

THE FOUNDATION OF RIGHTS IN POPES JOHN PAUL II AND BENEDICT XVI FROM THE PERSPECTIVE OF THE GIFT

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INTRODUCTION

Pope Benedict begins the third chapter of his encyclical *Caritas in Veritate* with the following words:

Charity in truth places man before the astonishing experience of gift. Gratuitousness is present in our lives in many different forms, which often go unrecognized because of a purely consumerist and utilitarian view of life. The human being is made for gift Sometimes modern man is wrongly convinced that he is the sole author of himself, his life, and society. This is a presumption that follows from being selfishly closed in upon himself¹

He had stated earlier that truth grasps the meaning of charity as “gift, acceptance, and communion.”² It follows, then, that the human person is created for love, an affirmation that should not be surprising coming from a Pope. The incongruity seems to appear when “charity as gift” is accorded the important and even systematically central place given it by Pope Benedict in his encyclical on social justice and economics.³ A similar incongruity

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1. Pope Benedict XVI, *Caritas in Veritate* [Encyclical Letter on Integral Human Development in Charity and Truth] ¶ 34 (2009) [hereinafter *Caritas in Veritate*].

2. *Id.* ¶ 3.

3. See George Weigel, *Caritas in Veritate in Gold and Red*, NAT’L REV. ONLINE (July 7, 2009, 11:30 AM), <http://www.nationalreview.com/articles/227839/i-caritas-veritate-i-gold-and-red/george-weigel>. The biographer of Pope John Paul II comments:

The encyclical includes a lengthy discussion of “gift” (hence “gratuitousness”), which, again, might be an interesting attempt to apply to economic activity certain

suggests itself in the context, if one notes the difficulty in resolving a twofold tension: one between a free individual and the claim made on him by a “law,” and the other between the individual and a similarly free individual “over and against” whom he exercises a claim by virtue of a “right.” In the first instance, the law is in the *vertical* dimension: it stands “above” and claims to bind him, a free individual; in the second, he makes a claim on another free individual in the *horizontal* dimension. If one understands freedom in the full and proper personal sense, the proposition that a “law” has its foundation in the “good” cannot reconcile the freedom of the individual and the binding character of the law. Nor can this occur with the reduction of the binding character to the “agreement” to limit individual claims as a matter of practical necessity. Pope John Paul II considers such a reduction as precisely excluding objective interpersonal bonds:

[S]ome kind of compromise must be found, if one wants a society in which the maximum possible freedom is guaranteed to each individual. In this way, any reference to common values and to a truth absolutely binding on everyone is lost, and social life ventures on to the shifting sands of complete relativism. At that point, everything is negotiable, everything is open to bargaining: even the first of the fundamental rights, the right to life.⁴

It is interesting that explaining the ensuing relativism in the same paragraph, Pope John Paul II simply and correctly notes, “‘right’ ceases to be such, because it is no longer firmly founded

facets of John Paul II’s Christian personalism and the teaching of Vatican II, in *Gaudium et Spes* 24, on the moral imperative of making our lives the gift to others that life itself is to us. But the language in these sections of *Caritas in Veritate* is so clotted and muddled as to suggest the possibility that what may be intended as a new conceptual starting point for Catholic social doctrine is, in fact, a confused sentimentality of precisely the sort the encyclical deplors among those who detach charity from truth.

Id. Apparently Weigel fails to note that the interesting—but muddled and lengthy—attempt to apply the personalist concept of gift to economic activity is precisely the hermeneutical key to understanding the “interpenetration” of subsidiarity and solidarity, without which, ultimately, they cannot be reconciled and remain in polar opposition.

4. Pope John Paul II, *Evangelium Vitae* [*Encyclical Letter on the Value and Inviolability of Human Life*] ¶ 20 (1995) [hereinafter *Evangelium Vitae*] (emphasis omitted).

on the inviolable dignity of the person, but is made subject to the will of the stronger part.”⁵

I do not intend to dispute in the present Article what has become a formulaic assertion in Catholic circles, that human rights are grounded in the dignity of the human person⁶ and, one almost invariably finds added, in the fact that man has been created in the image of God.⁷ Yet this truth is not grasped with a theoretical clarity sufficient to raise consciousness about the very thing Pope John Paul II notes in the preceding two paragraphs, the “surprising” and the “remarkable” contradiction between the affirmation of human rights in words and their denial in deeds.⁸ In the con-

5. *Id.*

6. See United States Conference of Catholic Bishops, *Forming Consciences for Faithful Citizenship: A Call to Political Responsibility from the Catholic Bishops of the United States* ¶ 10 (2007) (approved by the full body of bishops at its general meeting in November of 2007), available at <http://www.usccb.org/issues-and-action/faithful-citizenship/upload/forming-consciences-for-faithful-citizenship.pdf>.

What faith teaches about the dignity of the human person and about the sacredness of every human life helps us see more clearly the same truths that also come to us through the gift of human reason. At the center of these truths is respect for the dignity of every person. This is the core of Catholic moral and social teaching. Because we are people of both faith and reason, it is appropriate and necessary for us to bring this essential truth about human life and dignity to the public square.

Id.

7. See *id.* ¶ 9.

Christ’s love for us lets us see our human dignity in full clarity and compels us to love our neighbors as he has loved us. Christ, the Teacher, shows us what is true and good, that is, what is in accord with our human nature as free, intelligent beings created in God’s image and likeness and endowed by the Creator with dignity and rights.

Id.

8. See *Evangelium Vitae*, *supra* note 4, ¶¶ 18–19.

[A] long historical process is reaching a turning-point. The process which once led to discovering the idea of “human rights”—rights inherent in every person and prior to any Constitution and state legislation—is today marked by a surprising contradiction. Precisely in an age when the inviolable rights of the person are solemnly proclaimed and the value of life is publicly affirmed, the very right to life is being denied or trampled upon [T]hese noble proclamations [about human rights] are unfortunately contradicted by a tragic repudiation of them in practice. This denial is still more distressing, indeed more scandalous, precisely because it is occurring in a society which makes the affirmation and protection of human rights its primary objective and its boast.

Id. ¶ 18 (emphasis omitted).

text of these paragraphs, he indicates cultural and moral reasons for this remarkable contradiction. In plain language they are selfishness; in more theoretical language they are a concept of subjectivity pushed to the extreme. He lists a number of explanations for the violation of the value and dignity of human life identified as foundation for human rights.⁹ One of these is the crisis of culture that “makes it increasingly difficult to grasp clearly the meaning of what man is, the meaning of his rights and his duties.”¹⁰ But he gives only a brief indication of what might be taken as a theoretical explanation or grounding of this dignity itself or of the meaning, that is, of the nature of rights and duties. One of these indications is the affirmation that human life is “a sacred reality entrusted to us, to be preserved with a sense of responsibility and brought to perfection in love and in the gift of ourselves to God and to our brothers and sisters.”¹¹ Pope John Paul II does not accord the concept of gift the systematic and thematic role it actually plays in the encyclical,¹² as well as in his thoughts in general before and after his election to the papal throne.¹³

9. *Id.* ¶ 11.

10. *Id.*

11. *Id.* ¶ 2 (emphasis omitted).

12. As, for example, when he remarks *a propos* the entrusting of Abel’s life to Cain and of human life in general: “[I]n view of this entrusting that God gives everyone freedom, a freedom which possesses an inherently relational dimension. This is a great gift of the Creator, placed as it is at the service of the person and of his fulfillment through the gift of self and openness to others” *Id.* ¶ 19 (emphasis omitted). Later in the encyclical, the significance of “this entrusting” as gift and foundation of a juridical bond between human persons becomes more explicit:

The God of the Covenant has entrusted the life of every individual to his or her fellow human beings, brothers and sisters, according to the law of reciprocity in giving and receiving, of self-giving and of the acceptance of others. In the fullness of time, by taking flesh and giving his life for us, the Son of God showed what heights and depths this law of reciprocity can reach. With the gift of his Spirit, Christ gives new content and meaning to the law of reciprocity, to our being entrusted to one another.

Id. ¶ 76.

13. As a young priest, Karol Wojtyła came to understand human contingency in terms of an existence given as gift, requiring the gift of self in return. See TADEUSZ STYCZEN & EDWARD BALAWAJDER, *JEDYNIENIE PRAWDA WYZWALA: ROZMOWY O JANIE PAWLE II* [TRUTH ALONE LIBERATES: CONVERSATIONS ABOUT JOHN PAUL II] 35 (1987). Pope John Paul II says that man is “the one whom God, right from the beginning, introduces not only to the order of existence, but also to the order of giving.” Pope John Paul II, General Audience ¶ 2 (Dec. 13, 1978), http://www.vatican.va/holy_father/john_paul_ii/audiences/1978/documents/hf_jp-ii_aud_19781213_en.html (discussing creation as a gift of love). Pope John Paul II notes that the “very substance” of religion is not an abstract concept of God but knowledge and meeting. Pope John Paul II, General Audience ¶ 1 (Jan. 24, 1979), http://www.vatican.va/holy_father/john_paul_ii/audiences/1979/documents/hf

In contrast, Pope Benedict accords the concept of gift a more systematic role, devoting the third chapter of *Caritas in Veritate* to what he calls, at one point, the “logic of the gift” with regard to its implications for fraternity and integral human development.¹⁴ He contrasts it with a “mere logic of the exchange of equivalents, of profit as an end in itself.”¹⁵ The encyclical teaches the difference it makes to the social context for us to look at man as “made for gift.”¹⁶ Still, it presupposes rather than explains the meaning of gift. In the present Article, I propose a conceptual sketch of what would be a metaphysics of gift in the sense of Pope John Paul II—the concept of the gift as a hermeneutical key for a new understanding of creation¹⁷—as it bears on the narrower question of human rights and their foundation. I propose to ask not so much St. Paul’s first question, “*What* have you that you did not receive?”¹⁸ as “*Why* have you been given anything at all?” The answer to this may also provide some systematic answer to his se-

_jp-ii_aud_19790124_en.html. He then goes on to say, “Man gets to know[sic] God by meeting him, and vice versa he meets him in the act of getting to know him. He meets God when he opens up to him with the interior gift of his human ‘ego’, to accept God’s Gift and reciprocate it.” *Id.* The centrality of the concept of the gift in his anthropology is evident from the outset of Pope John Paul II’s pontificate.

14. *Caritas in Veritate*, *supra* note 1, ¶ 34.

15. *Id.* ¶ 38. It is significant that Pope Benedict implies a clear distinction between the “exchange” entailed by the market, indeed by the free market, and the “reciprocity” of the gift situation. A similar distinction is present *in nuce* in Pope John Paul II’s *Centesimus Annus*, where in one passage he refers to capitalism in positive terms, namely a free market circumscribed by laws in the service of human freedom. Pope John Paul II, *Centesimus Annus* [*Encyclical Letter on the Hundredth Anniversary of Rerum Novarum*] ¶¶ 34, 42 (1991) [hereinafter *Centesimus Annus*]. But in another passage makes reference precisely to the structures also present in the West, namely those that make it harder, not easier to make a gift of self. *Id.* ¶ 41. Furthermore, a third passage refers to something that is due to man *prior to the logic of fair exchange* by virtue of what is *due* to man because he is man. *Id.* ¶ 34.

16. *Caritas in Veritate*, *supra* note 1, ¶ 34.

17. See POPE JOHN PAUL II, *THE THEOLOGY OF THE BODY* 58 (1997) [hereinafter *THEOLOGY OF THE BODY*].

Now, it is opportune to turn again to those fundamental words which Christ used, that is, the word “created” and the subject “Creator.” They introduce in the considerations made so far a new dimension, a new criterion of understanding and interpretation, which we will call “hermeneutics of the gift.” The dimension of the gift . . . is also at the heart of the mystery of creation, which enables us to construct the theology of the body “from the beginning,” . . .

Id.

18. 1 *Corinthians* 4:7 (Revised Standard, Catholic Edition) (emphasis added).

cond question, "If then you received it why do you boast as if it were not a gift?"¹⁹

In the interest of narrowing the focus of this Article, I can formulate my approach in terms of the above mentioned tensions between the individual and, on the one hand, something that claims to bind him "from above" in the manner of what has been traditionally called "law" and, on the other hand, someone "over and against" whom he exercises a claim to what is "his own by right." In each case we have an existential tension between a free individual who is "his own" and a claim to bind him. I will take "right" to mean a legitimate or justified claim grounded in ownership in the strict and proper sense of the word. The theoretical justification of the grounding relation will require a conceptual articulation of some central elements entailed by a metaphysics of "right." I will propose the concept and nature of a gift as one such element in what can be a personalistic approach to and development of traditional "natural law." Accordingly, drawing on the personalism of the current Pope and his predecessor, I will deal in the first section with the subjective foundations of rights from the perspective of the gift, focusing on the concepts of ownership, experience, self-possession, and the free-personal center. In a second section, I will deal with the possible "dialectic" of these concepts. Each can be understood as one of two mutually exclusive meanings according to the way that their "reference" is one of the two possible *existential* actualizations or exercises in personal acts. Each will have one of two existentially contrary meanings according to whether the individual performs personal acts for his own sake or for the sake of another. The concept of "ownership," for example, will mean one thing in the context of acts "for my own sake" and the opposite in the case of acts "for the sake of the other." Each concept will be an accurate and adequate grasp of a real experience that can serve as evidence for each of two opposed and ultimately irreconcilable theories of "right." The third section will deal with the objective foundations of right to include the structure of the gift, with its complementary moments of *receiving* and *giving* as key to understanding the objective bond it establishes, one in which the subjects of a reciprocal giving and receiving of the gift of self come to "belong" to each oth-

19. *Id.*

er. The nature of the gift should open the field of “rights” to an analysis of the ways a personal being can be “bound” to others, in the mode of “yours” and/or in the mode of “mine.” The conclusion will reflect briefly on the way a hermeneutics of the gift can bring to light a personalist dimension not taken into account in traditional natural law theories.

I. THE SUBJECTIVE FOUNDATION OF RIGHTS

A. *Ownership*

The above questions raised by St. Paul bear on the theme of *ownership* that cuts across if not unites charity and justice. Speaking of the relation between these, Pope Benedict writes:

Charity goes beyond justice, because to love is to give, to offer what is “mine” to the other; but it never lacks justice, which prompts us to give the other what is “his,” what is due to him by reason of his being or his acting. I cannot “give” what is mine to the other, without first giving him what pertains to him in justice. If we love others with charity, then first of all we are just toward them. Not only is justice not extraneous to charity, not only is it not an alternative or parallel path to charity: justice is inseparable from charity, and intrinsic to it.²⁰

To make sense of these possessives, “mine, yours,” that indicate what belongs to, or is proper to, and eventually due to some individual person, we must distinguish ontological and juridical ownership.²¹ The former signifies what is simply in some fashion

20. *Caritas in Veritate*, *supra* note 1, ¶ 6 (footnote omitted).

21. See Damian P. Fedoryka, *The Demise of Capital Punishment in the Culture of Death and the Relationship between Pain and Punishment*, 7 AVE MARIA L. REV. 527 (2009).

Juridical ownership is to be distinguished from an *ontological* property or ownership, both of which can be signified with the grammatical possessive. Instances of the latter are indicated with the expressions “the hair of the dog” and the “hair of the woman,” or the “dog’s hair” and the “woman’s hair.” Signified is the fact that the hair is a “part” of the being and in this sense belongs to it. The difference should become, or at least used to be, quite apparent if a man, for example, were to touch any part of the body “of a woman” juridically not “his own” in at least some measure. Ontological “ownership” lacks the specifically and uniquely personal, active “rule” or sovereignty that presupposes self-possession, to which Karol Wojtyła, for example, referred with the scholastic formula, *persona sui juris et alteri incommunicabilis*: “Self-

part of a being, and in this regard belongs to it, constituting its identity in a broad sense.²² The latter signifies something a bit more difficult to explain, if not understand. It indicates sovereignty, a *juris*-diction and in this sense an ownership. I say more difficult because ownership of non-personal entities is easier to understand in terms of power.

If I tame a wild horse, he is mine. If I make the table, it is mine. The situation becomes somewhat complex if we observe two men disputing ownership of a tame horse, which neither has tamed. Manifestly, power cannot resolve the dispute. This makes it more difficult, if not impossible, to explain ownership or sovereignty as distinct from, even though involving, power. Before dealing with the question why power cannot be the solution of ownership,²³ we must first understand ownership. To define ownership by power, or right by might, is to understand “from outside” something that can only be understood from “within itself.” Ownership, as a *personal* act, cannot be understood “cosmologically” in Wojtyła’s sense, “from the outside” or as objects, the way we understand everything non-personal in the rest of the cosmos.²⁴

B. Experience

When Wojtyła states, in both his *The Acting Person*²⁵ and at the outset of his talks on the nuptial meaning of the body,²⁶ that

determination in some sense points to self-possession and self-governance as the structure proper to a person. If I determine myself, I must possess myself and govern myself. These realities mutually explain one another because they also mutually imply one another.”

Id. at 540 n.40 (citing 4 KAROL WOJTYŁA, *The Personal Structure of Self-Determination*, reprinted in CATHOLIC THOUGHT FROM LUBLIN 187, 192 (Andrew N. Woznicki ed., Theresa Sandok trans., 1993) (1974)). See *infra* Part III.A.

22. See *infra* Part I.D.

23. As claimed in the dictum, “possession is nine tenths of the law.” The implication here is that effective “control”—and hence “governance” in the extended sense—is the meaning of both “ownership” and “law.”

24. 4 KAROL WOJTYŁA, *Subjectivity and the Irreducible in Man*, in CATHOLIC THOUGHT FROM LUBLIN, *supra* note 21, at 211.

25. See CARDINAL KAROL WOJTYŁA, *THE ACTING PERSON* 15–16 (Andrzej Potocki trans., D. Reidel Publ’g Co. 1979) (1920) [hereinafter *THE ACTING PERSON*].

[I]t is necessary to explain in detail the various aspects of the reality of the acting person on the ground of a fundamental understanding of person and action. . . . But this can be accomplished only by going deeper and deeper into the content of experience

he is beginning with experience, not metaphysics,²⁷ he means that the things under discussion—personal being and whatever is an ontological “part” of him, in this case, the bodily and psychic states as well as spiritual acts—can be, and indeed are, cognitively “had from within.”²⁸ These are never “given” as objects over and against the subject, as something “other.” In experience, or in consciousness (a virtual synonym), we have a first indication of the meaning of juridical ownership: the person “has” himself from within.²⁹ The expressions “to have” and “to possess” signify a basic common core of meaning. We are dealing with what is “proper” to something, what is “one’s” own in a juridical sense. As noted however, the specific meaning of ownership cannot be

so as to bring the person and his actions out of the shadow and into full light for the cognizing mind to thoroughly examine and explore.

Id.

26. See Pope John Paul II, General Audience (Jan. 16, 1980), http://www.vatican.va/holy_father/john_paul_ii/audiences/catechesis_genesis/documents/hf_jp-ii_aud_10900116_en.html.

27. For a succinct statement on his reasons for starting with experience, see WOJTYŁA, *supra* note 21, at 188–95. Interestingly enough, at the end of the Article, referring the reader to a more extensive treatment of “starting with experience” in his THE ACTING PERSON, he writes:

I have attempted, however, even in this short presentation, to stress the very real need for a confrontation of the metaphysical view of the person that we find in St. Thomas and in the traditions of Thomistic philosophy with the comprehensive experience of the human being. Such a confrontation will throw more light on the cognitive sources from which the Angelic Doctor derived his metaphysical view.

Id. at 194–95.

28. See generally THE ACTING PERSON, *supra* note 25, at 105–48. Wojtyła identifies self-possession as the essential—if not the defining—feature of the person as person. If self-possession is the person’s possession of his being *from within*, then the person’s being is not an object, that is, an intentional object of the possession. Where Wojtyła speaks of “self-possession,” I claim that he intends “the thing itself” under investigation, namely, consciousness as “self-possession by the self from within itself” in the technical sense that I will use it. I propose that the addition of the phrase “from within” will allow for a more adequate positive circumscription of that aspect of consciousness Wojtyła has already identified with the negative “not intentional.”

29. This “having” or consciousness is also global in as much as the self can have itself “from within” *knowingly, feelingly, and willingly*. It is “global” in the sense that each of these functions “compenetrates” the others. In this global aspect, consciousness is a “unifying” principle rather than a mere “sum” of intentional acts and non-intentional experiences. As the unifying principle, it is the actualization of a being that is person, whose specifying mark is self-possession, and, as can be seen from the subsequent teachings of Pope John Paul II, self-giving. In this respect, it is a metaphysical property of a being whose ontological *act of being* is actualized in this global having of itself in the *subjective mode*, a self-possession that can be actualized or perfected only in a giving of self in the *objective mode* of intentional acts.

understood in a cosmological way,³⁰ as the ownership of objects, other than one's "own" being. We must pursue the subjective perspective, look at ownership as the experiencing person "sees" it when it has and "discovers" its being, and acts "from within." For it is in its own interiority³¹ that the person "has" the astonishing experience of ownership and gift.

C. *Self-Possession*

For Wojtyła, "self-possession" is the term indicating what is discovered in the experience of "I act" as analyzed in *The Acting Person*.³² It is the metaphysical foundation, given in experience, for personal acts of self-determination and self-governance. He also identifies self-possession with the term *sui juris*, which can be translated as "one's own by right."³³ In this Article, I will use

30. See WOJTYŁA, *supra* note 24, at 213.

We should pause in the process of reduction, which leads us in the direction of understanding the human being in the world (a *cosmological* type of understanding), in order to understand the human being inwardly. This latter type of understanding may be called *personalistic*. . . . [which] is not the antinomy of the cosmological type but its complement.

Id.

31. The dimension of interiority, under the term "subjectivity," together with the capacity for self-possession, has come to be well known in Wojtyła/Pope John Paul II's personalism, which I refer to as the free, personal, metaphysical center. See *infra* Part I.D. The same reality figures in the personalism of Pope Benedict XVI. Speaking of the entire mystery of Christ as a *sacramentum*, Pope Benedict writes that this *sacramentum* is:

[T]he entire mystery of Christ—his life and death—in which he draws close to us, *enters* us through his Spirit, and transforms us. But precisely because this *sacramentum* truly "cleanses" us, renewing us *from within*, it also unleashes a dynamic of new life. The command to do as Jesus did is no mere moral appendix to the mystery, let alone an antithesis to it. It follows from the inner dynamic of gift with which the Lord renews us and draws us *into* what is his.

2 POPE BENEDICT XVI, JESUS OF NAZARETH 62 (2011) (emphasis added). The dynamic of new life is the dynamic of gift, which entails the mutual "entry" into the "interiorities" of both the Lord and his human creature. It is within this free, personal center, with its power and act of self-possession, that the dynamic of the gift is initiated and completed—initiated by the Lord's gift of self and completed by the created person's receiving and reciprocating with a gift of self. It is with reference to this *sacramentum*, the dynamic of gift and of the new life it affords that Pope Benedict speaks of a "new foundation of being that is given to us. The newness can come only from the gift of being-*with* and being-*in* Christ." *Id.* at 64.

32. THE ACTING PERSON, *supra* note 25, at 106.

33. KAROL WOJTYŁA, LOVE AND RESPONSIBILITY 24 (H.T. Willets trans., Ignatius Press 1993) (1960) [hereinafter LOVE AND RESPONSIBILITY]. Wojtyła's own identification of the power of self-

the term “juridical ownership” to signify the same self-possession. In the present context I stress that this “ownership” of self means that it is not man’s nature that determines his ultimate end. Properly understood, this self-possession also indicates, negatively speaking, that the actualization of his own nature is not to be his intended ultimate end.³⁴ It would be entirely correct to say that the acorn and the puppy “strive” to be all they can be, fully oak and fully canine, respectively. However, in this regard, man’s distinctive or specific difference is that he is not called to become “in the end” some possibility seminally present in his nature and being. He is called to acquire some property that was not part of his essence and being “in the beginning.”³⁵ Thus, the veracity to which he is called, for example, and which he is to acquire as a *property* or determination of his being, is not seminally present in his being, an immanent part of his nature. Although the oak and canine natures are the plan or “law,” according to which their active potency unfolds and actualizes itself, in the end neither being becomes essentially different from what they were ontologically in the beginning. More importantly, this actualization is ontologically but not juridically “their own.” To use a colloquialism, they could not help what they were doing. Their activity was not their “own” in the strict sense of the word to the extent that it was determined by their natures. The beings in question have no sovereignty over their natures or their being.

D. The Free, Personal Center

Self-possession, presupposed for self-determination and self-governance, entails a metaphysical center within the person. In

possession in personalistic terms, namely as a power of the will that extends to the choice of ends and not simply means, puts him into a certain tension if not at odds with the natural law tradition to the extent that the latter retains the Aristotelian notion that human free will extends only to means, not to ends.

34. Pope Benedict XVI, General Audience (Feb. 21, 2007), http://www.vatican.va/holy_father/benedict_xvi/audiences/2007/documents/hf_ben-xvi_aud_20070221_en.html. The English text has “self-fulfillment” where the German reads *selbstverwirklichung*, and the Italian *autorealizzazione*, both closer to the English self-realization or self-actualization. The Croatian has an even stronger terminology, *samoostvarenja*, “self-creation.” (author’s translation).

35. The limited context allows for a brief remark. The fact that man’s essence or nature (his formal cause) is not also his “end” to be actualized (his final cause), as is the case of non-personal living beings, poses a logical if not metaphysical problem for traditional natural law theories, in which man was “bound” to act according to his nature by actualizing it fully.

some real sense it is absolute, manifesting itself as a radically *new beginning* in personal acts, particularly in acts of the will.³⁶ With regard to personal acts, they are in some real sense discontinuous with its nature in as much as this nature does not determine the *content* of personal acts. The nature of the human person as person makes its personal acts possible, specifying them as personal acts. It does not specify their inner content. The simple response of "Yes," to an invitation is only made *possible* by my nature. My decision to accept is in some sense literally that, a *decision*, a separation or absolution from any and all determinisms and powers causally operative in or outside my being, that is, outside my free, personal center. Having made the sovereign decision to accept an invitation into your parlor, I can now, in principle, direct and govern my own activity and everything else in the material universe toward that end. The use of any power I possess to govern the universe now stands structurally "justified" by the chosen end. And I stand sovereign, above the "law" with which I govern.³⁷ The particular actualization of the power of determining one's self toward an end of *one's own* choosing is not simply the actualization of the ontological "property" of a being, of what "belongs" to its being, and is already in it as a part and potentiality of it. Much rather, it is the exercise of a sovereign power by which the self governs itself toward an end of its "own" choosing. By virtue of this free governance, the self and its free acts are *juridically* its own in an "ownership" that is essentially different from the *ontological* ownership "by" a non-personal being of

36. Speaking of ethical contingency, Wojtyła writes, "[m]orality discloses the sheer possibility of good and evil within one and the same personal subject as the fruit of that subject's [agency] and self-determination." 4 KAROL WOJTYŁA, *The Problem of the Theory of Morality*, in CATHOLIC THOUGHT FROM LUBLIN, *supra* note 21, at 157. He then goes on to say that the "experience of morality certainly assists us in the definition of our status as human beings, including our ontological status. . . . This definition remains in strict connection with the experience whose inseparable subject and true center is the human being . . . as a person." *Id.* I have replaced the translator's "efficacy" with "agency" since it is more consonant with Wojtyła's analysis of self-determination as given in the experience of the "I act" and absent in the "it happens." The English "efficacy" does not capture or imply the "absolute" beginning of the "I act," only its "efficacy," a meaning that does not require the notion of a personal center whose acts are not simply moments in an efficacious process but the absolute beginning of self-determination. The Polish *czyn* of *Osoba i czyn* (*Person and Act*) is the root of *czynność*, which should be rendered as "agency" but is mistranslated by Sandock as "efficacy."

37. I briefly note that the preceding points would enter into a personalist concept of human dignity.

what is a part of it because it is causally determined by its nature—not by a free personal center.

II. THE DIALECTICAL POSSIBILITY

A. *The Choice of an Immanent End*

The experience of a free personal center as *possessing itself* in the act of determining an end of its choice reveals to the human subject the elements, sketched above, of the subjective foundation of his rights, that is, of the possibility of *claiming* anything as “one’s own.” However, the nature of the person is *relational* in a way that will be identified more fully. Therefore, the specific articulation of the act of self-possession needs to be further specified by reference to the terms of that relation as an *objective foundation* of rights.³⁸ These terms are *the gift* and *its giver*.

By virtue of the personal freedom of self-possession, there are two possibilities in relating to the gift and the giver: either receive or reject them. A rejection creates the dialectic. In the rejection, the power of self-possession is actualized in a way that bears the seeds of its own negation, the loss of self-possession.³⁹ The power of self-possession grounds the possibility of accepting or

38. I briefly note the line of reasoning here: if a right entails a claim to what is “my own,” it is *subjectively* grounded in the capacity of self-ownership or self possession. But this *subjective* capacity can be actualized (positively) in an adequate response to the gift and its giver as *objective* grounding of the validity of the claim. An inadequate response to the gift and giver means that the capacity is “dialectically” actualized, that is, it negates itself. Terminologically situated in the present context, the subjective capacity of self-possession constitutes what I have termed *ontological* ownership. The *juridical* ownership of one’s being is a function of the “adequate” response to the objective content of the gift situation—the gift and the giver—which, in this regard, is the norm of “law” that prescribes and calls for the response “due” to the gift and the giver. One can say, therefore, that the human person is “reserved” for itself, is its own, so that it can make a sincere gift of self to the giver of anything that it has received as gift; the person becomes fully its own when it makes a sincere gift of self to another.

39. The Christian will be familiar with this state of affairs from Christ’s warning, in language appropriate for our discussion, about keeping what has been given man as a gift: he who seeks to keep it will lose it; he who makes a gift of what he was given, will come to keep it. See *Luke* 17:33. The Catholic should be familiar with its contemporary reiteration: “man . . . cannot fully find himself [come to possess himself] except through a sincere [selfless and pure] gift of himself.” Second Vatican Council, *Gaudium et Spes* [*Pastoral Constitution on the Church in the Modern World*] ¶ 24 (1965), reprinted in *THE DOCUMENTS OF THE VATICAN II* 199, 223 (Walter M. Abbot, S.J. ed., Very Rev. Msgr. Joseph Gallagher trans., 1966) [hereinafter *Gaudium et Spes*]. This passage is used by Pope John Paul II in almost every major document in connection with his focus on the theme of the gift as central to his “personalism.”

rejecting a gift in free acts.⁴⁰ Given this and, *a fortiori*, man's rational nature, there must be a reason for not receiving or rejecting the gift, a reason for the counter-choice. One of these is the choice of "one's own" *satisfaction* that results in an existential self-negation and a new kind of "mine,"—which I will call a "dialectical mine"—distinct from ontological and juridical ownership. Such a choice of—that is, a self-determination of oneself towards—"one's own" satisfaction as end or motive for one's acting modifies the actualization of self-possession. On the one hand, the choice of satisfaction entails *claiming* something for oneself with nothing to justify the claim but one's *yielding* to the dynamism of satisfaction. The "claiming" is an element which such a choice shares with a genuine right, but without the latter's legitimacy. On the other hand, the very choice of *yielding* to satisfaction as motive constitutes an abdication of sovereignty over one's own being, a real loss of the ownership of self in some measure. In this regard, the choice of an immanent end is an existential deformation of an essential attribute of the human person, the power of self-possession, into its contrary, bondage to one's own need for satisfaction. The attempt to exercise self-possession in the choice of satisfaction as end has become dialectical; its own negation.

B. Satisfaction, Originally Gift, as End to be Possessed and Enjoyed

In the actualization of self-possession in acts of self-determination, the person experiences an extraordinary power in his "center," and himself at the center of that power. This experience can fill the inner space of the person with what we variously call joy, delight, bliss, enthusiasm, or simply satisfaction. The dynamic quality of such an experience of satisfaction in general and, in this case, the particular satisfaction accompanying the actualization of self-possession in acts of self-determination accounts for the vitality we speak of as "feeling alive." In the normal order, conscious satisfaction is a consequence that

40. However, it is the free acceptance of a gift that is the metaphysical explanation, the reason why the person is "formed" with the power of self-possession. Therefore, only the acceptance of gift justifies the actualization of the power, not the rejection of the gift or the "appropriation" of the power itself for the sake of the satisfaction it yields. In the former case, one can say that the person acted *secundum naturam*, "in accordance with his nature." The later case would represent, from the perspective of a Sartrean or Heideggerian existentialism, an instance of "making" one's essence or nature.

“accompanies” personal acts directed to some thing other than the one who has the experience. Structurally, the satisfaction is not an “object” in front of the acting person. It is immanent to the conscious agent as subject, an ontological “property.” It is also juridically “his own.” He can take a stance, assume an attitude, perform a new act, with regard to his satisfaction. He can *receive* satisfaction as a gift addressed to him by another. In the present context I presuppose that the original experience of its “own” satisfaction by the human person is a receptive act that is part of an act in which the person intends an *other*. In this regard, in its status of being received by the subject, it is a property that can be predicated of the person, who “is satisfied.” Or he can turn to the satisfaction that is ontologically “his” and perhaps even objectively reserved “for him,” and pursue it as a distinct end.⁴¹ In this case, he *appropriates* rather than receives the satisfaction, where appropriation is the execution of a claim justified only by a “mine” that is self-negating because it is mendacious.⁴²

In our context, the experienced power of self-possession and self-determination with the mastery they entail, can become the *immanent end* of a free choice. The motive for this choice is the specific *satisfaction*, unique because it is a correlate to the exercise of the power of self-possession, unique, therefore, because it is “mine” in a distinctive way. I will use the term “dialectical mine” to distinguish it from the ontological and the juridical senses of the term “mine.” Here, the word “mine” displaces the terminology that could have been used to designate an ontological property

41. Wojtyła explicitly identifies this kind of choice in LOVE AND RESPONSIBILITY, where he introduces powerful “emotional-affective” overtones that belong to the objective structure of human act. LOVE AND RESPONSIBILITY, *supra* note 33, at 31–34. These have a positive or negative charge which man, “precisely because he has the power to reason, can, in his actions, not only clearly distinguish pleasure [the positive] from its opposite, but can also isolate it, so to speak, and treat it as a distinct aim of his activity.” *Id.* at 33. It seems clear that Wojtyła is identifying an end that motivates not *sub specie bonitatis*, “under the aspect of “good,” but rather *sub specie satisfacionis*, “under the aspect of satisfaction.”

42. For a clear distinction between receiving and appropriation, see THEOLOGY OF THE BODY, *supra* note 17, at 125–29. The latter occurs when the person “takes” the gift but rejects the giver and his love. Appropriation is marked by the *closure* of the self in immanence and a refusal to share my *self* in a reciprocal gift of gratitude to the Giver. In appropriation, as opposed to receiving, the accent shifts to the act as exercise of power *over* the gift and *against* the giver. With reference to *Caritas in Veritate*, the profit “motive” is a particular instance of the act of appropriation and is therefore essentially hostile to the other and destructive of community.

of his being⁴³ as well as a juridical property of his person. The “mine,” in the choice of my own satisfaction, acquires the essentially different tone that resonated in Tolkien’s character, Gollum, as he affirmed ownership of the Ring of Power, “My-y-y precious-s-s-s, Mine.” It was the echo of a cunning greed and calculating avarice, a naked desire for satisfaction, one of whose characteristics is a *closure* upon the self as “mine.”⁴⁴ As it appropriates what it grasps, the act becomes an ego cramp, imprisoning the person in itself.⁴⁵ The “mine” is reduced to a sheer, naked claim with no foundation but the will to satisfy the agent, so precisely captured by Juvenal’s, *hoc volo, sic jubeo, sit pro rationem voluntas*.⁴⁶ An element of authentic right, the possibility of *claiming* something as legitimately “one’s” own, has been taken in our culture as a sufficient foundation of right. What now constitutes a right is not the legitimacy of a claim but the mere fact that one claims something as “mine.” Such a “right” binds others; it is always a right “over and against” another but leaves the subject unbound by others. The only motivation for the existential exercise of the claim is satisfaction; the only justification is the fact it is “my” satisfaction. The specific aspect of the dialectical “mine” that is relevant to my argument that self-possession is the foundation of rights is the fact that a choice of satisfaction constitutes a loss of self-possession.⁴⁷ By implication this is a rejection of anything

43. St. Augustine remarks on precisely this phenomenon when he describes the condition of the individual who ardently attaches himself to the things that please him and, when it comes time to think of himself, draws these things into himself and no longer distinguishes what he is from the things he is not. See ST. AUGUSTINE, THE TRINITY, Bk. X, Ch. 8, *reprinted in* 45 THE FATHERS OF THE CHURCH 305 (Stephen McKenna trans., 1962).

44. This is the closure instantiated in this paper’s opening citation from Pope Benedict, “being selfishly closed in upon himself.” *Caritas in Veritate*, *supra* note 1, ¶ 34. In contrast, the proper enunciation of the word mine in its juridical sense and in the context of the gift expresses the *openness* of the individual to the sharing of what is mine as a gift with the other.

45. In this regard it makes impossible the community that, together with “gift [and] acceptance” is a characteristic of charity. *Id.* ¶ 3.

46. See JUVENAL, THE SATIRES OF JUVENAL Pt. VI, l. 223 (Rolfe Humphries trans., 1970) (“This I want, thus I command, let my will suffice in place of reason.”). I first heard this phrase from Professor René Marcic as illustration of a principle of legal positivism. In our context, it turns out the phrase was used by a Roman noble lady demanding her husband punish a slave who had refused to assist her in an immoral activity motivated by satisfaction.

47. For a phenomenological analysis of what von Hildebrand calls a form of false consciousness that consists in a turn from objects that engender value responses and “has a deadly effect on true inward life,” see DIETRICH VON HILDEBRAND, TRANSFORMATION IN CHRIST 54–56 (1948). In the context of this Article, this turn from the object towards one’s own satisfaction de-

other than the mere intention to satisfy a subjective need as a foundation of rights.

C. Loss of Self-Possession as Basis for a Redefinition of "Rights"

The free choice of "one's own" satisfaction begins as an act of self-possession and ends as a state of slavery, for the choice of one's own satisfaction as an end always and necessarily entails a yielding to it,⁴⁸ and, in this regard, a loss of self-possession. When the satisfaction chosen as motive is specifically the satisfaction expected from the exercise of self-possession in self-determination, the individual becomes incapable of freely accepting an obligation or being bound by any law.⁴⁹

A fuller justification of the above proposition that the choice of satisfaction as motive entails a loss of self-possession is beyond the scope of the present Article.⁵⁰ I restrict myself to a conceptual elucidation of some consequences for a redefinition of rights that follows from grounding them in a "freedom to choose" one's own satisfaction. I will do so to sharpen the contrast of such redefinition with an understanding of rights grounded in a capacity of self-possession that is metaphysically justified in terms of a gift of self to and for the sake of an *other*.

stroys the self-possession that is an integral structural part of the "inward life." I focus the present Article on what is implicit in von Hildebrand's notion of "sanction" by an act of free will, namely, the aspects of self-possession and its actualization of receiving and making "my own" what is given to me as gift. See generally *id.* at 215–21, 491–94.

48. See DIETRICH VON HILDEBRAND, *ETHICS* 34–63 (2d ed., 1972) (1953) [hereinafter *ETHICS*]. One of the most important but insufficiently recognized contributions of Dietrich von Hildebrand to philosophical anthropology and a personalist ethics is his identification of satisfaction as a distinct motive, irreducible to what is good in itself. *Id.* at 36. This includes an identification of the specific ways a person relates to the different motive. *Id.* at 61–62. One of these lies in the response to each kind. In the case of satisfaction as motive, the person *yields* to the obtrusive, insistent appeal of satisfaction which does not require obedience, and hence freedom. To that extent, one loses self-possession in the choice of satisfaction as motive. The good in itself in contrast, maintains a sovereign distance from the personal center, presupposing freedom on the part of the subject from whom it demands a *fitting, proper, and due* response. The last three terms touch on the juridical dimension of "law" in the proper sense.

49. To the extent that any obedience or submission to obligation under a law presupposes freedom, i.e., being one's own, the individual who has *yielded* to his own satisfaction is no longer his own; he must become free again in order to obey a law or accept an obligation.

50. For a more extensive treatment of the topic, see Damian P. Fedoryka, *Free Will as Self-Giving*, in 2 *FREEDOM IN CONTEMPORARY CULTURE* 175–95 (Lublin: Catholic University of Lublin Press, 1998).

As the language of rights would have it, a "right" is a "right to something" and "over and against someone." This would seem to hold even when one claims a right to the same person over and against whom he makes the claim. This language correctly reflects the *agonistic* character of the interpersonal situation in which rights become an issue. What one claims as one's own is not "given" by the one who *wills* to hold it for himself. To exercise my claim, that is, my "right," I have to go *against* the will of another. Now, the above conceptual elements of a right do not contain the concept of self-possession. One can attempt to explain and articulate them with the concept of *power* without any reference to that of "possession" or "self-possession." Thus my "claim to is exercised by my power over the thing or the person. The same obtains in the exercise of my "claim over and against" This seems to be the case in all positive legislation whether it is theoretically grounded in an objective pre-positive norm or in the subjective pursuit of satisfaction. In the latter case the very meaning of "right" can be reduced to that of "might" or power if *satisfaction* is the sole foundation of rights. If the meaning of a "right" is a claim to what is "dialectically mine" as discussed above, the legislation of "right" will have the existential and practical consequences of destroying the self-possession and hence the freedom of the individuals subject to such legislation.

Significant for our discussion is that the power in question is always one "over" and "from without" what is claimed and the one against whom the claim is exercised. Thus, the legislative protection of a right understood in these terms includes a sanction or threat against the potential violator of the protected claim. Take the example of a traffic regulation mandating a stop at pedestrian crossings. Such a law does not require of the drivers an *interior* attitude of reverence and respect much less love for the pedestrians. It simply mandates the *external* behavior. The typical characteristic of positive law that it does not, because it cannot, directly mandate or legislate the interior attitude of those subject to it indicates another feature that is central to its effectiveness: in the event of a failure of the attitude of respect, motivated by the pedestrian's dignity as a human person, the law counts on the driver's fear of the negative consequence of disobeying it. In other words, it counts on the category of *satisfaction*,

in its negative form, as operative motive for the driver's compliance with the law.

The theoretical articulation of the above situation is as follows: On the one hand, the *subjective* basis for "right" in general is the subjective claim to the satisfaction chosen by the individual. On the other hand, the *objective* ground for the legislative efficacy of the individual's claim is the threat of dissatisfaction to those who would oppose the claim. Both the subjective and objective dimensions are a function of power that is functionally external both to the subject of a "right" so conceived and to the "hostile other."

In an order where a right has a normative source that transcends the individual's choice of satisfaction, positive legislation protects legitimate ownership against robbery, theft, or extortion by the threat of a punishment that has a deterrent function as dissatisfaction. If an objective and normative source, transcendent to the category of satisfaction, is rejected, the positive law functions as deterrent in direct proportion to the degree that its violator is driven more by the dissatisfaction of the penal function than he is driven by his choice of satisfaction. The sanctions attaching to positive law, therefore, cultivate satisfaction as the exclusive principle of motivation on both sides of the relation, in the subject of rights as well as in the violator of these rights. In this regard, they do not simply ignore the reality of self-possession, which is not included in the logical concept of rights as grounded in the choice of one's own satisfaction, but positively act against the real exercise of self-possession on the part of individuals.⁵¹

Self-possession is not and cannot be legislated because the interior dimension of the person is not accessible to external power and thus matter for positive legislation. In that sense, self-possession can be "ignored" as matter or intent of positive law. The system that protects the choice of satisfaction as a "right" actually protects the public exercise of and commerce in "what" satisfies by providing the power of the anonymous collective that

51. I take this to be the situation Pope John Paul II has in mind with his reference to the social structures which make it more difficult, not easier to make the gift of self. See *Centesimus Annus*, *supra* note 15, ¶ 34. In this regard, the functional appeal to satisfaction becomes dialectical: the legal penal sanction in terms of the category of satisfaction that is presupposed for the definition of rights as the protected "matter" is at the same time offset by the satisfaction that the aggressor against the rights of others to satisfaction claims for himself. This calculus of consequences in terms of satisfaction is practically resolved by the quantum and distribution of power in a social group.

the individual may lack in securing what is necessary for satisfaction. In the process, it "enables" the yielding of individuals to the desire for satisfaction, securing power over the individual who has lost self-possession in the addiction to his satisfaction. At the same time, the more the prospective criminal is possessed by his fear of loss, the more the prospective criminal is possessed by his fear of loss, the system that attaches penal sanctions to this protection is more powerful and effective in this protection. This in turn creates a dependence of the "citizen" on the state for the exercise of "his or her right" to satisfaction.

In the above conception of "rights" there can be no place for even the concept of self-possession from within a personal center as a condition for self-giving to an *other*. *A fortiori*, there can be no room for the self-donation to another in the manner of a gift which justifies the metaphysical capacity of self-giving from and by a free personal center that is "its own." The systematic political cultivation of the pursuit of satisfaction makes it more difficult for individuals who are formed by such a culture to experience self-possession whose clear conceptualization presupposes its exercise in self-giving to others. Exercised in the choice of one's own satisfaction, it becomes dialectical, losing itself in the very exercise. Still, its echo remains in the ubiquitous, "I am *my own*" man or woman, as the case may be.

The experience of self-possession, even in the evanescent act of "choosing oneself," places the individual "at the center" of one's being, at the source of an extraordinary power. Identified by Wojtyła as *sui juris*, it is the power of mastery over oneself from within oneself. In the present context, I wish to add that the exercise of this power has as its consequence its own specific satisfaction, that of "being one's own," even apart from the question of what one is going to do with that self that one has as one's own. Being the absolute origin of one's choices and experiencing oneself as such can be the source of what is variously called delight, joy, exhilaration, or, in general, simply satisfaction. The experience *fills* the individual and has a "friendly" and "pleasing" quality. In this regard, it is something dynamic that "adds" to one's conscious existence and there is nothing morally negative about it. But it is also something that "happens" in me. It is not within the direct power of the will. The individual cannot will his own satisfaction into existence. Precisely in this regard, even

though satisfaction has become an ontological “property” of his being, it is not “his own” in the proper juridical sense of the word.⁵²

He can make it “his own” in two different and mutually exclusive ways. He can, as discussed above, choose to *appropriate* it simply because it satisfies him or he can choose to *receive* it as a gift. The content of each choice, as appropriating or receiving, issues from and is determined by his free personal center. Each presupposes the capacity of self-possession. The former choice, however, becomes dialectical in the loss of self-possession.⁵³ The latter choice requires a fuller articulation in terms of the *gift* as “reason” for the power of self-possession “from within,” namely, a power that makes sense only in

52. See generally THE ACTING PERSON, *supra* note 25, at 220–60. For Wojtyła, the data of inner experience present the human person with the “task of integration” since affective experiences are in the category of “it happens” and not within the direct power of the will as exercised in every “I act.” Speaking of sensitivity he notes that it seems to be “an indication only of what happens in the person as a subject endowed with emotive capacities and of what in this respect *demands to be integrated*. *Sensitivity* . . . is primarily receptive rather than active, and this is precisely the reason why it demands integration.” *Id.* at 232 (first emphasis added). He goes on to note a tension between affectivity and will: “[W]ith the emergence of an emotion or passion man is prompted to seek some sort of integration and this becomes a special task for him,” *id.* at 243, with the consequence that the will may tend to “adopt the attitude presented by [the] emotion.” *Id.* at 245. Wojtyła understands—without using the terminology in a descriptive and non-technical sense—that the emergence of an affective experience is “*receptive*” and that it is not the subject’s “own” unless it is integrated. *Id.* This is the task that aims at “subordinating the spontaneous emotivity of the subjective ego to its self-determination.” *Id.* at 253. If the person exercises self-possession in the “I act” as act of will, the emotive or affective experience which, in my terminology, is an *ontological* part of one’s being but “happens” because it cannot be willed into existence by an act of the subject’s will, becomes “integrated” or—in my terminology—*juristically* one’s own in the act of self-determination that “takes ownership” of and “subordinates” the affective experience “received” as a gift.

Dietrich von Hildebrand is much more explicit on the individual’s “integration” or “becoming one’s own”: “[M]an is called not only to accomplish moral actions in which something is brought into existence through his will or is destroyed by it, but also to take a free position toward those experiences which exist in him and which he can neither create nor destroy by his will.” ETHICS, *supra* note 48, at 317. Further, “[t]hese free attitudes deeply modify the experience itself: *only in them does it become fully our own*.” *Id.* (emphasis added). In the context of this Article, the “modification” in question includes the fact that the experience, which is an *ontological* “property” of one’s being, becomes a *juridical* property by the act of being made “one’s own.”

53. It suffices here to note the disastrous equivocation of a “mine” which plays on the linguistic identity of the term “mine” to signify three different senses, the ontological, the juridical, and the dialectical “mine.” They come together in the appeal to “my body, my life, my decision” as the foundation for a right to abortion: the fetus is taken to be an *ontological* part of the woman’s being, her body; her life is *juristically* her own by virtue of the power of self-possession and thus self-determination; her decision or “free choice” is *dialectical* since in *appropriating* rather than *receiving* child as a gift, she *yields* to some satisfaction as the reason for her choice and in doing so loses self-possession.

terms of receiving and giving the Self as gift.⁵⁴ The human person's relation to a gift and its giver provide an *objective* intelligible explanation or foundation for the *subjective* capacity to own itself and thus a "right" over against others who would appropriate what is given but reject the giver and his or her reason for giving.

III. THE OBJECTIVE FOUNDATION OF RIGHTS

A. *The Nature of the Gift as Hermeneutical Tool*

With the remarks on the proper exercise of the power of self-possession in the context of the gift, I gratuitously, though not arbitrarily, introduce the concept of the gift as a systematic tool to indicate the objective conditions grounding rights. These include a more specific identification of the *personal* relation to a transcendent end or *entelechy*, a transcendent finality that, on the one hand, shapes or gives *metaphysical* "form" to the human being as person and, on the other hand, as we shall see in more detail, presents itself as a gift whose motive is love. The *existential* rejection of the gift or, in effect, the attempt to appropriate it, is the raw material for the theoretically systematic attempt to explain the human person in terms of *entelechy*, that is, of an immanent finality or, again, in Pope Benedict's words, of "being selfishly closed in upon himself."⁵⁵

B. *Human Existence is a Gift*

By way of contrast with the existentialist theory that both shapes and expresses the notion of man's self-creation in an existence "for oneself,"⁵⁶ and to go to the beginning, I start with the

54. See generally DIETRICH VON HILDEBRAND, *THE NATURE OF LOVE* 1–199 (John F. Crosby & John Henry Crosby trans., 2009) (discussing self-giving in chapters 1–7 and the different kinds of "mine" in chapter 8). My analysis is thematically focused on "self-possession" and intersects with von Hildebrand's, whose theme is the relevance of the distinction with regard to the nature of love.

55. *Caritas in Veritate*, *supra* note 1, ¶ 34.

56. Referenced in the same context in terms of the fundamental question:

Is man the product of his own labors or does he depend on God? Scientific discoveries in this field and the possibilities of technological intervention seem so advanced as to force a choice between two types of reasoning: reason open to transcendence or reason closed within immanence. We are presented with a clear *either/or*. Yet the rationality of a self-centered use of technology proves to be irrational because it implies

Christian recognition of God, not simply as Creator, but also as Father. Here we encounter the original “bond” between God and man. It provides a systematic background for the particular claim that binds an *other* in a subject’s affirmation of his “right.” Pope John Paul II notes that in the case of the human being, God has bound himself to a man by a link more *intimate* than that of creation.⁵⁷ This means that, as Creator, God gave man existence as a gift; as Father, he transmits himself in the gift. The gift entails a “bond” even as and precisely because it is a gift, which presupposes the above-noted subjective foundations—self-possession as the power of a personal center—if it is to be received and reciprocated.

The gift, furthermore, entails the act of giving that is more than a *causal* relation. A cause simply determines its effect. The cause-effect relation does not entail an offer. And it does not “call” for the response of receiving and giving in return. And even though divine causality “*ex nihilo*” involves a divine immanence in the effect, the reference to it as a “divine intimacy” is totally inappropriate. Nor is it appropriate to say that a rational causal act can intend the effect, as effect, out of love for the effect. The gift relation cannot be adequately identified, described, and

a decisive rejection of meaning and value. It is no coincidence that closing the door to transcendence brings one up short against a difficulty: How could being emerge from nothing, how could intelligence be born from chance?

Id. ¶ 74. In our context, the question is, “How can man own himself unless he was given to himself?”

57. “God, as Christ has revealed Him, does not merely remain closely linked with the world as the Creator and the ultimate source of existence. He is also Father: He is *linked to man*, whom He called into existence in the visible world, *by a bond still more intimate than that of creation*. It is love which not only creates the good but also grants participation in the very life of God: Father, Son and Holy Spirit. *For he who loves desires to give himself*.” Pope John Paul II, *Dives in Misericordia* [*Encyclical Letter on the Mercy of God*] ¶ 7 (1980) [hereinafter *Dives in Misericordia*] (emphasis added); see also Damian Fedoryka, *Man: The Creature of God*, in *CREATIVE LOVE* 69, 72 (John Boyle ed., 1989) (arguing that only in the case of a created person is existence given as a gift, implying God’s self-donation, and hence grounds His Fatherhood in the creative act). The above quoted passage from Pope John Paul II does not, perhaps, literally locate the Fatherhood of God at the creation of man, but the Pope is clearly speaking “already” of creation and his reference to a bond “still more intimate” sets man off against the “rest of creation.” *Gaudium et Spes* speaks of man as the only creature whom God willed—i.e., loved for its own sake—and he who loves, as the Pope notes, desires to give himself. *Gaudium et Spes*, *supra* note 39, ¶ 24. Furthermore, the tradition speaks of the “gift” of life when it speaks of human life. The analysis of the nature of a gift allows us to hold that the very granting of this gift, at creation, allows us to speak of the Creator’s self-giving to man, and therefore of His Fatherhood. See Pope John Paul II, *Gratissimam Sane* [*Letter to Families*] ¶ 11 (1994) (“*Its existence is already a gift, the first gift of the Creator to the creature.*”).

explained on the analogy of the cause-effect relation that is a function of the “natural law” governing the material world, even when the governing power is Mind.⁵⁸ Finally, the concepts of cause and effect do not, as such, imply the dialogical nature of *personal* bond that can be established in the responses of giving and receiving. Specifically, the concept of causality neither contains nor implies that of self-giving and the presupposed self-possession and its free personal center.

C. *The Response Due*

Natural law theory can be developed with Pope John Paul II’s understanding of moral life, which “*presents itself as the response due* to the many gratuitous initiatives taken by God out of the love for man. It is a *response* of love . . . ”⁵⁹ understood as a total gift of self. The category of response allows us to unfold what Pope Benedict means with “relationality” when he speaks of the person.⁶⁰ The response is an intentional, exclusively personal act in which the intentional, intelligible *content* of the response-act answers or “co-responds” to some intelligible *content* on the object side. The response relation cannot be adequately captured with such concepts as “intending,” “choosing,” or “willing” an end. In the context of our discussion we can speak of obedience to a prescription of natural law, of a submission to it, or of a conformity with it as responses. But these terms, accurate enough, signify only the nature of the *act of obedience*, or submission and conformity as a response to the *imperium* or the imperative, they tell us nothing of the *specific content* or matter of these response-acts.

58. With the gift as key, one has the opportunity to expand the notion of “natural law” beyond that of man’s “participation” by reason in divine law, as it governs the created universe with the additional notion of “receiving” law as gift and of reciprocating with a “sincere gift of self.”

59. Pope John Paul II, *Veritatis Splendor* [Encyclical Letter on the Splendor of Truth] ¶ 10 (1993) [hereinafter *Veritatis Splendor*].

60. “[T]he true meaning of freedom, which is not an intoxication with total autonomy, but a response to the call of being . . . ” *Caritas in Veritate*, *supra* note 1, ¶ 70. It is noteworthy that Pope Benedict speaks of freedom here not in terms of actualizing some intended end by an act of the will but rather as a response to the “call of being” which functions as a *nomos*: something that is already actual, commanding and demanding an answer. It is also significant that the Pope contrasts the meaning of true freedom as a response to the “call” of being as contrasted with, in my terminology, the response of yielding to the “intoxication,” that is, to the satisfaction accompanying the experience of autonomy.

To clarify the issue and the problem, I take the example of one kind of command, such as “Stand!” or “Build the table according to this plan!” There are two things here; one is the “ideal” or the “plan,” the other is the imperative to make it “real.” In obedience, one copies, replicates, or repeats the ideal, in one word, executes the prescription—as faithfully as possible—in the dimension of real or actual being. The *content* actualized in the act of obedience is a “repetition,” not a response. The act of obedience is a response. In this case, it is not the content which “calls” for the repetition, but rather the command. There is nothing in the “ideas” of standing or building a table that calls for their translation into real being. The ideal content, as content, presents itself as a possibility,⁶¹ even as a freely chosen norm “according to which” one acts, but not as an imperative.

D. Receiving and Giving as Personal Responses

Both Popes, John Paul II and Benedict, invariably use the couplet “receive–give” when speaking of the gift situation. These are two responses to the offer of a gift, and more specifically, to the “words” embedded in the gift. After Pope Benedict introduces love as “God’s greatest gift to humanity,”⁶² he also speaks of “acceptance[] and communion,” namely, of receiving the gift and a sharing or giving of a gift.⁶³ From his first encyclical, it is evident that love must both be received and given if it is to be complete.⁶⁴

61. In this regard, it is highly intelligible why the antinomian anthropology of Martin Heidegger, as we encounter it in his *Being and Time*, rejects all traditional ethics in preference for “possibilities” that “belong” to man in so far as they are “his own most” possibilities, free projects, not obligations. See generally MARTIN HEIDEGGER, *BEING AND TIME* (Joan Stambaugh trans., Univ. N.Y. Press 1996) (1953). It is also significant that for Heidegger man’s existence is “thrown,” not given as a gift. *Id.* at 10.

62. *Caritas in Veritate*, *supra* note 1, ¶ 2. Before that he spoke of charity as having its origin, not cause, in God; after that he speaks of it as “love received and given.” *Id.* ¶¶ 1, 5. Later, again, speaking of truth as gift he says, “truth is not something that we produce, it is always found, or better, received.” *Id.* ¶ 34.

63. *Id.* ¶ 3. “Because it is a gift received by everyone, charity in truth is a force that builds community.” *Id.* ¶ 34. Implicitly presupposed here, as suggested by the word “community,” is the role of giving and receiving the gift of self in the constitution of a community of persons. The Latin roots of “community” are *cum* and *munus*. One of the meanings of “munus,” in addition to “task” and “office,” is “gift.” Thus, “community” is literally a “sharing of the gift” [of selves given out of love].

64. “Anyone who wishes to give love must also receive love as a gift. Certainly, as the Lord tells us, one can become a source from which rivers of living water flow (cf. *Jn* 7:37-38).

I will consider the specific nature of giving and receiving as a personal act only in their role in establishing a bond between persons.

a) First, in general, they are distinct from the polarity of action-passion or action-reaction of the non-personal dimension. As suggested above, they both presuppose the capacity of self-possession. This allows the person to *open* itself, its interior space, both in the act of receiving a gift and of going out of oneself in the gift of self.

In the case of non-personal beings, the *nature* of a being determines its activity and at the same time constitutes a "boundary."⁶⁵ Nothing outside this boundary can enter the being and de-

Yet to become such a source, one must constantly drink anew from the original source, which is Jesus Christ, from whose pierced heart flows the love of God (cf. *Jn* 19:34)." Pope Benedict XVI, *Deus Caritas Est* [Encyclical Letter on God is Love] ¶ 7 (2005). In the present context, I restrict myself to note the affinity of meaning between "receive," "give," and "source," all of which exclude the cause-effect relationship. There is continuity between *source* and *issue* which is not implied in the notions of cause and effect: that which is in the source is also in the issue. The more appropriate terminology would be that of "generation." While the stone causes the breaking of the glass, its shattering generates the sound. Interpersonal relations stand above the cause-effect dimension and are more properly characterized by their gift structure which embodies generosity, significantly, a cognate of *genital*, i.e., "life bearing."

The implication is that there are two dimensions in the completion of love: one *inter*personal, the other *intra*personal. Both refer to the unity or integration established in a reciprocity marked by complementarity. Pope Benedict is talking about the interpersonal bond of community established in the receiving of another and responding with a gift of self.

65. The meaning of the Latin terms, *finis* and *terminus*, signifying "end" and *limes*, signifying "boundary," account for the synonymy, in the terminology of classical metaphysics, of the technical terms *definitio*, *determinatio*, and *delimitatio* with "nature" and "essence." A metaphysical literalism occurs when the "essence" of a non-personal being is taken as paradigm for understanding what "essence" would signify in a personal being. Because in the former case the activity of the being is always determined by its nature as both final and efficient cause, it is now erroneously assumed also to be so in the latter case. In the face of a lived experience of self-possession and its freedom from determination by one's nature, one might well assert the priority of existence to essence. I take this to be the gist of Wojtyła's understanding of those who reject "natural law" because they correctly affirm the experience of freedom. "I think that those who spontaneously reject natural law are spontaneously rising up in defense of the special character of human action, in defense of the reality of both the action of the person and the person as such." 4 KAROL WOJTYŁA, *The Human Person and Natural Law*, in CATHOLIC THOUGHT FROM LUBIN, *supra* note 21, at 181. Wojtyła is correct in as much as his "spontaneously" refers to a pre-theoretical *experience* of the truth of self-possession as essential constitutive of personal act. But such an experience can be part of another experience, that of choosing the satisfaction of being one's own. Given this choice, another spontaneity arises out of the experience of essence as a boundary that limits. Thus, the human essence as "limiting" has to be broken and sundered in the sheer sovereignty and power of a self-project. One of the intuitions of all natural law theory is the transcendence of the law with regard to its subject, the intuition of a transcendent sovereignty. If the natures or essences of the human person and of non-personal entities in the universe have a transcendent ground, they constitute a barrier and a negation of the experienced

termine its activity, which is always determined by its own nature. Take the example of an alcoholic whose addiction constitutes an analogy to a nature. It is not only imprudent but also impossible to give him a *gift* of alcoholic beverage.⁶⁶ He cannot receive a gift. So analogously with sexual addiction, such an individual cannot give a gift of self. The reason for this is that in both cases, the individual is not “his own” with regard to the fact that he is “possessed” or addicted to some interior desire for satisfaction to which he has yielded.

b) In their response character, both receiving and giving the gift ground the power of self-possession, in as much as they cast an *explanatory*, if not complete, light on the self-possession. As such, they are also manifestation of the personal capacity of transcendence,⁶⁷ that is an essential part of the personalism of both Pope John Paul II and Pope Benedict XVI.

c) As *responses*, receiving and giving, reveal the *dialogical*⁶⁸ situation of their agent, one of the specifying marks of the *relational* nature of the person as person.⁶⁹ In as much as a response

power of possessing either self or other beings when that power is oriented toward its satisfaction. Heidegger’s “spontaneous” defense of the absolute autonomy of Man or *Da-sein* is the sophisticated and sophistic defense of man’s freedom in being-one’s-own: *Eigentlichkeit* as a *sich-zu-eigen-machen*. Heidegger, *supra* note 61. Is a destruction of traditional metaphysics in which the meaning of being necessarily includes, in particular, the transcendentals *res* and *verum*, i.e., of essence as the principle of intelligibility, as well as *bonum*, the ultimate intelligibility, the explanation of why there are contingent beings (nothing) at all, rather than “pure” Being (something). The sophistry is no longer sophisticated but powerful, nonetheless, in the celebration and universality of the third kind of “mine,” introduced above, which grounds and explains the tyranny of satisfaction—and dissatisfaction—as the only acceptable norm for public life.

66. As it is impossible to give a gift of food to an animal even though there is an immaterial center, an “animal soul” capable of animal spontaneity, which can be conditioned by feeding. Since the animal is determined by the dynamisms of instincts, it lacks the metaphysical center that would allow it freedom from these instinctual dynamisms. It can be conditioned into the bond of “fidelity,” but it cannot freely bind itself or be *asked* to bind itself.

67. For a systematic analysis of the two dimension of human transcendence in receptivity and spontaneity, see JOSEF SEIFERT, ERKENNTNIS OBJEKTIVER WAHRHEIT: DIE TRASZENDENZ DES MENSCHEN IN DER ERKENNTNIS (1973).

68. “[F]illed with truth, charity can be understood in the abundance of its values; it can be shared and communicated. *Truth*, in fact, is *lógos* which creates *diá-logos*, and hence communication and communion. . . . Truth opens and unites our minds in the *lógos* of love: this is the Christian proclamation and testimony of charity.” *Caritas in Veritate*, *supra* note 1, ¶ 4.

69. Pope Benedict refers to Pope Paul VI’s call for “a new trajectory of thinking” with regard to the nature of the human community and goes on to identify this new trajectory more precisely: “Thinking of this kind requires a deeper critical evaluation of the category of relation. This is a task that cannot be undertaken by the social sciences alone, insofar as the contribution

is directed to a “word” that is also a “call,”⁷⁰ let us return to Pope Benedict’s reference to the relation between charity and justice and recast it in the form of a dialogue in order to deepen our reflection the category of relation and locate the bond that arises by virtue of the gift.

The Pope notes that before I can give in charity what is “mine,” justice demands that I give the other what is “his.”⁷¹ First, the “word” spoken in the dialogue of charity as gift is “yours.” What is given may be twofold: the gift of something and the gift of my *self* that is always in the gift. If I am in the act of giving, rather than merely describing it “from outside,” the *primary* gift is the gift of self which is “mine” only if I first possess it (in a relation to myself) in self-possession. But the primary “word” in the dialogical relation to the other is not “mine” but “yours.” This means that I am not so much transferring possession⁷² of my being to you as I am making a gift of my *self* to you.

of disciplines such as metaphysics and theology is needed . . .” *Id.* ¶ 53 (emphasis omitted). The category of *response* and, as I shall suggest, the category of the *due response* add a critical precision that is not contained in the concept of “relation” as such.

70. See *id.* ¶ 17 (“[V]ocation is a call that requires a free and responsible answer.”). In this regard, the response that is “called for” and “due” will always involve some form of self-giving. At the same time that the call is addressed to the free personal center, the “I” capable of self-possession and therefore enjoying sovereignty over oneself, in short, to a *sui juris*, the vocation establishes a juridical bond over the addressee of the call. Responsibility, in such a case, signifies an accountability of the sovereign owner of his personal act to the Source of the vocation.

71. *Id.* ¶ 7.

72. The concept of transferring possession of or “title” to something does not include or require the gift of self. In this regard, the “mutual giving of selves in a gift” and the implied bond cannot be reduced to a contract. In the mutual gift of selves, each giver retains self-possession. Indeed, only then does each acquire full self-possession. See *Gaudium et Spes*, *supra* note 39, ¶ 24. In this connection it is interesting that Wojtyła notes that the human being’s incommunicability means that he cannot transfer ownership or possession of Self to another. LOVE AND RESPONSIBILITY, *supra* note 33, at 96–99. This does not imply that one cannot give oneself to another. If genuine ownership—of self or another—presupposes the actual self-possession on the part of the owner, no one can transfer ownership, which is a state that can be actualized only by the one who comes to own what can be offered as a gift but never transferred. Another way of explaining this is that to the extent that ownership is a kind of “rule,” that rule, in the proper sense of the word, can extend only over the ruler’s self and what belongs to him, not to another. The apparent impossibility of ruling over another is resolved by the other’s gift of self to the eventual ruler. In the scriptural “Kingship” of Christ over the interior of the created person depends on Christ’s being received interiorly as one who gives himself as gift to the creature. The actualization of a *de jure* kingship depends on the human subject, sovereign over himself in self-possession, receiving the king as gift and reciprocating with a gift of self which only then becomes fully the king’s “own.” The personal bond this establishes can be spoken of as a form of “unity,” a “becoming one” or a “sharing of being.”

d) The gift of self establishes, or at least, in the case of the human being, initiates a unique *bond* between the giver and the addressee of the act of giving. It is an *incipient* binding of the giver to the intended recipient. Structurally, therefore, the binding of the giver to the recipient is prior. In other words, the reason for the gift is not the intention to bind the recipient.⁷³ This would be the case if the motivation for the “gift-behavior” were the immanent end of *my* satisfaction (self-fulfillment or self-actualization).

Let us, therefore, structure the relation of justice and charity not simply as a principle, but as a real dialogue, staging it at that moment of creation of which Pope John Paul II says that God has become “*linked to man, whom He called to existence in the visible world, by a bond still more intimate than that of creation.*”⁷⁴

E. The Original “Word” and the Original Juridical “Bond” in the Creation of the Human Being

We are faced with the task of grounding the contingent person’s ownership of his own being, which is supposedly the “mine” given in charity as gift. The *ontological* ground of the contingent being who *owns* himself is the creative power of God in the act of *giving* existence to the created person.

The primary and initial creative word addressed by God to Adam is “Yours” and gives existence. It refers, first and above all to God’s own Self, given as gift, and only secondarily to Adam’s being which is called forth, also as a gift, by God’s omnipotent

73. The major error of thinkers such as Jacques Derrida and Jean-Paul Sartre who affirm the contradictory character, and therefore the ultimate impossibility of the gift and generosity, is the assumption that the primary intention on the part of the giver is to bind the recipient for the sake his own, the giver’s, satisfaction or benefit. See generally JACQUES DERRIDA, *THE GIFT OF DEATH* (David Willis trans., Univ. Chi. Press 1995) (1992); JEAN-PAUL SARTRE, *BEING AND NOTHINGNESS* (Hazel E. Barnes trans., 1972). Thus, the gift appears essentially as gratuitous, as “for the sake of the other” necessarily hiding the fact that is it “for oneself.” The reciprocity of the gift, then, is a dissimulation that hides its more fundamental commercial character as “logic of fair exchange.” The gift, then, is an existential contradiction: meaning and promising what is contradicted by the very actualization of it. Such a perspective is essentially antinomial: the very meaning of *nomos* or law as a gift becomes an existential contradiction. I take this incompatibility between the gratuitousness of the gift and the binding demand for reciprocity to be the substance of the “incompatibility” proposed by some exegetes between God’s unconditional readiness to pardon and His demand for expiation that Benedict has in mind in the second volume of JESUS OF NAZARETH. See POPE BENEDICT XVI, *supra* note 31, at 119.

74. *Dives in Misericordia*, *supra* note 57, ¶ 7 (emphasis added).

and generous love.⁷⁵ Inseparably embedded in the primary word is the secondary one, "Mine," which, paradoxically, is both imperative and imprecative, claiming Adam's being as God's "own."

The "Yours" not only expresses but also *establishes*, as an integral moment in the creation of Adam, the double bond of ownership: *God belongs* to man and is "his" God, and Man belongs to himself and is "his own" (man or woman, as the case may be). At the same time, God's "Mine" is addressed to man who is given to be "his own," in the power of self-possession, a sovereign ownership of the human person as *sui juris*, as his own. The former is the moment of God's ownership of and sovereignty over man in which He claims what is His own. The internal evidence of human self-possession is also evidence that it is man, *as a self-possessing* sovereign, to whom God addresses the binding word.

F. The Gift and the Law of Reciprocity

However, the *juridical* ground of the personal power that allows man to be "his own" is the Fatherhood of God, that is, His transmission or "handing" of *His own* Self and His life as a gift to the created human person. This juridical meaning of ownership requires further elucidation.

The secondary word, "Mine"—embedded in the primary "Yours"—also has a dual meaning. As imperative, it binds juridically, that is, as law. As such, it does not simply affirm God's sovereignty *over* man as grounded in his absolute *power*, a sovereignty to which non-personal creatures are also subject. It is also an imperative. It is *experienced* as imperative—and therefore as binding—precisely because it is addressed to the self-possessing—that is, free and sovereign—personal center.⁷⁶ Pope

75. In this sense, a love that is "diffusive of itself," is an expression that does not logically contain the "self-giving" that belongs to the essence of this love.

76. With reference to hope in its character of gift, Pope Benedict says something that applies to the nature of the gift offered to the human being: "As the absolutely gratuitous gift of God, hope bursts into our lives as something not due to us, something that transcends every law of justice. Gift by its nature goes beyond merit, its rule is that of superabundance." *Caritas in Veritate*, *supra* note 1, ¶ 34. This means that the human person cannot initiate a claim to something that by its nature is a gift. The gift can be initiated only by the giver and particularly so in the case of the contingent being that "has nothing that he has not received" and therefore can not claim anything as his own prior to being offered it as gift. But this means that only the receptive act is capable of making the gift "one's" own. It is also the only adequate response to the

Benedict notes the place this binding claim occurs: “Gift by its nature . . . takes first place in our souls as a sign of *God’s presence in us*, a sign of what he expects from us.”⁷⁷ The “Mine,” spoken by God as embedded in the primary “Yours,” signifies here the binding expectation, the claim that *both* explains metaphysically why man has been given the gift of self-possession *and* binds him juridically to give himself freely to God in response to the gift. Man is “due” to God, a debt outstanding until it is given. This is the sufficient, even if not exhaustive reason why the “Mine” establishes the juridical and, in Pope John Paul II’s terminology, *intimate* bond of man to God.

Because man is a person—a being who possesses itself—in order to be fully actualized, the *bond must be completed by man’s free response* of self-giving in a “Yours” spoken by him to God.⁷⁸ In this regard, man “finds himself”—or more accurately and explicitly “comes to possess himself”—only when he makes of himself a sincere gift to another.⁷⁹

But the fuller scope of meaning, the spirit, if you will, of this *imperative* or law to render unto God what is his own lies in the same “Mine” spoken by God as *imprecation*. It becomes fully apparent when spoken by God to his Mother: the “please be mine” addressed to the beloved.⁸⁰ This “spirit of the law” is found in the *motive* that explains why the relation between God and man is *structured* as gift. As Pope John Paul II would explain it, “he who loves desires to give himself”⁸¹ in a total gift of self.⁸² Here again, I note, the spirit of the law as gift, presupposes the subjective

offer of anything in as much as the offer is “addressed” to the interiority “within which” the humans person possesses itself.

77. *Id.* (emphasis added).

78. “In the word of God proclaimed and heard, and in the sacraments, Jesus says today, here and now, to each person: ‘I am yours, I give myself to you’; so that we can receive and respond, saying in return: ‘I am yours.’” Pope Benedict XVI, *Verbum Domini* [*Post-Synodal Apostolic Exhortation*] ¶ 51 (2010).

79. See *Gaudium et Spes*, *supra* note 39, ¶ 24.

80. “In explaining the mystery of Jesus’ thirst, [Mother Teresa] writes that ‘*He, the Creator of the universe, asked for the love of His creatures.*’” JOSEPH LANGFORD, *MOTHER TERESA’S SECRET FIRE* 45 (2008). Langford includes a series of Appendices which cast into relief the connection between Christ’s words to the Samaritan woman, “Give me to drink” and his words on the cross, “I thirst,”—what I call the imperative and imprecative dimensions of God’s “Mine” addressed to man from their source in the primary “Yours” of his creative Self-giving.

81. *Dives in Misericordia*, *supra* note 57, ¶ 7.

82. *Veritatis Splendor*, *supra* note 59, ¶ 10.

foundation of self-possession on the part of the recipient and his free personal center.

G. Love is the Motive that Alone Justifies the Binding Claim of the "Law of Reciprocity" Embodied in the Gift

a) God's binding himself to man, in its *inception*, involves God's "entry" into the interior personal space of the recipient whose power of self-opening in receptivity is a function of the personal self-possession we have been considering. The initial creative dialogue between God and man is "in the image" of the dialog that exists within the Trinity. In partial explanation of the relational nature of person as person and its ordination to community, Pope Benedict writes:

The Trinity is absolute unity insofar as the three divine Persons are pure relationality. The reciprocal *transparency* among the divine Persons is *total* and the *bond* between each of them *complete*, since they constitute a unique and absolute unity. God desires to incorporate us into this reality of communion as well: "that they may be one even as we are one" (Jn 17:22).⁸³

We enter more deeply into the nature of this "pure relationality" that includes a "complete reciprocal bond" between the divine Persons, by turning to a passage in Pope Benedict's first volume of *Jesus of Nazareth*: "Jesus' own 'I' is always opened into 'being with' the Father; he is never alone, but is forever receiving himself from and giving himself back to the Father."⁸⁴

b) God's "movement" as Self-gift toward and into the created person so as to belong to it in love becomes and can only become *completed* in the creature's act of *receiving* him. God's sovereign intention to belong to a contingent person depends for its completion on the created person's free response. I repeat, God's initiative in giving the gift of Self in the gift of existence to man is an *incipient* ownership, depending on an answer to be *complete*. But the response of receiving the gift must in turn be completed, on man's part, with a gift of self in response to God's imperative-impreative "Be mine." Only then, as in the pure and transparent

83. *Caritas in Veritate*, *supra* note 1, ¶ 54 (emphasis added).

84. 1 POPE BENEDICT XVI, *supra* note 31, at 283.

relation between the Persons of the Trinity, is the bond between God and man complete.

c) The reciprocity of receiving and giving and, in this regard, the “complementarity” between the Father and Son constitutes the metaphysical state of “absolute unity” and “complete bond.” The Persons so “belong” to each other, are so totally each other’s own, that each belongs to the other as the other belongs to itself in interior self-possession. We need not pursue the theology of the internal Trinity in order to understand that in some measure the human being is in the image of God as community in the reciprocity of giving and receiving.⁸⁵ The nature of the personal *unity* [community] actualized in the reciprocity of receiving and giving of self and of the kind of bond established in it can be explained only in terms of love.⁸⁶ Love’s *intention of unity* has the dynamic of a total gift of self; a dynamic that “moves” toward and into the beloved in view of “becoming one.” Because it is a personal relation, the dynamic of charity requires the reciprocity of receiving and giving in order to be completed.⁸⁷

d) The reciprocity that completes God’s gift of self in the gift of life to man is marked by a new condition. In order to give the *response due to God* as giver of the gift, Adam must give it as the image of God, a community of persons. The law of reciprocity that demands the man’s gift of self in loving gratitude for the gift of existence extends the gift relation from its vertical dimension between God and man to the horizontal one between Adam and “the Woman.”

85. For an articulation of the reciprocity of the gift in the context of the complementarity of masculinity and femininity, see THEOLOGY OF THE BODY, *supra* note 17, at 69–72. The audience in question is a marvelous application, if not a formal definition, of the “law of reciprocity” which is explicitly invoked and identified in Pope John Paul II’s *Evangelium Vitae*, *supra* note 4, ¶ 76.

86. “[I]n the love that we receive there is always an element that surprises us. We should never cease to marvel at these things. In all knowledge and in every act of love the human soul experiences something ‘over and above,’ which seems very much like a gift that we receive, or a height to which we are raised.” *Caritas in Veritate*, *supra* note 1, ¶ 77.

87. Pope Benedict writes that “Charity is love received and given. It is ‘grace’ (*chāris*). Its source is the wellspring of the Father’s love for the Son, in the Holy Spirit.” *Id.* ¶ 5. He also refers to it as, “This dynamic of charity received and given . . .” *Id.*

CONCLUSION: THE RECIPROCITY OF THE GIFT AND HUMAN RIGHTS

Pope Benedict considers reciprocity to be at the heart of what it means to be a human being.⁸⁸ He is in essential agreement with his predecessor who identifies the *relational* dimension between human persons as one in which each and every human person is given, under the “law of reciprocity,”⁸⁹ as a gift to each and every other human person. Thus, as given to himself, each person is his own *sui juris*. In the social context, this ownership of self and one’s property is sufficient basis for one’s “right” over and against an *other* that would claim him for himself. However, as given to his neighbor, one also belongs to the other in a juridical bond. But the moment we speak from the perspective of the neighbor, one cannot simply receive the neighbor the way one receives God. There is a difference. God has loved us first and thus has given himself first, binding himself in a bond more intimate than creation. I note two differences.

First, as Giver of the gift, God is present in us as already bound to us by his initiative of self-giving. As one who has received what is now my own and as a created, not generated recipient, I have no rights “over and against” God to what is “my own.” The reason for this is the absolute fidelity of God: he will not take back what he has given out of love, depriving me of what is “my own” against my will. In other words, he will only receive, never appropriate, what I am bound to give in reciprocity. When I “keep” what I owe to God, the use of his absolute and

88. “By considering reciprocity as the heart of what it is to be a human being, subsidiarity is the most effective antidote against any form of all-encompassing welfare state.” *Id.* ¶ 57. Pope Benedict makes this affirmation in a specifically economic context, but he is clearly referring to reciprocity in the broader context of the gift. He is in essential agreement with Pope John Paul II who introduces the “law of reciprocity” in *The Gospel of Life* as grounded in the fact that God has entrusted man as a gift to man: we are each and all given as a gift to each. The hermeneutic of the gift is applicable. Each is called to receive the gift of neighbor as a gift from God who makes a new gift of Self in the gift of neighbor. Consequently, we are as bound to receive the neighbor as we are bound to receive God. So also, if we are to complete receiving the gift of our own existence, we must receive it as given also to our neighbor and to receive God as giving Himself to us in and through the neighbor. We are bound by the law of reciprocity to “bring” the gift of God to neighbor in and through the gift of self. Because we belong to neighbor, as given him by God, the neighbor has a claim on us as “his” when he is in need, threatened, from whatever source, by the loss of what God has given him by way of gift.

89. *Evangelium Vitae*, *supra* note 4, ¶ 76.

sovereign power to secure what is his from a created person is metaphysically precluded.

Second, in as much as the neighbor is given to me as gift, he is in a real sense “for me” and therefore “my” neighbor. But he has not yet participated with his own self-giving to me. It follows from this that the one thing that I cannot demand of the neighbor is the self-giving to me that is essentially included in every genuine gift. Because he has been given to me and I to him under the law—God’s law—of reciprocity, when either is in “need”—hungry, thirsty, naked, sick, threatened by an unjust aggressor—he can claim from the other food, water, clothes, medication, defense, and he can do so in justice. He can claim these as due in justice, not as gifts. The one thing he cannot claim is the underlying gift of self. To this he has no right.

The human right extends not only to what is the individual’s own but his own in a paradoxical way. It extends only to what can be “taken” from him by an external power. What is his own in the most intimate and in some sense absolute way is what I called his free personal center, his “I” of which he can say “Mine” in the most proper sense of the word. But that is the “property” which no external agency in the created universe can take from him and which God himself will not take from him because he gave it as a gift. What can be taken from him is something that belongs to him but is not identical with him, things which William James mistakenly, though plausibly, used to identify a man’s Self: his wife, his yacht, his bank account, and his reputation.⁹⁰

The above remarks bring me to the conclusion that so far we have not yet identified a human right adequately by its subjective and objective foundations, namely, the conditions for the possibility of human ownership to the extent that we focus what is in each case the individual’s own. Conventional language speaks of rights as something one “has,” another thing that is “owned.” Strictly speaking, a right is the exercise of ownership in an interpersonal context in which an *other* attempts to take or claims against my will what is legitimately my own. It is at this existen-

90. 1 WILLIAM JAMES, THE PRINCIPLES OF PSYCHOLOGY 291 (1950) (“[A] man’s Self is the sum total of all that he CAN call his, not only his body and his psychic powers, but his clothes and his house, his wife and children, his ancestors and friends, his reputation and works, his lands and horses, and yacht and bank-account.”) (emphasis omitted).

tial moment that a right is actualized.⁹¹ It is an act in which I do not merely affirm my legitimate ownership but also the legitimate use of power to keep what is my own “over and against” one who unjustly claims what is my own. The other is bound to respect my ownership. We can say that “respect” for my ownership is due to me. The *ownership* extends before and after the right becomes actualized by the other’s “hostile” intent or act. The *right* becomes actual in the moment when another’s unjust and therefore hostile intention begins. This is the moment that justifiably accounts for the focus of “rights talk” on the “mine” and on the question of defending what is “mine.” And this is the moment that grounds the state’s mission of justice, positive legislative protection of what is in each case “one’s own,” its adjudication of disputes and the reestablishment of legitimate sovereignty or ownership.

Ownership of one’s being constitutes the *subjective* background for an adequate understanding of rights. Personal ownership in the full and proper sense of the word is ownership of one’s being in the act of sincere and total gift of self to an *other* as self-possessing person, who constitutes the objective background. Ownership is the bond between them in the form of a gift. It can be actualized in an interpersonal context in which rights never become actualized because no one refuses to receive the other as gift and to reciprocate with a gift of self. In such a context civil “authority” will have a simply managerial function, organizing effectively and coordinating economically the processes of “exchange” and cooperation as a function of reciprocity.

The specifically distinct function of civil authority in *positive* legislation protecting rights as rights is a new question beyond the scope of the present Article. It will have to take into account the ownership of one’s own being and that of others as a gift from God. With the rejection of God as the source and foundation for

91. To say that one “has a right” to something, let us say, “to life” at any given moment when one is not under actual threat, is to speak of one’s legitimate ownership of one’s life as one’s own in anticipation of an actual moment when one comes under attack. It is an entirely new thing to speak of the right one has under *positive* law, which explicitly affirms one’s status under civil law when the critical moment arrives in which one faces an aggressor. In the current context, one speaks of the former in asserting that the unborn have an unconditional right to life as an actual right precisely because the positive law puts the unborn into the position of a victim of an aggression protected by positive law. From the perspective of legal positivism, there are no rights prior to positive laws. This is the operative assumption in the argument that the child has no right to life . . . simply because there is no positive law affirming such a right.

the ownership of one's being, positive legislation will inevitably tend towards the reduction of law to the protection of right simply as a claim to what is "mine over and against" the other and eventual competing claims. Civil authority will inevitably tend toward the "dialectical" form of human ownership, facilitating and protecting social and economic structures that make it harder, not easier to make a sincere gift of self.⁹² The negative or dialectical understanding of the specifically personal dimension of "self-possession" and therefore a depersonalizing and dehumanizing notion of rights will tend to dominate in culture and particularly in jurisprudence.

A just state cannot legislatively call for what is implied by genuine ownership and authentic rights, the gift of self to the other in their exercise. Only the "external" or public behavioral dimension of human ownership can be addressed or regulated by law. The fulfillment of the law takes place in the interior act of self-donation to neighbor and to God. It can only be demanded by God to whom it is "due." Nevertheless, by virtue of the metaphysical integrity of soul and body, that is, of the interior and exterior dimensions of human existence, in its service⁹³ to what is due to man because he is man, civil authority must provide public space for structures of gratuitousness,⁹⁴ so as to make it easier, not harder to make the sincere gift of self.⁹⁵

92. See *Centesimus Annus*, *supra* note 15, ¶ 34.

93. I mention what would require a separate treatment, namely, that the nature of authority as such entails service to the subject of authority. See Pope John Paul II, *Pastor Bonus* [*Apostolic Constitution on the Organization of the Roman Curia*] (1988), in 80 ACTA APOSTOLICAE SEDIS 841–930, ¶¶ 2, 7 (1988), cited in Edward N. Peters, *An Introduction to the Canonical Achievements of Pope John Paul II*, 6 AVE MARIA L. REV. 1, 11 n.40 (2007). In the context of the present Article, authority is always exercised in the name of the sovereign owner of the subject. The service implied in authority is already contained in God's creative word, "Thine" with which he gives himself to the created person. Thus, the paradox that in genuine service, the "superior" being becomes subject to his "inferior" and, in this regard, raises the inferior to a higher estate.

Civil authority has its source in God. However, God retains "ownership" of the creature as "his" in the authentic and proper sense of the word, an ownership that does not accrue to the state or any collective will of the people. Consequently, the human "sovereign" never becomes the owner of his subjects. Its "sovereignty" is not exercised in its own name; as authority, it remains always subject to God and the human person, serving both. As such, the state also stands bound to God in a re-ligio.

94. "[G]radually increasing openness, in a world context, to forms of economic activity marked by quotas of gratuitousness and communion. The exclusively binary model of market-plus-State is corrosive of society, while economic forms based on solidarity, which find their

A fitting conclusion is the question, "In whose name does civil authority act when it threatens and uses power in defense of what is an individual's or a community's own?" It is a question that takes us back again to the beginning and the foundation of human ownership of anything at all in the gratuitous gift from the loving Father of Lights,⁹⁶ the giver and guarantor of all good gifts and therefore of any legitimate claim and thus of any right whatsoever.

natural home in civil society without being restricted to it, build up society. The market of gratuitousness does not exist, and attitudes of gratuitousness cannot be established by law. Yet both the market and politics need individuals who are open to reciprocal gift." *Caritas in Veritate*, *supra* note 1, ¶ 39.

95. See *Centesimus Annus*, *supra* note 15, ¶ 34.

96. "Do not be deceived, my beloved brethren. Every good endowment and every perfect gift is from above, coming down from the Father of lights with whom there is no variation or shadow due to change." *James* 1:16–17 (Revised Standard, Catholic Edition).