



Rosmini on Individual Rights: The Soul (Reason) as Forerunner of Individual Rights in Human Society

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Abstract

The question that can be asked today is: Of what relevance is Rosmini's legal theory on individual rights for modern man? Rosmini's individual rights did not appear from nowhere. From the opinions of some Greek writers, he concluded that the soul, as a result of its immortal and mobile qualities, is divine in nature and therefore serves as the origin of individual rights. Rosmini is of the opinion, unlike Thomas Aquinas, that the protection of individual rights should filter through to all levels of human existence; from the foetal stage to adult life. In contrast with the Aristotelian Thomistic hylomorphism doctrine, he believes that just like an adult, a foetus has a soul, even in its early stages, and is entitled to the protection of his/her individual rights. This is the basis of the Constitution of South Africa 108 of 1996. Owing to the innate nature of the human soul, Rosmini succeeded in postulating God as ontological framework for the individual rights of man. The description of the unique value of humans in Psalm 8:5 is striking: "For thou hast made him but little lower than God, and crownest him with glory and honor." (*American Standard Version*) Man, as image bearer of God, is thus endowed with individual rights that must be recognised by all, including the state. Rosmini hereby rejects the *salus rei publicae suprema lex* doctrine supported by Thomas Aquinas. Rosmini argues that, if this (*salus reipublicae suprema lex*) doctrine were to be followed, the state would be encroaching on the individual rights of its citizens. Furthermore, he believes that the state is geared to protect the individual rights of its citizens. Rosmini thus argues that the interests of the state are best served if the interests of the citizen are first protected.

Keywords: Hylomorphism, Soul, Body, Man, Foetus, Individual rights.

1. The soul

1.1 Introduction

This study is based on qualitative research in that it is a text analytic reading of Hippo, Empedocles, Critias, Anaxagoras, Democritus, Aristotle, Thomas Aquinas and Rosmini's conception of the unity of body and soul. Our investigation will begin with what are accepted by Greek philosophers as the natural characteristics of the soul. Two characteristics of the soul, namely mobility and perception, are compared by these philosophers. These two characteristics indicate the divinity of the soul and will serve as a preamble to our discussion. Rosmini constitutes these characteristics of the soul in such a way that it subsequently serves as a basis or object of individual rights in human society.

2. Motion and perception as constitutive elements of the soul

In this paper, Rosmini rectify the perceptions of some of the Greek philosophers. It has been established, on the one hand, that the opinions of Hippo (Note 1), Empedocles (Note 2) and Critias (Note 3) do not at all conform to the characteristics of motion and perception, which are generally ascribed (by most Greek philosophers) to the soul. On the other hand, Anaxagoras and Democritus, stresses motion, but ignore the principle of perception. Anaxagoras, for example, attributed a soul to animals. He argued that because the soul is a moving principle, animals do possess a soul. Although, Anaxagoras is correct, in terms of the motion principle, he errs in respect of the principle of perception. Animals do not possess perception (in terms of interpretative observation). (Note 4) This means that animals do not possess a soul (which is tantamount to reason). Similarly, Democritus emphasises correctly that the soul is the cause of motion, but he errs in arguing that loadstone possesses a soul because it attracts iron objects. (Note 5) He errs furthermore, when he says that a loadstone, cause motion. In so doing, he interprets motion in the sense that it is not loadstone that is moving, but loadstone that cause movement. Like, in the case of Anaxagoras, the principle of perception is also omitted here (by Democritus). Loadstone does not possess a soul. It would appear that Rosmini would agree with those philosophers who would assert motion and perception, and on the other hand, differs with those who assert that the soul is simply matter.

3. Man as composition of soul and body

Rosmini deduced man as a composition of soul and body from Aristotle's doctrine of form/matter and actuality/potentiality. (Note 6) Matter can be analogous to potentiality, and form to actuality. Although a composition, Rosmini plays off the soul and body against each other. (Note 7) The finding was that the body is not the soul. It is matter (potentiality), while the soul is the form of the body (actuality). The soul is the first actuality of a natural body having in it the capacity of life. (Note 8) Rosmini says: "In the composite, soul is the form, body the matter of the human being." (Note 9) It means that the soul is not independent of the body. (Note 10) If the soul is a substance altogether different from the body, we cannot infer the death of the soul from the death of the body. (Note 11) Man (in the sense of a person or an individual) is not only soul and body, but soul and body combined. (Note 12) This means that were the question respecting man to be posed, namely: "What exists here?" the answer would not necessarily be, "A soul or body", but rather, "A person exists here." Similarly, we do not say, for example, "My thought believes", or, "My hand plays piano", but rather, "I believe," or, "I play."

4. Divinity of man

Having identified a single soul in man, we must investigate the divinity of man. Rosmini writes that a substance which has no bodily or material property is called 'spiritual' or spirit. The human soul, therefore, is a spirit. (Note 13)

The concept of spirituality naturally relates to immortality. The word "death" only has reference to a physical (natural) entity: "[...] it would be absurd to attribute it to what is not body." (Note 14) Since spirituality indicates non-corporeality, the former is not subject to death. Rosmini furthermore says, that the soul is spiritual and therefore immortal. (Note 15) Owing to the fact that man is a union of soul and body, and that the soul preponderates, it can be inferred that man is a divine being. (Note 16) The description of the unique value of humans in Psalm 8:5 is striking: "For thou hast made him but little lower than God, and crownest him with glory and honor." (*American Standard Version*)

In view of the divine nature of man, the soul is immortal and possess reason (interpretative observation, which is not present in animals or loadstones). (Note 17) Rosmini writes: "The infinite is found in man only by having recourse to [reason]." (Note 18) and consequently: "The very unity of [men] unites souls to themselves." (Note 19) On account of the soul's divine characteristics, man is considered to be a divine being.

5. Human/foetal life

Under influence of the hylomorphism doctrine, Thomas Aquinas denies that the soul (human life) begins at conception. This results in a debate with Rosmini.

5.1 Debate between Rosmini and Aquinas on the different stages of human/foetal life: Rosmini in defence of individual right

Thomas Aquinas argues that a foetus cannot be viewed as a human, since it does not possess a soul. He explains: "[This=human life] does not occur until the foetus has developed its brain and sensory systems to the point where it can support the distinctive intellectual capacities of a human being." (Note 20) His perception of when life begins is shaped by his view that material entities (humans) have life by virtue of the soul. He writes: "[Until] the foetus has a human soul, it is not a human being, no matter what the underlying biology looks like." (Note 21) Rosmini holds, on the other hand, that the foetus also possesses a (human) soul (from conception): "Primal, hidden, initial life [...] never perishes." (Note 22) Hereby Rosmini rejects Thomas Aquinas' argument that before a soul can exist, a foetal development should take place, according to which the vegetative soul portion expires and is followed by a more developed sensory (animal) soul portion that perishes, after which it culminates in a rational (intellectual) soul of man. According to Aquinas, only by the latter development stage, is there a human being, wherein the soul possesses a perfect body and developed brain with which to conduct life. (Note 23) Aquinas asserts that during the early stage of pregnancy (*anima vegetative* and the *anima sensitive*), the foetus does not have these characteristics (for example, a perfect body and developed brain). He writes that, if a body is not present, there is no soul and therefore there can be no human life. (Note 24) In other words: Before the rational soul (*anima rationalis*) can be created, the foetus will not have the ability to think. According to Aquinas, the foetus in the early stages of pregnancy is comparable to a plant or animal, and as such is not human. (Note 25) As mentioned previously, Rosmini acknowledges the existence of the soul from the beginning of the life of a foetus (that is, from conception) and is therefore, in his view, a human being. Rosmini thereafter emphasises the immortality of the soul (from foetal to adult stage). According to Thomas Aquinas the two preceding soul portions are mortal. Rosmini argues that the soul does not expire and that they are rather in "[...] a harmonious stimulation in a perpetual cycle." He therefore writes: "[...] the soul is immortal because life cannot lack life." (Note 26) Since Rosmini is afraid that he will end up with the same dilemma as Aquinas, he emphasizes that the sensory element (animal) soul portion is absorbed by the rational (intellectual soul) and that the latter furthermore preponderates. Hereby Rosmini again emphasises the unity of the human soul (as mentioned in paragraph 3) and also believes that different soul portions

never exist: “the soul is one in each human being,” (Note 27) and argues further: “[...] the unity of the soul disposes of the error requiring simultaneously three souls, animal, sensitive and intellectual, which certain authors [such as Thomas Aquinas] have endeavoured to posit in human beings.” (Note 28) Rosmini says regarding the Aristotelian Thomistic hylomorphism doctrine: “Even granted the existence in human beings of a principle of vegetation and sensation distinct from myself, this principle would not be the human soul, but something different from it.” (Note 29)

Rosmini thus acknowledges the existence of a single soul that shows development until man’s eventual birth.

Thomas Aquinas consequently argues that it is impossible for the rational soul to be created in man at the moment of conception. He asserts that God would not want a foetus to have an innate rational soul. God would only create the soul in man when the foetus has sufficiently developed. (Note 30) The question that can be asked is: At what point does this occur? According to Aquinas, the foetus is sufficiently developed during mid-pregnancy, that is, the twentieth week of pregnancy. At this point it has a perfect body and developed brain: This is 40 days for men and 90 days for women. The rational soul is only implanted at these respective times in the different sexes. (Note 31) At these respective times, the foetus will have sufficiently developed in Thomistic terms and can therefore be viewed as a human being. (Note 32) It is during the late stage of pregnancy, that is, after the twentieth week of pregnancy (ensouling), that one has to do with a human being, and abortion is stimulated by ethical considerations. According to this, abortion is criminalised and the taking of a human life is an encroachment of individual rights and tantamount to murder. (Note 33) Thomas Aquinas thus asserts that abortion during the early stage of pregnancy is permissible, but not during and after the twentieth week of pregnancy. In relation to the Thomistic distinction between the early and late stage of pregnancy, Thomas Aquinas debates with Rosmini and causes a violation of the individual right of the foetus by allowing abortion in the early stage of pregnancy. Despite Rosmini’s disapproval thereof, Thomas Aquinas’ approach was accepted in South Africa’s *Choice on Termination of Pregnancy Act 92 of 1996*.

Obviously, Rosmini views man, as well as the foetus, as an intellectual (rational) being. Rosmini therefore states that the Thomistic distinction between the early and late beginning of life is spurious and should be regarded as of lesser importance. Despite Rosmini’s association with the Church *magisterium*, which is silent on the subject of at which moment life begins, Rosmini argues, as do the majority of Catholics, that an actual person exists from the moment of conception. The Church *magisterium* views the foetus as a gift from God to mankind. On the basis of this God-given gift, the foetus must consequently be endowed with divine characteristics, even from the moment of conception. This therefore involves that the foetus also has individual rights during the stage of conception, which according to Article 11 (the right to life) of the Constitution of South Africa, act 108 of 1996, must be respected by all. According to this, performing an abortion (regardless at which stage of pregnancy) can therefore be considered a violation of the individual rights of the foetus.

6. *Nasciturus* fiction

Rosmini faces a dilemma. He desires to ascribe legal subjectivity (legal personality) to the foetus, but is prevented from doing this by South African common law, since a legal subject in the legally technical sense refers to someone that is endowed with rights and obligations. (Note 34) This means that, despite the fact that the foetus is an intellectual and rational being and thus has a soul, it still does not have legal subjectivity (legal personality). In terms of the South African common law, the legal subjectivity of a natural person only begins at birth. An unborn child is, for the purposes of the law, not a legal subject, since it has not yet been born. (Note 35) Rosmini’s dilemma is, however, solved by a legal institution, the *nasciturus* fiction, of South African law. According to Judge Hiemstra, the *nasciturus* fiction in the case of *Pinchin v Santam Insurance Co. Ltd.* (Note 36) involves that the foetus can be viewed as a living being (born) [regardless of the stage of pregnancy], if it is in the foetus’ interest or to its advantage. (Note 37) This finding by the judge implies that Thomas Aquinas’ distinction between early and late pregnancy can be dispensed with, and that in both stages of pregnancy (early and late) the foetus should be endowed with legal subjectivity. The thought can be rounded off as follows: When the foetus is born alive, it will be to his/her advantage. According to this, the foetus not only benefits by virtue of the *nasciturus* fiction, but, just like every other person, is also entitled to the protection of his/her individual right, namely his/her right to life (as guaranteed by Article 11 of the South African Constitution 108 of 1996).

Owing to the *nasciturus* fiction, the foetus will have subjective rights, provided it is to his/her advantage. But what if this provision is not met? Does this mean that the foetus’ subjective right is denied? If that is the case, Thomas Aquinas’ argument that the foetus is a plant (*anima vegetativa*) or animal (*anima sensitiva*) in the early stage of pregnancy, would be correct. The result hereof is that the foetus is not a legal subject, and therefore does not have individual rights. His/her individual right (the right to life) can thus, according to Thomas Aquinas and the South African common law, be encroached upon. On these grounds, Rosmini can argue that the prescriptions of the *nasciturus* fiction should be expanded—not only to the point where it is entitled to an advantage, but also if there is no material benefit for him/her. Rosmini thus pleads that South African common law should coincide with the Constitution.

7. Constitutional protection

From the debate between Rosmini and Aquinas, and the former's approach being superior, we can reach the conclusion that a foetus, despite the lack of legal subjectivity (according to the South African common law), is also a person. On this foundation, Rosmini has made a study for the protection of individual rights for all (including the foetus) possible.

The requirements of the moral law, which issues from the natural law, involve that one does not do to others that which one does not want done to oneself. The fact that you as an adult were not aborted when you were an foetus (embryo) signifies that you should do the same for your unborn baby. The inalienable right to life must be acknowledged and respected by both the state and the courts. Among these inalienable rights are each individual's right to life and physical integrity from the moment of conception until death. As soon as the state denies or deprives a certain category of human beings protection, it denies the equality of all before the law, which is guaranteed in terms of Article 9 of the *Constitution of South Africa* 108 of 1996. In terms of Article 9(3) of the Constitution, the state will thus be unfairly discriminating against the foetus if it does not protect the foetus' right to life. In this regard Article 9(3) says that the state would: "[...] unfairly discriminate directly or indirectly against anyone on one or more grounds, including [...] age [...] and birth," if it did not guarantee the foetus' right to life in terms of the Constitution. In my opinion, Rosmini could argue that the requirements of the *Choice on Termination of Pregnancy Act* 92 of 1996 should not be complied with, since it undermines the equality principle of the Constitution. After all, Article 2 of the Constitution expresses the principle of constitutional supremacy. Article 8 of the Constitution also stipulates that the *Bill of Rights* of the Constitution supersedes all legislation (including the *Choice on Termination of Pregnancy Act*). This approach is supported by the court case *Executive Council of the Western Cape Legislature v President of the Republic of South Africa* 1995 (4) SA 877 (CC), in which it was determined: "Any law or conduct that is not in accordance with the Constitution [...] will therefore not have the force of law." (Note 38) In view of this, the South African Constitution is the best guarantee for the protection and preservation of individual rights. The Constitution should, in my opinion, declare the *Choice on Termination of Pregnancy Act* unconstitutional.

8. Man and the State

The practical implication of Rosmini's basic legal doctrine involves that man must be endowed with fundamental rights, from the foetal stage of pregnancy to adulthood. On the basis of this, man may not be deprived of individual rights. (Note 39) The Church *magisterium*, in the *Declaration on Procured Abortion*, and Tertullian confirms that the foetus: "[...] would never be made human if it were not human already." (Note 40)

The person as an intellectual being possesses a soul (reason) (paragraph 4) and, by virtue of this, is viewed as a carrier of individual rights. According to this, man as an intellectual (divine) being, is endowed with moral dignity. He must be respected, since man is the image bearer of God. This divine intellect, or reason, is constitutive of the dignity of man. (Note 41) By virtue of this dignity, man possesses a fundamental individual right, that may not be encroached upon, even by the state. Rosmini writes: "The State, for example, cannot absorb the inalienable rights proper to persons, nor can it be considered as more than its individual members in such a way that persons can be sacrificed for the sake of society." (Note 42) Further, he says: "[...] not a single right of individual citizens [...] can be sacrificed for the sake of the public good [...]" (Note 43) On account of these quotations of Rosmini, there cannot be complied with the doctrine *salus rei publicae suprema lex*. The doctrine *salus rei publicae suprema lex* is totalitarian in nature and leads to a belittlement of man, since Thomas Aquinas writes that the individual subject to the state. (Note 44) This means that the *salus rei publicae suprema lex* doctrine which Thomas Aquinas obviously supports, approves the state's power to infringe upon the individual rights of its citizens. The approach is demonstrated in the light of the following references: In terms of the court case *S v Essop and Others* (Note 45), the *salus rei publicae suprema lex* doctrine is explained as follows: "The safety of the State is the supreme law of a state." This maxim is also mentioned elsewhere in judicature, for example, *Africa v Boothan* (Note 46) and *S v Baker, S v Doyle*. (Note 47) The source *Latin for Lawyers* explains it this way: "[The] welfare of the people, or of the public, is supreme law," (Note 48) and further says: "[This] phrase is based on the implied assent of every member of society, that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty, and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good." (Note 49)

Basic individual rights are described as unassailable. Yet, the principle, *salus rei publicae suprema lex*, implies that the government authority can utilise all the means at its disposal to overcome any threat to the security of the state, even if individual rights are thereby sacrificed. This principle is supported by Judge Rose-Innes in *Krohn v Minister of Defence and Others*: (Note 50): "[...] but there is an inherent right in every state, as in every individual, to use all means at its disposal to defend itself when its existence is at stake; when the force upon which the courts depend and upon which the constitution is based, is itself challenged. Under such circumstances the state may be compelled by necessity to disregard for a time the ordinary safeguards of liberty in defence of liberty itself, and to substitute for the careful and deliberate procedure of the law a machinery more drastic and speedy in order to cope with an urgent danger." Rosmini, on the other hand, opine (in contradiction to *salus rei publicae*) that the right of the individual is very important and

must therefore be protected up to the point where the interests of the community prevail (since its existence is threatened). After all, the individual's right would not be able to keep existing, if the society in which he exercises that right, were to perish. Rosmini puts it this way: "[...] society must prefer not to do harm to a private individual even for the sake of obtaining the safety of all the others. Conversely, it cannot do some good to the individual unless this good comes about without any damage or diminution of public good." (Note 51)

The general legal feeling is that a balanced relationship must be maintained between individual rights and state security (*salus rei publicae*). However, this does not seem to be the case with Rosmini and Thomas Aquinas. The former tends to give preference to the individual over the state: "Not a single right of individual citizens [...] can be sacrificed for the sake of the public good," (Note 52) while the latter is in favour of the interests of the individual being subject to the state: "[...] the individual as subordinate to the [state]." (Note 53)

9. Conclusion

The message is directed to those individuals who are responsible for the formulating of the conscience and public opinion, namely scientists, physicians, jurists and politicians. They should support the South African Constitution, which is the best guarantee for protection and preservation of individual rights (of the foetus and the adult), and undo the shortcomings which handicap it, so that the practical implications of Rosmini's Christian view of individual rights can be highlighted in reference to the South African Constitution. It stands to reason that Rosmini's treatment of individual rights can be viewed as a precursor of the South African Constitution. The Bill of Rights, in the Constitution, finds support in Rosmini's treatment of individual rights. If Aquinas had been in possession of the facts about embryology, he would have had a totally different view of the beginning of biotic life. Regarding embryology, he was completely influence by Aristotle. As for the distinction between the early and late beginning of life and Aquinas' choice respecting the former, and also because of his (Thomas Aquinas') totalitarian view of the state, the debate between him and Rosmini resulted.

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Tertullian. *De Anima*.

Notes

Note 1. De Anima 405a 12-405b 8. To Hippo the soul is water. The reason for this is that in all living beings semen is wet/damp. Semen is to him the undeveloped soul.

Note 2. Note. Aristotle. De Anima xxi; De Anima 404a 19-404b 15. Empedocles seeks the existence of the soul in air, earth, water and fire, which are the origins of the vital functions. He undermines the element of perception (senses) and feels that this element is imperfect. He also disregards the element of motion. Empedocles rather constitutes the soul in the element of blood.

Aristotle. De Anima xxiv. "Thus, then, we perceive like by like, the four elements of all things air, earth, fire and water, because air earth, fire and water are present in our bodies. Blood is the most perfect mixture of these four elements and to this blood where it is purest, viz. about the heart, he attributed thought."

Note 3. De Anima 405a 12-405b 8. Critias agrees with Empedocles against Hippo when he says that the soul is blood. He differs from Empedocles though, in the sense that he does not include earth in the composition of the distinct components for the formation of blood. Moreover, his opinions show parallels to those of Empedocles

Note 4. De Anima 404a 19-404b 15.

Note 5. De Anima 405a 12-405b 8.

Note 6. Rosmini, Development (1999 (vol. 2)) 47.

Aristotle, De Anima 412a 5-20.

Note 7. Rosmini, Development (1999 (vol. 2)) 12-13.

Note 8. De Anima 412a 22-412b 21.

Note 9. Rosmini, Essence (1999 (vol. 1)) 115.

Note 10. De Anima 414a 14-414b 10.

Note 11. Essence (1999 (vol. 1)) 85.

Note 12. Thomas Aquinas, Summa Theologiae 1a, q. 75, a. 4. "[Hominem] nec aliam solam, nec solam corpus, sed animam simul et corpus esse arbitrator."

Note 13. Rosmini, Essence (1999 (vol. 1)) 85.

Note 14. Essence (1999 (vol. 1)) 85.

Note 15. Essence (1999 (vol. 1)) 85.

Note 16. Rosmini supposes that the good (the divine nature of the man), will eventually prevail over the physical (natural), and that man thus has participation with God, the highest Being. The idea shows parallels to the Thomistic analogia entis and participation doctrine.

Note 17. Aristotle, De Anima 415a 8-415b 5.

Note 18. Essence (1999 (vol. 1)) 123.

Note 19. Essence (1999 (vol. 1)) 123, voetnoot 109.

Note 20. Thomas Aquinas, Summa Contra Gentiles II. 89. 1737

Pasnau, Aquinas on Human Nature (2002) 108.

Note 21. Aquinas on Human Nature (2002) 109.

Parallel reading: Thomas Aquinas, Summa Theologiae 1a, q. 75, a. 5.

Note 22. Rosmini, *Essence* (1999 (vol. 1) 288.

Note 23. *Summa Theologiae* 1a, q. 76, a. 3; 1a, q. 76, a. 5.

Summa Contra Gentiles II.89.1745. "The vegetative soul comes first, when the embryo lives the life of a plant. Then it is corrupted, and a more complete soul follows, at once both nutritive and sensory, and then the embryo lives the life of an animal. But once this is corrupted, the rational soul follows [...]"

Note 24. *Summa Theologiae* 1a, 76, a. 4.

Note 25. Thomas Aquinas *Summa Theologiae* 1a, 76, a. 3. "Animal autem dicitur ex eo quod habet animam sensitivam."

Summa Theologiae 1a, 76, a. 3, obj. 3. "Praeterea Philosophus dicit quod embryo est prius animal quam homo."

Note 26. Rosmini, *Essence* (1999 (vol. 1)) 287.

Note 27. *Essence* 82.

Note 28. *Essence* 82.

Note 29. *Essence* 82.

Note 30. *Summa Theologiae* 1a, q. 78, a. 1.

Note 31. Haldene, Aquinas on Human Ensoulment, *Abortion and the Value of Life* (2003) 266.

Note 32. *Summa Theologiae* 1a, q. 76, a. 5.

Haldene, Aquinas on Human Ensoulment (2003) 269.

Note 33. Thomas Aquinas, *Summa Theologiae* 1a2ae, q. 95, a. 2. "Derivantur ergo quaedam a principiis communibus legis naturae per modum conclusionem: sicut hoc quod est 'non esse occidum', ut conclusio quaedam derivari potest ab eo quod est 'nulli esse malum faciendum'"

Note 34. Davel, *Introduction to Child Law in South Africa* (2000) 2, footnote 9.

Neethling, *Deliktereg* (2006) 46.

Note 35. Davel, *Child Law* (2000) 2-3

Note 36. 1963 2 SA 254 (W)

Note 37. Testamentary advantage, or advantage of any kind, is viewed as of lesser importance in this context.

Note 38. Iain Currie, *The Bill of Rights Handbook* (2005) 9.

Note 39. Rosmini, *Rights of the Individual* (1993(b)) 19.

Note 40. *Congregation for the Doctrine of the Faith* (1987) 13.

Tertullianus, *Aplogoeticum* ix. In opposition to Aquinas, Tertullianus supports the Church magisterium and Rosmini. He writes: "Nobis vero semel homicidio interdicto etiam conceptum utero, dum adhuc sanguis in hominem delibatur, dissolvere non licet. Homicidii festinatio est prohibere nasci, nec refert natam quis eripiat animam an nascentem disturbet. Homo est et qui est futurus; etiam fructus omnis iam in semine est."

Note 41. *Anthropology* (1991) ix.

Note 42. Rosmini, *Rights in Civil Society* (1996) 37.

Note 43. Rosmini, *Rights in Civil Society* (1996) 37.

Note 44. Thomas Aquinas, *Summa Theologiae* 1-2, q. 90, a. 3. "Et ideo sicut bonum unius hominis non est ultimus finis, sed ordinatur ad commune bonum, ita etiam et bonum unius domus ordinatur ad bonum unius civitatis, quae est communitas perfecta."

Note 45. 1973 2 SA 815 (T).

Note 46. 1958 2 SA 459 (A) 462-3.

Note 47. 1965 1 SA 821 (W).

Note 48. *Latin for Lawyers* (1937) 241.

Note 49. *Latin for Lawyers* (1937) 241.

Note 50. 1915 AD 191.

Note 51. Rosmini, *Rights in Civil Society* (1996) 39.

Note 52. *Rights in Civil Society* (1996) 37.

Note 53. D'Entrèves, Aquinas. *Selected Political Writings* (1965) xviii.