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CONTRIBUTIONS, PART I: ARTICLE: CONTEMPORARY APPLICATIONS OF
ROSMINI'S VIEWS ON PERSONHOOD: SLAVERY AND INTELLECTUAL
PROPERTY ABUSE**

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Introduction

Recent developments in mobile communications bring to light, and make urgent, connections between intellectual property rights and human rights. True, human rights relate to natural law, while intellectual property relates to civil law. However, this phenomenon has consequences which are increasing and devastating: the economic exploitation of one's intellectual property intended in its widest sense, namely, abstracting beyond the alienation of one's own thought to embrace the alienation of the image of one's own body, of one's own voice, and even of one's own cultural identity. Provided it is voluntary, such alienation is usually a legitimate economic exploitation, while a non-voluntary alienation is potentially criminal. The impact of new technologies, however, has accelerated the process. Every cell phone today can take or steal voices, images, and whole performances, which can be posted for profit. The notions of author and work of art are in constant development and require adapting to an environment in which technical progress, lawmaking, and individual needs are changing too. ¹ In this sense, the notion of copyright shows implications that go beyond the mere economic issue and invest moral issues such as reputation, attribution, and association. ² First and foremost, however, the work of art must not be an instrument for external designs. Traditional private and public spaces were always local and as such subject to local legislation; the **[*278]** Internet has provided instead a global space of communication, no matter how virtual and intangible. In this global space, the defense of one's private rights is proving to be increasingly difficult, for to date neither social conventions nor legal sanctions have been provided. The hope is that the dynamic networks that have blossomed on the Internet will find themselves remedies in order to protect one's private sphere. However, to do so Internet users must prove to be strong in their ethical and religious assumptions. At stake is the formulation of a legal anthropology of human rights. Blessed Antonio Rosmini-Serbati's personalist philosophy provides an effective stand for defending the sanctity of life in accordance with the Christian anthropological view. ³ A number of case studies

¹ See generally Marianne Levin, Intellectual Property Rights in Transition, 42 Scandinavian Stud. L. 83, 83-84, 86, 87 (2002).

² See Riccardo Pozzo, Immanuel Kant on Intellectual Property, 29 Trans/Form/Acao, no. 2, Dec. 2006, at 11, 12.

will be considered and the predication (known already in the Roman Law) of "active slavery" will be shown to apply.
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I. Rosminian Ethics

Rosminian ethics is divided into three parts. He starts from "pure nomology," which is very close to Kant's moral law, and considers the supreme law or principle of ethics.⁵ Under the heading of "moral anthropology" Rosmini deals then with the human moral subject in the natural order, which is very close to Kant's metaphysics of morals.⁶ On top of these, Rosmini requires thirdly a "moral logic" in order to apply the moral principle to the moral subject without danger or error.⁷ Finally, the three parts of "pure ethics" are distinguished from "applied ethics," which deals with the concrete cases of moral laws or formulas, considered in themselves and according to the psychological conditioning of the subject who is [*279] supposed to carry them out.⁸ Just like Kant, however, Rosmini did not write any treatise on applied ethics.

Given that the moral good is objective,⁹ and given that moral actions are our own and fulfill our human personality,¹⁰ the human will is the "active power operating according to reasons present to the mind and proposed by the human subject to himself."¹¹ Therefore, "truth is the principle of morality, and ... acknowledgment of the truth, (that is, acknowledgment of direct knowledge) is the supreme duty and the proper, essential act of morality."¹²

II. Active Slavery

Rosmini's rather scholastic definitions of parts and notions of ethics continue nonetheless to be effective in the context of some case studies provided by contemporary individuals who use technology to damage themselves. Consider a ninety-second newsreel related to the Naples, Italy earthquake of November 1980.¹³ A camera team is meeting a young immigrant at the airport in Fiumicino, who is rushing back to help in the highly damaged village of his family. Assume that, hypothetically, just after the first cut, a transaction had taken place between the young man and the reporters, which might have run more or less like this: We are taking you to Calabritto, faster than by train or bus and on top of this we give you 300,000 lire (which in 1980 corresponded to €3,000 today), provided you agree to our camera shoots. This means you have to sign a disclaimer in which you transfer to the television station all rights to economic exploitation of your image, of the things you shall say, and of the things you shall do. And in fact, the newsreel broadcasts a number of impressive shots of the young man's grief. It looks like a normal

³ See Cardinal Jose Saraiva Martins, Homily at the Mass for the Beatification of Antonio Rosmini, The Vatican (Nov. 18, 2007), http://www.vatican.va/roman_curia/congregations/csaints/documents/rc_con_csaints_doc_20071118_beatif-rosmini_en.html; see also Giuseppe Cantillo, *Persona e societa tra etica e teodicea sociale: Saggio su Rosmini* (1999).

⁴ See Riccardo Pozzo, *Schiavitù attiva, proprietà intellettuale e diritti dell'uomo*, 30 *Intersezioni* 145, 145-53 (2010) (discussing the idea of "active slavery").

⁵ Terence Watson & Denis Cleary, Preface to Antonio Rosmini, *Principles of Ethics*, at xv (Terence Watson & Denis Cleary trans., Rosmini House 2d ed. 1989) (1867) [hereinafter *Principles of Ethics*]; see also Immanuel Kant, *The Metaphysics of Morals* 14 (Mary Gregor ed. & trans., Hackett Publ'g Co. 2d ed. 1999) (1797) [hereinafter *Metaphysics*].

⁶ Compare Watson & Cleary, *supra* note 5, at xv, with *Metaphysics*, *supra* note 5, at 10.

⁷ Watson & Cleary, *supra* note 5, at xv.

⁸ *Id.* at xvi, xv.

⁹ *Principles of Ethics*, *supra* note 5, at 52.

¹⁰ *Id.* at 54.

¹¹ *Id.* at 65.

¹² *Id.* at 82 (emphasis omitted).

¹³ *Telegiornale delle 13:00* (RAI 2 television broadcast Nov. 21, 1980) (on file with author).

intellectual property release, and no actor's agent would find any fault. On the other side a philosopher - Immanuel Kant - would object. By arbitrarily disposing of the image of his own grievance, the young man is actually degrading the humanity which lies in him, and which would stop being an end for itself, namely grief, the respect **[*280]** due to the grief of the one or the other person, and would become a means, a means towards gaining an external profit.
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In May 2008, a letter to the editor of the "Italians" column of *Corriere della Sera* expressed a series of doubts in regard to the increasingly uninhibited use of new technologies for disseminating images.¹⁵ Punctually, a few weeks later, came the confirmation of the darkest forecasts, a young girl selling pictures of her naked breast via her cell phone.¹⁶ Given the involvement of a minor, and given the obvious illegality of the transaction, the actor's agent, referenced above, would have had something to say in this case. Kant would repeat that by arbitrarily disposing of the image of her breast, by making use of her person merely as a means, the girl would be degrading from an end to a means the humanity that lies in her, for also in this case the action has profit as a goal. Among young people, the body matters. The point is the body does not mean to be physically there, in three dimensions, it can also be an iconic physicality, in two dimensions, without mass.

To understand the notion of "active slavery," we must go back to Aristotle, who opposed the slaves, as slaves by nature, to the citizens of the city.¹⁷ Slaves can understand reasons, but they do not use their own reason.¹⁸ They have no power to act, so they do not use the deliberative faculty.¹⁹ There can be a certain community of interest, and even friendship between slave and master, suggests Aristotle, in cases when they have been qualified by nature for those positions.²⁰ The Roman Law declared all human beings to be free and equal according to the natural law, while conceding that some among them might be slaves according to the positive law.²¹ Also Aquinas maintained that slavery has no natural cause and that its origins lie in **[*281]** the profit gained by both the slave owner, who runs a business, and the slaves themselves, who have traded their lives for becoming instruments.²² In the seventeenth century, Hugo de Groot did not hesitate to point out the reciprocal advantage to both the slave and the slave owner, for food and shelter are always a valid economic means of exchange.²³ Samuel von Pufendorf identified human dignity in the immortality of the soul and in the fact that all human beings were capable of the light of the understanding, with the consequence that all human beings are equal by nature.²⁴ At that time,

¹⁴ *Metaphysics*, supra note 5, at 177; see also 6 Immanuel Kant, *Kant's Gesammelte Schriften* 423 (1920); Oliver Sensen, *Kant on Human Dignity*, 100 *Kant-Studien* 309, 311, 315-16, 330 (2009).

¹⁵ Cristina Fossati, *Letter to the Editor, Video hard tra giovanissimi*, *Corriere della Sera* (May 23, 2008), <http://www.corriere.it/solferino/severgnini/08-05-23/10.spm>.

¹⁶ Roberto Rizzo, *A 12 anni si fotografa nuda a scuola: Immagini vendute per comprarsi abiti firmati*, *Corriere della Sera* (June 29, 2008), http://archivistorico.corriere.it/2008/giugno/29/anni_fotografa_nuda_scuola_immagini_co_9_080629078.shtml.

¹⁷ See Aristotle, *Politics*, Bk. I, Ch. 2 (B. Jowett trans.), reprinted in 2 *The Complete Works of Aristotle* 1987 (Jonathan Barnes ed., 1984).

¹⁸ *Id.* Bk. I, Ch. 5, at 1990.

¹⁹ *Id.* Bk. I, Ch. 13, at 1999.

²⁰ *Id.* Bk. I, Ch. 6, at 1992.

²¹ See Dig. 1.5.4 (Florentinus, *institutionum* 9) (Alan Warson trans., 1998).

²² St. Thomas Aquinas, *Summa Theologica*, Pt. II-II, Q. 57, Art. 3 (Fathers of the English Dominican Province trans., Benzinger Bros. 1947); see also St. Thomas Aquinas, *Summa Contra Gentiles*, Bk. III:II, Ch. 112 (Vernon J. Bourke trans., Image Books 1956).

²³ 2 Hugo Grotius, *The Rights of War and Peace* 557-58 (Richard Tuck ed., Liberty Fund 2005) (1625).

²⁴ 2 Samuel von Pufendorf, *De Jure Naturae et Gentium* 148 (C.H. Oldfather & W.A. Oldfather trans., Hein & Co. 1995) (1688).

then, the Aristotelian notion of slaves by nature lost its meaning. Exactly the argument laid out by Pufendorf came - through the mediation of John Wise - into the United States Declaration of Independence of 1776.²⁵

Rosmini makes it clear that there are two anthropological postulates. The first is, "being is known of itself If being is in itself light or idea ... it constitutes the essence or form of knowledge. It is therefore the seat of the evidence to which, in order to be perfect, every demonstration of knowledge must be reduced as to its final term."²⁶ The second is:

Experience of the feeling under discussion must be granted Being is known in itself; in order, therefore, for feeling to be made known to a mind, the spirit must refer feeling to being, the form of all cognitions. But feeling cannot be referred to being by someone who does not have feeling; having and experiencing feeling is the same. A feeling therefore cannot be known by anyone who has no experience of it... . Feeling, therefore, must be accepted as a postulate and incapable of definition.²⁷

[*282] It is important to stress the primacy given by Rosmini to "fundamental feeling" for human action. But this is no subjective feeling. It is rather the objective immediate feeling of being. On the basis of both postulates, Rosmini proposes and provides an explanation of the following definition of body:

"Body is an extended, tactile, odorous, coloured, etc. substance.' Besides the word is, which is known per se and needs no definition, the following words are present in the definition: 1. substance, 2. extended, 3. tactile, 4. odorous, coloured, etc. They must be considered as unknown, and their value found by means of definitions."²⁸

The human being is "an intellective and volitive animal subject... . endowed with the intuition of indeterminate-ideal being and with the perception of its own corporeal fundamental feeling, and operating in accordance with animality and intelligence."²⁹ These definitions indicate three distinct elements: "1. the animal part; 2. the spiritual part ... the complex of intellectual and volitive powers; 3. and ... the middle part, which joins the first two parts in itself and makes an individual, a subject, of the human being."³⁰ The human subject is "a subject that is simultaneously a principle of animality and of intelligence," and therefore with the human person, "an intellective subject in so far as it contains a supreme, active principle."³¹

If a human subject is for Rosmini "a mixed, feeling-intellective subject or, simply a rational subject,"³² a person is the "class of the most noble of subjects, the intellective."³³ Only the person is able to apprehend the union of morality and happiness. The idea of being finds its anthropological fall out as an eternal law of justice decreeing that "a morally good will should be happy."³⁴ Happiness, which consists for Rosmini in the "intercommunication of intelligences and universal love, means simply enjoyment of the totality of being, which is rooted and consummated in the first, infinite intelligence, **[*283]** God himself."³⁵ Rosmini was able to state the terms of a concept of person

²⁵ Hans Welzel, Ein Kapitel aus der Geschichte der amerikanischen Erklärung der Menschenrechte, in *Zur Geschichte der Erklärung der Menschenrechte* 236-66 (R. Schnur ed., Darmstadt 1964).

²⁶ Antonio Rosmini, *Anthropology as an Aid to Moral Science*, postulate 1, at 12 (Denis Cleary & Terence Watson trans., Rosmini House 1991) (1838) [hereinafter *Anthropology*].

²⁷ *Id.* postulate 2, at 13.

²⁸ *Id.* postulate 2, at 14.

²⁹ *Id.* at 20.

³⁰ Antonio Rosmini, *The Human Being*, P 44, in *Anthropology*, supra note 26, Bk. I, at 28.

³¹ Antonio Rosmini, *The Human Subject*, PP 767, 769, in *Anthropology*, supra note 26, Bk. IV, at 418.

³² *Id.* P 790, at 427.

³³ *Id.* P 833, at 451.

³⁴ *Id.* P 890, at 474.

that is all but purely subjective individualism. A person is (a) individual because the fundamental feeling is his or her basis; it is (b) rational due to his or her being illuminated by the objective light of being; and he or she is (c) capable of moral actions due to the same objective light of being.

III. Human Dignity

To annihilate the subject of morality in one's own person is to root out the existence of morality itself from the world, as far as one can, even though morality is an end in itself. Consequently, disposing of oneself as a mere means to some discretionary end is debasing humanity in one's person (*homo noumenon*), to which man (*homo phaenomenon*) was nevertheless entrusted for preservation. To deprive oneself of an integral part or organ (to maim oneself) - for example, to give away or sell a tooth to be transplanted into another's mouth, or to have oneself castrated in order to get an easier livelihood as a singer, and so forth - are ways of partially murdering oneself. But to have a dead or diseased organ amputated when it endangers one's life, or to have something cut off that is a part but not an organ of the body, for example, one's hair, cannot be counted as a crime against one's own person - although cutting one's hair in order to sell it is not altogether free from blame.³⁶

Immanuel Kant, and Rosmini in his wake, defend human dignity with an open sword. In the *Grounding of the Metaphysics of Morals* Kant is lapidary: "rational nature exists as an end in itself."³⁷ Dignity is a property that inheres to "whatever is above all price, and therefore admits of no equivalent."³⁸ Dignity is the condition for something to be "an end in itself" and thus to have "not merely a relative worth, i.e., a price, but an intrinsic worth, i.e., a dignity. Hence, morality and humanity, in so far as it is capable of morality, alone have dignity."³⁹ What provides the human being with its dignity, says Kant, is autonomy, namely it's being free as regards all [*284] laws of nature, for it obeys only those laws which it gives to itself.⁴⁰ The human being has thus in its "dignity (prerogative)" the capacity of being aware "that its maxims must be taken from the viewpoint that regards himself, as well as every rational being, as being legislative beings (and hence they are called persons)."⁴¹ And here we have reached the passage we aimed at, namely the prehistory of personalism. It was Kant, as soon as 1785, who imposed a number of criteria for acknowledging intellectual property.⁴²

Rosmini bases ethics on the interpretation of a fundamental moral law defined as the "notion of the mind used for making a judgment about the morality of human actions, which must be guided by it."⁴³ Rosmini objects to Kant's system of ethics, however, because it

attributes to the subject what belongs to the object. I have indicated how the object (which, for me, is the supreme moral law) is endowed with divine characteristics such as immutability, eternity, universality, necessity. All these characteristics are mistakenly attributed [by Kant] to the human subject, who was thus divinised. Those who uphold this system speak enthusiastically of what is divine in the human being, and make the human creature a law unto himself. Kant named the system autonomy, that is "law unto oneself."⁴⁴

³⁵ Id. P 894, at 476.

³⁶ *Metaphysics*, supra note 5, at 177.

³⁷ Immanuel Kant, *Grounding for the Metaphysics of Morals* 36 (James W. Ellington trans., Hackett Publishing Co. 3d ed. 1993) (emphasis added); Kant, supra note 14, at 429.

³⁸ Kant, supra note 14, at 429.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁴² See Pozzo, supra note 2, at 11-12.

⁴³ *Principles of Ethics*, supra note 5, at 3.

⁴⁴ Id. at 13-14.

While Kant had refused to admit good or evil as absolute values for distinguishing moral actions (because they would have limited the autonomy of the human subject), Rosmini goes back to the Thomistic principle that *ens et bonum convertuntur* and proclaims that "being and good are the same thing; every nature is good in so far as it is and evil in so far as it lacks any part of being belonging to it."⁴⁵ Rosmini acknowledges that Kant has "liberated ethics from the stimulus of happiness,"⁴⁶ but objects to him that he has concentrated himself on finding a pure, final stimulus for the moral good (what Kant used to call "pure interest"),⁴⁷ and has not succeeded "in establishing the true nature of morality itself."⁴⁸ In other words, Kant is right in pointing **[*285]** out that the true nature of morality is not simply happiness, but he fails in not being able to recognize in bliss (*makaria* as distinct from *eudaimonia*) the "full, perpetual, final and, in some ways, infinite enjoyment that contrasts so vividly with limited, instantaneous pleasure."⁴⁹ And bliss, which arises from the idea of being, is what gives proper dignity to the intelligent subject.⁵⁰

IV. Human Rights

The human right to freedom cannot be derived from human nature, but rather it is a rational right, which is valid independent of all historic, cultural, social, and religious conditions.⁵¹ As soon as a State endangers human rights, this State loses its legitimacy.⁵² Too bad, however, the term *Menschenrechte* (human rights dilemma) does not occur in any of Kant's writings.⁵³ Truly a pity, for the term did exist before Kant.⁵⁴ Karl-Heinz Ilting has indicated in Thomas Hobbes *The First Philosopher* that subtracted natural law from either a natural or a religious foundation in order to found it anew on the idea of equal persons.⁵⁵

The thirty-article-strong Universal Declaration of Human Rights ("UDHR") was approved with the contribution of Jacques Maritain on December 10, 1948 at the United Nations General Assembly.⁵⁶ The prohibition of active and passive slavery is expressed in Article 4: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."⁵⁷ The ban on slavery and on slave trade has been part of Western culture for centuries, and long before 1948 there existed agreements that prohibited trading human **[*286]** beings.⁵⁸ However, the issue is always present. Slaves today are workers in sweat shops, who put themselves voluntarily into subjection (e.g., the family described by John Steinbeck in *Grapes of Wrath* when it arrived in California and was

⁴⁵ Id. at 31.

⁴⁶ Id. at 33.

⁴⁷ *Metaphysics*, supra note 5, at 13.

⁴⁸ *Principles of Ethics*, supra note 5, at 33.

⁴⁹ Id. at 42.

⁵⁰ Id. at 42, 44.

⁵¹ Office of the High Commissioner for Human Rights, *What are Human Rights?*, United Nations Human Rights (Nov. 15, 2011), <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>.

⁵² Jerome Slater & Terry Nardin, *Nonintervention and Human Rights*, 48 *J. Politics* 86, 92 (1986).

⁵³ See generally Luigi Caranti, *Per una teoria kantiana dei diritti umani*, in *Leggere Kant: Dimensioni della filosofia critica* 203-26 (Claudio La Rocca ed., Edizioni ETS 2007).

⁵⁴ See Alessandro Pinzani, *Der systematische Stellenwert der pseudo-ulpianischen Regeln in Kants Rechtslehre*, 59 *Zeitschrift für philosophische Forschung* 71, 72-79 (2005).

⁵⁵ See Karl-Heinz Ilting, *Naturrecht und Sittlichkeit* 97 (1983).

⁵⁶ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁵⁷ Id. art. 4.

⁵⁸ See U.S. Const. amend. XIII, § 1.

forced to pay exorbitant prices for the food handled on the premises).⁵⁹ We are talking about minors, field workers, and women pushed into prostitution. A form of slavery, finally, is those that are forced into marriage.⁶⁰

Intellectual property goes well beyond economic exploitation and involves a number of consequences that pertain to the human rights domain. Article 27 of the UDHR declares that:

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.⁶¹

And Article 15 of the International Covenant on Economic, Social and Cultural Rights mandates: "the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author," while recognizing "the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications."⁶² These texts define the right of an author to be defended against unauthorized use of his work in compliance with the right of the public to enjoy the benefits of cultural life and scientific progress.

Intellectual property rights today stand for enormous economic interests.⁶³ Bronwyn Parry has gone as far as theorizing the sale of one's genome.⁶⁴ National and international trade of products that involve intellectual property does not concern anymore products or **[*287]** authors as such (respectively entity one and two of the Functional Requirements for Bibliographic Records, which were first issued in 1997), but rather multinational corporations that have stepped into the role of global gatekeepers of the world's cultural heritage.⁶⁵ It remains to be said that the 1994 agreement on Trade-Related Intellectual Property Rights privileges economic exploitation and gives minimal attention to moral rights.⁶⁶

V. Personalism

In the *Leviathan*, Hobbes gave a definition very general yet very precise of authorship in terms of personhood:

A person is he whose words or actions are considered either as his own, or as representing the words or actions of another man, or of any other thing to whom they are attributed, whether truly or by fiction. When they are considered as his own, then is he called a natural person; and when they are considered as representing the words and actions of another, then is he a feigned or artificial person... . Of persons artificial, some have their words and actions owned by those whom they represent. And then the person is the actor, and he that owneth his words and actions is the author, in which case the actor acteth by authority. For that which in speaking of goods and possessions is called an owner (and in Latin *dominus*, in Greek *kurios*), speaking of actions is called author. And as

⁵⁹ See John Steinbeck, *The Grapes of Wrath* 194-222 (1939).

⁶⁰ See Miriam Ouattara et al., *Forced Marriage, Forced Sex: The Perils of Childhood for Girls*, *Gender & Dev.*, Nov. 1998, at 27, 28; cf. Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 01 (implying personal choice regarding marriage).

⁶¹ G.A. Res. 217 (III) A, *supra* note 56, art. 27.

⁶² International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI) A, art. 15, U.N. Doc. A/6316 (Dec. 16, 1966).

⁶³ See William Fisher, *Theories of Intellectual Property*, in *New Essays in the Legal and Political Theory of Property* 168 (2001).

⁶⁴ See Bronwyn Parry, *Trading the Genome: Investigating the Commodification of Bio-Information* 4, 9-11 (2004).

⁶⁵ International Federation of Library Associations and Institutions, *Functional Requirements for Bibliographic Records* 13-15 (2009), available at http://www.ifla.org/files/cataloguing/frbr/frbr_2008.pdf.

⁶⁶ Cf. Agreement on Trade-Related Aspects of Intellectual Property Rights, Pt. 1-2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 319 (emphasizing the technicalities of trade without considering moral impact).

the right of possession is called dominion, so the right of doing any action is called authority. So that by authority is always understood a right of doing any act; and done by authority, done by commission or licence from him whose right it is.⁶⁷

For Rosmini, the "study of conscience is of its nature philosophical. It is in fact a part of the special logic of ethics."⁶⁸ Conscience means consciousness; and moral conscience (in English called simply **["*288]** conscience) means moral consciousness. "Properly speaking, we know other things but are conscious of what we ourselves do and what takes place at the level of our interior feeling. We take the word conscience in this sense, and use it to indicate knowledge of ourselves."⁶⁹ According to Rosmini, the whole realm of praxis relates to the practical judgment of conscience.⁷⁰

When I, as an intelligent being, decide to act, I first say to myself: "Such an action will help me", and I act immediately on this interior word. The judgment with which I recognise that an action is good for me here and now is the first movement leading me inevitably to what I actually do.⁷¹

The practical judgment "can be morally good or bad in so far as it rests upon motives conforming to, or in opposition to, the moral law."⁷² The moral law, or "the supreme Law ... is ideal-indeterminate being, the measure of all determinate and real beings."⁷³ We are able to proffer practical judgments in so far as we can say to ourselves, "'This being has this amount of beingness; I esteem it as such.'"⁷⁴ A long practice of judging produces habits that are principles of action, "and we are sometimes directed in what we do as a result of movements communicated to us through habit."⁷⁵ Habits are a second nature and they are decisive for constituting a moral action - some interpreters have seen in that a tendency to fall into probabilism.

Rosmini continues:

We act against nature and place ourselves in opposition to the law by determining our free will through a practical judgment. We judge it good to act against the law. Such a judgment necessarily **["*289]** includes the ethical judgment that our act is contrary to the law: and this judgment is conscience.⁷⁶

Human beings know that it "is always unlawful to act against a true conscience when it declares an act sinful. This is an obvious, well-known rule, needing no demonstration. Clearly, to desire an act which we have truthfully judged unlawful, is to desire what is unlawful, that is, to sin."⁷⁷

It is during the sacrament of Penance that this becomes clear, and it is up to the spiritual director to dialogue with the formed conscience of the penitent.⁷⁸ This is Rosmini's conclusion with regard to the issue of moral logic: "No one doubts that a director must always speak the truth, but he must speak it prudently."⁷⁹

⁶⁷ Thomas Hobbes, *Leviathan* 101-02 (Edwin Curley ed., Hackett Publ'g Co. 1994) (1668) (emphasis omitted).

⁶⁸ Antonio Rosmini, *Introduction to Conscience*, P 4, at 3 (Denis Cleary & Terence Watson trans., Rosmini House 1989) (1844) [hereinafter *Conscience*].

⁶⁹ Antonio Rosmini, *Morality Prior to Conscience*, P 9, in *Conscience*, supra note 68, Bk. I, at 8.

⁷⁰ See *id.* PP 18-19, at 12-13.

⁷¹ *Id.* P 18, at 12.

⁷² *Id.* P 19, at 13.

⁷³ *Id.* P 26, at 17.

⁷⁴ *Id.* P 39, at 23.

⁷⁵ *Id.* P 72, at 39.

⁷⁶ Antonio Rosmini, *Morality Resulting from Conscience*, P 116, in *Conscience*, supra note 68, Bk. II, at 65.

⁷⁷ Antonio Rosmini, *Rules of Conscience*, P 230, in *Conscience*, supra note 68, Bk. III, at 114.

Looking back at the decades around 1800, Rosmini notices that, at

the height of its powers, the previous century lost sight of justice, the essence of the perfection of laws. Attention was confined to utility; principles were replaced by consequences. Justice is a principle; utility is a consequence. While utility as a consequence is considered in its connection with the principle of justice, thought remains sound; when utility alone attracts the spirit's attention, sophistry reigns in minds and anarchy in society. Laws are looked at from an exterior point of view, wholly extraneous to their true, intimate essence.⁸⁰

Not only utilitarianism, also materialism has blinded the minds of Rosmini's age. "The following general formula expresses the condition of the mind when it has abandoned the contemplation of what is essential in order to devote itself exclusively to what is accessory: "People reject ideas and devote, their attention to sensations alone."⁸¹

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VI. Conclusion

Rosmini, it should not be forgotten, writes in the age of the first codifications.⁸² But Rosmini rejects codification on the simple ground that

human law attempts sacrilegiously to usurp the law of nature and of God to which it dares to say: "Depart from the face of the earth. Your throne is mine." In this case, human laws, instead of presenting themselves as they are - a simple, fallible, imperfect declaration of rational law, and a sanction of revealed law - begin with a supremely solemn lie and injustice by offering themselves to the public as almighty, unique, infallible, unappealable, inflexible and unchangeable.⁸³

Rosmini indicates that the right approach to the rule of law is to wish "the supreme authority preface the venerated code of social laws with the simple words: "The only law of the State, to which ourselves are subject, is justice as declared by reason enlightened by the Gospel."⁸⁴ We need a rule of law whose first words are indicative of humility. In other words,

if we are to have a code which can validly subject human beings to its own rule, it must be subject to God. Our business as human beings is not to make laws but, as we have said, to interpret carefully the supreme jural law by means of all the enlightenment available to us.⁸⁵

To conclude, "positive law must be subject to rational law, which must always be able to be heard."⁸⁶ Rosmini declares:

⁷⁸ Id. P 406, at 198.

⁷⁹ Id. P 407, at 199.

⁸⁰ 1 Antonio Rosmini, *The Essence of Right*, P 10, in *The Philosophy of Right 7* (Denis Cleary & Terence Watson trans., 1993) (1865) [hereinafter *The Essence of Right*].

⁸¹ Id. P 11, at 8.

⁸² See Rudolf B. Schlesinger, *The Past and the Future of Comparative Law*, 43 *Am. J. Comp. L.* 477, 479 (1995) (stating that the Age of Codification began in the second half of the eighteenth century).

⁸³ *The Essence of Right*, supra note 80, P 15, at 11-12.

⁸⁴ Id. P 16, at 12.

⁸⁵ Id. P 18, at 13.

⁸⁶ Id.

It is undeniable that Christianity, by introducing divine love into the world, placed therein a principle of unceasing action that has immensely increased and perpetuated human activity; the new presence on earth of an indestructible principle of infinite [*291] understanding cannot be ignored. One obvious result of such a principle of freedom is the Christian's sense of his own individuality, which goes hand in hand with the development of his new power of liberty... . This divine religion has restored and increased in human beings the three constitutive elements, activity, understanding and morality, which form the subject of rights... . Christian society possesses the creative power to extract rights from nothing, as it were, and it strengthens uncertain rights at their root by establishing them firmly. It founds and embellishes in mankind the subject of rights.⁸⁷

God is the only Lord,⁸⁸ and in a theocratic society human beings find governmental⁸⁹ and communal rights⁹⁰ that are all sanctioned by the divine law. Thus, the "best Provider of all, who has fixed a law for all beings, has driven human beings towards the truth."⁹¹

As human society moves forward from positing its foundation and guarantee first in force, then in foresight, and finally in the principles of justice and the Christian religion, it passes continuously from a weaker force to a stronger force In the end, only Catholicism will be found to stand firm; only Catholicism, a truly complete religion with followers who are simultaneously fully enlightened and sincere, possesses solidity and an absolute capacity.⁹²

The most fundamental bond is referred to personality, and it is the bond of ownership, when we "bind and unite to ourselves all things outside us which we find useful; we make them our own and mark out for ourselves."⁹³ We establish bonds of society, when persons are involved, that is when we "bind and unite persons to ourselves, and ourselves to them... . Persons united in this way acquire a communion in good, and together form a single end; things are only a means to the end which all persons have in common."⁹⁴ It is [*292] important to point out the leading role played by the person in Rosmini's philosophy. "What really is 'person'?"⁹⁵ He answers that

the dignity of this personal element, which must always be considered as an end in itself, not a means, consists properly speaking in the fact that it is the element by which the individual can adhere with his total self to truth, that is, to being, contemplated objectively in all its fullness.⁹⁶

Contemporary information technology, with its constant development of devices and infrastructures, provides serious threats to human dignity and the integrity of persons. Intellectual property, in its widest sense, is one of the weakest spots, for it can be easily channeled into directions that offend, diminish, and maim the integrity of a person. For this reason, in our everyday life, we need a strong personalist philosophy, and Rosmini has still a lot to say.

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⁸⁷ 4 Antonio Rosmini, Rights in God's Church, P 496, in *The Philosophy of Right*, supra note 80, at 10-11.

⁸⁸ Id. P 536, at 24.

⁸⁹ See id. P 632, at 47.

⁹⁰ See id. P 865, at 113.

⁹¹ 1 Antonio Rosmini, *The Philosophy of Politics*, PP 142-43, at 85 (Denis Cleary & Terence Watson trans., Rosmini House 1994) (1837) [hereinafter *The Philosophy of Politics*].

⁹² Id.

⁹³ 2 Antonio Rosmini, *The Philosophy of Politics*, supra note 91, P 34, at 11.

⁹⁴ Id.

⁹⁵ Id. P 52, at 17.

⁹⁶ Id. P 53, at 18.

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