general, the withholding of education-relevant information constitutes a violation of moral law by potentially harming students.

### *B. Analysis of the Case*

The majority of educational experts agree that interpretations of student performance should be based on thorough understanding of what was assessed, how it was assessed, how scores were derived, and what the scores mean. Obviously, Mr. Mott was in breach of professional ethics.<sup>188</sup> Turning to ethics, furthermore, he violated all the main moral principles. In light of this, we can identify his wrongdoing by saying that Mr. Mott failed to tell Miss Sue and her classmates that they were receiving a curriculum five years below the national standards. In other words, he failed to tell them the truth about what they were supposed to be doing and how their performance fitted into the overall K-12 curriculum. Secondly, Mr. Mott failed at his duty by giving Miss Sue an “A” because it reflects excellent achievement at the appropriate level. This wrongdoing also cuts across the distinction between the professional and ethical. Mr. Mott gave an “A” for Miss Sue’s performance when he should have considered not only her effort but also her achievement as

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<sup>188</sup> Referring to Principle II of the *Code of Ethics of the Education Profession* of the National Education Association (adopted 1975), we find that “the educator shall not in an application...make a false statement or fail to disclose a material fact related to competency...” By application to students, he would not make a false statement or fail to disclose a material fact related to student competency, such as grade level of work. Principle II also indicates that he “shall not misrepresent his/her qualifications.” By application to students, the teacher would not misrepresent the meaning of any assigned grade. Referring to Principle I, the Code states “the educator shall not deliberately suppress or distort subject matter relevant to the student’s progress.” Misrepresenting fractions as high school level work qualifies as such a distortion. The Code also states that “the educator shall not...unfairly...deny benefits to any student.” Since the disclosure of the truth about one’s progress benefits the student for his or her own sake, its denial violates not only the Code, but also the student’s right to truth NEA: National Education Association, Code of Ethics of the Education Profession, <http://www.nea.org/aboutnea/code.html?mode=print> (last visited Mar. 22, 2007).

attainment. While philosophical ethics does not address the kind of neglect that Mr. Mott institutionalizes in his inferior instruction, his omission by failing to tell the truth, as well as his willful act of giving Miss Sue an “A” are instances of offenses that would count as wrong-doing in total abstraction from their possible connection to the real world.

In the next paragraphs, we will use a methodology that maximizes clarity for the purpose of further analysis of the case. More precisely, we wish to separate act, intention, and consequence. However, we also proffer possible defenses for our intention is to give Mr. Mott as much credit as possible, and also to present counter-arguments that make use of the seven main moral principles that summarize our ethical position.

### *1. Possible Defense*

Faced with the accusation of having committed a wrong, both in relation to his omission and his act, Mr. Mott may respond that there is a practice or tradition for withholding the truth in the academic world.<sup>189</sup> In other words, the norm is to not fulfill the right to truth. In this manner, he may argue that other teachers do the same, and, therefore, his final reaction will be one of indignation. Not only will he feel falsely accused, but he will also wonder why he is being targeted.

### *The Ethical Position*

Irrespective of Mr. Mott’s personal opinion, there is no escape from accountability.<sup>190</sup> Furthermore, Mr. Mott’s wrong affects both the knowing-component and the becoming-component

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<sup>189</sup> Sacks, *The Teachers’ ‘Code of Silence,’* *supra* note 57.

<sup>190</sup> To the extent that consequences harm students, his being ignorant is merely a bad excuse for not doing the right thing. Furthermore, Mr. Mott has a professional duty to know, acting in his professional capacity as a teacher.

As for sanctions or, more generally, punishment, this is an issue we do not pursue in this article, except to the extent that we recommend legalization of the right to truth in order to make it possible to enforce the right in practice.

of the right to truth. For Mr. Mott, it is acceptable to give Miss Sue an “A” for a curriculum five years below expectancy. However, his opinion, an emotive and internal notion which Fernández-Armesto subsumes under subjectivism, is a grave error. By withholding the truth about Miss Sue’s academic status (knowing-component) and her academic potential (becoming-component), he makes himself guilty of grade distortion, specifically grade inflation. Avoiding an accurate interpretation of Miss Sue’s math proficiency constitutes a lie. Needless to say, the level of parents’ trust will vary in accordance with the teacher’s honesty and integrity, as well as his professional competence, which implies those two virtues. All the closest circles, including students and parents, suffer as a consequence of having been deceived.

As for Mr. Mott’s appeal to the low degree of truthfulness in schools, not even an absolute majority can right a wrong. Even if the whole academic world agreed with him, the sheer number does not justify this. It simply shows that many people are wrong. Consequently, the need for protecting the victims, the adolescent students, increases accordingly. Given that human rights, such as the right to education, counts as an individual right that is ultimately derived from dignity on the basis of humanity, the danger of teleological positions such as relativism and utilitarianism, cannot be overestimated. This shows a willingness to sacrifice one for the common good of the whole. Mr. Mott should have devised an alternative grading system to avoid the misleading assessment and harm that Miss Sue suffered. It should be observed that this type of harm is a widespread problem in many low-income, inner-city schools. While we do not have room for an elaborate discussion of the link between ethics and economics, it is clear that unless the economic resources are distributed in accordance with basic needs, no fairness or justice can be done. Thus, it follows that poor school districts with underachieving students ought to receive more funding. This falls under a real-world application of the First Priority Principle whereby basic needs such as a truthful education are a priority over non-basic needs, wants, desires, and preferences.

As for Mr. Mott’s lie, he prolonged the already silent and lengthy collusion yet another year. To qualify as an *omertà*, many

teachers would have to stand united in the effort to conceal education-related facts such as assembling in the teacher's lounge where they swear allegiance to the *omertà* principle by encouraging each other to not tell their students. When Mr. Mott feels satisfied that he had done the right thing, he adds insult to injury. His own feeling of complacency is real to himself, but not justified as based upon reality as linked with morality. He has no moral reason to feel right.

## 2. *Possible Defense*

Mr. Mott's defense consists in a general reference to necessity. Upon analysis, it appears that there are three different aspects.

Firstly, Mr. Mott argues that he had to do it based on his value system. In order to prevent an expected greater harm to Miss Sue, he thought that it was necessary to withhold the truth about the "A." Thus, he disputes any claims that he has committed a moral wrong. According to him, he had strong reasons to believe that Miss Sue would lose self-esteem, esteem from her peers, or that she might even attempt to take her own life, which is what he feared the most. Thus, his personal application of the First Priority Principle puts preservation first, be it for physical security or survival, whereas the need for truth is ranked lower. In this instance, Mr. Mott does not care whether the rest of the school agrees with him or not. He is convinced that he acted in her best interest.

Secondly, Mr. Mott adds that Miss Sue's expected negative reaction would be immediate. The temporal factor matters to him in his appeal to the Harm Principle. He did not feel that he had time to wait for outside intervention. For him, this reinforces his position, especially since he felt there were no other appropriate means to dispose of the matter. He was impatient.

Thirdly, he claims that he did consider the good of the individual student. His approach thus conformed with Kantian ethics or deontological ethics and human rights reasoning while dismissing utilitarianism or relativism. Besides Miss Sue, nobody else was made to matter, including himself. In this way, he arrived at a compromise whereby the Principle of Consideration was applied

individualistically, on the basis of considerations to do with Miss Sue as a person in her own right and, furthermore, because some of the considerations amounted to regard for humanity, ultimately respect for the human right to life, which is a necessary precondition for education. In both instances, Miss Sue was treated as an end in herself, a right holder, albeit indirectly.

### *The Ethical Position*

In the common law of the United States and England, under strict conditions, the defense of choosing the lesser of competing harms has standing.<sup>191</sup> However, the choice between life and other values is not always absolute in the real world. To illustrate, soldiers have chosen to relinquish their lives before they would reveal military secrets. In other circumstances, devout individuals have sacrificed their own lives to protect the good reputation of other people, while on the other hand, gang members have willingly died to protect their own honor or other members. At loftier levels, perhaps, phrases such as “Give me liberty, or give me death!” or “A man who won’t die for something is not fit to live” have inspired patriots and idealists to face death unflinchingly for decades.<sup>192</sup>

It is clear from these examples that the value of physical security or survival can be relativized in accordance with the different beliefs of different people.

While we concede that relativization, to individuals as well as to groups, does in fact occur, it is not possible to infer from this that it should be allowed in all circumstances. Certainly, it does not make sense to grant adolescent students or representatives, such as Mr. Mott, the freedom to determine values and their rank-ordering at their discretion. Such a radical type of liberalism is bound to

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<sup>191</sup> Leo Katz, *The Defense of Necessity*, in *CONTROVERSIES IN CRIMINAL LAW: PHILOSOPHICAL ESSAYS ON RESPONSIBILITY & PROCEDURE* 100-13 (Michael J. Gorr & Sterling Harwood eds., 1992).

<sup>192</sup> Patrick Henry’s *Liberty or Death* speech (Mar. 1775) before the Virginia Convention of Delegates, in *AMERICAN HISTORICAL DOCUMENTS* 77-8 (Harold C. Syrett ed., 1960). See also Martin Luther King’s speech (June 23, 1963), in *THE WORDS OF MARTIN LUTHER KING, JR* 23 (Coretta Scott King ed., 1987).



degenerate into the vice of permissiveness that Fernández-Armesto associates with relativism and subjectivism. That granted, we agree with Mr. Mott in putting life first primarily because life is necessary for embarking on the project of self-actualization.

However, upon close and critical analysis of the link between harm, truth and life, it is incorrect to argue, on behalf of Miss Sue, that withholding the truth causes minimal and trivial harm as compared to the value of life, as prioritized by Mr. Mott. His assumption of what she doesn't know can't harm her is false because of some of the potential consequences. Furthermore, his personal perspective blinds him to alternative options that should have been considered. As will be explained, the two points are inextricably linked.

If suicide is certain, then no other option exists,<sup>193</sup> and so Mr. Mott would have done the right thing.<sup>194</sup> However, in Miss Sue's

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<sup>193</sup> Suicide poses a very serious problem, in fact, it is one of the leading causes for death among teenagers.

"The principal...speaks candidly of the depression that he sees in many children. 'In the past two weeks I've had three children speak of suicide. I mean, they 'indicate' suicide. These are not just casual remarks.'" See KOZOL, *AMAZING GRACE* 63 (2000). Furthermore, a statistical survey reported the following suicide distribution: "Intentional self-harm (suicide) by 5-14 year-olds: 264; 15-24 year-olds: 4,010." See Kenneth D. Kochanek, *Deaths: Final Data for 2002*, 53 NAT'L VITAL STATISTICS REP. (No. 5, 2002) (Table 10: Number of deaths from 113 selected causes by age) 32 available at [http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53\\_05.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53_05.pdf).

A 2001 Harvard University report shows that "suicide rates among youths aged 15-24 have tripled in the past century." See David M. Cutler *et al.*, *Explaining the Rise in Youth Suicide* (Mar. 2001) <http://fact.on.ca/info/vac/cutler2001.pdf>.

<sup>194</sup> Benjamin Dowling-Sendor reports that Timijane, a seventh-grader, who was suspended for having a cigarette in her locker, committed suicide on the same day. The parents claimed that the "state-created danger" situation applied in this case. They claimed that the defendants either created the risk that Timijane would commit suicide or made her more vulnerable to the danger of suicide. The parents said school administrators had a duty to take steps to protect Timijane, such as making counseling available to her or keeping her at school until her parents could arrive to pick her up. The presiding Judge Manion disagreed. Although there was a risk that Timijane would commit suicide, the school official did not know about that risk; the accused assistant principal neither created the risk nor increased the chance of danger to Timijane from that risk. See Benjamin Dowling-Sendor,

case, suicide does not qualify as an analogy to a scientific prediction. For example, Mr. Mott could have resorted to preventative intervention in the form of psychological counseling, assistance from social workers, or other experts who were able to advise him as to the next appropriate steps to take. Since suicide is not a given, truth-telling prevails. Furthermore, the value of truth can be maximized in the event that Mr. Mott's personal and subjective belief is shared by a large number of his colleagues so, relatively, there exists an anti-truth climate.<sup>195</sup> If so, we can predict that for each year that passes, Miss Sue will be more prone to suicide. The argument being that she is bound to suffer accumulative harm, however insidiously. A lie doesn't just affect Miss Sue's present state of mind. The harm caused by that lie may snowball over time to produce negative feelings of defeat which hinder self-actualization.<sup>196</sup>

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*Policy and Tragedy*, 189 AM. SCH. BOARD J. (No 12, Dec. 2002) 58-60 available at <http://www.asbj.com/2002/12/1202schoollaw.html>.

By extension to our hypothetical case, one could claim that the sudden shock of finding out that one is in fact working on subject matter that is five years below level could result, without any affirmative protective actions, in suicide. A slightly different scenario might trigger a legal duty to protect students from a known risk of harm. However, unaware of any pre-disclosure risks, Mr. Mott is legally protected.

<sup>195</sup> The belief is subjective because Mr. Mott does not care about other people's beliefs or opinions, thus making himself the only authority on what ought to be done in the case at hand. The sharing of it is merely accidental.

<sup>196</sup> Focusing on educational and social fairness issues, a national report by the U.S. Department of Education recommended:

One reasonable step to improve the quality of education in high poverty schools may be to provide students and parents with accurate information about how much students are learning and what additional courses they should take to be more competitive with students from more affluent areas. Without such information, students will have no way of knowing how prepared—or unprepared—they are for further education or the work force. How fair is it for a student who has received A's and B's all through school to arrive at college and find that he or she is unprepared for college-level math courses? Wouldn't it be better to provide these students with an accurate picture of how they are doing early, so that they and their parents will know where improvements need to be made?

See U.S. Department of Education (Office of Educational Research and

In light of this, we can conclude that the harm component is primary through its link to truth telling. By overlooking the distinction between the quantity and the quality of life, Miss Sue's potential is impaired to the extent where she is at a serious disadvantage and even handicapped. While Mr. Mott avoided the accommodation of this option, it is debatable whether he had an intention to do so. What is certain is that a narrow focus on some consequences may happen at the expense of truths that are actually more relevant and important. In the words of Dewey: "It is willful folly to fasten upon some single end or consequence which is liked, and permit the view of that to blot from perception all other undesired and undesirable consequences."<sup>197</sup> The essential point is that Miss Sue might have been better off if Mr. Mott had opened up his mind to consider at least three alternatives. Besides withholding the truth (his chosen strategy), he should have considered telling the truth blatantly, telling the truth caringly or compassionately, that is, while providing support mechanisms, and telling a lie, which is not a viable option, although it is a realistic one in an anti-truth climate.

In our culture not many would have an expectation that teachers contribute to the failure of their students.<sup>198</sup> Nevertheless, it is a fact that Miss Sue received misleading positive input from Mr. Mott, who presented an obstacle on her developmental path. More concisely, she is being hindered from realizing her self-actualization, the value of which is otherwise highly prized in our own dynamic "self-made" culture. This is an additional reason why Mr. Mott is incorrect in believing that he promoted the good of the individual.

Accommodating Maslow's definition of self-actualization as

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Improvement & Office of Research Education), *What Do Student Grades Mean? Differences Across Schools* (Jan. 1994), <http://www.ed.gov/pubs/OR/ResearchRpts/grades.html>.

<sup>197</sup> JOHN DEWEY, *HUMAN NATURE AND CONDUCT, AN INTRODUCTION TO SOCIAL PSYCHOLOGY* 229 (1922).

<sup>198</sup> Of course it is trivial but true that until people have a problem with teachers, they would not expect to have a problem. Our claim is that if people started with a "problem expectation," *i.e.*, a lack of good faith, then they (probably) would not send their children to school in the first instance. Instead, they would keep their children at home and school them themselves, which is not the norm.

“ongoing actualization of potentials, capacities and talents, as fulfillment of mission (or call, fate, destiny or vocation), as a fuller knowledge of, acceptance of, the person’s own intrinsic nature, as an unceasing trend toward unity, integration or synergy within the person,” the extent of the teachers’ professional duties becomes more apparent.<sup>199</sup> In general, good teachers facilitate their students’ continuous growth. Therefore, it is crucial, even decisive, for teachers to recognize and respect the truth in terms of an absolute need. It should not be perceived as an object for individual or collective decision-making or bartering, and certainly attempts to manipulate or distort it are unacceptable, as well as impossible. The truth about the absolute need is that it is immune to any beliefs about its existence. It stands regardless—demanding compliance. The need may not always be immediate, but it will always be part of the conceptual and normative framework that surrounds self-actualization. Even if special circumstances may make non-fulfillment excusable because intervention is deemed necessary upon discovering that Miss Sue is showing signs or symptoms of mental illness or instability, the timing for its fulfillment constitutes an ethical component. In principle, it ought not to be too soon, neither too late. Teachers should be respectful. This is to say that the temporal component also refers to humanity thus making this an integral part of ethical consideration. By withholding the truth from Miss Sue, it can be argued that Mr. Mott, as a consequence, is not treating her as an end in herself through arrogantly assuming that her life doesn’t have much value. Even worse, there is also an inter-generational outgrowth since there is a high and very realistic probability of Miss Sue’s fate impacting adversely on her offspring. Consequently, the risk of transmitting what has now become a social harm will, if done, victimize the next and innocent generation. In short, Miss Sue’s educational deprivation will translate into an economic equivalent and so the imbalance will be widened, stifling and strangulating each new individual child by overwhelming forces beyond his or her control at an even earlier point in time than in the life of the parent. As expert James Garbarino states, “[T]he

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<sup>199</sup> ROBERT S. ZAIS, *CURRICULUM: PRINCIPLES AND FOUNDATIONS* 221 (1976) (quoting Abraham Maslow).

conditions of life conspire to compound rather than counteract the deficiencies and vulnerabilities of parents.”<sup>200</sup>

### *3. Possible Defense*

If Mr. Mott chooses a capacity-based defense, that is, one that highlights rationality and autonomy, he could argue that adolescent students are not always able to handle the truth. Given their lower level of rationality and autonomy, they should be shielded from the truth because they might become frightened or disillusioned as a consequence of making discoveries that seem to predestine them. For example, Miss Sue, being a female adolescent student, has to perform better than the boys because most bankers happen to be men. The same, she learns, is true of most other high-ranking people in society. Reasoning that adolescents in general and girls in particular are more sensitive and emotional, Mr. Mott may believe that he has more support for his position.

### *The Ethical Position*

Endorsing the notion that adolescents, simply as members of the human family, have inherent value, and that the Kantian definition of humanity in terms of rationality or autonomy must be dismissed, it follows that Mr. Mott is applying the wrong perception of humanity. Everybody everywhere, including Miss Sue, possesses equal and universal human rights as representatives of the species. As the right to know the truth belongs among the class of human rights, no reference to irrelevant features about the human person, such as rationality and autonomy, can justify such a violation. Given that being human is also being social, withholding the reality-based facts about the general conditions and requirements for success in society, adds to the wrong, as committed by Mr. Mott. Furthermore, his implicit judgment of girls as being inferior in comparison to boys demonstrates the adolescent students' dependency on good teachers.

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<sup>200</sup> James Garbarino, *An Ecological Approach to Child Maltreatment, in THE SOCIAL CONTEXT OF CHILD ABUSE AND NEGLECT* 237 (L.H. Pelton ed., 1981).

If Mr. Mott is either unwilling to convey the truth impartially, say, for ideological reasons, or ignorant of the truth, in this context about the real potential of girls, then the social impairment and harm he can be accused of manifests itself as an instance of Herbert Marcuse's notion of repressive tolerance.<sup>201</sup> In other words, he functions as an instrument for the reproduction of the current order or status quo, with his belief that it is acceptable to have lower expectations of girls. Mott obviously lacks any incentive to report the need for complete information to Miss Sue.

Through Mr. Mott's wrong-doing, he is in violation of all seven main moral principles. He inflicts other-directed harm, and thereby victimizes Miss Sue in all possible capacities (the Harm Principle). Furthermore, he is not even willing to consider Miss Sue in her individual right (the Principle of Consideration). He does not see Miss Sue's value as equal to the boys (the Principle of Recognition of Value). His treatment of Miss Sue is not decent (the Principle of Decent Treatment) because he refuses to treat her as an end (the Means/Ends Principle). Following Dewey's premises, the case of Miss Sue can be subsumed under slavery for two reasons, namely Miss Sue's natural resources have been wasted, and the circumstances are forcing her into an uncongenial calling. Both reasons entail that Miss Sue is reduced to being merely a means.<sup>202</sup> Furthermore, Dewey would agree with our subsumption of Miss Sue's case under the Principle of Consideration in that her own interest or preference for the banking profession was disregarded, together with the timely development of her capacities. Finally, given that Mr. Mott is embedded in ill-founded beliefs that, in reality, reduce to prejudice, the importance of invoking the central distinction between opinion and truth is further emphasized by Miss

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<sup>201</sup> Repressive tolerance is structural violence because it is extended to policies that maintain inequality and, ultimately, inhumanity. It fulfils the function of confusing "evil" for "good." The tolerance of "that which is radically evil now appears as good because it serves the cohesion of the whole on the road to affluence and more affluence." See Herbert Marcuse, *Repressive Tolerance*, in ROBERT PAUL WOLFF, BARRINGTON MOORE JR., & HERBERT MARCUSE, A CRITIQUE OF PURE TOLERANCE 83 (Boston Beacon Press ed., 1965).

<sup>202</sup> DEWEY, *supra* note 74, at 308-9.

Sue's case.

As pointed out in our analysis of international human rights law, the CRC specifies that States Parties, "[T]ake measures to encourage regular attendance at schools and the reduction of drop-out rates."<sup>203</sup> Contrary to receiving any encouragement, Kozol describes the direct link between the lack of teacher acceptance of the child's nature and underachievement in school, loss of esteem, truancy, and dropping out.<sup>204</sup> Adolescent students cannot understand what their best choice may be unless they have access to all the educational-relevant facts. For example, misleading information about their progress may cause them to act differently than they would have if they had known better. Instead of securing a peer tutor or extra help, they maintain the status quo. As a result, they remain underachievers.

As a reform at the federal level, by obligating teachers to report student's progress in comparison to objective standards, the government should amend the No Child Left Behind Act. This amendment would mandate that teachers report, as a minimum, the "basic truth" about student proficiency. Optionally, teachers could also report separately non-standard data disclosing students' amount of effort, quality of behavior, comparisons to other students within the classroom, the school, or the district. At the local level, in an attempt to prevent future violations such as deceptive or misleading information about student progress in schools, Educational Integrity Committees could be proposed.

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<sup>203</sup> CRC, *supra* note 11, art. 28(1)(e).

For the issue of connecting remedial help with dropping out, Susan Blake cites Valerie Lee and David Burkam's statement:

Making courses easier to keep students in school doesn't work, they say, instead, requiring all students to take rigorous courses tends to benefit at-risk students as well as high achievers. When students who fall behind receive remediation and extra help to succeed in their academic courses, they are less likely to drop out.

See Susan Blake, *Keeping Kids in School*, AM. SCH. BOARD J., *supra* note 194, at 33.

<sup>204</sup> KOZOL, SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS, *supra* note 60, at 57-62. See also *supra* note 54.

*V. Concluding Remarks:*

*Moving Toward Educational Integrity Committees*

The right to know the truth, to which human beings have epistemological access through sense-perception (empiricism) and reason (rationalism), is established by at least seven moral principles whereby agents ought to be willing to, as a matter of first priority, consider other people's basic needs and corresponding fundamental and objective interests with a view to treating people as ends in themselves, and not merely as means or instruments for their own selfishness, indifference or social utility. This type of good and decent treatment entails rights-recognition and correlative duty ascription in order to protect the needs and interests that are at stake. To recognize other people as right holders is, in the final analysis, to show respect on the basis of their inherent value and dignity as human beings. What is necessary, be it action or omission, for the purpose of remaining and/or, in the case of adolescent students, developing within the image of the species, as judged by the general norm for humanity, counts as a natural entitlement. This is something which is owed to people simply because they are who they are, namely human beings. But, while adolescent students are developing within the image of the species, they are also becoming in accordance with their own individual potential and, as a result, they are developing within their own image. In the case of successful self-actualization, there is no distinction between these types of normal human development. Therefore, in the context of educational ethics, humanity is, in one important sense, all that matters.

Although itself an instrumental need for full humanity, self-actualization is an end, as well as a public policy goal in educational ethics. All other listed needs, be they so-called special needs such as quality education, truth, paternalistic guidance, formative advice, or more general developmental needs, such as love, belongingness, esteem, safety and security, subsistence and survival, these needs are enabling conditions for self-actualization—to know oneself and to become in accordance with one's potential. This is what characterizes progressive development, which is the norm for



decision-making and action in the academic world. The right to truth mediates the transition from knowing to becoming. Analytically, this is why truth is an integral part of quality education.

According to qualified absolutism, all enabling conditions and needs are absolute because their non-fulfillment necessarily results in serious harm and because they exist independently of beliefs or feelings of individuals or groups. Introducing the Harm Principle, qualified absolutism builds a bridge between reality and morality, between what “is” (objective facts in the form of basic needs) and what “ought to be” (the moral entitlement to receive the things that the right to truth entails). In this manner, qualified absolutism combines consequentialism in the case of the Harm principle, the Principle of Consideration and the First Priority Principle, together with the four principles from deontological ethics.

As for duties, there are two additional principles which also apply as moral premises.

First, teachers’ possible violation of the absolute and unconditional duty to honor their students’ right can only be an excuse, and not a justification. If they are not always doing something, as a minimum, taking steps toward the creation of conditions that will eventually make truth-telling a reality, then they are committing a wrong. Concerning deliverability, however, circumstances may make the kind of duty-fulfillment which is directly correlative to rights protection impossible. It takes the right and the necessary circumstances for its fulfillment to generate a duty to deliver education-relevant information in strict accordance with the needs of students. Therefore, sometimes it may be the case that duty-bearers cannot and, consequently, they ought not be requested to do so. Instead, the duty ought either to be transferred to a third party (the case where teachers as primary duty-bearers fail), or it ought to be subjected to administrative scrutiny (the case where the annual budget appears insufficient to pay for expenses), or it ought to be made a local and political issue (the case where lobbying or public fundraising may change the circumstances), or other initiatives and enterprises that are useful for the promotion of the right to know the truth. Although the duty to deliver is relative to the circumstances,

economic, social, and cultural, its momentary defeat sends its bearers right back to the absolute duty to honor truth, so as to say that the teachers or third parties are always bound to comply with the meta-duty to try to create the conditions or circumstances that will make rights-protection possible in the real world. Seen from a concentric-circle perspective, the notion of third parties involves the idea about shared accountability. Plausible candidates for this role are other educators, elected officials, community members in the narrow and the wide sense (local to international), and parents, who are also active decision makers by voting for the school board and the national government. Ethically, there is no escape. To procrastinate or to even attempt to reject accountability all together brings the implied excuse down to the level of vice where it is best described as a crime. Adolescent students ought not to be made to do the time for the adults' crime. Humanity takes mortality seriously. Right-holders only have so much time for self-actualization. Harm that is irreparable through neglect (Miss Sue's case) is nothing less but a modern human tragedy, which is enacted systematically in many schools. Every school day that is wasted is a wrong committed against the student. Education is for the sake of that individual student, and this ethical end, this living and sentient being, ought to be respected as deserving and valuable. If teachers cannot see their students as human beings in their own right, then the important project called education is doomed before any ethical theory or doctrine can be made to apply.

The larger issue is whether self-actualization is something that is not easily distinguishable from the promotion of self-interest at the expense of the truth about what is right morally speaking as Fernández-Armesto points out.<sup>205</sup> Empirical testing is the only way to determine whether there is a link or not, but the very possibility of students wanting to become, say, missionaries, people who serve other people and the community before considering their own well-being, strongly suggests the absence of a necessary connection between self-actualization and egoism. In other words, it is possible to allow egocentric education and, at the same time, not end up with

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<sup>205</sup> See *supra* note 118.

the type of ethics whereby it holds that people should only consider themselves. That granted, our culture is individualistic by virtue of supporting and defending the ideology of maximizing the freedom to make choices as an individual, pursuing one's happiness as an individual, celebrating and rewarding private enterprises. For the same reason, becoming a rich and independent businessman is the essence of the American dream. Owing to the numerous ethical and legal scandals within the business world, the link between self-actualization and egoism is in fact difficult to separate here. This goes to show that there exists a need that has not been mentioned before, namely the need for ethics. Corporate America has proven, beyond reasonable doubt, that the law is not a good enough tool for successful education of people as moral decision-makers. Furthermore, the immorality of the fraud and deception that has characterized the business world in recent time, is often explained away with statements like, "Individuals within the business world think differently" or "The business culture is a world in its own right." Awareness of the statements' implicit references to, respectively, subjectivism and relativism, provides moral theorists with an analytical weapon against further attempts to undermine ethics.

Regarding ideology and truth-recognition methods, possible criticisms may come from theorists who analyze capacities and fairness. If, say, adolescent students are required to share accountability for rights-fulfillment, then this happens with full knowledge of their prior disadvantage, that is, comparatively less rationality and autonomy, and, as some scientists claim, less comprehension of consequences due to a lack of development of their brain.<sup>206</sup> If this were true, there could be a moral justification for resorting to a non-transcendentalist version of authoritarianism (truth-recognition method) so as to say that a responsible adult in a high position of power and trust, for instance, the superintendent, ought to be consulted first on matters that concern the protection of fundamental interests. Everybody else ought to follow his advice;

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<sup>206</sup> Interview by Sarah Spinks with Deborah Yurgelun-Todd, *Inside the Teen Brain*, PBS Frontline (Feb. 1, 2002).

strictly speaking, obey without disputing his competence and expertise. Alternatively, the parties may be treated as equals, namely from the point of view of their shared capacity to feel (truth-recognition method), although this is problematic by virtue of negating the whole idea of authority, since students would be as right as their teachers and other school personnel. If, for example, Miss Sue feels that she ought to receive a scholarship and Mr. Mott feels that she shouldn't, then their conflicting statements are equally valid from the point of view of their own feelings. Every school district, therefore, would soon become a political anarchy that rejects classifications in terms of inferior (students) and superior (teachers). It would be the end of hierarchy. Each individual would have to be respected as a Supreme Judge in his or her own right. Feelings, it seems, disclose subjectivist and/or relativist "truths" without providing a guarantee for their link with reality. Philosophically, the main problem with feelings is that they may be entirely based on want, as in, "I feel that I should have an A." However, in spite of the fact that the student feels that s/he is doing well, unless substantiated by an objective standard, the student in question must be considered to be in error. Thus, it is the objective standard that regulates the interpretation of the normative and value-laden terminology that expresses merit. It does not follow from this that erroneous self-judgments, as made by students, should not be taken seriously in any sense at all. Indicative of either little or no truth-content, it could be argued that such self-judgments require as much attention by teachers as needed to falsify them. After all for the students, perception is reality. Although sense-perception (empiricism as a truth-recognition method) is also shared by students and teachers, schools that wish to maximize equality, thus to treat people with respect and dignity, cannot rely solely on this truth method. Even if they were to engage in dialogue on the basis of empirical materials that draw on harm experiences (for example, as a part of HIV/AIDS education), dialogue presupposes the use of reason or rationality, and thus we return to the clearest advantage that the adult group has over adolescent students. Furthermore, Fernández-Armesto is correct in pointing out that reason can function as an elitist methodology, which favors a master class distinguished by education and superior mental powers, thus making the members of the class in question

better than others, although not necessarily more thoughtful or mindful of others.<sup>207</sup> As such, reason can be misused and abused for totalitarian ambition and political absolutism.<sup>208</sup> It is the Risk of Reason as an Ideology. To be reasonable, therefore, this risk has to be acknowledged. In an educational context, it might lead to anti-democratic schools which expect undue obedience from their student body (“Obey because I tell you to”). However, reason can be a good power, too, one which promotes a civilized society. If used with sensitivity, consideration, and a willingness to be inclusive rather than exclusive of other people, who may not be equals in terms of possession of reason, it can still command consent. Adolescents do listen, especially if they are not made to feel inferior. Cooperation seems even more logical in light of reason is not an absolute guarantee against fallibility. Description of facts as well as prescription of norms, rules and regulations may be wrong because they reflect prejudices or aversions toward fellow human beings who are not appreciated, not liked, or not even taken into account for some politically unfair or morally bad reason. Faced with the limits of reason, school personnel ought to exercise humility and try to humanize the academic world as much as is possible. At the same time, it holds in principle that the party who knows the truth about crucial matters like human development and education is also the party who is and ought to be able to decide what is in people’s best interest. Good teachers, superintendents, principals, and parents are people who ought to know better than to be arrogant and unwilling to give in to the truth in the event of a conflict of interest. To make sense, their paternalism must be founded on special competence, expertise, and maturity, which mainly consists in the capacity to discern and discriminate. Educational paternalism is a direct analogy to political paternalism where the President and his administration have the power to make decisions on behalf of the citizens because they are trusted as being the more capable party on account of their special competence, expertise and maturity. A hierarchy does not have to be an anti-democratic affair, especially not if the overall goal is to develop what Dewey calls “like-mindedness,” in effect, the

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<sup>207</sup> FERNÁNDEZ-ARMESTO, *supra* note 112, at 84.

<sup>208</sup> *Id.* at 85, 113.

man-made reality equivalent to harmony in the midst of diversity, which otherwise has a tendency to pull in the direction of subjectivism or relativism.<sup>209</sup>

Miss Sue, like most other students, is a human being with some measure of reason, the capacity to feel, and the capacity to register visually and aurally impressions of the world. At her developmental stage, she should have what it takes to realize her potential in accordance with the national standardized tests for the tenth grade level curriculum. Unfortunately, something went terribly wrong and, consequently, Miss Sue was taught a fifth grade curriculum. This means, among other things, that Miss Sue's prior receipt of the eighth grade diploma falsely attests to her competence in mathematics. Although it is difficult to date the origin of the first rights-violation against Miss Sue, we know that it has taken place for several years and that no effort was made to discontinue the neglect, the lack of consideration of her basic needs, and fundamental interests. Thus, it amounted to serious fraud and deception, the exact opposite of truth. Whereas such vices are prosecuted and punished in the business world, there are no accountability-securing mechanisms within the current educational system.

The practical application case with Miss Sue and Mr. Mott shows that the multiple factors that could be relevant, the act, the intention behind this, and its consequences, present us with a complex ethical situation. Any evaluation must accommodate this, as well as the different normative scenarios that follow from alternative perceptions.

In the real world, all the parties ought to be heard. And, one way of doing this could be by introducing *Educational Integrity Committees*. By these, we mean to create a forum for contending ideas subsequent upon investigations and hearings involving panels that represent the opposing sides. In practice, there are two choices. Either the complainant refers the case to a proper court or, alternatively, s/he makes do with the non-legal means of conflict-resolution. In the last-mentioned scenario, the party who stands

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<sup>209</sup> DEWEY, *supra* note 74, at 4-5.

accused of rights violations is invited to testify with a view to cooperation. Given that the Educational Integrity Committee has to operate at the state level, at least in places where education is a responsibility of the state, certain adjustments have to be made, such as there should be no procedures for crimes that already fall under the existing law such as, for example, pedophilia. Furthermore, fact-finding measures should be utilized by the Educational Integrity Committee, so as to secure the accuracy, or, more to the point, the truth, of the information that is presented to the Commission with a view to discussion and arbitration. To serve as an effective accountability-securing mechanism, truth telling has to be combined with certain powers, for example, the power to summon witnesses or obtain confidential documents. Concerning sanctions, one possible means of punishment might be to suspend or revoke teachers' certificate, thus adding real accountability to the proceedings.

Because the Educational Integrity Committee is intended as a moral forum, its primary functions are (1) to reinforce values, norms and standards that are conducive to a good truth climate, (2) attempt to find ways of instilling a positive attitude toward truth telling so as to transform the mindset of teachers, (3) express disapproval of teachers who do not cooperate, and, if necessary, (4) recommend suspension or revocation of the teaching certificate to the State Board of Education.

The stronger the emphasis on (1) and (2), the more the forum will function in an amicable spirit, which is probably necessary in order to transform the system from within, thus creating a new education culture. The end is radical change, but, the means belong under what might be called "transitional reformism," a set of steps that gradually re-socialize people, in one important sense, re-educate them into recognizing truth as a value. For this purpose, we would recommend cooperation with external parties, such as human rights experts. Furthermore, the human rights experts should consider the larger picture when facts are presented to them. For example, if a teacher like Mr. Mott stands accused, they should, for the sake of fair deliberation, look at what might be described as the Ultimate Causality. Mr. Mott may be a victim himself, in the sense that his *laissez-faire* attitude ultimately was caused by his long-term

experience of being caught up in the system. In other words, rather than being part of a conspiracy; there is a conspiracy against the teachers, so Mr. Mott sees it. And he may be said to have good proof. The fact that legal rights-recognition of education and truth is withheld goes to show that Mr. Mott “functions” as a teacher in a society that does not really value these. He is asking, therefore, “What is the point about a so-called Educational Integrity Committee if we are already in a society that does not even appreciate the theory of such rights?” Since integrity is about connecting theory and practice, Mr. Mott is making a valid point. At the same time, it is also a limited one, in essence, consistent only with defeatism. If values consistent with human dignity are not practiced at the classroom level, there is no reason to hope for change. With students, who are ill-prepared for participation in the ethical community by virtue of the disrespect they have suffered, the future offers no progress.

The need for Educational Integrity Committees is enhanced by the fact that students are not saints. However normal, the various types of immoral behavior that they engage in (lying, cheating, etc.) can only be expected to increase unless their role models, their teachers, improve the relationship between the two parties. For the same reason, teachers should take the first step in the right direction. One implication of this is to abandon the ways of corruption and deception which presuppose an adversarial relationship. On the other hand, teachers who are good in the ethical sense are, by definition, bound to be in tension with corrupt colleagues and superiors, as well as unethical students. This poses a dilemma and indeed a predicament. Briefly, they have to make hard choices. Pro-ethics choices will, of course, put them at risk. On our account, however, they should only remain if they choose to not play the game. Furthermore, concerning grades, good teachers should give these as ways of determining adequate annual progress in accordance with objective criteria. As it happens, this is the declared norm within the public school system.

It is common knowledge that the national standardized tests in mathematics and reading have become mandatory for third through eighth grade, as a part of the No Child Left Behind federal



legislation. Furthermore, by 2007-08, tests in science in elementary, middle, and high school that use Title One Funds will be mandated in school districts that are legally required to national annual tests that comply with state academic standards. There will also be tests for fourth and eighth grades for a special National Assessment of Educational Progress program that conducts inter-state comparisons every second year, and many other new tests that will affect all levels of the public school system. The essential point is that there is a new testing trend, if not fixation, in education, which may prevent repetitions of Miss Sue's case.

Skeptics and critics object that "the standardized testing plague" will adversely affect education. According to Stan Karp, "[T]est preparation will dominate classrooms, especially in struggling schools, and curriculum focus will narrow. . . it will also increase the pressure that has led to cheating scandals and to grade retention policies that push students out of school."<sup>210</sup>

While we support the new testing trend in principle, for the purpose of avoiding serious educational harm, as suffered by Miss Sue, the associated abuse and mis-administration ought to be condemned as unfortunate instances of the truth trashing trend, which also prevails at this point in time. The first duty of the primary duty-bearers, namely the teachers, is still to provide the students with that which is needed for direct rights-fulfillment. By having the Educational Integrity Committee focus on rights violations is an indication of the need for correction after things have gone wrong. To understand how and why things have gone wrong from an ethical perspective is necessary in order to make the idea of an Educational Integrity Committee meaningful in the first instance. The seven main principles that were outlined in this article constitute our proposal for an ethical perspective which, if implemented and enforced, would respect the "Children First!" motto that parents, teachers and other school personnel like to cite.

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<sup>210</sup> Stan Karp, *Let Them Eat Tests*, Rethinking Schools Online, 2002 [http://www.rethinkingschools.org/special\\_reports/bushplan/Eat164.shtml](http://www.rethinkingschools.org/special_reports/bushplan/Eat164.shtml) (last visited Mar. 19, 2007).