The Three Levels of Law's Goodness and then One More: Exploring John Finnis's Account of Good Juridical Reasons for Action

Los tres niveles de la bondad de la Ley y uno más: explorando la teoría de las buenas razones jurídicas para la acción de John Finnis

Petar Popović
Faculty of Canon Law
Pontifical University of the Holy Cross
p.popovic@pusc.it
http://orcid.org/0000-0001-5282-0850

RECIBIDO: 01/06/2020 / ACEPTADO: 12/12/2020

Summary: The article revisits, in the first section, the core arguments of John Finnis's account of law's «goodness». Having established that the premises of these arguments are situated in Finnis's theses on what constitutes good juridical reasons for action, and on law's «double life», the three levels of law's goodness are explored in detail. In the second section, the author argues that Aquinas's juridical philosophy contains another discrete level of juridical goodness relevant to law. This level is then presented along with a critical assessment of its harmony with Finnis's theory.

Keywords: John Finnis, reasons for action, goodness of law, basic human goods, practical reasonableness, justice.

Resumen: El artículo revisa, en la primera sección, los argumentos centrales del relato de John Finnis sobre la «bondad» de la ley. Una vez establecido que las premisas de estos argumentos están situadas en las tesis de Finnis sobre lo que constituyen buenas razones jurídicas para la acción, y sobre la «doble vida» de la ley, se exploran en detalle los tres niveles de bondad de esta. En la segunda sección, el autor argumenta que la filosofía jurídica de Tomás de Aquino contiene otro nivel discreto de bondad jurídica relevante para la ley. El análisis de este nivel se presenta junto con una evaluación crítica de su armonía con la teoría de Finnis.

Palabras clave: John Finnis, razones para la acción, bondad de la ley, bienes humanos básicos, razonabilidad práctica, justicia.

I. Introduction

It is not easy to envision a more foundational question in the field of legal philosophy than the one regarding the overlap between the «law» and the «good», both on a conceptual and on an ontological level. It is often overlooked that this question includes two inter-connected layers of analysis. First, we may ask whether some element of the good should be necessarily included in the concept or in the very nature of law; this is otherwise known as the «necessary connection between law and morality» question. Then again, we can also ask whether and under what conditions the good, both conceptually and

ontologically, may also be said to possess an inherently juridical status. One may speak of the law in terms of its «goodness» in many different ways, but in legal philosophy such discourse is never demoted to the status of merely figurative speech. Rather, it represents a sort of indicator that determines the exact coordinates of the author's position on the conceptual and argumentative map of the intersection between the «law» and the «good».

Since the publication of his work *Natural Law and Natural Rights* («NLNR») forty years ago, John Finnis has become known as arguably the most prominent advocate for the positive answer to both aspects of the question regarding the «goodness» of law. His positive answer to this question is, as we will see, carefully outlined across multiple levels, each level corresponding to a discrete aspect of the good as the peculiar standpoint from which the law may be analysed. In this article I will explore various levels of law's goodness as this is outlined in Finnis's writings, from NLNT to the present day.

In a relatively recent interview, Finnis has offered a definition of what he calls his «new classical natural law theory»: «I think of it as an explanation of the sense of having law, why we have law and what it's for and how all that 'why' and that 'what for' enter into the very content of the law, or should»[1]. Finnis's theoretical project may be understood as an account of how the «why» and the «what for» that «enter into the very content of law» intersect with various but precisely determined aspects of the concept of the good. As he himself has said in the very first paragraph of NLNR:

> «There are human goods that can be secured only through the institutions of human law, and requirements of practical reasonableness that only those institutions can satisfy. It is the object of this book to identify those goods, and those requirements of practical reasonableness, and thus to show how and on what conditions such institutions are justified and the ways in which they can be (and often are) defective»[2].

In the Postscript written on the occasion of the thirtieth anniversary of NLNR, he has claimed that «the book's programme» is to «trace the ways in which sound laws, in all their positivity and mutability, are to be derived [...] from unchanging principles [...] that have their force from their reasonable-

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1 FINNIS, J., «Oxford Conversations with John Finnis: What is New Classical Natural Law Theory?», https://oxfordconversations.org/john-finnis-scholars, 2016 (April 23, 2020).

2 FINNIS, J., *Natural Law and Natural Rights*, Oxford University Press, Oxford, 2011, p. 3.

ness»[3]. Elsewhere he has added that «the reasonableness and justification» of the acts of «making, acknowledging, and complying with law [...] cannot be assessed without premises about *true human good*»[4]. This cluster of Finnis's arguments announces, in a nutshell, the main thread of my present effort to trace out the principal implications of Finnis's thesis that the «drive to insulate legal from moral reasoning can never, however, be complete»[5].

At the same time, Finnis's account of law's «goodness» includes also the criteria for delimiting the domain in which law *cannot* be «reduced without remainder to ethics», i.e. the domain in which it is evident that the goals of law are «more limited than ethics' unbounded horizon of human good»[6]. Accordingly, this paper will present Finnis's outline of the boundaries that «cut off» those aspects of the «good» which remain outside of the intersection with law's ontology. In the second part of the article, however, I will argue that the broader «horizon of the human good» may be envisioned as *juridical* in ways that Finnis does not seem to take into full consideration, while at the same time respecting the due limits between moral and juridical domains.

A reader familiar with the foundational issues of Finnis's juridical philosophy will have the opportunity, in the first part of the article, not only to revisit, on the occasion of the fortieth anniversary of NLNR, these issues in Finnis's key texts, but also to reread them from the vantage point of law's goodness. In the second part of the article I will tackle an additional important aspect of the goodness of law that is partly only implicit in, and partly completely missing from, Finnis's account, namely, the aspect of the juridical good as this is outlined in Thomas Aquinas's texts.

The course of this paper actually reflects rather well my own personal reasons for celebrating the fortieth anniversary of NLNR together with its author and other contributors to this volume. Finnis's thought presented in that book, and further developed in his writings during the last forty years, has left a decisive mark on my juridical-philosophical thinking, and this remark refers both to those among his arguments that have added much clarity to the way I conceptualize the nature of law today, and those from which I learned most

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3 Finnis, J., *Natural Law and Natural Rights*, *op. cit*., p. 418.

4 Finnis, J., «Introduction», *Philosophy of Law. Collected Essays: Volume IV*, Oxford University Press, Oxford, 2011, p. 1.

5 Finnis, J., «Legal Reasoning as Practical Reason», *Reason in Action. Collected Essays: Volume I*, Oxford University Press, Oxford, 2011, p. 229.

6 Finnis, J., «A Grand Tour of Legal Theory», *Philosophy of Law*..., *op. cit.*, p. 111.

by critically challenging them. While on this occasion my principal intention is to revisit with enthusiasm the former group of arguments, the critique presented in the second part of the paper should also be read as an, illustratively speaking, «photographical negative» of gratitude to an author whom I consider a true professor.

II. Law's Goodness: Two General Premises

Before embarking upon the survey of the levels of the overlap between the concept of law and the concept of good in Finnis's theory, two general premises are in order. They will help us in grasping the general framework within which Finnis elaborates the various aspects of what I here refer to as «law's goodness». The first premise serves as an introduction to Finnis's general understanding that law is substantively connected to the realm of the good. The second premise situates this general understanding of law's goodness in the broader context of, in Finnis's words, law's ontological «life».

II.1. *First Premise: The «More than Purely Formal» Goodness of Law*

Already from the first chapters of NLNR it is clear that the points of essential continuity between the good and the law stand at the heart of Finnis's project under the conceptual umbrella of *reasons for action*. Goods and reasons for action are practically synonymous in Finnis's theory. He will say that, both in the moral and in the juridical sense, «the central case of reasons is not what are commonly accepted as reasons, but reasons good *as reasons*»[7]. In other words:

> «Some reasons are reasons for judging it to be true (or certainly not true) that some state of affairs that one might help bring about by doing something would be beneficial, worth bringing about. Call these reasons practical [...] reasons for action»[8].

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7 Finnis, J., «A Grand Tour of Legal Theory», *Philosophy of Law*..., *op. cit.*, p. 126.
8 Finnis, J., «Introduction», *Reason in Action*..., *op. cit.*, p. 1.

Practical goodness is thus, in Finnis's system, defined[9] in terms of «responsiveness to reasons (intelligible goods)»[10] which «give ground for intelligent action motivated ultimately by a basic human good (more precisely, by the intelligible benefit promised by the instantiation of a basic good)»[11].

Now, just as the basic human goods are *goods* essentially understood as expressing our practical thinking, and thus representing *good reasons for action* in the moral domain[12], so the positive laws represent reasons for action in the juridical domain. In NLNR, Finnis says that:

> «In any event, authority is useless for the common good unless the stipulations of those in authority [...] are treated as *exclusionary reasons*, i.e. as *sufficient reason for acting* notwithstanding that subjects would not themselves have made the same stipulation and indeed consider the actual stipulation to be in some respect(s) unreasonable, not fully appropriate for the common good»[13].
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> «The law provides the citizen, like the judge, with strongly exclusionary *moral* reasons for acting or abstaining from actions»[14].

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9 «The concepts of reason for action, intelligible end, intrinsic point, and understood good implicitly define one another (rather like the concepts of circle, radius, and circumference)». FINNIS, J., *Aquinas: Moral, Political, and Legal Theory*, Oxford University Press, Oxford, 1998, p. 60.

10 FINNIS, J., «On Hart's Ways: Law as Reason and as Fact», *Philosophy of Law*..., *op. cit.*, p. 239.

11 FINNIS, J., «Legal Reasoning as Practical Reason», *op. cit.*, p. 213. Without entering into much detail of Finnis's account of goods in the moral domain, for our present purposes suffice it to say that basic human goods are those instantiations of human nature that are idementified by the human practical reason as constitutive of the fundamental aspects of human flourishing and, therefore, as the ultimate reasons for action. See FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 59-103, 419, 440; *idem*, «Legal Reasoning as Practical Reason», *op. cit.*, p. 214; *idem*, «Aquinas and Natural Law Jurisprudence», Duke, G., and George, R. P. (eds.), *The Cambridge Companion to Natural Law Jurisprudence*, Cambridge University Press, Cambridge, 2017, pp. 18-22. These goods are, in his view, «picked out» by the basic principles of practical reasonableness, which thereby «direct» persons towards the goods. See FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 419, 440, 442. The complex structural unity of basic human goods picked out as reasons for action by the basic principles of practical reasonableness constitutes the *first principles of natural law*. *Vid.*, FINNIS, J., «'Natural Law'», *Reason in Action*..., *op. cit.*, p. 205. In the most complete, but still «open-ended» list, Finnis includes the following «basic *kinds* of intelligible human good»: «life and health, marital/procreative union, knowledge, friendly association, artistic accomplishment, friendship with the divine transcendent source of all these goods, and practical reasonableness in actualizing all these intrinsic, self-evidement forms of human good, these aspects or elements of wellbeing». See FINNIS, J., «Aquinas and Natural Law Jurisprudence», *op. cit.*, pp. 18-19.

12 *Vid.*, FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 59, 64, 77-78, 443, 451.

13 *Vid.*, *ibid*, pp. 351-352. Emphasis added.

14 *Ibid.*, p. 319. Emphasis added.

Are the reasons for action arising from the basic human moral goods and reasons for juridical action generated at the level of juridical norms somehow essentially connected? Do they, at least at these points of connection, pertain to the same group of reasons for action, i.e. to the same domain of goodness? Or, in Finnis's own words, «what sort of good *reasons* are there for thinking that laws or other social norms can and sometimes do give *good reasons for acting*»[15]? Before we analyse in more detail his account of law's goodness across various theoretical levels in the following sections of the paper, we must already now emphasize, on a general level, that Finnis gives an affirmative answer to the above questions. Laws are truly reasons for action insofar as they are somehow, proximately or remotely, linked to issues pertaining to the domain of substantive morality and basic human goods, i.e. insofar as they are substantively *good* reasons for action. Even though this simple argument is underlying the entire line of analysis in NLNR, it seems that Finnis found ways to make it explicit in its summary form only in the aftermath of NLNR:

> «Making, acknowledging, and complying with law involves acts of rational judgment. The reasonableness and justification of these acts cannot be assessed without premises about true human goods»[16].
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> «Those goods [that are the objects of action which actualize human capacities thereby revealing human nature] are the reasons we have for action, and nothing in [...] legal theory is well understood save by attending to those goods with full attention to their intrinsic worth, the ways they fulfil and perfect human persons, and their directiveness or normativity for all thinking about what is to be done»[17].
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> «The [primary] reality of laws and legal institutions [...] is as reasons for action which are good because intelligibly related to (albeit usually not deducible from!) the basic reasons for action, the basic goods, the intrinsic values at stake in human action, ant to their integral unfolding in moral standards»[18].

Thus, as Johanna Fröhlich rightfully notes while commenting on Finnis's account of law as reason for action, Finnis develops a «unified model of reasons for action», meaning that there exists a field of overlap – as she says,

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15 FINNIS, J., «Positivism and 'Authority'», *Philosophy of Law*..., *op. cit.*, p. 77.
16 FINNIS, J., «Introduction», *Reason in Action*..., *op. cit.*, p. 1.
17 FINNIS, J., «A Grand Tour of Legal Theory», *op. cit.*, p. 98.
18 *Ibid.*, p. 123.

«only one type of reasons» – between law's normative and authoritative reasons for action and its meta-juridical substantive goodness[19]. This means that Finnis considers law's goodness to denote more than simply intra-systemic, formal goodness that would essentially consist in the quality of constituting appropriate means to an end defined as «good» entirely within the realm of the legal system, and sealed off from all other possible conceptions of the good. His account of law's goodness thus certainly transcends Hans Kelsen's conception of law's goodness which is basically reducible to the standard of merely following the authoritative rules intra-systemically stipulated according to the prescribed legislative (or otherwise normatively generating) procedures[20]. On the other hand, Finnis's account of laws as «exclusionary moral»[21] reasons for action is far more inclusive with regard to substantive moral goods than Joseph Raz's thesis on laws as reasons for action whose exclusionary intra-systemic nature generally trumps appeals to extra-legal substantive moral goods on all occasions where the relevance of these goods might be applicable[22].

When the content of «goodness» predicable of law is monopolized by a positivist account of law's intra-systemic authority, the issue of the overlap between the «law» and the «good» risks collapsing into paradoxical and grotesque scenarios where laws become successfully deployed for, as Finnis says, «more or less amoral objectives or immoral purposes»[23]. Finnis has elsewhere quoted Thomas Aquinas's argument on this grotesque paradox: when intrinsic «goodness» is mistaken with intra-systemic «efficiency» the only juridi-

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19 Fröhlich, J., «Law as Reason for Action», Sellers; M., and Kirste, S. (eds.), *Encyclopedia of the Philosophy of Law and Social Philosophy*, Springer, Dordrecht, https://doi.org/10.1007/978-94-007-6730-0_215-1, 2018 (April 23, 2020).

20 «The concept of law [is not] outsideme the concept of the good. For the concept of the 'good' cannot be defined otherwise than as that which ought to be: that which conforms to a social norm; and if law is defined as norm, then this implies that what is lawful is 'good'». Kelsen, H., *Pure Theory of Law*, Trans. M. Knight, University of California Press, Berkeley, Los Angeles, 1967, p. 66.

21 Finnis, J., *Natural Law and Natural Rights*, *op. cit.*, p. 319.

22 *Vid*., Raz, J., *Practical Reason and Norms*, Oxford University Press, Oxford, 1999, pp. 36-84, 182-194; *idem*, *The Authority of Law: Essays on Law and Morality*, Oxford University Press, Oxford, 2009, pp. 28-33; *idem*, *Between Authority and Interpretation: On the Theory of Law and Practical Reason*, Oxford University Press, Oxford, 2009, pp. 143-147. For Finnis's partial and critical reception of Raz's argument on laws as exclusionary moral reasons for action, *vid*., Finnis, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 233-234, 246, 255, 319, 351-352.

23 Finnis, J., «The Nature of Law», Tasioulas, J. (ed.), *The Cambridge Companion to the Philosophy of Law*, Cambridge University Press, Cambridge, 2020, pp. 54-55.

cal-evaluative standard of reference regarding tyrannical and iniquitous laws is their efficiency-based «goodness», *i.e.*, goodness envisioned «not simply [*simpliciter*], but with respect [*secundum quid*] to that particular government»[24]. While Aquinas spoke of «good robbers»[25] when providing an example of the purely formal, efficient means-to-an-end conception of «goodness» compatible with intrinsically immoral actions and reasons for such action, Finnis has frequently used the example of «good Nazis»[26] or «the justice of quasi-communist notions of a borderless humanity»[27], for the same purposes.

In sum, if the central question of a natural law theory of law is «how and why can law and its positing in legislation, judicial decisions, and customs give its subjects sound reasons for acting in accordance with it»[28], each version of Finnis's answer instantiates an appeal to an aspect of law's goodness ultimately rooted in basic reasons for action, *i.e.*, basic human goods:

> «The theory or philosophy of law, then, is best done by tracing the human needs to which law – legal system and the rule of law – is a uniquely appropriate kind of response. These needs constitute the basic reasons for action which are available to make law a set of reasons for action»[29].
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> «To inform its understanding of the goods common to all human persons [...] the philosophy of law (and of laws) draws directly from ethics. That understanding takes the form of practical reason's very first principles, directing us to all the basic human goods»[30].

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24 *S.Th.*, I-II, q. 92, a. 1, ad 4. For the English translation of the texts from Aquinas's *Summa Theologiae*, I will be using AQUINAS, T., *Summa Theologiae: First Complete American Edition in Three Volumes*, Trans. Fathers of the English Dominican Province, Benziger Brothers, New York, 1947-1948. For Finnis's treatment of this Aquinas's passage, see FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 367-368; *idem*, «Aquinas and Natural Law Jurisprudence», *op. cit.*, p. 48.

25 *S.Th.*, I-II, q. 92, a. 1.

26 FINNIS, J., «Aquinas and Natural Law Jurisprudence», *op. cit.*, p. 48. See also his claim that the central case of a legal system is certainly not that of «radically corrupted Potemkin systems such as Hitler's or Stalin's». FINNIS, J., «Response», *Villanova Law Review*, 57 (2012), p. 931. For similar comparisons, see also FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 11.

27 FINNIS, J., «What is the Philosophy of Law?», *The American Journal of Jurisprudence*, vol. 59, 2014, p. 142.

28 FINNIS, J., «Natural Law Theories», *The Stanford Encyclopedia of Philosophy*, Zalta, E.N. (ed.), https://plato.stanford.edu/archives/win2016/entries/natural-law-theories/, 2016 (April 24, 2020), p. 1.

29 FINNIS, J., «Law as Fact and as Reason for Action: A Response to Robert Alexy on Law's 'Ideal Dimension'», *The American Journal of Jurisprudence*, vol. 59, 2014, p. 93.

30 FINNIS, J., «What is the Philosophy of Law?», *op. cit.*, p. 135.

II.2. *Second Premise: The Double Life of Law*

Providing good juridical reasons for action constitutes only one of the law's two «lives». The ontology of law, in Finnis's understanding, includes likewise the vector that, although inherently related to aspects of its goodness, is ultimately observable as a relatively autonomous domain, namely, the life of law historically manifested as a *social fact* promulgated in the form of the – constitutional, legislative, adjudicative, customary – *source* of juridical obligation. In short, it is the life of law as a source-based social fact.

Finnis's awareness of law's twofold ontology – including the vector of *goodness* and the vector of *source-based social fact* – is documented already in NLNR. At this stage of his work, his primary goal was to adequately establish the vector of law's goodness, since the reference to law's life as exclusively a social fact – the so-called *source thesis* – was practically the default position, at least in legal academia's positivist department[31]. Thus, in NLNR he states that a distinctive feature of legal order is:

> «that legal thinking (i.e. the law) brings what precision and predictability it can into the order of human interactions by a special technique: the treating of (usually datable) past acts (whether of enactment, adjudication, or any of the multitude of exercises of public and private 'powers') as giving *now*, sufficient and exclusionary reason for acting in a way *then* 'provided for'»[32].

In order to emphasize, however, how the «reason for acting» from the above quote actually gives rise to a discrete life of law, though not separate from its social-factual source-based – both historical and forward-looking – existence, in the Postscript to NLNR he will say that:

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31 For Finnis's assessment of the past and present status of legal positivism in the academia, and for his argument that the central claims of legal positivism are actually a «johnny-come-lately» position in legal philosophy, see FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 418-419; FINNIS, J., «Introduction», *Philosophy of Law...*, *op. cit.*, p. 2; FINNIS, J., «Law as Fact and as Reason for Action...», *op. cit.*, p. 97. For arguably the clearest positivist summary of the central claim of the *source thesis* – «A law is source-based if its existence and content can be idementified by reference to social facts alone, without resort to any evaluative argument» – *vid.*, RAZ, J., *Ethics in the Public Domain: Essays in the Morality of Law and Politics*, Clarendon Press, Oxford, 1994, p. 211. *Vid.*, also *idem*, *The Authority of Law...*, *op. cit.*, pp. 37-52.

32 FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 269.

> «the idea that 'all law is identified by reference to social facts [of legislation, adjudication, etc.] alone' is unsustainable [...]. Juristic thought about sources and validity conditions cannot reasonably proceed (and does not) without reference to a wide range of 'evaluative arguments'»[33].

In the years after NLNR, Finnis will refer to this composite state of affairs relative to law's ontology as the «double» or «dual» life of law[34]. More than a simple «metaphor»[35], the claim that law has a double life is a claim regarding law's *ontological status*[36]. This status is made up of (1) *social facts* representing material, historical, and formally still valid sources of juridical obligation, and (2) the *ongoing process of evaluation* that these sources have constituted sufficiently *good reasons* for juridical action *on the relevant occasions in the past*, and still do *today*.

Finnis's argument cannot be highlighted enough: ontologically speaking, laws are not only source-based social-factual artifacts; law's practical viewpoint, together with its corresponding consecutive levels of law's goodness, is an essential part of law's ontology[37]. To disregard any of the two «lives» is to misunderstand the ontology of that entity that we refer to as law. On the other hand, it is possible, according to Finnis, to approach the concept of law from the standpoint of each of its «lives» or ontological aspects – i.e. from its source-based factuality or from the relevant levels, taken together, of its goodness – without disregarding the other[38]. In his view, «one can switch

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33 FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 472.

34 FINNIS, J., «A Grand Tour of Legal Theory», *op. cit.*, pp. 101-102, 107; *idem*, «Adjudication and Legal Change», *Philosophy of Law*..., *op. cit.*, pp. 397, 402; *idem*, «Reflections and Responses», in Keon, J., and George, R.P. (eds.), *Reason, Morality and Law: The Philosophy of John Finnis*, Oxford University Press, Oxford, 2013, p. 547; *idem*, «Law as Fact and as Reason for Action...», *op. cit.*, pp. 95-96; *idem*, «Aquinas and Natural Law Jurisprudence», *op. cit.*, pp. 47-48; *idem*, «Natural Law Theories», *op. cit.*, Introduction.

35 FINNIS, J., «Adjudication and Legal Change», *op. cit.*, p. 402; *idem*, «Law as Fact and as Reason for Action...», *op. cit.*, p. 96.

36 FINNIS, J., «Reflections and Responses», *op. cit.*, pp. 519, 556.

37 «Though human law is artefact and artifice, and not a conclusion from moral premises, both its positing and the recognition of its positivity (by judges, professionals, citizens, and thence by descriptive and critical scholars) cannot be understood without reference to the moral principles that ground and confirm its authority or challenge its pretention». FINNIS, J., «The Truth in Legal Positivism», *Philosophy of Law*..., *op. cit.*, p. 186.

38 «Natural law theory accepts that law can be considered and spoken of *both* as a sheer social fact of power and practice, *and* as a set of reasons for action that can be and often are sound as reasons and therefore normative for reasonable people addressed by them». FINNIS, J., «Natural

between» both ontological aspects of the law in «thinking and talking about [law], and everyone regularly does»[39]. Keeping both aspects, both «lives», in focus[40] when conceptualizing law on all levels of juridical discourse has constituted Finnis's persistent effort throughout his academic career and, in my opinion, he cannot be given enough credit for this effort. The constant tension between descriptive and normative-evaluative standpoints is the only adequate way to tackle with all the relevant issues pertaining to law's twofold ontology. Finnis seems to suggest that the internal dynamics of this tension has a two-way reflexive character; law's being a good reason for action is – at least partially, but necessarily – founded upon «the fact of its positing»[41], while the material source of juridical obligation owes its factual existence to being «envisaged as a reason by a law-maker who has the capacity to make it (by enactment or binding precedent) become a reason for action for its subjects»[42]. The two «lives» of law are inseparable, or, better yet, constitute two aspects of law's single «life»[43]. Together, they «make law what it is»[44].

Law Theories», *op. cit.*, Introduction. «Law's existence, force, and effect – its life – can always thus be understood as sheer fact (historical or predictable) or alternatively as directive standard». FINNIS, J., «Adjudication and Legal Change», *op. cit.*, p. 397.

39 FINNIS, J., «Adjudication and Legal Change», *op. cit.*, p. 402.

40 See, for example, the following Finnis's argument, constantly switching gears between the two aspects: «Considered precisely as genuine reasons for action, positive laws are social facts which count as reasons – as positive law – just insofar as morality makes their social sources and their social-fact content count. [...] But what makes a reason a good reason for action can, in the last analysis, never be a fact, such as fact about what [...] is in fact, reasonably or unreasonably, counted as law in particular communities and sub-communities». FINNIS, J., «A Grand Tour of Legal Theory», *op. cit.*, pp. 106-107. «There is thus a movement to and fro between, on the one hand, assessments of human goods and of its practical requirements, and on the other hand, explanatory descriptions». FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 17. «Does it matter where you start? No. You can start with the social facts about what is called law [...] or you can start as I do in *NLNR* [...], go directly to the needs to which law is the generically most satisfactory kind of response, and trace out that complex of ends and means». FINNIS, J., «Reflections and Responses», *op. cit.*, p. 551.

41 FINNIS, J., «Law as Fact and as Reason for Action...», *op. cit.*, p. 95.

42 *Ibid*., p. 95.

43 «It is only in recent years that I have suggested that the purposes of descriptive theory can and should all be pursued, not outside and parallel with critically evaluative-justificatory theory, but instead *as an element within the latter*. [...] Practical reasonings, and therefore [...] legal theory, require extensive empirical information, selected and processed *so as to be of service in deliberating about what to do* as an individual, a family, an economy, political community and legal system...». FINNIS, J., «Reflections and Responses», *op. cit.*, p. 537. Emphasis added.

44 «What makes law what it is? Social facts. (They are its 'material' and 'efficient' causes.) Unless there is factual acceptance of actual acts of legislation and adjudication, law cannot possibly achieve its normative point or create legal or moral obligation. What makes social facts so utterly central to law? Human needs, vulnerabilities, scarcities, and ways of flourishing or losing out». *Ibid*., p. 552.

III. The Three Levels of Law's Goodness

Having established that Finnis's account of the nature of law generally refers to an ontological overlap with the domain of the substantive good, it is now time to explore the various levels of this overlap and verify *how exactly* (in what *ways*), in Finnis's view, law may be considered to be *good*. This enterprise reaches the deepest foundations of Finnis's legal philosophy, and each level of law's goodness represents a *sui generis* answer to questions regarding justification[45] and limits[46] of law, i.e. a line that delimits laws as good reasons for action from *less than good* or *downright bad* reasons.

III.1. *First Level: The Practical Viewpoint*

As already implied by the general overview of the schema of the law's «double life», Finnis has consistently maintained – throughout his texts and at least since that famous first chapter of his NLNR, entitled «Evaluation and the Description of Law» – that the ontology of law is not enclosed only within the *descriptive* realm of its being a factual source of juridical obligation and of the correlative conditions for the validity of such a source. To fully understand the dynamics and the products of acts such as legislation or adjudication, as

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45 «The reasonableness and *justification* of these acts [of rational judgement relative to making, acknowledging, and complying with law] cannot be assessed without premises about true human goods». Finnis, J., «Introduction», *Philosophy of Law*..., *op. cit.*, p. 1. Emphasis added. «One of the central enterprises of legal theory [is] the explanation and *justification*, in principle, of the law's moral authority»; *idem*, «Law's Authority and Social Theory's Predicament», *Philosophy of Law*..., *op. cit.*, p. 46. Emphasis added.

46 «Everything sound in a philosophical account of positive law can be given in the course of an account of law's moral *necessity* and moral *limits*». Finnis, J., «Law as Fact and as Reason for Action...», *op. cit.*, p. 98. «Aquinas's position about [...] natural moral law [...] providemes human positive law with its *justification* and rational *limits*»; *idem*, «Aquinas and Natural Law Jurisprudence», *op. cit.*, p. 22. Emphasis added. The question of the *limits* of positive law appears as the central aim of NLNR, according to Finnis's (first?) outline of the book, dated 14 January 1968, produced for the purposes of informing the editor, H.L.A. Hart, and the publisher, Clarendon Law Series at the Oxford University Press, about the goals and the main topics of the book: «*Aim*: About 80,000 words, seeking to indicate, primarily to law students, various problems of the *limits* of ('positive') law and the way men have tried to answer these by linking law with (other) features of the nature of the world or society of men». The outline is published as an Appendix in Legarre, S., «HLA Hart and the Making of the New Natural Law Theory», *Jurisprudence*, vol. 8, 2017, pp. 97-98. Emphasis added.

well as the purposefulness or the function of law, and the ways in which citizens have considered to be, and still do *today*, under obligation of the law's content, in short, *to fully understand law's essence*, one cannot prescind from the perspective of law's *practical* (evaluative or normative) viewpoint.

Already from that opening chapter of NLNR, it is obvious that, for Finnis, there is something essential in the nature of law as a social institution that necessarily implies «the work of evaluation, of understanding what is really good for human persons, and what is really required by practical reasonableness»[47]. This «something», namely, *the practical viewpoint of the requirements of reasonableness*, forms part *of* the central case of the legal viewpoint (as opposed to a peripheral case)[48], or, as Finnis elsewhere notes, *of* the concept[49] of law and *of* its «ontological basis or substance»[50]. As such, «it should be used as the standard of reference by the theorist describing the feature of legal order»[51]. The law's practical standpoint, in Finnis's assessment, includes the commitment to «decide what the requirements of practical reasonableness *really are*»[52], and this commitment extends itself to all juridically relevant aspects of human affairs[53].

The question that arises on this most foundational level of the overlap between the law and the good is whether the aspect of the practical viewpoint in law's ontology (its nature and concept) already somehow constitutes law's

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47 FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 3.

48 *Ibid.*, pp. 9-11, 14-15.

49 «A jurisprudence which aspires to be more than the lexicography of a particular culture cannot solve its theoretical problems of *definition* or *concept-formation* unless it draws upon at least some of the considerations of values and principles of practical reasonableness which are the subject-matter of 'ethics' (or 'political philosophy')». *Ibid.*, p. 358. Emphasis added.

50 FINNIS, J., «Reflections and Responses», *op. cit.*, pp. 519, 556.

51 FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 15.

52 *Ibid.*, p. 16. Finnis's argument does not stop there: «In relation to law, the most important things for the theorist to know and describe are the things which, in the judgement of the theorist, make it important from a *practical* viewpoint to have law – the things which it is, therefore, to 'see to' when ordering human affairs».

53 For Finnis's claim that it was really H.L.A. Hart who has opened up the way for the understanding of the essence of law not only from the social-factual, but also from a practical standpoint of reasons for juridical action (Hart's emphasis on persons' «internal point of view» regarding law), as well as for Finnis's critique of Hart's moral skepticism and the latter's consequent reluctance to firmly establish the content of the requirements of the practical reasonableness, see FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 12-14; *idem*, «A Grand Tour of Legal Theory», *op. cit.*, pp. 119-120; *idem*, «On Hart's Ways: Law as Reason and as Fact», *op. cit.*, pp. 230-256.

goodness even prior to the exact identification of the basic human goods, the requirements of practical reasonableness, and their concrete connections to legal matters. Does the concept of law somehow overlap with the good already at the level of its inherently practical viewpoint? Does the fact that there is something in the nature of law that necessarily, but at this level only generally, gestures towards an evaluative orderedness in human affairs – i.e. law's inevitable aptness to, as Finnis says, «change the world»[54] of those same human affairs according to some axiological standard – already constitute a significant aspect of its goodness?

One can certainly find vestiges of a positive answer to the above questions in Finnis's texts. It is certain that, as Finnis notes in connection to a congenial topic, that this general practical orientation «must, to make sense, refer to some good or goods (human need or needs)»[55], that is «to reason [for action] only if it is a reason which is *good* precisely as a reason»[56]. The practical viewpoint that is *already in principle* oriented towards the search not just for *any* set of reasons for action, but for all the *objectively good* reasons for action that may soundly be established, such as the viewpoint advocated by Finnis, is one that, as he himself says, «undertakes a critique of practical viewpoints, in order to distinguish the practically unreasonable from practically reasonable, and thus to differentiate the really important from that which is unimportant or is important only by its opposition to or unreasonable exploitation of the really important»[57].

Now, practical theorizing about law that, as Finnis says, «proceeds by looking not for conceptual necessities but rather for human needs and appropriate responses» already seems to represent, in my opinion, a principled openness to objectively existing forms of human good. The practical viewpoint – at least to the extent that it represents a general and principled openness to the identification and attainment of juridically relevant objective human goods – already represents an introductory level, an antechamber so to speak, of law's goodness. The application itself of this viewpoint in legal

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54 FINNIS, J., «Aquinas and Natural Law Jurisprudence», *op. cit.*, p. 45. See also Finnis's claim that «the point of law is to change things for the better in the community whose law it is». FINNIS, J., «Freedom, Benefit and Understanding: Reflections on Laurence Claus's Critique of Authority», *San Diego Law Review*, vol. 51, 2014, p. 907.

55 FINNIS, J., «Introduction», *Philosophy of Law*..., *op. cit.*, p. 4.

56 FINNIS, J., «A Grand Tour of Legal Theory», *op. cit.*, p. 107.

57 FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 18.

reasoning certainly participates to a degree in the goodness of one of Finnis's basic goods, namely the good of practical reasonableness,[58] in the form of legislative practical reasonableness[59].

III.2. *Second Level: Law's Systemic Moral Value*

The second level of law's goodness consists in Finnis's cluster of arguments relative to what is usually referred to in legal philosophy as *systemic moral value* of law as an institution[60], in response to questions such as «why have law, as a system, at all?».

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58 FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 88-89, 100-101; *idem*, «Grounding Human Rights in Natural Law», *The American Journal of Jurisprudence*, vol, 60, 2015, pp. 206-208; *idem*, «Aquinas and Natural Law Jurisprudence», *op. cit.*, pp. 18-21.

59 FINNIS, J., *Aquinas: Moral, Political, and Legal Theory*, *op. cit.*, pp. 236-237. The legal-philosophical work of Verónica Rodríguez-Blanco represents an important development in the understanding of precisely this first level of what I here refer to as law's goodness. Without entering into the analysis of the goodness of law from the standpoint of traced-out concrete aspects of objective human good, Rodríguez-Blanco explores the order of juridical reasons for action at the level of their being, already in principle, «good-making characteristics» that «ground the rules, decisions and legal directives». RODRÍGUEZ-BLANCO, V., «Practical Reason in the Context of Law», Duke, G., and George, R.P. (eds.), *The Cambridge Companion to Natural Law Jurisprudence*, *op. cit.*, pp. 176, 180, 181, 184-185. In a rather complex but very illuminative argument, Rodríguez-Blanco observes the law from the perspective of what she calls its specific «*logos*», namely, the nature of law understood not as fully concluded social-factual product or artifact, but from the standpoint of diachronically actualisable orderedness of reasons that instantiate practical «good-making characteristics» dynamically interlocked across time in the minds and actions of legislators, judges and law-abing citizens. «Our argumentative strategy has been to bring attention to the dynamic structure of practical reason and to show that the underlying structure of complex artifacts, including legal systems, is the structure of practical reason. Law-makers create law as an artifact invoking good-making characteristics and making it possible for citizens to understand the reasons of the law as good-making characteristics. We have focused on the idea that law is an activity that unfolds within the structure of reasons as values and principles». RODRÍGUEZ-BLANCO, V., «Processes and Artifacts: The Principles are in the Author Herself», in Burazin, L., Himma, K.E., and Roversi, C. (eds.), *Law as an Artifact*, Oxford University Press, Oxford, 2018, p. 212. For more details on Rodríguez-Blanco's above-described position in connection to her claim that «legal rules and good things, events or states of affairs are not absolutely distinct from one another», *vid*., RODRÍGUEZ-BLANCO, V., *Law and Authority under the Guise of the Good*, Hart Publishing, Oxford, 2014 (the quote is from p. 213.).

60 Even a contemporary legal positivist *par excellence* like Joseph Raz is prepared to concede that «there is a moral property, being morally valuable, which all law has by its very nature», and that this property concerns some specific «moral task» that is «central to the law, essential to its being the type of institution it is». This *systemic* moral task, according to Raz, is «to secure

In a way that is in harmony with the general direction of his natural-law position, Finnis grounds the systemic moral value of law in the framework of responsiveness to human needs. Rather than constituting a purely conventional or artifactual institutional response to certain human expectations for purposeful techniques, in the Finnisian perspective, law as an institution or as a concept corresponds to a determinate set of human needs[61]. As Finnis notes in NLNR, the concern of the tradition of natural law theorizing is «to show that the act of 'positing' law (whether judicially or legislatively or otherwise) is an act which can and should be guided by 'moral' principles and rules; that those moral norms are a matter of objective reasonableness, not of whim, convention, or mere 'decision'; and that those same moral norms *justify* [...] *the very institution of positive law*»[62]. Elsewhere, he has argued that good legal reasons for action include reasons *for having law at all*[63].

In sum, and without ambition to exhaustively present the whole of Finnis's thought on the subject, his overall position regarding law's *systemic* goodness is mirrored in his claims that the *moral*[64] point of having law as an institution corresponds to human needs, such as those for justice[65], peace[66], and coordination in view of the common good[67]:

> «In the domain of law as a [...] morally significant human enterprise, the need that grounds and informs normativity is the complex need for peace, justice (including compensatory, retributive and corrective justice) and the

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a situation whereby moral goals which [...] would be unlikely to be achieved without it [...] are realized», like authority-based issues of social coordination, including the peaceful resolutions of conflicts. RAZ, J., *Between Authority and Interpretation*, *op. cit.*, pp. 175-181.

61 «What best explains the features law has [...] is its [...] character as a response to human communities' morally significant need for the kind of access to justice that *only law systematically proves*». FINNIS, J., «Aquinas and Natural Law Jurisprudence», *op. cit.*, p. 50. Emphasis added.

62 FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 290. Emphasis added.

63 FINNIS, J., «Positivism and 'Authority'», *op. cit.*, p. 81; *idem*, «Aquinas and Natural Law Jurisprudence», *op. cit.*, p. 51.

64 «No understanding and no philosophical account of *the nature of law as a distinct kind of social institution* is satisfactory unless, in it, the idea of *both rulers and ruled* being governed by law is understood and presented as a *moral* idea». FINNIS, J., «Aquinas and Natural Law Jurisprudence», *op. cit.*, p. 45. Emphasis added.

65 FINNIS, J., «Describing Law Normatively», *Philosophy of Law...*, *op. cit.*, pp. 24-28; *idem*, «Reflections and Responses», *op. cit.*, p. 552.

66 FINNIS, J., «Aquinas and Natural Law Jurisprudence», *op. cit.*, pp. 39-40.

67 FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 231-233, 276; *idem*, *Aquinas: Moral, Political, and Legal Theory*, *op. cit.*, pp. 255-258; *idem*, «Law as Coordination», *Philosophy of Law...*, *op. cit.*, pp. 69-73; *idem*, «Aquinas and Natural Law Jurisprudence», *op. cit.*, pp. 27-28;

> avoidance of anarchy and tyranny. That complex of needs can be traced to its roots in the needs that are identified as normatively significant in the first principles of practical reason directing us to the basic human goods».[68]

III.3. *Third Level: Basic Human Goods and the Law*

But what is the *quality* of the connection between law and basic human goods, i.e. between juridical reasons for action and basic practically reasonable reasons for action? In what sense do basic human goods, such as human life, enter within the necessary conceptual range of law as an institution, at least with regard to the aspect of the practical viewpoint inherent to law's ontology?

In NLNR, Finnis argued that «true, some parts of the legal system commonly do, and certainly *should*, consist of rules and principles closely corresponding to requirements of practical reason which themselves are *conclusions* directly from the combination of a particular basic value (e.g. life) with one or more of [...] basic 'methodological' requirements of practical reasonableness»[69]. From the social-factual standpoint within law's double life, it is clear that, since law is a specific source-based artifactual and institutional social technique, basic human goods do not *automatically* replicate themselves to form part of the positive legal norms. As Finnis says, «the process of receiving even such straightforward moral precepts into the legal system» involves specific and complex *causal* intervention by those who are responsible the act of positing law as a source-based *artifact* in the political community[70].

On the other hand, since law's ontology, according to Finnis, essentially includes also the aspect of the *practical viewpoint* and its consecutive levels of goodness, it is clear that the word «should» in the above quote from NLNR (namely, that parts of the legal system «should» correspond to basic human goods) does not have a purely exhortative meaning. Quite the contrary, Finnis argues that «the law's institutions – to the extent that they are reasonable [...] remain dependent», and I would add remain *ontologically* dependent with

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68 FINNIS, J., «Aquinas and Natural Law Jurisprudence», *op. cit.*, p. 41.

69 FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 282. Emphasis added.

70 *Ibid.*, pp. 281-284: «Some positive laws are also norms of the natural moral law – that is, are requirements of practical reasonableness. But to say this is not to detract in the least from the positivity of those laws – that is, from the fact (where it is the fact) that they have been posited humanly, by human will, and can be studied as positive». FINNIS, J., «The Truth in Legal Positivism», *op. cit.*, p. 183.

regard to the levels of goodness arising from the practical viewpoint inherent to law's life, «upon foundational moral principles which pick out the requirements of a reasonableness attentive to the basic human goods»[71].

From this practical viewpoint of law's «life», both the principles closely related to basic human goods and these goods themselves may be spoken of «as belonging to law by a kind of 'conceptual' necessity»[72]. For instance, the moral principle of acting in ways that forward the fulfilment of all human beings and their communities regarding all basic human goods and the correlative principle of not destroying an instance of a basic human good for the sake of good, represent, according to Finnis, «the backbone of decent legal systems»[73]. With regard to their legal protection, the basic human goods «are the 'deep inside' of all that we can and should 'say to ourselves' to warrant our decisions as law-makers, law-appliers (executive or judicial), and citizens»[74], and abstaining from acts conducive to the contraries of basic human goods (i.e. evils in themselves, «*mala in se*») is «required by the very same practical reason that the law-maker judged inherently sound and sought to refine and enforce» through «either penalties or other negative consequences»[75].

In sum, we could say, together with Finnis, that, from the viewpoint of law's ontological connectedness to good reasons for action, «that part of our positive law that is, as it were, adopted from, or carried over from, or quasi-read off, the natural moral law», such as the part proximately relative to basic human goods, «*is natural law*»[76]. Elsewhere he has said that this part of positive law is «a direct enforcement of certain basic moral principles and rules»[77]. However, as Finnis adds, we should not forget that «it is at the same time positive law»[78],

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71 Finnis, J., «A Grand Tour of Legal Theory», *op. cit.*, p. 118.

72 Finnis, J., «Natural Law Theories», *op. cit.*, 1.4.

73 *Ibid*., p. 121. *Vid*., also, *idem*, «Aquinas and Natural Law Jurisprudence», *op. cit.*, p. 43.

74 Finnis, J., «On Hart's Ways: Law as Reason and as Fact», *op. cit.*, p. 253.

75 *Ibid*., p. 242.

76 Finnis, J., «Coexisting Normative Orders», *The American Journal of Jurisprudence*, vol. 57, 2012, p. 116.

77 Finnis, J., «How Persistent are Hart's 'Persistent Questions'?», in D'Almea, L.D., Edwards, J., and Dolcetti, A. (eds.), *Reading HLA Hart's The Concept of Law*, Hart Publishing, Oxford, 2013, p. 230.

78 Finnis, J., «Coexisting Normative Orders», *op. cit.*, p. 116. For the correlative «goodness» of *purely positive law* – namely, the part of positive law that is only remotely connected to basic human goods as a legislative *determinatio* in view of reasonable needs the juridical response to which is ultimately chosen between plural good options – see Finnis, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 284-289; *idem*, «Natural Law Theories», *op. cit.*, 1.5; *idem*, «Aquinas and Natural Law Jurisprudence», *op. cit.*, pp. 37-38.

from the standpoint of law's ontology referable to its source-based social-factual existence.

In Finnis's reading of Aquinas, the peculiar juridical status of the basic human goods as necessary evaluative standards for positive law, has a reflexive impact on the range of the domain covered by basic human goods, which is narrower[79] than the field that they cover in the moral domain. The range covered by *juridical* basic human goods is set according to their constitution as aspects of the *public good*: namely, according to the *interpersonal* (or *other-directed*) and *external* segment of actions regarding basic human goods that is relevant as a subset of the common good by being inherently relatable to issues of *justice* and *peace* in the political community[80].

The way that the paradigm of law's double life replicates itself on this third level of law's goodness is particularly illuminating with regard to some persistent legal-philosophical questions, like the question of the status of the necessary connection between law and substantive morality and the question of the status and validity of unjust laws.

Starting from the latter question, Finnis has spilled much ink on tackling its answer, from NLNR[81] to the multiple restatements of his position in subsequent writings[82], and, in my opinion, that ink has been put to best possible use. His answer, in a nutshell, is that we cannot adequately approach the question of the status of unjust laws without a prior understanding that law's ontology may enter the mode of its internal dichotomy marked by the simultaneous coexistence of unjust law's factual source-based validity, on the one hand, and its

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79 «The law of the state cannot rightly regulate the full range of choices required by practical reasonableness». FINNIS, J., *Aquinas: Moral, Political, and Legal Theory*, *op. cit.*, p. 225.

80 «As the public good, the elements of the specifically political common good are not all-round virtue but goods (and virtues) which are intrinsically interpersonal, other-directed (*ad alterum*), person to person (*hominum ad invicem*): justice and peace». *Ibid*., pp. 226-227. «Public good is a part or aspect of the all-inclusive common good. It is the part which provides an indispensable context and support for those parts or aspects of the common good which are private (especially individual and familial good). [...] The common good specific to the *civitas* as such – the public good – is not basic but, rather, instrumental to securing human goods which are basic». *Ibid*., pp. 237, 247. See also FINNIS, J., «Aquinas and Natural Law Jurisprudence», *op. cit*., p. 53; *idem*, «Coexisting Normative Orders», *op. cit.*, pp. 112-113.

81 FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 279-280, 351-368, 476.

82 FINNIS, J., «A Grand Tour of Legal Theory», *op. cit*., p. 103; *idem*, «Natural Law Theory: Its Past and Present», *The American Journal of Jurisprudence*, vol. 57, 2012, p. 95; *idem*, «Reflections and Responses», *op. cit.*, p. 553; *idem*, «Law as Fact and as Reason for Action...», *op. cit.*, pp. 100-101, 107-108; *idem*, «Aquinas and Natural Law Jurisprudence», *op. cit.*, pp. 41-42; «What is the Philosophy of Law?», *op. cit.*, p. 140; *idem*, «Natural Law Theories», *op. cit.*, 1.4.

injustice, and thus lack of its third-level goodness from the practical viewpoint, on the other. In other words, while the social-factual aspect of an unjust law may still reflect its technical intra-systemic validity, law's ontology from the practical viewpoint may at the same time definitely defeat the presumable and defeasible moral obligation to obey that law (in this sense, an unjust law is *no law at all*)[83].

A similar line of argument settles the question of the necessary connection between law and substantive morality. H.L.A. Hart gave form, perhaps paradigmatically so, to the positivist «no necessary connection» thesis: «there is no necessary connection between law and morals or law as it is and ought to be»[84]. If we take into consideration both lives of law, factual and practical, descriptive and evaluative (normative), then we can find the necessary points of connection between law and morality (broadly speaking) within the first (*practical viewpoint*[85]) and second (*systemic moral value*[86]) levels of Finnis's account of law's goodness. Laws are thus connected to the good through the inherently practical aspect of their ontology which generally gestures towards good reasons for action, as well as through their participation in moral goodness of law as an institution that responds to certain human needs, ultimately relatable to basic human goods. If these two levels of law's goodness collapse, we can say that the concept or the nature of law collapses with it.

The «necessary connection» question becomes more complicated and, indeed, stratified on the third level of law's goodness. In Finnis's understanding, we cannot consider law's third-level substantive goodness, more proximately related to basic human goods, to enter into the very concept of law to the degree that a law which is unjust would conceptually collapse as a source-

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83 On Finnis's reading of Aquinas's account of collateral moral obligations that should be taken into considemeration as a proviso to the principle of unjust law's lack of moral authority and consequent lack of moral obligation to be obeyed, see FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 361-362; *idem*, *Aquinas: Moral, Political, and Legal Theory*, *op. cit.*, p. 273; *idem*, «Aquinas and Natural Law Jurisprudence», *op. cit.*, pp. 41-42.

84 HART, H.L.A., «Positivism and the Separation of Law and Morals», *Essays in Jurisprudence and Philosophy*, Oxford University Press, Oxford, 1983, p. 57. «My main concern [...] was to defend the wisdom of insisting [...] on the distinction between law as it is and law as morally it ought to be, against various forms of the claim that there are conceptual necessary connections, not merely contingent ones, between law and morality». HART, H.L.A., «Introduction», *Essays in Jurisprudence and Philosophy*, *op. cit.*, p. 8.

85 FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 11-18; *idem*, «Introduction», *Philosophy of Law...*, *op. cit.*, p. 9; *idem*, «The Truth in Legal Positivism», *op. cit.*, p. 185.

86 FINNIS, J., «Introduction», *Philosophy of Law...*, *op. cit.*, p. 8; *idem*, «The Truth in Legal Positivism», *op. cit.*, p. 185.

based social fact within the complex and interrelated set of such facts that constitute a legal system. In addition, not all laws are immediately or proximately required to have such-and-such content in reference to the basic human goods, as witnessed by the existence of the above mentioned *purely positive laws*. From the opposite angle, unjust laws cannot validly claim to be necessarily substantively moral. In these senses, Finnis claims that we *cannot* speak of the *necessary*, I would add *third-level*, connection between law and morality[87].

But the practical or evaluative aspect of law's ontology does constitute a necessary connection between law and morality on the third level of law's goodness. Thus, the concept of the good enters into (i.e. constitutes a necessary connection with) the concept and nature of law, at the first and second levels of goodness, as well as within the practical-evaluative aspect of law's ontology at the third level. Finnis's account of law's goodness therefore renders the positivist «no necessary connection» thesis unintelligible in a number of ways. First, the aspects of law as it *conceptually* or *systematically* ought to be is, in fact, already included in the concept and nature of law on the first two levels of its goodness. Second, Finnis has himself, as we have already seen, acknowledged that, given his schema of law's bifurcated ontology, there is no necessary conceptual connection between law as it is (source-based social fact) and law as it ought to be (practical-evaluative viewpoint on law as a set of good reasons for action) on the third level.

This article started with a question regarding the overlap between the concepts of «law» and the «good». I believe that the part of my analysis relative to Finnis's three levels of law's goodness may now be concluded with his quote that, in a way, gathers all three levels:

> «As a matter of *fact*, there is no necessary connection between law and reasonableness, justice and morality; irrational and unjust laws abound, as natural law theory insists from earliest time until today. As a matter of *practical reason*, unreasonable (and therefore unjust and immoral) laws and legal systems are not what we are seeking to understand when we inquire into the reasons there are to make and maintain law and legal systems, and what features are essential if law and legal systems are to be acceptable – worthy of acceptance – and entitled to the obedience or conformity of reasonable people»[88].

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87 FINNIS, J., «Introduction», *Philosophy of Law...*, *op. cit.*, p. 8; *idem*, «A Grand Tour of Legal Theory», *op. cit.*, pp. 105, 112; *idem*, «The Truth in Legal Positivism», *op. cit.*, pp. 184-185.

88 FINNIS, J., «On Hart's Ways: Law as Reason and as Fact», *op. cit.*, p. 242.

IV. The Fourth Level of Law's Goodness: Juridical Good

The overview of Finnis's account of law's goodness shows that his predominant concern is to establish the elements of the good that are either inbuilt in or necessarily (or reasonably, from a practical viewpoint) oriented towards the modelling of the juridical domain. Across all three levels of law's goodness, Finnis's main concern is to explain how various aspects of the good «afford a rational basis for the activities of legislators, judges and citizens»[89], «what morality has to say about law»[90], and what exactly «positive laws add [...] to morality's inherent directives»[91].

On the other hand, his position regarding the second aspect of the overlap between the «law» and the «good», namely the question of how juridicity may be predicated of goodness, is mainly grounded in the premise that in order to enter into the juridical domain, the various aspects of the good (e.g. basic human goods, public goods of peace and justice) must be positivized. Even his argument on the juridicity of the good implicit in the claim that laws provide good juridical reasons for action presupposes that these reasons are posited as laws. Thus, even in their limited range tailor-made for the purposes of the political community's legal attainment of public goods, basic human goods as good reasons for action are conceived of as *pre-juridical*, or *a-juridical*, unless they are somehow positivized. Certainly, these goods (together with moral principles related to them) are «very important to the structuring of legal thought»[92]. But, even when envisioned from the perspective of their constitution as absolute human or natural rights, they are again understood essentially as *moral* rights, not juridical ones[93].

In this section I would like to explore the second aspect of the overlap between the law and the good, namely, the juridicity of various instances of the good. This aspect orbits the question of the existence of plural focal points of juridicity. Are there discrete juridical entities that do not receive their juridical character from positive law, and, if there are, what impact would their juridicity have on the levels of law's goodness? I argue that there is a focal point of

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89 Finnis, J., *Natural Law and Natural Rights*, *op. cit.*, p. 290.
90 Finnis, J., «A Grand Tour of Legal Theory», *op. cit.*, pp. 105-106.
91 *Ibid.*, p. 103.
92 Finnis, J., «Legal Reasoning as Practical Reason», *op. cit.*, p. 216.
93 Finnis, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 198-199, 223-226.

juridicity that is sufficiently distinct from – and in certain circumstances even causally and ontologically, in a relative or absolute way, autonomous from – positive law. I also argue that this focal point of juridicity is actually central for the constitution of the juridical domain for Thomas Aquinas.

This focal point of juridicity is referred to by Aquinas under the rubric of *ius*, which may be considered to bring about the issue of *juridical goods* that are not reducible to the concept of law. Now, I have to say immediately that I am *not* about to reintroduce the debate on the historical occurrences of rights-talk or of the interchangeable use of the terms «law» and «right», nor enter into doctrinal discussions on objective and subjective meanings of rights[94]. What I would like to do, instead, is to argue that Finnis's levels of law's goodness may be successfully upgraded if we broaden the perspective of the juridicity of aspects of the good in order to include the concept of *ius* as yielding, in a certain sense, something that may be called *juridical goods*. The upgrade is neither merely terminological, nor reducible to ultimately indifferent shifts in viewpoints. I will outline the way I read and interpret Aquinas's argument on this issue, and parallelly explore to what extent the aspects of this argument may be acceptable to Finnis.

Aquinas argues that there is a way to conceptualize the juridicity of aspects of the good through his understanding of the juridical domain (*ius*) as the object of the virtue of justice. There is a discrete aspect of goodness underlying his treatment of the whole «right-justice» cluster of arguments, namely, that of juridical goodness, but in order to adequately understand it we must first see how he defines *ius*, i.e. right, or more broadly, the juridical domain, and then how he contextualized *ius* in the broader schema of the dispositional and operative principle of justice. According to Aquinas, *ius* is *primarily* – hence, as the focal point of juridicity – defined as the «just *thing* itself» (*ipsa res iusta*), «the *just*» (*iustum*)[95].

Thus, at least on a first level of analysis, Aquinas identifies *ius* with the *things themselves* or *things as they are in themselves*, in the broadest possible sense

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94 For Finnis's contribution to these discussions, see FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 205-210, 465-466; *Aquinas: Moral, Political, and Legal Theory*, *op. cit.*, pp. 132-138; *idem*, «Aquinas on Ius and Hart on Rights», *The Review of Politics*, vol, 64, 2002, pp. 407-410; *idem*, «'Natural Law'», *op. cit.*, pp. 206-207, 211; *idem*, «Grounding Human Rights in Natural Law», *op. cit.*, pp. 199-225; *idem*, «On Moyn's *Christian Human Rights* (2015)», *King's Law Journal*, vol, 28, 2017, pp. 14-15.

95 *S.Th.*, II-II, q. 57, a. 1.

of the term, as material or immaterial, natural or artifactual entities[96]. He is quite clear in his presentation of this primary meaning of the concept of *ius*, and Finnis's reading of this passage is almost *sine glossa*: «the primary meaning [of *ius*] is 'the just thing itself' (and by 'thing', as the context makes clear, he means acts, objects, and states of affairs, considered as subject-matters of relationships of justice)»[97].

Now, what does Aquinas mean when he says that *ius* is the *just* thing itself or *the just*? Justice does, in fact, have an essential role in determining the goodness of *ius*, as we will see, but it is not envisioned by Aquinas as interdefinable with the concept of *ius* at the risk of collapsing into mere tautology (e.g. *ius* is that which is just to the extent that justice is that which gives to each his *ius*). According to Aquinas a *thing* is *just* when it denotes a specific «kind of equality»[98] between plural persons, and the kind of equality that is relevant for the constitution of a thing as right (*ius*) is that which has as its final result the adjusting of a thing to another «without taking into account the way in which it [i.e. this adjusting] is done»[99]. In sum, a thing that is constituted as *ius* (or right) is, *first*, susceptible to become the object of interpersonal or other-directed relationships; *second*, apt to be attributed, in the context of those relationships, as a *suum* according to its concrete measure, i.e. as «mine» or «ours» in distinction to «yours» or anyone else's, which is implied in the concept of «things that are made equal»; and *third*, external or outward, i.e. caught only in those of its aspects that are not exclusively related to intra-personal moral dispositions of persons. Some of these properties – other-directedness, outwardness – are covered, as we have seen, by Finnis's somewhat different argument on the objects of the positive-law domain determined by reference to *public* (as opposed to various instances of private) *goods*.

Having determined the qualities of the thing to-be-constituted as *ius*, we can now briefly present a Thomistic argument regarding this constitution. Aquinas adopts Ulpian's definition of justice from the Roman law tradition: the constant and perpetual will to render to each his *right*, *ius suum cuique*

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96 The term «thing» is not intended here as a conceptual tool for conferring any ontological status to somebody or something, thereby «reifying» or «objectivizing» them. To say, together with Aquinas, that right is essentially the *thing* itself, means to already outline the foundations «*in re*», in the reality itself, of the juridical domain.

97 Finnis, J., *Natural Law and Natural Rights*, *op. cit.*, p. 206.

98 *S.Th.*, II-II, q. 57, a. 1.

99 *Ibidem.*

tribuendi[100]. Before being able to give to each his right (*ius*), we must first determine what belongs to each person, i.e. which concrete things does a person have as his *ius*.

How can we do that? For example, how do other persons know that my life or bodily integrity is not something theirs, but exclusively mine? Aquinas holds that a thing is initially attributed to determinate persons through legal norms, positive or natural, that provide the *ratio* – the underlying or foundational normative idea – of the *ius* in question, thereby establishing those persons as the holders of aforementioned thing. The law thus situates the thing within the realm of the person's ontological (natural) or convention-based (positive) possession by a normative connection which renders the *thing* something that is the person's *suum*, his own thing[101]. In order to be constituted as right, a thing must be attributed to a determinate holder. Finnis seems to follow, in his own texts, the general lines of this reading of Aquinas[102].

But how does the duty to give to each their right (what is due to them), i.e. the duty of justice, arise? Finnis would say that this duty is generated, in the case of natural title of rights, «by reference to the principles of practical reason»[103], in the case of positive title of rights, in the form of the legal and, presumptive but defeasible, moral obligations to obey the law according to both its «lives»[104]. Let's concentrate, for the sake of the argument, on the case of an absolute human right such as life. In a first moment, according to Finnis, this right is constituted as an absolute *moral* claim-right *erga omnes* through the cluster of moral principles and the relevant principles and requirements of practical reasonableness which pick out this «thing» (*res*) as a human good and specify the moral duties in its regard; all this is reducible to a version of the following precept: *do not act in any way that damages or destroys the basic human good of life*[105].

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100 *S.Th.*, II-II, q. 58, a. 1.

101 *Vid.*, *S.Th.*, II-II, q. 57, a. 1, ad 2; II-II, q. 57, a. 2.

102 FINNIS, J., *Aquinas: Moral, Political, and Legal Theory*, *op. cit.*, pp. 134-135; FINNIS, J., «Practical Reason's Foundations», *Reason in Action*..., *op. cit.*, p. 21.

103 FINNIS, J., «Practical Reason's Foundations», *op. cit.*, p. 21. «To say that someone has a right is to make a claim about what practical reasonableness requires of somebody (or everybody) else»; *idem*, *Aquinas: Moral, Political, and Legal Theory*, *op. cit.*, pp. 134-135.

104 *Vid.*, FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 297-350.

105 *Ibid.*, pp. 225-226; *idem*, «'Natural Law'», *op. cit.*, pp. 209-211; *idem*, «Legal Reasoning as Practical Reason», *op. cit.*, pp. 216, 226-227; *idem*, «A Grand Tour of Legal Theory», *op. cit.*, pp. 117, 120-122; *idem*, «Reflections and Responses», *op. cit.*, p. 476.

In a second moment, this same absolute moral right becomes *juridical* through the causally artifactual operation of positing a law which specifies[106], by way of reasonable and technical conclusions, the relevant precepts of practical reasonableness, thereby constituting an aspect of law's third-level goodness.

Finnis's claim is very similar to the argument on the obligatoriness of right forwarded by one of the commentators of Aquinas's doctrine on right and justice, Javier Hervada. In Hervada's view[107], after the moment of attribution of a thing (*res*) to its holder designated by the relevant title, the obligatoriness of right (*ius*) arises from the very «exposure» of the thing to the sphere of interference of others who might wrongfully act as if the thing is «theirs», thereby violating the order established by the legal title, natural or positive. Given the fact that the *thing* – the *suum*, e.g. human life – is susceptible to the interference of others who are not the designated subjects of its attribution, all these potential subjects of interference have the obligation to give to each titleholder what is his *suum*[108].

Now, this obligation is, in a first moment that still takes place in the *moral* sphere, established by the precepts and requirements of practical reasonableness and morality at the level of the underlying legal *ratio* of the obligation. Aquinas, Finnis, and Hervada all seem to converge on this point: law is the underlying normative framework of right, «*aliqualis ratio iuris*»[109], «a foundation of or informing idea behind right(s)»[110], «rule of right, that is, reasonable rule of that which is just»[111].

But, as Aquinas says, *law* is *not* the same thing as *right* («*lex non est ipsum ius*»)[112]. In his view, *juridicity*, or the quality of being juridical, is not the result of practical reasonableness or the virtue of *prudentia*, but the result of being

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106 *Vid*., Finnis, J., *Natural Law and Natural Rights*, *op. cit*., pp. 218-221, 281-284.

107 For Hervada's reading of the Aquinas's account of the «right-justice» cluster of arguments, see Hervada, J., *Critical Introduction to Natural Right*, Trans. M. Emmons, Wilson & Lafleur Ltée (eds.), Montréal, 2020, pp. 7-30. *Vid*., also, *idem*, *Lecciones propedéuticas de filosofía del derecho*, EUNSA, Pamplona, 2008, pp. 198-209; *idem*, *What is Law? The Modern Response of Juridical Realism*, Trans. W. L. Daniel, Wilson & Lafleur Ltée (eds.), Montréal, 2009, pp. 49-51.

108 Again, this sounds very similar to Finnis's line of reasoning regarding «the steady determination to respect human good in one's own existence and the equivalent humanity or human rights of others, when that human good and those human rights fall directly into one's care and disposal». See Finnis, J., *Natural Law and Natural Rights*, *op. cit*., p. 226.

109 *S.Th*., II-II, q. 57, a. 1, ad 2.

110 Finnis, J., «Practical Reason's Foundations», *op. cit*., p. 21.

111 Hervada, J., *Lecciones propedéuticas de filosofía del derecho*, *op. cit*., p. 315.

112 *S.Th*., II-II, q. 57, a. 1, ad 2.

the object of *justice*. This is because justice is precisely the dispositional and operative principle of maintaining the (in Finnis's words, *practically reasonable*) order established by the legal norms, natural or positive[113]. Said differently, justice picks up where practical reasonableness and *prudentia* left off; while these latter establish the order of the attribution of things (*res*) to determinate persons thereby picking out the practically reasonable and moral obligation to respect that order, justice is the dispositional principle of respecting the difference, as Aquinas says, between *suum* and *non suum* in one's operations, i.e. the limits of «mine» as opposed to «yours»[114].

The viewpoint of justice and *ius* as its object is not only and exclusively about rights, as may be concluded from the English translation of *ius* as right; things are, indeed, constituted as what we call *rights*, but justice and *ius* is about what constitutes juridicity itself, it is the viewpoint of the juridical domain which regards both rights *and* law. The viewpoint of the *juridical* is the viewpoint of what is operatively owed as a *suum* precisely as distinct from *non suum*, and the character of the obligation or duty switches from moral to juridical when we shift the perspective from practical reasonableness and *prudentia* to justice. Thus, basic human goods, such as life, are constituted as *ius* in their aspects of other-directedness, outwardness, and aptness to be attributed and owed as a *suum*, only in the perspective of the virtue of justice which functions as the principle of «giving» them, according to their *ratio* or measure, to their holders.

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*», namely, «the good as due in respect of law»[115]. There is a discrete level of *goodness*, indeed an *aspect of the human good*, in the actualization of the operative principle of maintaining that which is owed in respect of the law, natural or positive. The term of the operative principle of justice, namely, the thing (*res*) constituted as *ius*, shares in this discrete level of goodness, thereby itself becoming a good, *juridical good*: «justice is praiseworthy in respect of the virtuous person being well disposed towards another, so that justice is somewhat *the good of another person*»[116].

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113 *S.Th.*, I-II, q. 61, a. 2-4; I-II, q. 96, a. 3; II-II, q. 79, a. 1.

114 *S.Th.*, I-II, q. 66, a. 4, ad 1.

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

116 *S.Th.*, II-II, q. 58, a. 12. For the specific good of justice that consists in the actualization of the order of reason in operations, within the above-described range of the properties of the thing to-be-constitutes-as-right, see *S.Th.*, I-II, q. 61, a. 2-4; I-II, q. 60, a. 2-3.

In sum, the basic human good, such as life, becomes a *basic* or *natural juridical good*[117] in the sphere of justice, where it is «being given» – by operatively distinguishing between *suum* and *non suum*, «mine» as opposed to «yours» – to its title-holder according to the underlying *ratio* expressed in the legal norm, natural or positive. I am not saying that Finnis completely disregards the importance of the arguments related to the sphere of justice and *ius* as its object – that simply would not be true[118]. I do, however, argue that he tends to settle the complex issues of the *genesis of the juridical domain and juridical obligation* predominantly at the level of practical reasonableness and the virtue of *prudentia*, to the detriment of perceiving the benefits in assigning some of the arguments regarding justice and *ius* in the perspective of juridical goodness a more prominent role in those issues[119].

I wish to highlight again that nothing in this argument on the juridical good is meant to catalyze a purely historical analysis of the semantics of *ius*, nor to propose putting the clock back with regard to conceptual watersheds of rights-talk. I am advocating the usefulness of expanding the range of law's goodness in order to include a reference to the discrete level of the juridical good while reading Aquinas, following Finnis's advice, «as a participant in today's debates»[120]. I argue that this «effort is rewarding»[121] in the following

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[117] Again, only in its outward and other-directed aspects which are otherwise apt for attribution as due according to either the natural or the positive legal norm.

[118] For Finnis's treatment of the role of justice, either with regard to rights, or regarding justice as the element of the public good, *vid*., FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, pp. 205-210, 423-424; *idem*, *Aquinas: Moral, Political, and Legal Theory*, *op. cit.*, pp. 132-133, 137-138, 226-234; *idem*, «Aquinas on Ius and Hart on Rights», *op. cit.*, pp. 407-410; *idem*, «Grounding Human Rights in Natural Law», *op. cit.*, pp. 200, 208-209, 214-215; *idem*, «On Moyn's *Christian Human Rights* (2015)», *op. cit.*, pp. 14-15.

[119] In the Postscript to NLNR Finnis seems to perceive these same problems to a certain degree, though not to the extent to which I develop them here: «The opportunity is missed to reflect a little, somewhere in the chapter [VII], on the fact that the classic definition picks out a virtue – [...] a steady and lasting willingness to give to each the right(s) that belong(s) to each ['his or her right']. As noted above, the book could with advantage have given more attention to virtue as stability of disposition, shaped up by choices as lasting, i.e. as an immanent, intransitive effect of choosing, the virtuous and virtue-making choices being those guidemed accurately by practical reasonableness. Neither this chapter nor Chapter VIII on rights reports that Aquinas adopts that same definition as his own definition of justice». FINNIS, J., *Natural Law and Natural Rights*, *op. cit.*, p. 460.

[120] According to Finnis, «the best way to understand Aquinas, even historically, is to read him as a participant in today's debates [and] though this involves both some risk and some contextualizing, the effort is rewarding, and can be quite faithful to what he meant». FINNIS, J., «Aquinas and Natural Law Jurisprudence», *op. cit.*, p. 17.

[121] *Ibid*., p. 17.

aspects: besides highlighting Aquinas's own position on the overlap between juridicity and goodness, natural rights (or natural juridical goods) are finally considered not only as moral, but as properly juridical; they are rooted at the same time in reality («*in re*», in the *things as they are in themselves*) and understood as an aspect – juridical aspect – of the human good that is inherently other-directed (rights as the *goods* of *another person*).

With regard to *rights*, natural or positive, the Thomistic argument on their juridical goodness opens up a possibility for their conceptualization not only as self-centric superstructures (moral or artifactual) that are essentially distinct from *things as they are in themselves*, and whose juridicity is wholly dependent on positive law; they are not *positive law subjectivized* or, otherwise, *natural-law moral rights*. The benefits and pay-offs of conceptualizing rights as juridical goods seems to me to be fully intelligible, and perhaps even appealing, to most corners of contemporary jurisprudence and legal philosophy, not necessarily only those that are aligned with other aspects of the Thomistic conception of law, right and justice.

But, what does all this, in the ultimate analysis, have to do with laws as good reasons for action? Well, to begin with, juridical goods constitute an additional *juridical* level of reasons for action, be they connected to natural or positive law.

Since *natural juridical goods* are conceptually prior to positive law, and because they do not need positing in order to be fully juridical, these goods constitute good *juridical* reasons for action. Thus, basic human goods do not represent the only reasonable or moral basis for the activities of legislators, but, since they are constituted as natural juridical goods, they offer a *juridical* basis that must be taken into consideration for the acts of law's positing. In addition, the constitution of basic human goods as juridical goods structures the very basic human goods not only as «things» (*res*) that are reasonably or morally owed to their subjects, but as «things» that constitute genuine juridical obligation based on the very fact of their other-directed and outward attribution and obligatoriness in justice, even before being specified by positive law. Juridical goodness thus constitutes an essential aspect of the very structure of basic human goods.

Next, positive law is also provided with an additional layer of good juridical reasons for action, to the extent that there is not only a practically reasonable or moral obligation to obey the law, but also an obligation in strict justice to attain the juridical good by maintaining the order established by positive law.

In addition, unjust laws would be «no laws at all» not only from the practically reasonable viewpoint, as this is successfully explained by Finnis, but also because, in the case of natural juridical goods, there are prior *juridical* reasons for action that are thereby violated, constituting a discrete level of injustice consisting in the fact that each person (or the community of persons) has *not been given his own right*. I argue that this additional discrete level of law's *justice* corresponds to Aquinas's tripartition of law's accordance with the human good: they are either «just» laws («*iustae sunt*») – hence, they are in accordance with what I here refer to as juridical good – or morally «binding in conscience» («*obligant in foro conscientiae*») or constitute «legal laws» («*sunt leges legales*»)[122].

The same line of argument points to the existence of an additional necessary conceptual connection between morality and juridicity, and this connection is grounded in the emphasis on the ontological continuity of the *things* (*res*) *as they are in themselves* between pre-juridical and juridical (and also legal, in the case of positive juridical goods) domains. For example, a natural juridical good, such as human life, has the same ontological identity as the basic human good of life in the moral sphere, while at the same time constituting a set of good juridical reason for action regarding the law's practical viewpoint relevant for the technical-artifactual specification of the corresponding norms of positive law regarding the same good of life. In this perspective, it becomes even clearer that positive law's artifactuality does not operate in full discontinuity with regards to structurally prior juridical goods, and therefore does not, so to speak, create juridicity *ex nihilo*.

With these arguments in mind, I am certain that John Finnis's account of the levels of law's goodness, perhaps together with the remarks on an additional level of its goodness revisited in this section, will continue to be an inspiration to many future generations of legal philosophers, in the same way (or in some new ways) that the intellectual force of his arguments has had a formative influence on many legal theorists and lawyers, including myself. And, for this, my deepest gratitude, professor Finnis.

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[122] *S.Th.* I-II, q. 96, a. 4.

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