NATURAL JURIDICAL GOODS: THE JURIDICAL STATUS OF BASIC HUMAN GOODS IN AQUINAS'S JUSNATURALIST PHILOSOPHY

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SUMMARY: *1. Introduction: A Thomistic Debate on the Moral Status of Basic Human Goods. 2. The Ontological and Moral Status of the Basic Human Goods as Aspects of the "Good". 3. The Essential Aspects of Juridical Goodness. 4. The Concept of "Ius". 5. Basic Human Goods as Natural Juridical Goods. 6. Conclusion.*

1. INTRODUCTION: A THOMISTIC DEBATE ON THE MORAL STATUS OF BASIC HUMAN GOODS[1]

THOMAS AQUINAS's Question 94, Article 2, in the *Prima Secundae* of his *Summa Theologiae*, is arguably the most quoted single textual locus of the Angelic Doctor's account on natural law.[2] It is precisely in this article that he explicitly mentions the term "human goods" ("*bona humana*") in reference to the genesis of the precepts of natural law.

The first principle of natural law is one founded on the notion of good, i.e., that "good is that which all things seek after". Hence this is the first precept of law, that "good is to be done and pursued, and evil is to be avoided". All other precepts of the natural law are based upon this: so that whatever the practical reason naturally apprehends as man's good [*naturaliter apprehendit esse bona humana*] belongs to the pre-

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[1] This article, written and submitted for publication in «Acta Philosophica», is included under the same title in the author's recently published collection of essays. See P. POPOVIĆ, *The Goodness of Rights and the Juridical Domain of the Good*, EDUSC, Roma 2021, pp. 71-94.

[2] Russell Hittinger argues that the exclusive focus on this textual locus is an «understandable», but ultimately «regrettable» mistake. He goes on to say that in this text Aquinas «is not defining the natural law», since «the *ratio formalis* – what it is, and what makes it law – is discussed in qq. 91 and 93». Question 94, and especially the celebrated Article 2, «takes up the *ratio formalis*: natural law as an effect in the creature». See R. HITTINGER, *The First Grace: Rediscovering the Natural Law in a Post-Christian World*, ISI Books, Wilmington 2003, p. 286, n. 17.

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cepts of natural law as something to be done or avoided.[3] Since, however, good has the nature of an end, and evil, the nature of the contrary, hence it is all those things to which man has a natural inclination, are naturally apprehended by reason as being good [*ratio naturaliter apprehendit ut bona*], and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance.[4]

The contemporary restatement of Aquinas's natural-law theory – roughly, from the aftermath of the World War II until today – is marked by a considerable emphasis, certainly to a greater extent than in previous generations, on the concept of human goods. As is well known, this restatement has gradually taken the dialectical form of a debate between two opposing Thomistic camps.

In a very influential 1965 article, Germain Grisez proposed a reading of Aquinas's crucial passage, quoted above, according to which the precepts of natural law are expressed «in terms of intelligible goods, i.e., ends toward which reason can direct».[5] The article, whose main arguments are developed in Grisez's subsequent writings, inaugurated the conception of human goods as one of the essential elements of the Thomistic natural-law theory. Human person's natural ends, says Grisez, are not primarily cognized by derivation from speculative or theoretical principles that are related to the various aspects of the metaphysical status of his being. Rather, «ends are naturally known as practical principles by practical reason's grasping them as self-evidently *goods* to-be-done».[6] In sum, *bona humana* occupy an architectonic structural place in the framework of Grisez's moral philosophy: «human practical reflection begins from the *basic human goods*».[7]

The new emphasis on basic human goods established the authors who endorsed it as proponents of what is now referred to as a "goods-based" ethi-

[3] For the English translation of the texts from Aquinas's *Summa Theologiae*, I will be using T. Aquinas, *Summa Theologiae: First Complete American Edition in Three Volumes*, trans. Fathers of the English Dominican Province, Benziger Brothers, New York 1947-1948. Stephen L. Brock's translation of this passage from the *Summa* is more faithful to the original Latin text. In his translation, the term *bona humana* is kept in its plural form: «All those things to be done or avoided that practical reason naturally apprehends to be *human goods* pertain to the precepts of natural law». See S. L. Brock, *Natural Law, Understanding of Principles and Universal Good*, «Nova et Vetera», 9 (2011), pp. 683, 695. Emphasis added.

[4] *STh* I-II, q. 94, a. 2. Germain Grisez translates the expression «*ratio naturaliter apprehendit ut bona*» in the following way: «reason naturally grasps as *goods*». See G. Grisez, *The First Principle of Practical Reason: A Commentary on the Summa Theologiae, 1-2, Question 94, Article 2*, «Natural Law Forum», 10 (1965), p. 170. Emphasis added.

[5] *Ibidem*, p. 181.

[6] See G. Grisez, *Natural Law and Natural Inclinations: Some Thomistic Clarifications*, «The New Scholasticism», 61 (1987), p. 311.

[7] G. Grisez, *A Contemporary Natural-Law Ethics*, in W. C. Starr and R. C. Taylor (eds.), *Moral Philosophy: Historical and Contemporary Essays*, Marquette University Press, Milwaukee 1989, p. 127.

cal and legal theory.[8] The account of basic human goods that is proposed by Grisez and endorsed by the adherents to his moral philosophy is frequently labelled as the "New Natural Law Theory".[9] This moral theory was subsequently adapted for the purposes of legal philosophy by a number of authors, perhaps most notably in the writings of John Finnis. According to Finnis, basic human goods – for example, life, knowledge, play, practical reasonableness, religion, etc. – must be sought and attained not only with regard to the individual's personal moral perfection, but «also in common, in community».[10] This, in turn, means that, when observed from the viewpoint of the other-directed requirements of justice, the basic human goods become the objects not only of moral, but somehow also of specifically juridical duties.[11] In the communitarian, other-directed perspective of the requirements of justice, then, the basic human goods constitute the objects of natural rights, claims Finnis. They represent «what is owed (*debitum*) or due to another, and correspondingly of what that other person has a right to».[12]

Now, according to Finnis, the essential nature of rights, legal and moral, is perfectly describable in terms of subjective rights. This means that he understands rights primarily as juridical «powers of the right-holder»[13] over a certain object, in the present case "over" basic human goods. Natural rights are thus envisioned as expressions of the juridical "superstructure" of claim-rights, powers or faculties, immunities, liberties, or privileges which their title-holder may exercise (or whose existence he may invoke) regarding their objects, namely, the basic human goods.[14] In other words, according to Finnis,

[8] For more details on the general characteristics and varieties of the "goods-based" natural law theories, see C. Tollefsen, *Basic Goods, Practical Insight, and External Reasons*, in D. S. Oderberg and T. Chappell (eds.), *Human Values: New Essays on Ethics and Natural Law*, Palgrave Macmillan, Hampshire-New York 2004, pp. 32-51.

[9] It seems that the term was coined by one of the critics of this theory, Russell Hittinger. See R. Hittinger, *A Critique of the New Natural Law Theory*, University of Notre Dame Press, Notre Dame 1987, p. 5. The proposed common term was rejected on various occasions by proponents of the "New Natural Law Theory", perhaps most notably by John Finnis. See J. Finnis, *Reflections and Responses*, in J. Keown and R. P. George (eds.), *Reason, Morality and Law: The Philosophy of John Finnis*, Oxford University Press, Oxford 2013, p. 468, n. 31.

[10] J. Finnis, *Natural Law and Natural Rights*, Oxford University Press, Oxford 2011, p. 161.

[11] Id., *Aquinas: Moral, Political and Legal Theory*, Oxford University Press, Oxford 1998, pp. 132-138.

[12] Id., *Natural Law and Natural Rights*, cit., p. 162. «In short, the modern vocabulary and grammar of rights is a many-faceted instrument for reporting and asserting the requirements [...] of justice *from the point of view of the person(s) who benefit(s) from* that relationship. It provides a way of talking about "what is just" from a special angle: the viewpoint of "other(s)" to whom something [...] is owed or due, and who would be wronged if denied that something». *Ibidem*, p. 205. Emphasis original.

[13] *Ibidem*, p. 209.

[14] Finnis claims that the American jurist Wesley Newcomb Hohfeld «rather satisfacto-

the basic human goods represent the "objects" of the requirements of justice that are (1) describable in terms of moral or legal *subjective rights*, and (2) also recognized (or further determined) through *positive law*. The *bona humana* may thus be referred to as "juridical" goods only to the extent that they constitute legal "oughts," that is, values protected by positive laws and easily translatable into the language of subjective rights. However, the *bona humana* themselves remain essentially non-juridical, moral goods.

Another legal philosopher and a proponent of the so-called New Natural Law Theory, Robert P. George, understands the juridical status of the basic human goods in a similar fashion. In his view, since «basic human goods are constitutive aspects of the well-being and fulfillment of human persons and the communities they form [...] they thereby provide the foundations of moral judgements, including our judgements pertaining to justice and human rights».[15] In other words, these goods represent the foundations of justice and human rights precisely as moral goods.

In sum, according to Finnis and George, the moral status of the basic human goods does not need to undergo any kind of structural reconstitution (or re-evaluation of viewpoint) for the purposes of describing the immediate relevance of these goods for the juridical domain.

The New Natural Law Theory was criticized from its outset on a variety of issues. Without pretending to offer an exhaustive list, the main objections of the critics may be narrowed down to some of the more frequent claims. For example, the theory is sometimes seen as insufficiently *Thomistic*.[16] It is also criticized as defunct regarding its account of the *legal status* of natural law.[17] The theory's conception of *ius* as essentially a subjectivized extension of legal norms, natural or positive[18] – a sort of *legalism* operative at the foundations

rily accommodates» all assertions of *subjective* rights, without remainder, to these four categories: claim-rights, powers or faculties, immunities, liberties or privileges. *Ibidem*, p. 199. For Hohfeld's original insights, see W. N. Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, «Yale Law Journal», 23 (1913), pp. 28-59; Id., *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, «Yale Law Journal», 26 (1917), pp. 710-770.

[15] See R. P. George, *Natural Law, God and Human Dignity*, in G. Duke and R. P. George (eds.), *The Cambridge Companion to Natural Law Jurisprudence*, Cambridge University Press, Cambridge-New York 2017, pp. 60, 64-65.

[16] For example, see M. Pakaluk, *Is the New Natural Law Thomistic?*, «The National Catholic Bioethics Quarterly», 13 (2013), pp. 57-67; R. Hittinger, *A Critique of the New Natural Law Theory*, cit., pp. 27-30, 61-65.

[17] For example, see S. L. Brock, *The Light That Binds: A Study in Thomas Aquinas's Metaphysics of Natural Law*, Pickwick Publications, Eugene 2020, pp. 10, 100-106; R. Hittinger, *The First Grace*, cit., pp. 39-62.

[18] «These two main meanings of *ius* – right(s) and law(s) – are rationally connected. To say that someone has a right is to make a claim about what practical reasonableness requires of somebody (or everybody else). But one's practical reasonableness is guided and

of the conceptual understanding of rights and of the juridical phenomenon in general – is seen as equally problematic.[19] Perhaps the most frequent objection of the critics is aimed at the theory's emphasis on the separation of the practical cognition of the basic human goods from their immediate ontological setting and, consequently, from the theoretical knowledge of this setting.[20]

Without entering into the merit of these objections, it is my intention to highlight that the critics of the New Natural Law Theory seem to share at least some foundational claims of this theory. First, the critics do not seem to consider the general use of the concept of basic human goods to be problematic, and they themselves frequently use this concept.[21] In addition, as will be shown, both groups of authors clearly perceive the need to somehow ground the concept of basic human goods in the broader Thomistic schema of the "good" as a universal.

Both the New Natural Law Theory and its critics, however, seldom focus their respective lines of argument on an aspect of the account of basic human goods which represents the very fulcrum of my present analysis: namely, no legal philosopher in either argumentative bloc provides an elaborated account of the specifically juridical status of basic human goods. Does the human good – and basic human goods – possess a juridical status, and, if the answer is affirmative, under what conditions?

shaped by principles and norms, in the first instance by the principles of natural reason, i.e. of natural law – *lex naturalis* or, synonymously, *ius naturale* – and then by any relevant and authoritative rules which have given to natural law some specific *determinatio* for a given community: positive law, i.e. *lex positive* or, synonymously, *ius positivum*, usually *ius civile*». J. Finnis, *Aquinas: Moral, Political and Legal Theory*, cit., pp. 134-135.

[19] See M. Villey, *Si la théorie générale du droit, pour Saint Thomas, est une théorie de la loi*, «Archives de philosophie du droit», 17 (1972), pp. 427-431; P. Popović, *The Concept of "Right" and the Focal Point of Juridicity in Debate Between Villey, Tierney, Finnis and Hervada*, «Persona y Derecho», 78 (2018), pp. 65-103.

[20] For example, see H. B. Veatch, *Natural Law and the "Is" – "Ought" Question*, «Catholic Lawyer», 26 (1980-1981), pp. 251-265; Id., *Human Rights: Fact or Fancy?*, Louisiana State University Press, Baton Rouge 1985, pp. 95-104; R. McInerny, *The Principles of Natural Law*, «The American Journal of Jurisprudence», 25 (1980), pp. 1-15; Id., *Aquinas on Human Action: A Theory of Practice*, The Catholic University of America Press, Washington D.C. 1992, pp. 184-192; R. Hittinger, *A Critique of the New Natural Law Theory*, cit., pp. 160-165; J. Porter, *Basic Goods and the Human Good in Recent Catholic Moral Theology*, «The Thomist», 57 (1993), pp. 27-49; S. L. Brock, *Natural Inclination and the Intelligibility of the Good in Thomistic Natural Law*, «Vera Lex», 6 (2005), pp. 57-78; Id., *Natural Law, Understanding of Principles and Universal Good*, cit., pp. 671-706.

[21] For example, see Id., *Natural Inclination and the Intelligibility of the Good in Thomistic Natural Law*, cit., pp. 61, 75, 77; Id., *Natural Law, Understanding of Principles and Universal Good*, cit., pp. 692-699; R. Hittinger, *Varieties of Minimalist Natural Law Theory*, «The American Journal of Jurisprudence», 34 (1989), p. 158; H. B. Veatch, *Human Rights: Fact or Fancy?*, cit., p. 97.

As I provide an answer to this question in the following sections, I will also address a tangential issue: Is it possible to consider the argument in favor of the juridical status of basic human goods to be relatively autonomous from the debates regarding the ontological and moral status of these goods, and thereby to transcend these debates at least in this respect?

2. The Ontological and Moral Status of the Basic Human Goods as Aspects of the "Good"

Any Thomistic account of the ultimate foundations of basic human goods must necessarily be traced back to the question of "what is good" and how "good" may be predicated of anything. It is impossible to fully grasp the moral status of basic human goods in the Thomistic tradition without having at least an initial understanding of Aquinas's metaphysical context for this status.[22]

According to Aquinas, «nothing is *good* except *being*».[23] "Goodness" and "being" are «the same reality».[24] However, they are «not predicated of a thing absolutely in the same way»:

> Since *being* properly signifies that *something actually is* [...] a thing is, in consequence, said simply to have being. But *goodness* signifies *perfection* which is *desirable*.[25]

Hence, *goodness* «does not add anything to *being* beyond the aspect of desirability and perfection».[26] Now, in Aquinas's view, the goodness of being denotes «a term of the movement of the appetite»[27] from the viewpoint of desirability and perfection. When commenting on these Aquinas's passages, Stephen L. Brock describes "good" as that which each being desires according to its own nature:

> If each thing, insofar as it is a being, is good, each is also, insofar as it is a being, desirous of its own goodness. (…) Every being has goodness, final causality; and its first final causality is with respect to itself, the inclination of its nature.[28]

[22] Stephen L. Brock refers to this context as «Thomas's ontology of the good». See S. L. Brock, *The Primacy of the Common Good and the Foundations of Natural Law in St. Thomas*, in R. Hütter and M. Levering (eds.), *Ressourcement Thomism. Sacred Doctrine, the Sacraments, and the Moral Life: Essays in Honor of Romanus Cessario, O.P.*, The Catholic University of America Press, Washington D.C. 2010, p. 243.

[23] *STh* I, q. 5, a. 2, ad 4.

[24] *STh* I, q. 5, a. 1. «Thus we are left with the conclusion that good and being are interchangeable [*bonum et ens convertantur*]». *De Veritate*, q. 21, a. 2. For the English translation of the source of the latter quote, I have used T. Aquinas, *Quaestiones Disputate de Veritate*, trans. R. W. Schmidt, Henry Regnery Company, Chicago 1954.

[25] *STh* I, q. 5, a. 1, ad 1. Emphasis added.

[26] *STh* I, q. 5, a. 3, ad 1. Emphasis added.

[27] «So a thing is called a term of the movement, so far as it terminates any part of that movement». *STh* I, q. 5, a. 6.

[28] S. L. Brock, *The Primacy of the Common Good and the Foundations of Natural Law in St. Thomas*, cit., p. 248.

The being is essentially constituted according to the orderedness towards its own good, towards the fullness of its being. It possesses that order in itself, according to its own nature.[29]

Among those "things" which are desired for their own sake – the so-called *bona honesta* – Aquinas makes a further important distinction. Some of these things, he claims, are desired for their own sake alone – such as happiness, which is equivalent to the last end – and never for the sake of something else. Other things among *bona honesta* are desired, he adds, «also for the sake of something else, inasmuch as they are conducive to some perfect good».[30] Although they are not desired only for their own sake, these *bona honesta* have an «aspect of goodness in themselves [*habent in seipsis aliquam rationem bonitatis*]».[31] Since, in Aquinas's view, everything tends toward its natural perfection, «which is a natural good»,[32] it follows that certain aspects of a being are desired as goods in light of their last end or their natural perfection.

In light of this account of "good" as the universal convertible with "being",[33] Aquinas argues that those things which the practical reason naturally apprehends as desirable, perfective, and thereby apt to mobilize the intentionality of the acting person as "things to be done" denote the *bona humana*, basic human goods.[34]

Their mutual differences notwithstanding, both the proponents of the New Natural Law Theory and their critics seem to accept some form of this Thomistic line of argument regarding the ontological and moral status of the *bona humana*.

Thus, according to John Finnis, basic human goods are fundamental aspects or instantiations of human flourishing and of what he calls the «integral human fulfillment».[35] The normative structure underlying and conducive to basic human goods picked out as reasons for action by the basic principles of

[29] Id., *Metafisica ed etica: la riapertura della questione dell'ontologia del bene*, «Acta Philosophica», 19/1 (2010), p. 52. [30] *STh* II-II, q. 145, a. 1, ad 1. [31] *Ibidem*.

[32] *STh* I, q. 19, a. 1.

[33] For more details on Aquinas's meta-ethical conception of the good as transcendental, see J. A. Aertsen, *Natural Law in the Light of the Doctrine of Transcendentals*, in L. J. Elders and K. Hedwig (eds.), *Lex et Libertas: Freedom and Law According to St. Thomas Aquinas*, Libreria Editrice Vaticana, Città del Vaticano 1987, pp. 99-112; J. A. Aertsen, *Good as Transcendental and the Transcendence of the Good*, in S. MacDonald (ed.), *Being and Goodness: The Concept of the Good in Metaphysics and Philosophical Theology*, Cornell University Press, Ithaca 1991, pp. 56-73; J. A. Aertsen, *Medieval Philosophy and the Transcendentals: The Case of Thomas Aquinas*, Brill, Leiden-New York-Köln 1996, pp. 290-334; Id., *Thomas Aquinas on the Good: the Relation between Metaphysics and Ethics*, in S. MacDonald and E. Stump (eds.), *Aquinas's Moral Theory: Essays in Honor of Norman Kretzmann*, Cornell University Press, Ithaca 1999, pp. 235-253.

[34] See *STh* I-II, q. 94, a. 2.

[35] J. Finnis, *Natural Law and Natural Rights*, cit., pp. 64, 419, 440; Id., *Aquinas: Moral, Political and Legal Theory*, cit., pp. 90-94.

practical reasonableness represents, in Finnis's view, the essential fabric of the first principles of natural law.[36] In the most complete, but still an «open-ended» list, Finnis includes the following «basic kinds of intelligible human good»:

> The normative principles of practical reason pick out and direct us to [...] goods such as life and health, marital/procreative union, knowledge, friendly association, artistic accomplishment, friendship with the divine transcendent source of all these goods, and practical reasonableness in actualizing all these intrinsic, self-evident forms of human good, these aspects or elements of wellbeing (flourishing, in Greek *eudaimonia*; in Latin *beatitudo* or *felicitas*).[37]

In a congenial synthesis, Martin Rhonheimer claims that *bona humana* are perceived by human reason as «objectified within the context of a total ordering of the "human good" (*bonum humanum*)».[38] In addition, it has been noted in theory that the very term *bona humana* already presupposes the human good both as a *whole* and in its *particular aspects*.[39]

Among the critics of the New Natural Law Theory, Brock provided what may be considered to constitute the most detailed account of the ontological and moral status of the basic human goods. He reads Aquinas's frequently invoked text on natural law – *STh* I-II, q. 94, a. 2 – in direct continuity with the Angelic Doctor's account of the ontological status of the good. According to this reading, the human person desires those things – and is inclined towards the attainment of those goods – which constitute the final term (or the object) of the movement of man's rational appetite precisely on account of their being grasped as perfective according to his nature. The natural inclinations

[36] J. Finnis, *'Natural Law'*, in Id., *Reason in Action. Collected Essays: Vol. I*, Oxford University Press, Oxford 2011, p. 205. See also the following Finnis's synthesis of his own theory: «An account of practical reasonableness can be called a theory of "natural law" because practical reasoning's very first principles are those basic reasons which identify the basic human goods as ultimate [...] reasons for action which will instantiate and express human nature precisely because participating in those goods, i.e. instantiating (actualizing, realizing) those ultimate aspects of human flourishing». J. Finnis, *Legal Reasoning as Practical Reason*, in Id., *Reason in Action*, cit., p. 214.

[37] Id., *Aquinas and the Natural Law Jurisprudence*, in G. Duke and R. P. George (eds.), *The Cambridge Companion to Natural Law Jurisprudence*, cit., pp. 18-19.

[38] See M. Rhonheimer, *Natural Law and Practical Reason: A Thomist View of Moral Autonomy*, Fordham University Press, New York 2000, pp. 75-76. Rhonheimer explicitly distances himself from the New Natural Law Theory, while also, at the same time, occasionally expressing his indebtedness to some of the insights of the authors adhering to that theory. For example, see Id., *Practical Reason, Human Nature, and the Epistemology of Ethics. John Finnis's Contribution to the Rediscovery of Aristotelian Ethical Methodology in Aquinas's Moral Philosophy: A Personal Account*, «Villanova Law Review», 57 (2012), pp. 873-887.

[39] D. Farrell, *I trascendentali e la ragione pratica: il contributo di Tommaso d'Aquino*, in A. Contat, C. Pandolfi, and R. Pascual (eds.), *I trascendentali e il trascendentale: percorsi teoretici e storici*, IF Press, Roma 2012, p. 163.

towards human goods (from *STh* I-II, q. 94, a. 2) should be understood, argues Brock, to denote the *inclinations of the will* which derive from reason's prior apprehension of their objects as good.[40]

In Brock's view, the first precept of natural law – the good is to be done and pursued, and the bad is to be avoided – «rests on the good taken absolutely or universally».[41] However, he adds that this precept must also refer to the specifically human good.[42] The perfection of the "being" that is the human person is to be found primarily in the *whole human good*. The whole human good or «man's last end» – the «chief human good, "the" human good, taken unqualifiedly» – is «the principle by which things are placed in the genus of human goods».[43]

> Taken as a unit, the human good is a certain whole. The [particular] goods that the lower precepts [of natural law] regard are parts of it. They are parts whose belonging to it is immediately evident. They belong to its very concept or definition. [...] There are particular goods, fulfillments of the various dimensions of human nature, that pertain to the very concept of the human good. [...] To be "a" human good, a member of this genus, is either to be the last end itself, or else to contribute somehow to the last end. This is what "a human good" *means*.[44]

Thus, Brock considers the relationship between the whole human good – man's last end or happiness – and particular human goods to be generally overlapping with Aquinas's argument on the interconnectedness between the perfect good and those particular *bona honesta* which have an «aspect of goodness in themselves».[45] The basic human goods, such as those from Finnis's list (life, marriage, etc.) are therefore graspable as determinate parts of the human good considered as a whole.[46] We rationally apprehend these goods as

[40] See S. L. Brock, *Natural Inclination and the Intelligibility of the Good in Thomistic Natural Law*, cit., pp. 61-65. Brock's argument that Aquinas's reference to "natural inclinations" – from *STh* I-II, q. 94, a. 2 – ought to be understood to denote the inclinations of the will seems to be widely accepted. For example, see J. Finnis, *Postscript*, in Id., *Natural Law and Natural Rights*, cit., p. 449; R. Hittinger, *The Legal Renaissance of the 12th and 13th Century: Some Thomistic Notes*, «Doctor Communis», 1-2 (2008), pp. 79-80.

[41] See S. L. Brock, *Natural Inclination and the Intelligibility of the Good in Thomistic Natural Law*, cit., p. 75.

[42] Id., *Natural Law, Understanding of Principles and Universal Good*, cit., p. 695.

[43] *Ibidem*, p. 697.

[44] *Ibidem*, pp. 692, 695, 697.

[45] *STh* II-II, q. 145, a. 1, ad 1.

[46] Brock notes that Aquinas presents this argument even prior to his analysis of the human goods in the *Summa*'s treatise on law. «Man wills naturally not only the object of the will [i.e. the good in general or the last end], but also other things that are appropriate to the other powers; such as the knowledge of the truth, which benefits the intellect; and to be and to live and other things which regard the natural well-being; all of which are included in the object of the will, as so many particular goods [*particularia bona*]». *STh* I-II, q. 10, a. 1. See S. L. Brock, *Natural Law, Understanding of Principles and Universal Good*, cit., p. 698.

the objects of the natural inclinations of our will precisely on account of their being intrinsically and essentially, and not only instrumentally, constitutive of the whole human good.

Thus, the basic human goods are particular aspects of the natural perfection – or the whole good – of the being which is the human person. They are simultaneously grasped both in their cognitive and ontological distinctiveness (whereby each basic human good constitutes the object of a particular set of natural inclinations) and according to the unity of their telic context, namely, in the perspective of the whole human good.

In my opinion, this general line of argument regarding the ontological (and moral) status of basic human goods may be supported by most contemporary proponents of the Thomistic natural-law theory, regardless of their mutual differences.[47] The common ground that is thereby established is meant to provide the context for the next stage of my analysis. Having determined the foundational aspects of the status – ontological and moral – of Aquinas's account of basic human goods, it is now possible to approach the question of whether it is possible to envision a *juridical* status of basic human goods. However, before answering this question, it is necessary to explore the aspects of juridical goodness in general.

3. The Essential Aspects of Juridical Goodness

Unlike the frequent analyses regarding the ontological status and the moral status of basic human goods, the concept of juridical goodness of basic human goods remains, to a certain degree, at the margins of Thomistic legal philosophy. In recent contributions to this issue, at least two authors – namely, the French legal historian Michel Villey and the Spanish jurist and legal philosopher Javier Hervada – argue that the reasons for, relatively speaking, the marginalization of the concept of juridical goodness may be connected to the frequent reduction of Aquinas's account of the juridical phenomenon (*ius* or right) to his treatise on law developed in the *Prima Secundae* of the *Summa*

[47] For example, some authors object to the New Natural Law theorists' treatment of the basic human goods as (1) «natural categoricals» detached from the «teleological conception of the human good» (Hittinger), or as (2) «hypostatized goods» of «uncertain ontological status» (Porter). In addition, Brock warns that the proponents of the New Natural Law Theory might be, in fact, reducing the ontological context of the whole human good to the abstract category of "basic goodness" which would denote the *genus*, whereas the particular basic goods – *primary* reasons for action – would represent the instantiated *species* of basic goodness. See R. Hittinger, *A Critique of the New Natural Law Theory*, cit., p. 163; Id., *Varieties of Minimalist Natural Law Theory*, cit., pp. 158-159, 165; J. Porter, *Basic Goods and the Human Good in Recent Catholic Moral Theology*, cit., pp. 37-39; S. L. Brock, *Practical Truth and Its First Principles in the Theory of Grisez, Boyle, and Finnis*, «The National Catholic Bioethical Quarterly», 15 (2015), pp. 320-321.

Theologiae.[48] These two authors advocate the claim that Aquinas's elaboration of the concept of right as the object of the virtue of justice, as treated in the *Secunda Secundae* of his *Summa Theologiae*, should be relocated, from the study for purely historical purposes,[49] to the very fulcrum of Thomistic juridical philosophy.[50]

[48] See M. Villey, *Philosophie du droit. Vol. 1: Définitions et fins du droit*, Dalloz, Paris 1978, p. 126; Id., *Seize Essais de philosophie du droit dont un sur la crise universitaire*, Dalloz, Paris 1969, pp. 96, 222; J. Hervada, *Lecciones propedéuticas de filosofía del derecho*, eunsa, Pamplona 2008, pp. 500-506.

[49] An example of a purely historical treatment of Aquinas's concept of *ius* is provided by John Finnis. See J. Finnis, *Natural Law and Natural Rights*, cit., pp. 205-210. Finnis later abandoned even this purely historical perspective and, instead, advocated the projection of modern subjective-rights paradigm to Aquinas's conception of *ius*. See Id., *Aquinas: Moral, Political and Legal Theory*, cit., pp. 132-138; Id., *Aquinas on Ius and Hart on Rights: A Response to Tierney*, «The Review of Politics», 64 (2002), pp. 407-410; Id., *Postscript*, in Id., *Natural Law and Natural Rights*, cit., pp. 423-424, 465-466; Id., *Grounding Human Rights in Natural Law*, «The American Journal of Jurisprudence», 60 (2015), pp. 213-221; Id., *On Moyn's Christian Human Rights*, «King's Law Journal», 28 (2017), pp. 14-15. Finnis's project was disputed even among authors who otherwise share in the claim for a similar projection to pre-modern jurists. See B. Tierney, *Natural Law and Natural Rights: Old Problems and Recent Approaches*, «The Review of Politics», 64 (2002), pp. 389-406.

[50] Surely, these two authors are not the only ones who propose the reading of Aquinas's juridical philosophy through the lens of his methodological realistic epistemology, consistently applied in his *rei*-centric treatise on *ius* in the *Secunda Secundae* of the *Summa Theologiae*. Aquinas's essential meaning of *ius* as the "just thing itself" is considered to be a cornerstone of Thomistic juridical philosophy, in continental Europe, in the writings of authors preceding both Villey and Hervada, such as, for example, Odon Lottin, Louis Lachance, Francesco Olgiati, and Giuseppe Graneris. See O. Lottin, *Le droit naturel chez Saint Thomas d'Aquin et ses prédécesseurs*, Charles Beyaert, Bruges 1931, pp. 63-67; F. Olgiati, *Il concetto di giuridicità in San Tommaso d'Aquino*, Vita e Pensiero, Milano 1944; L. Lachance, *Le concept de droit selon Aristote et S. Thomas*, Les Éditions du Lévrier, Ottawa 1948, pp. 28-31, 188-189, 228-231; G. Graneris, *Contributi tomistici alla filosofia del diritto*, Società Editrice Internazionale, Torino 1949. Interestingly enough, Villey mentions all four authors as the direct sources of his own arguments, while he expresses his academic preference to Graneris's thought: «We recommend Graneris's text *Contributi tomistici alla filosofia del diritto*, since, in our view, a significant progress is made in that book regarding the current interpretation [of Aquinas's texts]». See M. Villey, *La formation de la pensée juridique moderne*, Presses Universitaires de France, Paris 2013, p. 155. A more complete overview of continental European authors who embraced a version of Aquinas's juridical realism, whether in its minimalist form or in the form of a fully-fledged *rei*-centric jurisprudence, may be consulted in J.-P. Schouppe, *Le réalisme juridique*, E. Story-Scientia, Bruxelles 1987. Among the more contemporary Anglo-Saxon authors who adopt an affirmative view on Aquinas's juridical realism, see R. McInerny, *Aquinas on Human Action*, cit., pp. 207-219; A. J. Lisska, *Aquinas's Theory of Natural Law: An Analytic Reconstruction*, Clarendon Press, Oxford 1996, pp. 228-232; Id., *Human Rights Theory Rooted in the Writings of Thomas Aquinas*, «Diametros», 38 (2013), pp. 133-151. But, again, both of these authors cite Villey as an authority for the *ius*-realistic reading of Aquinas. My choice to focus on Villey's and Hervada's thought in this article is motivated

In the question of the *Summa* that serves as a sort of a preamble to the long treatise on justice, Aquinas affirms that the primary meaning of right, *ius*, is that of the «just thing itself» (*ipsa res iusta*), precisely as the object of the virtue of justice.[51] On the other hand, justice which has the right as its object – we could call it "justice in the strict sense" or "juridical justice"[52] – is defined as the «perpetual and constant will to render to each his own right» («*ius suum unicuique tribuens*»).[53]

The question that is particularly the object of my interest here is whether Aquinas envisions the right (*ius*) and juridical justice in some sort of connection with the concept of the good. Does any aspect of the good pertain to *ius*?

Aquinas is quite clear in his claim that it does. Human virtues in general, says the Angelic Doctor when quoting Aristotle, «render a human act and man himself *good*», and this, he claims, «can be applied to justice».[54] To be sure, the good that is desired and fulfilled through the optic of the virtue of justice does not, of itself, pertain to the telic stratum that is considered to be essential and intrinsic to the whole human good *in the same way* as the basic human moral goods. Nonetheless, justice «regards a certain special aspect of good [*quandam rationem boni specialem*]».[55] The right as the object of justice, thus, represents an aspect of the orderedness to the good in general, and to the human good in particular.

Justice, as the perpetual and constant will to render to each his own right, pertains to the domain of human action. Since, according to Aquinas, the proximate principle of action is the appetitive power, «justice must be in some appetitive power of its subject»; this appetitive power, continues Aquinas, is the intellective appetite which can have the good as its object – i.e., the will.[56] The will of the human person inclines to the object of juridical justice upon apprehending that this object «regards a certain special aspect of good».[57]

Which essential characteristics of this "certain special aspect of good" pertain to *ius* as the object of justice?

First of all, Aquinas argues that the good of justice is essentially the good

by a conviction that these two authors – Hervada even more than Villey – elaborated the most systematic account of Aquinas's concept of *ius*.

[51] *STh* II-II, q. 57, a. 1.

[52] This ("juridical") type of justice is distinct from metaphorical or analogical usages of the term justice. According to this latter usage of the term, "justice" denotes aspects of virtue or acts that refer to the internal dispositions of persons (*STh* I-II, q. 59, a. 5; I-II, q. 60, a. 2-3; II-II, q. 58, a. 2; II-II, q. 58, a. 5-6; II-II, q. 58, a. 9, ad 2-3) or to divine "justice" (*STh* I-II, q. 113, a. 1; II-II, q. 57, a. 1, ad 3; II-II, q. 58, a. 2, ad 1).

[53] *STh* II-II, q. 58, a. 1. Emphasis added.

[54] *STh* II-II, q. 58, a. 3. Emphasis added.

[55] *STh* II-II, q. 79, a. 1.

[56] *STh* II-II, q. 58, a. 4; II-II, q. 58, a. 5, ad 2.

[57] See *STh* II-II, q. 58, a. 4, ad 2.

of "the other", that is, the other-directed good.[58] Justice, he says, differs from other virtues precisely with regard to its other-directed object: «[while] the other virtues are commendable in respect of the sole good of the virtuous person himself, [...] justice is praiseworthy in respect to the virtuous person being well disposed towards another».[59] He concludes this argument by saying that justice is somewhat (*quodammodo*) the good of another person (*bonum alterius*).[60]

The "other", whose good is the object of the virtue of justice, may be either another individual together with his particular good, or a community of persons and its common good.[61] Justice, therefore, regards "goods" either as «due to one's neighbor [*bonum sub ratione debiti ad proximum*]» or «in relation to the community [*facere bonum debitum in ordine ad communitatem*]».[62] In sum, a person establishes the equality of justice through the fulfillment of those aspects of the good which consist in rendering to another his due (*reddendo alteri quod ei debitur*) or his just things themselves (rights).[63] The right, as the object of juridical justice, is essentially the good of another, be it another individual or a community as a group-person.[64]

When speaking about whether "to do good" is a part of justice, Aquinas affirms that justice regards a special aspect of the good, namely, «the good as due in respect of Divine or human law».[65] Now, this claim may be understood to be pertinent also for the normative structure of natural law, since Aquinas defines natural law essentially as the «participation of the eternal law in the rational creature».[66] Although he connects justice with the good which is due in respect of the law only when he speaks about general or legal justice, Aquinas envisions particular justice as essentially the part of general justice, just as the particular good is a part of the common good.[67] Hence, justice, general

[58] Aquinas inherited the argument on the other-directedness of justice from Aristotle. «He [*i.e., Aristotle*] says first that justice itself is a certain perfect virtue not in terms of itself but in relation to another. Since it is better to be perfect not only in oneself but also in relation to another, therefore it is often said that this justice is the most excellent among all virtues». *Sent. Eth.* v, lec. 2. For the English translation of the texts from this Aquinas's work I will be using T. Aquinas, *Commentary on Aristotle's Nicomachean Ethics*, trans. C. I. Litzinger, O.P., Dumb Ox Books, Notre Dame 1993.

[59] *STh* II-II, q. 58, a. 12.

[60] *Ibidem*.

[61] *STh* II-II, q. 58, a. 5; II-II, q. 58, a. 7.

[62] *STh* II-II, q. 79, a. 1.

[63] *Ibidem*.

[64] For another instance of Aquinas's argument that justice concerns the orderedness to the «good of another», whether the common good of a community or the individual good of another person, see *Sent. Eth.* v, lec. 2-3.

[65] *STh* II-II, q. 79, a. 1; II-II, q. 79, a. 3.

[66] *STh* I-II, q. 91, a. 3. Aquinas affirms also that there are things which are «naturally just», and, thus, «contain the very order of justice». See *STh* I-II, q. 100, a. 8, ad 1.

[67] «Now it is evident that all who are included in a community, stand in relation to that community as parts to the whole; while a part, as such, belongs to a whole, so that what-

and particular, may be said to refer to the good precisely as due (*debitum*) in respect of the law – i.e., eternal, natural, and human law. As Aquinas says, the mode of doing acts of justice, which falls under the precept, is that they be done in accordance with the right (*secundum ordinem iuris*).[68]

Hence, the right as the object of justice regards a certain special aspect of good that is essentially other-directed and may be referred to the goods which are established through law, including natural law.

Another important "special aspect" of juridical goodness regards the mode in which "things" are owed and in which they are consequently, as Aquinas says, done in accordance with the *ius*. We may call this aspect the *essentially outward aspect of juridical goodness*. This aspect is crucial for the clear distinction of the specifically juridical goodness from the moral goodness.

Aquinas distinguishes from within «the matter of moral virtue» (i.e., the domain of morality), first, the «internal passions of the soul», and then «external actions or things»; he then affirms that justice is «only about external actions and things».[69] In addition, the «internal passions which are a part of moral matter are not in themselves directed to another man», but, he continues, only «their effects, i.e., external actions are capable of being directed to another man».[70]

Moreover, Aquinas argues that juridical justice refers to a specific kind of equality that must be established in relations of justice.[71] He claims that «a person establishes the equality of justice by doing good, i.e., by rendering to another his due»,[72] or, as he elsewhere specifies, «his own right».[73] In another textual locus, Aquinas maintains that «the matter of justice is an external operation insofar as either it or the thing we use by it is made proportionate [*proportionatur*] to some other person to whom it is related by justice»; «each man's own [*suum*]», he continues, is «that which is due to him according to equality of proportion [*proportionis aequalitatem*]».[74]

This passage should be read together with Aquinas's claim that a "thing" is said to have the «rectitude of justice [...] without taking into account the

ever is the good of a part can be directed to the good of the whole». *STh* II-II, q. 58, a. 5. «Besides legal justice which directs man immediately to the common good [...], but as to the good of the individual, it does so immediately [...] there is need for particular justice to direct man immediately to the good of another individual». *STh* II-II, q. 58, a. 7.

[68] *STh* I-II, q. 100, a. 9, ad 1.

[69] *STh* II-II, q. 58, a. 8. In his *Commentary on Aristotle's Nicomachean Ethics*, Aquinas makes the same argument, namely, that justice is related to «the principle of external operations», and therefore is «not concerned with passions». *Sent. Eth.* v, lec. 1.

[70] *STh* II-II, q. 58, a. 8, ad 3.

[71] See *STh* II-II, q. 57, a. 1; II-II, q. 57, a. 2; II-II, q. 58, a. 2.

[72] *STh* II-II, q. 79, a. 1.

[73] *STh* II-II, q. 58, a. 1. Emphasis added.

[74] *STh* II-II, q. 58, a. 11.

way in which it is done by the agent».[75] Hence, according to the Angelic Doctor, the "good" that is "appropriated to justice" is considered under a special aspect: «justice is concerned with operations and things which are external», and not with the internal «passions» of the subjects.[76]

In other words, some "things" are "made proportionate" in a relation of justice in such a way that in order to establish the equality between the persons in that relation, the internal dispositions of these persons are irrelevant. The orderedness to the good which is the object of juridical justice – i.e., juridical goodness – is outlined by the imperative that the equality of the apportioned other-directed things has been reached in its outward aspects. The right is that aspect of the good which is desired and attained in a way that transcends the internal domain of subjective dispositions which are potentially mobilized by the act of justice. For example, from the perspective of the juridical domain, a person is not primarily interested in the morally perfective subjective dispositions of other persons regarding his life, property, or inheritance. This person is, rather, primarily interested that his life, property, or inheritance is not interfered with.

4. The Concept of *Ius*

Another preliminary question that has to be answered in order to have the complete outline of the essential aspects of juridical goodness regards the very essence of right. What is right (*ius*)?

We have already seen that, for Aquinas, the primary meaning of right is that of the «just thing itself» (*ipsa res iusta*).[77] The right is the "thing" which is "good" precisely because it is other-directed or «adjusted to another person [*adaequatum alteri*]»[78] according to, as we have seen, the essentially outward mode of equality. Aquinas distinguishes two ways in which a "thing" can be adjusted to man. First, by nature itself (*ex ipsa natura rei*), and this is called "natural right" (*ius naturale*). Second, by private or public agreement, and this is called "positive right" (*ius positivum*).[79]

According to Villey and Hervada who both advocate the importance of Aquinas's concept of *ius* for the correct understanding of Thomistic legal philosophy, the "*ius* as essentialy the *ipsa res iusta*" passage should be read in its literal sense. Perhaps Aquinas does not develop a systematically elaborated account of what he has in mind when he speaks about *ius* as the *ipsa res iusta*. The broader context of his thought may provide us with the doctrinal tools necessary to fill in the gaps.

The basic postulates of Thomistic realism lead us to the conclusion that

[75] *STh* II-II, q. 57, a. 1. Emphasis added. [76] *STh* II-II, q. 79, a. 1, ad 1.
[77] *STh* II-II, q. 57, a. 1. [78] *STh* II-II, q. 57, a. 2. [79] *Ibidem*.

the specific reality (*res*) that is the object of juridical justice is fundamentally attainable within a grasp of what is, as such, intelligible in reality. In other words, the essence of right – the *ipsa res iusta* – is not describable in terms of a thought, a mental construct, or a concept. Instead, the very *res*, the *thing-in-itself* in its multiple manifestations as the object of the virtue of juridical justice, is constituted as *ius*. The right is, therefore, necessarily determined by the specific characteristics of the thing-as-it-is-in-itself. The *ipsa res* (the thing itself) brings its own ontological givenness to the juridical domain.

In their account of the main properties of Thomistic juridical realism, both Villey and Hervada have identified the *ipsa res iusta* with whatever material or immaterial reality (*res*) may be suitable to become the object of justice. For Villey, Aquinas's term *res* denotes a certain *real thing*, or a concrete *being* in the metaphysical sense. This *res* receives the additional quality of being just (*iusta*) with regard to its being a constituent part of a relation of justice, that is, insofar as it is owed to another who is its titleholder. Not only material things, but also immaterial things, and especially those (material, immaterial, or mixed) things which are attributed to somebody according to nature – like, for example, life, good reputation, or physical integrity, etc. – may constitute this "reality," *res*.[80]

> The specificity of classical juridical language is made manifest in seeing a world of *things*, external goods, because the juridical relation between persons is manifested solely in things and in the distribution that is made regarding things.[81]

Hervada reads Aquinas's *dictum* on the right as the *ipsa res iusta* in an almost identical fashion. The right is the concrete *res* which is owed in justice to its titleholder. *Ius* is, for example, the land, the conduct regulated by positive law, the payment of a price, the house, the goods inherited, etc.[82]

> The right is that *thing* which, given its attribution to a subject, who is its titleholder, is owed to him in virtue of a debt, in the strict sense of the term.[83]

In the words of the previously mentioned Italian legal philosopher, Giuseppe Graneris:

> Our acts, detached from internal dispositions, *fall to the level of things* and constitute rights only insofar as they may be equated with a thing and treated as a thing. We

[80] For example, see M. Villey, *Philosophie du droit. Vol. II: Les moyens du droit*, Dalloz, Paris 1979, pp. 148-149, 155; Id., *Questions de saint Thomas sur le droit et la politique ou le bon usage des dialogues*, Presses Universitaires de France, Paris 1987, p. 133.

[81] Id., *La formation de la pensée juridique moderne*, cit., pp. 243-244.

[82] J. Hervada, *Lecciones propedéuticas de filosofía del derecho*, cit., pp. 198-199. See also Id., *Critical Introduction to Natural Law*, trans. M. Emmons, Wilson & Lafleur Ltée, Montréal 2020, pp. 19-20.

[83] Id., *Lecciones propedéuticas de filosofía del derecho*, cit., p. 198.

can, thus, understand [...] St. Thomas's preference for [the term] *res* in the definition of right: *ipsa res iusta*.[84]

In sum, that which must be rendered to each as his own (*suum*) is not the individual power, faculty to demand (*facultas exigendi*), or any other sense of the subjective claim to a sphere of juridical autonomy that may be invoked regarding a certain *res*. To reduce *ius* from the just thing itself to a purely subjective meaning of right means to superimpose a secondary goods-based thought-construct on the concrete *res*, while, at the same time, leaving the ontological givenness of this *res* outside of the juridical domain. Instead, Aquinas seems to argue that the *res* itself must be rendered to each person, insofar as it constitutes the *ipsa res iusta* or his own right (*ius suum*) in the perspective of juridical goodness. It is the objective, rather than subjective, primary meaning of right that corresponds more adequately to the fact that, in Thomistic legal philosophy, juridical goods are, as we have already seen, conceptualized as the goods belonging to another person. In the Thomistic account of right, the conceptual focus is not on the subject who is the titleholder of the right. On the contrary, *ius* is primarily understood as a thing – and, at the same time, as an aspect of the good – that must be rendered to another.

Both Villey and Hervada frequently refer to *ius*, the just *thing* itself, as the *juridical good*.[85] In light of Aquinas's account of juridical goodness, it seems that Villey's and Hervada's terminological choice is far from arbitrary; it is, indeed, profoundly Thomistic. The concrete material or immaterial "thing" that is constituted as right is describable in terms of a juridical good, insofar as it participates in that certain special, other-directed, and essentially outward aspect of the good which is the object of justice. Thomistically speaking, we may refer to the house that forms part of one's property, the payment of a price according to a contract, the things inherited, etc., as juridical goods. And, yes, it is also possible to refer to certain goods that are, as Aquinas says, adjusted to the human person by nature itself – for example, life, liberty, and other basic human goods – as juridical goods.

5. Basic Human Goods as Natural Juridical Goods

The general line of argument regarding the adequacy of predicating the term "juridical good" also of basic human goods should be sufficiently clear from

[84] G. Graneris, *Contributi tomistici alla filosofia del diritto*, cit., pp. 25-26.

[85] For example, see M. Villey, *Seize Essais de philosophie du droit*, cit., pp. 152-153; Id., *Leçons d'histoire de la philosophie du droit*, Dalloz, Paris 2002, pp. 160-161, 174; J. Hervada, *Critical Introduction to Natural Law*, cit., pp. 54-55, 59; Id., *Lecciones propedéuticas de filosofía del derecho*, cit., pp. 502-503.

the previous course of this analysis: *ius* may be considered to denote a domain of juridical goodness insofar as it regards a certain special – other-directed and outward – aspect of the ontological and moral goodness. What remains to be seen in more detail is the exact structural connection between the ontological and the moral status of the basic human goods, on the one hand, and the juridical status of these goods, on the other.

From a certain point of view, it can be said that the basic human goods represent more than just another kind of juridical goods. Outside of the perspective of their constitution as juridical goods, a house, a cell-phone, the payment of a price, the experience of listening to a live concert, or the content of an inheritance, may represent an instrumental good for the human person, that is, something that instantiates various aspects of useful (*utile*) and pleasant (*delectabile*) forms of good.[86] The basic human goods, however, are essential for the attainment of the whole human good. They represent the aspects of the moral good – of themselves and as particular instantiations of the whole human good – already before they are envisioned to be constituted as rights. Their peculiar ontological and moral status as goods surely transcends the aspects of their juridical goodness.

Nonetheless, the basic human goods form part of the juridical domain according to their reconstitution as basic juridical goods. This means that the basic human moral goods are necessarily reconstituted as juridical goods for the specific domain of their attribution to their titleholders as the *suum* that is owed to them in justice by other determinate debtors. These goods are not just certain moral goods which also "happen to be" the objects of rights. Rather, they are constituted as rights – i.e., as juridical goods – in the outward and other-directed aspect of their ontological and moral givenness. From the standpoint of their being adjusted to man by his very nature, they are said to be *natural rights*. We could also call them *natural juridical goods*.

Now, this perspective is easily neglected if one understands the essence of *ius* to be describable exclusively according to the subjectivist meaning of this term. This is probably the reason why Finnis, for example, does not perceive the necessity to predicate a juridical domain of basic human goods as the domain that is somehow inherent to these goods from the viewpoint of justice. In his view, these goods are juridically (or legally) relevant already – and exclusively – at the level of their ontological and moral goodness. However, the mutual dependence between the moral and juridical levels of analysis becomes ultimately unintelligible in a schema where one (1) insists on the legal relevance of the sole moral goodness of basic human goods, and, at the same time, (2) conceptualizes the juridical status of basic human goods only

[86] See *STh* I, q. 5, a. 6; I-II, q. 59, a. 3.

in terms of positive laws and corresponding subjective legal rights that refer to these goods.[87]

On the other hand, authors like Hervada, who highlight the juridical-philosophical importance of Aquinas's concept of *ius* as the object of justice, ordinarily refer to natural rights as juridical goods.

> Therefore, all the goods inherent to [the person's] own being are the object of his dominion, are *his* in the most strict and proper sense. With this in mind, it is evident that the set of goods inherent to his being represent *his things*, with which others cannot interfere and which they cannot appropriate except through force or violence, which would infringe on the ontological status of the person; they are then rights of the person, rights that the person has by virtue of his nature. They are natural rights of man in the strictest sense of the word. These rights or goods, which belong to the person because they make up his being [...] engender in others the duty of respect.[88]

There is one more argument that I would like to address with regard to natural juridical goods. As we have seen, Aquinas argues that justice regards a special aspect of the good, namely, the good as due in respect of a law – divine, natural, or human.[89] When we observe this claim from the perspective of natural juridical goods, it would seem that there is a distinct domain of "what is due" in "respecting" the natural law in view of the attainment of natural juridical goods. In its juridically relevant domain, the natural law does not fully overlap with the entirety of the orderedness towards the human individual and common good (i.e., with the preceptive scope of natural *moral* law). Only that aspect of the natural law which has as its end the attainment of the relevant telic part of juridical goodness is operative at the level of juridical justice. This means that within the framework of the natural moral law we may postulate a specifically juridical domain: natural juridical law or a set of natural norms of justice.[90]

6. Conclusion

Finnis firmly maintains[91] that there is no need to return to the Thomistic objective conception of right as the just thing itself whenever the notion of subjective rights is sufficiently secured at the level of its objective foundations

[87] Perhaps this is part of the reason why Finnis never really distinguishes pre-positive natural rights (or their strictly *juridical* domain) from the category of "fundamental and general *moral* rights". See J. Finnis, *Natural Law and Natural Rights*, cit., pp. 198-199. Emphasis added.

[88] J. Hervada, *Critical Introduction to Natural Law*, cit., p. 54.

[89] See *STh* II-II, q. 79, a. 1; II-II, q. 79, a. 3.

[90] See P. Popović, *Natural Law and Thomistic Juridical Realism: Prospects for a Dialogue with Contemporary Legal Theory*, The Catholic University of America Press, Washington D.C., forthcoming in 2022.

[91] See J. Finnis, *Natural Law and Natural Rights*, cit., pp. 209-210.

through the immediate appeal to natural moral law. However, the project of recovering the Thomistic conception of *ius* for contemporary purposes is far from anachronistic. To be sure, the conception of natural rights as natural juridical goods – wherein the *res* in question denotes a specific domain of the basic human goods themselves – is profoundly Thomistic.[92]

Unlike Finnis's predominantly moral theory,[93] the claim for a reconceptualization of the essence of right as the juridical good of another person represents a juridical argument, in the proper sense of this term. However, it may turn out that this argument is not even that far from Finnis's own position.[94] Of course, Finnis and the other proponents of the New Natural Law Theory would have to take into consideration the concept of juridical good for their legal-philosophical theory and, consequently, interrelate this concept with the juridical phenomena of subjective rights and positive laws. If there is a place in a Finnisian natural-law account of *ius* for the inclusion of the *rei*-centric goods-based concept of right (i.e., *ius* as juridical good), then there is reason to believe that the Thomistic debates regarding the ontological and moral status of basic human goods may be transcended at least for the purposes of a more complete juridical argument regarding these goods.

Abstract · The article offers an analysis of the way to transcend the debates on the moral status of basic human goods in Thomistic natural-law theory, by starting from the common ground of both parties to the debate and then presenting a research on the status of human goods as juridical goods. The claim that natural rights are natural juridical goods is not only profoundly Thomistic; it also contains elements of a fully-fledged juridical line of argument. Without the passage from the moral status of the basic human goods to their juridical status, the legality of the natural law would be seen as inherently non-juridical. The article concludes by claiming that Thomistic juridical realism establishes a bridge – between the moral "ought" and a conception of the juridical "ought" – on which rights are essentially seen not as subjective right-claims, but as the juridical goods of the other person.

Keywords · Basic human good, Juridical good, Natural right, Aquinas.

[92] In a relatively recent article, Dominic Legge argues that Aquinas, in fact, simultaneously operates with both the subjective and the objective meaning of right, but always within a telic framework of the orderedness of rights to the individual and common good. See D. Legge, *Do Thomists Have Rights?*, «Nova et Vetera», 17 (2019), pp. 127-147.

[93] For Jeremy Waldron's claim that Finnis's account is not a theory of law at all, but a theory of *morality*, see J. Waldron, *What is Natural Law Like?*, in J. Keown and R. P. George (eds.), *Reason, Morality and Law: The Philosophy of John Finnis*, cit., pp. 73-89.

[94] Finnis has a rather clear understanding of the importance of other-directedness and outwardness as the properties of justice. Regardless, he fails to perceive the importance of the concept of right as "juridical good", even though he sometimes refers to the, ultimately moral, aspect of what he calls "the good of justice". See J. Finnis, *Natural Law and Natural Rights*, cit., p. 205; Id., *Aquinas: Moral, Political and Legal Theory*, cit., pp. 133, 138; Id., *Grounding Human Rights in Natural Law*, cit., p. 208.