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State Power over the Body in the Context of Thomistic Ethics — Capital Punishment, Police Killing and Waging War*

Abstract: When engaging in a philosophical analysis of body and corporeality in a political context, it is essential to ask to what extent, under what circumstances, and in accordance with what moral norms the state performs actions that have the bodies and lives of citizens as their object. This issue was already discussed in ancient philosophy, examples of which can be found in the writings of Plato and Aristotle, but also in ancient jurisprudence, especially in the law and the legal doctrine of ancient Rome.

Aware of such a previous history of studies on this topic, this analysis will discuss the three main ways in which state power over the life and health of citizens is manifested. Namely: (i) capital punishment (ii) policing and (iii) warfare. In addition, it will be indicated, based on Thomistic philosophy, what moral norms govern these state actions. The fundamental differences between the three main state powers — judicial, police, and military — will also be shown in the context of lethal actions undertaken on their basis.

Keywords: ethics, St Thomas Aquinas, capital punishment, police killing, war

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Introduction

Studies focused on the problem of body and its actions are commonly connected with modern and contemporary philosophy. However, it is important to point out that in ancient and medieval times, the body was also present as an object of philosophical studies, sometimes even in a more detailed and precise manner, as it constituted a part of systematic philosophical enquires. The body was an object of philosophical studies in all of their essential subdisciplines — metaphysics, epistemology, ethics, and political philosophy. In this study, I will focus my attention on an ethical and political approach to the issue of body and corporeality. To determine it precisely, I shall put under consideration states' power over the body (and life) of human beings, as well as acts through which individuals can be justly deprived of their lives — capital punishment, intentional killing by police officers, and waging war. The goal of the study is twofold. First, I intend to present the problem of the lethal actions of states in a systematic way by determining the difference between the private and the public right to kill. Second, through this study, I want to show that Thomistic ethics presents a robust and compelling theory of the lethal actions of the state which is a viable alternative to contemporary ethical frameworks. In order to achieve the goal outlined above, I will draw from St Thomas Aquinas' texts and analyses¹ and commentators of Aquinas — Domingo de Soto and Hieronymus Noldin.

The order of the article is as follows. First, St Thomas' position on private and public rights to carry out lethal actions will be reconstructed, focusing mostly on the difference between them. To present this issue, I will also draw from the analogy presented by Aquinas — an analogy between the actions of a medic and the actions of the state.² In the second part, I will analyse the rights of the state which have the human body and health as their object: the right to judge (*ius iudicationis*), the right to coerce (*ius coercionis*) and the right to wage war (*ius militare*). Accordingly, in this part I will also determine the norms that govern a state's lethal actions, namely: capital punishment, intentional killing by police officers, and waging war. Finally, in the third part, I will conclude the whole text.

Prior to presenting the aforementioned problem of the lethal actions of the state, it is necessary to briefly reconstruct Aquinas' theory of intentional actions and the doctrine of double effect. It is a crucial step, as only on the basis of this theory can the difference between private and public rights to kill will be properly understood.

As to Thomas' theory of intentional acts, on the one hand, one can analyse intentions in the context of a certain agent and his goals (*finis operantis*). Within this approach, two ways of intending something can be distinguished. First, an agent can intend something as a goal of their action. For example, I can intend to satisfy my hunger as a goal of my action. Second, one can intend something as a means to an end, ex. I can intend to buy a sandwich as a means to an end — the

¹ Mostly on the basis of “Summa theologiae”, see St Thomas Aquinas, *Summa theologiae*, Editio Leonina, Roma 1895 (in subsequent footnotes: *S. th.*). English citations from: idem, *Summa Theologiae*, transl. Fr. L. Shapcote, Steubenville: Aquinas Institute, Emmaus Academic 2018.

² See *S. th.* II-II, q. 64, a. 3.

satisfaction of my need for nourishment.³ On the other hand, one can analyse the action itself and ask whether there is some type of intention constituted solely on the basis of the nature of certain actions (*finis operis*). Drawing on the concept of Diego de Covarrubias y Leyva, a Spanish philosopher from the school of Salamanca, I would like to propose a theory according to which some effects are intended indirectly.⁴ In such cases, effects that occur after an illicit action naturally and in most cases are regarded as intended indirectly, while effects which occur after a given action only incidentally and rarely are not intended.

Next, the doctrine of double effect should be outlined. As Aquinas states, some effects of action must be considered as intended and, as such, morally significant;⁵ while others are merely foreseeable side-effects of the agents' actions, without moral significance for the agent's action. The possibility to foresee some effects of one's action is not sufficient to constitute the moral responsibility of the agent. Intent is what usually constitutes moral responsibility.

To sum up this part of the study, one can present the following types of intending, which is morally significant: (i) intending as a goal, (ii) intending as a means, and (iii) intending indirectly.⁶

I Aquinas on the difference between the public and the private right to kill

To understand Aquinas' position on public dominion over the human body, one must first grasp the difference between public and private rights to carry out lethal actions. From the outset, it must be pointed out that, in Aquinas' philosophy, the difference between the rights of those agents is fundamental. It lies in two primary aspects: (i) mode of lethal actions, and (ii) object of lethal actions.

Let us first focus on killing by a private individual. Aquinas writes about this in one of his articles on homicide:

Accordingly the act of self-defence may have two effects, one is the saving of one's life, the other is the slaying of the aggressor. Therefore this act, since one's intention is to save one's own life, is not unlawful, seeing that it is natural to everything to keep itself in being, as far as possible. And yet, though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end. Wherefore if a man, in self-defence, uses more than necessary violence, it will be unlawful: whereas if he repel force with moderation his defence will be lawful, because according to the jurists, it is lawful to repel force by force, provided one does not exceed the limits of a blameless defence. Nor is it necessary for salvation that a man omit the act of moderate self-defence in order to avoid killing the other man, since one is bound to take more care of one's own life than of another's.⁷

³ See *S. th.* I-II, q. 12, a. 4, co.

⁴ See D. de Covarrubias y Leyva, *Opera omnia*, I, 5, 2, Frankfurt: Sigmund Feierabend 1571, p. 556.

⁵ See *S. th.* I-II, q. 12, a. 1 i 4.

⁶ Full argumentation for this proposition can be found in: W. Kilan, "Morderstwo jako odrębny typ działania śmiertelnościowego. Analiza filozoficzno-prawna w kontekście tomistycznej etyki," *Rocznik Tomistyczny* 11 (2022), p. 295–312.

⁷ *S. th.* II-II, q. 64, a. 7, co.

Any private killing of another human being can be justly carried out only if it is an action aimed at defending one's health and life or the lives of others. In other words, it might be justified only if it is a defensive action, a realisation of the private right to self-defence. Being an act of self-defence, it must be a reaction to an actual, real, and unlawful assault. As such, it must be conducted appropriately to the aforementioned right: otherwise, the agent will be guilty of a crime too — the defence cannot be performed too late or too soon, and an attack cannot be repelled with disproportionate force.⁸ If the defence is done correctly, the death of the attacker is caused only as a side-effect. It is usually accepted by Thomistic and Christian scholars that it is strictly forbidden for any private individual to cause anyone's death intentionally. This applies of course to all types of intending — as a goal, as a means, and intending indirectly.

It would undeniably be beneficial to show this in some examples. On the one hand, it is permissible for a private individual to cause someone's death as a side-effect of their defence — when the pushed attacker unfortunately trips, and dies as an effect of hitting his head on metal railing. A person defending themselves from the attack may, of course, foresee that their actions may cause the attacker's death but it is not intended in any way, for only defence was intended. On the other hand, it is not permissible to intentionally kill an attacker, even in self-defence: by stabbing with a knife in the neck or shooting them directly in the face.

The actions of public authorities differ immensely from the actions of private individuals. In the realm of lethal actions, the state is not bound by the same conditions as a private person. As Aquinas states:

But as it is unlawful to take a man's life, except for the public authority acting for the common good.⁹

The reason for a state's right to kill lies in the referring of its actions to the common good, which is not reducible to the good of all members of the community but is the good of a community as a whole. It is, of course, possible for individuals to act for the common good, yet those acts are only incidentally directed to the common good. Only the state is in its essence a being constituted for nurturing and supporting the common good of a certain community.

The following differences between the states' and private lethal actions stem from this reference: first, a state's lethal action need not be in response to a direct and actual attack. It is permissible for the state to kill individuals even if they are not currently fighting with public officers but are responsible for crimes already done. Hence, although the state takes action as a reaction to injustice, it is not necessarily a reaction to the injustice being realised in the current moment. This is most evident in the case of the death penalty, imposed by the court for a crime already committed. Second, what distinguishes states' rights from private rights to

⁸ Contemporary Polish penal law expresses these two forms of violation of right of self-defence as extensive excess and intensive excess; see *ustawa Kodeks karny 6.06.1997 r., Dz.U. 1997 Nr 88, poz. 553 art. 25.*

⁹ *S. th. II-II, q. 64, a. 7, co.*

self-defence is the possibility to kill perpetrators of crimes and enemies in a war in an intentional way.

As it was said in the introduction, one can also draw some conclusions on the status of public authority and community from Aquinas' analogy between a medic and the actions of public authorities: (i) just as a physician heals patients, i.e. a being living independently from him, so the community has a life independent from the state; (ii) just as a medic intervenes only in the case of a medical emergency, so do public authorities only carry out lethal actions as a public intervention against injustice, (iii) just as an illness or mutated cell constitutes a threat to the whole body, so the individuals subject to state killing constitute a threat to a whole community.

II Public right to kill

The public right to kill intentionally realises itself through three more specific rights: (i) right to judge (*ius iudicationis*), (ii) policing rights (*ius coercionis*), and (iii) right to declare and wage war (*ius militare*). All of those rights together fall under the wider power of the state — power of the sword.¹⁰ Yet this distinction, even if not expressed precisely in this way, was already present in antiquity in the Roman Empire.¹¹ In those times, the law distinguished two types of state power — *dominium* and *potestas*, attributed respectively to lower officials (*magistratus minores*) and higher officials (*magistratus maiores*),¹² called magistrates. The existence of this distinction in the Middle Ages is evidenced by the provisions contained in the “Corpus Iuris Civilis.”¹³ It can therefore be said that, in the context of lethal actions of the state, Thomistic ethics draws from two main sources — the Holy Bible and Roman law.

It is now necessary to determine the main differences between judicial, police, and military rights in the context of lethal actions. In other words, one must answer the question: by what actions is the general object of state action — the common good — specifically defended within the rights indicated above.

¹⁰ Cf. Romans 13, 1–4: “Let everyone submit himself to the governing authorities, for there is no authority except that which derives from God, and whatever authorities exist have been instituted by God [...] Do you wish to be free of fear from someone in authority? Then continue to do what is right and you will receive his approval. For he is acting as God's representative for your welfare. But if you do what is evil, then be afraid for he does not wear a sword for nothing. People in authority are God's servants to mete out punishment to wrongdoers”; *New Catholic Bible*.

¹¹ See J. Plešcia, “Judicial Accountability and Immunity in Roman Law,” *The American Journal of Legal History* 45 [1] (2001), pp. 52–53, DOI: 10.2307/3185349.

¹² See J. Plešcia, *Judicial Accountability and Immunity in Roman Law*, p. 52; T. Mommsen, *Römisches Strafrecht*, Cambridge: Cambridge University Press 2010, pp. 35–54; and P. Kołodko, “Uwagi na temat odpowiedzialności ‘Magistratus Populi Romani’ w świetle prawa prywatnego oraz prawa publicznego,” *Zeszyty Prawnicze* 14 [3] (2014), pp. 117–118, DOI: 10.21697/zp.2014.14.3.06.

¹³ See C.H. Haskins, *The Renaissance of the Twelfth Century*, Cambridge: Harvard University Press 1927, pp. 193–223; and J.C. Russel, “Gratian, Irnerius, and the Early Schools of Bologna,” *The Mississippi Quarterly* 12 [4] (1959), pp. 168–188.

A. Judicial right to kill — capital punishment

The judiciary may be understood as a model and most important power of a state. Its importance flows from the fact that it is through acts of judging that the state gives members of the community what is due to them in the event of harm done to them by other people. As Aquinas claims:

Now a judge (*judez*) is so called because he asserts the right (*jus dicere*) and right is the prison sentence, with a determined time of probation. However, there are also harsher object of justice.¹⁴

On the general level justice is upheld not through any lethal acts, but through the passing of good laws. Yet in certain circumstances, it becomes necessary for the state and its judicial power to administer penal punishments to those who act against the common good. Those penal actions are naturally of a varying severity for the perpetrator, the weakest of them consisting of a suspended penalty, such as life imprisonment, and the harshest of all — capital punishment. Capital punishment is a strictly lethal action carried out by the judiciary for the most heinous crimes. It is also an action in which the death of the criminal is directly intended, constituting a model type of state lethal action. Aquinas points out that the justification of capital punishment lies not only in its reference to the common good of a certain community but also in two additional elements. First, the judicial verdict,¹⁵ and second, the peculiar status of the perpetrator in the case of the most serious crimes — that of a servile animal — to which he falls on the account of his crimes.¹⁶

The importance of judicial verdict is shown by Aquinas many times, as it is a direct act of justice in the realm of social relations. That is also why Aquinas pays a lot of attention to the analysis of the conditions for good judging, emphasizing that a state's actions must be carried out in a way ensuring the objective character of a criminal conviction¹⁷. This objectivity is assured directly and indirectly. Directly through the verdict passed by the judge acting in the name of the state, in which he determines the guilt of the perpetrator and the punishment proper to the crime. Indirectly by criminal proceedings, conducted in accordance with the penal procedure.

Not only Aquinas but also Thomistic commentators point out the importance of judicial verdict — Domingo de Soto, a Thomistic scholar from the School of Salamanca, and Hieronymus Noldin, a XIX-century Austrian Jesuit and moral theologian. Soto presents this condition in the question concerning the permissibility of recovering a stolen object by the robbed person's own means when it is not possible to reclaim it through the criminal process.¹⁸ He claims that even in this specific situation it is not permissible to independently recover one's belongings, for it is a usurpation of the state's rights. Noldin, in "Quaestiones Morales. De Principiis Theologiae Moralis," shows the following conditions for killing a criminal through

¹⁴ *S. th.* II-II, a. 60, a. 1.

¹⁵ See *S. th.* II-II, a. 64, a. 3, ad. 4.

¹⁶ See *S. th.* II-II, a. 64, a. 3, ad. 3.

¹⁷ See *S. th.* II-II, q. 60.

¹⁸ See D. de Soto, *De Iustitia et Iure*, p. 1, V, q. 1, a. 2, 3, Campo 1589.

capital punishment: (i) the perpetrator must commit a serious crime, (ii) the perpetration of a crime must be determined with certainty, (iii) the perpetration of a crime must be determined judicially (*de crimine commisso iudicialiter constet*).¹⁹

St Thomas claims that the perpetrator of a very serious crime falls, in a certain manner, into a slavish animal state and as such, the criminal can be used for the benefit of other people.²⁰ The analogy of Aquinas sheds more light on this state. The analogy takes the following form: as it is permissible for a doctor to cut off an infected limb for the good of the whole body so it is permissible for a public authority to deprive a person harming the community of his life for the good of the whole community.²¹ It can be said that a criminal that has fallen into an animal state resembles a foreign body, ex. a cancerous cell. A foreign body is something that remains physiologically connected to the rest of the body, but is in fact already separated from the vital processes taking place in the body. Just as a doctor cuts out the part of an organ that has been invaded by cancer cells, effectively removing from the body what had already been excluded from the natural life of the body, so do public authorities kill a criminal who remains connected to the rest of the community through social relations, but who, because of their actions, are no longer part of that community.

In this context, to kill a criminal, the state has to determine that they pose a threat analogous to a deadly disease. It is of course not a medical threat to the community (ex. leprosy) or any future, not yet realised harm. Similarly, it is not convincing to claim that the state has to anticipate future threats posed by any person. On the contrary, I state that the threat posed by a criminal lies in their impunity, i.e. the fact that their crime was not punished. Impunity is a threat to the community as it fails to fulfil the victim's right to obtain justice and reparation. So, one can understand the contagiousness of a criminal in this way that his continued life within the community creates the possibility of great depravity for others and of leading them down the path of moral wickedness and crime (criminals do not have to do this actively – their mere impunity in the community is worse for others). Also on the basis of the analogy, one can present the goal of capital punishment: it is to sequester the criminal from society, and to take away from them the good against which they willingly acted in a wicked way.

B. Police right to kill

Police killing constitutes a second type of state lethal action. As was already stated, the police's right to kill is founded upon a right called *ius coercionis*, a right to enforce obedience to the law on those who violate it. This right has Roman roots,²²

¹⁹ See H. Noldin, *Summa Theologiae Moralis*, b. VIII, q. 3, t. 2: *De Praeceptis*, Feliciani Rauch (C. Pustet), Oeniponte 1954, p. 302.

²⁰ See *S. th.* II-II, a. 64, a. 3, ad. 3.

²¹ See *S. th.* II-II, q. 64, a. 3.

²² See T. Dean, "Police Forces in Late Medieval Italy: Bologna, 1340–1480," *Social History* 44 [2] (2019), pp. 151–172, DOI: 10.1080/03071022.2019.1579974; K. Fliieger, "Historia policji od czasów II wojny światowej do współczesności," *Przegląd Naukowo-Metodyczny. Edukacja dla Bezpieczeństwa*

but it can be applied to contemporary times, since both ancient and contemporary acts are a realisation of the aforementioned power of the sword. It realises three main objectives: (i) enforcing obedience to the law, (ii) ensuring security and order in the community, and (iii) prosecuting and detecting crime. Hence, the norms presented in the following section of the paper apply, or could apply, to all historically different formations that perform these tasks on the basis of state authority.

The essential difference between the police and judicial powers can be put forward positively, and negatively. In positive terms, the difference between these rights lies in the fact that, whereas lethal actions, which are the realisation of a judicial right, are exercised against an action already committed and on the basis of a court judgment, police actions are a reaction to a criminal act currently being committed, being an immediate way of enforcing obedience to the law on its perpetrator. In negative terms, it lies in the fact that, while judicial lethal actions are justified by a court judgment, police lethal actions do not need to be justified by a judgment, but are based on the general right to combat disobedience. The distinction between these powers is also expressed in the fact that while the courts can impose various types of punishment (or penal measures) on offenders, members of the police can only apply various types of disciplinary or coercive measures.

Let me finalise this section by determining the status of police officers in Aquinas' philosophy, since it is not as obvious as it might seem. Without going into too much detail, it must be stated that St Thomas named police officer by the term: *minister iudicis*, i.e., someone carrying out the acts of the judiciary:

But as it is unlawful to take a man's life, except for the public authority acting for the common good, as stated above, it is not lawful for a man to intend killing a man in self-defence, except for such as have public authority, who while intending to kill a man in self-defence, refer this to the public good, as in the case of a soldier fighting against the foe, and in the minister of the judge struggling with robbers, although even these sin if they be moved by private animosity.²³

Because of that, *ius coercionis* is derivative of *ius iudicationis*. In other words, all police rights are founded upon a more primary right of the courts. Yet it does not mean that police can only act upon judicial sentences.

Now let me move on to the next issue — the norms governing the lethal actions of police officers. First, I would like to point out that there are two main types of lethal police actions: (i) actions involving a significant risk of depriving someone of their life, (ii) actions carried out with the intent to kill.

The first type of action is not very controversial when it comes to norms that govern it. In such circumstances, police officers do not intend another person's death, but nevertheless foresee that, as a result of their actions, someone may, in particular circumstances, die. For example, police officers may use rubber bullet guns during riots. They do not intend to kill anyone, yet they foresee that in specific circum-

3 [8] (2010), pp. 147–149; M. Mielnik, "U źródeł policji polskiej: spojrzenie na tradycje w literaturze dwudziestolecia międzywojennego," *Studia Bezpieczeństwa Narodowego* 8 [13] (2018), pp. 87–98, DOI: 10.37055/sbn/129899; A. Misiuk, *Historia policji w Polsce od X wieku do współczesności*, Warszawa: Wydawnictwo Akademickie i Profesjonalne 2008; S. Pieprzny, *Policja. Organizacja i funkcjonowanie*, Warszawa: Wolters Kluwer 2011.

²³ See *S. th.* II-II, q. 64, a. 7.

stances a rioter may die after an unfortunate strike in the head. Such actions are governed by the principle of proportionality. According to this principle, the severity, or harshness, of the measures chosen by the police must be proportionate to the crime they prevent and the goods they protect. Those actions fully fall into the aforementioned *ius coercionis*, a right to enforce obedience without the intent to kill.

The second type of action — intentional killing by the police — is considerably more problematic. As was shown above, the judiciary has a right to kill intentionally because they refer their actions to the common good, and additionally pass a sentence determining the guilt of a criminal. It would seem that it is absolutely impermissible for the police to kill in the same manner, for they are not able to pass judgment in situations requiring urgent action, such as riots, i.e. situations when a right of a typically police nature is realised. However, I claim that the judicial verdict may be understood in two ways: (i) in a strict sense — as a verdict issued by the court after a trial, (ii) as a general right to fight injustice. The latter allows police officers to kill intentionally in situations when the perpetrator attempts an act punishable by death. The aim of the police officer's action would be to prevent the perpetration of a crime punishable by death; in this situation, they may present to themselves as the intention of their action the deprivation of the life of the criminal.

Military right to kill

The last type of lethal state power is realised by the military, founded upon a strictly military right to kill: *ius militare*, a right to wage war. This issue, concerning the public right to kill, is usually presented within the theory of just war and I shall follow this common intuition. The roots of the theory of just war can be found in the texts of St Augustine; St Thomas Aquinas adapted Augustine's reflections to his own philosophy. The theory of just war is traditionally divided into three main parts: (i) *ius ad bellum*, right to declare war, (ii) *ius in bello*, right to wage war, and (iii) *ius post bellum*, right to end wars and determine conditions of ceasefire. In this article, I shall focus on the first two questions, i.e. the right to declare war and the right to wage war.

Ius ad bellum is the right to declare war, but of course not arbitrarily or freely, for only wars declared under certain conditions are just wars. Aquinas states that there are three conditions of a just war declaration: (i) war must be declared by public authorities, (ii) war must be declared on the basis of just cause, (iii) war must be declared with an intention of restoring peace and punishing evil.²⁴ I would like to add another condition — (iv) the extremity of war, i.e. the fact that war constitutes a fundamentally different type of the state's action; its radical character. These conditions must be fulfilled together, and the failure to fulfil any one of them renders the war in question unjust. Furthermore, it should be pointed out that a war is usually not fair to both warring parties. For example, in September of 1939, the Polish side defending itself against German aggression waged a just war, while the German state waged an unjust war. The belief that war in general is bad is also

²⁴ See *S. th.* II-II, q. 40, a. 1.

false. It is evil, especially for the side at war that violates one of the conditions of declaring (and waging) it, being the perpetrator of all evil. For the attacked party, such an unjustly declared war is of course a certain evil, but an evil that is experienced and not caused. There is also the possibility of both sides waging an unjust war and of both sides waging a just war. The latter case arises when a third party deceitfully pushes them into war.

This right is not dependent on any other stately right to kill and constitutes a sphere that is independent of judicial or police rights. However, together with the two aforementioned rights, it is one of the realisations of the public power of the sword. As such, war should not usually be understood as a realisation of states' rights to judge or to coerce citizens. Those two false theories may be called the judicial model of war and the law enforcement model of war. On the one hand, the judicial model of war, would allow armies to fight only on the basis of a judicial verdict, making generals into judges. But it is not really convincing and against Aquinas' understanding of state powers. On the other hand, a law enforcement model of war, analysed for example by Alexander Pruss,²⁵ would allow armies to fight their enemies as a way of enforcing obedience on other countries and states by a dominant power. In contemporary times, this idea of police wars may seem wholly unjustified but I would claim that it is in reality an idea of imperial power to rule lower rulers, such as dukes and kings. However, it has been realised in the past by the Roman Empire, with later and contemporary failed attempts to imitate this power from the Soviet Union and the United States of America. Nevertheless, even if war could be exercised as a police action, this would not address the problem of the military right as military right, which is the object of analysis here. Hence, this will not be analysed further.

It was already stated that military actions occur after the declaration of war, and can be justly made only if the latter act was also justly done. I would like to first point out three main norms of any military action: (i) innocents may not be intentionally killed, (ii) the means of war used by armed forces must allow for differentiation between guilty and innocent, combatants and non-combatants (principle of discrimination), (iii) the chosen means of war must be proportional to the military goal that is currently being pursued. The last, third condition is quite clear and self-evident, especially in the context of the analysis of police actions presented in the previous paragraph — the military cannot use any means that are not proportional to current military goals. Still, I would like to point out some issues connected with conditions (i) and (ii).

The first condition of morally permissible military action states that, during the war, no innocent may be killed intentionally. That is why all actions of the military that intend it in any way are strictly forbidden, ex. carpet bombing of cities or use of nuclear weapons. But it does not mean of course that there are no circumstances in which a civilian can be killed. In the context of the principle of double effect, it might be said that a civilian may be unintentionally killed when their death

²⁵ See A. Pruss, "The law enforcement model of war," <http://alexanderpruss.blogspot.com/2022/03/the-law-enforcement-model-of-war.html> (accessed: 23.03.2022).

is a side-effect of a strictly military action. For example, during an air attack on a military base of the enemy, a civilian may die as they deliver some goods to this base; the death of such a civilian is not only unintentional but also unforeseeable.

The second condition may be understood as a specification of the first one in the domain of military action. Any means used by the military must allow for differentiation between the guilty and the innocent; also between combatants and non-combatants. On the most basic level of analysis it involves of course a prohibition of killing of innocents, i.e. civilians but also all people that are *in-nocens*, not harmful. It encompasses not only civilians but also all military personnel that is currently unable to wage war, hence is not a threat to anyone, ex. soldiers in captivity, soldiers injured and in field hospitals, combat medics.

This is of course only a general analysis, and we must note that there are many other problems connected with this topic, ex. whether soldiers fighting in wars always have an equal status²⁶ — soldiers fighting a just war and an unjust war; the peculiar situation in which both sides fight in a just war because of a sinister influence of a third state; or the problem of the permissibility of the use of autonomic or military targeted killings.

III Conclusion

This paper has shown that, in the framework of Thomistic ethics, the state has three distinct rights to intentionally kill: *ius iudicationis*, *ius coercionis*, and *ius militare*.

First, judicial powers of the state can sentence criminals to capital punishment, since, on account of their actions, they resemble a foreign organ, i.e. one connected physiologically to the body, but in fact already excluded from it. The state only finishes the separation of the criminal from the community in order to take away from them the good they acted against. Second, police officers can kill intentionally with a special judicial right when the criminal attempts to commit a crime punishable by death. Third, the military has a right to kill intentionally in order to render enemy soldiers harmless.

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²⁶ Such equality is sometimes identified as a part of a "traditional" approach to theory of just war.

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