A HERVADIAN REALISTIC ARGUMENT FOR THE JURIDICAL STATUS OF NATURAL LAW

UN ARGOMENTO REALISTICO HERVADIANO PER LO STATUTO GIURIDICO DELLA LEGGE NATURALE

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ABSTRACT: This paper addresses the question of the juridical status of natural law from the point of view of Javier Hervada's re-reading of the classical juridical realism. The contributions to the topic of some of Hervada's intellectual followers, like Carlos José Errázuriz and Eduardo Baura will also be consulted. It will be argued that a Hervadian account of the juridical status of natural law is contextualized within the Spanish jurist's doctrine on the twofold aspect – moral and juridical – of the legal norm and on his argument on the natural title of right. We shall subsequently show that the juridicity of natural law is founded upon a clear distinction – without separation – between the moral and juridical status of natural law. The essential properties of the juridical status of natural law will be presented along with the treatment of the reconstitution of the natural human goods as natural juridical goods. A reference will also be made to the structure of the precepts of juridical natural law precisely as "natural" norms.

KEYWORDS: natural law, Javier Hervada, classical juridical realism, Thomas Aquinas, juridicity.

RIASSUNTO: Questo articolo elabora la questione dello status giuridico della legge naturale dal punto di vista della rilettura del realismo giuridico classico da parte di Javier Hervada. I contributi sul tema di alcuni alievi di Hervada, come Carlos José Errázuriz e Eduardo Baura saranno altrettanto consultati. Sarà proposto l'argomento secondo il quale l'approccio hervadiano allo status giuridico della legge naturale viene contestualizzato dentro la dottrina sul duplice aspetto – morale e giuridico – della norma legale di Hervada, nonché dentro il suo argomento sul titolo naturale del diritto. In seguito sarà mostrato come la giuridicità della legge naturale è fondata sulla distinzione chiara – senza separazione – tra lo status morale e giuridico della legge naturale. Le proprietà essenziali dello status giuridico della legge naturale saranno presentate insieme all'argomento sulla recostituzione dei beni umani naturali come beni giuridici naturali. Si presenterà alla fine anche la questione della struttura dei precetti della legge naturale giuridica precisamente come quella delle norme "naturali".

PAROLE CHIAVE: legge naturale, Javier Hervada, realismo giuridico classico, Tommaso d'Aquino, giuridicità.

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SUMMARY: Introduction. – 1. Hervada's Doctrine of the "Juridical" Legal Norm. – 2. Hervada's Arguments on Human Nature as the Natural Title of Right. – 3. Hervada's Explicit Arguments for the Juridical Status of Natural Law. – 4. Hervada's Claims on the Natural Juridicity of the Human Person with Regard to the Juridical Status of Natural Law. – 5. The Main Properties of the Juridical Status of Natural Law. – 6. Juridical Natural Law and the Constitution of Natural Rights as "Juridical Goods". – 7. Natural Law as a "Natural" Juridical Norm. – Conclusion.

INTRODUCTION

ACCORDING to Thomas Aquinas's classical definition, the natural law is «the participation of the eternal law in the rational creature», whereby the rational creature «has a natural inclination to its proper act and end».[1] This participation is «impressed»[2] in the order of being and order of knowledge of the rational creature, and has, in Aquinas's view, the following basic structure:

> «All those things to which man has a natural inclination are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. Wherefore according to the order of natural inclinations is the order of the precepts of the natural law».[3]

This is the basic structure according to which natural law is situated within Aquinas's general definition of *law*: «an ordinance of reason for the common good, made by him who has the care of community, and promulgated».[4] According to this understanding, natural law is «the communication of *moral* necessities to a created intellect»[5] which has a «legal character».[6] The definition of both law and natural law is situated in the *Prima Secundae* of Aquinas's *Summa Theologiae*, where the Angelic Doctor's primary focus regarding natural law is its adequate place within the broader ontological and *moral* normative order.

In the *Secunda Secundae* of the same work, Aquinas is concerned with how to interrelate the concept of law with the specific domain of right (*"ius"*) as the object of the virtue of justice. His primary and essential meaning of the

[1] *STh* I-II, q. 91, a. 2. For the English translation of the texts from Aquinas's *Summa Theologiae* – we will be using the translation of the Fathers of the English Dominican Province – see T. AQUINAS, *Summa Theologiae: First Complete American Edition in Three Volumes*, New York, Benziger Brothers, 1947-1948.

[2] *STh* I-II, q. 90, a. 4, ad 1; I-II, q. 91, a. 2; I-II, q. 91, a. 3, ad 2; I-II, q. 93, a. 5.

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

[4] *STh* I-II, q. 90, a. 4.

[5] R. HITTINGER, *The First Grace: Rediscovering the Natural Law in a Post-Christian World*, Wilmington, ISI Books, 2003, p. xxiii. Emphasis added.

[6] See S. L. BROCK, *The Legal Character of Natural Law According to St Thomas Aquinas*, PhD diss., University of Toronto, 1988.

notion of "*ius*" is that of the "just thing itself" ("*ipsa res iusta*").[7] His basic position regarding the juridical status of the law in general is that, «strictly speaking», it is «not the same as right», but is rather an «expression of right» («*aliqualis ratio iuris*»).[8] In this part of the *Summa*, Aquinas speaks generally of law, without specifying – at least for the purpose of his doctrine of right – the status of natural law in the juridical domain. In this part of the *Summa* he does, however, present the concept of "natural right" ("*ius naturale*") when arguing that things ("*res*") may be attributed and consequently owed in justice ("*iusta*"), in virtue of the nature itself ("*ex ipsa natura rei*").[9]

In this article we shall present how the Spanish legal philosopher, jurist and canon lawyer, Javier Hervada, as well as some of his intellectual followers, like Carlos José Errázuriz and Eduardo Baura, contribute to the doctrine of the juridical status of natural law, especially with regard to the distinction of the essential features of juridicity as predicable of natural law from the moral aspects of the Thomistic conception of "*lex naturalis*".

1. Hervada's Doctrine of the "Juridical" Legal Norm

In the realistic conception of right the notion of law is envisioned as a composite concept essentially consisting of a twofold aspect. First, a legal rule has a *moral* aspect: law is the measure of morality insofar as it is a rule of conduct containing an order toward the attainment of human fulfilment and happiness. Secondly, a legal norm has a *juridical* aspect according to which law is the measure of right, insofar as it attributes certain things to determinate persons as their "*suum*" owed in justice by others. Thus, according to Hervada's stratification of the basic aspects of the concept of law, a legal norm has two principal functions: *moral*, where law is a rule of personal conduct; and *juridical*, where law is the rule of right.[10] Hervada seems to understand the moral function of law to essentially denote that norm of individual

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

[8] *STh* II-II, q. 57, a. 1, ad 2. The official English translation of the Fathers of the English Dominican Province translates the word «*aliqualis* ratio *iuris*» as «an *expression* of right». When referring to this translation in the text, we shall also add the original word "*ratio*" in order to maintain the original meaning of Aquinas's *dictum*, which is, perhaps, not entirely reducible to the word "expression". Hervada seems to translate Aquinas's concept of law, from the perspective of its being a "*ratio iuris*", essentially as the rational «rule of right». See J. Hervada, *Critical Introduction to Natural Law*, Montréal, Wilson & Lafleur, 2006, pp. 117-124; Id., *Lecciones propedéuticas de filosofía del derecho*, Pamplona, eunsa, 1992, pp. 315, 362.

[9] *STh* II-II, q. 57, a. 2.

[10] J. Hervada, *Lecciones propedéuticas*..., cit., p. 311. He also identifies a third function of law in the *political* aspect of the legal norm. According to this function, law is essentially a rule that expresses the order of communal human conduct toward the common good. See *ibid*., p. 312. The political function of law clearly overlaps with its socio-moral and juridical functions.

action which expresses the order toward man's natural end, the virtues and personal happiness.[11] Since man's natural end and human fulfilment include also the domain of social morality, Hervada notes that the moral aspect of Aquinas's definition of law primarily contemplates the legal norm «from the point of view of the development of social life in relation to social ends, to the common good».[12] However, the moral function of law differs from its juridical function: the perspective of moral philosophy «is not characteristic of right, the key concept of which is not the [moral] order, but the apportionment of things, that is, of *what is just*».[13]

According to Hervada, the great majority of treatises in legal philosophy which adopt a jusnaturalistic perspective do not contemplate the legal norm from the perspective of its juridical function as a rule of right. These treatises adopt, instead, the Thomistic vision of law from the *Prima Secundae* of his *Summa* as their exclusive starting point.[14] Precisely on this account, these philosophical perspectives easily confuse right (*"ius"*) with law (*"lex"*), reducing the philosophy of right to political or moral philosophy, without ever really establishing the juridical function of the legal norm as an essential element of their respective accounts.[15]

Even though the law, in a classical realistic conception, is not the right, there is nonetheless an important structural link between the two realities, especially with regard to that aspect of law manifested in what Hervada calls its "juridical" function. In Hervada's view, in order to understand the essence of law in its specifically juridical function, it is necessary to observe the legal norm – from Aquinas's definition in the *Prima Secundae* of his *Summa Theologiae* – under the aspect of the apportionment of things consequently owed in justice. If this aspect is not taken into consideration, the specificity of the juridical domain is easily disregarded. This, in turn, leads to juridico-philosophical accounts of the essence of right which are deprived of a clear distinction between morality and juridicity. In Hervada's words:

«The norm is juridical as a function of the *"ius"* or right (in the realistic sense). The juridical perspective is not the perspective of the social order, but of the distribution of things. Consequently, the norm acquires the connotation of juridical because of its relation with [...] justice. [...] Briefly stated, juridical norms are those norms that

[11] *Ibid*., p. 312.

[12] J. Hervada, *Critical Introduction*..., cit., p. 123, n. 40. See also J. Hervada, *Lecciones propedéuticas*..., cit., p. 362, n. 74.

[13] J. Hervada, *Critical Introduction*..., cit., p. 123, n. 40.

[14] In other words, these accounts do not sufficiently consider the fact that, as Schouppe says, the juridicity of the norm should not be sought in the norm itself, but in its relation to that which is due in justice as the norm regulates. See J.-P. Schouppe, *Le réalisme juridique*, Bruxelles, E. Story-Scientia, 1987, pp. 171-172.

[15] See J. Hervada, *Lecciones propedéuticas*..., cit., p. 313.

refer to just conduct, that is, to conduct that is owed – obligatory – because they constitute a duty of [...] justice; a norm is juridical when the conduct it prescribes constitutes a just debt».[16]

The distinctive character – i.e. *juridicity* – of the *juridical* norm is its property of being related «to the thing justly owed»,[17] i.e. to its property of being the norm of *just* conduct,[18] beyond, in a broader *moral* context, constituting a norm of *good* conduct. The juridical norm, according to Hervada, has the generic character proper to all laws, which «consists in being an *ordinatio rationis*, a rule or rational structure of human social life», to the extent that it cannot fulfil its essence if it is not, at the same time, «rational» or if it does not constitute or reveal an «order» to an aspect of the good.[19] At the same time, the juridical norm has the specific character of relatedness to right.[20]

Hervada explains this specific relation of the legal norm to right by arguing that law is a specific «source»[21] of right: it is a «rule» of right, understood in continuity with the Thomistic *dictum* on law as the *"ratio iuris"*.[22] Under its juridical aspect, then, the law is a rule of what is just, insofar as it «regulates the right and the correlative debt, that is, it indicates what things belong to each person».[23]

«If the right is the just thing, that thing which is owed to its title-holder, the norm establishes the statute of right: it attributes things to a title-holder [...]. In brief, the norm *regulates* the right, it is its rule».[24]

For Hervada, law has two determinate tasks resulting from its being the "source" of right. First, law is the *cause* of right. The relation in question is one of cause (law) and effect (right).[25] This means that juridical laws themselves apportion or attribute certain things to determinate persons and establish and regulate the corresponding debt, thereby «creating rights».[26] Secondly, law is a *measure* of right, in the sense that the juridical norm regu-

[16] J. Hervada, *Critical Introduction...*, cit., pp. 121-122.

[17] J. Hervada, *Lecciones propedéuticas...*, cit., p. 320.

[18] J. Hervada, *Critical Introduction...*, cit., p. 120. See also J. Hervada, *Apuntes para una exposición del realismo jurídico clásico*, «Persona y Derecho», 18 (1988), p. 295.

[19] J. Hervada, *Lecciones propedéuticas...*, cit., p. 362.

[20] *Ibid.*

[21] See *ibid.*, p. 315. Schouppe also refers to the law as the «source» of right. See J.-P. Schouppe, *Le réalisme...*, cit., p. 54.

[22] J. Hervada, *Lecciones propedéuticas...*, cit., pp. 315, 362.

[23] J. Hervada, *Critical Introduction...*, cit., p. 118.

[24] J. Hervada, *Lecciones propedéuticas...*, cit., p. 315.

[25] J. Hervada, *What is Law? The Modern Response of Juridical Realism: An Introduction to Law*, Montréal, Wilson & Lafleur, 2007, p. 98.

[26] J. Hervada, *Critical Introduction...*, cit., p. 118; Id., *Lecciones propedéuticas...*, cit., pp. 316-317; Id., *What is Law...*, cit., p. 99; Id., *Apuntes para una exposición...*, cit., p. 294.

lates all of the particular aspects and determinations of a concrete right.[27] The relation in question here is one between a measure (law) and the thing measured (right).[28]

2. Hervada's Arguments on Human Nature as the Natural Title of Right

Hervada, thus, envisions the law, in its juridical aspect, as the «cause» or «title» of right.[29] In his doctrine, the title is that in which the right has its origin, that is, that which attributes the thing to a subject, or that by virtue of which the thing is his own.[30] Among the principal types of different titles, Hervada repeatedly refers to «human nature» as a possible title of right.[31] He notes how, since antiquity, right has ordinarily been divided, according to its title, into natural right and positive right, affirming that the former of these «comes from nature».[32]

> «What does this origin mean? In substance, it means that there are things that are attributed to a person by virtue of the very nature of man – in other words, that his title proceeds from man's very being – and they are measured according to the nature of things. [...] [T]here are things that are attributed to each man precisely because he is a person: there are things that belong to man by virtue of his nature, for example, his life, his physical integrity, etc. [...] Those things – corporeal and incorporeal – that are attributed to man by nature constitute, each of them, a natural right».[33]

Hence, in a realistic conception of right and juridicity, natural rights are those *things* which are attributed to man by his nature as his own and are owed in justice by all, who are thus indebted to "give" those rights to their title-holder. The title which attributes things as natural rights is called the «natural title».[34]

[27] J. Hervada, *Critical Introduction*..., cit., p. 118; Id., *Lecciones propedéuticas*..., cit., p. 317; Id., *What is Law*..., cit., pp. 99-100.

[28] J. Hervada, *What is Law*..., cit., p. 99.

[29] J. Hervada, *Lecciones propedéuticas*..., cit., p. 317.

[30] J. Hervada, *Critical Introduction*..., cit., p. 34.

[31] *Ibid*., pp. 34-35; J. Hervada, *What is Law*..., cit., p. 52; Id., *Apuntes para una exposición*..., cit., p. 291; Id., *Lecciones propedéuticas*..., cit., p. 205.

[32] J. Hervada, *Critical Introduction*..., cit., p. 67. Here Hervada refers, among other sources, to Aquinas's claim for the existence of natural right: «[Since] right or the "just" is a work that is adjusted to another person according to some kind of equality [...] a thing can be adjusted ["*adaequatum*"] to a man [...] by its very nature [...] and this is called "natural right"». See *STh* II-II, q. 57, a. 2.

[33] J. Hervada, *Critical Introduction*..., cit., pp. 67-68. See also Id., *Lecciones propedéuticas*..., cit., p. 523.

[34] J. Hervada, *Critical Introduction*..., cit., p. 70. See also Id., *Lecciones propedéuticas*..., cit., pp. 503-504; Id., *What is Law*..., cit., pp. 68-70.

«All the goods inherent to [man's] own nature are [...] *his* in the most strict and proper sense. Given this, it is evident that the set of goods inherent to his being represent *his things*, with which others cannot interfere and which they cannot appropriate [...] they are then rights of his person, rights that the person has by virtue of his nature».[35]

Let us now try to interrelate Hervada's doctrine of the juridical law with his arguments on the natural title. In one textual *locus* Hervada himself acknowledges this connection:

«[N]atural law [...] as the rule or measure of rights is a juridical law [...] [N]atural rights obviously do not only have a natural title but also a natural measure [...] this natural measure or rule of rights is natural law, since the rule of right is law».[36]

Therefore, the concrete normative structure of human nature, which at the same time represents both the rule of right and the natural title (or measure) of natural rights, is precisely the *natural law*. Again, a legal rule is, in its juridical aspect, a rule of right insofar as it «indicates what things belong to each person» and, thus, «regulates the right and the correlative debt».[37] This means that a precept of natural law may *also* have the characteristic of a natural title, insofar as it attributes certain "things" as a person's "*suum*" owed in justice by others, i.e. as a person's natural rights.[38]

3. Hervada's Explicit Arguments for the Juridical Status of Natural Law

On numerous occasions throughout his writings, Hervada explicitly contributes to the argument for the juridical status of natural law. The precise textual *loci* in which he addresses this issue should be read in the immediate context of his accounts on the juridical aspect of the legal norm as the rule of right and on the natural title. His relevant texts on the juridical domain of natural law testify to his own intellectual progress with regard to this issue. For this reason, we shall present the development of his thought on the juridical domain of natural law in a chronological way, following the thread of argumentation in which this domain is envisioned in each of his relevant works.

In the first work of Hervada's mature juridico-philosophical thought, *Critical Introduction to Natural Law*, Hervada already seems to possess rather clear ideas on the need to postulate a specifically juridical status pertaining

[35] J. Hervada, *Critical Introduction*..., cit., p. 71.
[36] J. Hervada, *What is Law*..., cit., p. 143.
[37] J. Hervada, *Critical Introduction*..., cit., p. 118.
[38] J. Hervada, *Lecciones propedéuticas*..., cit., p. 523.

to natural law. However, his ideas on this topic, even if easily discernible, do not resemble that same argumentative precision with which he establishes other foundational elements of his theory in this work. Early on in the book, he hints at arguments which he will develop later:

«What we call the order of justice, demands of justice, or the rule of justice is none other than natural right. And the so-called principles of justice are nothing other than the principles or precepts of that natural right».[39]
«The duty of justice, demand for justice, the rule of justice, are expressions that mean a duty, a demand, or a law, compliance with which is an act of the virtue of justice, that is, which designate a right or a law – of natural origin or of positive origin – of a juridical nature».[40]

Hervada here mentions the «precepts of natural right» and the «law of a juridical nature», which may have a «natural origin». Since right and natural right are never in his theory reduced to a precept, we may conclude that when he refers to the «precepts», i.e. «laws of a juridical nature», which are related to natural right, Hervada has a very clear idea of the specific normative structure that possesses a juridical aspect and is the origin or title of natural right. He is certainly not speaking about a *moral* law of natural origin here, nor is he referring to right in its primary sense, namely as a just thing owed in justice. In this early stage of the book he does not yet even mention "natural law".[41]

In line with his position on the internal stratification of the concept of law in at least two of its aspects – moral and juridical – Hervada explicitly distinguishes two domains of natural law, as well.

«Natural juridical norms [...] are a sector or part of the natural normative structure of human life – in its individual aspect as well as in its social aspect – which is given the name of *natural law*; that is why it is appropriate to take note of that law here. However, a detailed study of natural law does not belong to the science of natural

[39] J. Hervada, *Critical Introduction*..., cit., p. 13. [40] *Ibid.*, p. 20.

[41] For a book that predominantly addresses the topic of natural rights from a classical Thomistic perspective, the reader may be surprised to discover that Hervada initially dedicates a relatively small portion of text to the topic of natural law. Thomistic accounts of natural right usually begin with, and are developed within the framework of Aquinas's discussion of natural law, especially of the q. 94, a. 2 of the *Prima Secundae* of his *Summa Theologiae*. Natural rights are, then, ordinarily treated as an argumentative extension of the discourse on Thomistic natural law. Hervada's approach in *Critical Introduction to Natural Law* is surprisingly different. He first starts with the basic elements of what he understands to be the essence of the juridical domain, namely right as the thing owed in justice. Then he moves toward an elaboration of what the concept of natural right means in classical juridical realism. Even more surprisingly, his treatment of natural right does not seem to depend on explicit natural-law arguments. Only in the second half of the book, after completing his account of the main features of right, does he discuss natural law explicitly.

right, but in the moral philosophy; that is why we will only briefly expound on natural law insofar as we consider it necessary for the study of natural right».[42]

Hence, within the natural normative structure of the human person, which may be identified with the natural *moral* law, there is a sphere constituted in accordance with the properties of the juridical domain. Hervada here refers to this particular sphere under the term «natural juridical norms».[43]

In its *moral* domain, natural law is, according to Hervada, «the set of rational laws that set forth the order of natural tendencies or inclinations toward the purposes characteristic of human beings»,[44] which are «his natural ends, the fulfilment of the individual, and the human development of society».[45] Although Hervada dedicates a quantitatively significant portion of the text in *Critical Introduction to Natural Law* to natural *moral* law,[46] he certainly does not envision this aspect of natural law as primarily foundational with regard to the specificities of the juridical dimension. The natural law in its *juridical* aspect or function is, in his view, primarily the "rule" ("*ratio*") or set of rules which are the measure of natural rights, because they determine the obligations of natural justice.[47] Hence, these rules may be called «natural juridical norms» and they are «constituted as a part of natural law».[48]

At this stage of his work in legal philosophy (*Critical Introduction to Natural Law* was first published in 1981) he does not yet fully interrelate his arguments for a juridical status of natural law, at least on a terminological level, with other elements of his theory of right. Although throughout the book he is careful enough to consistently refer to right or natural right in the primary sense given to this term within a realistic conception of juridicity – "*ipsa res iusta*" – he still sometimes labels the juridical domain of natural law as simply «natural right»[49] or «natural right in the objective sense».[50]

[42] J. Hervada, *Critical Introduction...*, cit., p. 125.

[43] For another example of the use of the term "natural juridical norm" by authors who embrace a realistic conception of right and juridicity, see C. J. Errázuriz M., *Sul rapporto tra diritto e giustizia: valore e attualità della tradizione classica e cristiana*, «Persona y Derecho» 40 (1999), p. 352.

[44] J. Hervada, *Critical Introduction...*, cit., p. 130.

[45] *Ibid.*, p. 129.

[46] He dedicates almost thirty pages of his *Critical Introduction to Natural Law* (precisely, pp. 125-154) to a presentation of natural law in its moral domain. For references to natural moral law in his other works, see for example J. Hervada, *Lecciones propedéuticas...*, cit., pp. 504-506, 584-586; J. Hervada, *What is Law...*, cit., pp. 148-150, 159-168.

[47] See J. Hervada, *Critical Introduction...*, cit., p. 124.

[48] *Ibid.*

[49] «Natural law and natural right – understood in the sense of the [natural] juridical norm that we are discussing – cannot be separated, but neither should they be confused». J. Hervada, *Critical Introduction...*, cit., p. 154.

[50] «Natural right – in the objective sense – is none other than a class or type of juridical norms». J. Hervada, *Critical Introduction...*, cit., p. 124, n. 41.

«Natural right is that part of natural law which refers to the relations of justice; that is, natural law is called natural right insofar as it is a rule of right and only under this aspect».[51]

Hervada's "natural juridical norms" are, thus, still partly identified with natural right – "*ius naturale*" – rather than being developed as a distinct but not separate feature of the natural law in its specifically juridical aspect. This characteristic of Hervada's early doctrine on the juridicity of natural law is even more apparent in his arguments on the relation between natural law and natural right. He still predominantly categorizes «natural rules of right which govern the relations of justice», such as, for example, «do not kill» or «do not steal», as an aspect of the concept of natural right.[52] Hervada's reluctance to view the juridical status of natural law as a distinct, though never separate, domain from that of natural right leads him to conclude, at this developmental stage of his thought on the subject, that natural law is the *measure* and the *rule*, but not the *cause* of natural right.[53]

In his 1992 work, *Lecciones propedéuticas de filosofía del derecho*, Hervada fur-

[51] *Ibid*., pp. 154-155.

[52] *Ibid*., p. 155.

[53] J. Hervada, *Critical Introduction*..., cit., p. 155. Hervada's present argument is developed within the broader doctrinal position that natural rights do not, so to speak, immediately arise from the precepts of natural law. Hervada claims that, from the point of view of the juridical domain, the cognition of the moral precept as a *formulated rational judgment* is actually *posterior* to the attribution of a thing (for example, life) as owed in justice. See *ibid*. This position is also echoed in Jean-Pierre Schouppe's parallel line of argument: «The question consists in knowing whether the primary cause of the right to life is the natural law or whether there is another cause which would precede it. Life is attributed to a person from conception as his or her proper good. The obligation which thus arises for others is to respect this life, and this is certainly a precept of natural law; but does the right to life stem from natural law? Natural law merely acknowledges the existence of a natural obligation, and it consequently enacts a precept: you will respect the life which belongs to another person, because it is due to its title-holder. In this case, the just thing – life – represents a givenness prior to the natural precept imposing a respective conduct. The cause of life as a right is found not in natural law, but above all in God's act of creation which causes the attribution of life to the person awaiting birth, from the moment of conception, as his or her own good». J.-P. Schouppe, *Le réalisme*..., cit., p. 172. One wonders whether at least part of the reason why both Hervada and Schouppe in their respective treatments of natural law deny its feature of being a potential *cause* of natural right might be connected to a predominant reference to that aspect of natural law which is reducible to a *rational formula of the human mind*. If so, perhaps a more detailed understanding of the natural law as a decidedly *natural* norm – promulgated by and through human nature – might settle the issue and establish the natural law as an essential element in the causal order of the constitution of natural right. We have already seen how Aquinas always defines natural law as the law which is primarily in the divine mind, and then, in a participative way, also instilled as the rationality immanent in nature itself and, concomitantly, in human reason. We shall return to the issue of the structure of natural law as a natural norm in the last section of this paper.

ther elaborates on his line of argumentation regarding the juridical status of natural law. In his analysis of natural right, he affirms that this concept may be viewed from the aspect of «right in the proper and strict sense, i.e. as that which is just», but also «as a norm or as a relation».[54] In his view, however, among these basic structural elements, the primary and proper sense of the concept of natural right is ascribed to *that which is just according to human nature*. *Ius naturale* is fundamentally that «corporeal or incorporeal thing which is adjusted or apportioned to man in virtue of his nature or fundamental ontological structure, conjugated with the property of debt and eligibility to make [correspondent] claims inherent in the dignity of the human person».[55]

> «This is natural right in the proper sense of the term; the other elements of the natural nucleus of juridicity, such as the natural juridical norms or natural law in its juridical aspect, may be called natural right only in an analogous sense».[56]

By clearly separating «the natural law in its juridical aspect» from the primary meaning of natural right, Hervada terminologically upgrades his position with respect to that expressed in the *Critical Introduction to Natural Law*. This development is obvious in his following claim:

> «[H]uman nature [...] is constituted as a rule or criterion of personal and social conduct which contains a normative or legal structure – it is a norm of conduct, ordinarily known as natural law. The aspect of this normative structure which has a greater relevance – because of its relation to the perfection and development of the person [...] – is the moral aspect [...] We shall [...] limit ourselves to the study of natural normativity from the juridical point of view, that is, insofar as this natural normativity is, in part, constituted as a natural juridical norm...»[57]

The natural juridical norm or, as he calls it elsewhere in this work, «juridical natural law»,[58] is a set of rules that point to «that which is just» according to human nature.[59] In other words, the natural law, «in that which pertains to the juridical domain», is constituted as «the set of natural juridical norms».[60]

In his 2002 work, *What is Law? The Modern Response of Juridical Realism*, Hervada adds certain significant arguments for a better understanding of the juridical status of natural law. We can say that his remarks in this work represent his final thoughts on the subject. First, with regard to the twofold division of the aspects, moral and juridical, of natural law Hervada affirms that the «demands which in themselves or with respect to others flow from the personal nature of humans are what constitute the moral order and the

[54] J. Hervada, *Lecciones propedéuticas...*, cit., p. 518.
[55] *Ibid.*, p. 523.
[56] *Ibid.*, p. 522.
[57] J. Hervada, *Lecciones propedéuticas...*, cit., p. 531.
[58] *Ibid.*, pp. 532, 586.
[59] See *ibid.*, p. 532.
[60] See *ibid.*

natural juridical order, which is expressed in *natural law*».[61] Later in the book he affirms that, although the whole of moral reality, and consequently the natural law, should be viewed as a unity, we may, and should, nonetheless «distinguish *aspects* in it».[62] Thus, the natural law may be viewed under the aspect of a «stream and path of personal realization», that is, under the aspect of *moral* law.[63] It may also be viewed under the aspect of «the rule or measure of rights», that is, as «juridical law».[64] In Hervada's view, the juridical natural law may be expressed as a natural *title*, as a *rule* and *measure* of right, and also as formulated rules of *just* conduct or rules of *justice*.[65]

«This complex of rules of right constitutes the juridical aspect of natural law, or natural juridical law».[66]

Hervada's arguments reveal that he possesses a rather clear and elaborate doctrine on the juridical status of natural law. The only possible objection we could advance with regard to his account is a certain underdevelopment in interrelating juridical natural law with the elements of the Thomistic theory of natural *moral* law. Although he acknowledges the distinction between the moral and juridical aspects of natural law, Hervada perhaps does not follow his own claim that the moral and juridical domains are «aspects of one and the same law»[67] to its logical consequences.

4. Hervada's Claims on the Natural Juridicity of the Human Person with Regard to the Juridical Status of Natural Law

Hervada's arguments on the juridical status of natural law imply that the domain of right is not a sphere somehow external to human nature. As one of his intellectual followers, Carlos José Errázuriz M., affirms, the domain of right is a «reality which is proper to the human person as such», and has inherent «anthropological presuppositions».[68] Hervada affirms that «the very structure of the human person possesses [a domain of] a radical and basic juridicity or [...] a radical nucleus of natural juridicity».[69] The "natural juridicity" inheres in the "natural" or ontological capacity of the human person to juridically interrelate with other persons or to be the protagonist of a juridical system,[70] as the title-holder of right or the bearer of juridical dues.[71]

[61] J. Hervada, *What is Law...*, cit., p. 116. Emphasis added. [62] *Ibid.*, p. 143.
[63] *Ibid.* [64] *Ibid.* [65] See *ibid.*, pp. 143-144. [66] *Ibid.*
[67] *Ibid.*, p. 145.
[68] C. J. Errázuriz M., *Corso fondamentale sul diritto nella Chiesa: Vol. I.*, Milano, Giuffrè, 2009, p. 18. [69] J. Hervada, *Lecciones propedéuticas...*, cit., p. 474.
[70] J. Hervada, *Critical Introduction...*, cit., p. 107; J. Hervada, *Lecciones propedéuticas...*, cit., p. 474. [71] J. Hervada, *Critical Introduction...*, cit., pp. 107, 110.

But this term, "natural juridicity" – or «natural normativity from a juridical point of view»[72] – also concerns the fact that the *normative structure of the nature itself of the human person*, i.e. natural law, *has a juridical aspect*, insofar as it may be, and is, the natural title of right.[73]

«Just as without right, or the just thing, the juridical system would not exist, so too without the natural right or the natural just the natural nucleus of juridicity would not exist; we would perhaps have a natural law, but this law would not be a juridical norm, only a moral or ethical norm».[74]

We shall conclude this brief *excursus* on Hervada's understanding of the normative aspect of natural juridicity with a quote from his texts which illustrates how anthropological presuppositions are made manifest in their specifically juridical status. In one of his arguments concerning the institution of marriage, Hervada actually provides a synthesis of his entire line of argument regarding juridical natural law and the natural juridicity of the human person.

«This objective order among persons is natural right, insofar as it is manifested as demands of justice, and the normative structure which constitutes its rule is the natural law. [...] Because marriage corresponds to an ontological structure, to a constitutive principle of the human being (natural *inclinatio*), the juridical structure of marriage is determined by the demands inherent in this ontological structure (*lex naturae*). [...] Insofar as these innate demands of the personal ontological structure are presented with respect to other persons as demands of justice, the conformity with the natural *inclinatio* which is at the basis of marriage is revealed before the other spouse as a demand of justice, as an "ought" that is juridical in nature. [...] The juridical domain of marriage is a domain of justice inherent in the very ontological structure of human nature».[75]

5. The Main Properties of the Juridical Status of Natural Law

We have already seen that the main distinctive character of the *juridical* norm is its property of being «related to the thing justly owed»,[76] and thus

[72] J. Hervada, *Lecciones propedéuticas*..., cit., p. 531.

[73] «What is this natural nucleus of juridicity? I think that, on one hand, this natural nucleus of juridicity is to be found in a juridical dimension of the human person, in virtue of which the person has the necessary natural potentiality to be a title-holder of rights. [...] On the other hand, the natural nucleus of juridicity presupposes the natural structure of the human person [...], which implies a natural law». J. Hervada, *El derecho natural en el ordenamiento canónico*, in Id., *Vetera et nova: Cuestiones de Derecho Canónico y afines (1958-2004)*, Pamplona, Navarra Gráfica Ediciones, 2005, p. 613.

[74] J. Hervada, *Lecciones propedéuticas*..., cit., pp. 522-523.

[75] J. Hervada, *Reflexiones en torno al matrimonio a la luz del derecho natural*, «Persona y Derecho» 1 (1974), pp. 125-126, 128-129, 131-132.

[76] J. Hervada, *Lecciones propedéuticas*..., cit., p. 320.

to «justice».[77] Thus, with respect to its juridical aspect, the precept of natural law is structurally connected to the "thing" or "good" constituted as the right according to all the properties of juridicity. This means that, first of all, the precept of natural law must attribute a "thing" or "good" that is susceptible of becoming a right to a person as his "*suum*". At the same time, this precept must refer to the constitution of a relation of debt on the part of other persons with respect to the title-holder regarding this "thing" or "good". Next, the precept of natural law must regard "things" or goods that are manifestable according to their external dimension (the property of "outwardness"). Also, the "thing" or "good" constituted by the precept of natural law as a person's "*suum*" must include other persons in a relation of debt with regard to this "*suum*" (the property of "other-directedness"). Finally, the "thing" or "good" which is attributed to a person as title-holder and correlatively owed in justice to him by others must be apportioned to the title-holder according to a certain kind of equality.[78]

In the case of natural rights, as we have seen, "things" or goods are attributed, and thereby owed in justice, *equally to every member of the human species*, because natural rights are based on those "things" or goods that have the human nature itself as their title with respect to which all men are equal. For example, the precept (or cluster of precepts) of natural *moral* law establishes the good of "life" as perfective of the human person with regard to his natural end. The constitution of life as a *moral* good consists in, among other elements, preserving this natural human good in the sphere of individual and social morality. This moral precept is, on a distinct level, then constituted as the *juridical* precept that attributes the good of life to its title-holder in the outward domain and with regard to all other people (*"erga omnes"*). Since others could, at least potentially, interfere with the measure or nature of this good, obligations in justice are established between them and the title-holder of the good of life, according to the equality which demands the respect of the same good in other persons.[79]

This reconstitution of the precept of natural moral law as the juridical norm is supported by the doctrine of the two aspects of the concept of law in Aquinas. The natural law, which falls under Aquinas's definition of law in general as «an ordinance of reason for the common good, made by him who

[77] J. Hervada, *Critical Introduction*..., cit., p. 120. See also Id., *Apuntes para una exposición*..., cit., p. 295.

[78] For more details on the main theses of Hervada's doctrine on the essence of right and the properties of juridicity, see J. Hervada, *Critical Introduction*..., cit., pp. 9-39; Id., *Lecciones propedéuticas*..., cit., pp. 165-250.

[79] We could apply the same logic of the genesis of natural rights with regard to freedom of conscience, freedom to form an act of faith, bodily and psychological integrity, and other "things" or goods owed in justice as natural rights.

has the care of community, and promulgated»[80] is reconstituted – while retaining all its properties from the definition of law – as the «*ratio* of right» or the «*ratio* of a certain act of justice»,[81] which is «adjusted» to a person «*ex ipsa natura rei*».[82] This means that natural rights – the "things" or goods owed in justice which have natural law as their title – are determinable and measured for the juridical domain according to the nature of things that is expressed in *"lex naturalis"* itself as, essentially, the ordinance of reason. In other words, "things" or goods become right in virtue of a natural title – the precept of natural law – which itself consists of the very measure of rationality (*"rationabilitas"*) instilled in the nature of these "things" or "goods". Hervada clearly notes these premises.[83] In addition, Errázuriz has rightfully argued that if the normative structure of the demands of justice deriving from human nature were reduced exclusively to the moral domain, then natural normativity would ultimately amount to an extra-juridical question.[84] In a realistic conception of right and juridicity, the precept of natural moral law must be reconstituted according to the specificity of the juridical domain, as the title which creates natural rights by attributing the natural *"res"* or good as something owed in justice.

6. Juridical Natural Law and the Constitution of Natural Rights as "Juridical Goods"

The precept of natural *moral* law – together with the ordinance of reason contained therein – is not the only element of the intersection between right and morality that is reconstituted (in this case, as the juridical natural law) according to its juridical status. The "thing" or good itself, which is both the essence and primary meaning of right in a realistic conception of juridicity, is also reconstituted with regard to how we view this "thing" in its shift from the moral to the juridical domain. In the broader domain of the natural *moral* law, "things" are constituted as natural human goods. Interestingly, Hervada himself uses the term "good" on various occasions precisley to denote the *"res"* which is constituted as *right*.

«Therefore, all the goods inherent to [person's] own being are the object of his dominion, are *his* in the most strict and proper sense. It is, thus, evident that the set of goods inherent to his being represent *his things*, with which others cannot interfere and which they cannot appropriate except through force or violence, which would

[80] *STh* I-II, q. 90, a. 4.

[81] See *STh* II-II, q. 57, a. 1, ad 2.

[82] *STh* II-II, q. 57, a. 2.

[83] «[T]here are things that are attributed to a person by virtue of the very nature of man – in other words, their title proceeds from man's very being – and they are measured according to the nature of things». J. Hervada, *Critical Introduction*..., cit., pp. 67-68.

[84] See C. J. Errázuriz M., *Corso fondamentale I*..., cit., p. 15.

infringe on the ontological status of the person; they are then rights of the person, rights that the person has by virtue of his nature. They are the natural rights of man in the strictest sense of the word. These rights or goods, which belong to the person because they make up his being [...] engender in others the duty of respect...»[85]
«As we have stated, those goods inherent to the being of man constitute rights with a natural title».[86]

From this explicit usage of the term "goods" as rights, together with other instances of the interchangeable use of the terms "goods" and "things" as *"res iusta"*,[87] it follows that Hervada employs the term "natural human good" also with the *juridical* domain in mind.[88] Therefore, the "thing", in its ontological consistency, is constituted first as a natural human good in the moral domain. Within the moral domain, this natural human good is then, under the specific aspect of the juridical domain and within the relational perspective of justice, constituted as a "juridical good". Since the precept of natural *moral* law denotes the orderedness toward a natural human good, the precept of natural *juridical* law points to an order within a juridical domain, which has as its end the specific juridical good. In virtue of the precept of natural juridical law, human goods are, therefore, attributed to their title-holders as their *"suum"*, owed to them in justice, and are thus constituted as juridical goods.

When explaining the basic elements of a realistic conception of right, Errázuriz also develops certain arguments wherein the "things" are owed in justice precisely as juridical goods. Errázuriz's doctrinal position on juridical goods reveals that he understands this conceptual element to be central for a study of the juridical phenomenon.

«The most fundamental question posited in any juridical field consists in the determination of the concrete juridical good in play».[89]
«The classical notion of right highlights the concept of the juridical good. The right, that which is just, is the good itself, with all the determinations which contribute to the configuration of right in its concreteness».[90]

Directly referencing human goods as juridical goods, he claims, much like Hervada, that the human person is title-holder of fundamental goods that

[85] J. Hervada, *Critical Introduction*..., cit., p. 71.
[86] *Ibid*., p. 78.
[87] For example, see J. Hervada, *Lecciones propedéuticas*..., cit., pp. 502-503.
[88] This is obvious enough from some the expressions in the above quote, such as «goods inherent to [person's] own being are *his* in the most strict and proper sense» or «the set of goods inherent to his being represent *his things*, with which others cannot interfere». See J. Hervada, *Critical Introduction*..., cit., p. 71.
[89] C. J. Errázuriz M., *Corso fondamentale sul diritto nella Chiesa: Vol. II*., Milano, Giuffrè, 2017, pp. 293-294.
[90] C. J. Errázuriz M., *Cos'è il diritto? Una domanda sempre attuale*, «Rivista internazionale di filosofia del diritto» 94 (2017), p. 265.

are «not attributed to him by any social system, nor by any agreement between the concerned parties, but which arise as a result of the very nature [...] of human beings».[91]

«The object of relations of justice may also be called a juridical good, to use the expression that emphasizes its essential juridical importance as a good belonging to a person and, consequently, due to that person by others. [...] [T]here exist juridical goods on the natural plane [...] and which are the object of natural rights of the human person [...]. Naturally the term "juridical good" does not indicate that their essence as goods is of a juridical nature. Undoubtedly these are goods that transcend the juridical, but they possess a real dimension of justice, inseparable from their unitary reality as natural [...] goods of the human person».[92]

Errázuriz also highlights the connection between the juridical goods and the properties of juridicity. In his view, the essential premise for the existence of juridical goods is «the attribution of these goods to every person as truly "theirs", and the consequent duty of others to make this attribution effective».[93]

When viewed from the perspective of the "things" themselves, constituted as natural human and juridical goods, it should also be affirmed, together with Errázuriz, that the juridical domain «cannot be separated from the complex human reality of these goods, since, should we posit such separation, [the juridical goods] would become mere idealistic manifestations and would cease to be real».[94] Natural juridical goods, thus, never cease to be natural human goods. Just as natural *juridical* law always continues to be the ordinance of reason inherent in the natural *moral* law, in an analogous way life, for example, as a juridical good never ceases to be "life" as a natural human good. These goods are ontologically identical, though the aspects according to which they are observed differ in reference to the specific properties and respective ends of each domain, moral and juridical. Errázuriz cautions of the negative consequences of theoretically "splitting" the concept of the juridical good from its realistic roots in the natural human good. He argues that such "splitting" would relegate human goods to «the pre-juridical or meta-juridical sphere»,[95] while reducing the concept of juridical goods to a formalistic vision of right.[96]

«In any juridical field, the realistic consideration of the fundamental goods in play, which point to the things that constitute the rights of individuals and group-per-

[91] C. J. Errázuriz M., *Justice in the Church: A Fundamental Theory of Canon Law*, Montréal, Wilson & Lafleur, 2009, p. 115. [92] *Ibid.*, p. 215. [93] *Ibid.*, p. 136.

[94] C. J. Errázuriz M., *Corso fondamentale I...*, cit., p. 19. «For example, when the person's *rights* to freedom have been recognized and protected, the *objective human good* is the *very spiritual freedom* of man *in its visible manifestations*». *Ibid*. Emphasis added.

[95] C. J. Errázuriz M., *Justice in the Church...*, cit., p. 213. [96] *Ibid*.

sons, enables us to overcome, at its root, the formalism which is a constant threat to juridical science and practice. This basically means that [the realistic conception of the juridical good] makes more explicit and more operative a dimension that [refers to] an in-depth analysis of the essential juridicity which is inherent in every good, and which cannot be manipulated at will if we are to remain within the authentic juridical domain».[97]

In a "formalistic" vision of right, we could ultimately end up considering the juridical domain to be extrinsic to the human person,[98] reducible to positive law or subjective rights, while fully adhering to a Thomistic doctrine of natural *moral* law. It is therefore evident that the concept of juridical good is particularly pertinent for a realistic conception of juridical anthropology, especially with regard to its aspect of normative natural juridicity as expressed by the juridical status of natural law.

7. Natural Law as a "Natural" Juridical Norm

In the previous section we have seen that the juridical status of natural law shares in the normative structure of natural moral law. They are not two separate laws, but the same law viewed from different – distinct, but not separate – perspectives. Both perspectives share in the same state of affairs: the natural law has the character of a *legal norm*.

However, the structure of natural law, in both its moral and its juridical aspect, essentially differs from that of positive human law. Positive law is usually understood to be a written (or, under certain circumstances, unwritten, as in the case of a custom) rational fourmula which, according to Aquinas's general definition of law, contains an ordinance of reason promulgated by him who has the care of the community in view of the common good. As such, positive law is the rational rule[99] of positive right (*ius positivum*), since it adjusts certain "things" ("*res*") or goods to determinate persons by way of private or public agreement.[100] According to a realistic conception of right, the juridicity of positive human law arises from its connection with the "just thing itself", that is, from its aspect of constituting or declaring the order of just relations with regard to certain juridical goods. The promulgation of a rational written formula by the public legislative authority has the effect of rendering the order expressed in this rational formula enforceable and coercible upon people under the obligation to obey it. Arguably, the normative structure of positive human law – a written rational formula which contains that which is just – is predominantly understood to be the

[97] C. J. Errázuriz M., *Cos'è il diritto*..., cit., p. 265.
[98] See C. J. Errázuriz M., *Sul rapporto tra diritto*..., cit., p. 346.
[99] See *STh* II-II, q. 57, a. 1, ad 2.
[100] See *STh* II-II, q. 57, a. 2.

paradigmatic model for the concept of law as a legal rule, or at least the primary analogue that is most proximate to the essence of the word "law" in contemporary juridical culture.

Juridical natural law is not reducible to this paradigm of positive law understood as a written (or otherwise made *"positivum"*) rational formula. Its normative structure belongs to a different mode of promulgation than that of a positivized formula elaborated by human reason. In contrast to a "positive" juridical norm, the juridical status of *"lex naturalis"* is dependent upon the essentially *natural* structure of its promulgation.

Another Hervada's intellectual follower, Eduardo Baura, provides a very helpful distinction between a *natural* norm of right, on the one side, and a *positive* juridical norm or any other formula of human reason which possesses a legal structure with regard to the order of just actions, on the other.[101] The latter is only an analogue of the former. Rationally formulated expressions of the juridical aspect of natural law, developed either in the human mind or in positive law, are *not* juridical natural law. The precept of juridical natural law is essentially a *natural* norm. Baura advocates the claim that an abstract rational rule – formulated in the human mind within the process of cognition of the demands of justice and right in the nature of things – is not the cause of the obligations of natural justice.[102] As Aquinas would say, the rule expressed as a rational formula in the human mind is not the *"ratio iuris"*.

«Human reason is capacitated to perceive the norm which is instilled in human nature and social reality, as well as to express the rule for action in a formula. But we should not confuse the norm itself with this formula, since the latter is but an abstraction from reality and as such may be imperfect. [...] It is worth insisting on the need to not confuse the natural norm itself with human knowledge of it, that is, to not confuse the "ought" instilled in the nature of things [...] with the abstract human formula which expresses these natural demands: the human formula, as such, is defective».[103]

According to Baura, we must distinguish between the rule that is rationally formulated in the human mind, and the *juridical natural norm*, which is the rule containing the demands of juridical justice derived from the nature of the human person regarding the orderedness of determinate "things".[104]

«Under the rubric of the "norm of natural right" we understand the rules which man is capable of identifying as juridical demands arising from human nature [...] insofar as these regard the virtue of justice. The natural norm which regards just

[101] E. Baura, *La norma giuridica e la sua tipologia nella Chiesa*, in *Le sfide del diritto*, ed. G. Dalla Torre, C. Mirabelli, Soveria Mannelli, Rubbettino, 2009, pp. 289-299.

[102] E. Baura, *La norma giuridica...*, cit., p. 290.

[103] E. Baura, *Parte generale del diritto canonico: Diritto e sistema normativo*, Roma, edusc, 2013, p. 130.

[104] E. Baura, *La norma giuridica...*, cit., p. 290.

human acts may be understood either as a moral rule of human conduct (moral conception) or as a rule of right (the juridical conception, as the juridical natural norm)».[105]

The rule that is rationally formulated in the human mind may contain the juridical natural norm as expressed and promulgated in nature, and, thus, have a declaratory function with regard to the natural norm. But the juridical natural norm which is promulgated through human nature and makes reference to the order of justice arising from nature is *constitutive*[106] of the right. Ths norm is the *"ratio iuris naturale"* since it constitutes certain natural human goods as juridical goods, i.e. precisely as owed in justice. A precept of natural law is the legal rule, promulgated in a certain way by human nature, that expresses the ordinance of reason toward human *moral* goods or, insofar as it concerns relations of justice, toward *juridical* goods.[107]

Baura adverts to the fact that the immediate consequence of confusing the natural norm of justice with the rationally formulated rule that expresses it is that the rational «formula» – although it contains the elements of the natural norm – is still posited as «extrinsic to reality».[108] The natural law, instead, possesses a juridical domain *precisely* as the law instilled *in nature*, promulgated *by human nature*. The juridicity of human nature is not primarily a "product" of human reason which formulates the demands of justice arising from human nature through abstract rational formulas or, subsequently, through positive law. The normative aspect of the natural juridicity of the human person is not generated solely by human rational categories, as abstract ideas which, then, predicate the juridical phenomenon of reality. If this were the case, such a position would be adequately termed "idealistic", since it would necessarily understand juridicity as arising exclusively from the formula which contains the right and which, as Baura says, would then be conceived as «a sort of categorical imperative».[109]

In a realistic conception of right and juridicity, it is *reality itself* – the nature of "things", or, in the case of our present research, *human nature* – which qualifies certain human goods as owed in justice, i.e. as juridical goods. The juridical status of natural law is not primarily predicated on the bases of an abstract rational rule containing a declarative expression of the right, but is, instead, founded on the ordinance of reason (*"ratio"*) instilled in human nature which indicates an order of attributions of "things" that are owed in justice by others (*"iuris"*).

[105] E. Baura, *Parte generale*..., cit., p. 130.
[106] E. Baura, *La norma giuridica*..., cit., p. 291.
[107] «The natural law has juridical relevance insofar as it concerns relations of justice with other people». E. Baura, *Parte generale*..., cit., p. 165-166.
[108] *Ibid*., p. 166.
[109] E. Baura, *La norma giuridica*..., cit., p. 292.

Conclusion

According to a Hervada's reading of the realistic conception of right and juridicity, a right is that precise "thing" which is apportionable to its title-holder as something that is distinctly "his", and which is, in the outward and intersubjective dimension, owed by others in a relation of justice. We can trace each right back to an attributional cause that situates the "thing" within a realm of application *in concreto* of the properties of juridicity. This attributional cause, thus, becomes the origin of the predication of the juridical phenomenon to a particular "thing"; it is called the title of right.

If the attributional cause of right is human nature itself, or, more precisely, the precept or cluster of precepts of natural law as the normative structure of the *"ratio"* regarding the attainment of the human good, then we may view these precepts under the aspect of the properties of juridicity. A precept of natural moral law which attributes certain human goods to persons, when the applicability of the properties of juridicity is ascertained, is constituted according to its specifically juridical status as juridical natural law or natural norm of justice.