

Evangelical Lutheran Church in America



A Social Statement on:

THE DEATH PENALTY

This social practice statement¹ was adopted by a more than two-thirds majority vote at the second biennial Churchwide Assembly of the Evangelical Lutheran Church in America, meeting in Orlando, Florida, August 28-September 4, 1991.

A Climate of Violence

Violent crime is as ancient as the human family. Since Cain slew Abel, the blood of countless victims has cried out to the Lord (Genesis 4:10). Our hearts, too, cry out to the Lord who gives life. We grieve with the family and friends of the victim—the violated one.

Violent crime has a powerful, corrosive effect on society. Bonds of trust, the very assumptions that allow us to live our lives in security and peace, break down. Instead of loving, we fear our neighbor. We especially fear the stranger.

The human community is saddened by violence, and angered by the injustice involved. We want to hold accountable those who violate life, who violate society. Our sadness and anger, however, make us vulnerable to feelings of revenge. Our frustration with the complex problems contributing to violence may make us long for simple solutions.

Such are the circumstances under which we, as the Evangelical Lutheran Church in America, speak to the death penalty. At the request of a number of congregations to synod assemblies, and in response to the memorials of those synods, the 1989 Churchwide Assembly placed the issue of the death penalty on the church's social agenda. Discussions on the death penalty then took place in local churches and at synodical and regional hearings.

Points of View

Members of the Evangelical Lutheran Church in America have different points of view with regard to social issues.² While the Spirit makes us one in our *faith in*

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the Gospel, we can and do vary in our *responses* to the Gospel.

While we all look to the Word of God and bring our reason to the death penalty issue, we can and do assess it with some diversity. Social statements of our church do not intend to end such diversity by 'binding' members to a particular position.³ Social statements acknowledge diversity and address members in their Christian freedom.

This church has not finished its deliberation on the death penalty. Members of the Evangelical Lutheran Church in America continue the deliberation, upholding together the authority of Scripture, creeds, and confessions; the value of God-given life; and the commitment to serve God's justice. Members continue their discussion, knowing they have in common the goals of justice, peace, and order.

As a church united in resistance to hate (Luke 6:27), we minister to an often vengeful society. As a Church united in joy over the good news of God's healing grace, we minister to a battered society. As a church heeding the call to do justice (Jeremiah 22:3), we minister to a broken society. As a church united for mission, we organize for ministries of restoration.

An Affirmation

On the basis of Scripture and the Lutheran Confessions we hold that, through the divine activity of the Law, God preserves creation, orders society, and promotes justice in a broken world. God works through the state and other structures of society necessary for life in the present age.⁴

The state is responsible under God for the protection of its citizens and the maintenance of justice and public order. God entrusts the state with power to take human life when failure to do so constitutes a clear danger to society.

However, this does not mean that governments have an unlimited right to take life. Nor does it mean that governments must punish crime by death. We increasingly question whether the death penalty has been and can be administered justly.

Ministries of Restoration

Lutheran theological tradition has maintained that society is ruled by the Law and is influenced and nourished by the Gospel. Renewed by the Gospel, Christians, as salt of the earth (Matthew 5:13)⁵ and light of the world (Matthew 5:14),⁶ are called to respond to violent crime in the restorative way taught by Jesus (Matthew 5:38-39)⁷ and shown by his actions (John 8:3-11).⁸

For the Evangelical Lutheran Church in America, following Jesus leads to a commitment to restorative justice. This commitment means addressing the hurt of each person whose life has been touched by violent crime. Restorative justice makes the community safer for all.

It is because of this church's ministry with and to people affected by violent crime that we oppose the death penalty. Executions focus on the convicted murderer, providing very little for the victim's family or anyone else whose life has been touched by the crime. Capital punishment focuses on retribution, sometimes reflecting a spirit of vengeance. Executions do not restore broken society and can actually work counter to restoration.

This church recognizes the need to protect society from people who endanger that society: removing offenders from the general population, placing them in a secure facility, and denying them the possibility of committing further crime (i.e., incapacitating them). Our challenge is to incapacitate offenders in a manner that limits violence, and holds open the possibility of conversion and restoration.

Doing Justice

Christians live in anticipation of the day when "justice roll[s] down like waters, and righteousness like an ever flowing stream" (Amos 5:24). In the meantime, God holds governments accountable to ensure justice. In a democracy, where government is by the people, justice is the responsibility of all citizens.

Violent crime is, in part, a reminder of human failure to ensure justice for all members of society.⁹ People often respond to violent crime as though it were exclusively a matter of the criminal's individual failure. The death penalty exacts and symbolizes the ultimate personal retribution.

Yet, capital punishment makes no provable impact on the breeding grounds of violent crime.¹⁰ Executions harm society by mirroring and reinforcing existing injustice. The death penalty distracts us from our work toward a just society. It deforms our response to violence at the individual, familial, institutional, and systemic levels. It perpetuates cycles of violence.

It is because of this church's commitment to justice that we oppose the death penalty. Lutheran Christians have called for an assault on the root causes of violent crime,¹¹ an assault for which executions are no substitute. The ongoing controversy surrounding the death penalty shows the weaknesses of its justifications. We would be a better society by joining the many nations that have already abolished capital punishment.

Executions in the United States

Despite attempts to provide legal safeguards, the death penalty has not been and cannot be made fair. The race of the victim plays a role in who is sentenced to death and who is sentenced to life imprisonment,¹² as do the gender, race, mental capacity, age, and affluence of the accused. The system cannot be made perfect, for biases, prejudices, and chance affect whom we charge with a capital crime, what verdict we reach, and whether appeals will be successful.

Since human beings are fallible, the innocent have been executed in the past and will inevitably be executed in the future. Death is a different punishment from any other; the execution of an innocent person is a mistake we cannot correct.

It is because of this church's concern regarding the actual use of the death penalty that we oppose its imposition. The practice of the death penalty undermines any possible moral message we might want to 'send.' It is not fair and fails to make society better or safer. The message conveyed by an execution, reflected in the attention it receives from the public, is one of brutality and violence.¹³

Commitments of This Church

As a community gathered in faith, as a community dispersed in daily life, as a community of moral deliberation, and as a church body organized for mission, this church directs its attention to violent crime and the people whose lives have been touched by it.

As a community gathered in faith:

- we welcome victims of violent crime and their families, standing with them and for them during their times of grief and anger;
- we welcome offenders and their families, supporting them in their recovery;
- we welcome partnership with faith communities within the correctional system, joining them in ministries of restoration;
- we welcome people who work in criminal justice and their families, recognizing the special burden that accompanies such work.

As a community dispersed in daily life:

- we continue to offer ministries of healing and reconciliation to victims of violent crime, to families of victims, and to neighborhoods that have experienced violence;

- we recognize and affirm ministries by those who, in word and action, announce the good news to the imprisoned and their families;
- we encourage the ministries conducted by people through their work in the criminal justice system;
- we seek further opportunity to serve people caught in cycles of violence, and call for training to respond to the fear and anger of individuals, families, and society.

As a community of moral deliberation:

- we invite and encourage moral deliberation on the causes and effects of criminal behavior, the function of punishment, and the role of the criminal justice system—a deliberation grounded in Scripture and informed by reason and knowledge, including the social sciences;
- we shall discuss criminal justice in connection with other issues of concern to this church, such as racism, poverty, abuse, and chemical dependency;
- we ask that available resource materials be distributed, and that a resource specific to the present statement be developed, printed, and distributed.

As a church organized for mission:

- we recognize that the government bears responsibility for protecting people, and give it our support in the exercise of this function;
- we commend public officials, and others, who shape the vision of a just society and work toward it;
- we know the Church is called by God to be a creative critic of the social order, and to speak on behalf of justice, peace, and order;
- we urge the abolition of the death penalty, and support alternative and appropriate punishment for capital crime, including the possibility of life sentence without parole;
- we call for an ongoing reform of the criminal justice system, seeking means of incapacitation that protect citizens while limiting violence and holding open the possibilities for conversion and restoration, and for education for future responsible citizenship in society;
- we direct state public policy offices and the Lutheran Office for Governmental

Affairs to work against the death penalty and for alternative and appropriate punishment for capital crime, such as imprisonment for natural life;

- we ask congregations, synods, agencies, and institutions of this church to support the work of state advocacy offices and the Lutheran Office for Governmental Affairs in effecting the abolition of the death penalty;
- we seek ways to work with our ecumenical partners, with other faith groups, and with other organizations with similar goals.

NOTES

1. Social practice statements "focus on policy guidelines for the ELCA's responsibility in society. They are especially important in defining and developing priorities and directives for this church's advocacy and corporate social responsibility practices. In their use as teaching documents, their authority is persuasive, not coercive" ("Social Statements in the Evangelical Lutheran Church in America," adopted by the 1989 Churchwide Assembly).

2. The following are issues reviewed during churchwide deliberation on the death penalty. They are offered here as a summary of points of view presented in the course of developing this statement. Members of the Evangelical Lutheran Church in America should be aware of them and may find some of them helpful for further discussion.

In Favor of the Death Penalty

Those who support the use of the death penalty often do so on the basis of Scripture, especially "you shall give life for life" (Exodus 21:23b) and "let every person be subject to the governing authorities ... for the authority does not bear the sword in vain" (Romans 13:1-7; cf., 1 Peter 2:13-14).

Proponents of the death penalty remind us that the Lutheran tradition has stressed the scriptural distinction between Law and Gospel, maintaining the right of the state under the realm of Law to punish evildoers.

Those who would retain the death penalty testify to the value of the life God has given and the murderer has taken; they assert the value of the victim's life by demanding the offender's death.

Supporters of the death penalty feel it makes society safer by permanently incapacitating convicted murderers.

Proponents argue that states have written death penalty statutes limiting the risk of error and meeting standards set by the United States Supreme Court.

Advocates of the death penalty claim it to have a deterrent effect, causing would be murderers to hesitate before taking actions that could result in the loss of their own lives.

In Opposition to the Death Penalty

Those who oppose the death penalty often do so on the basis of Scripture, arguing that Jesus in his teaching abolished the death penalty in the Law (Matthew 5:38-39, assuming the Sermon on the Mount applies not only to Christians but to all peoples) and by example (John 8:3-11).

Opponents of the death penalty note from Scripture and the confessions that God ordained government for the sake of good order, and oppose a practice they believe to be violent, unjust, and, therefore, contrary to good order.

Those who would abolish the death penalty observe that executions violate the sanctity of the offender's life, which God has given and which God values despite the repulsiveness of what the offender has done.

Opponents claim the state need not implement the death penalty to incapacitate safely those who threaten society, as attested by the international movement away from the death penalty and toward alternative and effective means of incapacitation.

Those who would abolish the death penalty assert that it continues to fall disproportionately upon those least able to defend themselves, and to run the risk of an irreparable mistake.

Arguing against the death penalty, people point to the unlikelihood of proving that the death penalty has a deterrent effect, and note that executions contribute to a climate of vindictiveness and violence.

3. For more on social statements, see "Social Statements in the Evangelical Lutheran Church in America" (full reference at note 1).

4. "The Church in Society: A Lutheran Perspective," adopted by the 1991 Churchwide Assembly.

5. "You are the salt of the earth; but if salt has lost its taste, how can its saltiness be restored? It is no longer good for anything, but is thrown out and trampled under foot."

6. "You are the light of the world. A city built on a hill cannot be hid."

7. "You have heard that it was said, 'An eye for an eye and a tooth for a tooth.' But I say to you, Do not resist an evildoer. But if anyone strikes you on the right cheek, turn the other also. . . ."

8. The scribes and the Pharisees brought a woman who had been caught in the act of adultery; and making her stand before all of them, they said to him, "Teacher, this woman was caught in the very act of committing adultery. Now in the Law Moses commanded us to stone such women. Now what do you say?" They said this to test him, so that they might have some charge to bring against him. Jesus bent down and wrote with his finger on the ground. When they kept on questioning him, he straightened up and said to them, "Let anyone among you who is without sin be the first to throw a stone at her." And once again he bent down and wrote on the ground. When they heard it, they went away, one by one, beginning with the elders; and Jesus was left alone with the woman standing before him. Jesus straightened up and said to her, "Woman, where are they? Has no one condemned you?" She said, "No one, sir." And Jesus said, "Neither do I condemn you. Go your way, and from now on do not sin again." (On restoration, see also Matthew 5:(21-22) 23-24; Romans 12:19-21; 1 Thessalonians 5:15; 1 Peter 2:23.)

9. "In Pursuit of Justice and Dignity: Society, the Offender, and Systems of Correction," adopted by the Lutheran Church in America (1972).

10. The body of research on deterrent effect indicates, at best, conflicting evidence. Many proponents of the death penalty have abandoned the deterrence theory altogether, and argue for the death penalty on the basis of incapacitation or just retribution. Many opponents claim the death penalty stimulates crime, a claim for which there is also conflicting evidence.

11. "Capital Punishment," adopted by the Lutheran Church in America (1966) urged "the continued development of a massive assault on those social conditions, which breed hostility toward society and disrespect for the law." "Capital Punishment," adopted by The American Lutheran Church (1972) called for "the correction of conditions, which contribute to crime."

12. The United States Supreme Court, in *McCleskey v. Kemp* (1987), acknowledged the findings of the David Baldus study in Georgia, which showed that the murderer of a white victim was more likely to receive a death sentence than the murderer of an African American. The implication—that a white life is considered more valuable than an African American life in the criminal justice system—has been of concern to the United States Congress in the drafting of racial justice legislation.

13. William J. Bowers and Glen J. Pierce, "Deterrence or Brutalization: What is the Effect of Executions?" in *Crime and Delinquency* 26 (1980), 453-484.

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