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## Crime Without Punishment

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## Crime Without Punishment

By [Lester Jackson](#)

In common parlance, "getting away with murder" is a metaphor for doing something wrong without suffering deserved adverse consequences. Getting away with actual murder has meant that the killer did not get caught, or else he avoided conviction or appropriate punishment thanks to a good lawyer (often taking advantage of [judge](#)-concocted [rules](#) favoring guilty defendants).

In recent decades, however, getting away with murder has been infused with new meaning: purposeful government policy now grants murderers immunity from punishment for new crimes.

Out of thin air, a right has been officially and surreptitiously created exclusively for select *previously convicted* murderers: the right to commit, cost-free, further violence, and even further murders. When judges, legislators, and governors make capital punishment impossible in willful defiance of great public support, they liberate those already serving life sentences to fearlessly perpetrate as many additional vicious crimes as they can because they face no greater penalty.

This shocking reality, known to those few immersed in what passes for the criminal "justice" system, is covered up by our [murderer-protective media](#).

### Governors and Legislators

A recent vivid illustration occurred when a lone Oregon elected officeholder joined elected officeholders from other states (e.g., [New Mexico](#), [New Jersey](#), [Illinois](#), and potentially [Connecticut](#)) in defying the public. (Last July, the Supreme Court fell one vote short of saving a brutal murderer based on a never-enacted law proposed by a [solitary legislator](#).) On November 22, Gov. John Kitzhaber [declared](#) a death penalty "moratorium" during his term in office, expressly barring Gary Haugen's scheduled December 6 execution for a barbarous slaughter while serving a [life sentence](#). In 1981, Haugen [raped](#) Mary Archer and [beat](#) her to death with repeated blows from his fist, a hammer, and a baseball bat. In 2003, together with another inmate, Haugen murdered a third inmate, [David Polin](#), by stabbing him 84 times and crushing his skull. After humbly seeking expert [consultation](#) with "mostly myself," Kitzhaber found all this insufficient to warrant execution.

So in order to keep Haugen alive after he savagely murdered his first victim, the life of a second victim was sacrificed, again savagely, this time with no penalty. Because there is no price to be paid for taking them, the lives of additional innocent victims are effectively deemed by the Kitzhabers of the world to be worth nothing -- while these people, at the same time, hold sacred the lives of recidivist murderers.

Decades earlier, another object of abolitionist devotion laid it on the line.

### New York State's High Court

In 1981, while serving [multiple life sentences](#) for multiple murders, Lemuel Smith beat, strangled, [bit off the nipples of](#), and murdered Donna Payant, a 31-year-old prison guard and mother of three, finally throwing her body into the garbage to be compacted. (This was [not the first time](#) he sank his teeth into his murder victim's nipples.) A [4-3 majority](#) of the New York State Court of

Appeals used this case to foist their unpopular moral values upon an unwilling public by declaring unconstitutional the state's death penalty law. Despite legal window dressing which the minority found specious, Smith himself left no doubt that, at bottom, the bare majority valued his life, but not the lives of the guard or Smith's previous torture-murder victims, to say nothing of possible future ones.

Realizing that punishment-free murder had received the court's seal of approval, Smith [boasted](#) at his new "sentencing": "I got so much time they can't do nothing to me ... Think about it. If I wanted some sex, I could rape, I could sodomize. *They can't do nothing to me!*"

### **U.S. Supreme Court: Rape**

Smith's defiant mockery of his be-kind-to-murderers benefactors would not have surprised Chief Justice Burger, who saw it all coming when the U.S. Supreme Court invented a right especially for those serving life sentences: to commit unpenalized rape.

In 1974, while serving three consecutive life sentences and others for brutal crimes including murder, attempted murder, at least two rapes, and kidnapping, Ehrlich Anthony Coker escaped and promptly raped 16-year-old Elnita Carver, threatening to murder her. In 1977, the Court issued a fiat that there must never be a death sentence for rape of an "adult." Chief Justice Burger [protested](#) that the Court thereby (a) "prevents the State from imposing any effective punishment ... for [Coker's] latest rape," (b) "bars Georgia from guaranteeing its citizens that they will suffer no further attacks by this habitual rapist," and (c) assures that [Coker] -- as well as others in his position -- will henceforth feel no compunction whatsoever about committing further rapes as frequently as he may be able to escape from confinement and indeed even within the walls of the prison itself." This left "in doubt" the ability of states "to protect innocent persons from depraved human beings." (In 2008, [five justices](#) expanded their solicitude for sexual predators to protect 300-pound rapists of 8-year-old girls, banning capital punishment for "child rape.") The Lemuel Smith ruling applied to just one state. The 1977 Coker case involved "merely" rape by a life-sentenced murderer. A decade later, six justices extended their ardor for convicted murderers to those who commit new murders, for whom, for the first time ever, the death penalty could never be mandatory anywhere in the country -- period.

### **U.S. Supreme Court: Murder**

In 1973, fifteen years after committing first-degree murder for which he was serving life without parole, Raymond Wallace Shuman decided that it was time to hone his skills. He doused fellow inmate Ruben Bejarno in flammable fluid and [set him on fire](#). Bejarno died after three days of unimaginable pain; Shuman was convicted, receiving a mandatory death sentence.

In prior cases, the Supreme Court hinted that mandatory capital punishment was possible. In reality, as Justice Scalia [complained](#), the Court already had "decreed -- by a sheer act of will, with no pretense of foundation in constitutional text or American tradition -- that the People (as in We, the People) cannot decree the death penalty, absolutely and categorically, for any criminal act, even (presumably) genocide[.]"

Removing all doubt, the Court now completely seized from the American people and their elected representatives the right to ever provide for their own safety by making the death penalty mandatory -- conferring upon Shuman a "constitutional right" to "mitigate" his multiple murders and show why he was worthy of being kept alive to possibly commit yet more murders.

Justice White [dissented](#): "Until today, the Court has never held that the Constitution prohibits a State from identifying a ... category of [murder for which] no combination of mitigating factors ... could ever warrant reduction of a sentence of death."

Ironically, it was White who wrote the main opinion saving murderer-rapist Coker, holding that convicted murderers could never be executed for new rapes. After all, as White (joined by Justices

Stewart, Blackmun, and Stevens) [put it](#), the victim "was unharmed." However, to bar a mandatory death sentence for repeat murders was going too far. Even White saw harm in additional murders. (The *Coker* "[evolving standards of decency](#)" [mutation](#) left Burger [incredulous](#): "This bifurcation of rape into categories of harmful and non-harmful [eludes my comprehension](#).")

## The Crucial Stakes

To justify forcing his quixotic values upon a self-governing people, Justice White [divined](#) that, "in the end," the Constitution empowered justices to impose "our own judgment" about death penalty "acceptability." This claim would have been "[laughed to scorn](#)" by the Framers, countered Justice Scalia and Chief Justice Roberts.

The values, wishes and concerns of the American people do not matter to unelected and unaccountable judicial autocrats. They get away with arrogant usurpation of power primarily because most people don't know, and the media are not going to tell them.

The media are not going to disclose the [deliberate policy](#) of sacrificing innocent lives to save convicted murderers. The media are not going to reveal the special dispensation granted vicious criminals to freely commit new barbarity -- and that this is *official government policy* imposed by *public* servants whose primary duty is ostensibly to provide for public safety. The media are not going to question the rationality of eliminating punishment when the number and depravity of a barbarian's crimes increase.

Death penalty opponents endlessly moralize that "no civilized society can execute human beings." But how can a society that considers itself civilized tolerate being governed by power-abusing officials who confer on the most violent and depraved, *precisely because* they are the most violent and depraved, the right to commit additional murders and other barbaric crimes without fear of any punishment at all?

When rulers dictate that convicted life-sentenced murderers pay no price for taking or ruining additional lives, they are, despite contrary protestations, actually declaring the additional lives to be worth nothing because they may be taken at no cost -- and the lives of convicted murderers have such great value that they may commit any and all new crimes, also at no cost.

How "civilized" is a society that places so little value on the lives of the innocents that it sacrifices them on the altar of preserving what it deems the precious lives of convicted barbaric murderers?

Based on the 40-year "[guerilla war](#) to make [capital punishment] a practical impossibility," it must be concluded that many justices have considered the lives of most murderers to be sacred, while placing little or no value on their victims' lives. Executions of convicted killers have [led justices to](#) tears, stress, and "excruciation" -- with never a word of concern about victims. There has been [denial](#) that many severely traumatized victims are [victims at all](#), combined with extended verbiage [lamenting](#) the [suffering](#) of brutal murderers on death row.

Vitality at stake in the next election is whether we will continue to be afflicted by unaccountable rulers so grotesquely [contemptuous of the Constitution](#), the values, and the very lives of "We, the People."

***Lester Jackson, Ph.D., a former college political science teacher, views mainstream media [suppression](#) of the truth as essential to harmful judicial activism. His recent articles are collected [here](#).***