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## Punishment as *medicina peccatoris*. Reflections on Capital Punishment in St. Thomas Aquinas' Doctrine

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Kara jako *medicina peccatoris*. Na marginesie rozważań o karze śmierci  
w doktrynie św. Tomasza z Akwinu

Thomas Aquinas' legal doctrine presents its author's originality. On the basis of contemplating the virtue of justice, Thomas Aquinas formed guidelines typical for rules present in modern penal law, both in the law of criminal proceedings and in substantive law in times of inquisition process predomination and canonical law.<sup>1</sup> His postulates would have contributed to humanisation of the criminal law if these were recognized by a bigger group of lawyers or philosophers. Taking into consideration the fact that they were written in the religious language, the postulates were not popularized and did not gain proper resonance, which would provide Thomas Aquinas with the place in the hall of fame of creators and propagators of the modern concept of the criminal law.

St. Thomas did not use terms known to the modern lawyer, pursuing the precision of expressions. It is worth reminding that Thomas Aquinas had neither legal education, nor he was a philosopher. He was a theologian and he used the language of theology. In this article, modern terms are used, in order to enhance the timelessness of Aquinas' legal-criminal concepts.

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<sup>1</sup> John M. Kelly, in his *A Short History of Western Legal Theory* (Kraków 2006) on p. 176, rightly notices that "St. Thomas proposed reasonable solution, overall theoretical frames, indicating proper look of the criminal law, legitimacy of the punishment, its purpose and its role, which should be connected with the perpetrator's intentions, or their lack". Nevertheless, apart from few general ascertaining presented on two pages of the monograph, the author does not describe the issue in detail.

Justice and judicial activities have to be conducted solely by the political power and should not be submitted, in any cases, to private people. Due to the fact that the law, which constitutes the basis for settling each particular case, is established by the “public power”, and only this power has the right to “interpret law” and pass verdicts.

The judge passes the verdict, based only on the civil law. The judge must not refer to any other jurisprudences. In this sphere, one may talk about the judicial independence. As to the principle, the judge should pass statements upon the rule, nowadays referred to as the discretionary assessment of the evidences, which is a directive used by judicial authorities to assess evidences with the logical reasoning, the knowledge and lifetime experience.

It should be recognized that the competence of the justice refers *ad alterum*, then its opposition, namely the sin of injustice should also be referred to fellow beings. Human being, according to the doctrine of the Angelic Doctor, cannot commit the act of injustice on oneself. One may sin against oneself through acting in opposition to the virtue of moderation or reason, and then, next harm oneself.

An individual as a part of the whole of the specific human community can, as described by St. Thomas, sin both against other individuals and against the community. Belonging to God, as “His creation and vision”, man can also perpetrate the act of injustice against God. Nevertheless, the representatives of the political power deal with such misdemeanours only when the *lex aeterna* is bridged by the natural law, being transmitted onto the grounds of civil law.

Thomas Aquinas’ legal doctrine, formed in the 13<sup>th</sup> century, in terms of the principles of court proceedings, departs naturally from the contemporary standards. Aquinas does not recognize the term “procedural directive”, and he does not apprehend these rules in such a manner as contemporary representatives do. Particular procedural rules may be interpreted either on the basis of the author’s entire deliberations, or on its fragments. The last case would be applied while forming general rule of law, such as the rule of humanitarianism. It can be derived from all works of Thomas, in which the dignity of a human being, inborn and inalienable, constitutes the testimony of God’s love to the humankind. Man, no matter how many and what kind of offences he commits, deserves respect as a being created in the image of the Creator. This is why, in Thomas’ doctrine, one will find neither tortures as a mean of obtaining testimony, nor the possibility to treat the culprit in a humiliating manner.

Similarly, the right to trial as the political and organizational system can be derived from the general considerations upon justice, as one of cardinal virtues. This principle of Aquinas has nearly the same tone today. Each subject who is submitted to political power, has to be provided with the access to the trial and court, which has to recognize the case on the basis of the civil law in an impartial

manner, preserving the accuracy and diligence in acquiring and evaluating the evidence.

The punishment, accurate to the size and type of the crime, should generally form and strengthen the culprit's decision in his or her departure from actions against well-being. This means it should bring, above all, pedagogical effects.<sup>2</sup> In the case of the death penalty, it will bear the eliminating aspect.

The punishment should be inevitable and should form in the society the conviction that it is "a cure" for bad human passions and it brings the "justice's order" back.<sup>3</sup> Punishing those who violate the civil law is, therefore, a justified idea of *bonum commune*. The idea of common good is directed to realisation of *pax* and *ordinis* in community's life. According to Thomas' doctrine of justice, the punishment is an answer or a specific consequence of criminal acts.<sup>4</sup> It is the "price" of breaking the law.<sup>5</sup>

"Each sin follows one's will further than it should: to fulfil one's will, one crosses the reason and God's laws. In order to return the order of justice, one should take away something that the will wants: the will should be punished either by depriving of goods it wants, or by receiving some of the evil it's afraid of".<sup>6</sup>

The return to the justice is completed only when the sinner commits an act of self-punishment. However, if the punishment is "against culprit's will" he "does not return to the justice," but "the justice is poured onto him".<sup>7</sup>

"The punishments are given in order to refrain people from the sin (...). Nobody is afraid of losing things they do not desire. Those whose wills turn away from the final destination are not afraid of being excluded from reaching the final destination. (...) Thus, the sinners should receive a different punishment, of which they would be afraid of".

The punishment is a type of *medicina peccatoris*, a mean of correcting sentenced people, and – to be more accurate – the criminal's soul, which in this way receives a chance for atonement, regret for the harm and strong desire of amendment, and, at the same time, reconciliation with God and neighbours.<sup>8</sup>

<sup>2</sup> Jarosław Warylewski underlines that in the "Thomist philosophy", "The punishment is the answer to man's action of will, man who made a choice. Punishments allow to preserve order among external human behaviours", J. Warylewski, *Kara. Podstawy filozoficzne i historyczne*, Gdańsk 2007, p. 40.

<sup>3</sup> St. Thomas Aquinas, *Summa contra Gentiles*, III, 142 (called *ScG.*)

<sup>4</sup> According to Zygmunt Ziemiński's definition of a doctrine of justice, what we have in Aquinas' work is precisely that kind of a doctrine, Z. Ziemiński, *O pojmowaniu sprawiedliwości*, Lublin 1992, p. 187.

<sup>5</sup> H.J. Berman, *Prawo i rewolucja. Kształtowanie się zachodniej tradycji prawnej*, Warszawa 1995, p. 225.

<sup>6</sup> St. Thomas Aquinas, *De rationibus fidei*, 7.

<sup>7</sup> *Ibidem*.

<sup>8</sup> To the retaliation, prevention and restitution of the criminal punishments in medieval times on examples of theories presented in St. Thomas Aquinas' doctrine points Jarosław Utrat-Milecki,

This is where Aquinas presents not only the diversification of the punishment, but also its specification.

All punishments can be conducted fairly only by the subject to which the convicted is subjected. Punishment carrying a pedagogical aspect and leading to self-improvement, and, at the same time, being deprived of human body intervention (e.g. whipping), can be used not only by the public authorities, but also by a private person who has parental powers, or by those bearing business authority.

“Father or master, leading the family being an imperfect form of community, does not possess full authority to punish, so he has the right only to lighter punishments, which do not do harms that cannot be fixed. An example of the lighter punishment is whipping”.<sup>9</sup>

Whipping causes ailment which does not lead to permanent interference in the structure of the body, which “cannot be fixed.”

“Whipping causes some damage to the whipped body but in a different manner than, for example, cutting off a body part, as this deprives body’s integrity, while the whipping affects only the sense of pain”.<sup>10</sup>

This kind of corporal punishments can be used only by those leading the domestic community, and being, at the same time, its authorities.<sup>11</sup> Each punishment, in order to be just, should be deprived of anger, revenge desire and any disproportions. Most importantly, it should have a pedagogical role and, at the same time, it ought to discourage from further misdemeanours in the future. Simultaneously, Aquinas suggests that punishments executed by the parental authority might be “sometimes eased in the act of mercy”.<sup>12</sup>

“The bigger power, the bigger punishments it may give. And since the state is a real community, the one who owns the power of governing possesses full right to punish and may apply irreversible punishments such as the death penalty or cutting off joints”.<sup>13</sup>

If the governing subject possesses the power to judge in the name of the state’s superior, and he may, on the basis of the court order, eliminate the individuals from the society, then, pursuant to the rights given by the authorities, he may punish less severe guilt with cutting off the joints.<sup>14</sup>

Mutilation punishments are to, first of all, discourage. These punishments are

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*Podstawy penologii. Teoria kary*, Warszawa 2006, p. 94. Cf. B. Bartusiak, *Kara śmierci. W świetle sporu o racjonalizację kary*, Warszawa 2011, p. 26.

<sup>9</sup> *STh.*, II–II, q. 65. a. 2. ad. 2.

<sup>10</sup> *STh.*, II–II, q. 65. a. 2, resp.

<sup>11</sup> “No one is allowed to whip another person if they do not have authority over this person”, *STh.*, II–II, q. 65. a. 2, resp.

<sup>12</sup> *STh.*, II–II, q. 65. a. 2. ad. 1.

<sup>13</sup> *STh.*, II–II, q. 65. a. 2. ad. 2.

<sup>14</sup> O dopuszczalności kar cielesnych *ScG.*, III, 146.

not only a retribution for the acts, but are also designed to act as prevention. Just the imagination of the mutilation punishment, the pain caused by it should prevent the potential culprits from committing acts forbidden by the law. To some extent, the corporal punishment has an individual prevention aspect as it may prevent from committing further crimes in the future. In this way, the punishment which eliminates any parts of the body should be treated as an instrument necessary to fully protect the state community from violating important personal rights.

Yet the role of the punishment is not only to deprive from what is good, but also to act against one's will, not every person understands the notion of good, it happens sometimes that the punishment seems to be smaller as it opposes the will less. And this leads to the fact that for those who treasure and recognize more what's sensual or physical than what's spiritual or intellectual, they fear more the corporal punishment than the spiritual punishments.

For them, the presented order of the significance of the punishments should be opposite.<sup>15</sup>

For this kind of people, the most severe punishment is the punishment which involves physical pain or is connected with deprivation of worldly possessions. People who yield to material temptations do not care for the "order in their souls" and what follows the "loss of the virtue and the loss of God, and the loss of the ultimate happiness, is considered to be insignificant or it means nothing".<sup>16</sup>

The isolation or prevention penalty, in terms of the individual prevention, is the imprisonment. The main idea of this punishment is separating the culprit, who is the "illness" of the state community, from the healthy human population. Separation makes it impossible for the "sinner" to continue with forbidden acts, but, at the same time, it creates an obstacle to those good acts. Considering this, only those who possess the authority to state about death or dismembering may also state about the detention or imprisonment. They make it in order to "punish someone or to prevent from further evil" in the near future.<sup>17</sup>

Only in exceptional cases and for a short period of time ("for about an hour")<sup>18</sup> may a private citizen detain other member of the community and only in a state of greater need, "in order to prevent this person from unlawful and immediate acts, such as the suicide or hurting other person".<sup>19</sup>

"Those who abuse their power should lose it. Therefore, the one who through his acts abuses the freedom of use of his joints, ought to be the subject to detention".<sup>20</sup>

<sup>15</sup> *ScG.*, III, 141.

<sup>16</sup> *Ibidem.*

<sup>17</sup> *STh.*, II-II, q. 65, a. 3, resp.

<sup>18</sup> *STh.*, II-II, q. 65, ad. 3, ad. 3.

<sup>19</sup> *STh.*, II-II, q. 65. a. 3. ad. 3.

<sup>20</sup> *STh.*, II-II, q. 65. a. 3. ad. 1.

According to St. Thomas, the time of imprisonment should not only be considered as a time of atonement, but also as a time devoted to reflections upon one's life. The convicted person, while in isolation, has a time and way to ponder upon himself and upon what he did. In this manner, the convict receives the chance to improve. Moreover, through the repentance, regret and disdain of his past lifestyles he gains the possibility to return on the tracks of law.

God, in accordance with his wisdom, sometimes kills the sinner instantly, sometimes leaves them for atonement because He knows what suits his chosen ones. Human justice, as far as possible, is in this way similar to the God's acting, by killing those presenting threat to other human beings and imprisoning those who act without harm to others.<sup>21</sup>

The first place in the punishment catalogue is taken by the death penalty. It is a particular punishment. Its aim is not to educate, but to eliminate the culprit. It is inflicted and proceeded directly in the name of common good.

In the introduction to his reflections on capital punishment, St. Thomas Aquinas assumes his attitude towards one of the Ten Commandments: You shall not kill. Aquinas' reflections lead to conclusion that this commandment is related only to those who possess a sensible soul. The Angelic Doctor refers to the Book of Genesis (1, 29–30) saying that: "it is allowed, and even necessary, to give all plants as food to animals, and the animals shall be food for men. (...) what is imperfect should serve to what is perfect".<sup>22</sup>

Life in accordance with the Ten Commandments deserves respect and protection. This requirement is not, however, absolute and relates only to killing other person in an improper manner. It is not only about the way, possibly humanitarian and not derogatory, in which the death penalty shall be proceeded, but also about the catalogue of crimes, created in such a manner that only the most severe acts shall be punished by it. Moreover, one more condition in a cumulative way, in reference to the sentenced criminal, should be met, namely it shall be the person who does not fear of punishment, whose nature is contaminated with sins to such an extent that he does not feel any repentance of immoral acts, and that this gives the guarantee that further, similar, unlawful acts will be ceased. Above that, the death penalty should always be justified by the common good which is breached by the culprit's acts.

Aquinas understands the human as sensible existence in two ways: "(...) in reference to themselves and in reference to others".<sup>23</sup> Human, created in God's picture, received from his Creator the most precious gift – life. There is no acceptance then for taking away what was given by God even from the most hardened

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<sup>21</sup> *STh.*, II–II, q. 64. a. 2. ad. 2.

<sup>22</sup> *STh.*, II–II, q. 64. a. 2, resp.

<sup>23</sup> *STh.*, II–II, q. 64. a. 6, resp.

or the biggest sinner in respect of himself. It can only be done if the sin hits and destroys what creates the common wealth.

The concept of good, and the common wealth in particular, is extremely serious in St. Thomas' doctrine, it specifies and penetrates number of questions posed by Aquinas. Consequently, Aquinas presents his thesis about identification of what is good with the purpose. Then he puts an equal sign between wealth and existence. The law has the purpose of realisation of the common wealth idea: "The law shall primarily and mainly consider the common wealth."<sup>24</sup> The law is *sui generis* the rule of human acting, on which the entire legal order is based.<sup>25</sup> The common wealth leads directly to the happiness of the entire society.<sup>26</sup> *Bonum commune* is conditioned by the mind.<sup>27</sup> Thus, the good to which wise legislator shall endeavour should lead to good and prosperous life of all people subjected to his authority.<sup>28</sup>

The justification for the death penalty should be found in the idea of *bonum commune* and in the organic concept of the state.

"The Ten Commandments forbid killing other human being, unless it should be done: and that is how the Commandment encloses the main point of the justice. Human laws should not allow to kill. Killing malefactors or enemies of the republic is not considered unsuitable"<sup>29</sup>

A man, while committing the act of sin, loses the perfection deriving directly from the creation in God's picture. By drifting away from the God's laws the individual undergoes animalization. In this manner he loses the innate dignity of human being.<sup>30</sup>

"Therefore, killing a human who is loyal to his human dignity is evil. Killing a sinner, however, may be considered good, just like killing an animal. Evil human is worse and more harmful than the animal"<sup>31</sup>

Depriving the criminal of life is bad in itself, however, in the final account, it may lead to good.

<sup>24</sup> *STh.*, I–II, q.90, a.3, resp.

<sup>25</sup> *ScG.*, III, 114, 5.

<sup>26</sup> Cf. W. Kaczocha, *Dobro wspólne w nauce społecznej Kościoła katolickiego*, „Przegląd Religioznawczy” 2000, nr 2, pp. 89–108.

<sup>27</sup> J. Vélez-Sáenz, *The Doctrine of the Common Good of Civil Society in the Works of St. Thomas Aquinas*, Notre Dame 1951, pp. 27–29. J.M. Ramírez, *Doctrina S. Thomae Aquinatis de bono communi immanent totus universitatis creaturarum*, “Doctor Communis” 1963, no. 16, pp. 41–45.

<sup>28</sup> Cf. S. T. Pinckaers, *Źródła moralności chrześcijańskiej. Jej metoda, treść, historia*, Poznań 1994, p. 318.

<sup>29</sup> *STh.*, I–II, q. 100. a. 8. ad 3. Cf. B. Bartusiak, *Filozoficzne aspekty kary śmierci w myśli Platona i św. Tomasza z Akwinu*, „Annales UMCS. Sectio G” 1999, t. XLXI, pp. 173–174.

<sup>30</sup> *STh.*, I–II, q. 64. a. 2. ad 3.

<sup>31</sup> *STh.*, II–II, q. 64. a. 2. ad 3. Cf. W. Galewicz, *Tomasz z Akwinu o zabijaniu*, „Znak” 2001, nr 7, p. 554.

“And that is why, sometimes, it is possible to commit evil on an individual if it transforms into a common good of the society. For example, killing a rascal to restore peace in the community. God would not leave evil on earth as it is, if it didn’t extract good of it for the benefit and beauty of the universe”.<sup>32</sup>

In all cases where the death penalty could be avoided without threatening the public safety, other penalties should be used.

The fact that the evil ones, till they live, may improve their acts, does not prevent the just use of capital punishment, because the harm they might pose to the community while staying alive is bigger and more certain than the good expected from their conversion. They may, at the moment of death, through the atonement turn to God. If, however, they are hardened to such an extent that even at the moment of death their hearts do not depart from evil, one can reasonably assume that they will never give up their anger.<sup>33</sup>

According to the organic concept of the state, the community is organized similarly to human body, where an individual is a part of the whole just “as a part to the entirety”.<sup>34</sup> In any cases when a part harms the whole to such an extent that it disturbs its correct functioning, then it should be, for the sake of the whole, disconnected.

“That is why, when amputating any parts of the body is necessary for the sake of saving the health of the body, for example, because of the infection or gangrene, it is allowed and necessary to do it. (...) so, if any man is dangerous to the entire community (...) then it is deserved and healthy to kill such a person to protect the common wealth (...)”.<sup>35</sup>

According to Aquinas, the death penalty carries also eliminative function to those committing great sins.

“Just as cutting off an infected body member is reserved to a doctor to whom the concern of rescuing the whole body was entrusted”, so the death penalty, in the face of the law, can only be made by an entity authorised by a competent state authority standing on guard of the safety, order and social peace.<sup>36</sup> Due to these empowerments, judge who passes the sentence, the executioner who executes the sentence, and the soldier killing enemy during war times, may act.<sup>37</sup>

<sup>32</sup> *De reg.*, 10.4.1.

<sup>33</sup> *ScG.*, III, 146.

<sup>34</sup> “Now, each part is submitted to the whole, just as imperfection is submitted to perfection”, *STh.*, II–II, q. 64. a. 2, resp.

<sup>35</sup> *Ibidem.*

<sup>36</sup> *STh.*, II–II, q. 64. a. 3, resp. Similarly, St. Thomas states in *Summa contra Gentiles*: “Whereas the doctor is doing well and usefully by cutting off the ill joints, if these are threatening the health of the whole body. Then the ruler acts justly and bears no sin himself if he sentences criminals to the death penalty, to prevent them from disturbing peace in the state.” *ScG.*, III, 146. In the subject of the necessity to state the court judgement sentencing to the most severe degree of the penalty. *STh.*, II–II, q. 64. a. 3. ad. 2.

<sup>37</sup> “Killing the malefactor is allowed in so far as its aim is to protect the entire community and, therefore, is reserved only for those who bear the authorisation to protect and preserve it (...).

The public good, that is the wealth of the entire political community, is worth more than the wealth of an individual. “This means the individual welfare must give its place to common good.”<sup>38</sup> If, then, “the life of certain vicious people is disturbing the common good”, violating the social law and order, then the state, acting through its representatives, cannot do anything else, than “removing by the death penalty” such individuals from the given community.<sup>39</sup>

The death penalty may be sentenced in exceptional cases. It must never be used as a prevention: “(...) it is forbidden, ever and in any cases, to remove any joints in order to prevent the sin”.<sup>40</sup>

Life is the gift of God – states Angelic Doctor – no one can be deprived of it, without denying God’s love (with exceptions above mentioned). Taking this into consideration, the judge must be cautious while sentencing the death penalty, especially when having witnesses’ statements as a base. Executioner, while performing his duties, may refuse to act out the death penalty only when the sentence “carries flaws which cannot be borne”. In the case when the sentence “does not carry any obvious injustice”, it is not the executioner who sins, but the judge or those giving false statements (perjuries).<sup>41</sup> It is not the executioner conducting the order who kills, similarly like it is not “the sword in executioner’s hand” which kills.<sup>42</sup> It is strictly forbidden to murder anyone on the pretext of the death penalty. This crime is committed when the eliminative punishment is sentenced under anger, revenge or retaliation.

“Punishments in the present life are more of a medicine than the retaliation against the sinner, reserved for the God’s Judgement and acting »in accordance with the truth«” (Rom 2, 2). That is why the Earth’s courts do not sentence capital punishment for every sin, but use it only when the sin makes irreversible harm or when the sin consists something disgusting in it.<sup>43</sup>

The one sentencing the death penalty and the one executing the sentence are understood as a link between God as the Rightful Judge and the God’s people corrupted with sins. St. Thomas referring to St. Paul’s authority quotes the fragment from the Letter to the Romans (13, 4) – “God’s minister is an avenger to execute wrath upon him who does evil”.<sup>44</sup>

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Now the care of the whole is entrusted to those who exercise the state power. Only they may kill the malefactors while privet people are not allowed to do it”, *STh.*, II–II, q. 64. a. 3, resp.

<sup>38</sup> *ScG.*, III, 146.

<sup>39</sup> *Ibidem.*

<sup>40</sup> *STh.*, II–II, q. 65. a. 1. ad. 3.

<sup>41</sup> The executioner kills on the authorisation from the judge, *STh.*, II–II, q. 64. a. 3, resp.

<sup>42</sup> Cf. *STh.*, II–II, q. 67 and q. 69.

<sup>43</sup> *STh.*, II–II, q. 66. a. 6. ad. 2.

<sup>44</sup> *De reg.*, 9.2.

What is interesting, Thomas gives the sinner the right for self-deliverance as a result of the right to defence, nevertheless, the question of justly sentenced statement does not pose any importance. Aquinas claims that the convict does not have any duty to contribute to their death by staying in the place of isolation. The sinner contributes to his own death sentence by staying in the prison, even if he had a chance to leave it.<sup>45</sup>

The concept of the common good determining the death penalty is corresponding strictly with St. Thomas' metaphor of the state society resembling human body.<sup>46</sup> The idea of good unites around itself individuals from the society and joins them into inseparable integrity. The community, therefore, as the united organism, consists of individual human beings, subordinate to the community and acting out menial functions.

Human is, therefore, a rational being of community, who is aware of the fact that it is possible not only to exist and function as an individual creating a bigger community, but thanks to this community he may perfect himself. At the same time, rules of life in a community cram each individual into strict frames, put the individual in his place and position in accordance to the professional and social position. That unity extorts specific way of organisation.<sup>47</sup> According to St. Thomas' anthropology, an individual is lively interested in correct functioning of the entity known as a *corpus*. Thomas's *corpus morale et politicum* is, at the same time, *corpus mysticum*.<sup>48</sup> In order to eliminate differences and contradictory interests of particular parts of the *corpus*, and in the name of common welfare, each individual engages into social affairs and group life on economic, political and cultural grounds. The individual acts on the basis of the common good concept, which he tries to implement by his work. Many different factors, among others education of given community members by upbringing, influence preserving the social order. Common good makes correct functioning of the state possible, and, as a base of the social order, favours development of social virtues.<sup>49</sup> What follows, according to St. Thomas Aquinas, the punishment should have educative character firstly, and then restrictive and eliminative.

In the organic metaphor of the political society and in the common wealth construction, one may find thesis condemning suicide.

<sup>45</sup> *STh.*, II-II, q. 69. a. 4.

<sup>46</sup> About the organic concept of the state one will read in the V chapter, devoted to Thomas' idea of state and society.

<sup>47</sup> C. Strzeszewski, *Hierarchia dobra wspólnego a naturalna hierarchia społeczności*, „Roczniki Filozoficzne KUL” 1966, z. 2, pp. 5–10.

<sup>48</sup> E. Cassirer, *Mit państwa*, Warszawa 2006, p. 125.

<sup>49</sup> Cf. W. Piwowarski, *Państwo jako społeczność naturalna według świętego Tomasza z Akwinu*, „Roczniki Nauk Społecznych” 1994–1995, nr 1, p. 17; M. Mróz, *Człowiek w dynamizmie cnoty*, Toruń 2001, p. 416.

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## SUMMARY

The article presents the issue of punishment in St. Thomas Aquinas' doctrine. In particular, it analysis the propriety of capital punishment. The author presents the link between punishment's functions, rules of stating and executing with the common wealth. The acceptance of capital punishment is the consequence of rational attitude towards *bonum commune* and is a derivative of acceptance of organic state concept. The originality of Aquinas' ideas in the subject of humanization of criminal law provides Thomas Aquinas with permanent place in the hall of fame of creators and propagators of the modern concept of the criminal law.

**Keywords:** St. Thomas Aquinas; punishment; capital punishment; organic state concept; common good

## STRESZCZENIE

W artykule została przedstawiona problematyka kary w doktrynie św. Tomasza z Akwinu. W szczególności przeanalizowano celowość kary śmierci. Autor stawia tezę o ścisłej korelacji funkcji kary, zasad jej orzekania i wykonania z koncepcją dobra wspólnego. Dopuszczalność kary śmierci stanowi konsekwencję racjonalnego ujęcia *bonum commune* oraz jest pochodną przyjęcia organicznej koncepcji państwa. Oryginalność rozważań Akwinaty w przedmiocie humanitaryzacji

prawa karnego zapewnia mu trwałe miejsce w panteonie twórców i krzewicieli nowożytnych koncepcji szeroko rozumianego prawa karnego.

**Słowa kluczowe:** Św. Tomasz z Akwinu; kara; kara śmierci; organiczna koncepcja państwa; dobro wspólne