

# Rosmini's Legal Philosophical Ideas on Human Nature and Cosmological Principles: An application to South African and American Judicature on Human Rights

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## Abstract

Rosmini distinguishes between the terms philosophy and metaphysics. He employed the latter in the limited sense of science of the real, which, according to him, includes the metaphysical concepts such as cosmology, ontology and natural theology. These metaphysical concepts are vague to simple man. They could only make sense, if these concepts, especially cosmology, could be applied to mankind and his natural habitat, the civil or human society (the state). His philosophical ideas and cosmological principles exalt mankind, so that the latter forms the fulcrum of this research. Man, being a divine entity, because of his immortal soul innated by God, is endowed with human dignity that must not be encroachment upon by all, even the state. This notion of Rosmini will be test practically against case law of the South African judicature as well as the 8<sup>th</sup> and 14 Amendment of the Constitution of the United States of America.

**Keywords:** cosmology, ontology, natural theology, human dignity, state, god

## 1. Cosmology

Cosmology (from Greek *κοσμολογία*) refers to the study of the universe and humanity's place in it. The study of the universe involves science, philosophy and religion (Note 1).

Cosmology places man in the universe in relationship with other human beings. An ancient phraseology used by Marcus Aurelius reads: "He who does not know what the world is does not know where he is, and he who does not know for what purpose the world exists, does not know who he is, nor what the world is" (Note 2). Cosmology is an important aspect of the creation of myths or religions that seek to explain the existence and nature of reality (Note 3).

Cosmology, the science of the world, also includes the sciences of perception, because the objects of perception are the bodies (the human being) of which the world is made up (note 4).

To understand the concept of cosmology in the Rosminian sense, certain questions need to be answer: What is the origin of the universe? What is its first cause? Is its existence necessary? And does the cosmos have a purpose (teleology)?

In order to answer these questions, a discourse about the soul is important.

## 2. The Soul

A definition of the soul by Porphyry, which was given in ancient times, agrees in several essential points with Rosmini's, according to Davidson: "The soul is an essence, unextended, immaterial, imperishable, endowed with essential, self-derived life, possessing being" (Note 5). This definition identifies the soul with life and attributes to it, the possession of being, which is the essential form of intelligence (Note 6). According to this definition, the idea of feeling (perception) and intelligence is central to what the soul is.

From this definition, which expresses the essence of the soul, the immortality of the soul will be eventually proved from these considerations. The soul is the principle which gives life to the body. Now, the soul, being that which gives life, is life itself. Hence, of itself it cannot die, it is through itself immortal. From this immateriality of the soul follows its immortality. Because of the immortality of the soul, it is therefore rendered as a substance

altogether different from the body (Note 7).

The essence of the soul is known through perception. If the soul did not feel itself, it would be unable to perceive itself and to be perceived by other. Each individual, therefore, feels and perceives his own soul. There is no perception without feeling. Bodies themselves would not be perceived by the understanding, if they were not first felt (Note 8). Bodies are therefore felt by the soul and the soul is felt by itself and through itself. From this metaphysical framework, cosmology seems to be a science of perception and observation. Davidson cites Rosmini: "Cosmology... [is] the known world [that] exists in the bosom of the soul" (Note 9).

But, the human soul not only feels, it also perceives intellectually. The soul is therefore sensitive and intellective. It has by its nature the intuition of being and (as mentioned) of feeling, whose terms are extended besides certain activities consequent upon intelligence and sensitivity. The soul is directive to the intellective part of the body: "the νοῦς or ψυχή νοητική, that which Aristotle calls the place of forms (τόπος εἰδώ) and the form of forms (εἶδος εἰδώ). Thomas Aquinas says: "*Cum principium intellectivum sit quo primo intelligit homo, sive vocetur intellectus, sive anima intellective, necesse est ipsum uniri corpori human out formam.*" (Note 10).

Cosmology dictates that the soul enabled us to know the material world. But we need a human being or form in order to present the soul in the cosmos. Aristotle helped in this regard, when he states that the human being is a composition of soul and body (Note 11). Although a composition, the soul and body need to play off against each other. The result is that the body is not the soul. 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. Man is therefore not only soul and body, but soul and body combined. 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 the piano," but rather, "I believe," or, "I play." (Note 12).

The soul is however, spiritual and the concept of spirituality relates to immortality. The human being, as established in the former paragraph, is a union of soul and body in which the soul preponderates. On account of the soul's divine characteristics, the human being is considered to be a divine being (Note 13).

Rosmini concurs with the Aristotelic truth that the human being is a composition of soul and body, but he went further than Aristotle, when he asserts that the soul consists of both a bodily (natural) and a godly component. As mentioned earlier the godly component will preponderates so that the human being, been rendered a divine characteristic. In Rosmini's cosmology, humankind is viewed in relation to God and the world (cosmos) (Note 14).

### **3. Origin of the Universe (Cosmology)**

Due to the fact that humankind stands in relation to God and the cosmos, Rosmini expounds: If man exhibits the same characteristics as God, for example, essentiality, universality, and eternity, then he must have always been in existence (Note 15). If there is evidence to the contrary, and man possesses the characteristics of contingency, particularity, and temporality, he must have had a beginning (origin). The latter is acceptable, since cosmology determines that man is not responsible for his own existence, but has an origin (Note 16).

### **4. What is it's (Cosmology) First Cause**

Cosmology requires a cause, a creative cause. Rosmini is of the opinion that we cannot comprehend cosmology without dealing with the nature and workings of its author or First Cause, God (Note 17). Rosmini says: "[The cosmos] is the work of the creative liberty of God..." (Note 18).

Rosmini forwards a further proof for the creation of the cosmos from the analysis of perception. Man and the cosmos would not be being, if the mind did not see it united to the essence of being. It can be inferred that the essence of being, asserts that creation does not mean production from nothing, but from non-being. Since being is cognizable, it follows that creation is the act whereby God knows the existent. This creative being (cosmos) is not related to man in the same way as it is related to God. In God, the being is subject as well as object, whereas in man, it is merely object. Rosmini says: "[...] it is communicable merely as object, and therefore, initial being exists in the human mind in a different way from that in which it exists in the divine mind, from which it is undistinguished. If the absolute object were communicated to the creature, such creature would see the Divine Word [the λόγος], which is not possible in the order of nature, but only, through grace, in the supernatural order [...] man seeing this initial being does not see God, although he sees in it an appurtenance of the divine essence." (Note 19).

Another proof for the creation of the cosmos by God is the feeling that we do not subsist through ourselves. Rosmini says: "We feel that [the world] subsist, but we do not feel the force that causes [it] to subsist." (Note

20).

### 5. Is it's (Cosmology) Existence Necessary?

Cosmology cannot be fully treated except in connection with ontology and especially theology. It cannot therefore be a complete science on its own. It can only be part of a higher science, namely ontology and natural theology.

#### 5.1 Ontology

Rosmini is of the opinion that ontology treats a being in its essence. In terms of a being's essence, Rosmini identifies three forms, namely the ideational, the actual or essential, and the moral form (Note 21).

Ontology treats of being in all its extent, as known to man. It treats of being in its essence and its essences are the ideal form, the real form and the moral form (Note 22). Being exists of necessity in all three forms, perfectly distinct and inconfusable, but yet in such a way that each implies the other two. In all these three forms, the essences are identical, while the forms themselves are most distinct and altogether incapable of interchange (Note 23).

These three categories in a certain way correspond with each other. For example, when I say, "Man is rational," the subject is real; the predicate, ideal; and the *copula*, moral. In other words, in making this affirmation, I set a reality, man, and an idea, rational, both at once against the background of being, which, therefore, at once measures both of them absolutely and relatively to each other. These measures express their absolute and relative moral worth.

It is necessary, according to Rosmini, to distinguish between the three forms in order to separate God and humankind. He remarks that God is an Ideational Being, while the human being is limited. God as Ideational Being, is perfect, while the human being, as real being, is imperfect. The moral form though bridges the divide between God and humankind. The human being must unite with God. It is the task of the moral form to bring about unity between God and humankind (Note 24).

Although humankind is equal to the godly image, God and the human being differ in essence. This difference (as explained above) lies in the fact that the human being possesses the qualities of contingency, particularity and temporality, while God displays the qualities of necessity, universality, eternity, etc (Note 25). According to Rosmini, the highest forms of beings are the ideational, the actual and the moral forms. Humankind partakes in the ideational, the actual and the moral forms by means of the soul.

God and man differ also in essence from one another. This eternal, perfect Being (God), can therefore not be human. Rosmini believes that the imperfect, limited being (man) is not independent, but is usually united with the Ideal Being, who is perfect and infinite. By man's centeredness or dependency on God, he/she will comply with his or her rights and obligations in civil or human (*societas*) society (Note 26).

#### 5.2 Natural Theology

Natural theology, called by the Greeks *θεολογία*, demonstrates the existence of God (Note 27).

According to Rosmini, man does not have the ability to reach a full science of the perfect Being (God). The perfect Being (God) in his totality and completeness is thus not subject to human knowledge or existence. According to Nico Swartz, human reason can only know that which is revealed to man by nature (Note 28). The human being tends to link something positive to God with which human intelligence shows similarities. These similarities are accompanied by differences so that one cannot form an adequate understanding of God. One knows that God exists rather than what He is. On the question how human intelligence knows God, Rosmini, like Thomas Aquinas, is of the opinion that when one mentions that God is intelligent, this does not mean that God is subject to the same standards for human intelligence. Swartz proposes that the term "analogous" should rather be used. Thomas Aquinas states: "[...] we cannot mean that God is intelligent in precisely the same way that a [human being] is intelligent: we cannot, that is, by using the term in a univocal sense. Nor can we by using it purely equivocally. If we were, the term would have no meaning when applied to a being transcending our natural experience [...] we predicate of God something positive to which human intelligence bears some resemblance [...]" (Note 29).

Natural theology proves that we know God through our reason. We cannot know more about God than is allowed by the necessity of the essence of Being. This forms the restriction of our knowledge which we have from God in the natural field. According to Swartz, our knowledge of God is negative knowledge (Note 30). He asserts that negative knowledge, which the human being has of God, lies for instance in the fact that it is illogical to state that God also possesses fundamental rights. Fundamental rights, for example, can only be applied in respect of

people and not in respect of God. God, however, is the ontological source from which fundamental rights in the human *societas* derives (Note 31).

It means, therefore, that one cannot form a perception of God without exceeding human intelligence or reason (Note 32).

## **6. Does the Cosmos has a Purpose? Its Practical Application in South African and American Judicature - With Regard to Human Dignity**

Rosmini's cosmology, ontology and natural theology form the point of departure for his anthropological thought.

Anthropology is the study of man. It investigates the nature and role of man in the real world. Rosmini is of the opinion, that in order for the human being to play his role in the cosmos, the two elements, soul and body need to come into play. Man, as mentioned earlier, is the result of both the rational soul and the physical or natural body (Note 33). An analogy between God and the human soul is therefore hypothesized. Rosmini, therefore, views man as divine. For this reason, Rosmini's anthropological doctrine serves as the basis of moral acts and the source of rights and obligations in human (*societas*) society. On the basis of the anthropological points of similarity between God and man (which are established by the soul), Rosmini believes that man possesses inalienable human rights, which must be respected by all, even the civil society or state (Note 34).

The divine characteristics of the human being, elevated man's stand in the hierarchy of being, in the sense that every person possesses dignity which may not be encroached upon by the other people and the state. Rosmini says, for example, "The state, [...] 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: 'Let civil society perish [...] or be dissolved if this needed for the salvation of individuals.'" (Note 35). Furthermore, he states that: "[Not] a single right of individual citizens [...] can be sacrificed for the sake of the public good [...]" (Note 36).

The practical implications of Rosmini's cosmological (Christian) viewpoints (regarding human dignity) can be illustrated with reference to the South African judicature and the American court's interpretation of the 8<sup>th</sup> and 14<sup>th</sup> Amendment to the Constitution.

According to the s. 1 of the *Constitution of South Africa*, Act 108 of 1996, The Republic of South Africa is founded on the values of human dignity. Human dignity is ranking equally with the values of equality and freedom. These attributes requires that the rights of the individual are not merely to be protected against state power, but the state power must be used to secure the goals of dignity (Note 36).

Human dignity is considered to be what gives a person their intrinsic worth. It is clear that the constitutional protection of dignity requires us to knowledge the value and worth of all individuals as members of society. Inasmuch as every person possesses human dignity in equal measure everyone must be treated as equally worthy of respect, in Rosminian thought. In the parlance of the *South African Constitution*, "[...] it is clear that the constitutional protection of dignity [...] requires us to acknowledge the value and worth of all individuals as members of society (Note 37). The Constitutional Court's decision in *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (CC), paragraph 28 held that it is clear that the constitutional protection of dignity requires us to acknowledge the value and worth of all individuals as members of society. The court's decision further asserts that punishing a form of sexual conduct which is identified by the broader society with homosexuals, is inconsistent with human dignity. The court hold: "[...] in the eyes of our legal system all gay men are criminals. [...] As a result of the criminal offence, gay men are at risk of arrest, prosecution and conviction of the offence of sodomy simply because they seek to engage in sexual conduct which is part of their experience of human being. Just as apartheid legislation rendered the lives of couples of different racial groups perpetually at risk, the sodomy offence builds insecurity and vulnerability into the daily lives of gay men. There can be no doubt that the existence of a law which punishes a form of sexual expression for gay men degrades and devalues gay men in our broader society. As such it is a palpable invasion of their dignity and it's a breach of s. 10 of the Constitution." (Note 38).

Besides being a foundation for civil rights, the right to dignity is also a basis for a number of political rights. In *S v Williams* 1995 (3) SA (CC), the Constitutional Court holds in paragraph 58 that respect for human dignity entails that even the vilest criminal remains a human being possessed of common human dignity. In similar vein, *Advance Mining Hydraulics v Botes* NO 2000 (2) BCLR 119 (T), states that the right to dignity requires at least that "persons be treated as recipients of rights and not as objects subjected to statutory mechanisms without a say in the matter. In this case proceedings under s. 415 of the *Companies Act* 61 of 1973 were set aside inter alia because the presiding officer did not warn an examinee of his right to legal representation before compelling him

to answer questions he did not understand. This result was regarded as a blatant affront to the examinee's dignity (Note 39).

In *S v Pienaar* 2000 (7) BCLR 800 (NC) paragraph 10, it is maintained that if the government or persons in power belittle, ignore or negate a person's language, they violate his or her right to dignity (Note 40).

It was held in *S v Makwanyane* 1995 (3) SA 391 (CC) that although imprisonment impairs a person's dignity, the State has the power to impose this form of punishment. Prisoners do not lose their rights on entering prison. They retain all the rights to which every person is entitled under the Bill of Rights. But any infringement of prisoner's rights must be justifiable with reference to the objectives of placing them in prison. In the particular case, Chaskalson J has indicated that the death sentence could be replaced with severe punishment of a long term of imprisonment. On the constitutionality of life imprisonment, Ackerman J made reference to German Constitutional Court, *45 BVerfGE* 187 (1977), which found that the right to human dignity demands a humane carrying out of a sentence. The court further held that the law must provide for some prospect of parole for a prisoner sentenced to life imprisonment who had become rehabilitated during his or her time in prison. The law must also lay down objective criteria for the granting of parole. It is a violation of the right to human dignity simply to banish a convict to a cell without giving the person some hope of release after a long period of time has passed and where there is proof that the prisoner has been reformed. The Constitutional Court stated in *S v Dodo* 2001 (3) SA 382 (CC) that where the length of imprisonment is grossly disproportionate to the offence, then the right to human dignity would be violated. The same follows for a life-long term of imprisonment without the possibility of release. In *S v Tcoeb* 1996 (7) BCLR 996, The Namibian Supreme Court held that life imprisonment was not unconstitutional. The Namibian Court did not exclude the possibility that a sentence of life imprisonment could be held to be unconstitutional if the sentence was so grossly disproportionate to the severity of the crime committed that it constituted cruel, inhuman or degrading punishment that it invaded the dignity of the accused (Note 41). Rosmini would have discourse that the state must not arbitrarily inflict severe punishment. He accords that the state would not respect human dignity, if it does so.

The right to dignity is at the heart of the right not to be tortured or to be treated or punished in a cruel, inhuman or degrading way. The right to dignity encompasses a great deal more than the prohibition of torture or cruel punishment. In *S v Human* 1996 (1) SA 232 (W) the court had to consider whether the ascertainment of bodily features and the taking of fingerprints in terms of s 37 and s 225 of the *Criminal Procedure Act* 51 of 1977 were an infringement of the right to dignity. The court held that the right to dignity would only be impaired if the practice amounted to cruel, inhuman or degrading treatment. Since it did not, it was held that the taking of fingerprints did not infringe the right to dignity. In *Christian Education v Minister of Education of the Government of the RSA* 1999 (9) BCLR 951 (SE), the court held that the administration of corporal punishment in schools an affront to the dignity of all concerned (Note 42).

By committing ourselves to a society founded on the recognition of human rights we are required to value human dignity (apart from the right to life) above all others. And this must be demonstrated by the state in everything that it does, including the way it punishes criminals.

In the American case of *Boxer v Harris* (Note 43), a male prisoner was forced by a female warder to engage in acts of masturbation. If the inmate (Boxer) refused, the warder (Harris) would file disciplinary charges against Boxer. On appeal, the majority decision was upheld that the abuse that Boxer suffered was not a violation of the 8<sup>th</sup> Amendment, insofar as forced masturbation only constituted "*de minimis* harm." The panel decided that Boxer only suffered minimal sexual abuse: "[...] not constituting 'the unnecessary and wanton infliction of pain' as demanded for constituting 'cruel and unusual punishment forbidden by the Eight Amendment.'" (Note 44).

The panel was also convinced that the forced masturbation did not presuppose a constitutional violation "objectively 'harmful enough.'" In a dissenting judgment, Chief Justice Barkett claims that the decision of the appeal court denied the "broad and idealistic concepts of dignity, civilized standards, humanity, and mercy," which are guaranteed in the 8<sup>th</sup> Amendment. Barkett explained that, in terms of the directives of the 8<sup>th</sup> Amendment, the alleged harm to the prisoner (Boxer) resided in the violation of his human dignity, as well as in the standards that have been established for decency's sake. Barkett was of the opinion that the chief cause of boxer's complaint was the violation of his human dignity. He (Barkett) claims that the Higher Court maintained that sexuality is central to human dignity "[...] and even to the very meaning of human existence" (Note 45). According to Nico Swartz, Barkett therefore concluded that forced masturbation is sexual abuse and that a most basic aspect of human dignity as a cosmological offshoot was violated (Note 46).

Barkett's dissenting judgment tends to be more sensitive about the nature, value, and status of sexual integrity in relation to human dignity. According to him, Boxer's moral status as a person and his treatment as a moral object

(means) for the self-gratification of Harris were not sufficiently considered by the Higher Court. Consequently, Barkett is of the opinion that Harris' encroachment on Boxer's duty to avoid moral evil contributed to the seriousness of Harris' denying Boxer his dignity as a moral person. The innate dignity of man because of his status as a moral being is a fundamental, inalienable right, which should be acknowledged everywhere. In the constitutional judicature of the USA, the moral value of man's physical integrity has evoked much interest in the context of the 8<sup>th</sup> Amendment. This formulation states: "[...] the right not to be subject to cruel and unusual punishment and the corollary measure in the Fourteenth Amendment due process clause, regarding the right to liberty, containing the right to be secure in one's person."

In the American court case *Meredith v State of Arizona* (Note 47), a prisoner with a medical history of emphysema was struck on his peritoneum without cause by a warder, after which he became "totally handicapped." The prisoner, Meredith, received oxygen for four hours "to counteract the damage that has been done." The facts of this case operating within the bounds of the Civil Rights Act (Note 48), which guaranteed to each person the right to dignity. The court found that a right which is violated by an attack and an assault presupposes "the right to be secure in one's person, and is grounded in the due process clause of the Fourteenth Amendment. The court maintained, with reference to *Rochin v California* (Note 49), that the attack and assault in the *Meredith*-case "shocks the conscience" (Note 50) and leads to conduct including exercise of force which is "brutal" and "offensive to human dignity." (Note 51). The court ruled that the warder's conduct towards Meredith was willful, unfair, brutal, and reprehensible regarding human dignity (Note 52).

In the American court case *Schy v State of Vermont* (Note 53), the court ruled that a plaintiff who had been bound with his hands behind his back and attached to a chain embedded in a wall for more than two hours, did not supply sufficient facts to prove that the handcuffs were brutal and a degradation of his human dignity. Such conduct, according to Rosmini's cosmology thoughts, constitutes a violation of the victim's human dignity (Note 54).

The treatment of persons as moral objects constitutes an encroachment of their moral liberty. The case of *Felix v McCarthy* (Note 55) emphasizes that the moral context of human dignity must not be undermined. In this case, Felix, a prisoner in San Quentin, brought a civil action against prison warders who used excessive force against him and consequently encroached on his constitutional rights, for example, the right not to be subjected to cruel and unusual punishment as guaranteed in the 8<sup>th</sup> Amendment. Warders handcuffed Felix and flung him against a wall, which resulted in bruising, injuries, and emotional anguish. Judge Canby, who relied on the *Meredith*-case, declared: "It is not the degree of injury which makes out a violation of the Eighth Amendment, but rather it is the use of official force or authority, that is, 'intentional, unjustified, brutal and offensive to human dignity.'" (Note 56).

Dignity is inevitably impaired by imprisonment or any other punishment, and the undoubted power of the State to impose punishment as part of the criminal justice system necessarily involves the power to encroach upon a prisoner's dignity. To be justifiable, such encroachments must however be kept to a minimum: "A prisoner is not stripped naked, bound, gagged and chained to his or her cell." (Note 57).

## 7. Conclusion

It is been established in this research that the cosmos is the work of the creative liberty of God. With regard to the concept of cosmology, the human being is not responsible for his own existence, but has an origin, namely God. This is true, because the soul is inculcated by God in the human being. On the strength of the spiritual soul innated in the human being, man is accord divinity. An analogy between God and the human soul is thus hypothesized. Because of the divine characteristic of the soul, as postulated in Rosmini's cosmology, the human being become to be endowed with human dignity, which serves as offshoots for fundamental human rights. Clouded with divine characteristics, human dignity must not be encroached upon by all, even the state. This objective is achieved in this research if the judicature of the South African and the 8<sup>th</sup> and 14<sup>th</sup> Amendment to the United States Constitution is taken into account.

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## Notes

- Note 1. <http://en.wikipedia.org/wiki/Cosmology> accessed on 11/24/2010 (page 1 of 11).
- Note 2. <http://en.wikipedia.org/wiki/Cosmology> accessed on 11/24/2010 (page 2 of 11).
- Note 3. <http://en.wikipedia.org/wiki/Cosmology> accessed on 11/24/2010 (page 2 of 11).
- Note 4. Davidson (1882) 317.
- Note 5. Davidson (1882) 263-64.
- Note 6. Davidson (1882) 263-64.
- Note 7. Davidson (1882) 268.
- Note 8. Davison (1882) 257.
- Note 9. Davidson (1882) 255.
- Note 10. Thomas Aquinas. *Summa Theologiae* I, q. 76, a. 4. "Since the intellectual principle is that whereby man is originally intelligent, whether it be called intellect or intellectual soul, it must be united to the human body as form."
- Note 11. Aristotle. *De Anima* 412a5-20.
- Note 12. Swartz (2009) 101 (*Acta Theologica*).
- Note 13. Swartz (2009) 101 (*Acta Theologica*).

- Note 14. Swartz (2009) 145 (*Acta Theologica*).
- Note 15. Swartz (2009) 55 (*Speculum Juris*); Swartz (2009) 47 (*Acta Theologica*).
- Note 16. Swartz (2009) 55 (*Speculum Juris*); Swartz (2009) 147 (*Acta Theologica*).
- Note 17. Swartz (2009) 147 (*Acta Theologica*).
- Note 18. Rosmini on Theosophy, vol. 1, a. 460 in Davidson (1882) 320.
- Note 19. Rosmini on Theosophy, vol. 1, a. 490 in Davidson (1882) 321.
- Note 20. Davidson (1882) 321.
- Note 21. Davidson (1882) 326; Swartz (2009) 148 (*Acta Theologica*).
- Note 22. Davidson (1882) 326.
- Note 23. Davidson (1882) 329-30.
- Note 24. Swartz (2009) 148 (*Acta Theologica*).
- Note 25. Davidson (1882) 328-29; Swartz (2009) 148 (*Acta Theologica*).
- Note 26. Swartz (2009) 56 (*Speculum Juris*).
- Note 27. Davidson (1882) 334.
- Note 28. Swartz (2010) 31.
- Note 29. Swartz (2010) 32; Copleston (1952) 93.
- Note 30. Swartz (2010) 34.
- Note 31. Swartz (2010) 34.
- Note 32. Swartz (2010) 34.
- Note 33. Swartz (2009) 57 (*Speculum Juris*).
- Note 34. Swartz (2009) 58 (*Speculum Juris*); Rosmini (1991) vii.
- Note 35. Swartz (2009) 61-62; Rosmini (1996) 37.
- Note 36. Currie & De Waal (2005) 272.
- Note 37. Currie & De Waal (2005) 273. *National Coalition for Gay & Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (CC) para 29 (Ackermann J).
- Note 38. Currie & De Waal (2005) 274.
- Note 39. Currie & De Waal (2005) 275.
- Note 40. Currie & De Waal (2005) 275.
- Note 41. Currie & De Waal (2005) 267-77.
- Note 42. Currie & De Waal (2005) 276.
- Note 43. 437 F.3d 1107 (11<sup>th</sup> Cir. 2006).
- Note 44. 437 F.3d 1107 (11<sup>th</sup> Cir. 2006). See *Whitley v Alberts* 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed. 2d 251, 54 U.S.L.W. 4236.
- Note 45. For the purpose of the court's decision, Barkett relied on the authority of other court cases, for example, *Laurence v Texas* (539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed.2d 508, 71 U.S.L.W. 4574, 03 Cal. Daily Op. Serv 5559, 2003 Daily Journal D.A.R. 7036, 16 Fla. L. Weekly Fed. S. 427).
- Note 46. Swartz (2009) 65 (*Speculum Juris*).
- Note 47. 523 F.2d 481.
- Note 48. 42 USC 4 1983.
- Note 49. 342 U.S. 833.
- Note 50. 342 U.S. 172.
- Note 51. 342 U.S. 174.
- Note 52. Swartz (2009) 66 (*Speculum Juris*).

Note 53. 2 Fed. Appx. 101 C.A. 2 (N.Y.), 2001.

Note 54. Swartz (2009) 67 (*Speculum Juris*).

Note 55. 939 F.2d 699 Jul 10, 1991.

Note 56. 523 F.2d 484.

Note 57. Currie & De Waal (2005) 179.