
The Juridical Domain of the Intrinsic Common Good of the Political Community: Hervadian Perspectives

El dominio jurídico del bien común intrínseco de la comunidad política: perspectivas hervadianas

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Abstract: This paper explores the contribution of Javier Hervada to the correct understanding of the juridical domain of the intrinsic common good of the political community. After some introductory remarks on the current status of the intrinsic political common good, in the first part of the article the concept of the intrinsic aspect of the political common good is presented from the viewpoint of the Thomistic social ontology and Catholic social doctrine. In the second part of the article, some crucial Hervadian perspectives are elaborated for the conception of the juridicity of the intrinsic bonum commune of the polity.

Keywords: Political Common Good; intrinsic Common Good; Natural Rights; Justice.

Resumen: Este artículo explora la contribución de Javier Hervada a la correcta comprensión del dominio jurídico del bien común intrínseco de la comunidad política. Después de algunas observaciones introductorias sobre el estado actual del bien común político intrínseco, en la primera parte del artículo se presenta el concepto del aspecto intrínseco del bien común político desde el punto de vista de la ontología social tomista y la doctrina social católica. En la segunda parte del artículo se elaboran algunas perspectivas hervadianas cruciales para la concepción de la juridicidad del bonum commune intrínseco de la comunidad política.

Palabras clave: bien común político; bien común intrínseco; derechos naturales; justicia.

I. INTRODUCTORY REMARKS

A lot of ink could be spilt on detecting all the *whys* and the *hows* of the crisis of envisioning and living out the political common good in our polities today. The nature of this crisis is not only practical; it is rooted in the absence of a clear fundamental conception on how to live our social bonds

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in a political community, especially in the face of what may be called polar tensions or oppositions arising from citizens' competing, or often contrasting, worldviews or comprehensive ideas of the good. How should we, as citizens of a polity, live out our mutual social bonds – inherent to the concept of the political common good – in the face of our contrasting ideas of the good?

It is of paramount importance to explore in what ways this crisis is, at the same time, also juridical, both on a practical and on a theoretical level of analysis. What kinds of social bonds do we owe to each other, juridically speaking, as members of a political community?

According to Ronald Dworkin's assessment, the juridically relevant conceptualization and recognition of our existing rights is prior to the constitution of the public policies that determine and express the political community's general welfare and common flourishing¹. A unified, axiologically firmly anchored, and comprehensive conception of a political common good, in Dworkin's view, may prove to be insufficiently attentive to the ideas of the good of those citizens who do not fully share this conception. Therefore, their rights must be envisioned as trumps that may, in a given situation, quash a contrasting aspect of the common good². It seems that, according to this approach, the concept of the political common good and the concept of rights are locked in what is essentially a dialectical interplay which can be resolved only by positing a primacy of individual rights over the common good.

In his attempt to transcend this dialectic, Dworkin claims to have found a framework in which the two potentially conflicting questions – «what *rights* do persons have» and «which *policies* make the community flourish» – overlap. «What we all together owe others as individuals when we act in and on behalf of that artificial collective person»³, namely, the political community, is a *set of rights* that is ultimately compatible with the citizens' *fundamental natural right*, which trumps all competing common-good policies, and, at the same time, represents in itself the overarching *common-good policy*: the right to be treated with equal concern and respect⁴.

¹ DWORKIN, R., *Taking Rights Seriously* (2nd ed.), Harvard University Press, Cambridge, 1978, pp. 82-84, 90-94, 294; DWORKIN, R., «A Reply by Ronald Dworkin», in COHEN, M. (ed.), *Ronald Dworkin and Contemporary Jurisprudence*, Duckworth, London, 1983, p. 263.

² DWORKIN, R., «Rights as Trumps», in WALDRON, J. (ed.), *Theories of Rights*, Oxford University Press, Oxford, 1984, p. 166.

³ DWORKIN, R., *Justice for Hedgehogs*, The Belknap Press of Harvard University Press, Cambridge, 2011, pp. 327-328.

⁴ *Ibid.*, p. 330. See also DWORKIN, R., *Taking Rights Seriously*, cit., pp. xii, xv, 176-177, 182, 272-273.

Thus, the Dworkinian primary quality of social bonds in a political community is established by the institutional value of *equality*: the equal personal sovereignty over one's own private autonomy. The juridical domain of Dworkin's account of the political common good consists of (1) all those interpersonal states of affairs in which we socially owe equal concern and respect to others in a political community, and (2) all those other rights that are compatible to (or derived from) this overarching right and, again, owed to others as their individual or social benefits.

A different *ratio* behind the concept of political common good in the face of «diversity of opposing and irreconcilable religious, philosophical, and moral doctrines»⁵ is advocated by John Rawls. In his search for the common good, defined as «certain general conditions that are in an appropriate sense equally to everyone's advantage»⁶, Rawls holds that the primary quality of the social bond that is owed socially between citizens in a political community is «giving one another justice»⁷.

Of course, Rawls uses the term *justice* according to peculiar coordinates outlined in his liberal political conception of justice as fairness. Thus, justice is the operative principle and the institutional outcome of a constructivist procedure in which the fair terms of political rightness – those that may attract the support of all reasonable citizens – have absolute priority over all the individual ideas of goodness that fail to attract such support. In short, what we owe to each other socially in a polity – i.e., in the realm of «social unity and the allegiance of citizens to their common institutions»⁸ – is a unity that does not rely upon a single conception of the good; rather, it relies upon the premise that «each citizen wants everyone (including himself) to act from principles to which all would agree in an initial situation of equality»⁹.

It seems that Rawls constructs his notion of the political good of social unity among citizens – i.e., the intrinsic political common good – within the framework of a dialectical tension between the conception of justice and the ideas or comprehensive conceptions of the good. In this optic, ideas of the

⁵ RAWLS, J., *Political Liberalism* (3rd ed.), Columbia University Press, New York, 2005, pp. 3-4.

⁶ RAWLS, J., *A Theory of Justice*, The Belknap Press of Harvard University Press, Cambridge, 1971, pp. 233, 246.

⁷ RAWLS, J., *Political Liberalism*, cit., p. 202.

⁸ RAWLS, J., «Justice as Fairness: Political not Metaphysical», *Philosophy and Public Affairs*, 14 (1985), p. 249.

⁹ RAWLS, J., *A Theory of Justice*, cit., p. 527.

good, even if they are true or «rely upon a full knowledge of the facts»¹⁰, cannot be just, and thus cannot provide the basis for the bonds of social unity in a polity, unless they are shared and supported by all reasonable citizens.

Thus, to reason publicly and institutionally in a polity from the viewpoint of political justice as fairness and not from one's own conception of the good, represents an «intrinsic»¹¹ political good that is essentially social: «it is realized through citizens' joint activity in mutual dependence on the appropriate actions being taken by others»¹². In other words, reasoning from political justice as fairness represents the operative set of rules for fair cooperation between citizens in a contemporary pluralistic democratic society, rules that are, in Rawls's view, easily comparable to the pleasurable participation in a good performance by members of an orchestra or in a good play of the game by the players on a team¹³.

Rawls's writings offer sufficient basis to conclude that, in his theory, the juridical phenomena of rights and the law are constructed on a level that is located downstream from the main principles and ideas of his political conception of justice; thus, the law and rights are constructed in the basic institutional structure of society, and are then further specified, respectively, at the constitutional, legislative, and adjudicative levels¹⁴. It seems, therefore, that the juridical domain of Rawlsian political common good is a mere translation of his account of social unity – i.e., of «giving one another justice accordingly»¹⁵ – into juridical categories expressed through laws and subjective rights. However, some Rawls's texts may point to the conclusion that he envisions the *right to political justice as fairness* – expressed in terms of the citizens' «legitimate expectations»¹⁶ of justice that is socially owed to them by others – as a *sui generis* political-natural right¹⁷.

At one point, Rawls claims that «social unity so understood is the most desirable conception of unity available to us; it is the limit of the practical best»¹⁸. He is convinced to have achieved an ideal of the intrinsic political common good

¹⁰ *Ibid.*, pp. 448-449.

¹¹ RAWLS, J., *Political Liberalism*, cit., p. 207.

¹² *Ibid.*, p. 204.

¹³ *Ibidem*.

¹⁴ *Ibid.*, pp. 258, 334-340.

¹⁵ *Ibid.*, p. 202.

¹⁶ RAWLS, J., *A Theory of Justice*, cit., p. 235.

¹⁷ *Ibid.*, pp. 505-506. See also RAWLS, J., «Justice as Fairness: Political not Metaphysical», cit., pp. 236-237.

¹⁸ RAWLS, J., *Political Liberalism*, cit., p. 202.

that is wide and inclusive enough so that any reasonable comprehensive doctrine may endorse it from within its own viewpoint¹⁹. In fact, he believes that his account of the quality of social unity in the political community may accommodate even the «Catholic views of the common good and solidarity», but he immediately adds: «when they are expressed in terms of *political* values»²⁰, namely, in terms of his dialectical framework of political justice as fairness and the ideas of the good, wherein the former enjoys a structural priority over the latter.

The scope of this paper is to present an alternative view of the juridical domain of the intrinsic common good of the political community, that is, of the quality of social bonds among citizens in a polity.

The late Javier Hervada (1934-2020) did not directly engage with the aforementioned Dworkin's or Rawls's ideas. In an interview-book published in 2009, Hervada did affirm that Rawls's theory of justice denotes an anti-realist rupture in the continuity between the concepts of *justice*, *rights* and the *moral* (and, as he elsewhere adds, *social-political*²¹) order. On that occasion, he criticized Rawls's aprioristic Kantian idealism for having conceptualized justice as an idea that is already fully developed even before the constitution of the juridical realm. The idea of pre-judicial justice is unacceptable for Hervada, who envisions the realm of justice as a domain that is inherent to very «idea of the juridical realm»²².

I am convinced, however, that Hervada did advocate important, perhaps even decisive arguments for an adequate understanding of the juridical realm of the intrinsic common good of the political community, from the viewpoint of his juridical realism. In this sense, his ideas denote a head-on answer to the aforementioned accounts by Dworkin and Rawls, even if Hervada did not develop them in a frontal dialogue with the theories of these authors. As I will argue in this paper, when Hervada's account of the juridical realm is applied to the concept of the common good, it directly challenges claims, such as Dworkin's and Rawls's.

In other words, Hervada offers an alternative to the claim that the only acceptable way of conceptualizing juridicity of the polity's intrinsic common good is outlined by proceeding from what one considers to be the basic value of substantive political morality – for example, *equality* (Dworkin) or *political justice as*

¹⁹ *Ibid.*, p. 203.

²⁰ *Ibid.*, pp. 451-452. Emphasis added.

²¹ HERVADA, J., *Lecciones propedéuticas de filosofía del derecho* (4th ed.), EUNSA, Pamplona, 2008, p. 126.

²² ESCRIVÁ IVARS, J., *Relectura de la obra científica de Javier Hervada. Preguntas, diálogos y comentarios entre el autor y Javier Hervada. Parte II: Derecho natural y filosofía del derecho*, EUNSA, Pamplona, 2009, p. 655.

fairness (Rawls) – and by subsequently affirming this value as ultimately foundational for the juridical realm in the form of a supreme *quasi* natural right (i.e., of what we owe to each other *socially* in a polity). Hervada is convinced that instead of positing a single value of political morality – a value that is sufficiently wide to include or legitimately disqualify comprehensive ideas of the good – as prior and foundational with regard to the juridical realm, we should be more attentive to the viewpoint according to which the juridical realm itself introduces certain aspects of the good that are constitutive of the quality of social bonds in the political community. To establish this viewpoint, he develops his position within a conceptual interplay – not necessarily dialectical – between justice, rights, ideas of the moral good, and the intrinsic political common good.

In order to fully understand Hervada's contribution in this field, we must first contextualize his arguments in a broader tradition of the doctrine on the intrinsic common good of the polity, namely, in the Thomistic analysis of this concept as well as in the correlative developments of the Catholic social doctrine. In other words, it is first necessary to have a clear conception of the intrinsic common good in a political community before embarking upon an analysis of its juridical realm²³. This is the immediate scope of the first part of this article. As will be shown, Hervada himself invokes or indirectly references these background doctrinal contexts when elaborating his own understanding of the polity's common good.

Since Hervada almost never examines the elements of the juridical realm of the polity's intrinsic common good as a unified whole – rather, these elements are often scattered throughout his texts – his final position on this issue is still, so to speak, in need of a synthesis. It is precisely this synthesis that I intend to offer in the second part of this paper. Nonetheless, Hervadian perspectives for the development of such synthesis represent a valuable contribution to both the Thomistic juridical realism and the Catholic social doctrine. The dialogical potential of these perspectives, together with the accounts of the intrinsic common good that will be presented in this paper, may prove to be intelligible to multiple traditions of legal and political philosophy.

²³ Although both Rawls and Dworkin clearly refer to elements of what will be presented as the intrinsic aspect of the political common good in the next section of this paper, neither of the two authors offers an in-depth analysis of this aspect. They simply incorporate, within their respective theories of juridically relevant social cooperation, the relatively under-researched phenomena of (a) certain social bonds that are essential to social unity (Rawls), or of (b) what we all together, as citizens, owe to each other socially (Dworkin).

II. THE INTRINSIC COMMON GOOD OF THE POLITICAL COMMUNITY

In Aquinas's ontology of social forms, the basic metaphysical structure of a society is different from that of an individual person, which is metaphysically constituted as a *unity of substance*; Aquinas describes the ontological substrate of a society through the notion of the *unity of order*²⁴. Now, the orderedness towards the good in a societal unity is twofold. Most interpreters of Thomas Aquinas's relevant texts on the concept of the common good concur in thinking that these texts reveal the nature of *bonum commune* as, in fact, a composite concept, consisting of an internal and an external aspect²⁵.

«For good, inasmuch as it is the end or goal of a thing, is twofold. For an end is extrinsic to the thing ordained to it, as when we say that a place is the end of something that is moved locally. Or it is intrinsic, as a form is the end of the process of generation or alteration; and a form already acquired is a kind of intrinsic good of the thing whose form it is. Now the form of any

²⁴ «Now a twofold order is found in things. One kind is that of parts of a totality, that is, a group, among themselves, as the parts of a house are mutually ordered to each other. The second order is that of things to an end. [...] It must be known moreover that the whole which the *political group* or the family constitutes has only a *unity of order*, for it is not something absolutely one. A part of this whole, therefore, can have an operation that is not the operation of the whole, as a soldier in an army has an activity that does not belong to the whole army. However, this whole does have an operation that is not proper to its parts but to the whole». AQUINAS, T., *Commentary on Aristotle's Nicomachean Ethics*, I, lec. 1, nn. 1 and 5. Emphasis added.

²⁵ FROELICH, G., «The Equivocal Status of *Bonum Commune*», *The New Scholasticism*, 63 (1989), pp. 49-53; KEMPSHALL, M. S., *The Common Good in Late Medieval Political Thought*, Clarendon Press, Oxford, 1999, pp. 99-101, 127-129; HITTINGER, R., «The Coherence of the Four Basic Principles of Catholic Social Doctrine», in ARCHER, M. S., and DONATI, P. (eds.), *Pursuing the Common Good: How Solidarity and Subsidiarity Can Work Together*, Vatican City, Pontificia Academia Scientiarum Socialium, 2008, pp. 78-93; HITTINGER, R., «Polity in Catholic Social Doctrine: Some Recent Perplexities», in GLENDON, M. A., and ALVIRA, R. (eds.), *Religion and Civil Society: The Changing Faces of Religion and Secularity*, Georg Olms Verlag, Hildesheim-Zurich-New York, 2014, pp. 42-47; HITTINGER, R., «Love, Sustainability, and Solidarity: Philosophical and Theological Roots», in SCHLAG, M., and MERCADO, J. A. (eds.), *Free Markets with Solidarity and Sustainability: Facing the Challenge*, The Catholic University of America Press, Washington, D.C., 2016, pp. 19-27; FINNIS, J., *Natural Law and Natural Rights* (2nd ed.), Oxford University Press, Oxford, 2011, p. 459; BAUR, M., «Law and Natural Law», in DAVIES, B., and STUMP, E. (eds.), *The Oxford Handbook of Aquinas*, Oxford University Press, Oxford, 2012, p. 240; GOYETTE, J., «On the Transcendence of the Political Common Good: Aquinas versus the New Natural Law Theory», *The National Catholic Bioethics Quarterly*, 13 (2013), pp. 152-153; LONG, S. A., «Understanding the Common Good», *Nova et Vetera*, 16 (2018), p. 1142; LEWIS, V. B., «Catholic Social Teaching on the Common Good», in BRADLEY, G. V., and BRUGGER, E. C. (eds.), *Catholic Social Teaching: A Volume of Scholarly Essays*, Cambridge University Press, Cambridge, 2019, pp. 241-247.

whole which is one through the arrangement of its parts is the order of that whole. Hence it follows that it is a good of that whole. [...] We see this, for example, in the case of an army; for the good of the army is found both in the order itself of the army and in [...] the purpose of achieving the good of [...] attaining victory»²⁶.

Therefore, one aspect of the specific good of social unity is brought about by the society's intentional orderedness to certain good ends or telic outcomes that are attainable only through participative membership and shared action in that particular society. This is the extrinsic aspect of the common good, for example, a victory for an army or a sports team, the desired outcome of an artistic piece performed by a musical band, an orchestra or a theatre group, the attainment and progress of knowledge for a university, the ultimate good of the spouses and children for marriage and family, the salvific union with God for the Church, etc.

Another aspect of the common good of a society is the intrinsic aspect, namely, the desirableness of the good of participating in the very order of communal action: the quality of the social bond itself, the very form of *communicatio* or making things common between members of a society, the peculiar form of unity of shared action itself, the mode of acting together with others in precisely such-and-such societal way. In contrast to being a part of an accidental social aggregation that is only instrumental for achieving certain private ends, such as the queue in front of an ATM cash-machine, a crowded bus, or a traffic jam, in a true society members desire the very form of the social bond itself as a form of good that is distinct from the telic outcomes of societal action²⁷. For example, persons desire precisely the good of being in and acting together in: the classic John Coltrane Quartet with its shared social-musical bonds brought about by the unique dynamics in the performances, a university's modes of making the knowledge common through lectures and research, the forms of spousal *communicatio*, the specific forms of lived-out *communio* in the Church.

²⁶ See AQUINAS, T., *Commentary on Aristotle's Metaphysics*, XII, lec. 12, nn. 2627, 2630. Emphasis added.

²⁷ For an excellent and perhaps most complete account of the intrinsic aspect of the common good, see HITTINGER, R., «The Coherence of the Four Basic Principles of Catholic Social Doctrine», cit., pp. 81-93; HITTINGER, R., «Love, Sustainability, and Solidarity: Philosophical and Theological Roots», cit., pp. 21-24.

According to Russell Hittinger's reading of Aquinas's concept of the intrinsic *bonum commune* in light of the tradition of Catholic social teaching, there is another term for denoting the quality of social bonds that exhausts the intrinsic aspect of the common good: *societal love* or *solidarity*. The societal order of shared action, *communicatio* or «making things common», is itself loved by members not only theoretically, but also existentially. The concrete form of societal love changes according to the type of society. The intrinsic common good may thus be understood to be identical to the meaning of solidarity that denotes lived-out social love for the concrete ways of participating socially in the life of other members of a particular type of society, for example, marriage (societal spousal love), family (societal familial love), Church (societal fraternal love), political community (societal love as civic friendship), etc.

The following question is: how to best understand the intrinsic common good of the political community²⁸ in light of the Thomistic tradition and Catholic social doctrine?

I suggest that the answer lies in reading the crucial passages of the Catholic social doctrine that explore the topic of the political common good and civic solidarity in the polity against the backdrop of our previous analysis on the intrinsic aspect of the common good of any true society.

Now, this is surely a pressing issue today: to rediscover the quality of solidary bonds of social civic friendship that hold together the desirability of making «political things» common in our polities. Can this special form of

²⁸ In order to keep the focus on the intrinsic common good of the political community, I leave out of this present research a closer look on the external aspect of the common good – the whole line of argument on the value of peace and justice in the framework usually denoted by the Augustinian term *tranquillitas ordinis* – as the telic outcome of the shared action in a polity. For some reflections on this perspective, see HITTINGER, R., «*Quinquagesimo Ante*: Reflections on *Pacem in Terris* Fifty Years Later», in GLENDON, M. A.; HITTINGER, R. and SÁNCHEZ SORONDO, M. (eds.), *The Global Quest for Tranquillitas Ordinis: Pacem in Terris, Fifty Years Later*, Vatican City, Pontificia Academia Scientiarum Socialium, 2013, pp. 38-60; FINNIS, J., *Aquinas: Moral, Political, and Legal Theory*, Oxford University Press, Oxford, 1998, pp. 219-254. For the sake of brevity, I will also have to leave out of my present focus the differences between forms of an *essentialist* conception of the common good and an *instrumentalist* (such as, for example, Finnisian) conception of *bonum commune*. For various approaches to these differences, see DEWAN, L., «St. Thomas, John Finnis, and the Political Good», *The Thomist*, 64 (2000), pp. 337-374; PAKALUK, M., «Is the Common Good of Political Society Limited and Instrumental?», *The Review of Metaphysics*, 55 (2001), pp. 57-94; MURPHY, M. C., «The Common Good», *The Review of Metaphysics*, 59 (2005), pp. 133-164; GOYETTE, J., «On the Transcendence of the Political Common Good», cit., pp. 133-155; DUKE, G., «The Distinctive Common Good», *The Review of Politics*, 78 (2016), pp. 227-250.

civic love for the order of shared political action be instantiated in our political communities that are deeply polarized by differing and contrasting world-views, and, if it can, on what basis?

The tradition of the Catholic social doctrine establishes a firm connection between (a) the natural-law inclination of the will that provides human persons with the basic reasons for action with respect to living in society²⁹, including political society³⁰, and (b) the corresponding need that this basic reason for communal action be fulfilled within an appropriate framework of the bonds of social unity³¹. The essential nature of this relational framework is a kind of love: «civic and political love»³², a «charity as the principle of po-

²⁹ «Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to [...] live in society, and in this respect, whatever pertains to this inclination belongs to the natural law». AQUINAS, T., *Summa Theologiae: First Complete American Edition in Three Volumes*, I-II, q. 94, a. 2. «But it is a great error not to see, what is manifest, that men, as they are not a nomad race, have been created [...] for a natural community of life». LEO XIII, Encyclical Letter *Diuturnum*, June 29, 1881, n. 12. «Man's natural instinct moves him to live in civil society, for he cannot, if dwelling apart, provide himself with the necessary requirements of life, nor procure the means of developing his mental or moral faculties». LEO XIII, Encyclical Letter *Immortale Dei*, November 1, 1885, n. 3.

³⁰ «Now there are three necessary societies, distinct from one another and yet harmoniously combined by God, into which man is born: two, namely the family and *civil society*, belong to the natural order; the third, the Church, to the supernatural order». PIUS XI, Encyclical Letter *Divini Illius Magistri*, December 31, 1929, n. 11. Emphasis added. «Among those social ties which man needs for his development some, like the family and *political community*, relate with greater immediacy to his innermost nature». SECOND VATICAN COUNCIL, Pastoral Constitution *Gaudium et Spes*, December 7, 1965, n. 25. Emphasis added. «But for his spiritual nature to fully flourish, a person has the need to form relations of generous friendship with his fellow human beings and to develop intense cooperation in the search for the truth. His integral good is so intimately linked to life in community that he enters *into political society by virtue of a natural inclination and not by mere convention*». INTERNATIONAL THEOLOGICAL COMMISSION, *In Search of a Universal Ethic: A New Look at the Natural Law*, 2009, n. 48. Emphasis added.

³¹ «Because order, as St. Thomas well explains, is a unity arising from harmonious arrangement of many objects, a true, genuine social order demands that the various members of a society be united by some strong bond. This unifying force is present [...] in that common good, to achieve which all [...] together ought, each to the best of its ability, to cooperate amicably». PIUS XI, Encyclical Letter *Quadragesimo Anno*, May 15, 1931, n. 84. When affirming that «the common good corresponds to the *highest of human instincts*, but it is a good that is very difficult to attain because it requires the constant ability and effort to seek *the good of others as though it were one's own good*», the *Compendium of the Social Doctrine of the Church* develops the reference to «highest of human instincts» in a footnote that cites Aquinas's passage from *S.Th.* I-II, q. 94, a. 2 and adds that «Saint Thomas Aquinas places 'knowledge of [...] life in society' as the highest and most specific level of man's *inclinationes naturales*». See PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *Compendium of the Social Doctrine of the Church*, April 2, 2004, n. 167, footnote 353. Emphasis added.

³² FRANCIS, Encyclical Letter *Laudato Si'*, May 24, 2015, n. 231.

litical macro-relationships»³³, «the care for the social organism and the good of society as a unit»³⁴. It is not an abstract love for some unreal social body, but the specific kind – a macro-relational political kind – of social love whose recipient is always the other member of the concrete polity.

«In this perspective love takes on the characteristic style of social and political charity: social charity makes us love the common good, it makes us effectively seek the good of all people, considered not only as individuals or private persons but also in the social dimension that unites them»³⁵.

What are the main properties of political love, that is, of the intrinsic aspect of the political common good according to Catholic social doctrine?

First, in each form of political government, the interpersonal bonds that constitute the fabric of solidary social unity – i.e., the «structures of participation and shared responsibility» that make up the «subjectivity of society» – must be founded upon a «correct conception of the human person»³⁶. This means that the framework of societal-political love cannot prescind from a «hierarchy of values» that are grounded in «a correct understanding of the rights of the person»³⁷, rights that represent the basic human goods (such as life, bodily integrity, private property, etc.) reconstituted as specifically juridical goods. It is important to note that the essential content of some among these basic human goods is predetermined by structures of freedom (such as the freedom of personal assent in matters of faith, freedom of conscience, freedom of opinion, freedom of choosing one's state of life, etc.) whose integrity must be secured in the form of «immunities from coercion on the part of individuals or of social groups and of any human power»³⁸ through a «strong juridical framework»³⁹.

³³ BENEDICT XVI, Encyclical Letter *Caritas in Veritate*, June 29, 2009, n. 2.

³⁴ PIUS XI, Encyclical Letter *Divini Redemptoris*, March 19, 1937, n. 51.

³⁵ PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *Compendium of the Social Doctrine of the Church*, cit., n. 207.

³⁶ JOHN PAUL II, Encyclical Letter *Centesimus Annus*, May 1, 1991, n. 46.

³⁷ *Ibid.*, n. 47. Emphasis added. «Since the common good of society [*societatis commune bonum*] consists in the entirety of those conditions of social life under which men enjoy the possibility of achieving their own perfection in a certain fullness of measure and also with some relative ease, it chiefly consists in the protection of the rights [...] of the human person». SECOND VATICAN COUNCIL, Declaration *Dignitatis Humanae*, December 7, 1965, n. 6. Emphasis added.

³⁸ SECOND VATICAN COUNCIL, *Dignitatis Humanae*, cit., n. 2.

³⁹ PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *Compendium of the Social Doctrine of the Church*, cit., n. 200.

Second, the actual lived-out forms of bonds of social unity within a polity assume different forms «with the changing of times»⁴⁰, but always in continuity with the orderedness to political love within the aforementioned framework – including the juridical framework – of truth and freedom. We could say that historical-cultural changes in the last centuries have deconstructed the social imaginaries of the intrinsic common good of the polity to the point where both its conceptualization as political love and its relatedness to the correct juridical anthropology have been thoroughly replaced by a utilitarian notion of predominantly aggregative social unity reduced to the mere result of artifactual or contractual moral powers of equal, separate, and autonomous individual sovereignties of human persons⁴¹. Dworkin's and Rawls's accounts of social-political unity, from the introduction, both pertain to the paradigmatic line of reasoning in the aftermath of these historical-cultural shifts.

In my opinion, nowhere in the Catholic social doctrine has the current status of the intrinsic common good of our polities been diagnosed with such precision as in Pope Francis's argument on what he calls «bipolar tensions» or «polar oppositions» that are present in our contemporary political communities⁴². There is something important to be learned from Francis's account of the presence of a dialectic module («polar tensions») in the essence of political love that contradicts neither its character of solidary love nor its inherent reference to the correct (juridical) anthropology. In his view, much like in Aquinas's⁴³, the nature of the intrinsic common good is dynamical, a constant

⁴⁰ PIUS XII, Encyclical Letter *Summi Pontificatus*, October 20, 1939, n. 41.

⁴¹ For an excellent overview of the historical-cultural migrations of meaning of the political common good, from one extreme of conceptualizing civic friendship as the preeminent social bond from which all other types of solidarities are to be outsourced, to the other extreme of envisioning it as, more or less, a utility in the service of the unencumbered self's sphere of Promethean liberty, see HITTINGER, R., «Making Sense of the Civilization of Love: John Paul II's Contribution to Catholic Social Thought», in Gneuh, G. (ed.), *The Legacy of Pope John Paul II: His Contribution to Catholic Thought*, The Crossroad Publishing Company, New York, 2000, pp. 71-93; HITTINGER, R., «Polity in Catholic Social Doctrine: Some Recent Perplexities», cit., pp. 31-51.

⁴² For the notion of «polar oppositions» in the thought of Francis, see BORGHESI, M., *The Mind of Pope Francis: Jorge Maria Bergoglio's Intellectual Journey*, Liturgical Press, Collegeville, 2018, pp. 57-130. See also BERGOGLIO, J. M. (POPE FRANCIS), *Noi come cittadini, noi come popolo*, Libreria Editrice Vaticana, Vatican City, 2013, pp. 59-69.

⁴³ «The word *communicatio* simply means making something common, one rational agent participating in the life of another. Society, for Thomas, is not a thing, but an activity». HITTINGER, R., *The First Things: Rediscovering the Natural Law in a Post-Christian World*, ISI Books, Wilmington, 2003., p. 271.

agency, «an ongoing process» of «becoming a people»⁴⁴. True progress in becoming a people – i.e., in attaining the intrinsic common good of societal bonds that correspond to the proper level of actualization of human social nature in a polity – depends on certain *principles* «related to constant tensions present in every social reality»⁴⁵. Two of the four principles are immediately pertinent to our present analysis and they may be presented together: unity prevails over conflict and the whole is greater than the part.

As is especially evident in our contemporary context, the bipolar tensions between particular interests manifested as conflicts regarding the ideas of the good are not only the result of concrete historical-cultural states of affairs where those advocating the existence of a «correct anthropology» often find themselves in a minority. Some roots of certain polar tensions are to be found in existentially lived-out forms of those structures of certain basic human goods that are characterized by the strata of freedom (freedom of thought, of personal assent in matters of faith, of conscience, etc.). In this sense, perhaps to some surprise, Francis does not think that the very existence of polar tensions in the context of a polity is something inherently wrong. Quite the contrary, and together with Pope John Paul II, he seems to envision the inevitability – and even legitimate or positive elements – of polar tensions regarding the diverging worldviews on some aspects of the ideas of the good as simply a part of the fabric of the social bonds in a polity⁴⁶.

Developing the line of argument according to which political love or civic friendship cannot be defined exclusively in terms of polar opposites⁴⁷, Francis explores the aspects of how the acceptance and the resolution of conflicts forms part of the grammar of political-social bonds and thereby transcends the «conflicts, tensions and oppositions [in a] diversified and life-giving unity»⁴⁸. In his view, political love means accepting the givenness of polar tensions by overcoming the potential for conflict through «a principle indispensable to the building of friendship in society; namely, that unity is greater than

⁴⁴ FRANCIS, Apostolic Exhortation *Evangelii Gaudium*, November 24, 2013, n. 220.

⁴⁵ *Ibid.*, n. 221.

⁴⁶ FRANCIS, Encyclical Letter *Fratelli Tutti*, October 3, 2020, n. 237-243. See also JOHN PAUL II, *Centesimus Annus*, cit., n. 14.

⁴⁷ «Yet the people who come together in the political community are many and diverse, and they have every right to prefer divergent solutions. [...] The political community is not to be torn apart while everyone follows his own opinion...». SECOND VATICAN COUNCIL, *Gaudium et Spes*, cit., n. 74. See also PIUS XI, *Quadragesimo Anno*, cit., n. 88; JOHN PAUL II, *Centesimus Annus*, cit., n. 47.

⁴⁸ FRANCIS, *Evangelii Gaudium*, cit., n. 228.

conflict»⁴⁹. Instead of «opting for a kind of syncretism» or «absorption of one [polar opposite] into the other», this resolution actually entails living out «solidarity in its deepest and most challenging sense» by finding a «higher plane» of «building communion amid disagreement» and thereby «preserving what is valid and useful on both sides»⁵⁰.

In the realm of values, this means that transcending the conflict must include: (a) the safeguarding of ethical and juridical considerations, as John Paul II carefully notes⁵¹, and, at the same time, (b) «seeing others in their deepest dignity»⁵², while living our political communion according to the model that is «not the sphere [...] where every point is equidistant from the centre», but as the «polyhedron, which reflects the convergence of all its parts, each of which preserves its distinctiveness», according to Francis⁵³. Thus, «the whole is greater than the part»⁵⁴.

The nature of political love is, among all kinds of social love, perhaps the one where unity in diversity is most instantiated. We certainly do not enter politics, whether by birth or through various forms of migration, upon exercising the option to choose all the participants in the social unity or all their cultural, moral, or religious worldviews.

Transcending the dialectic of inherently conflictual «us-versus-them» reductions on a higher plane, where both the correct juridical anthropology and the personal dignity of each person is fully safeguarded, is thus the imperative of civic friendship⁵⁵. Hence, even though political love must be lived out in the context of truth with regard to basic human goods as juridical goods or rights⁵⁶, it becomes evident that the fabric of social unity does not contain, among its ends, the necessary unification on issues which pertain to legitimate freedoms as spheres of immunity from external coercion⁵⁷.

⁴⁹ *Ibidem*.

⁵⁰ *Ibidem*.

⁵¹ JOHN PAUL II, *Centesimus Annus*, cit., n. 14.

⁵² FRANCIS, *Evangelii Gaudium*, cit., n. 228.

⁵³ *Ibid.*, n. 236.

⁵⁴ *Ibid.*, n. 237.

⁵⁵ See FRANCIS, *Fratelli Tutti*, cit., nn. 215, 244.

⁵⁶ On the clear imperative to safeguard the basic human goods as fundamental rights that represent the solid foundations of the juridical realm, see *ibid.*, nn. 206-214. See also FRANCIS, Encyclical Letter *Laudato Si'*, n. 157.

⁵⁷ «Disagreements may well give rise to conflicts, but uniformity proves stifling and leads to cultural decay». FRANCIS, *Fratelli Tutti*, cit., n. 191.

Thus, the strata of social bonds in a polity are essential for the flourishing of the human person's social nature in at least two important aspects. First, these strata are instrumental⁵⁸ – in the sense of being ministerial, *in-service-of* – with regard to the personal attainment of basic human goods according to their essential structure (whether as values with fixed anthropological content or as goods whose axiological structure includes the sphere of legitimate freedom).⁵⁹ Second, polyhedral and axiologically anchored political love – or the social love in the context of what Pope Benedict XVI calls political macro-relationships – is in itself essential for human flourishing. To reduce political love to utilitarian, rather loose and «accidental», or even less than voluntary, inherently conflictual partnerships – or to envision it exclusively through the lens of the structures of oppressive social hierarchies – means to deprive ourselves and others of a specific and essential aspect of the basic human good of friendly love in the context of macro-social bonds.

This brings us to another related question, the one that is much closer to Javier Hervada's contribution to the understanding of the juridical realm of the intrinsic common good of the polity. On various occasions throughout

⁵⁸ «It is for this [natural] perfection [of the human person] that society [*civitas*] is designed by the Creator as a kind of instrument [*quasi instrumentum*]». PIUS XII, *Summi Pontificatus*, cit., n. 59. «[Pope Leo XII] frequently insists on necessary limits to the state's intervention and on its *instrumental character*, inasmuch as the individual, the family and society are prior to the state, and inasmuch as the state exists in order to protect their rights and not stifle them». JOHN PAUL II, *Centesimus Annus*, cit., n. 11. Emphasis added. For the reading of the *instrumental* role of state and its common good in its essentially and positively *ministerial* meaning and not according to the interpretation of its less-than-necessary role in the flourishing of the social nature of the human person, see HITTINGER, R., «Polity in Catholic Social Doctrine: Some Recent Perplexities», cit., pp. 40-42, 47.

⁵⁹ There is good reason to conclude that the Catholic social doctrine's emphasis on the instrumental aspects in the nature of the political common good becomes more intelligible when it is seen as a response to contemporary «facts and lived experience», since today, as Hittinger notes, «no one is quite sure where the 'political' stands in the continuum of human life», see HITTINGER, R., «Polity in Catholic Social Doctrine: Some Recent Perplexities», cit., p. 48. This does not mean that the common good *simpliciter*, together with its intrinsic aspect, is to be understood as essentially instrumental, even though recent formulations of the definition of the common good tend to favour what is usually called the «sum total» or «ensemble» of conditions approach: «the common good [is] the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment». SECOND VATICAN COUNCIL, *Gaudium et Spes*, cit., n. 26. For an excellent analysis of the *more than instrumental* meaning of the common good in the Catholic social teaching, even in the face of the emphasis on certain instrumental elements of this good, see LEWIS, V. B., «Is the Common Good an Ensemble of Conditions?», *Archivio di filosofia*, 84 (2016), pp. 121-132.

this paper we made reference to rights, laws, and other phenomena pertaining to the juridical realm as essential aspects of political love. It is important to understand how exactly the juridical realm represents not only an *a posteriori* consequence, but, indeed, a constitutive part of the intrinsic common good of the political community.

It seems that for both Aquinas and the Catholic social doctrine the juridical realm of political love is brought into focus when considerations of the quality of social bonds are viewed from the perspective of *justice*. As Hittinger notes, «when he treats of a common good, Saint Thomas Aquinas always looks at the solidarity in terms of both love *and justice*»⁶⁰. Indeed, according to Aquinas, the virtue of justice «directs man in his relations with other men» both individually *and socially*, through societies, namely «as regards his relations with others in general, in so far as a man who serves a community, serves all those who are included in that community»⁶¹. We can call this type of justice – which consists in «giving to each person his own right»⁶² socially, through social bonds of participation in a true society – *the common-good justice*⁶³. Hittinger refers to it as justice regarding those things that each person juridically owes to other persons from the social viewpoint, *sub specie societatis*⁶⁴.

Benedict XVI elegantly explains the different aspects of the common good when this good is observed from the viewpoint of love and justice: «*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»⁶⁵. Pope Pius XI referred to common-good justice as *social justice*: giving to each member of a society that which corresponds to «the dignity of his human personality» and that which is «necessary for the exercise of his social functions» represents a

⁶⁰ HITTINGER, R., «Love, Sustainability, and Solidarity: Philosophical and Theological Roots», cit., p. 24. Emphasis added. «*Bonum commune* [...] is the prime analogue for the virtues of love and justice». HITTINGER, R., «Polity in Catholic Social Doctrine: Some Recent Perplexities», cit., p. 48.

⁶¹ See *S.Th.* II-II, q. 58, a. 5.

⁶² See *S.Th.* II-II, q. 58, a. 1.

⁶³ Aquinas refers to the type of justice that is principally and immediately directed to common good as *general* or *legal* justice. See *S.Th.* II-II, q. 58, a. 5; II-II, q. 58, a. 7, II-II, q. 58, a. 9, ad 3.

⁶⁴ See HITTINGER, R., «The Coherence of the Four Basic Principles of Catholic Social Doctrine», cit., pp. 114-116.

⁶⁵ BENEDICT XVI, *Caritas in Veritate*, cit., n. 6.

prerequisite of his «care for the social organism and the good of society as a unit»⁶⁶. As the conciliar declaration *Dignitatis Humanae* makes quite clear, the aspect of justice – that which must be given as owed – inherent in the intrinsic common good or political love chiefly consists in the protection of the rights of the human person. Thus, the framework of individual rights is never emancipated from considerations of the common good⁶⁷.

When an individual person is deprived of his natural rights, the very fabric of political love, including its own specific juridical realm, is somehow also damaged. As John Paul II warns, when natural human rights are denied – as is the case with the right to life in the face of state-sponsored legal use of lethal force through abortion or euthanasia – the very meaning of «societies of ‘people living together’ is jeopardized» and «the process leading to the breakdown of a genuinely human co-existence and the disintegration of the state has already begun»⁶⁸. In fact, the background worldviews and contextual ideas of the «good» that make possible the denial of natural rights are always somehow linked to a negative conception of political love, as John Paul II affirms⁶⁹. But social unity itself, together with its own specific juridical realm, may also constitute a primary and direct object of denial and thereby prevent that citizens live out the kind of political love – polyhedral and axiologically firmly anchored – that they owe to each other according to their social nature. John Paul II refers to this phenomenon under the rubric of «alienation of society»: «a society is alienated if its forms of social organization [...] make it more difficult to offer this gift of self and to establish this solidarity between persons»⁷⁰.

However, it seems that, in order to understand all the important passages of the connection between the ontological framework of the polity's intrinsic common good, on the one hand, and the specific rights that are owed according to common-good justice, on the other, we need a more precise concep-

⁶⁶ PIUS XI, *Divini Redemptoris*, cit., n. 51.

⁶⁷ SECOND VATICAN COUNCIL, *Dignitatis Humanae*, cit., nn. 6-7.

⁶⁸ JOHN PAUL II, Encyclical Letter *Evangelium Vitae*, March 25, 1995, nn. 18, 20. Emphasis added.

⁶⁹ «If the promotion of the self is understood in terms of absolute autonomy, people inevitably reach the point of rejecting one another. [...] Thus society becomes a mass of individuals placed side by side, but without any mutual bonds. [...] 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 bargain: even the first of the fundamental rights, the right to life». *Ibid.*, n. 20.

⁷⁰ JOHN PAUL II, *Centesimus Annus*, cit., n. 47.

tual inventory of natural rights as juridical goods of persons and societies, an inventory that the Catholic social doctrine evidently presupposes, but does not fully and explicitly develop. For a successful and, in my opinion, unique development of this inventory we must consult some of the main themes in Javier Hervada's juridical philosophy.

III. JAVIER HERVADA AND THE JURIDICAL REALM OF SOCIAL UNITY AS POLITICAL LOVE

Although Hervada's writings do not include a systematic development of the notion of political love, he certainly is familiar with the main arguments that establish this notion. He acknowledges that the political community is «not a mere aggregation of human persons, but a true society or an organic unity»⁷¹. He is familiar with the teaching that the political community's common good is the foundational principle of being of this community. The concept of the common good, in his view, does not consist only of the proper ends or specific goods of political society that are describable in terms of the sum total of the conditions of social life necessary for the perfection of individuals and societies different than the polity⁷². For Hervada, the framework of the citizens' agency in view of the attainment of the specific ends of the polity – the collaborative relational framework of solidarity and the specific kind of love⁷³ – also seems to form part of the notion of the *bonum commune*⁷⁴. He clearly acknowledges that the essential part of the common good is reflected in the respect for the structure of human person's rights⁷⁵ and that this structure is expressed either through a predominantly fixed anthropological given-

⁷¹ HERVADA, J., *Principios de doctrina social de la Iglesia*, Industrias Gráficas CARO, Madrid, 1984, p. 15.

⁷² *Ibidem*.

⁷³ HERVADA, J., *El ciudadano y la comunidad política*, Editora de Revistas, S.A. de C.V., Guadalajara, 1990, p. 27.

⁷⁴ HERVADA, J., *Principios de doctrina social de la Iglesia*, cit., p. 15. «The first constitutional principle of the political society is *solidarity as the orderedness to the common good*, since the whole society is *the union* in virtue of a common end». HERVADA, J., and ZUMAQUERO, J. M. (eds.), *Textos internacionales de derechos humanos*, EUNSA, Pamplona, 1978, p. 25. Emphasis added. «The end of the political society [...] is the common good or the good that specifically pertains to this society [...]. The common end is constitutional for the moral and intentional bond of union between all citizens». *Ibid.*, p. 43.

⁷⁵ HERVADA, J., *Principios de doctrina social de la Iglesia*, cit., p. 15.

ness or through spheres of legitimate freedom or immunity⁷⁶. In addition, Hervada advocates the imperative that the political community's specific ends include, within the objective order of the good, also all the legitimate claims to the «maximum possible sphere of liberty»⁷⁷.

Another crucial line of argument *en route* to the correct understanding of the juridical domain of the social unity as political love is offered in Hervada's account of the relationship between the political and juridical realms. Hervada affirms that the various forms of social «ought» may be explained within the framework of a «composition in unity»⁷⁸. Political, juridical, and moral realms are all, each in its own way, pertinent for the correct understanding of the intrinsic common good of the polity. But, at the same time, each of these realms contributes something unique that is immediately pertinent and, we could say, foundational to all other realms and to the social order itself⁷⁹. Political philosophy, he claims, «contemplates society from the point of view of the development of social life in relation to social ends, to the common good»⁸⁰. By contrast, the main focus of juridical philosophy does not primarily belong to the order of social bonds towards the extrinsic common good – i.e., towards the societal telic ends of the polity; rather, it belongs to the order of justice relative to the correct apportionment of things: giving to each person that which is his own right⁸¹.

Thus, when contemplating the juridical domain of the common good, the main question seems to be that of the specific contribution, or the foundational viewpoint, of the juridical realm with regard to the political domain. In other words, does the juridical realm – the realm of juridical goods – somehow unilaterally determine the conceptualization of the political common good,

⁷⁶ HERVADA, J., *El ciudadano y la comunidad política*, cit., p. 12. «In the case of freedoms – such as the freedom of thought, the freedom of conscience, and religious freedom – we find ourselves before spheres of juridical autonomy of the person that are founded upon the principle of state's incompetence». HERVADA, J., «Pensamientos sobre sociedad plural y dimensión religiosa», *Ius Canonicum*, 38 (1979), p. 75.

⁷⁷ HERVADA, J., *El ciudadano y la comunidad política*, cit., pp. 12-13, 27-28. «The human person acquires the freedom to fly once she has known and follows the laws of aerodynamics». HERVADA, J., and ZUMAQUERO, J. M. (eds.), *Textos internacionales de derechos humanos*, cit., p. 107.

⁷⁸ HERVADA, J., *What is Law? The Modern Response of Juridical Realism: An Introduction to Law*, Wilson & Lafleur, Montréal, 2009, p. 132.

⁷⁹ *Ibid.*, pp. 132-139, 143-145.

⁸⁰ HERVADA, J., *Critical Introduction to Natural Right* (2nd ed.), Wilson & Lafleur, Montréal, 2020, p. 93.

⁸¹ *Ibid.*, pp. 7-30, 93.

including its intrinsic aspect? How can the realm of the intrinsic common good of the polity be constituted in terms of juridical reasons for action? The main vector in the search for an answer to these questions is outlined in the discovery of the juridical realm of the good, or, in our present analysis, the juridicity of goodness that is inherent to the quality of social bonds that correspond to the nature of the political community.

Although the line of analysis that I will propose here is nowhere explicitly or systematically developed by Hervada, it is nonetheless fully Hervadian, since it relies on his peculiar claims relative to the essence of the juridical realm and its rootedness in reality, moral reality, politically-moral reality, the reality of the political common good.

The juridical domain is, in a Hervadian perspective⁸², constituted in the reality itself – in things, *res*, or states of affairs – more precisely, in its outward and other-directed aspects. Each thing, *res*, or state of affairs that appears in reality belongs (or is apportioned) to someone by virtue of some title: human nature, positive law, etc. The title, juridical title, specifies the modes of belonging of the «thing» itself to its titleholder, that is, his sphere or power regarding the thing in question. If the outward aspects of this thing, reality or state of affairs, are, at least potentially, within the sphere of interfering power of other persons, different than the titleholder, a distinct kind of obligation comes into existence: juridical obligation. These potential violators of the relationship between the thing itself and its titleholder have a duty to respect – i.e., not to violate – the concrete modes of belonging of the «thing» to its titleholder, as these are outlined and determined by the juridical title.

This specific kind of obligation does not arise solely from the moral or practically reasonable principles that establish a value – someone's property, life, bodily integrity, freedom in its many legitimate instantiations, etc. – as something morally perfective for the titleholder to «have» or for the debtors to «respect». The juridical obligation, and, indeed, the discrete goodness correlative to this obligation, arises from the fact that a precise operative principle is being actualized whenever I respect or, so to speak, «give» to each titleholder his own right: justice. Justice is the dispositional principle of respecting the difference, as Aquinas says, between *suum* and *non suum* in one's operations, that is, respecting the limits of «mine» as opposed to «yours»⁸³.

⁸² See *ibid.*, pp. 7-30. See also *S.Th.* II-II, q. 57-58.

⁸³ *S.Th.* I-II, q. 66, a. 4, ad 1.

The thing itself that is apportioned to the titleholder and, at the same time, owed by other persons is called, by both Aquinas and Hervada, the «right» (*ius*). Now, Aquinas is very clear in his argument that it is precisely the sphere of justice and juridicity that «regards a certain special aspect of the good»⁸⁴. There is a discrete level of goodness, indeed an aspect of the human good, to be found in the actualization of the operative principle of giving to each that which is his own right, that is, of giving those things that are someone's by virtue of a juridical title. Since a discrete aspect of goodness is actualized when the things are «given» in their outward and other-directed aspects to their designated titleholders, namely, juridical goodness, the right or the thing itself owed in the order of justice may be referred to as a juridical good⁸⁵.

In what ways is this mode of conceptualizing rights as juridical goods relevant for the societal context, where the thing, *res*, or state of affairs, whose juridical realm is to be defined, is the *common good*? Certainly, one way to approach this question is to understand that, according to Aquinas, general or common-good justice is the operative principle of «giving to each that which is his own right» in what is primarily a societal context⁸⁶. The real question is: what exactly is owed to whom in the context of the intrinsic aspect of the political common good? We already know the answer to this question from the previous section. But now we are equipped with the adequate doctrinal tools for formulating this answer from a specifically juridical point of view.

First, in the context of the intrinsic common good of the polity, the citizens owe to each other those rights that each of them possesses by virtue of a natural or positive title. In this context, however, the relevant debt in justice – i.e., respecting rights – is not only individual, but primarily social. Citizens owe to each other the «giving» or the respect for their individual rights *socially* – e.g., institutionally and in all instantiations of their social bonds – conscious as they should be that the violation of individual rights always has a social aspect and may damage or cancel-out the quality of the social bonds in a polity.

Second, what citizens also owe to each other socially are the outward and other-directed aspects of *political love itself*, whose titleholder is the very

⁸⁴ *S.Th.* II-II, q. 79, a. 1. Emphasis added.

⁸⁵ Rights are regularly referred to as goods in a «juridical» sense in Hervada's writings. For example, see HERVADA, J., *Critical Introduction to Natural Right*, cit., pp. 54, 59; HERVADA, J., *Lecciones propedéuticas de filosofía del derecho*, cit., pp. 502-503.

⁸⁶ «It belongs to general justice to do good *in relation to the community*». *S.Th.* II-II, q. 79, a. 1. Emphasis added.

political community. This debt in justice arises in all those situations where concrete state policies, laws, or forms of governance (or authority) at least potentially violate or interfere with the polyhedral and axiologically firmly anchored social bonds that correspond to the nature of the intrinsic common good of the polity.

In conclusion, what we owe to each other in a polity, juridically, is the quality of social bonds through which citizens operatively – through concrete agency – acknowledge (1) each other's rights as aspects of the common good, as well as (2) all those states of affairs where the social bonds themselves represent a discrete juridical common good.

In the perspective of Hervadian juridical realism, we thus find a way to transcend a twofold «conflict»: the conceptual «conflict» between the notions of the common good, justice, and rights, on the one hand, and the «bipolar» conflictual states of affairs inherent in the very being (or «becoming») of the social unity in a polity, on the other.

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