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Capital Punishment - The Issues and the Evidence

Report of Special Commission to the Massachusetts Legislature

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CAPITAL PUNISHMENT — THE ISSUES AND THE EVIDENCE†

THE COMMONWEALTH OF MASSACHUSETTS requires that if a person is to justify the killing of another by a plea of self-defense, he must establish that he had a reasonable apprehension of great bodily harm and a reasonable belief that no other means would suffice to prevent such harm. The right of self-defense does not accrue to a person until he has availed himself of all proper means to avoid physical combat. Thus, the person claiming the privilege of self-defense must establish that there existed an actual necessity for taking life, or at least that such a necessity reasonably seemed to exist; and that the necessity seemed so apparent, imminent, and convincing to him as to lead him to believe that he could defend himself only by taking the life of his attacker. A person may not claim the privilege of self-defense merely because, at the recollection of some injury or past wrong, he has become so angry that he is moved to kill. There is imposed upon everyone the duty of keeping his passions under restraint. This is the law.

The Commission believes that the existing principles are valid. It believes further that the State has the same right to take a life as an individual; provided, that it can be established that it is absolutely necessary for the protection of society.

The Commission, further, accepts and endorses the report of its own Sub-committee on Moral Arguments for and against the Death Penalty, said Sub-committee consisting of Rabbi Roland B. Gittelsohn, Rev. Dr. Dana McLean Greeley and Rt. Rev. Monsignor Thomas J. Riley, which unanimously presented the opinion that:

The only moral ground on which the State could conceivably possess the right to destroy human life would be if this were indispensable for the

†An excerpt from the majority report to the Massachusetts legislature of the Special Commission to Investigate the Abolition of the Death Penalty in the Commonwealth of Massachusetts. Reported in full in MASS. H.R. DOC. NO. 2575, 33-46 (1958).

protection or preservation of other lives. This places the burden of proof on those who believe that capital punishment exercises a deterrent effect on the potential criminal. Unless they can establish that the death penalty does, in fact, protect other lives at the expense of one, there is no moral justification for the State to "take life."

Those who favor capital punishment have not, however, accepted responsibility for demonstrating that the people of Massachusetts, organized as a Commonwealth, kill only because of necessity, and that there is no other means of protection available. Their position appears to be that the existence of the law requires no justification and that its usefulness may be assumed. It is for those who would change it to prove the desirability of so doing.

The Commission believes such a position is untenable. It is perhaps because of it, however, that the testimony of those who have expressed themselves as favoring capital punishment has been largely limited to statements of conviction, albeit, sincerely held and often grounded in significant but not systematic and critically evaluated experiences. These convictions though variously expressed, may be summarized as follows:

1. Death is the appropriate and deserved penalty for one who has committed murder in the first degree.
2. The abolition of the death penalty in Massachusetts would encourage gangsters to come to Massachusetts and would result in an increase in murder.
3. The execution of murderers is necessary to protect ourselves against the probability that they will again commit murder.
4. The abolition of the death penalty in Massachusetts would increase the dangerousness of police work and the numbers of police killed in line of duty.
5. The penalty of death should be re-

tained because it is a more effective deterrent to potential murderers than life imprisonment or any other penalty.

The statement that death is the appropriate and deserved penalty for murder is one of honest belief rather than of fact. Those who support it by reference to the biblical injunction to take "an eye for an eye and a tooth for a tooth" overlook the fact that this represented a limitation upon the then existing practice of unlimited vengeance in which the penalty, which was sometimes a life for an insult, was disproportionate to the injury. They also forget that in Ancient Judaism "an eye for an eye and a tooth for a tooth" was interpreted to justify equitable financial damages rather than literal vengeance, and that the New Testament expressed a principle which, while not always realized in practice, is a goal worth seeking to attain:

But I say unto you which hear, Love your enemies, do good to them which hate you . . . For if you do good to them which do good to you, what thanks have ye? For sinners also do even the same.

In fact, there are probably few believers in capital punishment who would consider it either just or desirable to put all murderers to death. It is because in practice we do not find the penalty of death appropriate that we now execute for murder in all of the United States fewer than 55 persons in a year. Moreover, an examination of the cases of those who are executed would show that they are not more deserving of punishment or more dangerous than those we do not kill; in fact, the most dangerous are likely to be the legally insane whom we do not execute and those, perhaps, most deserving of punishment, are the few hired killers who are rarely convicted and who are most likely to be killed by their

competitors. To a considerable extent, the choice of those to be executed depends on chance factors that have nothing to do with the merits of the case.

Lewis E. Lawes, long-time Warden of Sing Sing Prison wrote, "It seldom happens that a person who is able to have eminent defense attorneys is convicted of murder in the first degree, and very rare indeed that such a person is executed. Incidentally, a large number of those who are executed were too poor to hire a lawyer, counsel being appointed for them by the state."¹

Clinton Duffy, formerly Warden of San Quentin in California told the American Correctional Association in 1956, "Seldom is a person of means executed. If he has a competent attorney, who develops the case, and who can play upon the emotions of the jury, the defendant usually receives a conviction in a lesser degree."²

A study has been made³ of 110 men executed in California. It is based upon psychiatric studies of these offenders made at San Quentin. The following excerpts are illustrative of the kinds of persons executed:

1. The psychiatric report on this case reads: "We are all agreed that he is mentally defective and partly out of contact with reality, and his mental illness falls into the schizophrenic category. . . . has had catatonic and hebephrenic elements.

At present he is so depressed and so agitated, despite electric shock treatment, that we are all agreed he is too insane to be executed. We recommend early transfer to Mendocino State Hospital."

2. The psychiatric report indicated that the prisoner was a chronic alcoholic with a history of amnesia and blackouts. His overall picture "resembles that of psychoneurotic with hysterical and schizoid features." He was of dull normal intelligence and had "deep seated feelings of inferiority," and felt quite threatened by interpersonal relationships.

3. In this case the man claimed to be under an "influence" that made him say "yes" to everything the police asked. When he first saw the victim of his crime a voice said to him "Yes, this is the man." The psychiatrists said of this prisoner that "he is a psychoneurotic and psychopathic and has sufficient mental instability to fall in the group of paranoid schizophrenics. . . . We are all in agreement, however, that though he is medically insane, he knows fairly well the crime he committed and the sentence imposed on him. He is considered to be legally sane at this time." Because of the question of his sanity there was a delay in execution of 2,200 days.

4. This man stated that there was absolutely no motive to the offense other than his desire to do away with himself. He felt that if he could go to the gas chamber he would achieve his own self-destruction which he could not do on his own initiative because of his Catholic belief. The psychiatric report on this case reads, ". . . his deterioration quotient is 38 per cent which is extremely high, and hard to explain in view of his age, and suggests the possibility of some intercranial damage, as well as emotional incapacity . . . typically psychopathic."

5. Of this man it was said in the psychiatric report: ". . . some deterioration was indicated, and his intellectual efficiency was somewhat below expectancy in the areas that had to do with the understanding of the demands inherent in certain social situations. The Rorschach test was highly colored with material usually given by psychotics who have some awareness of their condition and have set up a psychoneurotic defense against the inroads of their psycho-

¹ LAWES, LIFE AND DEATH IN SING SING 155-56 (1928).

² From a paper read at the Annual Congress of Corrections, Section Meeting on Capital Punishment, August, 1956.

³ CARTER, CAPITAL PUNISHMENT IN CALIFORNIA 1938-1953 (1953).

sis. It is also quite possible that the syphilitic infection of 1930, and the head injuries he claims to have had, had a deleterious effect on his personality structure . . . ; signs of organic involvement appear."

6. Concerning this case the psychiatrists wrote, "We had a telegram from Western State Hospital, Washington, which said, '(he) is a psychotic of years standing, and is entitled to every consideration which the law will allow chronic psychotics who are mentally irresponsible.' His diagnosis is psychosis with psychopathic personality."

Those who favor capital punishment because it is the justly deserved penalty for murder must, therefore, ask themselves whether they would apply it in every case of murder. If they would apply it only to some offenders, they should ask on what basis it is to be determined which among the convicted murderers are the ones who deserve to die and which should be sent to prison for life instead? They will need to consider that the death penalty, in fact, is now applied to only a little more than fifty persons a year, in all the country, among the nearly 7,000 who kill, and that those who are executed are unlikely to be either the most dangerous or the most culpable.

That the abolition of the death penalty would encourage gangsters to come to Massachusetts and would result in an increase in murders is an opinion not supported by any evidence. On the contrary, all of the available evidence suggests that no such effect would follow. It has not happened in Rhode Island, which has been without capital punishment for more than a hundred years and which is adjacent to the capital punishment States of Massachusetts and Connecticut. It has not happened in Michigan which has been without capital punishment since 1847 and which

is adjacent to the capital punishment State of Indiana and within a hundred miles of Chicago in the capital punishment State of Illinois.

In their testimony before the Commission, the representatives of the Massachusetts Police Chiefs' Association expressed the firm opinion that to abolish capital punishment would deprive the police of necessary protection and expose them to the risk of being killed by criminals who would have no reason to fear execution for their act. The Commission, being appreciative of the importance, the difficulty, and the dangerousness of the work of the police in safeguarding the lives and property of all of us, gave serious study to this opinion. It is agreed that not only are the police entitled to every proper protection that can be given them, but that the people of Massachusetts have an obligation to make quite clear to offenders that the citizens of the Commonwealth support them in the performance of their often hazardous duties.

Representatives of the Massachusetts Police Chiefs' Association cited several cases to support their conviction that the existence of a statute providing for capital punishment for murder was a deterrent and a safeguard.

In 1934, when he was a sergeant, he received a call at one A.M. that two men had committed robbery on a bootlegger. While en route to the situation, and unarmed, he came across the robbers, whose car was stuck in the snow. He stopped to apprehend them and one of them stuck a gun in his belly. He reminded them that they could only get away in a police car, and if they killed him they would be caught. They agreed to go along with him.

At another time, with an officer from Kingston, they came across some rum run-

ners at Humarock and presently found themselves covered by "hired guns." Someone said "Don't knock off these guys. They give you the chair in this state." And the offenders were taken into custody.

Three years ago, a policeman was called to deal with the case of a deaf mute who shot his brother in the arm and left a note saying "do not have any cops follow me or I will kill them." The policeman and his men cornered the deaf mute, who was armed, and who, when asked why he did not shoot, replied "Do you think I want the electric chair?"

Reference was made to the case of Chief Matthew Mantoni of Mendon, who was murdered at the Red Rooster Cafe by one Ward, who had been drinking and who held the waiters in the cafe as hostages. One of them managed to tell Mantoni, who came to get Ward, whom he knew, and Ward shot Mantoni and a girl. Upon examination by psychiatrists, Ward was found sane, but he became insane while he was confined in jail and was, therefore, committed to Bridgewater. After 18 months there, he was released and brought into court where he pleaded guilty to second-degree murder and was sent to state prison. He has tried to escape and the witness believes he would not hesitate to kill a guard to accomplish this purpose, if we did not have the death penalty in Massachusetts.

Two boys were apprehended by the police for stealing a car. When the police arrived, the 17-year old boy produced a gun which his 15-year old companion did not know he had. The younger boy grabbed it because, as he said, he "did not want to go to the electric chair."

It was also pointed out that since the robbery in Needham by the Millen-Faber trio, during which a policeman responding to the bank alarm was one of those killed, there have been no killings during bank robberies in Massachusetts. The police attributed this to the fact that the robbers were executed.

It is, of course, impossible for either the police or the Commission to know what weight to give to the verbal utterances of offenders under condition of great emotional stress or to know whether the prospect of "rotting in prison" would have as great or a greater effect than the somewhat remote prospect of being "burned." It should, perhaps, be noted that the Millen-Faber killings occurred during the period when capital punishment in Massachusetts was mandatory upon conviction of first degree murder, and that Millens and Faber were executed for it. The period of freedom from such killings has been one in which the mandatory provision was modified to permit life imprisonment upon the jury's recommendation of mercy. There have also been no killings during bank robberies in Massachusetts during the period of the last ten years when no person convicted of murder in the first degree in Massachusetts has been executed.

The Commission also heard testimony from the police in the non-capital punishment State of Rhode Island. The police chief of Providence expressed the opinion that a majority of the police chiefs of Rhode Island were opposed to capital punishment. This opinion received the support of a telegram from the President of the Rhode Island Police Chiefs' Association asking that he be recorded as opposed to capital punishment.

It is, of course, possible that one could stand in opposition to capital punishment, even if it did offer some additional measure of protection to the police, because of attendant and offsetting disadvantages. The Commission, therefore, specifically asked the police chief of Providence if he believed that the police in Rhode Island are in greater danger because of the abolition of

capital punishment there. He expressed the opinion that they are not.

Harold Langlois, Assistant Director, Correctional Services of the State of Rhode Island said:

It has been argued by police officials in various localities throughout the country that execution is a deterrent to the crime of murder. As a former Special Agent of the F.B.I., I spent nine years as a Law Enforcement Officer. Never, at any time, have I observed one single instance wherein the existence of the death penalty served as the stop to pulling of a trigger or as a preventive to murder. As a Law Enforcement Officer, I have talked with the accused and taken a statement of confession to the crime of murder. I was impressed to a marked degree with the intricate and involved drives of emotion and unmet needs within the murderer which I am sure were responsible for the horrendous and vile deed which culminated in his crime. This expression of thought does not imply that beneath this breast beats the tender heart of easy forgiveness and patient acceptance of any and all wrongdoing. I firmly believe in our social order as we know it. Other methods of the penalty to fit the crime are more effective in both the individual situation and certainly are of substantially greater value to society and to the preservation of the dignity of man than a summary execution.

The Commission has substantial reason to believe that in other parts of the United States, and within the same State, there are differences of opinion among the police as to the protective advantages of capital punishment. Certainly, for whatever may be the reason, not all police, even in Massachusetts, favor capital punishment. One of the most eminent of police chiefs, the late (1953) August Vollmer of Berkeley, California, formerly president of the International Police Chiefs' Association and Director of the study of Police Conditions in the

United States for the National Commission on Law Observance and Enforcement, expressed his opposition to the death penalty in a paper entitled, "The Case Against Capital Punishment in California."

The comparative studies of police safety from which summaries are given in the preceding section indicate that, for areas that are properly comparable, the risks of the police being killed by criminals are, if anything, slightly less in cities in the States not having capital punishment.

The Commission can only conclude that the claim that the abolition of the death penalty would increase the dangerousness of police work is not supported by the evidence. On the contrary, the evidence indicates that no increase in the dangerousness of police work would follow abolition.

The claim that the execution of murderers is necessary to protect ourselves against the probability that they will again commit serious offenses also seems of little merit. It is not possible to say that no murderer sentenced to a life term will ever kill again. Neither is it possible to say that any other person, prisoner or non-prisoner, who has not killed will, of a certainty, never kill. The evidence given in the preceding section of this report indicates that convicted murderers have a much lower risk rate than other offenders. This is consistent with the much more extensive study made by the British Royal Commission on Capital Punishment 1949-1953 which said, "The evidence given to us in countries we visited (which included the United States), and the information we received from others, were uniformly to the effect that murderers are no more likely than any other prisoners to commit acts of violence against officers or fellow prisoners or to attempt to escape; on the contrary, it would appear that in all

countries murderers are, on the whole, better behaved than most prisoners."⁴

Undoubtedly, the chief argument advanced in favor of capital punishment is that it is a more effective deterrent than a sentence of life imprisonment because what human beings fear most is the loss of their lives. This overlooks the fact that the desire to live is not constant in intensity and that it may be, and often is, overridden by other motives such as the desire to rescue a loved one from danger, the feeling of duty and responsibility on the part of a policeman, a fireman, or a soldier, or even the need on the part of the suicide to escape from an intolerable situation. The fact is that the number of murderers who execute themselves by committing suicide far exceeds the number who are executed by the State for their crimes.

It is obviously impossible for anyone to determine with certainty what is in the mind of the murderer *at the time he commits his crime*. The circumstances of these crimes, however, are such as to suggest that they either act without consideration of the penalty or it seems to be such a remote and unlikely event as to have no deterrent effect. Anyone who is capable of analyzing the situation rationally might well be justified in thinking that his chances of execution are slim indeed.

In a paper delivered at the 86th Annual Congress of Corrections in 1956 former Warden Clinton Duffy of San Quentin prison said:

It has been a part of my work to interview, over these 26 years, several thousands of prisoners, their families, and friends. I have studied their individual cases.

From 1929 to 1952 I talked with every man that was committed to San Quentin Prison under the penalty of death. Many of these men have been executed, others committed to life imprisonment, some without possibility of parole. A few have had new trials or reversals. Some have died while serving their sentences within the prison walls.

I have personally asked every man (and two women) if they gave any thought to the fact that they might be executed should they commit a murder or a crime that is covered by the death penalty. I have asked hundreds—yes, thousands of prisoners, who have committed homicides, and who were not sentenced to death, whether or not they thought of the death penalty before the commission of their act.

I have interviewed and have asked the same question of thousands of robbers who have used a gun or other deadly weapon in the commission of their "stick-up." . . . They are, of course, potential murderers.

I have, to date, not had one person say that he had ever thought of the death penalty prior to the commission of his crime.

Warden Duffy's views were further confirmed by a subcommittee of our Commission which held extensive interviews with a number of first degree lifers in Rhode Island and Massachusetts prisons. Of the fourteen first degree murderers interviewed by our subcommittee, every one said that he had not thought even for an instant of the punitive consequences of his act prior to the commission of his crime.

The rates of murder and non-negligent manslaughter presented in this report show clearly that the rates in Massachusetts, with capital punishment, and Rhode Island, without it, are not appreciably different. The rates in other abolition States are as low or lower than those of neighboring capital punishment States. It is sometimes suggested that these rates, being based upon the number of offenses committed, show

⁴ REPORT OF THE ROYAL COMMISSION ON CAPITAL PUNISHMENT 1949-1953, pp. 216-17.

how frequently capital punishment has failed to deter, but they give no indication of how many would have committed murder if the death penalty had not been provided for. This position would require us to assume that the people of Massachusetts are so different from those of Rhode Island, and that the people of Michigan are so different from those of Illinois, that if the death penalty were not present in the capital punishment States, their people would be more likely to commit murders than the people of Rhode Island and Michigan. Such a contention seems unreasonable. It becomes even more obviously so if one compares the rates in the same State before and after abolition, or the rates during the period of executions under a mandatory death penalty, as in Massachusetts, with the rates during the recent ten-year period of no executions and the five-year period of permissive life imprisonment. If the entire population of Massachusetts were given a cold vaccine and no one in Rhode Island received it, and if under these circumstances, the frequency rate of colds was the same in Massachusetts as in Rhode Island, would anyone seriously advance the argument that we might have had a still higher rate in Massachusetts if we had not all been vaccinated? Would it not be more logical to conclude that the vaccine was ineffective?

This is not to say that there may never be an exceptional case in which the threat of capital punishment may be a greater deterrent factor than the threat of life imprisonment. But it must also be recognized that there are demonstrable instances of persons who are led to kill by the desire for capital punishment, which is used as an indirect way of committing suicide by those who wish to die, but cannot bring them-

selves to the point of self-execution. Some such cases are summarized and sources of other evidence are given earlier in this report.

Against the possibility that the death penalty may in some exceptional case deter some potential murderer who would not be deterred by a sentence of life imprisonment, there must, then, be set the evidence that people do occasionally kill as an indirect means of committing suicide. It appears that in the United States, or at least in New England, both are infrequent, and since there is no appreciable difference in the rates of criminal homicide in comparable capital and non-capital punishment States, the one factor must offset the other.

It has been said that the reason capital punishment does not deter is because it is so infrequently used. The obvious answer is that the rate of criminal homicide is highest in the States and the countries where, and at the periods of time, when used most. For the United States as a whole, the trend, both of the rate of criminal homicide and the number of executions for murder, has been generally downward during the past twenty-five years. Those who believe that capital punishment fails as a deterrent because it is used so infrequently might logically be expected to favor not only an extension of its use, but also public executions in order to increase its deterrent force. There appear to be few, if any, among us who now advocate such a course.

There appears, in fact, to be no greater deterrent effect in capital punishment than in a sentence of life imprisonment. It is almost axiomatic that the deterrent effect of punishment depends upon its certainty and the closeness in time with which it follows the offense. Every day in Massa-

chusetts, normal men and women undeterred by the threat of death from traffic accidents, which kill 40,000 people a year in the United States, pass on curves and hills, run through traffic lights, jay walk and drive at excessive speeds. Would these same people, who run the risk of being killed, be likely to jay walk if they were sure that if they did so they would, in nine cases out of ten, be thoroughly splashed with mud? Would they risk death, as they do now by running through traffic lights, if they were sure that in nine cases out of ten the result would be only, but surely, a dented fender?

The Commission is persuaded that the social usefulness of capital punishment is insignificant and is far outweighed by its considerable social damage. There is here no question of being either soft or tough with murderers. It is easy to understand the force of human emotions which causes an individual who has had a member of his family, or a close personal friend, murdered, to feel like taking the law into his own hands and killing the murderer. But killing the killer does not restore the victim's life, nor prevent another killing. Such an act would be vengeance which, however understandably motivated, is nevertheless clearly and wisely forbidden by public policy. Yet it should be explicitly recognized that vengeance, pure and simple, may often be the unspoken, unadmitted, and unrecognized motive behind the rationalization of deterrence. Vengeance is an emotional spree that is too harmful for us to afford in a civilized community.

CONCLUSIONS.

The essential question, therefore, is whether capital punishment does more social harm than good. The majority of the

Commission believes that it does. They are persuaded that:

Capital punishment is not a better protection against murder than a sentence of life imprisonment. Its deterrent effect is slight and is offset by its encouragement to unstable individuals to commit murder.

It does not contribute to the reduction of murder; it is simply an easy and harmful way of satisfying the need to "do something about it."

It is the swiftness and certainty of punishment and not its severity that deters. There is reason to believe that trials would be shorter, and conviction more swift and certain, if life imprisonment rather than death were the maximum penalty.

There is reason also to believe that trials would be less sensational, would appeal less to the morbid, and have a less harmful effect on the unstable if the sentence of death were not an issue.

It is not true that life imprisonment means that dangerous offenders will be free again in a short time. Even if it were, the remedy would be to insist upon a professional correctional, parole and pardon administration rather than to retain capital punishment as a substitute for our failure to establish a proper system of control.

All human beings are fallible. Mistakes have been made in convicting men of murders they did not commit, and such mistakes may reasonably be expected to occur again in the future. The finality of the death penalty removes the possibility of making restitution for such human errors in judgment and confronts all men with the possibility that they could at some time be erroneously convicted of murder and executed.

The factors that determine to what charge a defendant may plead, and on what charge

he may be tried and convicted, are so much affected by the circumstances of time, place and persons, that whether the offender is now sentenced to death or to life imprisonment depends not upon his dangerousness, nor his culpability, but on the vagaries of chance.

The accepted objective of any modern correctional system is to work towards and assist the rehabilitation and reformation of offenders. To this end the staff is trained in correctional methods and encouraged to accept the assumption that no prisoner is beyond hope of redemption. Capital punishment is inconsistent with this basic premise, and with the correctional objectives of the warden who must carry out the sentence, as it is inconsistent with the duties of the physician. It has, in fact, been suggested that capital punishment by injection would be simpler, swifter, less mutilating and less painful than any other method. Such proposals, however, get little serious consideration because it is considered unlikely that any reputable physician would be willing to give such an injection. It is equally difficult to find wardens who favor capital punishment since it is equally inconsistent with their professional principles and objectives.

The existence of capital punishment tends to cheapen human life. It tends to encourage both children and adults to believe that physical violence, the ultimate form of which is putting an individual to death, is a proper method of resolving social and personal conflict.

Each individual is the product of a continuing interaction between his hereditary potentialities and his environment. Part of his environment is social. Without freeing the individual criminal from any portion of his proper personal responsibility, therefore, society as a whole must accept some

measure of responsibility for those conditions which produce crime.

Whatever penalty we impose on those who are adjudged guilty of crime is morally valid only to the extent that it accomplishes two purposes; one, the protection of society against further offense by the criminal; two, the rehabilitation of the criminal and his restoration to a useful, moral life wherever this is possible. If any punishment other than the death penalty will effectively accomplish these purposes, the death penalty should be abolished.

Dead, the offender can make no restitution for his offense. Alive, he may not only be the object of useful study by those interested in preventing such behavior in others, but he may make his person available as a subject for medical and other experimentation, as a considerable number of prisoners throughout the country regularly do, often at great risk to themselves.

The only moral ground on which the State could conceivably possess the right to destroy one human life would be if this were indispensable for the protection or preservation of the life of another. This places the burden of proof on those who believe that capital punishment exercises a deterrent effect, on the potential criminal. Unless they can establish that the death penalty does in fact protect innocent lives at the expense of guilty ones, there is no moral justification for the State to take life.

The essential evidence obtained by the Commission, and the conclusions of the majority, have now been set forth. It remains for the Legislature and the people of Massachusetts to reach their own conclusions. Perhaps many will find themselves in the position of Sir Ernest Gowers who, after

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(continued)

years of eminent service to his country, became in 1949 the Chairman of the Royal Commission to consider whether the liability to suffer capital punishment should be limited or modified. Having now, after five years completed his task, he writes:

Before serving on the Royal Commission I, like most other people, had given no great thought to the problem. If I had been asked for my opinion, I should probably have said that I was in favour of the death penalty, and disposed to regard abolitionists as people whose hearts were bigger than their heads. Four years of close study gradually dispelled that feeling. In the end I became convinced that abolitionists were right in their conclusions — though I could not

agree with all their arguments — and that so far from the sentimental approach leading into their camp and the rational one into that of the supporters, it was the other way about.⁵

It is important that the Commission's recommendations be neither accepted nor rejected until after they have been examined and evaluated as carefully as possible. No man's opinion is entitled to be given much weight unless he has, to the best of his ability, and with some success, made serious effort to examine and review the facts and the issues. The Commission submits its report on confidence that the people of Massachusetts have both the ability and the desire to consider the evidence and to act upon it wisely.

⁵ GOWERS, *A LIFE FOR A LIFE?* (1956).