

## ROSMINI'S UNDERSTANDING OF RIGHTS IN THE CHURCH, THE FAMILY, AND CIVIL SOCIETY

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Blessed Antonio Rosmini-Serbati (1797–1855) was an Italian philosopher and theologian, as well as one of the most significant authors on human rights of the nineteenth century. In addition to his writings, he was the founder of two religious communities, the Institute of Charity and the Sisters of Providence.<sup>1</sup>

Rosmini was born on March 24, 1797 in Rovereto, a small city located in the Trentino region of the Italian Tyrol (an area which was then under Austrian control, but completely Italian in culture and language).<sup>2</sup> He died on July 1, 1855 at Stresa (Lago Maggiore) after being visited by several bishops and his good friend, the Italian author Alessandro Manzoni (1785–1873).<sup>3</sup>

Rosmini had a reputation for holiness during his lifetime, and he enjoyed the friendship of several popes.<sup>4</sup> Nevertheless, various factors, both political and ideological, resulted in opposition to some of his ideas and writings. In 1849, two of Rosmini's books, *The Five Wounds of the Holy Church* and *The Constitution According to Social Justice*, were placed on the Index of Forbidden Books by the Sacred Congregation of the Index (Holy Office), but in 1854—the year before his death—the Holy Office removed all of Rosmini's writings from examination with the Decree *Dimittantur*.<sup>5</sup>

Even after his death, Rosmini's opponents continued to press their case against some of his ideas. In 1881, the Holy Office determined

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1. CLAUDE LEETHAM, ROSMINI: PRIEST AND PHILOSOPHER 58–98, 146–51, 226, 275 (1982).

2. MARY F. INGOLDSBY, A SHORT LIFE OF ANTONIO ROSMINI (1797–1855) 8–9 (1983).

3. LEETHAM, *supra* note 1, at 473–79.

4. *See id.* at 104–06, 375; Giuseppe Bozzetti, *Rosmini Serbati, Antonio*, in ENCICLOPEDIA CATTOLICA 1359, 1359–61 (1953); Robert L. Fastiggi, *Rosmini-Serbati, Antonio*, in ENCYCLOPEDIA OF CATHOLIC SOCIAL THOUGHT, SOCIAL SCIENCE AND SOCIAL POLICY 922, 922–23 (Michael L. Coulter et al. eds., 2007).

5. *Compare* LEETHAM, *supra* note 1, at 398–401 (describing Rosmini's submission to the judgment of the Holy See), *with id.* at 433–35 (detailing Rosmini's rehabilitation at the hands of Pope Pius IX); *see also* DENIS CLEARY, ANTONIO ROSMINI: INTRODUCTION TO HIS LIFE AND TEACHING 14, 67–68 (1992).

that the 1854 decision, *Dimittantur*, did not mean that Rosmini's writings were to be considered entirely free from error but only that they were not forbidden.<sup>6</sup> In 1887, the Holy Office censured forty propositions of Rosmini (many extracted from posthumous and unedited works).<sup>7</sup>

In spite of the 1887 censure of the Holy Office, both the Institute of Charity and the Sisters of Providence remained devoted to Rosmini.<sup>8</sup> Moreover, both John XXIII and Paul VI admired him.<sup>9</sup> Subsequently, Pope John Paul II, in 1994, agreed to open the cause for the Italian thinker's beatification, and, in his 1998 encyclical, *Fides et Ratio*, he included Rosmini among recent thinkers who pursued a "fruitful relationship between philosophy and the word of God."<sup>10</sup>

Rosmini's cause for beatification led to a reconsideration of the 1887 decree of the Holy Office.<sup>11</sup> On July 1, 2001, the Congregation for the Doctrine of the Faith ("CDF") issued a *Note on the Force of the Doctrinal Decrees Concerning the Thought and Work of Fr. Antonio Rosmini Serbati*.<sup>12</sup> In this Note, the CDF stated that the original motive for the 1887 decree was to warn against idealist, ontologist, and subjectivist interpretations of certain propositions of Rosmini.<sup>13</sup> These motives now have been superseded because such interpretations do "not belong to the authentic position of Rosmini, but to conclusions that may possibly have been drawn from the reading of his works."<sup>14</sup> The CDF, therefore, concluded that the plausibility of his philosophical and theological theories should "remain entrusted to the theoretical debate."<sup>15</sup> This (along with an

6. HEINRICH DENZINGER, ENCHIRIDION SYMBOLORUM DEFINITIONUM ET DECLARATIONUM DE REBUS FIDEI ET MORUM 792 (Peter Hünermann ed., 43d ed. 2010).

7. *Id.* at 802–09.

8. INGOLDSBY, *supra* note 2, at 67–68; Fastiggi, *supra* note 4, at 923.

9. Fastiggi, *supra* note 4, at 923; *see also* Mary F. Ingoldsby, *Preface* to ANTONIO ROSMINI, MAXIMS OF CHRISTIAN PERFECTION 6, 57–58 (Mary F. Ingoldsby trans., 1985).

10. Pope John Paul II, *Fides et Ratio* [Encyclical Letter on the Relationship Between Faith and Reason] ¶ 74 (1998).

11. Fastiggi, *supra* note 4, at 923; *see also* Richard Malone, *Historical Review of the Rosmini Case*, L'OSSERVATORE ROMANO (English ed.), Jul. 25, 2001, at 9–10 (juxtaposing Rosmini's twenty-first century rehabilitation with his canonization cause).

12. Congregation for the Doctrine of the Faith, *Note on the Force of the Doctrinal Decrees Concerning the Thought and Work of Fr. Antonio Rosmini Serbati* (2001), in L'OSSERVATORE ROMANO (English ed.), Jul. 25, 2001, at 9 [hereinafter *On the Force of the Doctrinal Decrees*]; *see also* 96 ACTA APOSTOLICAE SEDIS 667–70 (2004).

13. *On the Force of the Doctrinal Decrees*, *supra* note 12, ¶ 5.

14. *Id.* ¶ 7.

15. *Id.*

approved miracle) opened the way for Rosmini's beatification, which took place on November 18, 2007 in Novara, Italy.<sup>16</sup>

While Rosmini can be studied as a speculative theologian, metaphysician, and spiritual writer, this present Article is concerned with his philosophy of human rights. Some of his more significant works concern social and political issues, for example: *La Società e il suo Fine* [*Society and Its Purpose*] (1839); *La Costituzione secondo la Giustizia Sociale* [*The Constitution According to Social Justice*] (1848); *Il Comunismo e il Socialismo* [*Communism and Socialism*] (1849); and *Le Principali Questioni Politico-Religiose della Giornata, brevemente risolte* [*The Principal Political-Religious Questions of the Day, Briefly Resolved*] (1853).<sup>17</sup> Among all of Rosmini's writings dealing with social and political questions, probably none is more significant than his six volume work, *Filosofia del Diritto* [*The Philosophy of Right*] (1841–1843). In these six volumes, he examines the essence of right (volume one),<sup>18</sup> the rights of individuals (volume two),<sup>19</sup> the principles of universal social right (volume three),<sup>20</sup> the rights in theocratic society or the Church (volume four),<sup>21</sup> the rights in the family or domestic society (volume five),<sup>22</sup> and the rights in civil society (volume six).<sup>23</sup>

#### I. THE DEFINITION OF "RIGHT"

In *The Essence of Right*, Rosmini provides this definition: "[R]ight is a moral governance or authority to act, or: right is a faculty to do what we please, protected by the moral law which obliges others to respect that faculty."<sup>24</sup> This definition of "right" has five elements or

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16. Denis A. Cleary I.C. & Robert L. Fastiggi, *Rosmini-Serbati, Antonio, BL.*, in 2 NEW CATHOLIC ENCYCLOPEDIA SUPPLEMENT 2010, at 959, 961 (2010).

17. LEETHAM, *supra* note 1, at 490, 492–93.

18. 1 ANTONIO ROSMINI, THE ESSENCE OF RIGHT, in THE PHILOSOPHY OF RIGHT (Denis Cleary & Terence Watson trans., 1993) (1865) [hereinafter THE ESSENCE OF RIGHT].

19. 2 ANTONIO ROSMINI, RIGHTS OF INDIVIDUALS, in THE PHILOSOPHY OF RIGHT, *supra* note 18.

20. 3 ANTONIO ROSMINI, UNIVERSAL SOCIAL RIGHT, in THE PHILOSOPHY OF RIGHT, *supra* note 18.

21. 4 ANTONIO ROSMINI, RIGHTS IN GOD'S CHURCH, in THE PHILOSOPHY OF RIGHT, *supra* note 18 [hereinafter RIGHTS IN GOD'S CHURCH].

22. 5 ANTONIO ROSMINI, RIGHTS IN THE FAMILY, in THE PHILOSOPHY OF RIGHT, *supra* note 18 [hereinafter RIGHTS IN THE FAMILY].

23. 6 ANTONIO ROSMINI, RIGHTS IN CIVIL SOCIETY, in THE PHILOSOPHY OF RIGHT, *supra* note 18 [hereinafter RIGHTS IN CIVIL SOCIETY].

24. THE ESSENCE OF RIGHT, *supra* note 18, ¶ 237, at 129. The key part of the Italian is "una facoltà di operare ciò che piace, protetta dalla legge morale, che ne ingiunge ad altri il rispetto."

characteristics: 1) it pertains to subjective activity, i.e., the activity of a subject; 2) it involves personal activity, i.e., the activity of a person endowed with a rational will and freedom; 3) it assumes that there is some good in the action undertaken; 4) it assumes the lawfulness of the act because there can never be a right to do what is evil, and a “right can only be a faculty to do what is intrinsically upright and lawful”;<sup>25</sup> and 5) a right “implies a relationship with other intelligent beings according to which they remain morally obliged not to disturb the exercise of that faculty or moral activity.”<sup>26</sup> This is what *governance* means.

Behind these constitutive elements of “right” is the implicate notion of “jural duty,” which refers to “that moral duty which obliges human beings to respect the freedom of others when this freedom has all the characteristics necessary to constitute a right . . . . [I]t is the duty which requires one human being to respect, without interference or damage, the jural governance of another.”<sup>27</sup>

Behind this understanding of right is a eudaemonistic view of ethics: one grounded in the pursuit of happiness. This is why Rosmini believes a right is a faculty to do what one pleases (*ciò che piace*). Rita Zama notes that Rosmini’s path is one that recognizes “the inseparability of the moral good and the eudaemonological good: the ontological union expressed in the law that ‘a morally good will is a happy will.’”<sup>28</sup> For Rosmini, happiness ultimately is found by adherence to the “order of being,” which can never be separated from the moral order.<sup>29</sup>

## II. TYPES OF RIGHTS

According to Rosmini, rights can be broken down into subcategories.<sup>30</sup> Rights are *innate*, *natural*, or *connatural* when they

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1 ANTONIO ROSMINI-SERBATI, *ESSENZA DEL DIRITTO*, ¶ 237, in *FILOSOFIA DEL DIRITTO* 130 (Milan, Boniardi-Pogliani 1841).

25. *THE ESSENCE OF RIGHT*, *supra* note 18, ¶ 256, at 137.

26. *Id.* ¶ 262, at 140.

27. *Id.* ¶ 268, at 142. The word “jural” translates the Italian word “*giuridico*,” which can also mean “juridicial,” i.e., that which pertains to rights and obligations.

28. RITA ZAMA, *LA PERSONA E LA LIBERTÀ IN ROSMINI* 134 (2006) (author’s translation). The original quote reads as follows: “L’itinerario che Rosmini qui compie consiste dunque nel riconoscimento dell’inscindibilità tra il bene morale e il bene eudemonologico: unione ontologica che si esprime nella legge secondo cui ‘una volontà moralmente buona è felice.’” *Id.*

29. *See id.*

30. VITO MANFREDI, *ANTONIO ROSMINI: PROFEZIA DEL RINNOVAMENTO* 173–74 (2002).

are based on what is inborn or natural.<sup>31</sup> Among such rights are “the right to the truth, the right to justice, and the right of happiness.”<sup>32</sup> Rights can also be *positive* or *acquired* when they are based on ownership or what is acquired during one’s lifetime. For example, a person has a right of dominion over a house that he owns.<sup>33</sup> Rights, moreover, are either *individual* or *social*, and, therefore, they can be further categorized as: 1) *natural individual rights* and *acquired individual rights*; or 2) *natural social rights* and *acquired social rights*.<sup>34</sup> Social rights are related to various societies, which help human beings to unite with others and attain their perfection, either on earth or in the future life.

These rights—natural and acquired, individual and social—can be applied to different types of societies. For Rosmini, there are three basic societies on earth: 1) theocratic society or the Church; 2) domestic society or the family; and 3) civil society or the state.<sup>35</sup> We now need to investigate how these rights are expressed in these three basic societies.

#### A. *Rights in Theocratic Society or “God’s Church”*

What does Rosmini mean by “theocratic society”? He does *not* mean a civil society governed by priests or bishops.<sup>36</sup> Instead, he means “the Church of Jesus Christ,” which is “simply the natural society of mankind raised in certain human beings to the supernatural order and brought to its final completion and full realisation.”<sup>37</sup> Rosmini believes there are various connatural and acquired rights possessed by the Church.<sup>38</sup> He lived during a time when the anti-clericalism of the French Revolution was still a fresh memory.<sup>39</sup> Moreover, movements such as Josephism and Febronianism

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31. *Id.*; see also CLEARY, *supra* note 5, at 38 (hypothesizing, audaciously, that the essential, connatural right is the human person himself).

32. MANFREDI, *supra* note 30, at 173 (author’s translation). The original reads: “Essi sono il diritto alla verità, il diritto alla giustizia, il diritto alla felicità.” *Id.*

33. *Id.* at 174.

34. CLEARY, *supra* note 5, at 38.

35. *Id.* at 40–44.

36. Denis Cleary & Terence Watson, *Foreword* to RIGHTS IN GOD’S CHURCH, *supra* note 21, at vii. The exception to this might be Rosmini’s own preference for Italy, which was some type of oligarchy with the Pope as the protector of the state and the College of Cardinals as the “Supreme Court.” See LEETHAM, *supra* note 1, at 354.

37. RIGHTS IN GOD’S CHURCH, *supra* note 21, ¶ 633, at 47.

38. *Id.* ¶¶ 766–864, at 83–112.

39. See, e.g., LEETHAM, *supra* note 1, at 13, 242, 341.

threatened to put the Church under state control.<sup>40</sup> In this context, Rosmini articulated the five connatural rights of the Church in relation to all human beings.

These rights are: 1) the right to existence; 2) the right to recognition; 3) the right to freedom; 4) the right to propagation; and 5) the right to ownership.<sup>41</sup> Rosmini's motivation in articulating these rights is the historical experience of the confiscation of ecclesial properties and goods by secular regimes.<sup>42</sup> He refers to examples of the usurpation of Church lands, abbeys, monasteries, etc. in Russia, Poland, France, Germany, and Scandinavia.<sup>43</sup>

In addition to the connatural ecclesial rights relative to all human beings, Rosmini also mentions the rights of the Church proper to her own members (e.g., the rights of the hierarchy and the rights of the faithful) and her various acquired rights.<sup>44</sup> In regard to the latter, he recognizes that these acquired rights are often "accidental facts."<sup>45</sup> He himself clearly favored having the Catholic Church recognized by the civil order as the true religion.<sup>46</sup> He recognized, however, "that the universal Church cannot be confused with the natural society of mankind."<sup>47</sup>

Within the Church, Rosmini believed there were connatural rights of the faithful, such as the right to receive the sacraments and the right to undergo self-immolation.<sup>48</sup> Although the lay faithful do not have authority to appoint pastors, they do have a right to be given acceptable pastors who teach sound doctrine and manifest prudence.<sup>49</sup> Moreover, they have an inalienable right "to pastors they trust."<sup>50</sup> In this regard, Rosmini recognizes the right of the faithful to indicate "unworthiness in a candidate suggested for promotion to sacred orders,"<sup>51</sup> something recognized by the *Roman Pontifical*.<sup>52</sup>

40. See, e.g., *id.* at 42–43, 173–74, 341.

41. RIGHTS IN GOD'S CHURCH, *supra* note 21, ¶¶ 767–822, at 83–97.

42. See *id.* ¶ 858, at 107–10.

43. *Id.*

44. *Id.* ¶ 854, at 106–07.

45. *Id.* ¶ 960, at 145.

46. See *id.* ¶¶ 961–68, at 145–49.

47. *Id.* ¶ 965, at 146–47.

48. *Id.* ¶ 898, at 126 (enumerating faculty of self-immolation); *id.* ¶ 901, at 127 (describing right to sacraments conferred by baptism).

49. *Id.* ¶¶ 920–21, at 132.

50. *Id.* ¶ 922, at 132.

51. *Id.* ¶ 924, at 133.

52. *Id.* ¶ 924, at 133 n.196 (illustrating the vetting process, and the laity's role in it, prescribed by *The Roman Pontifical*). *The Roman Pontifical* is a liturgical book containing

Rosmini also affirms the obligation of Church authorities to consult the lay faithful on matters that affect the temporal realm.<sup>53</sup> As he writes:

The faithful are competent in their own temporal affairs, and their advice and judgment should be considered. Similarly, authority should take in good part the complaints of the faithful, and evaluate them carefully in all good faith. If the desired modifications are compatible with the greater good of the Church, they should be accepted.<sup>54</sup>

In recognizing the right of the lay faithful to express their opinions on what pertains to the temporal order and the good of the Church, Rosmini anticipated, in many ways, what Vatican II teaches in *Lumen Gentium*.<sup>55</sup>

Rights within the Church must ultimately be understood in light of the purpose of theocratic society, which transcends that of the natural society of man. Natural society ultimately “depends upon the Creator,” but “the universal Church cannot be confused with the natural society of mankind, just as a real house cannot be confused with the plans of the house.”<sup>56</sup> The Church nevertheless is a true society. It is a “family society in the supernatural order.”<sup>57</sup> It is also a society brought together by generation, “the eternal generation of the Word, together with his Incarnation, followed by the incorporation and grafting of human beings in him.”<sup>58</sup> Because of this, “the universal Church contains within itself the great organising principle of the human race. She is destined to bring together dispersed human beings, forming them into a single, ordered body.”<sup>59</sup>

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various rites and ceremonies, usually reserved to bishops. Early versions of it in the West go back to the 700's. After Vatican II, it was expanded to include rites beyond the ministry of bishops. See J. Nabuco & T. C. O'Brien, *Pontifical, Roman*, in 11 NEW CATHOLIC ENCYCLOPEDIA 474 (2d ed. 2003).

53. RIGHTS IN GOD'S CHURCH, *supra* note 21, ¶ 942, at 138.

54. *Id.*

55. See Second Vatican Council, *Lumen Gentium* [*Dogmatic Constitution on the Church*] ¶ 37 (1964), reprinted in THE SIXTEEN DOCUMENTS OF VATICAN II 107, 148–49 (Nat'l Catholic Welfare Conference trans., 1967) (“[The laity] are, by reason of the knowledge, competence or outstanding ability which they may enjoy, permitted and sometimes even obliged to express their opinion on those things which concern the good of the Church.”); see also 1983 CODE OF CANON LAW c.212, § 3 (2d ed. 2004) (“[Christ's faithful] have the right, indeed at times the duty, in keeping with their knowledge, competence and position, to manifest to the sacred Pastors their views on matters which concern the good of the Church.”).

56. RIGHTS IN GOD'S CHURCH, *supra* note 21, ¶¶ 962, 965, at 146–47 (emphasis added).

57. *Id.* ¶ 966, at 147.

58. *Id.*

59. *Id.* ¶ 967, at 148.

Ultimately, theocratic society or the Church must be understood as a “supernatural, domestic society.”<sup>60</sup>

B. *Rights in Domestic Society (Connatural Rights of Spouses and Families)*

In volume five of *The Philosophy of Right*, Rosmini discusses “rights in the family.”<sup>61</sup> The family can be understood as “domestic society” and divided into the “conjugal society” of the spouses and the “parental society”—the latter emerging from the bond between parents and their children.<sup>62</sup> The two expressions of domestic society, the conjugal and the parental, are related to theocratic society inasmuch as they reflect the order willed by the Creator.<sup>63</sup> For Rosmini, “[c]onjugal society is possible only on earth because God does not spiritualise human beings.”<sup>64</sup> Human beings are both spiritual and material.<sup>65</sup> They are “united in their higher part to God while remaining material in their lower part.”<sup>66</sup> Rosmini, though, is not a dualist; nor does he despise the material, animal dimension of human nature. In fact, he believes that our material bodies offer many opportunities for practicing virtue, and, therefore, they can serve as a means toward union with God.<sup>67</sup> Moreover, conjugal society can become “a means for completing theocratic society”

60. *Id.* ¶ 968, at 148–49 (emphasis omitted).

61. RIGHTS IN THE FAMILY, *supra* note 22.

62. *Id.* ¶ 981, at 6; *cf.* Pope Gregory XVI, *In Supremo Apostolatus Fastigio* [*Apostolic Brief on the Catholic Opposition to Slavery*] (1839) [hereinafter *In Supremo Apostolatus Fastigio*]. Rosmini also speaks of seigniorial society or the society formed by proper dominion, whether within the family or in the civil order. Although he acknowledges the existence of “the relationship between bond-servant and master,” he makes it clear that he does not justify “the kind of servitude that is harsh and repugnant to human dignity.” RIGHTS IN THE FAMILY, *supra* note 22, ¶ 978, at 5. He refers to slavery as an “extreme injustice.” *Id.* ¶ 1168, at 67. His views on slavery followed the teaching of Pope Gregory XVI in his constitution, “We, by apostolic authority, warn all faithful Christians, of whatever condition, and vigorously implore them in the Lord that henceforth no one shall dare to abuse unjustly Indians, Blacks, or other such peoples or despoil [them] of their possessions or reduce [them] to slavery . . . .” *In Supremo Apostolatus Fastigio, supra*.

63. *See* RIGHTS IN THE FAMILY, *supra* note 22, at 7.

64. *Id.* ¶ 992, at 9–10.

65. For Rosmini’s complete treatment of man as an animal with a rational, immortal soul, see generally ANTONIO ROSMINI, ANTHROPOLOGY AS AN AID TO MORAL SCIENCE (Denis Cleary & Terence Watson trans., 1991) (1838) [hereinafter ANTHROPOLOGY].

66. RIGHTS IN THE FAMILY, *supra* note 22, ¶ 992, at 9–10.

67. *Id.*; *cf.* ANTONIO ROSMINI, ANIMALITY, ¶¶ 102–03, *in* ANTHROPOLOGY, *supra* note 65, Bk. II, at 61 (rejecting the dualism of Descartes and others).

because it is “the source of the growth of the human species.”<sup>68</sup> For this reason, the Redeemer of the human race was moved to raise marriage to the dignity of a sacrament.<sup>69</sup>

Conjugal society reflects the natural drive of human beings to enter into friendships with each other.<sup>70</sup> Between the two sexes, though, “a fuller and altogether special union is possible,” and this union, which can only exist between a man and a woman, “forms the object of love and the end of the conjugal society which results from it.”<sup>71</sup>

Rosmini has many beautiful things to say about marital love and the conjugal union. In this sense, he anticipates the language of Vatican II in *Gaudium et Spes*.<sup>72</sup> He recognizes sexual union as involving “the lower” or “material” parts of the person, but he states that “[t]he Creator has predisposed a wonderful appropriateness of form and organisation of one body to the other.”<sup>73</sup> Sexual union cannot be reduced to “the mere mechanical union of material parts.”<sup>74</sup> Instead, “[t]he act of sexual intercourse, in which generation takes place, is an act of the soul operating in bodies and through bodies.”<sup>75</sup> In the marital union, there is a true communication of life between the two spouses.<sup>76</sup> As he writes, “one body feels the very soul of the other body,” and “each would fuse totally with the other, if possible.”<sup>77</sup> Rosmini states that “[s]exual intercourse is certainly the most intimate of bodily unions: the two fundamental feelings seem for a moment to become one, so that the feeling of one is reciprocally the feeling of the

68. RIGHTS IN THE FAMILY, *supra* note 22, ¶ 993, at 10 (emphasis omitted).

69. *See id.* ¶ 995, at 11.

70. *Id.*

71. *Id.*

72. *See* Second Vatican Council, *Gaudium et Spes* [*Pastoral Constitution on the Church in the Modern World*] ¶ 48–49 (1965), *reprinted in* THE SIXTEEN DOCUMENTS OF VATICAN II, *supra* note 55, at 513, 561–84 [hereinafter *Gaudium et Spes*]. Paragraph forty-nine is particularly consonant with Rosmini’s writings: “The actions within marriage by which the couple are united intimately and chastely are noble and worthy ones. Expressed in a manner which is truly human, these actions promote that mutual self-giving by which spouses enrich each other with a joyful and a ready will.” *Id.* ¶ 49, at 564.

73. RIGHTS IN THE FAMILY, *supra* note 22, ¶ 1056, at 32.

74. *Id.* ¶ 1057, at 32.

75. *Id.* ¶ 1058, at 32. The point here is not a form of dualism that separates the soul from the body. Rather, the soul, as the form of the body, is the spiritual dimension of the body/soul unity. The act of marital union is a spiritual act expressed in and through the body.

76. *See id.* ¶ 1059, at 33.

77. *Id.* ¶ 1060, at 33.

other."<sup>78</sup> He finds the most fitting description of the marital union in the words of Scripture: "[A]nd the two shall be in one flesh."<sup>79</sup>

Although conjugal union is "a perfect union in accord with nature, a union between two human individuals of different sex,"<sup>80</sup> there is, nevertheless, one thing that must remain unique in them: their persons.<sup>81</sup> The spouses "cannot form one person out of two."<sup>82</sup>

Having described the beauty and goodness of the marital union, Rosmini proceeds to enumerate the rights and duties of the spouses.<sup>83</sup> These duties flow from the four consequences of the union between the spouses: "1) the indissolubility of marriage; 2) the uniqueness of each spouse; 3) community of life; 4) community of goods."<sup>84</sup> Because marriage is indissoluble, concubinage and divorce must be rejected.<sup>85</sup> Likewise, marriage can only exist between one man and one woman.<sup>86</sup> The bond of marriage, by its very nature, requires an exclusive union.<sup>87</sup> Thus, Rosmini writes, although the spouses "are unique and incommunicable, they do have a way of possessing each other."<sup>88</sup> Jealousy arises because of this natural sense of possessing the other in an exclusive way.<sup>89</sup> These feelings, though, express a right of the spouses: namely, the right of "mutual exclusive ownership"<sup>90</sup> of each other, which is protected by the moral law.<sup>91</sup> From this, there comes the right or duty of "mutual fidelity."<sup>92</sup> Because of this right, polyandry and polygamy must be rejected.<sup>93</sup> Moreover, they are contrary to the natural law—even if polygamy was tolerated among the ancient Hebrews because of their hardness of heart.<sup>94</sup>

Rosmini enumerates other rights within marriage worthy of mention. There is a right of "*innate ownership*" that pertains to both

78. *Id.* ¶ 1060, at 33–34.

79. *Id.* (quoting *Matthew* 19:5 (Douay-Rheims)).

80. RIGHTS IN THE FAMILY, *supra* note 22, ¶ 1065, at 35.

81. *Id.*

82. *Id.*

83. *Id.* ¶¶ 1227–1398, at 83–155.

84. *Id.* ¶ 1239, at 87.

85. *Id.* ¶¶ 1269–98, at 97–106.

86. *Id.* ¶ 1333, at 126.

87. *See id.* ¶ 1319, at 122.

88. *Id.* ¶ 1321, at 122–23.

89. *See id.*

90. *Id.* ¶ 1326, at 124.

91. *Id.*

92. *Id.* ¶ 1333, at 126.

93. *Id.* ¶¶ 1334–39, at 126–29.

94. *Id.* ¶ 1336, at 126–27.

spouses, but there are likewise “connatural rights relative to *freedom*.”<sup>95</sup> Because “[e]ach spouse is an end, not simply a means,” respect must be shown to the dignity and freedom of the other.<sup>96</sup> It follows that “[t]he woman cannot be forced into marriage but must give and submit herself to her husband with her free consent.”<sup>97</sup> Moreover, “[t]he woman is a *companion*, not a *bond-servant* of the husband,” and “[e]ach spouse has equal right to require the other to observe the natural, obligatory laws of conjugal union,”<sup>98</sup> such as conjugal fidelity, mutual aid, etc.<sup>99</sup>

The rights of marriage also reflect the two basic goods of marriage: the good of conjugal society itself, and the good of offspring.<sup>100</sup> Rosmini does not rank one over the other. Instead, he notes that, “[b]oth ends were present in God’s original institution of marriage,”<sup>101</sup> and in human history, “we see one prevailing over the other at different times.”<sup>102</sup> Rosmini sees the need to balance the “external” end of offspring with the “internal” end, “which is the natural good sought and found by two beings made for each other in their full union.”<sup>103</sup>

With regard to parental society, Rosmini notes that the parental rights over the child are not absolute. Rather, they must reflect the nature of the child who is free, and this freedom does not come from the parents but the Creator.<sup>104</sup> Rosmini also teaches that, “the *person* of the child occupies its own *body* from the first moment of existence.”<sup>105</sup> Consequently, the child “retains naturally the ownership of his own body which cannot be alienated by the parents.”<sup>106</sup> The child, as a consequence, has a “never-ending *ethical duty of gratitude*”<sup>107</sup> toward his or her parents.

Parents have certain rights and duties with respect to their children. Rosmini completely rejects the idea that parents can inflict

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95. *Id.* ¶ 1370, at 142 (emphasis added).

96. *Id.* ¶ 1371, at 142.

97. *Id.*

98. *Id.*

99. *Id.* (emphasis added).

100. *Id.* ¶ 1378, at 144–45.

101. *Id.* ¶ 1380, at 145.

102. *Id.* ¶ 1379, at 145.

103. *Id.* ¶ 1396, at 154.

104. *Id.* ¶ 1458, at 174.

105. *Id.* ¶ 1459, at 174–75 (emphasis added).

106. *Id.*

107. *Id.* ¶ 1460, at 175 (emphasis added).

the death penalty on their children.<sup>108</sup> Moreover, he believes that, in the Bible, God did not allow the death penalty to be used “[a]s long as people lived in domestic society.”<sup>109</sup> It is only when civil society was established (after the Flood) that the death penalty began to be used.<sup>110</sup> Parents cannot sell their children as bond-servants.<sup>111</sup> Punishment inflicted on children must be corrective and necessary; they cannot inflict any harm on the child unless it is necessary for the ordained good of the family.<sup>112</sup> In fact, all the actions of the parents toward their children must be aimed at the good of the family.

Rosmini does recognize a “blood bond” between parents and their children, which gives the parents the following five rights:

1. To *occupy* the child born to them[;]
2. To *use* the child for their own advantage, but without harm to the child[;]
3. To *rear* the child physically[;]
4. To *educate* the child in the way they think best for the child[; and]
5. To *keep the child in their society* until he marries and forms a new family, or certainly until something intervenes which makes it helpful to the child and his descendants to permit him to leave the domestic society of his parents.<sup>113</sup>

These rights are an expression of the *patria potestas*, which bestows a parental authority of the parents over their children (though it never allows them to do intrinsically evil acts).<sup>114</sup>

As children grow older, these rights of parents over them diminish but the blood relationships remain.<sup>115</sup> Rosmini, therefore, believes parents cannot force their children to marry spouses that the children find unacceptable.<sup>116</sup> Parents, though, have a right to

108. *Id.* ¶ 1466, at 176.

109. *Id.* ¶ 1468, at 177.

110. *Id.* Although Rosmini accepted, in theory, the possible use of capital punishment, he believed it was “desirable to restrict the death penalty as far as possible,” and he expressed hope that “certain civil, Christian societies will cease to make use of it in the not too distant future.” RIGHTS IN CIVIL SOCIETY, *supra* note 23, ¶ 2508, at 375 n.423.

111. RIGHTS IN THE FAMILY, *supra* note 22, ¶ 1472, at 180.

112. *Id.* ¶¶ 1474–79, at 181–82.

113. *Id.* ¶ 1489, at 184–85 (emphasis added).

114. *Id.* ¶¶ 1476–79, at 181–82; *id.* ¶ 1464, at 176; *see also id.* ¶ 1521, at 193–94 (ascribing a *moral* duty to parental education, which has often been mischaracterized as a *jural* duty).

115. *Id.* ¶¶ 1530–31, at 196.

116. *Id.* ¶ 1532, at 196.

propose spouses to their children, and they also have the right “to insist that the children choose partners whom [they] judge suitable.”<sup>117</sup>

### C. *Rights in Civil Society*

Rosmini treats rights in civil society in volume six of his *Philosophy of Right*.<sup>118</sup> He divides the volume into two sections: the first dealing with the “Theory of Civil Society,”<sup>119</sup> and the second with “Right in Already Constituted Civil Society.”<sup>120</sup> The first section consists of four parts: 1) “The Essence of Civil Society”;<sup>121</sup> 2) “The Science of Right in Civil Society Distinguished from Political Science”;<sup>122</sup> 3) “The Origin of Civil Society”;<sup>123</sup> and 4) “Occasional and Efficient Causes of Civil Society.”<sup>124</sup> The second section breaks down into three parts: 1) “Possible Elements of Injustice in Civil Society Considered as Such”;<sup>125</sup> 2) “The Organs of Civil Society and the Social Functions Determining Them”;<sup>126</sup> and 3) “Appendix to the Philosophy of Right—The Better Construction of Civil Society.”<sup>127</sup>

This Article need not cover all of the details of his exposition on rights within civil society. A few, though, should be noted. Rosmini believes those who are governed have rights of remonstrance and petition, even in absolute monarchies;<sup>128</sup> there is likewise a right to protection from slavery,<sup>129</sup> and “to express one’s feelings in the correct way, to tell the truth.”<sup>130</sup>

Rosmini’s view of rights within civil society, however, hinges on his conviction that civil society has been instituted to provide support to the theocratic and domestic societies, for these societies are prior to any state and have a more noble and elevated purpose.<sup>131</sup> As he

117. *Id.*

118. RIGHTS IN CIVIL SOCIETY, *supra* note 23.

119. *Id.* at 7.

120. *Id.* at 252.

121. *Id.* at 8.

122. *Id.* at 60.

123. *Id.* at 67.

124. *Id.* at 130.

125. *Id.* at 255.

126. *Id.* at 332.

127. *Id.* at 403.

128. *Id.* ¶ 2378, at 323.

129. *Id.* ¶¶ 2231–34, at 272–73. Rosmini also rejects hard servitude, which becomes “immanent, wicked, inexcusable slavery,” and proposes that “Christian governments are bound to punish its practice severely.” *Id.* ¶ 2234, at 273.

130. *Id.* ¶ 2376, at 322.

131. *Id.* ¶ 1593, at 17.

writes: "It is clear, therefore, that civil society has been instituted to further the two preceding societies . . . ." <sup>132</sup> All its laws, therefore, must never do damage to theocratic or domestic society, and all its laws and activities "serve solely to ensure the safety, peace and prosperity of theocratic and domestic society." <sup>133</sup> For Rosmini, there is a true sense of subsidiarity. Civil society must provide *subsidium* or support to the more primordial societies, rooted in marriage, the family, and the Church. <sup>134</sup>

### III. CONCLUDING THOUGHTS

Rosmini's understanding of human rights is rooted in his belief that rights are means to protect the human search for happiness. His ethical and political theories are ultimately eudaemonistic, i.e., oriented toward human well-being or happiness. His worldview, however, is supremely theocentric. Man's ultimate happiness transcends the goods of the earth, so priority must be given to the rights of theocratic and domestic society. Civil society is necessary, but its ultimate purpose is to regulate the goods proper to human nature (found in domestic society) and the goods proper to the human person (found in theocratic society). Civil society, therefore, should seek to insure "that the first two societies may prosper by attaining fully the end for which they were constituted by God and by nature, which is the minister of God's divine power and will." <sup>135</sup>

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132. *Id.* ¶ 1592, at 17.

133. *Id.*

134. *Id.* Rosmini also believes that civil society, when purified by theocratic society, can assist domestic society in going beyond selfishness. *See id.* ¶ 2683, at 444–45 ("Theocratic society does not want to destroy civil society, but root out the vice of selfishness that defiles it with injustice. In the same way, civil society did not want to destroy family society, but heal in it the same disease of even narrower selfishness.").

135. *Id.* ¶ 1591, at 16–17.