

2003

Sanctity of Life and Authorization to Kill: Tensions and Developments in the Catholic Ethics of Killing

Joseph Boyle

Bluebook Citation

Joseph Boyle, *Sanctity of Life and Authorization to Kill: Tensions and Developments in the Catholic Ethics of Killing*, 1 U. St. Thomas L.J. 217 (2003).

This Article is brought to you for free and open access by UST Research Online and the University of St. Thomas Law Journal. For more information, please contact lawjournal@stthomas.edu.

ARTICLE

**SANCTITY OF LIFE AND AUTHORIZATION
TO KILL: TENSIONS AND
DEVELOPMENTS IN THE CATHOLIC
ETHICS OF KILLING**

JOSEPH BOYLE*

Approaches to the ethics of killing based upon the relationships of human life to God can reasonably be called sanctity of life views. There is more than one such view, and within a sanctity of life view there can be several more or less harmonious ideas. The Roman Catholic Church's sanctity of life position incorporates at least two distinct ideas, which are generally complementary but sometimes in tension.

These views are the following:

(1) Because of the special status of humans as images of God and because of the special role for humans within divine providence, God retains a unique and direct form of lordship over human life, such that God alone has a proper say over human life; that is, only God has authority over human life similar to the human authority over property and similar to the authority of political leaders over members of the polity they govern. Human life is sacred in this view because of God's special authority over it, and that is based on God's special interest in humans.

(2) Because of the special position within divine providence of human life, which presupposes that humans are made in God's image and likeness with a unique capacity to think, choose, and so to respond to God's call to friendship, human life has an inherent dignity and inviolability. Human life is sacred in this view because its inherent human dignity is grounded in the unique similarities and relationships humans have to God.

These two elements of a sanctity of life view share a common ground—the similarity of human beings to God and the special relationship

* Professor of Philosophy, University of Toronto, Fellow and Former Principal of St. Michael's College in the University of Toronto. Boyle works in moral philosophy within Catholic tradition, and is a collaborator with Germain Grisez and John Finnis in developing a distinctive version of natural law theory.

of friendship with God for which human beings have been created. These are distinct since inherent human dignity implies a ground in human beings for not killing them that is conceptually distinct from the special authority God has over human life. As we shall shortly see, both current Catholic teaching, as proclaimed by Pope John Paul II, and traditional Catholic teaching, as represented theologically by St. Thomas Aquinas, contain these two ideas, very tightly but somewhat differently woven together, to comprise the sanctity of life rationale for excluding most killing of human beings.

However, these different ideas appear sometimes to point in contrary normative directions. The divine authority idea of the sanctity of life seems to allow for the killing of those whose killings God would authorize, and would delegate to some humans to carry out as his agents. So, a person delegated to kill could rightly do so on God's behalf. Special revelations aside, the candidates to be delegated authorities for this kind of killing are political authorities acting against criminals for the common good of the polities within which they have authority to use violent force. The innocent are immune since political authorities have no authority to kill them. By contrast, the inherent dignity idea of the sanctity of life view seems to resist even limited permissions to kill, since even God's delegates must respect the inherent dignity of the person.

These different ideas within the sanctity of life view point toward differing moral assessments of capital punishment. If killing is authorized by God, then justly killing criminals seems morally good; but since even criminals have human dignity, killing even the worst of them is problematic. In fact, some of the current movement in ecclesial attitudes and pronouncements concerning capital punishment seems to reflect the play between these two ideas, and to suggest a reluctance—qualified to be sure—to rely on divine authority to authorize acting against a criminal's inherent human dignity. Consequently, tracing these shifts in the respective roles of these ideas within the sanctity of life view may prove to be of some general interest for reflection upon the development of moral doctrine. For here the development, if there is one, seems to be based upon a more precise understanding of the foundation of a related set of moral norms taught by the church—namely, the sanctity of life view that grounds Catholic teaching about killing. Normative foundations of this kind can be a complex of interrelated ideas that may be in tension and in need of distinction and clarification. That clarification in turn can allow a more precise and sound derivation of norms. In other words, here we may have a case in which it is the understanding of the Christian value itself that develops, not the complexities of its application in new social contexts.

A brief notice of the state of church teaching on capital punishment is necessary at this point. The church has not ever taught that capital punishment is as such impermissible. It seems to be accepted in Scripture, in the

Old Testament, and most importantly in Romans 13:1-7, where the “power of the sword” of political authorities is justified. This authority of political leaders seems to have obvious application to capital punishment. Therefore, it is not surprising that many Catholics and Catholic teachers before now have believed it morally permissible. Thus, for example, St. Thomas Aquinas, reflecting earlier canonical and theological opinion, argued that capital punishment is permissible when the conditions for its justice were met.

This assessment has been nuanced—if not contradicted outright—lately. There is at the very least a change of emphasis from the assessments to be found in classical Catholic discussions exemplified by that of St. Thomas. There is, first of all, a heightened wariness about the appropriateness of invoking this punishment, as evidenced by the well known appeals of the pope and many bishops for clemency toward convicted capital criminals. This involves not only concerns about unfairness within the application of this penalty within the criminal justice system, but also pleas for mercy. Following these concerns, there is growing ecclesial support for the abolition of capital punishment, even if the underlying point of moral doctrine—that political society has the authority to kill the guilty as punishment—is not directly challenged.¹

Moreover, and more significantly, recent papal teaching, notably Pope John Paul II’s teaching in *The Catechism of The Catholic Church*,² and more extensively in *Evangelium Vitae*,³ places very stringent conditions upon any legitimate use of capital punishment. The trajectory of this movement seems to be in the direction of rejecting completely the permissibility of capital punishment, at least for societies with penal systems like those prevalent in the modern world. Although the papal teaching in *Evangelium Vitae* limits capital punishment in ways that render it significantly at odds with earlier, more permissive teaching on this matter, this development does not include a complete rejection of capital punishment; it is still judged to be permissible under certain unlikely conditions.

I address the question of the permissibility of capital punishment not because I think it the most significant of the questions of life and death addressed by church teaching on the sanctity of life: abortion involves the unjustified, and increasingly socially accepted, killing of innocent people on a great scale; euthanasia and suicide have become more socially acceptable;

1. See U.S. Catholic Conf., *U.S. Bishops’ Statement on Capital Punishment* 3, 7 (Nov. 1980). For a discussion of this document and the other matters referred to in this paragraph, see Germain Grisez, *The Way of the Lord Jesus: Volume 2: Leading A Christian Life* 891-93 (Franciscan Press, 1992).

2. *The Catechism of the Catholic Church: Modifications from The Editio Typica* Nos. 2266-67, at 604-05 (Doubleday 1995).

3. Pope John Paul II, *Evangelium Vitae* (Mar. 25, 1995) (available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html).

and so, these concerns are central to the teaching of *Evangelium Vitae*, while capital punishment is an issue considered in a subsidiary way.

But Catholic teaching on capital punishment remains significant theoretically and practically because it must cohere with the larger Catholic teaching on the ethics of killing and its rationale in the Catholic conception of the sanctity of life. It focuses our attention on the tension in this conception because it is *publically authorized* killing. The practical importance of this issue is now greater than in the past: because more people than in the past—jury members and judges, legislators and governors, and prison officials and executioners—must make choices about whether or not to intentionally kill some capital criminals. All of us in a democracy are involved in some way. Providing such people guidance is no trivial matter.

I will consider the reasoning of St. Thomas Aquinas on capital punishment as representative of traditional teaching reflecting the dominance of the idea that only God has authority over human life, and that of Pope John Paul II's 1995 encyclical, *Evangelium Vitae*, as exemplifying the dominance, however incomplete, of the idea that inherent human dignity of persons is the reason killing is wrong. Considering and comparing strands of reasoning from St. Thomas and from John Paul II is plainly insufficient for drawing robust conclusions about the development of moral doctrine, but it does allow for a focus on the moral reasoning which makes clear how it varies and maybe develops.

I. ST. THOMAS, CAPITAL PUNISHMENT AND THE ETHICS OF KILLING

St. Thomas's treatment of capital punishment in *Summa Theologiae*, Second Part of the Second Part, Question 64, Articles 2 and 3⁴ provides little evidence of the church's contemporary concern for limiting capital punishment. In answering an objection, he notes with approval that those who are dangerous to others are killed while those who do not gravely harm others are given time to repent.⁵ Perhaps this is to be taken as a limit on capital punishment that would significantly extend opportunities, but this is hardly part of a rationale for limiting as much as possible the use of capital punishment.

Two other limiting conditions may be inferred from St. Thomas's reasoning; they are implications of his rationale for capital punishment. Only public authority is justified in killing, and only sinners may be killed.

Central aspects of this rationale are, not surprisingly, retained in current teaching, most centrally they appeal to the common good of political

4. St. Thomas Aquinas, *Summa Theologiae* Vol. 38, art. 2-2, q. 64, aa. 3-4, pp. 20-28 (Marcus Lefebure ed. & trans., Blackfriars 1975) [hereinafter this work will be referred to according to the standard protocol: *St* 2-2, q. 64, aa. 3-4].

5. *St* 2-2, q. 64, a. 2, ad 2.

society to justify capital punishment. St. Thomas compares the effect of a sinner on the common good to that of a disease on the body, and concludes:

Now every individual person is as if it were a part of the whole. Therefore, if any man is dangerous to the community and subverting it by some sin, the treatment to be commended is his execution in order to preserve the common good, for a little leaven sours the whole lump.⁶

St. Thomas's use of this analogy between the relationship between sinner and common good and the relationship between a bodily part and the organism of which it is a part appears problematic, for in the latter part/whole relationship the organic part has no special dignity, and human dignity must be respected in a person's relationship to political society. However, this difficulty is not decisive here. St. Thomas's claim that individuals are part of society in this context can be limited and correct: for individuals are members of political society, which, in the Catholic tradition, surely has authority over them, including the authority to use force to punish criminals.

That authority is grounded in the common good and is vested in public officials, not private persons.⁷ And it is an authority only to punish the *guilty*, since innocent persons do not threaten the common good but foster it. The reasoning for this limitation is as follows:

A man can be looked at in two ways—in isolation and in some context. Now considering man in isolation it is not legitimate to kill any man. Every man, even the sinner, has a nature that God made and which we are bound to love, whereas we violate it by killing him. It nevertheless remains true, as we have already seen, that sin corrodes the common good and so justifies the killing of the sinner, whereas the life of the just man preserves and promotes the common good, since they constitute the bulk of the people.⁸

A fuller explanation of how it can be justified to kill one we are bound to love, on the ground of the harmful relationship that person has to the community, is developed somewhat by St. Thomas when he addresses the objection that killing a human being is intrinsically evil because we should have the friendship of charity toward all, and that requires wanting our friends to live.⁹ The response is:

A man who deviates from the rational order, and so loses his human dignity insofar as man is naturally free and an end unto himself. To that extent, then, he lapses into the subjection of the beasts and their exploitation by others, as Scripture puts it well:

6. *St 2-2*, q. 64, a. 2.

7. *See St 2-2*, q. 64, a. 3.

8. *St 2-2*, q. 64, a. 6.

9. *St 2-2*, q. 64, a. 2, obj. 3.

“Man cannot abide in his pomp, he is like the beasts that perish;” and “The fool will be servant to the wise.” Therefore to kill a man who retains his natural dignity is intrinsically evil, although it may be justifiable (*potest esse bonum*) to kill a sinner just as it is to kill a beast, for as Aristotle points out, an evil man is worse than a beast and more harmful.¹⁰

This reasoning goes beyond the obvious truth it contains, namely, that criminal activity surely justifies punishments that remove a person’s liberty. But that removal of liberty does not remove human dignity in the sense that seems relevant to the objection St. Thomas is considering. The criminal remains a rational animal with whom others can be friends. Moreover, the truth that a sinner can be worse than an animal is not evidence that sinning causes a change in species or that we may treat a sinner just as we treat dangerous animals. The sinner’s human nature remains in spite of the sin and of the flawed relationship it creates between the sinner and the common good. St. Thomas affirms much of this in the subsequent article:

Beasts are of their own nature different from man, so that one does not require a judgment before one can kill. This is when they are wild. When they are domestic animals, a judgement is required, but only because of the loss the owner stands to incur. A sinner, however, is a man, and as such is not by nature different from a just man, and this is why some public judgement is necessary to decide whether he is to be killed in the public interest.¹¹

So, something more compelling than what the analogy between criminal and beast can justify is likely to be at work in the reasoning here. The conclusion St. Thomas reaches does not, of course, require the analogy of criminal and dangerous beast, nor the other questionable analogy between person and society on the one hand and an organic part and organism on the other. That conclusion is that the authority of political officials to kill criminals overrides the inherent dignity of the human person. The analogies indicate that St. Thomas thinks there are grounds for taking the authority to kill to be morally dominant when the two strands of the sanctity of life view properly apply to the same choice. But he does not state these grounds and instead only states the view that when there is public authority to kill, then the human dignity of the criminal does not block imposing the penalty.

Therefore, as used by St. Thomas in this context, the inherent dignity of human life does not imply an absolute prohibition, but apparently only what might be called an abstract prohibition—that is, human dignity tells us that if all we know about a living thing is that it is a human being, then no one should kill him or her. That would be contrary to charity. But once we attend to certain specific relationships a person has to the common good of

10. *St 2-2*, q. 64, a. 2, ad 2.

11. *St 2-2*, q. 64, a. 3, ad 2.

the community, then the authority of the community takes over and settles the moral verdict: if one is a sinner and thereby harms the common good, then officials may kill him or her. But if one lives justly, one promotes the common good and so there is no authority to kill him or her. On this reading, the inherent dignity of the person plays little evaluative role once the issues of the person's relationship to the community and to public authority are brought into consideration.

The grounds for treating the authority to kill as morally dominant are not stated. Perhaps St. Thomas takes that to be evident from the specifically theological nature of the authority to kill. As St. Thomas understood Revelation, God kills, he directly inspires some people to kill, and civil authority shares in divine governance. In the light of such weighty and seemingly well established considerations, how could the inherent dignity of the human person stand as a block to killing when properly authorized, ultimately by God himself?

An answer to this rhetorical question is certainly suggested by what St. Thomas (and many other Christians) have said about the grounds for prohibiting killing. Human life is special among the forms of life within visible creation. This is because humans are created in God's image and likeness and are destined for familial community with God in the Kingdom. This special divine concern about human beings implies that God is in a special, direct way the master of human life and death. The stewardship of humans over other things is quite different from their care and responsibility for human life. That is at God's disposal, not ours.

The third of St. Thomas's well-known arguments against suicide contains much of this view (and captures what seems to me to be the main reason why many Christians and other theists such as Plato explain their rejection of suicide):

Third, life is a gift made to man by God, and it is subject to him who is master of life and death. Therefore, a person who takes his own life sins against God, just as he who kills another's slave injures the slave's master, or just as he who usurps judgement in a matter outside his authority also commits a sin. And God alone has authority to decide about life and Death, as he declares in *Deuteronomy*, "I kill and I make alive."¹²

Thus, when it comes to killing, only God has authority; but, of course, he can delegate this. Given a standard reading of Romans 13, the delegation to legitimate public officials of the divine authority intentionally to kill is reasonable.¹³

12. *St 2-2*, q. 64, a. 5.

13. But by no means an implication or a clear truth of Revelation; see Grisez, *supra* n. 1, at 893 (quoting Pius XII's teaching about how to interpret this and related passages: the sources and Church teaching "do not refer to the specific content of individual juridical prescriptions or rules of action.").

Moreover, the delegation of divine authority to kill can account for other killings, for example, some suicides in Scripture and by saints that are taken to be directly inspired by God.¹⁴ Aquinas deals with Abraham's readiness to kill Isaac in this way: "God has sovereign authority over life and death, for it is in accordance with his ordinance that both sinners and just die. Therefore, anyone who kills an innocent person in obedience to God's command commits no sin; on the contrary he shows the fear of the Lord thereby."¹⁵

This makes explicit that inherent human dignity cannot be a block to moral considerations based on divine authority: human dignity is created by God, and God can delegate. Consequently, the natural love a person should bear toward his or her own being, the premise in the first of St. Thomas's arguments against suicide, does not provide a consideration that could block suicide based on a divine dispensation, and this causes the query about how much weight this argument, which is based on human dignity, can bear.

The requirement of charity that abstractly prohibits all killing of human beings may well be normatively robust or dominant in other contexts, for example, in the case of killing by private persons, but that is only suggested in question 64. Private killing is discussed there in the treatments of suicide and killing in self-defense, in articles 5 and 6 respectively. Considering these articles suggests that human dignity is never a necessary ground for prohibiting private killing.

In article 5, dealing with suicide, St. Thomas presents three arguments. The last is his version of the famous Platonic argument cited above. The second is a public good argument that suicide harms the community. The first is that suicide is contrary to charity because it destroys the nature we are bound by natural instinct to love.¹⁶ The second and third of these arguments are within the logic of the divine authorization to kill conception of sanctity of life; the first is a version of the inherent human dignity idea. Here the three work in tandem, since the first gives a further reason, independent of those based on authority, for rejecting suicide. The rationale for rejecting suicide is therefore morally overdetermined.

The discussion of self-defense in article 7 provides no reason for thinking that inherent human dignity is not completely subordinate to authority-based considerations, and only suggests that when authority is not at issue human dignity may play a distinctive function. St. Thomas's position is that private persons may not intentionally kill in self-defense, but they may defend themselves by actions causing an attacker's death as a side effect.

14. See *St 2-2*, q. 64, a. 5, ad 3.

15. *St 2-2*, q. 64, a. 6, ad 1.

16. See Joseph Boyle, *Sanctity of Life and Suicide: Tensions and Developments within Common Morality*, in *Suicide and Euthanasia: Historical and Contemporary Themes* 221, 223-28 (Baruch A. Brody ed., Kluwer Academic Publishers 1989).

The central prohibition affirmed in this article is that private persons may not intentionally kill in self-defense. This is an authority based norm. Private persons lack the authority to refer the killing to the common good. Not surprisingly, therefore, when officials intentionally kill attackers in *self-defense*, their intention of death must be justified by concern for the common good, not simply to defend privately their own lives.

The central permission affirmed in this article is that private persons may, if other conditions are met, bring about death as a side effect of defensive action. This permission does not seem authority-based. The limitation of authorized intentional killing to that by public officials does not imply that a private person's causing death as a side effect of defending himself or herself is morally permissible. That permission needs justification. When public authority is unavailable to secure elements of the common good, as in cases calling for legitimate self-defense by a private person, that authority is reasonably limited so as to allow some action by private persons to defend their own interests, if there are no other moral considerations forbidding such action. In addition to the permission based on public authority's limits, perhaps human dignity is also playing a role in this justification: intuitively, causing death as a side effect is more easily squared with the charity owed to human beings than intentional killing could be. The intent is not to wrong or to harm, but to defend oneself, and that involves no bad will towards the assailant. In a word, human dignity may play an implicit role in the permissive reasoning of this article.

In short, the story seems to be this: public authority, acting within its proper sphere of responsibility as defined by the common good, stands above the moral considerations rooted in the dignity of human beings. These latter considerations may rule out intentional killing by private persons. Such killing, however, is also sufficiently excluded by their lack of authority intentionally to kill. So, although inherent human dignity is sufficient to prohibit killing by private persons, it is not necessary even there.

This review of St. Thomas's treatment of the ethics of killing in general and of capital punishment in particular highlights an important aspect of Catholic teaching on killing: moral considerations based on the inherent dignity of human persons and moral considerations based on the divine authority over human life and death sometimes point in divergent normative directions. Both considerations are present in St. Thomas's thinking. He avoids the tensions between them because he systematically subordinates the human-dignity-based considerations. Indeed he does this so thoroughly that whenever public authority or any other delegation of divine authority is in play, considerations based on human dignity cannot be decisive. These considerations are so thoroughly secondary that there is always an authority-based consideration to prohibit whatever inherent human dignity prohibits.

Indeed, one might construct an almost completely authority-based ethics of killing from the arguments in question 64 by excising a few claims and arguments: from article 6, where killing a person considered in isolation is held to be always wrong; from article 3 ad 2, in responding to the objection that killing is intrinsically wrong; and from article 5, where suicide is held wrong because of its failure to respect the life one naturally loves. On such a reconstruction, the charity toward others and toward one's own life that seems to exclude killing sinners or oneself would need reinterpretation to allow that it is not precisely the dignity of a person's human nature that grounds the moral demand for charity inconsistent with killing, but rather God's will as to how human life is to be treated.

However, the permissibility of causing death as a side effect is not so easily accommodated. For in this case, authority and its requirements have been set aside and respect for the dignity of the person resisted remains as the only moral concern.

I am not suggesting that an authority-based ethics of killing such as that which dominates question 64 would be voluntaristic, but simply that any normative source distinct from authority will have the potential of normatively limiting the application of authority, much as the demands of the common good do. So, only if norms are based solely upon the proper exercise of authority will they remain in principle subordinate to authority-based norms. How the inherent dignity of a human person, which plays a decisive though not competitive role in the discussion of self-defense, is to be subordinated to considerations of authority is never made clear, although it must if it is to have a basis distinct from any human sharing in divine authority.

II. SANCTITY OF LIFE IN *EVANGELIUM VITAE*

At least at the level of the papal rhetoric, John Paul II would appear unwilling either to excise considerations based on the dignity of the human person, or to subordinate them so systematically as does St. Thomas. His discussion of the fifth commandment, "You shall not kill," is cast in terms of the sacredness of human life, and his explanation of that religious idea contains strong elements of both the sanctity of life ideas I have distinguished. Moreover, the analysis seems to give greater weight to the dignity of the human person, but without systematically subordinating considerations of divine authorization to kill. So, the tensions between the two strands of sanctity of life thinking continue to be present.

These tensions emerge within John Paul II's teaching on capital punishment. The issue is set within the general context of the pope's account of the sacredness of human life.¹⁷ More specifically, the context of his discussion is the legitimacy of defense, and its obligatory character for one

17. Pope John Paul II, *Evangelium Vitae*, *supra* n. 3, Nos. 52-54.

having responsibility for another's life.¹⁸ Then he explains and defends the responsibility of public authority to maintain a penal system. Then follows the application to capital punishment:

It is clear that for these purposes to be achieved, the nature and extent of the punishment must be carefully evaluated and decided upon and ought not to go to the extreme of executing the offender except in cases of absolute necessity: In other words when it would not be possible otherwise to defend society. Today, however, as a result of steady improvements in the organization of the penal system, such cases are very rare if not practically nonexistent.

In any event, the principle set forth in the new Catechism of the Catholic Church remains valid: "If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority must limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person" (footnote to the *Catechism of the Catholic Church*, number 2266).¹⁹

This teaching plainly does not exclude capital punishment in principle, but the concern of the reasoning is much more on the stringent limitations under which it could be justified than on any positive rationale for capital punishment. This concern with limiting the rights of public authority to kill malefactors does not appear to be similarly prominent in older teaching such as represented by St. Thomas. Indeed, St. Thomas is more concerned with the positive rationale for capital punishment, rather than with the limitations of its use.

Moreover, the shift in emphasis exhibited here could be understood as simply the recognition that the social conditions that now shape penal systems do not require the punitive destruction of capital criminals. Current social reality creates the possibility that no convicted criminal is so dangerous that just service to the common good would require his or her execution. And so, as St. Thomas noted, time should be allowed to criminals for their conversion and repentance.

However, the differences between St. Thomas's theological account and John Paul II's teaching are not simply differences in emphasis caused by changed social conditions. In the papal teaching human-dignity-based considerations appear to play a role not possible in St. Thomas's account. For in this account, they cannot compete with or limit authority-based considerations; whereas in the papal teaching human dignity appears to limit authority.

18. *Id.* at No. 55.

19. *Id.* at No. 56.

This shifting of the priority of the elements in the sanctity of life view is certainly suggested in the reasoning of paragraph 55 quoted above. The emphasis on the necessity of capital punishment as a form of social self-defense as essential to its justification is the most important hint. The treatment of legitimate capital punishment as a kind of social defense against criminal activity emphasizes its similarity to the kind of killing in self-defense St. Thomas allowed as permissible. As noted above, St. Thomas thought that a private person's taking defensive action having a lethal effect could be justified, and I suggested that part of that justification is the presumptive compatibility of that action with respect for the inherent human dignity of the person killed as a side effect. If my suggestion is correct, then the pope's emphasis on the necessity of social defense indicates that human dignity is a decisive factor in assessing capital punishment, because it limits the public authority to kill to just those cases in which the human dignity of the criminal is most likely honored. Of course, the penalty inflicted as punishment must be intended, and so capital punishment, if it is strictly *punishment* in which execution is the assigned legal penalty, cannot be the sort of defense in which the harms inflicted are only side effects. Still, the pope's underlining of the strict necessity of capital punishment for social self-defense suggests he is limiting authority by considerations of the criminal's human dignity.

This suggestion is reinforced by the pope's account of the sacredness of human life and of the moral legitimacy of some forms of defensive killing. He explains the idea of the sacredness of human life by developing a rich account of the idea that humans are made in God's image. This is difficult material to summarize, but some critical sentences are the following:

Man as the living image of God is willed by his creator to be ruler and lord. St. Gregory of Nyssa writes that "God made man capable of carrying out his role as king of the earth. Man was created in the image of the One who governs the universe." . . . Called to be fruitful and multiply, to subdue the earth and to exercise dominion over other lesser creatures (*cf.* Gen 1:28), man is the ruler and lord not only over things but especially over himself, and in a special sense, over the life which he has received and which he is able to transmit through procreation, carried out with love and respect for God's plan. Man's lordship is not absolute but ministerial: it is a real reflection of the infinite lordship of God. Hence man must exercise it with wisdom and love, sharing in the boundless wisdom and love of God. And this comes about through obedience to God's holy law, a free and joyful obedience (*cf.* Ps 119) born of and fostered by an awareness that the precepts of the Lord are a gift of grace entrusted to man always and solely for his

good, for the preservation of his personal dignity and the pursuit of his happiness.²⁰

This reflection seems to emphasize those aspects of the sanctity of human life that point to divine authority over it. The next paragraph pushes towards the human dignity conception:

Human life is sacred because from its beginning it involves “the creative action of God” and forever remains in a special relationship with the Creator who is its sole end. God alone is the Lord of life from its beginning its end: No one can claim for himself in any circumstance the right to destroy directly the life of an innocent human being (footnote to *Donum Vitae*).²¹

This sentence emphasizes relational properties of humans themselves. Further on in this paragraph, the emphasis on human dignity becomes explicit: “God proclaims that he is absolute Lord of the life of man who is formed in his image and likeness (*cf.* Gen 1:26-28). Human life is thus given a sacred and inviolable character, which reflects the inviolability of the Creator himself.”²² Here the relationship to God is taken as grounding “inviolability,” which seems to include the idea of inherent dignity.

This idea begins to do analytical work in paragraph 55, which deals with the difficult casuistry occasioned by the sometimes very urgent need for defense against aggressors. This is set in context by the detailing in paragraph 54 of the teaching prohibiting homicide. He begins paragraph 55 in the following words: “This should not cause surprise: To kill a human being in whom the image of God is present, is a particularly serious sin. *Only God is the master of life!*”²³

Here the qualifier “innocent” is absent, and John Paul II goes on immediately to discuss defensive killing: Moreover, “legitimate defense can be not only a right but a grave duty for someone responsible for another’s life, the common good of the family or the state” (footnote to *Catechism of the Catholic Church*, number 2265). Unfortunately it happens that the need to render the aggressor incapable of causing harm sometimes involves taking his life.²⁴ The suggestion is surely that here, difficult as such cases may be, intentional killing is not required, and the inviolability of even an unjust assailant is respected in lethal defense. The next sentence underlines this by putting the responsibility for the loss of life squarely on the assailant.

It seems, therefore, that the inherent dignity of a human being’s life is doing different and more extensive work here than it could do in St. Thomas’s analysis. As noted above, in strictly defensive killing, the death of the assailant is a side effect of the defensive action, and the permissibility

20. *Id.* at No. 52.

21. *Id.* at No. 53.

22. *Id.*

23. *Id.* at No. 55.

24. *Id.*

of causing death as a side effect is based in part on the fact that this kind of killing compatible with respecting the inherent human dignity of the one whose death is so caused.

In short, in paragraph 55, the dominance of the idea of delegation to humans of the divine authority to kill seems significantly limited by the casting of self-defense, including social self-defense, within terms not of the authority of public officials to inflict harm but of the tragic need for them systematically to resist it.

Of course, the actions taken by authority within the institution of punishment are not simply acts of defending the rights of the innocent. The purpose of just punishment is partly defensive, but punishment involves choices beyond those needed to resist and prevent unjust action. And the pope does not clearly distinguish between punishment for the sake of legitimate defense and defense that involves no punishment beyond that inflicted as a side effect in the act of defense. Nevertheless, he is pushing the entire discussion of publically authorized killing in the direction of defense as understood in St. Thomas's analysis of causing death as a side effect. This is what one would expect in an account concerned to secure respect for the dignity of those being killed.

Moreover, this dominance of respecting the inherent dignity of the person that is so prominent in the discussion of defensive killing in paragraph 55, also appears to be limiting the rights of public authorities to execute criminals. That is clearest in the *Catechism* teaching quoted at the end of paragraph 56; the limitation of the authority of public officials to execute criminals is based on two considerations: this limitation "better corresponds to the concrete conditions of the common good," and because it is "more in conformity to the dignity of the human person."²⁵ I interpret the first of these conditions to refer to the current conditions of penal systems in which executing criminals is not absolutely necessary. The second, however, plainly addresses a consideration that provides a principled block on the human exercise of the authority to kill.

Finally, in moving on to other issues of killing that are his focal concern John Paul II says: "If such great care must be taken to respect every life, even that of criminals and unjust aggressors, the commandment 'you shall not kill' has absolute value when it refers to the innocent person."²⁶ Here it is explicit that the lives of the non-innocent are to be respected. So, the dignity of the person has weight against considerations of public good. But that weight, given what the pope said in the immediately preceding paragraph about the possible permissibility of capital punishment, cannot be absolute. There is no explanation of and how the image of God can lose its

25. *Id.* at No. 56.

26. *Id.* at No. 57.

inviolability, but since capital punishment remains possibly legitimate, inviolability can be set aside.

Consequently, the tensions we noticed in St. Thomas's account remain, even though respect for the inherent dignity of the human person is, as it were, out of the shadows, and bearing much of the weight of the moral reasoning. This raises the question whether and to what extent there is development of moral doctrine here.

There is, of course, the development involved in the recognition that the social conditions that made capital punishment seem necessary no longer generally exist. That is a straightforward assessment of a morally important, and new, circumstance. But there is also a question about the internal clarification of the notion of the sanctity of life.

The presence within the sanctity of life rationale for the Catholic teaching on killing of a ground for respecting human life as such, independent of the moral character of the person's guilt or innocence, is certainly out in the open in *Evangelium Vitae*. But the question of the precedence of this moral consideration or of the idea of the delegation of the divine authority over human life remains unsettled. That lack of resolution seems to me to introduce uncertainty, unclarity, and hesitancy into the Catholic teachings on human life.

I will end by sketching a way in which the tensions can be removed. I believe that all the elements of the sketch are to be found in the Thomistic and papal texts I have been exploring.

If God intentionally kills, in the literal sense of that expression, then he surely can delegate his authority to do so to created persons. Moreover, there is no rational basis for limiting that delegation by considerations of human dignity—assuming that God literally kills.

But this is not possible: God does only good; he does not do any evil intentionally, and death is evil. I conclude that, as in the case of other evils, God accepts death as a side effect of his completely good act of creation. He accepts the laws of nature in the universe he created, and that involves the deaths of rational animals, an outcome he does not intend but makes good use of. So, the texts of Scripture which seem to contradict this implication of very basic truths of faith are to be understood in ways compatible with it. Consequently, what God has available to delegate in the matter of authorized killing can be no more than causing death as a side effect.

This account is compatible with a reasonable understanding of the importance of recognizing the special dominion of God over human life, which St. Thomas and John Paul II both unequivocally affirm. The natural law is understood by St. Thomas and by the church as the rational participation by human beings in God's providential direction of created beings to

their ultimate destiny.²⁷ Our limited share in that providence comes by understanding the human goods God has allowed us to share in, and by our understanding of how to pursue them in accord with the plan revealed by him within our practical intelligence. Thus, to say, in this context, that God is master of life, is to say at least that humans may not dispose of human life in any way not sanctioned by the natural law. All the rest is up to God, and he accepts the death of humans as a side effect of his good creation. *Mutatis mutandis*, to say of political authorities that they have power that comes from God is to say that their morally justified authority is rooted in the natural law. And so far forth it is from God, just like any other morally good social arrangement.

This account of why the direct disposal of human life is outside of human providence and therefore reserved to God does not explain the particularly religious concern that underlies the concern common to many Christians and to pagans such as Plato, that there is, and should be, a specifically religious awe toward human life: there is something of sacrilege in killing a human being. That awe includes more than a strictly moral conviction, even one grounded in the Christian conception of natural law articulated by St. Thomas. But that awareness functions morally to superdetermine the natural law convictions by which the natural law teaches us to reject intentionally killing the innocent, and maybe the guilty as well: when killing is wrong we know it to be a grave breach in our submission to, and so in our proper relationship toward, God. So, it is sin in the theological sense. But it becomes a breach in the first place because it fails to respect what we know is deserving of respect.

So, intentional killing is out; it cannot be authorized because God cannot intentionally do evil and so cannot authorize anyone else intentionally to do evil. That does not contradict the belief that God is the Lord of life, or that some people have duties to take steps to defend the innocent that may lead them to cause death. The casuistry of separating intentional killing from causing death as a side effect is not complete, but in paragraph 56 of *Evangelium Vitae*, Pope John Paul II is moving toward a view that encompasses much of what was once thought to be authorized killing within the concept of causing death as a side effect. As for the other publically authorized killing, I think it should be recognized as wrong because it fails to respect the inherent dignity of human life. Authority is real and important; it allows us to organize socially for the sake of the common good. That

27. See St 1-2, q. 91, aa. 1-2; see Documents of II Vatican Council, *Declaration on Religious Freedom (Dignitatis Humanae)*, Nos. 2-5 (Dec. 7, 1965) (available at http://www.vatican.va/archive/hist-councils/ii-vatican-council/documents/vat-ii-decl-19651207-dignitatis-humanae_en.html); see generally Joseph Boyle, *Natural Law*, in *The New Dictionary of Theology* 703-08 (J. Komonchak, M. Collins, & D. Lane eds., Michael Glazier, Inc. 1987).

rightly includes defensive and punitive measures. But that authority is limited by the dignity of the persons God established it to serve.²⁸

The current Catholic teaching on capital punishment is consistent with most of this, except, of course, its abstract permission of capital punishment. Moreover, this teaching endorses a lot of what I have just argued. But the story is unfinished. There may be underway a significant development of moral doctrine, but the tensions remain and the Church and its teachers seem not yet to be of one mind as to God's will on these matters.

28. See John Finnis, Joseph M. Boyle, Jr., & Germain Grisez, *Nuclear Deterrence, Morality, and Realism*, 297-319 (Clarendon Press 1987) (a Catholic account of the ethics of killing that rejects all intentional killing of humans); see also John Finnis, Germain Grisez & Joseph Boyle, "Direct and Indirect: A Reply to Critics of Our Action Theory," 65 *The Thomist* 1-44 (January 2001) (a response to critics of our conception of causing harm as a side effect).