
Bonum Commune Ecclesiae and the Juridical Domain of the Goods That Are ‘Made Common’ in the Church

Bonum commune Ecclesiae y la dimensión jurídica de los bienes que se hacen comunes en la Iglesia

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Abstract: This paper re-evaluates the concept of *bonum commune Ecclesiae* in light of recent research on the original Thomistic meaning of the common good in the context of social ontology and the current re-reading of classical juridical realism. After distinguishing, as well as establishing the inherent connections between, the concept of the common good of the Church from other things or goods that are “made common” in the Church, the paper addresses the question of the juridical domain of *bonum commune Ecclesiae*.

Keywords: Common Good, *bonum commune Ecclesiae*, Juridical Realism.

Resumen: Este artículo reevalúa el concepto de *bonum commune Ecclesiae* a la luz de investigaciones recientes sobre el significado tomista original del bien común en el contexto de la ontología social y la relectura contemporánea del realismo jurídico clásico. Después de distinguir y establecer las conexiones inherentes entre el concepto del bien común de la Iglesia de otras cosas o bienes que se “hacen comunes” en la Iglesia, el documento aborda la cuestión de la juridicidad de *bonum commune Ecclesiae*.

Palabras clave: Bien común, *bonum commune Ecclesiae*, Realismo jurídico.

SUMMARY: 1. Introduction. 2. The Common Good: *Status Quaestionis*. 3. The Common Good of the Church. 4. “Things” That Are Made Common in the Church. 5. The Juridical Domain of the “*Communio*” Itself among “Things” or Goods That Are Made Common in the Church. 6. Conclusion.

1. INTRODUCTION

A number of reasons contribute to the argument that the time has come for a re-evaluation of the elements of interdependence between the existence of the *right* in the Church and the notion of the *common good* of the Church. The academic treatment of the foundations of the right in the Church and of the notion of the common good has seen significant developments since the last doctrinal attempts to explain their interconnectedness¹.

Recent research on the concept of the common good focused on the rediscovery of the Thomistic roots of this concept and its importance for social ontology of the societies or so-called “group-persons”. As a result of this research, certain limits of previous conceptions of the common good of the Church have been superseded. The approach of the Swiss master of canon law, Eugenio Corecco, is a paradigmatic example of such previous conceptions. Corecco perceived a certain conceptual split between the socio-philosophical and theological aspect of the *bonum commune Ecclesiae*. As a socio-philosophical concept, the common good would be inherently incapable of explaining the theological nature of the Church. Corecco understood the notion of the common good of the

¹ Without attempting to offer an exhaustive list of these doctrinal attempts, we wish to highlight the following texts that offer a good synthesis of the last “wave” of the academic treatment of the interrelation between “*bonum commune Ecclesiae*” and canon law: O. ROBLEDA, *Fin del derecho en la Iglesia*, Revista Española de Derecho canónico 2 (1947) 283-292; IDEM, *El espíritu del Derecho canónico*, Gregorianum 44 (1963) 827-839; R. BIDAGOR, *El espíritu del Derecho canónico*, Revista Española de Derecho canónico 13 (1958) 5-30; J. HERVADA, *Fin y características del ordenamiento canónico*, Ius Canonicum 3 (1962) 5-110; E. CORECCO, *Teologia del diritto canonico*, in E. CORECCO, *Ius et Communio: Scritti di diritto canonico*, Facoltà di Teologia di Lugano, Piemme, Casale Monferrato 1997, 157-220; IDEM, *From Subsidiarity to Communion*, in IDEM, *Canon Law and Communio: Writings on the Constitutional Law of the Church*, Libreria Editrice Vaticana, Città del Vaticano 1999, 369-412.

Church – at least its strictly philosophical aspect – to be radically diverse from the concept of *communio* which he, instead, saw as far more suitable to express theological social realities². However, if the *bonum commune* were envisioned as a theological concept – hence, «not the natural *bonum commune* of a human society of natural law, but the supernatural common good of the Church» – Corecco was prepared to see a greater connection between this concept and the *communio*³. From the theological point of view of the nature of the Church, he was very explicit about the argument that «the *bonum commune* of the Church is the *communio*»⁴. But Corecco never developed this connection further and instead consistently preferred to use the concept of *communio* for his approach to canon law.

In the first section of this article we shall present the results of the more recent research on the original Thomistic meaning of the term “common good”. The results of this research reveal that the concept transcends the purely philosophical domain and is, thus, also applicable to the specific reality of the Church. In the second section of this paper, we shall present some aspects of this re-evaluated concept of *bonum commune Ecclesiae*. We shall occasionally return to the previous attempts of defining the common good of the Church only to highlight the extent to which they, in a way, prefigure certain aspects of the more recent perspectives on this notion.

The explanation of the existence of the right itself in the Church has also significantly developed since the last “wave” of the attempts to outline the basic elements of ecclesial common good. The results of a fresh re-reading of the postulates of classical juridical realism was applied to the specific nature of juridical relationships in the Church. As we shall see later in the text, according to this realistic re-reading, the right in the Church is the domain of juridical justice understood as intrinsic to the ecclesial mystery. The right in the Church is not a meta-judicial or only analogically juridical phenomenon extrinsic to its nature. It is neither an essentially subjective right (a faculty or moral

² Corecco even compares this “qualitative” difference between the common good and “*communio*” to the distinction between “*lex Moysis*” and the “*nova lex evangelii*”. See E. CORECCO, *Teologia del diritto...*, cit., 213-214.

³ E. CORECCO, *From Subsidiarity...*, cit., 385.

⁴ *Ibid.*

power over certain objects), nor synonymous with the legal norm or the normative order. Rights in the Church are certain “things” (“res”) or goods which are the objects of intraecclesial relationships of justice. An intrinsic juridicity may, therefore, be predicated of them. We may call these “things” the ecclesial juridical goods⁵. In the third section of this paper we shall present the connection between the common good of the Church and the juridical domain of the “things” which are attributed and owed in justice within the Church.

Our re-evaluation of the notion of *bonum commune Ecclesiae* has the task of providing only a modest supplement to valid doctrinal routes towards the adequate understanding of the right in the Church. The existence of the right in the Church is usually explained by taking its sacramentality⁶ or the *communio*⁷ as the starting point. Then, in the next doctrinal step, the juridical aspects of both realities are sought by way of tracing out paths through which certain goods pertinent to these realities are constituted as the objects of relationships of justice, i.e. as ecclesial juridical goods⁸. In the final section of this paper we shall analyze the possibility of predicating a juridical domain of the *bonum commune Ecclesiae* itself.

According to Carlos José Errázuriz, if we say that canon law “promotes the common good of the Church”, we have yet to explain what

⁵ For more details on the basic postulates of this juridical-realistic approach to the existence of the right in the Church, see J. HERVADA, *Las raíces sacramentales del Derecho canónico*, in AA. VV., *Sacramentalidad de la Iglesia y Sacramentos: IV Simposio Internacional de Teología de la Universidad de Navarra*, Eunsa, Pamplona 1983, 359-385; IDEM, *Pensamientos de un canonista en la hora presente*, Navarra Gráfica Ediciones, Pamplona 1989; C. J. ERRÁZURIZ M., *Justice in the Church: A Fundamental Theory of Canon Law*, Wilson & Lafleur Ltée, Montréal 2009; IDEM, *Corso fondamentale sul diritto nella Chiesa: Vol. I*, Giuffrè Editore, Milano 2009; IDEM, *Corso fondamentale sul diritto nella Chiesa: Vol. II*, Giuffrè Editore, Milano 2017; M. DEL POZZO, *L'evoluzione della nozione di diritto nel pensiero canonistico di Javier Hervada*, PhD Dissertation, EDUSC, Roma 2005; J.-P. SCHOUPPE, *La dimensione giuridica dei beni salvifici della Parola di Dio e dei sacramenti*, in C. J. ERRÁZURIZ M. – L. NAVARRO (eds.), *Il concetto di diritto canonico: Storia e prospettive*, Giuffrè Editore, Milano 2000, 115-205.

⁶ See J. HERVADA, *Las raíces sacramentales...*, cit., 359-385; C. J. ERRÁZURIZ M., *Justice in the Church...*, cit., 140-145.

⁷ See C. J. ERRÁZURIZ M., *Justice in the Church...*, cit., 132-140.

⁸ See J. HERVADA, *Las raíces sacramentales...*, cit., 359-385; C. J. ERRÁZURIZ M., *Justice in the Church...*, cit., 136-138, 216-252.

exactly is this «common good proper to the Church»⁹. In other words, in order to explain «certain important aspects of the juridical reality of the Church»¹⁰ through the concept of common good, we must have a clear, rather than merely generic, understanding of this concept and of its peculiar content when it is used to express the nature of the Church.

The canon 223, which contains the only mention of the *bonum commune Ecclesiae* in the 1983 *Code of Canon Law*, presents this notion, without defining it, as a specific structuring criterion for the exercise of the rights of the faithful and for the ecclesiastical authority's protection and regulation of this exercise.

It seems that both the positive law of the Church and the tradition of the usage of the concept of “common good” in relation to canon law necessitate a more adequate explanation of the link between the exact meaning of the *bonum commune Ecclesiae* and its relevance for the existence of right in the Church. Our present work constitutes an aspect of this important effort.

2. THE COMMON GOOD: *STATUS QUAESTIONIS*

If we want to apply the concept of the common good to a certain social reality in order to present its essential aspects, it is paramount to make sure that the common good is predicated of these realities univocally. The importance of this issue is enhanced by the fact that the term “common good” has an *equivocal* (or analogical) status even in what is arguably its most developed philosophical context, namely, in the Thomistic account of social ontology of group-persons¹¹. There is a number of different meanings of the common good even in Thomas Aquinas's own texts, none of which may be said to have the property of a primary meaning¹². This, of course, does not mean that the concept

⁹ See C. J. ERRÁZURIZ M., *Justice in the Church...*, cit., 168.

¹⁰ See *ibid.*, 169.

¹¹ See G. FROELICH, *The Equivocal Status of Bonum Commune*, *The New Scholasticism* 63 (1989) 38-57.

¹² Aquinas never wrote a treatise dedicated to common good as such, though he quite frequently uses the concept in different contexts. For the various usages of the common good in Aquinas, see also S. WALSH, *Fidelissimus Discipulus Ejus: Charles De Koninck's Exposition of Aquinas's Doctrine on the Common Good*, *The Aquinas Review* 19 (2013-2014) 1-22.

itself is of little use. It simply means that we have to be precise about which of the various meanings of the common good is used to describe a certain reality. In each of its meanings, the common good, just as the concept of the “good” itself¹³, denotes an aspect of the final cause or, more specifically, a common end¹⁴. Although the concept has distinct meanings, each meaning has been analyzed and categorized and we should be able to clearly distinguish between them.

According to a first meaning, the common good may be predicated of certain “goods” – like health, happiness, knowledge, etc. – that are numerically one, but which, as such, exist essentially in an “intelligible” realm. People may desire these goods for themselves or for others only in the form of concretely realizable personal goods¹⁵. These goods, thus, may be said to be common and may take on a universal character only at the purely “intelligible” level.

Next, certain goods are sometimes referred to as “common”, while they are really *not* ends in themselves, but only “common” means to an end. These goods – quite consistently referred to in plural (*bona communia*) in Thomistic tradition – are essentially “common goods of utility”¹⁶. Even though before distribution, according to Gregory Froelich, they are «parts of the common stock» and «belong to no one in particular», these common goods – like water, food, money, streets, etc. – are «meant to be distributed among the citizens for their private use»¹⁷. Of course, nothing prevents us from referring to these goods as “common goods” (*bona communia*), but it is important to know that, at the same time, there are other, analogical meanings of the common good which may be more suitable to explain certain specific aspects of social realities.

Finally, there are certain goods which, at the same time, (1) bear the notion of the final cause or common end to plural persons, (2) are

¹³ For example, see T. AQUINAS, *Summa Theologiae*, I, q. 5, a. 1; I, q. 5, a. 6; II-II, q. 145, a. 1, ad 1.

¹⁴ See *STh* I-II, q. 90, a. 2, ad 2.

¹⁵ G. FROELICH, *The Equivocal Status...*, cit., 43-47.

¹⁶ *Ibid.*, 53-55.

¹⁷ *Ibid.* John Finnis refers to some of these “common goods” as the «common stock» or «common enterprises» which are «among the means of realizing the common good». See J. FINNIS, *Natural Law and Natural Rights*, Oxford University Press, Oxford 1980, 168.

concretely and existentially, and not only “intelligibly”, realizable precisely as common, (3) are indivisible, and (4) are communicable in their effects to many without diminution¹⁸. The specific aspect of these goods precisely as inherently *societal* arises only at this level of analysis of the common good. We may refer to this approach as the “societal meaning of the common good”.

This meaning of the common good is essentially twofold. It possesses, at the same time, an intrinsic and an extrinsic aspect.

According to the *intrinsic* aspect of the common good, the desired form of order of communal action is itself a common end. The unity of shared action itself, in a specific type of society – e.g. family, political society, the Church – is, thus, the intrinsic common good in which the members of the society participate. The societal unity is desirable for the person precisely insofar as he is an agent acting in common with others in such-and-such way¹⁹. In Aquinas’s own understanding, the love for the societal order itself is an aspect of the common good²⁰.

¹⁸ These elements are gathered from G. FROELICH, *The Equivocal Status...*, cit., 47-53; S. A. LONG, *Understanding the Common Good*, *Nova et Vetera* 16 (2018) 1140-1141; J. F. NIETO, *The Axiomatic Character of the Principle that the Common Good is Preferable to the Private Good*, *The Aquinas Review* 14 (2007) 112-115.

¹⁹ See R. HITTINGER, *The Coherence of the Four Basic Principles of Catholic Social Doctrine: An Interpretation*, *Nova et Vetera* 7 (2009) 799-801; IDEM, *Love, Sustainability, and Solidarity: Philosophical and Theological Roots*, in M. SCHLAG – J. A. MERCADO (eds.), *Free Markets with Solidarity and Sustainability: Facing the Challenge*, The Catholic University of America Press, Washington, D.C. 2016, 23; G. FROELICH, *The Equivocal Status...*, cit., 49-53; S. A. LONG, *Understanding the Common...*, cit., 1142; J. F. NIETO, *The Axiomatic Character...*, cit., 130-131; D. FARRELL, *Wanting the Common Good: Aquinas on General Justice*, *The Review of Metaphysics* 71 (2018) 522-523.

²⁰ For this Aquinas’s argument, see T. AQUINAS, *Quaestiones Disputatae de Caritate*, a. 4, ad 2. «[F]or 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 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». T. AQUINAS, *Commentary on the Metaphysics*, lect. 12, n. 2627. «A good existing in the universe, namely, the order of the universe, is an end thereof; this, however, is not its ultimate end, but is ordered to the extrinsic good as to the end...». *STh* I, q. 103, a. 2, ad 3.

The *extrinsic* aspect of the common good denotes the end (or ends) sought through the entrance and membership of a societal union²¹. In other words, the end(s) of a society is «that for the sake of which the intrinsic common good exists»²². The extrinsic common good of certain societies may be exemplified in the following ends: victory (army), education of students (university), children (marriage), tranquillity of order (political society), the eternal salvation of mankind (Church) and, ultimately, God himself²³.

According to Russell Hittinger, it is precisely this meaning of common good – plural rational agents which, while aiming at common extrinsic ends, desire the societal unity itself as the intrinsic common good – that defines a true society as a group-person, a unity of ordered common action, distinct in dignity²⁴. It also represents the salient mark of a true society, when compared to a mere aggregation of individuals in view of some common purpose which lacks any form of intrinsic common good. Since the essential characteristic of a true society is the intrinsic order itself in view of an extrinsic common end, the societal unity is said to be constituted through the activity denoted by the term *communicatio*. In Hittinger's view, this term essentially denotes «*making something common*, one rational agent participating in the life of another»²⁵. The common good, as such, is indivisible. It cannot be distributed, cashed-out or divided in exchange, but only participated by its members²⁶. A member of a true society cannot suddenly appropriate himself of or take away, upon leaving this society, his private share of the intrinsic or extrinsic aspects of the common good²⁷.

²¹ R. HITTINGER, *The Coherence...*, cit., 799; IDEM, *Love, Sustainability...*, cit., 23.

²² S. A. LONG, *Understanding the Common...*, cit., 1142.

²³ «[A common good] is an end to which a community is ordered. It may be extrinsic to the community. [...] It is in this way that [...] God Himself is the universal end of all things. Thomas does not hesitate to call God the common good of the universe. [...] All other ends are subordinate to it, because in comparison with it they are all merely particular». See S. L. BROCK, *The Distinctiveness of the Natural Inclinations Proper to Man in Summa Theologiae 1-2.94.2*, *Doctor Communis* 1-2 (2012) 43.

²⁴ R. HITTINGER, *The Coherence...*, cit., 799, 808.

²⁵ *Ibid.*, 822.

²⁶ R. HITTINGER, *Divisible Goods and Common Good: Reflections on Caritas in Veritate*, *Faith & Economics* 58 (2011) 39-40.

²⁷ See *ibid.*; R. HITTINGER, *The Coherence...*, cit., 800.

This meaning of the common good is sometimes veiled by certain formulations of its content which leave room for a purely instrumental understanding of its primary conceptual role. One formulation of the description of the common good in the Catholic social doctrine may serve as an example here:

The common good indicates the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfilment more fully and more easily. The common good does not consist in the simple sum of the particular goods of each subject of a social entity. Belonging to each person, it is and remains “common”, because it is indivisible and because only together it is possible to attain it²⁸.

The second part of the description contains the essential characteristics of the common good: it is not a sum of particular goods, it belongs to each person while remaining “common”, it is indivisible and attainable only through participation or *communicatio*. But the first part of the description – «a sum total of social conditions» which facilitates personal fulfilment – is seen by some authors as potentially inattentive to the telic aspect of the common good as a final cause or an end²⁹. Some even argue that such overall description of the common good is exceedingly instrumental and that it lacks a clear and immediate reference to the «role of *communio*, of solidarity in good»³⁰.

However, when the two parts of the argument are read together, and seen in the light of the above doctrinal positions on the societal unity of order, there is no real opposition between an occasional “instrumentalist” emphasis and the essentially telic meaning of the common good.

3. THE COMMON GOOD OF THE CHURCH

The tension between an instrumentalist emphasis and the essentially telic meaning is also present in some formulations of the common

²⁸ PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *The Compendium of the Social Doctrine of the Church* (2-IV-2004) § 164.

²⁹ S. A. LONG, *Understanding the Common...*, cit., 1136-1137; V. B. LEWIS, *Is the Common Good an Ensemble of Conditions?*, *Archivio di filosofia* 84 (2016) 121-132.

³⁰ S. A. LONG, *Understanding the Common...*, cit., 1137.

good when this concept is predicated of the Church as a society or group-person. Consider, for example, the two following descriptions of the common good of the Church:

The common good of the Church is the sum of the conditions of life of the People of God, which make possible the easier and complete attainment of the use of necessary and adequate means for the salvation and sanctity, as well as for the fulfilment of the apostolic mission of the faithful and the pastoral mission of the Hierarchy, and, in the final analysis, the *salus animarum*, the salvation of the souls³¹.

The common good of the Ecclesiastic society must necessarily be a *unique single end* [...] the *attainment of which is binding solidarity on all the members of the Church*. [...] The common good [in question] consists of [...] *the perpetuation of Christ's mission in its social dimension*, the principal aspects of which may be summed up in realities such as the sacraments, the Magisterium, preaching, apostolic work, divine cult, etc., i.e. *in those things where the solidarity among the baptized persons takes place...*³²

Both definitions – certainly valid and precisely formulated – contain various elements which point to some intrinsic and extrinsic aspects of the societal meaning of the common good. However, it is difficult to see the common good as a unified whole and to grasp its exact meaning unless we attempt to categorize and unify these elements according to the societal meaning of the common good.

This task is even more important once we realize that Hervada seems to find it very difficult to see how the common good of the Church and the *salus animarum* (salvation of the souls) may be conceived as anything other than overlapping realities which, ultimately, belong to different levels of analysis. In his view, the common good is,

³¹ J. HERVADA, *Pensamientos...*, cit., 51.

³² J. HERVADA, *Fin y características...*, cit., 70, 72. Emphasis added. Regardless of the fact that almost 30 years have passed between the texts which contain the two descriptions, Hervada's position on the notion of the common good remained substantially unchanged. The main ideas of his 1962 article *Fin y características del ordenamiento canónico* are actually summed up in a few paragraphs of his 1989 work *Pensamientos de un canonista en la hora presente*. See J. HERVADA, *Pensamientos...*, cit., 51-52.

at least according to the first description, the sum of social conditions which make possible the optimum use of the means that are conducive to the *salus animarum*³³. It is the «merely relative ultimate end», ordered to the *salus animarum* as the «absolute ultimate end»³⁴. It seems that, for Hervada, the concept of common good is unsuitable to express the deepest level of analysis of the societal nature of the Church: «The common good of the Church is not its ultimate end if we consider the totality of the Church»³⁵. Regardless of the mutual differences between the juridical perspectives of the two authors, Hervada's present argument may strike us as somewhat similar to Corecco's claim that the philosophical aspect of the concept of the *bonum commune Ecclesiae*, unlike the notion of *communio*, is unsuitable to express theological social realities.

The doctrinal difficulties inherent in the tension between the concept of the common good and the concepts of the *salus animarum* and *communio* may be successfully overcome once we read the elements of both Hervada's descriptions of the Church's common good in light of what we called the "societal meaning of the common good".

Since the *extrinsic* aspect of the common good denotes precisely the end sought through the societal union, we perceive no problem in the position that the *salus animarum*, and ultimately God himself, constitutes the extrinsic aspect of the *bonum commune Ecclesiae*. These are precisely the common ends which are ultimately aimed at through the existence and the activity of the Church: the salvation of the souls and the union with God himself. These ends are not external to the concept of the common good of the Church, but really are constitutive of this good precisely as *common* ends.

Hervada himself affirms this and in one of his texts, even without explicit intention, outlines both the extrinsic and the intrinsic aspects of the common good:

³³ «The salvation of the soul, as the ultimate end, is attained at the moment of man's death, that is, once the *status vitae* is terminated. But the common good of Ecclesiastical society should be a good which is obtained in the *status vitae*, since the Church in its external societal aspects pertains to that state...». J. HERVADA, *Fin y características...*, cit., 69.

³⁴ J. HERVADA, *Fin y características...*, cit., 73.

³⁵ *Ibid.*, 72.

The good toward which the evangelical law tends and, consequently, toward which the Church tends, is God Himself in and through Christ, by means of the participation in the Divine Nature through grace, which makes us capable of penetrating into the life of the Trinity. This good is not divisible; although in varying degrees of intensity, it is given completely to all, with neither allocation nor distribution. At the base of the structure of the Church is neither division, nor allocation, nor distribution. There is not only the unity of the good, but unicity, the one that is given wholly to all³⁶.

The Church [may be said to be] comparable to a radical sacrament or, if one prefers, the sacraments [are] manifestations of the Church, which is itself, and radically, the sign and instrument of grace and of *salvation*³⁷.

What is, then, the intrinsic aspect of the societal meaning of the common good of the Church? As we have seen, this aspect denotes the desired form of order of communal action, i.e. the love for the specific mode of the union itself – the solidarity of precisely *this type* of acting together with others. The intrinsic aspect of the *bonum commune Ecclesiae* is the ecclesial *communio* itself – the specific modality according to which the Church lives the “*koinonia*”.

³⁶ J. HERVADA, *Las raíces sacramentales...*, cit., 367-368.

³⁷ *Ibid.*, 381. Emphasis added. «The Church [...] has [...] its own end, which is the eternal salvation of mankind». PIUS XI, Encyclical *Divini Illius Magistri* (31-XII-1929) § 13, 53. See also the elements of the common good of the Church, especially regarding the salvation of the souls as its extrinsic aspect, in the following conciliar claim: «God gathered together as one all those who in faith look upon Jesus as the author of salvation and the source of unity and peace, and established them as the Church that for each and all it may be the visible sacrament of this saving unity». SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen Gentium* (21-XI-1964) § 9. Given the remarkable presence of many essential elements of the concept of the common good in his writings, it is our impression that Hervada would have most probably been favourable to our present analysis which seeks to unify these elements, had he been aware of the full impact of the societal meaning of the common good. Unaware of this meaning, he simply and consistently applies the “sum total of social conditions” meaning of the common good taken from the classic formulation of this concept in the Catholic social doctrine and applies it to the societal nature of the Church as it is presented by the Magisterium.

Without pretending to be able to exhaustively present this intrinsic aspect of the common good of the Church, we wish only to highlight some of its central features and crucial magisterial and theological passages relative to them.

According to Thomas Aquinas, the Church possesses a specific societal unity of order, «since the members of the Church are of service to each other and are ordained to God»³⁸. The fact that the Church's nature is societal is not a marginal feature of its constitution. In the words of Henri de Lubac, the Church is essentially social «in the deepest sense of the word: not merely in its applications in the field of natural institutions but first and foremost in itself, in the heart of its mystery, in the essence of its dogma»³⁹.

The *differentia specifica* of the societal nature of the Church, according to its specific common good, is that the external aspects of this common good are already reflected on the union itself. As Pope Pius XI affirmed, «the nobler the end towards which [the Church's members] strive, and the more divine the motive which actuates this collaboration, the higher, no doubt, *will be the union*»⁴⁰. If we are to grasp its true and whole nature, the intrinsic aspect of the societal common good of the Church must be observed also on the theological level of analysis. The «union in and with Christ» and «the continual sanctifying of the members»⁴¹ are both present and *already operative* in the *status vitae* of the Church⁴². This is because «the Spirit of our Redeemer who penetrates and fills every part of the Church's being and is active within it» lifts the Church «far above the whole natural order»⁴³. In De Lubac's words, the Church is, at the

³⁸ T. AQUINAS, *Quaestiones Disputatae de Veritate*, q. 29, a. 4.

³⁹ H. DE LUBAC, *Catholicism: Christ and the Common Destiny of Man*, Ignatius Press, San Francisco 1988, 15. «The concept of *communion* [...] is very suitable for expressing the core of the Mystery of the Church...». CONGREGATION FOR THE DOCTRINE OF FAITH, Letter *Communiois Notio* (28-V-1992) § 1.

⁴⁰ PIUS XII, Encyclical *Mystici Corporis* (29-VI-1943) § 68.

⁴¹ *Ibid.*

⁴² In the words of the Second Vatican Council, «[The] *end* [of the People of God] is the kingdom of God, which *has been begun* by God Himself on earth, and which is to be further extended until it is brought to perfection by Him at the end of time». *Lumen Gentium* § 9.

⁴³ *Mystici Corporis* § 63. «In the moral body the principle of union is nothing else than the common end, and the common cooperation of all under the authority of society

same time, a «means to unite humanity in God» and «she is herself the end, that is to say, *that union in its consummation*»⁴⁴.

The extrinsic aspect of the *bonum commune Ecclesiae* – the salvific union with God, i.e. the vertical dimension of communion – has already «begun as a reality in the Church on earth», i.e. according to the horizontal dimension of the ecclesial *communio* among men⁴⁵. This salvific Divine “restoration”⁴⁶, which has already begun, and is already operative also in the societal aspect of the Church’s nature, «is directed toward its eschatological fulfilment in the heavenly Church»⁴⁷, where it will “attain its full perfection”⁴⁸.

How are these principal vectors of the societal aspect of the Church’s nature manifested with regard to the quality of its intrinsic social relationships, i.e. on the union itself from the perspective of its members?

God’s work of redemption of the mankind through the Church – his actual operative intention «to raise up within it a life, his own life» and so «to enable us to raise ourselves through [Christ] to God» by “changing us inwardly” – embraces also man’s relational perspective within the Church as an authentic society⁴⁹. As the Second Vatican Council affirms, God did not want to save people merely as individuals, without bond or link between one another⁵⁰. The immediate consequence of this new relational perspective is that the Church was never

for the attainment of that end; whereas in the Mystical Body of which We are speaking, this collaboration is supplemented by another internal principle, which exists effectively in the whole and in each of its parts, and whose excellence is such that of itself it is vastly superior to whatever bonds of union may be found in a physical or moral body. As We said above, this is something not of the natural but of the supernatural order; rather it is something in itself infinite, uncreated: the Spirit of God, who, as the Angelic Doctor says, numerically one and the same, fills and unifies the whole Church». *Ibid.* § 62. For Aquinas’s quote used here by Pope Pius XI, see *Quaestiones Disputatae de Veritate*, q. 29, a. 4.

⁴⁴ H. DE LUBAC, *Catholicism...*, cit., 70. Emphasis added. «For between the means and the end there is not merely an extrinsic relationship». *Ibid.*, 73.

⁴⁵ *Communio Notio* § 3. See also *Lumen Gentium* § 48.

⁴⁶ *Lumen Gentium* § 48.

⁴⁷ *Communio Notio* § 3.

⁴⁸ *Lumen Gentium* § 48.

⁴⁹ H. DE LUBAC, *Catholicism...*, cit., 225-226.

⁵⁰ See *Lumen Gentium* § 9.

intended as a “mere aggregation” or a “sum total” of its members⁵¹. Quite the opposite, the work of God’s redemption aims at the quality of the bonds between the members of the Church which represent a “real trans-personal unity”, without externality («not a mere collection of individuals») yet also without confusion (the Church «does not absorb the individual»)⁵².

The quality of the unity between the members of the Church is described as “organical” – they are «members of one another»⁵³. It is also described as a “spiritual solidarity”⁵⁴ wherein, according to the deepest level of the meaning of “solidarity” (communional *obligatio in solidum*)⁵⁵, the members of the Church become progressively aware of their reciprocal responsibility, since «each is “bone of my bone and flesh of my flesh”»⁵⁶.

The specificity of the Church as a society in this regard, already prefigured by the expression “to become progressively aware”, is the fact that its mode of unity is not necessarily fully realized upon the entrance in this society. The solidary unity – *communio* – between members of the Church is an appetible end also in the sense that it is yet to be accomplished, since it is dynamically and progressively made real only through God’s pneumatic action⁵⁷. As Joseph Ratzinger affirmed, quite realistically, we may enter the Church as, so to speak, separate individuals, who often live merely «beside one another or in conflict with one another»⁵⁸ and «may not even like very much» the «person

⁵¹ H. DE LUBAC, *Catholicism...*, cit., 114.

⁵² *Ibid.*, 114, 117.

⁵³ J. RATZINGER, *Eucharist, Communion, and Solidarity*, in J. F. THORNTON – S. B. VARENNE (eds.), *The Essential Pope Benedict XVI: His Central Writings and Speeches*, Harper, San Francisco 2007, 75-76.

⁵⁴ *Communio* § 6.

⁵⁵ For the various degrees of the meaning of solidarity according to historical-legal and socio-ontological perspectives, see R. HITTINGER, *Love, Sustainability...*, cit., 19-27; IDEM, *Social Inclusions Beyond Exchanges and Distributions*, in P. DONATI (ed.), *Towards a Participatory Society: New Roads to Social and Cultural Integration*, Libreria Editrice Vaticana, Vatican City 2017, 247-251.

⁵⁶ J. RATZINGER, *Eucharist, Communion...*, cit., 76.

⁵⁷ See J. RATZINGER, *The Holy Spirit as Communio: Concerning the Relationship of Pneumatology and Spirituality in Augustine*, *Communio* 25 (1998) 332.

⁵⁸ J. RATZINGER, *Eucharist, Communion...*, cit., 83.

next to me», or even care that much for the members of the Church that are geographically distant. The beginning of the salvific union with Christ, already operative in the Church, progressively transforms its members into *one*, as the Council says, «not according to the flesh but in the Spirit»⁵⁹.

4. “THINGS” THAT ARE MADE COMMON IN THE CHURCH

In the previous section we have seen how the ends that are sought through the societal union are constituted as the common good in the Church, according to its extrinsic aspect. We have also seen some elements of how the societal union – *communio* – is itself, if we may say so, “made common” among the members of the Church as the intrinsic aspect of its common good. While it is possible to distinguish between the intrinsic and extrinsic aspects of the common good – or, respectively, the horizontal and vertical aspects of *communio* – the Church’s societal union is determined not only by the social aspects of humanity and the purely human communal dynamics. It is also essentially determined by the operative presence of the extrinsic aspect of the common good within the union itself.

In order to better understand what is included and made the object of *communio* or *communicatio* – and *how* it is made common – in the Church, we should adopt the perspective pointed at by Pope Paul VI in one of his post-conciliar speeches:

The Church is a communion. In this context what does communion mean? We refer you to the paragraph in the Catechism that speaks of the *sanctorum communionem*, the “communion of saints”. The meaning of the Church is a communion of saints. “Communion” speaks of a double, lifegiving participation: the incorporation of Christians into the life of Christ, and the communication of that life of charity to the entire body of the faithful, in this world and in the next, union with Christ and in Christ, and union among Christians, in the Church⁶⁰.

⁵⁹ *Lumen Gentium* § 9.

⁶⁰ PAUL VI, *General Audience* (8-VI-1966).

According to the *Catechism of the Catholic Church*, the term “communion of saints”, contained in the Niceno-Constantinopolitan Creed, has two closely linked meanings: communion as the specific societal union of the Church (i.e. the peculiar overlap between the intrinsic and extrinsic aspects of its common good), and the communion in the “holy things”⁶¹. The texts quoted by the *Catechism* in support of this doctrine are extremely helpful in understanding this twofold meaning of “communion of saints”. One of the quotes comes from Aquinas, who, with regard to the communion understood as the societal union, says:

Because all the faithful are one body, the good of one member is communicated to another [...]. So, among the points of faith which the Apostles have handed down is that there is a common sharing of good in the Church. This is expressed in the words, “the Communion of Saints”. [...] Thus, through this communion we receive two benefits. One is that the merits of Christ are communicated to all; the other is that the good of one is communicated to another⁶².

Regarding the second aspect of the “communion of saints”, which gravitates towards the “holy things” that are made common in the Church, Aquinas says that «this communication [*communicatio*] takes place through the Sacraments of the Church»⁶³.

A second quote comes from the Roman Catechism (or the catechism of the Council of Trent), which Pope Paul VI referenced in his above quote:

As this Church is governed by one and the same Spirit, all the goods she has received necessarily become a common fund⁶⁴.

The 1992 letter *Communio in Notio* of the Congregation for the Doctrine of the Faith includes the doctrine on this article of the Creed in its presentation of the Church’s “*communio*”:

The Church is a *Communio of the saints*, to use a traditional expression that is found in the Latin versions of the Apostles’ Creed

⁶¹ *Catechism of the Catholic Church* (11-X-1992) § 948.

⁶² T. AQUINAS, *Expositio in Symbolum Apostolorum*, a. 10.

⁶³ *Ibid.*

⁶⁴ *Roman Catechism*, I, 10, 24.

from the end of the fourth century. The common visible sharing in the goods of salvation (*the holy things*), and especially in the Eucharist, is the source of the invisible communion among the sharers⁶⁵.

It seems, therefore, that there are various levels of “things” that are “made common” in the Church. In Thomistic parlance, some of these things are *aspects of the common good*, while others are specific *goods* which are *made common* and possess, in various ways, the specific form of the *bona communia* in the Church.

First, the union with God and the *salus animarum* are, so to speak, “made common” in the Church under the aspect of its ultimate end as a society. In the Thomistic understanding of the common good, these ends are the extrinsic common good of the societal union of the Church – that for which sake this societal union exists, as seen under the aspect of the end sought through the membership of the union.

Second, the Church’s societal union is itself “made common”, insofar as it represents the *communicatio* which is loved precisely as this unique type of union that is oriented towards – and at the same time animated by – its ultimate end.

Third, there are certain “things” (“*res*”) that are “made common” in the Church in view of its ultimate end and are, as such, aspects of the ultimate end. But these goods are not reducible to the – intrinsically relational – societal union itself or to the ultimate end in the strict Thomistic sense of the term. We may broadly refer to these “things” as the “ecclesial goods”.

In the hierarchy of the relatedness of ecclesial goods to the ultimate end of the Church, some of these goods are, indeed, “holy things”,

⁶⁵ *Communio Notio* § 6. According to the then prefect of the Congregation for the Doctrine of the Faith, cardinal Joseph Ratzinger, «It must not be forgotten that the Latin expression [*communio sanctorum*] does not mean only the union of the members of the Church, living or dead. *Communio sanctorum* means also to have “holy things” in common, that is to say, the grace of the sacraments that pours forth from the dead and resurrected Christ. It is precisely this mysterious yet real bond, this union in Life, that is also the reason why the Church is not our Church, which we could dispose of as we please. She is, rather, *his* Church. All that which is only *our* Church is not Church in the deep sense; it belongs to her human – hence, secondary, transitory – aspect». J. RATZINGER – V. MESSORI, *The Ratzinger Report: An Exclusive Interview on the State of the Church*, Ignatius Press, San Francisco 1985, 49.

spiritual or salvific goods, such as the already mentioned sacraments, the word of God and the ministry of charity. Even though they are not conceptually included in the *stricto sensu* Thomistic meaning of the common good, these goods cannot be reduced to merely instrumental means of achieving the Church's common good, in the sense of the above-presented natural "common goods" (*bona communia*) of utility. This is because these goods actually have a structuring or formative meaning for the societal union of the Church in the way that common goods, such as water, air, food, etc., do not have for various natural communities. These three goods may therefore be called the "goods of communion" (*bona communionis*)⁶⁶. Although the goods of communion are not reducible to the societal union itself, they are dynamically operative as essential structuring facets of the *communio* according to the Church's self-understanding. They belong to the societal union of the Church in a shared and solidary fashion⁶⁷.

First, the word of God forms part of the «dynamic definition of the Church's life»⁶⁸, especially in structuring its peculiar communal form:

Sacred tradition and Sacred Scripture form one sacred deposit of the word of God, committed to the Church. Holding fast to this deposit the entire holy people [...] remain always steadfast in the teaching of the Apostles, *in the common life*...⁶⁹

Second, the sacraments are salvific goods which are "made common" in the Church as «sacred links uniting the faithful with one

⁶⁶ «The word of God, the [divine] cult and the service of charity animate and shape the entire life of the people of God. [This] salvific asset therefore has a constitutive and structuring function for ecclesial sociality». M. DEL POZZO, *Lo statuto giuridico fondamentale del fedele*, EDUSC, Roma 2018, 73. The full awareness that the traditional binary structure – "word-sacraments" – of the essence of the goods of communion has to be supplemented by the good of the ministry of charity, as having also the constitutive structure for the communal nature of the Church, is rather recent. See BENEDICT XVI, Encyclical *Deus Caritas Est* (25-XII-2005) § 25; IDEM, Apostolic Letter issued "Motu Proprio" *Intima Ecclesiae Natura* (11-XI-2012), Introduction; C. J. ERRÁZURIZ M., *Corso fondamentale II...*, cit., 438-444; M. DEL POZZO, *Lo statuto giuridico...*, cit., 119-122.

⁶⁷ *Ibid.*, 75.

⁶⁸ See BENEDICT XVI, Apostolic Exhortation *Verbum Domini* (30-IX-2010) § 51.

⁶⁹ SECOND VATICAN COUNCIL, Dogmatic Constitution on Divine Revelation *Dei Verbum* (18-XI-1965) § 10.

another and binding them to Jesus Christ»⁷⁰. They are at the same time the object of communion in the faith⁷¹ and the reality which brings about the *communio*⁷²:

As actions of Christ and of the Church, [the sacraments] are signs and means by which faith is expressed and strengthened [...]. Thus they contribute in the most effective manner to establishing, strengthening and manifesting ecclesiastical communion⁷³.

Finally, the *ecclesial good of the ministry of charity*, both corporeal and spiritual, to the poor and those in most urgent need also essentially pertains to the nature of the Church and to her mission as a good of communion⁷⁴.

In enumerating other “things” that are “made common” in the Church, we shall closely follow Errázuriz’s list of such goods.

He enumerates among salvific ecclesial goods, in the broad sense, also the goods summarized in the compound notion *freedom-hierarchical power*⁷⁵. This compound good includes, on one hand, the spheres of legitimate autonomy as well as the obligations inherent in the constitutional position of human persons in the Church. On the other hand, this compound good also includes the *potestas* of the ecclesiastic Hierarchy, which refers to ecclesial governance aimed at «safeguarding the authenticity of the Word of God, and of the sacraments, and at the same time the unity of the Church»⁷⁶.

Besides salvific goods, the ecclesial communion includes also the safeguarding of the *natural human goods*, i.e. human goods which persons possess according to their nature: e.g., life, liberty, psycho-corporeal integrity, good reputation, privacy, but also such intrinsically rela-

⁷⁰ *Catechism of the Catholic Church* § 950.

⁷¹ «Since the sacraments are the same throughout the universal Church, and belong to the divine deposit of faith...». Can. 841 of CIC 1983.

⁷² See *Lumen Gentium*, § 11; THE SECOND EXTRAORDINARY COUNCIL OF THE SYNOD OF BISHOPS, *Relatio Finalis* (10-XII-1985) II, C, 1.

⁷³ Can. 840 of CIC 1983.

⁷⁴ C. J. ERRÁZURIZ M., *Corso fondamentale II...*, cit., 440-444.

⁷⁵ C. J. ERRÁZURIZ M., *Justice in the Church...*, cit., 218.

⁷⁶ See C. J. ERRÁZURIZ M., *Corso fondamentale I...*, cit., 26-27, 212-213; C. J. ERRÁZURIZ M., *Justice in the Church...*, cit., 138.

tional goods as family and then marriage, which constitutes at the same time both a natural human good and a sacrament⁷⁷.

Finally, *patrimonial* (or *temporal*) *goods*, which are also “things” that are “made common” in the Church, come much closer to the meaning of common means or common stock (*bona communia*) related to the attainment of the common good, since they are instrumental to the concrete modalities of the Church’s salvific mission⁷⁸.

5. THE JURIDICAL DOMAIN OF THE “COMMUNIO” ITSELF AMONG “THINGS” OR GOODS THAT ARE MADE COMMON IN THE CHURCH

The immediate scope of this article is to re-evaluate the importance of the concept of the common good of the Church for the understanding of its juridical domain. Accordingly, our presentation of the juridical aspect of the *bonum commune Ecclesiae* will be limited only to the elements of juridicity inherent in the common good of the Church as this is outlined in the preceding sections.

The contours of the juridical domain generally, applicable also to the existence of right in the Church, gravitate around the following essential features. What constitutes the right or the person’s *suum* owed in justice is *the thing itself* (in Thomistic parlance, the *ipsa res iusta*)⁷⁹ in so far as it is viewed in the relational aspect of the virtue of justice⁸⁰. This means that the right is that concrete *thing* (“*res*”) which is in principle apportionable and then actually attributed to a determinate subject as his *suum* by virtue of a juridical title (positive, natural or divine law, contract, testament, etc.). However, the relation between the title-holder and the thing is in itself insufficient to explain the nature of the juridical obligation. The constitution of an authentic juridical obligation depends rather upon the inclusion of the property of other-directedness into the scheme of the relation between the title-holder and his

⁷⁷ C. J. ERRÁZURIZ M., *Justice in the Church...*, cit., 138, 219; IDEM, *Corso fondamentale II...*, cit., 439-440.

⁷⁸ C. J. ERRÁZURIZ M., *Justice in the Church...*, cit., 138, 219; IDEM, *Corso fondamentale II...*, cit., 463-464.

⁷⁹ *STb* II-II, q. 57, a. 1.

⁸⁰ For this essential characteristic of right, see J. HERVADA, *Critical Introduction to Natural Law*, Wilson & Lafleur Ltée, Montréal 2006, 25-26.

suum. Given the fact that the *thing* – the *suum* – is or is able to be in the sphere of power of other persons, different from the title-holder, and susceptible to their interference, all potential subjects of interference become debtors in the relationship of justice. In this sense, they “owe” the “*thing*” – i.e. the concrete measure of the title-holder’s *suum*, as determined by the title – to the title-holder⁸¹.

In this juridical perspective, it seems quite clear that the extrinsic aspect of the common good – the *salus animarum* and the union with God – actually transcends the juridical realm and is unsuitable to, in and of itself, strictly speaking, constitute the object of juridical justice. Neither the union with God, nor the salvation of the soul may, as such, become a right, since both are “made common” precisely as ultimate ends and only in order to be participated in as such, without being attributed to certain subjects as their *suum* and owed in justice by others.

What about the intrinsic aspect of the common good, i.e. the very societal union? Does the good of the Church’s societal union itself (*communio*) represent a “thing” (*res*) or good which is “made common” while, at the same time, as such, constituting a *suum* owed in justice? To be sure, the goods of communion (*bona communionis*) – the word of God, sacraments and the ministry of charity – may be the object of the relations of justice and may constitute rights⁸² while at the same time representing structuring features and “channels”⁸³ of attaining the common good. However, the question we are trying to answer here is distinct from the one on the juridical domain of the goods of communion. Our question concerns the juridicity of the intrinsically relational good of *communio* as such. There are a couple of preliminary questions that have to be addressed in order to give a complete answer to this question.

⁸¹ For more details on the main theses of this doctrine on the essence of right, see J. HERVADA, *Critical Introduction...*, cit., 9-39; IDEM, *Lecciones propedéuticas de filosofía del derecho*, Eunsa, Pamplona 1992, 165-250.

⁸² For the constitution of the juridical domain regarding each of the ecclesial juridical goods, see J. HERVADA, *Las raíces sacramentales...*, cit., 359-385; IDEM, *Pensamientos...*, cit.; C. J. ERRÁZURIZ M., *Justice in the Church...*, cit., 120-132, 212-252; IDEM, *Corso fondamentale I...*, cit., 25-32, 183-287; IDEM, *Corso fondamentale II...*, cit., 3-507; J.-P. SCHOUPPE, *La dimensione giuridica...*, cit., 115-205.

⁸³ See, J. HERVADA, *Las raíces sacramentales...*, cit., 368.

First, we have seen that the salient mark of the intrinsic common good is that it is indivisible. According to Hittinger, it cannot be distributed, cashed-out or divided in exchange, but only participated by its members⁸⁴. Hervada applies the same argument of indivisibility to the common good of the Church: «At the base of the structure of the Church is neither division, nor allocation, nor distribution. There is not only the unity of the good, but unicity, the one that is given wholly to all»⁸⁵. The societal union of the Church is “made common” in a way that is essentially indivisible. Is this an obstacle for the constitution of the juridical domain regarding the *communio* itself?

In order to provide an answer to this question and establish whether the *communio* is “made common” in a way that gives rise to the relations of juridical justice in the Church, we have to address the connected question of *attribution*: namely, we have to ask to whom and in what way is the indivisible *communio* attributed. The answer to this question implies two different levels of attribution. On a first level, the *communio*, the peculiar societal union in the Church, is “made common” or attributed to the group-person itself of the Church. Being essentially a unity of societal order, on one level, the first recipient of the *communio* – its subject – is the Church itself. On a second level, the societal union of the Church, as the intrinsic aspect of the common good, is “made common” in a participative way among each single person who is a member of the Church. The Church is *communio*, while each single person who is its member shares in the *communio*. However, the common good of societal union is shared by individual persons precisely as it is “made common”: being indivisible, it is never a private good⁸⁶. The primary subject of its attribution is, therefore, the Church itself, while the secondary and participative subject is each person which shares in the *communio*.

Things (“*res*”) which qualify as rights are always attributed to their subjects or title-holders according to a determinate *measure*. This is because the nature of each thing must refer to dimensions that can be measured in view of its juridical status and thus determine the modali-

⁸⁴ R. HITTINGER, *Divisible Goods...*, cit., 39-40.

⁸⁵ J. HERVADA, *Las raíces sacramentales...*, cit., 367-368.

⁸⁶ R. HITTINGER, *The Coherence...*, cit., 800, 808.

ties of its belonging to the title-holder⁸⁷. What is the concrete measure of *communio* in the Church – its proper nature – besides the mere fact that it is a societal union? Without pretending to exhaust all the aspects of the issue, this measure is masterfully described by Hervada and Errázuriz according to the following general outline:

Within the people of God, as an outward social group [...] we may distinguish [...] various types of bonds. In the first place, the bond of fraternity through which its members form a solidary community. This solidary bond consists of the communion in faith, the communion of [Divine] cult, the bonds of mutual love and affection [...] and the communion of ends: this is, properly speaking, the *communio fidelium*. In the second place, there is also the hierarchical bond, through which the members of the people of God are united, by relationships of authority, with the legitimate pastors: this is the *communio hierarchica*⁸⁸.

The ecclesial communion possesses an intrinsically hierarchical nature. It is not the case that the communion with the Hierarchy (*communio hierarchica*) is something extrinsic or added onto the communion among the faithful (*communio fidelium*). Rather, both are aspects of a single reality...⁸⁹

The nature of the societal union of the Church is determined by the simultaneous presence of the following constitutional principles: the principle of fundamental equality (personal, social and juridical) of all the members of the Church, the principle of the variety of the forms of attaining the end of the people of God and the hierarchical-institutional principle⁹⁰. Although the basic form of *communio fidelium* constitutes the nucleus of the communal aspect of the Church, the «common status of the baptized person and the principle of fundamental equality are insufficient to describe the completeness and the concrete form of the

⁸⁷ See J. HERVADA, *Critical Introduction...*, cit., 36, 78; IDEM, *Lecciones propedéuticas...*, cit., 206-207.

⁸⁸ J. HERVADA, *Elementos de derecho constitucional canónico*, Navarra Gráfica Ediciones, Pamplona 2014, 49.

⁸⁹ C. J. ERRÁZURIZ M., *Justice in the Church...*, cit., 188.

⁹⁰ For more detail on these principles, see J. HERVADA, *Elementos de derecho...*, cit., 49.

ecclesial phenomenon: the functional diversity and institutionality therefore arise in order to structure the [social] being [of the Church]»⁹¹.

We have thereby established the attributional aspect of juridicity, wherein the “thing” (“*res*”), i.e. the *communio* of the Church, is the *suum* of the subject that is the Church. We have yet to explain how the other essential property of juridicity is constituted regarding this relationship of attribution, namely, the *obligatoriness*. The juridical obligation arises only in a relational context where the *suum* of the title-holder becomes, from the point of view of its debtors, the other-directed “good of the other person” (i.e. of the title-holder)⁹². Obligatoriness essentially depends on the fact that determinate persons, different from the title-holder, find themselves in the position where it is within their sphere of power to potentially or actually interfere with the concrete measure of the “thing” which is the title-holder’s *suum*. Any person who finds himself in that position is a title-holder’s debtor, and the obligation that arises here is an authentically juridical obligation.

Our present question is, then: how does obligatoriness arise regarding the nature of the societal union of the Church? The Church’s societal union itself can be interfered with, potentially and actually, in each act which constitutes what we could call a “denaturing” of the precise measure or nature of *communio*. We are referring to the acts which represent an interference with the determinate communal nature of the Church’s societal union to the possible effect that the very nature of *communio* is at risk of being essentially altered. Now, according to Aquinas, justice regards “goods” that are owed not only to an individual human person (*bonum sub ratione debiti ad proximum*), but also «in relation to the *community*» (*facere bonum debitum in ordine ad communitatem*)⁹³. The “other”, whose good is the object of juridical justice, may also be a community of persons and its common good⁹⁴.

But what kind of quality must an act of juridical injustice possess in order to interfere with the nature (or the determinate measure) of the

⁹¹ See M. DEL POZZO, *La struttura “ordo-plebs” cardine del sistema costituzionale canonico*, *Ius Ecclesiae* 26 (2014) 43.

⁹² See *STh* II-II, q. 58, a. 12. See also J. HERVADA, *Lecciones propedéuticas...*, cit., 201-204.

⁹³ *STh* II-II, q. 79, a. 1. Emphasis added.

⁹⁴ *STh* II-II, q. 58, a. 5; II-II, q. 58, a. 7.

very societal union of the Church? To establish a juridical obligation, in Hervada's view, it is necessary that the "thing" which is attributed to a subject may effectively be interfered with in its outward domain⁹⁵. The interference which is characteristic of the juridical obligation is not possible in the domain of purely subjective and internal dispositions of persons, i.e. within the inward context of individual or social morality. For the juridical domain, it is sufficient that the "thing" or good in question is determinable in its exterior manifestation and, thus, capable of being grasped or interfered with directly or indirectly⁹⁶. Things that are socially incommunicable, despite any eventual attribution to a subject, do not constitute right, but rather a «non-juridical domain of the person»⁹⁷. In synthesis, to qualify for the constitution of the juridical obligation, the "thing" in question must be "outward", with the consequence of leaving socially incommunicable *things* outside of the juridical domain⁹⁸.

Each intrinsic common good, including the *bonum commune Ecclesiae*, is certainly broader in content than its juridical domain, i.e. that part of it which may be said to be owed according to juridical justice. The common good of the Church certainly includes obligations which pertain to the (individual and social) moral and salvific order. We have already said that the goods of communion – in their attributable, other-

⁹⁵ «[Right] demands outwardness in the things which are the object of division; only that which is externally tangible, or may be otherwise materialized, is apt to be apportioned. [...] For the existence of right there must be a previous division and apportionment of goods. [...] Without divisions and apportionments, it seems that the very presupposition of right does not exist and, without right, justice is not possible». J. HERVADA, *Las raíces sacramentales...*, cit., 366-368.

⁹⁶ See J. HERVADA, *Critical Introduction...*, cit., 26. «In what sense is an incorporeal thing an external thing? It is external to the extent that it possesses a projection which is external to the person – being outward in its means or its effects – by virtue of which it enters into the social context of communication and personal interrelation. This is why, although the property of outwardness always entails a certain material dimension, it more properly means that the thing has a social projection [...], in itself or in some of its dimensions». J. HERVADA, *Lecciones propedéuticas...*, cit., 224-225.

⁹⁷ See J. HERVADA, *Lecciones propedéuticas...*, cit., 225-226.

⁹⁸ For Aquinas's account of the property of "outwardness" regarding the obligations in justice and the relative juridical irrelevance of the purely internal subjective dispositions of persons, see *STb* II-II, q. 57, a. 1; II-II, q. 58, a. 3, ad 3; II-II, q. 58, a. 8; II-II, q. 58, a. 11.

directed and outward aspects of attaining the common good of the Church – possess an intrinsic juridical domain. But can we speak of the acts of juridical injustice as possible or actual interferences with the nature itself of the societal union of the Church, i.e. acts which would denature the *communio* itself? An affirmative answer to this question would establish the intrinsic aspect of the common good of the Church – the societal union itself – as an autonomous juridical good which is connected to but not reducible to the single goods of communion (*bona communionis*).

The intrinsic aspect of the common good of each society, including the *bonum commune Ecclesiae*, is indivisible and therefore juridically inattributable to subjects, whether individual or communal, which participate in it. *It is nonetheless attributable to the group-person itself*, in our case *the Church*, and constitutes a “thing” that is owed in justice by anyone who might interfere with its determinate measure or essential nature. In our opinion, it is not easy to imagine a possible interference with the *communio* as the societal union itself of the Church that would not be connected with a simultaneous act of juridical injustice regarding some aspects of the single goods of communion (word of God, sacraments or ministry of charity) or, for that matter, even natural human goods in such a way that would denature the *communio*. But the argument which we wish to highlight here is that even though a good of communion or a natural human good is the immediate object of an act of juridical injustice, there is a juridical good – distinct from the juridical goods of communion and natural juridical goods – that has thereby been unjustly interfered with. And this is the juridical good of the *communio* itself.

A recent example which might prove to be illuminative for our present analysis was given in the already well-known text written by the Pope Emeritus Benedict XVI on the issue of clerical sexual abuse in the Church. In the introduction to the text, Benedict XVI refers to this issue as the «crisis of the faith and of the Church» which many perceived to «call into question the very faith of the Church»⁹⁹. Further in

⁹⁹ BENEDICT XVI, *The Church and the Scandal of Sexual Abuse*, II, 2: <http://www.catholicnewsagency.com/news/full-text-of-benedict-xvi-the-church-and-the-scandal-of-sexual-abuse-59639> (accessed May 3, 2019).

the text, the Pope Emeritus highlights the importance of the juridical protection of what he calls “the good of faith”. Since the acts of clerical sexual abuse have “confounded” many “in their faith”, he argues that the order of juridical justice must protect the good that is at stake. And, in his view, the juridical good of faith must be included in this protection¹⁰⁰. Now, on a juridical level, the tragic occurrences of clerical sexual abuse represent grave injustice with regard to natural juridical goods, such as liberty, psycho-corporeal integrity and privacy. These acts also represent severe violations of the goods of communion, such as, for example, grave denaturation of the ministry of charity, as well as of the good of the word of God to the extent that it is connected to the deposit of *faith*¹⁰¹. It is difficult to say whether Pope Benedict actually meant this, but we would like to push his discourse on the juridical aspect of the “good of faith” on a level even higher than that of the single goods of communion. The acts of injustice in question really represent an interference with the juridical good of *communio* itself, as they attempt to denature the essential characteristics of the societal union of the Church. By immediately violating the goods of communion and natural juridical goods, such acts of grave injustice also violate, on a connected but ultimately distinct level, the juridical good of *communio* whose primary title-holder is the Church itself, while its secondary participative subject is each individual member of the Church. Perhaps this is what Pope Benedict has in mind when he says that this

¹⁰⁰ *Ibid.*

¹⁰¹ In his analysis of the practical aspects inherent in the measure or nature of the juridical good of the word of God, Errázuriz actually includes both levels of analysis that we seek to highlight in our present work, namely, the level of the juridical domain of the single *bonum communionis* (e.g. the word of God) and the connected but distinct level of the essentially relational, juridical good of the “*communio*” itself. «It should be emphasized that the word of God as an ecclesial juridical good is not limited to a doctrinal message, but necessarily includes a practical component that concerns how one lives one’s own life. [...] Visible ecclesial communion is impaired by gravely immoral behaviour which creates scandal in the community and thereby hinders others from living in that communion». C. J. ERRÁZURIZ M., *Justice in the Church...*, cit., 225. Pope Emeritus Benedict XVI seems to follow a similar line of argumentation when he claims, in the same text, that «it is important to see that such misconduct by clerics ultimately damages the faith» and that «only when faith no longer determines the actions of man are such offences possible». BENEDICT XVI, *The Church and the Scandal...*, cit., II. 2.

issue represents the «crisis of the faith and of the Church»¹⁰². And perhaps the juridical good of *communio* is already alluded to in the Catechism of the Catholic Church where the communion of the Church is said to be essentially structured around the «communion in the faith of the Church»¹⁰³.

6. CONCLUSION

The peculiar societal nature of the Church which determines the measure of the juridical good of *communio*, as described above, is referred to in the sole occurrence of the term “common good” in the 1983 Code of Canon Law (can. 223). The first paragraph¹⁰⁴ of this canon mentions the common good of the Church as a sort of limit to the exercise of the rights of the faithful, along other limits (i.e. the rights of the others and their own duties to others). This paragraph may be read as an ecclesial incorporation of the Catholic social doctrine’s standards of the limits to natural rights. For example, the same standards appear in the Second Vatican Council’s Declaration on religious freedom *Dignitatis Humanae*¹⁰⁵. The second paragraph establishes a relationship

¹⁰² The underlying doctrine of the intrinsic common good implied in Pope Benedict’s words on the juridical good of faith, is analogically echoed in his address pronounced at the Bundestag in Berlin, where he argued that the fundamental issues of right pertain to a domain where the dignity itself of man *and of humanity* is at stake. In other words, to deny somebody of their dignity or humanity actually amounts to a violation of what Pope John Paul II called «the common good of humanity». This is most certainly a violation of a moral due. But it may also be taken to represent a grave injustice of the juridical good of universal human communion. Crimes against humanity are a violation of both the natural juridical goods and the juridical good of the societal union of humanity. See BENEDICT XVI, *Address on the Occasion of the Visit to Bundestag* (22-IX-2011); JOHN PAUL II, Letter to the Families *Gratissimam Sane* (2-II-1994) § 6.

¹⁰³ *Catechism of the Catholic Church* § 949.

¹⁰⁴ «In exercising their rights, Christ’s faithful, both individually and in associations, must take into account of the common good of the Church [*“boni communi Ecclesiae”*], as well as the rights of others and their own duties to others». CIC 1983, c. 223 § 1.

¹⁰⁵ «In the exercise of their rights, individual men and social groups are bound by the moral law to have respect both for the rights of others and for their duties toward others and for the common good of all». SECOND VATICAN COUNCIL, Declaration on Religious Freedom *Dignitatis Humanae* (7-XII-1965) § 7.

between the common good of the Church and the ecclesiastical authority¹⁰⁶. The subjects mentioned by the canons – the faithful and the hierarchy – reflect the *communio fidelium* – *communio hierarchica* structure of the societal union of the Church.

When the common good of the Church is understood in the sense that we presented in this text, i.e. in its extrinsic and intrinsic aspects, this canon has a deeper meaning than only an expression of social responsibility¹⁰⁷. The guidelines for the exercise of the faithfuls' rights and its regulation by ecclesiastical authority are: the union with God, *salus animarum* and the good of the societal union of the Church (*communio*). The *bonum commune Ecclesiae* may be, thus, understood to represent the structuring principle for the actions of both the faithful and the ecclesiastical authority in the exercise of their respective roles and functions (*munera*). Both subjects are juridically obligated to conform their actions to the common good of the Church and to refrain from any action which would denature the *communio*.

¹⁰⁶ «Ecclesiastical authority is entitled to regulate, in view of the common good [*boni communis*], the exercise of rights which are proper to Christ's faithful». CIC 1983, c. 223 § 2.

¹⁰⁷ The content of this canon was also included in the never-promulgated *Lex Ecclesiae Fundamentalis*, while the explanatory reports for this project invoked the «principle of personal and social responsibility» as the main legislative motive for its normative inclusion. See D. CENALMOR, *Commentary on c. 223*, in *Exegetical Commentary on the Code of Canon Law*, II/1, Wilson & Lafleur-Midwest Theological Forum, Montreal-Chicago 2004, 147.

Bibliography

- AQUINAS, T., *Summa Theologiae: First Complete American Edition in Three Volumes*, trans. Fathers of the English Dominican Province, Benziger Brothers, New York, 1947-1948.
- , *Commentary on the Metaphysics*, trans. John P. Rowan, Henry Regnery Company, Chicago 1961.
- , *Expositio in Symbolum Apostolorum*, trans. Joseph B. Collins, in <https://dhspriority.org/thomas/Creed.htm>.
- , *Quaestiones Disputatae de Caritate*, trans. Lottie H. Kendzierski, Marquette University Press, Milwaukee 1960.
- , *Quaestiones Disputatae de Veritate*, trans. Robert W. Schmidt, S.J., Henry Regnery Company, Chicago 1954.
- BENEDICT XVI, Encyclical *Deus Caritas Est*, 25-XII-2005, AAS 98 (2006) 217-252.
- , Apostolic Exhortation *Verbum Domini*, 30-IX-2010, AAS 102 (2010) 681-787.
- , *Address on the Occasion of the Visit to Bundestag*, 22-IX-2011, AAS 103 (2011) 663-669.
- , Apostolic Letter issued “Motu Proprio” *Intima Ecclesiae Natura*, 11-XI-2012, AAS 104 (2012) 996-1004.
- , *The Church and the Scandal of Sexual Abuse*, II. 2, in <http://www.catholicnewsagency.com/news/full-text-of-benedict-xvi-the-church-and-the-scandal-of-sexual-abuse-59639> (accessed May 3, 2019).
- BROCK, S. L., *The Distinctiveness of the Natural Inclinations Proper to Man in Summa Theologiae 1-2.94.2*, *Doctor Communis* 1-2 (2012) 36-53.
- Catechism of the Catholic Church*, Libreria Editrice Vaticana, Vatican City 1997.
- Code of Canon Law: Latin/English Edition*, Canon Law Society of America, Washington, D.C. 1983.
- CONGREGATION FOR THE DOCTRINE OF FAITH, Letter *Communio Notio*, 28-V-1992, AAS 85 (1993) 838-850.
- CORECCO, E., *Ius et Communio: Scritti di diritto canonico*, Facoltà di Teologia di Lugano, Piemme, Casale Monferrato 1997.

- , *Canon Law and Communio: Writings on the Constitutional Law of the Church*, Libreria Editrice Vaticana, Città del Vaticano 1999.
- DE LUBAC, H., *Catholicism: Christ and the Common Destiny of Man*, Ignatius Press, San Francisco 1988.
- DEL POZZO, M., *L'evoluzione della nozione di diritto nel pensiero canonistico di Javier Hervada*, PhD Dissertation, EDUSC, Roma 2005.
- , *La struttura “ordo-plebs” cardine del sistema costituzionale canonico*, *Ius Ecclesiae* 26 (2014) 27-48.
- , *Lo statuto giuridico fondamentale del fedele*, EDUSC, Roma 2018.
- ERRÁZURIZ M., C. J., *Justice in the Church: A Fundamental Theory of Canon Law*, Wilson & Lafleur Ltée, Montréal 2009.
- , *Corso fondamentale sul diritto nella Chiesa: Vol. I*, Giuffrè Editore, Milano 2009.
- , *Corso fondamentale sul diritto nella Chiesa: Vol. II*, Giuffrè Editore, Milano 2017.
- FARRELL, D., *Wanting the Common Good: Aquinas on General Justice*, *The Review of Metaphysics* 71 (2018) 517-549.
- FINNIS, J., *Natural Law and Natural Rights*, Oxford University Press, Oxford 1980.
- FROELICH, G., *The Equivocal Status of Bonum Commune*, *The New Scholasticism* 63 (1989) 38-57.
- HERVADA, J., *Fin y características del ordenamiento canónico*, *Ius Canonicum* 3 (1962) 5-110.
- , *Las raíces sacramentales del Derecho canónico*, in AA. VV., *Sacramentalidad de la Iglesia y Sacramentos: IV Simposio Internacional de Teología de la Universidad de Navarra*, Eunsa, Pamplona 1983, 359-385.
- , *Pensamientos de un canonista en la hora presente*, Navarra Gráfica Ediciones, Pamplona 1989.
- , *Lecciones propedéuticas de filosofía del derecho*, Eunsa, Pamplona 1992.
- , *Critical Introduction to Natural Law*, Wilson & Lafleur Ltée, Montréal 2006.
- , *Elementos de derecho constitucional canónico*, Navarra Gráfica Ediciones, Pamplona 32014.
- HITTINGER, R., *The Coherence of the Four Basic Principles of Catholic Social Doctrine: An Interpretation*, *Nova et Vetera* 7 (2009) 791-838.

- , *Divisible Goods and Common Good: Reflections on Caritas in Veritate*, Faith & Economics 58 (2011) 31-46.
- , *Love, Sustainability, and Solidarity: Philosophical and Theological Roots*, in M. SCHLAG – J. A. MERCADO (eds.), *Free Markets with Solidarity and Sustainability: Facing the Challenge*, The Catholic University of America Press, Washington, D.C. 2016, 19-31.
- , *Social Inclusions Beyond Exchanges and Distributions*, in P. DONATI (ed.), *Towards a Participatory Society: New Roads to Social and Cultural Integration*, Libreria Editrice Vaticana, Vatican City 2017, 246-259.
- JOHN PAUL II, Letter to the Families *Gratissimam Sane*, 2-II-1994, AAS 86 (1994) 868-925.
- LEWIS, V. B., *Is the Common Good an Ensemble of Conditions?*, Archivio di filosofia 84 (2016) 121-132.
- LONG, S. A., *Understanding the Common Good*, Nova et Vetera 16 (2018) 1135-1152.
- MARZOA, Á. – MIRAS, J. – RODRÍGUEZ-OCAÑA, R. (eds.), *Exegetical Commentary on the Code of Canon Law*, II/1, Wilson & Lafleur-Midwest Theological Forum, Montreal-Chicago 2004.
- NIETO, J. F., *The Axiomatic Character of the Principle that the Common Good is Preferable to the Private Good*, The Aquinas Review 14 (2007) 109-132.
- PAUL VI, *General Audience*, 8-VI-1966, in https://w2.vatican.va/content/paul-vi/it/audiences/1966/documents/hf_p-vi_aud_19660608.html.
- PIUS XI, Encyclical *Divini Illius Magistri*, 31-XII-1929, AAS 22 (1930) 49-86.
- PIUS XII, Encyclical *Mystici Corporis*, 29-VI-1943, AAS (1943) 193-248.
- PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *The Compendium of the Social Doctrine of the Church*, Libreria Editrice Vaticana, Vatican City 2004.
- RATZINGER, J., *The Holy Spirit as Communio: Concerning the Relationship of Pneumatology and Spirituality in Augustine*, Communio 25 (1998) 324-337.
- , *Eucharist, Communion, and Solidarity*, in J. F. THORNTON – S. B. VARENNE (eds.), *The Essential Pope Benedict XVI: His Central Writings and Speeches*, Harper, San Francisco 2007, 69-84.

- RATZINGER, J. – MESSORI, V., *The Ratzinger Report: An Exclusive Interview on the State of the Church*, Ignatius Press, San Francisco 1985.
- ROBLEDA, O., *Fin del derecho en la Iglesia*, Revista Española de Derecho canónico 2 (1947) 283-292.
- , *El espíritu del Derecho canónico*, Gregorianum 44 (1963) 827-839.
- SCHOUPPE, J.-P., *La dimensione giuridica dei beni salvifici della Parola di Dio e dei sacramenti*, in C. J. ERRÁZURIZ M. – L. NAVARRO (eds.), *Il concetto di diritto canonico: Storia e prospettive*, Giuffrè Editore, Milano 2000, 115-205.
- SECOND EXTRAORDINARY COUNCIL OF THE SYNOD OF BISHOPS, *Relatio Finalis*, L'Osservatore Romano, 10-XII-1985, I-IV.
- SECOND VATICAN COUNCIL, Dogmatic Constitution on Divine Revelation *Dei Verbum*, 18-XI-1965, AAS 58 (1966) 817-835.
- , Dogmatic Constitution on the Church *Lumen Gentium*, 21-XI-1964, AAS 57 (1965) 5-75.
- , Declaration on Religious Freedom *Dignitatis Humanae*, 7-XII-1965, AAS 58 (1966) 929-946.
- WALSHE, S., *Fidelissimus Discipulus Ejus: Charles De Koninck's Exposition of Aquinas's Doctrine on the Common Good*, The Aquinas Review 19 (2013-2014) 1-22.