



# Fact Sheet Memo

November 2001

## ***The Death Penalty in Massachusetts and Catholic Teaching***

### **Early History**

The Commonwealth is one of twelve states in addition to the District of Columbia that does not inflict the death penalty.<sup>1</sup> The story behind the status of the death penalty in Massachusetts is a complicated one but can be summarized as follows.<sup>2</sup>

At various points during the colonial era and early stages of statehood, the General Court included besides murder several other capital offenses: idolotry, witchcraft, blasphemy, bestiality, sodomy, adultery, man-stealing, false witness in capital cases, conspiracy, rape, cursing or smiting of a natural parent by a child of 16 years or older, being a rebellious son of 16 or older, burglary, highway robbery, arson, denying that scripture is the word of God, the return of a Jesuit or Quaker after banishment, piracy, mutiny, concealment of an illegitimate child's death, polygamy, the escaping of a "Romish priest" from prison, and the sleeping of sentinels at their posts. Only after 1852 did the state limit death penalty cases to those involving first degree murder.

In a series of rulings from 1975 to 1980, the Massachusetts Supreme Judicial Court (SJC) held that the state constitution's prohibition of "cruel and unusual" punishment forbade the state from using the death penalty.<sup>3</sup> The SJC believed that changing moral standards dictated the conclusion that death as a punishment was *per se* cruel and unusual.

In response, voters approved in November 1982 a state constitutional amendment adding two sentences: "No provisions of the Constitution, however, shall be construed as prohibiting the imposition of the punishment of death. The general court may, for the purpose of protecting the general welfare of the citizens, authorize the imposition of the punishment of death by the courts of law having jurisdiction of crimes subject to the punishment of death."<sup>4</sup>

### **Current Status**

One month after the constitutional amendment passed in 1982, the General Court enacted a law to reinstate the death penalty for first degree murder. In 1984, the SJC ruled that while the new amendment eliminated the argument that a death penalty law was *per se* cruel and unusual, it did not prevent the courts from striking down such a law on other constitutional grounds. The SJC struck down the law because it violated the right against self-incrimination and the right to a jury trial.<sup>5</sup> Thus, there is no law on the books implementing the death penalty but the General Court is free to try again. Attempts to reinstate the death penalty failed in 1997, 1999, and 2001 and the issue can not come up again for a vote until 2003.

(OVER)

## Catholic Teaching

The Fifth Commandment “forbids *direct and intentional killing*” as murder.<sup>6</sup> Although murder “cries out to heaven for vengeance”<sup>7</sup> Jesus himself “adds to [the Fifth Commandment’s prohibition] the proscription of anger, hatred, and vengeance” by human beings.<sup>8</sup> If only heaven and not humankind can exact vengeance, then what about the use of the death penalty as punishment for murder?

“[T]he traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor.”<sup>9</sup> Mindful of the biblical command that one should “not slay the innocent and the righteous”,<sup>10</sup> Church teaching requires that “[i]f . . . non-lethal means are sufficient to defend and protect people’s safety from the aggressor”, in other words, if such means as imprisonment will “render[] one who has committed an offense incapable of doing harm”, then the death penalty cannot be used.<sup>11</sup> Today, “the cases in which the execution of the offender is an absolute necessity ‘are very rare, if practically non-existent.’”<sup>12</sup> The root meaning of “innocent” refers to one who is not causing harm,<sup>13</sup> suggesting that a convicted murderer prevented by imprisonment from pursuing unjust aggression is in that sense “innocent” and cannot be slain. Of course he or she remains guilty and appropriately subject to non-lethal punishment.

Then why is the killing of an unjust aggressor when it is “an absolute necessity”<sup>14</sup> not treated as murder? The Church relies on the principle of double effect to make the distinction. “The act of self-defense can have a double effect: the preservation of one’s own life; and the killing of the aggressor. . . . The one is intended, the other is not.”<sup>15</sup> The defender must use only that amount of force necessary to disarm the aggressor since the protection of one’s own or another’s threatened life, and not the death of the aggressor, is the goal of any strategy of legitimate defense. Because “[l]ove for oneself remains a fundamental principle of morality”, thus obliging one to preserve one’s own life against aggression, and the aggressor’s threat is the sort that leaves open no other option of defense but “forces” the intended victim “to deal his aggressor a lethal blow”,<sup>16</sup> then the aggressor’s death in such circumstances is not “deliberate murder”.<sup>17</sup> However, when not absolutely necessary to protect human life, imposing the death penalty violates the right to life of the person executed since “the dignity of human life must never be taken away even in the case of someone who has done great evil.”<sup>18</sup>

---

<sup>1</sup> Court TV website, *Special Report: Death Penalty on Trial*, <www.courtstv.com> (visited May 22, 2001). Illinois has the death penalty but has imposed a moratorium on executions pending a study of the practice.

<sup>2</sup> The historical discussion relies on Kathleen J. Burns, *A Chronicle of the Death Penalty in Massachusetts—Parts 1 & 2*, Lawyers Journal (Mass. Bar Assoc.), Jan. & Feb. 1999.

<sup>3</sup> Commonwealth v. O’Neal, 369 Mass. 242 (1975); Opinion of the Justices, 372 Mass. 912 (1977); 381 Mass. 648 (1980) (construing Mass. Const. Part I, Art. 26).

<sup>4</sup> Mass. Const. amend. 116.

<sup>5</sup> Commonwealth v. Colon-Cruz, 393 Mass. 150 (1984).

<sup>6</sup> Catechism of the Catholic Church (CCC) §§ 2268, 2269 (2d ed. 2000).

<sup>7</sup> CCC § 2268.

<sup>8</sup> CCC § 2262 (citing Matthew 5 verses 21, 22-39).

<sup>9</sup> CCC § 2267.

<sup>10</sup> CCC § 2261 (quoting Exodus chapter 23 verse 7).

<sup>11</sup> CCC § 2267.

<sup>12</sup> CCC § 2267 (quoting Pope John Paul II, *Evangelium Vitae*, no. 56).

<sup>13</sup> Merriam-Webster’s Collegiate Dictionary 603 (10th ed. 1999).

<sup>14</sup> CCC § 2267.

<sup>15</sup> CCC § 2263.

<sup>16</sup> CCC § 2264.

<sup>17</sup> CCC § 2262.

<sup>18</sup> Pope John Paul II, Address in St. Louis, Mo., Jan. 27, 1999.