

# **A STATEMENT ON CAPITAL PUNISHMENT**

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Adopted by the Second Biennial Convention of the Lutheran Church in America - Canada Section  
Port Arthur, Ontario, June 23-24, 1965

## **RESOLUTIONS:**

**Resolved, That the Lutheran Church in America - Canada Section express to the Government of Canada its view that capital punishment ought be abolished**

**and**

**That the Lutheran Church in America - Canada Section request the Synods to call upon their congregations and their members and their fellow citizens to work toward and support improved treatment facilities in our correctional institutions, additional facilities for those on probation and parole, and those preventive efforts that help reduce the incidence of delinquency and crime.**

## **BACKGROUND INFORMATION**

Should capital punishment in Canada be abolished? This is a question often debated with much emotion and without appeal to objective reasoning.

It is difficult to reason objectively about capital punishment. We cannot put ourselves in the place of the outraged person or of the one with the disordered mind or understand the mental processes and attitudes of the anti-social person. To assume that the threat of capital punishment is a deterrent because it would deter us is no argument.

To approach the question logically, it is necessary to address ourselves to the purpose of punishment. The oldest theory of retribution - to pay the price for the harm an offender has done. In earlier centuries this theory was responsible for a harshness that today fills us with feelings of disgust. This form of public revenge is vindictive and out of harmony with the mandate to love those who hate us.

Today the social sciences have shown that a man's attitudes and behaviour are shaped by the kind of society we create or allow to develop. The Nineteenth General Council of the United Church of Canada, September 1960, Edmonton, Alberta, in its statement on capital punishment said:

*Man is a responsible being. The gospel teaches that people can choose between good and evil. This is a privilege and responsibility, for the same will that may choose evil may also choose good (Romans 7:13 ff). This is in full recognition, however, of the fact that there are sociological and pathological situations in which the responsibility of the individual almost ceases and he becomes the instrument of mental, social and physical conditions.*

The Board of Social Missions in its report to the Twenty-Second Biennial convention of the United Lutheran Church in America, Atlantic City, New Jersey, October 13-20, 1960 said:

*It could also document how often crimes of violence have their breeding places in social conditions which we have ignored - in racial segregation, in the profitableness of blighted housing, in the pursuit of profit. Without asserting any kind of environment determinism, we can assuredly say that persons who grow up under certain kinds of conditions run a far greater risk of criminal involvement than those who live in better environments. Insofar as these environments are remediable, we bear the blame if they continue to exist. The blood is on our hands.*

Speaking to a meeting sponsored by the Canadian Corrections Association in Montreal, November 5, 1964, the Honourable Guy Favreau, Minister of Justice, said:

*Whenever public opinion sees only the horror of the criminal act and not the history of a delinquent soul, it naturally seeks merely to punish,*

He went on to say:

*We must show Canadians how human conduct is molded by poverty, sickness, mental deficiency, ignorance or a childhood marred by cruelty, hate, divorce, and alcoholism; we must show the grotesque deformation of character which results from punishment which is blindly vengeful; we must show then, finally, how humane treatment, confidence and modern scientific care can salvage an individual apparently wicked by nature, and return him to civil society transformed and grateful.*

The second theory advanced to justify punishment is deterrence. By punishing a person for an offense it is assumed that others will refrain from committing the same offence. The Honourable Guy Favreau, in the speech referred to above, said, "in the long run, punishment promises society no real security".

The main argument for capital punishment is that it acts as a deterrent to murder. The arguments advanced by those who support capital punishment as a deterrent are inconclusive. No one has been able to demonstrate that the abolition of capital punishment leads to an increase in capital crimes. At the same time the arguments of those favoring abolition of capital punishment are less than conclusive, because there are variables such as cultural differences, attitudes of law enforcement authorities, legal traditions, and socio-economic conditions. Nevertheless, the evidence advanced against capital punishment is substantial.

There are now thirty odd countries who have abolished the death penalty and there is no evidence of an increase in capital crimes. There are now nine states in the United States of America who have replaced the death penalty with life imprisonment.

The Board of Social Missions said in its report to the Twenty-Second Biennial Convention of the United Lutheran Church in America:

*...seven states without capital punishment had a murder rate of 2.0 per 100,000 in 1958; the other 41 states had a rate of 5.0; the fifteen states in which executions actually occurred had a rate of 6.0.*

H.E. Barnes and N.K. Teters, eminent penologists, in their book, *New Horizons in Criminology*, in 1943 said:

*History reveals the most varied and numerous proofs that there is no close correlation between the severity of the Criminal Code and the infrequency of crime. The statistics which we have available show that there is not ground whatever for holding that the murder rate increases when the death penalty is abolished.*

In any state where the death penalty has been abolished, the rate of homicide is approximately the same as in states in the same area where the death penalty still persists. In other words, the presence of the death penalty appears to have nothing to do with the amount of homicide. As Professor Vold states, life in Maine is just as secure as in New Hampshire or Vermont, yet the latter states have capital punishment, while Maine does not; similarly, Michigan (with no death penalty) has a rate somewhat lower than the adjoining states of Ohio and Illinois (with death penalty).

Experience in Canada does not so far prove that hanging is any deterrent to murder, as indicated by figures revealed by the Canadian Corrections Association. Up to November last, 21 months had passed without a hanging. The number of convictions was actually lower. In 1964, up to November 10, there

were only three murder convictions, compared to 12 the previous year, and 13 in 1962. The following figures are from the *Correctional Process*, a publication of the Canadian Corrections Association, Volume VIII, No. 3, November 1964:

	No. of Convictions	No. of Commutations	No. of Executions	No. Dealt with Otherwise
1951	19	3	11	4 new trials 1 reduced to manslaughter
1952	26	8	10	8 new trials
1953	22	6	8	3 new trials 1 reduced to manslaughter 2 convictions quashed
1954	25	4	10	5 new trials 4 reduced to manslaughter 2 convictions quashed
1955	18	9	6	2 new trials 1 reduced to manslaughter
1956	19	5	5	7 new trials 2 reduced to manslaughter
1957	12	5	3	3 new trials 1 reduced to manslaughter
1958	21	16	3	2 new trials
1959	18	11	3	4 new trials
1960	12	6	2	2 new trials 2 reduced to manslaughter
1961	17	10	1	4 new trials 1 conviction quashed 1 reduced to noncapital murder
1962	13	7	2	3 new trials 1 awaiting appeal
1963	12	5	0	3 new trials 4 pending
1964	3	0	0	3 pending (to Nov. 10, 1964)

**Explanatory Note:** In preparing the statistics, each case has been treated as having been dealt with, by execution or commutations or by the Court of Appeal, as the case may be, in the same year as that in which the sentence of death was imposed. That is to say, if a sentence of death was imposed, for instance, in November of a particular year and was commuted in February of the following year, the case is treated, for the purpose of these statistics, as having been one where the sentence was imposed and commuted in the same calendar year.

In any evaluation of the death penalty as a deterrent, one has to classify the several types of murderers. W. T. McGrath in his book, *Should Canada Abolish the Gallows and the Lash?* wrote:

*Murderers might be classified arbitrarily into three groups - the insane killer, the person who strikes in a moment of blind fury, and the deliberate killer who murders for gain. Which of these three will be deterred by the possible consequences of his crime? Obviously not the insane killer who is living in a world of his own. Surely not the impulsive killer who is in the grip of a passion he cannot control. Surely not the deliberate killer, who has based his decision to kill on considerations of profit and loss; life in prison would make it an unprofitable transaction indeed. He does not expect to be caught.*

In connection with the professional who kills while committing a robbery, the argument is advanced that he fears capture and takes the gamble that the risk of death penalty is safer than the possibility of a long prison term for a lesser offense. Topping in the November, 1952 issue of the *Annals of the American Academy of Political and Social Sciences*, states:

*It seems clear that there is an inverse relationship between severity of punishment and certainty of punishment...the net result of the administration of justice in Canada as it relates to capital offenses is that murder has become the least risky of any or all of the offenses which a citizen might choose to commit.*

Thus, it is further argued that it is the certainty of punishment that really deters rather than the severity of punishment.

There are persons with honest convictions who, while agreeing that the death penalty should be abolished, maintain that there should be an exception for those serving a sentence for murder and who kill a prison guard or policeman in an escape attempt. Major General R. B. Gibson, testifying as Commissioner of Penitentiaries before the Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries, March 22, 1955, said that there was only one killing of a penitentiary staff person since the time he took office in 1946. Murray Shiff, Professor at the School of Social Work, University of Toronto, in his research in 1952 was unable to discover any record of a murder having been committed within prison walls by a prisoner serving a sentence for murder. Instead, the evidence is quite convincing that persons convicted of first degree murder may be less dangerous to prison staff and policemen than hardened habitual offenders.

A disturbing factor is the unevenness of the application of justice. While there is no clear evidence to indicate that an innocent man can be hanged, there are those guilty ones who are never apprehended. There are those who believe that juries hesitate to convict when they know a death sentence will follow. There were 460 murder charges laid in Canada in the ten-year period, 1943-52, and of those, 221, or one out of every two, led to acquittal. Consequently, it is suspected, law enforcement authorities, knowing a conviction for murder will be hard to get, decide on a lesser charge. Another aspect of the problem is that the person who has the least resources to protect himself is the one ordinarily hanged.

Perhaps most significant are the social effects of capital punishment. It is contended that capital punishment has a degrading effect on society and that taking a human life in the name of the law actually lowers the value of human life and weakens respect for the law. Archbishop William Temple, when Archbishop of York, had the following to say concerning the death penalty:

*I believe Jeremy Bentham was perfectly right when he laid it down that the main influence of the state should be exercised always on the side of the limitation of penalties, as any form of excessive punishment defeated its own aim in that it encouraged a callousness in people by the over violence of the suffering inflicted, and thus did more harm by lowering the public impression of the accepted standard of treatment of citizens than it did good by its deterrence. I suggest that the defence of the death penalty has always been based on the main in its deterrent power and I believe that the example of the state taking life, even when it only does so in return for life already taken, does more to lower the value of human life in the minds of its citizens than the deterrent influence of this penalty*

*can do to protect the lives of the citizens. In this way I believe that the main influence of the retention of the death penalty is rather to increase than diminish the number of murderers.*

*Secondly, a very great amount of harm is done by the working up of popular sympathy for a criminal awaiting execution, so that a very large amount of sympathy that ought to be enlisted in upholding the majesty of the law is, in fact, arrayed against the law.*

It is believed that much of the morbid fascination which surrounds murder cases is due to the possibility of the death penalty. The abolition of the death penalty would, it is believed, cause murder to lose much of its attraction. In addition to its effect on the community, the death penalty has serious effects on judge, jury, attorneys, prison staff, other inmates, and the relatives of the convicted person.

The third and newest theory advanced concerning the purpose of punishment is that punishment is for the purpose of reform. Society is protected through the rehabilitation of the offender. Any sentence is to restrain the offender to allow for redemption. Obviously, this is not possible for a person who has been executed.

It is the third theory concerning the purpose of punishment that causes the Christian, in particular, to have conscientious scruples about the use of the death penalty. Rehabilitation is consistent with the major concept of the Judaic-Christian tradition, namely the dignity of the individual, regardless of his past. It poses the dilemma whether the Gospel is powerful for all men.

The Rev. Sig G. Sandrock, volunteer Lutheran Chaplain at the San Quentin Prison, California, in an article, "Retribution or Rehabilitation?" in *The National Lutheran*, February 1965, spoke of God's unmerited love for the just and the unjust. This love "knows no hopeless situations or hopeless people". In commenting further, Pastor Sandrock writes:

*I will readily admit that I am numbered among those who want capital punishment abolished because I believe rehabilitation is the answer. God Himself practised this in a certain sense. Moses, who led the children of Israel from the slavery of Egypt, murdered an Egyptian foreman in his youth. This crime proved to be a source of humility and teachability for Moses, as it can be for all men. David under whose reign the Hebrew people rose to its greatest height, was a murderer and an adulterer. He caused Uriah, an army captain, to meet his death in battle, and was already having sexual relations with the man's wife. Both counts carried the death penalty. But if David had been executed, he would not have lived long enough to sing the Psalms and to evidence the deep humility of surrender to God.*

*Those who embrace the death penalty are paying tribute to the static belief that an offender is beyond fundamental growth and dynamic development. They assert that what he seems to be, he is; that what he has been, he will always be. They deny the reality of transformation and redemption. But I have seen some remarkable transformations take place at San Quentin.*

The State, under God's sovereignty, exists for law and order and for the protection of society. The State, in unusual circumstances, may have to take human life in the performance of its duty. The question, then, is whether capital punishment serves any useful purpose in helping the State to perform its function. Capital punishment does not seem to serve the State in maintaining order, justice, and the protection of society.

The State must repudiate an evil action of its member. Resort to capital punishment as a repudiation of an evil action of a person is hardly in accord with our ideas today about Christian justice and the ultimate goal of treatment, namely the redemption of the offender.

The first objective of the State and its citizens must be to strive for adequate treatment facilities in correctional institutions, for increased parole and probation services, for intensified study of the causes of

anti-social behavior and crime, and for programs and social services which work toward the elimination of such causes. Coupled with this must be the strengthening of family life and the building up of strong spiritual and moral values in the individuals who make up our society. The Church must constantly reappraise its ministry to people in conflict with society and its role in strengthening family life and upholding community values. Only after intensive efforts by both State and Church towards the improvement of social conditions and of the correctional system will society be in a position to assess an appropriate response to those who commit capital crimes.