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Getting it Wrong about "Getting it Right"

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**GETTING IT WRONG ABOUT "GETTING IT RIGHT"
THE REMARKABLE LAVISH PRAISE BY JUSTICES THOMAS AND SCALIA OF
RADICAL LIBERAL JUDICIAL ACTIVISTS"**

By Lester Jackson, Ph.D.

NOTE to Readers: *Because the main objective of my writing is to make Supreme Court abuses understandable to non-experts, this is written to enable easy reading without looking at the links. The links below are provided for those who might think this is fiction rather than incredible fact. --- L.J.*

On television, Justices Thomas and Scalia lavishly praise extremist liberal activists. For those who eviscerate the Constitution, such praise is unjustified on the merits as well as contradicted by the scathing writings of Thomas and Scalia themselves.

**GETTING IT WRONG ABOUT "GETTING IT RIGHT"
The Remarkable Lavish Praise by Justices Thomas and
Scalia of Radical Liberal Judicial Activists**

by

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I

LAVISH PUBLIC PRAISE

It is daunting to dispute Justice Clarence Thomas when one agrees that he is a “[national treasure](#)” and “[our greatest justice](#).” Nevertheless, with the president’s second term ominously portending a Supreme Court [nightmare](#) unimaginably [more spine-chilling](#) than it already has been for the last [two generations](#), it is vital to place in perspective the justice’s repeated recent televised appearances “[lavish with praise](#) for his colleagues — especially the liberals.”

Last [September](#), Thomas averred that *all* justices are “good people” who “try to get it right” and who “don’t agree with each other, but ... agree that this is more important than we are and we’ve got to make this thing work”; he singled out Justice Ginsburg as “a good person” and “fabulous judge.” On January 29, he explained that “[she makes all of us better judges](#)” and proclaimed Justice Kagan a “delight.”

Thomas is not alone. [Purportedly](#) conservative commentator [Jennifer](#) Rubin [asserts](#): “I may not agree ... with ... Justice Breyer's constitutional approach, but I have no doubt he is trying to get it ‘right.’” On November 27, Justice Scalia [stated](#) all his fellow justices are “honest” and decide cases “fairly and honestly.” Previously, he [characterized](#) Justice Ginsburg, with whom he often disagrees, as among “some very good people [who] have some very bad ideas.”

These seemingly reassuring statements are glittering generalities lacking any evidence or explanation of meaning. Specifically, what differentiates “good” and “bad” people? Should officeholders be evaluated in a vacuum divorced from the consequences of their official actions based on “bad ideas”? Does sincerely “trying to get it right” make a judge “good” and “fabulous”? Why is it good to “make this thing work” if doing so causes great harm? Is the televised off-the-cuff warm *oral* praise by Thomas and Scalia supported by their own considered *written* words in official Supreme Court opinions?

Before turning to those writings, it is important to provide a context.

A College Bull Session?

The Supreme Court is not a debating society, a scholars’ think tank or an ongoing college “bull session.” Justices wield fearsome power to determine the outcome of real controversies between people engaged in very substantial, often life and death, disputes. Decisions often cause immense joy and agony – for example, [joy](#) for

rapists and murderers and [unspeakable agony](#) for their victims. Moreover, the high court decides not only winners and losers among actual litigants but also among competing public interests on the most critical and fiercely contested political issues. Justices’ “ideas” result in highly consequential decisions adopting or imposing values and policies, often undemocratically. (Justice Kennedy ostensibly figured this out in March, experiencing an [epiphany](#) after 38 years as a federal judge – including 25 as a frequent example on the high court and 21 after Justice Scalia [complained](#).)

Lincoln famously [warned](#): if policy “upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made in ordinary litigation between parties in personal actions, the people will have ceased to be their own rulers.” To a large extent, that has happened. The high court has become the last best hope of democracy’s losers. When they cannot prevail in fair debates and elections, they zoom to the court to overturn the results.

In his [autobiography](#) (8), Justice Douglas revealed a “shattering” statement by Chief Justice Hughes: “At the constitutional level where we [justices] work, 90 percent of any decision is emotional. The rational part of us supplies the reasons for supporting our predilections” Douglas added: “I had thought of the law [as] principles chiseled in granite. I knew judges had predilections. ...But I had never been willing to admit to myself that the ‘gut’ reaction of a judge ... was the main ingredient of his decision ... Judges ... represent ideological schools of thought No [justice] was neutral.”

So the “very bad ideas” of justices are not harmless academic musings. They are “gut reaction” value judgments. And not just minor ones. Abusing “[interpretation](#),” justices often ram their own personal morality down the throats of a strongly opposed large majority. Consider two examples.

First, it is largely unknown that media-protected justices have played an immensely toxic role in encouraging [highly unpopular](#) illegal immigration. Law professor Lino Graglia [demonstrates](#) (9-11) that, despite widespread misinformation, the Constitution does *not* grant citizenship to American-born babies of immigrants. It is *justices’* rulings that effectively have made them citizens. Moreover, an unelected bare majority [explicitly required](#) that illegal foreign-born aliens be given a free public education, [gratuitously adding](#) that *unlawful* aliens’ babies born here are citizens – thus “[entitled](#) [3] to all the advantages of the American welfare state.”

Second, for four decades, justices who consider themselves morally superior to the public have done everything they could to [subvert](#) and repudiate [capital punishment](#), despite its being explicitly and repeatedly

authorized by the Constitution. Those vitally affected, especially victims and their traumatized loved ones, are not likely to yawn about good versus bad ideas. As explained [elsewhere](#), “[a]n unbridgeable values chasm exists between victims of the worst crimes and the zealous devotees of their depraved victimizers.” The latter are likely to pronounce “good” those justices who will do anything to save murderers and rapists; the former are likely to disagree sharply – and painfully. (See Part III.)

What’s “Good” about Making “Bad Ideas” “Work”?

Justice Thomas implies that there is something laudatory about making the court work. But as [shown](#) by Thomas [Sowell](#), “very bad ideas” can be very destructive and even horrifying. For example, if Iran successfully produces nuclear weapons that “work,” there can be nuclear attacks against Israel and the United States, as well as nuclear blackmail. That would certainly be an example of something that “works.” Scalia himself [recently](#) observed: “kings can do ... good stuff that a democratic society could never achieve ... Hitler produced a marvelous automobile and Mussolini made the trains run on time. So what? That doesn’t demonstrate what’s a proper interpretation of a Constitution.”

Is celebration warranted when improper and often dishonest so-called interpretations “work” to produce both unconstitutional and harmful or even disastrous results? Before giving kudos to the Supreme Court for “working,” it must be determined if this is toward good” or “bad” policies and if it results from abuse of power to impose personal values of justices rather than the People’s as expressed in their Constitution and statutes.

Obviously, the Supreme Court, as an institution, works in the sense that it has [questionable legitimacy](#) and its diktats are, so far, accepted. But in another sense, justices, for two generations, have “worked” by undermining the rule of law to achieve a [far left agenda](#) that [could not be implemented](#) by full, fair and open debate in a democratic republic. And they are [not done yet](#) – not by a long shot!

Making bad ideas work has required a frontal assault on the rule of law for a very simple reason: From [Woodrow Wilson](#) to [Barack Obama](#), condescending leftist elitists have realized that the Constitution’s protected freedoms would prevent dictatorship of often unpopular “reforms” by those who think they know what’s best for the people better than the people themselves.

Recently, frustrated leftist law professor Louis Michael Seidman has called the Constitution so “[utopian \[yet\] downright evil](#)” that we should “[give up](#)” on it. He apparently thinks the Supreme Court has not rendered the document sufficiently unrecognizable to its Framers.

Just last June, five “fabulous” justices, over a vehement ObamaCare dissent joined by Thomas and Scalia, made the court “work” by driving another nail in the coffin of federalism, a critical Constitutional [safeguard of liberty](#) against federal tyranny. Justices have been [legitimizing unlimited](#) federal power for over 70 years, as they previously [sanctified segregation](#) for 58 years. The court “worked” by seizing the highly divisive abortion issue from the states, creating a “right” that even highly respected prominent [liberal scholars concede](#) is nowhere in the Constitution. And it should never be forgotten that, notwithstanding President Buchanan’s [prediction](#) that the slavery issue would be “speedily and finally settled” by the Supreme Court, six justices “worked” to produce a decision that took “a civil war to overturn,” as the late [Judge Bork](#) put it.

“A” for Effort?

There are two problems with the mantra that sincerely “trying to get it right” makes a justice “good.”

First, this is a strikingly low standard for highly educated and trained powerful judges. They don’t have to *actually* get it right; if they *try*, give them an “A-for-effort.” Should medical and law licenses be granted to all who study very hard, including those who fail their exams? Does “trying to get it right” trump actually being right? As Winston Churchill [pointed out](#), “[i]t is no use saying, 'We are doing our best.' You have got to succeed in doing what is necessary.” What is necessary for justices is to apply the law, not misstate and rewrite it.

Second, sincerity can be downright dangerous. It is a short step from “trying to get it right” to arrogantly concluding, not merely that a view or policy is right, but that this must be forced upon everyone for their own good by elitists who presume themselves to be better because they are cocksure that they know better.

Judge Learned Hand [cautioned](#) precisely that “[t]he spirit of liberty is the spirit which is not too sure that it is right.” Self-righteous self-certainty has been a hallmark of ruthless fanatics throughout history. After all, for one convinced of being “right,” wouldn’t it be immoral, or even sinful, to tolerate what is “wrong”? If necessary, why not just torture and murder heretics?

Surely, the fanatics who flew planes into the World Trade Center thought they were “right.” By all accounts, sixteenth century [Pope Paul IV](#) was personally honest and incorruptible; but he also was convinced of his moral superiority and that he was “right.” So he became a “reformer.” The result: ghettos and persecution for Jews and an intensified [Inquisition](#) accompanied by the most [unimaginable torture](#) to “save souls.” Positive he had “got it right,” this autocratic pope ordered law student Pomponio Algerio to be slowly boiled to death in oil to save his soul and protect the church from heresy. In turn, an unrepentant Algerio, convinced of his own

rectitude, calmly accepted being [boiled in oil](#) – also to save his soul!

Giving thanks for small favors, at this point in history, justices do not actually boil in oil those who disagree with them. Nevertheless, the sobering reality, explained below in Part III, is that these “fabulous” and “good people” have no qualms about further and cruelly [torturing](#) the tortured to protect their torturers.

II

WRITTEN OPINIONS vs. OFF-THE-CUFF TELEVISION INTERVIEWS

Chief Justice Roberts has [boasted](#) that his Court is unique because “[w]e give a reasoned explanation . . . We have to spell out in our opinions exactly why we’re doing what we’re doing. . . . Everybody else can look at it [sic].” On February 5, Justice Sotomayor [chimed in](#), claiming that justices “*completely explain* to the public the basis of their decision.” [Emphasis added.]

In truth, as Roberts and Sotomayor well know, “everybody else” and “the public” do not look at opinions. Most people do not even know how to find them. Thus, few in the public ever see or hear about the considered scathing assessments *written* by Justices Thomas and Scalia, in official published opinions. They hear biased [media caricatures](#) intended to ridicule; but they are unaware of the actual assessments.

The Overriding Value Judgment: Noble Ends Justify Dishonest Means

On television, Scalia vouches for *all* justices’ honesty and fairness, while Thomas gives them credit for “trying to get it right.” If this is insupportable, there is no basis for public trust and legitimacy accorded the Supreme Court – and it becomes easy to understand Scalia’s [written objection](#) to “unelected lawyers['] policy-judgment[s]-couched-as-law,” widely criticized as judicial activism.

Chief Justice Roberts [asserts](#) that “[i]t’s really quite wrong to view it as we decide it, then we write an opinion to explain what we’ve decided.” This squarely contradicts Chief Justice Hughes and Justice Douglas, who asserted that opinion writing is a quest to rationalize ideological predilections.

In non-ideological cases, Roberts is probably correct; but surely not in those involving the most critical, and bitterly divisive issues, e.g.: abortion, religion, political speech, race, public safety from crime, the economy and economic freedom, national security and terrorism, education, etc.

Scalia [rues](#) that “constitutional adjudication consists primarily of making *value judgments*.”

Underpinning all others is the conviction that dishonesty is moral when advancing the “greater good.”

Professor Graglia [writes](#) (11) that “the most liberal-activist Justice,” Brennan, “never let law, fact, or logic stand in the way of a decision he wanted to reach.” Attorney [Joel Jacobsen](#) explains that, because Brennan “was committed to a vision of a nation ruled by judges[,] he viewed any sort of intellectual dishonesty as a justified means to that all-worthy end.”

Exactly! The end justifies the means for justices who are so deeply committed to their personal and political values that they have no scruples about misstating, distorting and rewriting the Constitution or any other law to the point of emasculation, even inventing their own law. In so doing, they often craftily turn crystal clear language into confused incoherence euphemized as “[interpretation](#).”

Dishonesty about Clarity. In addition to asserting that “everybody else” can look at the Court’s “exact reasoned explanations,” Chief Justice Roberts declared that everybody can “understand” them. Justice Sotomayor [added](#): “Every ... majority opinion ... carefully analy[zes] the case and why the end result was reached. Everyone ***fully explains*** their views.” [Emphasis added.]

To use Justice Scalia’s expression, “[sheer applesauce](#).” It is fanciful and/or disingenuous to claim that “everybody” can understand opinions, which are “fully explained.” Forget “everyone”! Even many justices and lower court judges have called high court opinions incoherent and incomprehensible. A “[confused patchwork](#)” exasperated Justice White. In 2007, Roberts himself decried the Court’s “[dog's breakfast](#) of divided, conflicting, and ever-changing analyses” and, this year, he complained of an opinion giving police officers “[no idea](#)” what was required of them. Scalia [protested](#) “a mess—entirely of our own making” caused by replacing a “clear” statute “with a hodgepodge ... hav[ing] no evident basis even in common sense... If this muddle [is] *welcome* ... the world is mad.” In the last two years, Scalia [scorched](#) other justices for “sow[ing] further confusion” to the point of insanity, while Justice Thomas [blasted](#) justices’ refusal to provide “clarity to an Establishment Clause jurisprudence in shambles [that] has confounded the lower courts.”

Thus, to assert, with a straight face, that “everybody” can “understand” the court’s “full ... reasoned explanations” illustrates the low value placed on honesty by many justices, including the Chief. Moreover, confusion and incoherence are [sometimes deliberately](#) used to advance ideological predilections.

Scalia and Thomas on Dishonesty

Understandably in their rarified atmosphere, Justices Thomas and Scalia can’t use charged words like “fraud,” “liar” or “dishonesty” to describe colleagues. But nearly two decades ago, Thomas came very close

when he harshly faulted his fellow justices for using a “[conjurer’s trick](#)” to “hide” what they were really doing, engaging in “[perva\[sive\]](#)” “[dissembling](#),” which “should not continue. Not for another Term, not until the next case, not for another day. The disastrous implications ... are too ... too damaging to the credibility of the Federal Judiciary.”

Although Thomas and Scalia usually don’t go that far, they go far enough. In last year’s ObamaCare case, so momentous that the Court devoted to it six hours of oral argument over three days ([unheard of](#) in modern times), they participated in a dissent [accusing](#) five justices of being “sophists” engaging in “verbal wizardry.” Days earlier, in a case continuing what Scalia long ago called justices’ “[campaign against the death penalty](#),” Thomas and Scalia joined a strong dissent accusing fellow justices of making “[false promises](#).” And years earlier, Scalia (joined by Thomas) [attacked](#) fellow justices’ “habit of disclaiming the ... consequences of [their] ... Constitution-making[] opinions. Each ... abridgment of the people's right to govern themselves is portrayed as extremely limited....”

When five justices [seized](#) from the elected branches significant control over national security matters, the orally effusive duo joined a dissent accusing them of perpetrating “[constitutional bait and switch](#),” while Scalia wrote his own dissent (joined by Thomas, Roberts and Alito) again reproving the bare-majority for playing a “game of [bait-and-switch](#) ... upon the Nation’s Commander in Chief,” as well as “[just kidding](#),” when they gave their word in a prior case.

Rewriting, Arrogance, Usurpation and Illegitimacy Go Hand in Hand

Thus while Justices Thomas and Scalia largely avoid the ultimate taboo words, their thrust is clear. For many justices, often a majority, credibility is of little concern because the key to their [judicial dictatorship](#) and [imperialism](#) is [fraud](#): false assurances and broken promises, misstating and making up law, dissembling, sophistry and sharp practices.

If the law means whatever justices want it to mean rather than what it actually says, if words have no meaning that can be relied upon (or no meaning at all), if promises mean nothing, if facts are ignored or [suppressed](#) – why then justices can do anything. And they do just that, with monumental arrogance in two respects. These “supremes” have supreme confidence in their own moral superiority. In turn, this inspires them to unabashedly grasp and exercise powers they do not have, trampling upon the domain of officials who do have those powers, illegitimately usurping, without Constitutional authorization, the functions of both the states

and co-equal branches of the federal government.

In sum, judicial dishonesty, rewriting, usurpation, illegitimacy, arrogance and value imposition are inextricably intertwined. These motifs appear repeatedly in the writings of Thomas and Scalia.

The Dishonesty of Rewriting. Justices take two [oaths](#) to support and apply the actual Constitution and laws of the United States. They do not take an oath to rewrite laws conflicting with their political beliefs, write new laws or even apply laws they [acknowledge do not exist](#). Indeed, John Marshall [cited](#) the oaths in justifying judicial review.

Yet during the [televised interview](#) in which Justice Scalia called his colleagues “honest,” he also complained about their “revising” and “rewriting” the Constitution – despite the fact that their only power is to “apply” it. It defies logic to say that justices who do this are anything but dishonest. They are fully aware that they have no authority to rewrite the Constitution, as evidenced by their repeated denials (e.g., by [Justice Kagan](#)) that they ever do any such thing. Even Justice Brennan [claimed](#) merely to be “interpreting” the Constitution in declaring that it prohibited capital punishment despite explicit written authorization in four clauses.

Scalia [accuses](#) such justices of convincing themselves that words mean whatever they want them to mean. In other words, they deny they are rewriting because they claim sincerity in assigning meanings to language that would be unrecognizable to its drafters.

The only way for this to be honest would be if such justices actually believe their own deceptions. But in that case, it must be remembered that self-*deception* is still deception.

Scalia and Thomas have repeatedly accused “fabulous” justices of rewriting the law and the Constitution. Judge Bork wrote a book with a [title](#) adapted from Justice Scalia’s wistful [lament](#): “While the present Court sits, a major, undemocratic restructuring of our national institutions and mores is constantly in progress.... Day by day, case by case, it is busy designing a Constitution for a country I do not recognize.” That is scarcely an expression of confidence that the other justices are honestly applying the actual Constitution.

Succinctly, Thomas [accused](#) justices of “not interpreting the Commerce Clause, but rewriting it.”

Arrogance and Values. Realizing they can get away with dishonest rewriting and outright disregard of the duly ratified Constitution and duly enacted laws, there is nothing to prevent arrogant justices from forcing their own idiosyncratic values upon an unwilling populace. Thus, Justice Scalia [objects](#) to “self-righteous” justices, “acting on [their] personal view of what would make a ‘ “more perfect Union, ” ’ ... impos[ing their]

own favored social and economic dispositions nationwide ... [progressively narrowing the] sphere of self-government reserved to the people”

Some justices accept no limit. Scalia (joined by Thomas and Rehnquist) has [chastised](#) them for thinking that no issue, however trivial, is beyond their sense of superiority: “[U]nelected federal judges have been ... illegitimate[ly] ... usurping th[e] lawmaking power” of elected officials for decades. “This Court seems incapable of admitting that some matters—*any* matters—are none of its business.” Scalia (joined by Thomas) sarcastically [criticized](#) justices who “confront[ed] ... an awesome responsibility ... the solemn duty ... to decide What Is Golf. I am sure that the Framers of the Constitution ... fully expected that ... this august Court would some day have to wrestle with that age-old jurisprudential question, for which their years of study in the law have so well prepared them[.]”

Of course, what agonizes critics of judicial abuse is that justices have not confined themselves to the trivial. All too often, in service of their personal moral values, they have shanghaied the power to decide the gravest and most contentious issues. Consider a few examples.

III

SPECIFIC VALUE and POLICY JUDGMENTS: Capital Punishment

Few subjects exemplify the themes discussed here better than the [crusade](#) to [protect](#) murderers and rapists.

For decades, various justices have virulently and [surreptitiously](#) (43) opposed capital punishment. For example, with outright contempt for the Constitution’s clear language, Justices Brennan and Marshall asserted that it bans capital punishment altogether. Justice Blackmun later [joined them](#) (1147), “[a]lthough most of the public seems to desire, and the Constitution appears to permit, the penalty of death.” [Pretending](#) to adhere to precedent when his vote made no difference, but having “relied on my own experience,” Justice Stevens [asserted](#) (17) the death penalty is “patently... violative” of the Constitution.” Justice White (joined by Stewart, Blackmun and Stevens) arrogantly [declared](#) that the document empowered justices to force upon society their “own judgment” regarding the “acceptability” of capital punishment.

The judicial stranglehold on self-government was tightened in 2008, when Justice Kennedy (joined by Breyer, Ginsburg, Stevens and Souter) boasted that the Constitution gave any five justices the power to impose

their “[independent judgment](#)” regarding any punishment’s “[acceptability](#),” a boast that Justice Scalia declared would have been “[laughed to scorn](#)” by the Framers. Although [politically unable to completely abolish](#) the death penalty, this quintet hijacked from the People the power to decree a value judgment, nowhere in the written Constitution, that capital punishment must be “[limited](#)” by a fantasized “[necessity to constrain](#)” its use.

Among the “conjurer’s tricks” Thomas [complained](#) of (and contrary to judicial pretensions of clarity) has been what Justice Scalia called the “[fog of confusion](#)” used in the “campaign against the death penalty.” Just as in the [national security](#) case, Scalia long ago denounced other justices who “cause[] state legislators to pull their hair” by disparaging what previously they had “encouraged, if not indeed coerced ... administering a ‘[bait and switch](#)’ capital sentencing jurisprudence.” Scalia also has criticized the “[hollow ... assurance\[s\]](#)” of justices who “[purport](#)” to make narrowly confined decisions fully realizing they have sweeping implications that will be applied in future cases (a point validated, incredibly, by [The New York Times](#)). Last year, Scalia (joined by Thomas) [berated](#) fellow justices for “insult[ing] the reader’s intelligence” by claiming their “radical ... creat[ion of] a [monstrosity](#)” was “limited,” which “no one really believes.” Indeed, Scalia has not hesitated to declare “[I-told-you-so](#).”

A few examples show how “bait and switch” justices gradually expanded their “limited” rulings.

After declining to protect allegedly retarded murderers from execution, they did. They banned the death penalty for nearly 18-year-old murderers after refusing to do so. Then they barred life-without-parole sentences for under-18 recidivists who commit depraved violence short of murder. Next, they banned not just the death penalty but mandatory life-without-parole for murderers under 18. After negating capital punishment for rape of “adults,” they banned it for repeatedly raping little girls.

And they created an unimaginable “constitutional right” to commit punishment-free murder and rape!

All this without a single word alteration in the written Constitution!

In addition to the bait-and-switch ruse, the dishonesty of these justices includes their endless pretense of deciding cases based upon an alleged national consensus heedless of [likely recidivism](#), to keep alive convicted murderers and rapists – while simultaneously proclaiming the existence of a consensus to be irrelevant to their own superior “independent judgment,” i.e., personal values.

When majority justices usurped the power of the states by [granting protection](#) to [allegedly retarded](#) rapist-murderers at the expense of victims, Scalia (joined by Thomas and Rehnquist) [spotlighted](#)

what really underlies today's decision: pretension to a power confined *neither* by the moral sentiments originally enshrined in the Eighth Amendment (its original meaning) *nor even* by the current moral sentiments of the American people. ... (The unexpressed reason ... is presumably that really good lawyers have moral sentiments superior to those of the common herd, whether in 1791 or today.) The arrogance of this assumption of power takes one's breath away. And it explains, of course, why the Court can be so cavalier about the evidence of consensus. It is just a game, after all."

Answering five justices' assertion of an "[irreversible](#)" consensus to ban *capital punishment* for nearly-18-year old convicted *murderers* who abduct, tie up and throw terrified women off bridges to drown while conscious, Scalia (joined by Thomas and Rehnquist) charitably characterized the consensus claim as "[flimsy](#)"; and accused the majority of only pretending to care about consensus, because "[the real \[driving\] force](#)" is these justices' "own judgment" that murderers younger than 18 must never be executed. (Of course, in saving murderers' lives, these justices stripped from the law-abiding the right to decide how best to protect their own lives.) Scalia [suggested](#) that, for the majority justices, "[w]ords have no meaning." He [added](#) that they had "usurp[ed] role of moral arbiter" and asked: "By what conceivable warrant can nine [really five] lawyers presume to be the authoritative conscience of the Nation?"

Later, justices gave enhanced [occupational protections](#) to those they care about most, by proscribing not just capital punishment but even *life without parole* for any violent *non-homicide* recidivist under age 18. In response to the claim that such punishment violated their "independent judgment" as to what was "acceptable," Thomas (joined by Scalia) [declared](#): "I am unwilling to assume that we, as members of this Court, are any more capable of making such moral judgments than our fellow citizens. Nothing in our training as judges qualifies us for that task, and nothing ... gives us that authority."

Just last year, five pro-murderer justices further upped the ante by suddenly announcing that their values would not tolerate mandatory *life-without-parole* sentences for any *murderers* under age 18. (Those objecting to terming justices "pro-murderer" should read [this](#).) Thomas (joined by Scalia) again [protested](#): "nothing in the Constitution grants the Court the ... [even less legitimate](#) ... authority it exercises ... based on nothing more than the Court's belief that 'its own sense of morality pre-empts that of the people and their representatives.'"

In this vein, contemptuous of little girls and deeply devoted to the welfare of the most brutal murderers and rapists, a bare majority of justices concocted an unlimited "Constitutional right," undreamed of by the Framers, for huge powerful men to rape little girls as brutally and as often as possible without facing the death

penalty, based on a purported national consensus to protect these men. Thomas and Scalia joined Justice Alito's [outcry](#) against justices who

prohibit[ed] ... the death penalty for ... raping a child ... no matter how young ..., no matter how many times ..., no matter how many children the perpetrator rapes, no matter how sadistic[ally] ..., no matter how much physical or psychological trauma is inflicted, and no matter how heinous the perpetrator's prior criminal record may be.

Later, Scalia resignedly added: "to [tell the truth](#) ... the views of the American people ... were ... irrelevant to the majority's decision...." That's a polite way of accusing the majority of not telling the truth, considered "lying" by the gauche. Regarding justices' solicitude for the most violent "juvenile" convicted criminals, Thomas (joined by Scalia) declared that "the Court [does not even believe](#) its pronouncements" supported by mere "[window dressing](#) that accompanies its judicial fiat." Finally, last year, Scalia joined Alito, who [declared](#) that all consensus "pretense" had been "discarded."

Some justices are so protective of brutal killers that they invented "rights," which most Americans would consider unthinkable, for foreign terrorists on foreign soil. Scalia (joined by Thomas, Alito and Roberts) [protested](#) that this "will almost certainly cause more Americans to be killed." Earlier, Scalia (joined by Thomas and Rehnquist) [denounced](#) his colleagues' "judicial adventurism of the worst sort" in creating "a monstrous scheme in time of war ... in frustration of our military commanders' reliance upon clearly stated prior law[.]"

Torturing Victims to Protect Premeditated Rapist-Murderers

Shortly before expressing high praise for fellow justices, Scalia (joined by Thomas) [objected](#) to their resort to "lawlessness" and "license" in order to "effectively reduce [death] sentence[s], giving [defendants] many more years to live, beyond the lives of the innocent victims whose [lives they] snuffed out." Earlier, five justices employed an [utter absurdity](#) to save Marcus Wellons, who "[did not dispute](#)" committing rape-murder in 1989. Scalia (joined by Thomas) [noted](#) that "Wellons has already outlived his [15-year-old] victim by 20 years." (And that's on top of the 34 years of life he had before the rape-murder!)

Thus, after they commit murder, barbarians are often kept alive for periods longer than their victims even had a chance to live. To achieve this, fanatic justices have no qualms about torturing victimized loved ones to protect torturers.

Anyone finding this language too harsh should consider Mark Moseley. He was a star National Football League kicker for sixteen years, a pro-bowler, a most valuable player and a record holder. That did not spare

him. If justices can torture a man of such prominence, is any ordinary person safe from their predations?

In 1979, at the height of his fame, Moseley's sister Pamela Moseley Carpenter, was brutally selected, stalked, raped, beaten and murdered by a recidivist parolee, repeat rapist Johnny Paul Penry, whose life was saved by multiple justices. To do so, they subjected the Moseley family to 28 years of agony, including three trials, three death sentences, endless appeals and two Supreme Court reversals by pro-murderer justices.

Following a Supreme Court execution stay 21 years after the rape/murder, Moseley [bitterly expressed](#) how "angry" he was "at the system letting us down," adding: "this is killing my mom and dad." After another seven years of torture, the Moseleys and prosecutors [surrendered](#), agreeing to keep alive this brutal barbarian sentenced to death by not one, not two, but three juries who had considered the evidence.

Key facts must be emphasized.

- Penry's guilt was never in doubt.
- Outside the world of pro-murderer fanaticism, there can be no question that interminable delays to spare the lives of the clearly guilty cause severe [additional agony](#) for victimized surviving loved ones, in effect cruelly punishing them for the "crime" of already having been traumatized by an unspeakably savage loss. They have been needlessly and repeatedly compelled to relive the barbarity and to fear that the barbarian will be released or escape to commit new barbarity. Shockingly, it is far from unusual for cases to drag on for twenty, thirty and even forty years.
- [Unlawful](#) torture, as [defined](#) by federal statute, includes the intentional infliction of "severe...mental pain or suffering." The Supreme Court itself has [declared](#) that "a punishment is barred by the Eighth Amendment [even when there is] no physical mistreatment, no primitive torture[, if it] subjects the individual to ... ever-increasing fear and distress." While it cannot be said that the primary objective of the pro-criminal justices is to torture victims, they surely have shown a "[depraved indifference](#)" to the victim agony they cause. Indeed, some have openly expressed [lack of concern](#) amounting to disdain for suffering victims.
- Pro-murderer and [virulently anti-victim](#) justices understand the mental cruelty of inflicting "[inhumane delay](#)." However, [their resulting concern](#), astonishingly, is to reward the brutal murderers who [themselves](#) most successfully resort to all ploys to seek endless delay.
- Penry's retardation claim was given credence despite uncontested evidence that he was a repeat paroled rapist who had made a premeditated, well-reasoned, intentional decision to (1) rape Carpenter and (2) murder her to avoid being "squealed on" and sent "back to the pen." Penry clearly and fully understood his brutal crime and how to try to avoid being caught. Yet justices contemptuous of victims spent years professing to take seriously the claim that Penry was "mentally retarded." If "[getting it right](#)" means using any deceptive pretext to impose unpopular judicial values, perhaps "retardation" usage applies. But if "getting it right" means applying clearly understood language, then the "retardation" claim is grossly disingenuous, illustrative of the shams resorted to by "honest" anti-death penalty justices.
- Mark Mosely's fame was unique. Not unique at all, tragically, is the last 40 years' ruthless torture of victims' loved ones by callous self-righteous justices devoted to murderers.

Torturing victimized survivors by needlessly but deliberately stretching out cases for multiple decades is not the only cruelty inflicted by Justices devoted, above all else, to the welfare of barbaric rapists and murderers.

Even worse than torturing survivors of barbarity already committed, these justices have [invented](#) a so-called “constitutional” right for the most depraved violent criminals to murder and torture new victims free from the fear of being punished at all, thus virtually guaranteeing preventable violent crimes.

Although the most fanatically pro-criminal justices and their acolytes would certainly disagree, few crime victims are likely to dissent from the view that one of the great unreported and largely unknown scandals of what is called the “justice” system is the brutal torture of violent-crime victims – by the very recipients of lavish public praise as “good” and “honest” by Justices Thomas and Scalia.

Significantly, the victims are tortured by justices hypocritically [claiming](#) to act in the name of “compassion” and “mercy” – for convicted murderers of course!

Arrogant judicial hypocrisy warrants special consideration.

IV

SPECIFIC VALUE and POLICY JUDGMENTS: Hypocrisy and Perversity

Hypocrisy

Without using the word, Justices Thomas and Scalia repeatedly portray fellow justices as hypocrites pretending to do and be the opposite of what they really do and are. In deciding cases, “self-righteous” justices impose their professed personal values on everyone else when it suits them, but not consistently. And it is not unusual for them to avoid subjecting themselves to their own lofty preachings.

A conceit so endemic to leftists that it requires no documentation is their repeated claim to represent and protect the weak against the powerful, the poor against the rich, etc. They endlessly prattle about “fairness.” Nevertheless, attorney Jacobsen has hit the radical leftist nail on the head in referring to Justice Brennan, publicly [anointed](#) by [Justice Scalia](#) as “the most influential justice of the 20th century.” Jacobsen [disputes](#) the notion that Brennan saw the “judiciary's role as a defender of vulnerable minorities and individuals.” Instead, “[t]he chief distinguishing feature of Brennan's jurisprudence was his utter contempt for the *most* vulnerable of individuals ... a grossly disproportionate number of whom were members of minority groups: victims of crime.”

In one case, Thomas (joined by Scalia and Rehnquist) [rebuked](#) pro-criminal justices for having “unnecessarily sentenced law-abiding citizens to lives of [gang inflicted] terror and misery,” pointing to the

[“shame” that](#) “our most vulnerable citizens... the people who will have to live with the consequences of today’s opinion do not live in [justices’ safe] neighborhoods.”

Majority justices also took the side of the strong against the weak when they [proclaimed](#) (after previously denying) the lives of rape-murder victims to be less important than those of allegedly retarded powerful premeditated killers such as Penry. Scalia (joined by Thomas and Rehnquist) [declared](#): “Seldom has an opinion of this Court rested so obviously upon nothing but the personal views of its Members.”

Surely, [safeguarding](#) 300-pound men who viciously attack the most helpless rape victims, little girls, cannot be characterized as anything but protecting the very strong against the very weak and defenseless.

Even still more helpless are infants. Reacting to five justices invalidating a state law against “partial birth abortion,” Justices Scalia and Thomas did not limit their objection to illegitimate usurpation of power to impose personal moral and value judgments. Here, they explicitly expressed their own judgment of these judgments. Thomas (joined by Scalia and Rehnquist) accused colleagues of validating [“infanticide.”](#) For [himself](#), an aghast Scalia described the majority justices as imposing a “constitutional right” to engage in a “visibly brutal ... barbarian ... method of killing a human child ... [and] eliminating our half-born posterity ... so horrible that ... it evokes a shudder of revulsion...” (Explanations: [here](#) and [here](#).)

When the Court later upheld a [narrower](#) federal law to rescue partly born infants, the “fabulous” Ginsburg revealingly took the rare step of [reading](#) her dissent from the bench to express her indignation that the moral values of elected representatives, which she [labeled](#) “the Court’s ‘moral concerns,’” should prevail over her own: that it was perfectly moral – and mandated by the Constitution, no less – to puncture the skulls and suck out the brains of defenseless living creatures considered to be “human children,” not alone by Scalia but also by countless others, including abortion supporters [such as](#) the late Senator Moynihan and Mayor Koch. Although Ginsburg [denounced](#) fellow justices for their “irrational...notion,” she did not hesitate, just months later, to [hypocritically fuel](#) the media [canard](#) that Scalia is uniquely harsh and “intemperate” because he once said the position of another justice could not be taken “seriously.” While Thomas and Scalia heap unwarranted praise upon Ginsburg, she has no scruples about twisting the knife of unjustified slander.

In dissenting from a Brennan opinion, Scalia noted the [“irony”](#) that “the only losers” were “predominantly unknown, unaffluent, unorganized [individuals who] suffer ... injustice at the hands of a Court fond of thinking itself the champion of the politically impotent.”

In the [infamous](#) 5-4 *Kelo* eminent domain case, five self-styled “compassion/fairness” justices [redefined](#) and expanded “public use” to mean “public purpose,” enabling local politicians (frequently [corrupt](#)) to severely traumatize an 88-year-old lady by evicting her from, confiscating and destroying the only home she had ever lived in, so that the land could be transferred to a huge corporation (which ultimately [abandoned](#) it). Thomas sadly [observed](#): “no compensation is possible for the subjective value of these lands to the individuals displaced and the indignity inflicted by uprooting them. ... these losses will fall disproportionately on poor communities [that are] the least politically powerful.” In addition, Thomas and Scalia joined Justice O’Connor’s [dissent](#): “[T]he fallout ... will not be random. The beneficiaries are likely to [have] disproportionate influence and power ... [T]he government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this *perverse result*.” [Emphasis added.]

The majority justices were doubly perverse. Thomas [noted](#) their “overriding respect for the sanctity of the home ... when the issue is only whether the government may search a home. Yet today the Court tells us that ... the government may ... tear[] down ... homes. Something has gone seriously awry *Though citizens are safe from the government in their homes, the homes themselves are not.*” [Emphasis added.]

Dishonesty, Perversity and Punishment-Free Crime

Although already mentioned, one outrage is so shocking and so clearly demonstrates dishonesty that it merits citation for a special place of maximum dishonor in the Supreme Court pantheon of perversities. When it comes to perversity that the “Founders cannot have intended,” nothing can top that of arrogant justices with a soft spot for depraved convicted murderers and rapists. Such justices would have us believe that, as a reward for the exceptionally worst barbarities – beyond the imaginations of normal people – the Framers created a “constitutional right” to commit further unimaginable violence, including murder and rape, with absolutely no punishment at all! (Explained [here](#).) What honest person can possibly believe this?

Few know of this unreported “right” because, yet again, dishonest media protect dishonest justices.

Dishonesty, Perversity and Free Speech

Nearly as “perverse” is the very [low value](#) placed by the “fabulous” justices on “the heart of what the First Amendment is meant to protect: the right to criticize the government.” Justice Scalia made clear that a [prime motivation](#) of incumbents who enact so-called campaign finance reform is to suppress criticism by challengers. He proclaimed it “a sad day for the freedom of speech” when justices granted congressional

incumbents the power to enact a law suppressing challengers' freedom to criticize them. These were the same justices who had “sternly disapproved of restrictions upon such inconsequential forms of expression as virtual child pornography ... tobacco advertising ... dissemination of illegally intercepted communications... and sexually explicit cable programming”

As [summarized](#) by Thomas, justices in a past (and likely future) majority have claimed the First Amendment protects

“speech,” such as making false defamatory statements, filing lawsuits, dancing nude, exhibiting drive-in movies with nudity, burning flags, and wearing military uniforms... Not surprisingly, the Courts of Appeals have followed our lead ... protect[ing], for example, begging, shouting obscenities, erecting tables on a sidewalk, and refusing to wear a necktie. ... [T]oday's decision is a most curious anomaly. ... [T]he majority today, rather than going out of its way to *protect* political speech, goes out of its way to *avoid* protecting it.

Thomas [later added](#) to the list of the protected: pornographers, flag burners and cross burners.

Affirmative Action Hypocrisy

A particularly striking illustration of hypocrisy is Supreme Court imposed quotas, euphemistically referred to as “affirmative action.” Two strong proponents have been Justices Brennan and Ginsburg. Yet Brennan [explicitly refused ever to hire](#) any female law clerk, rejecting even a top Berkeley Law School graduate highly recommended by two of his former male law clerks. At her confirmation hearings, Ginsburg avidly defended tormenting small businesses for statistical disparities in hiring minorities, [despite the fact](#) (130-31) that, during her thirteen years as a circuit judge, there was not one black among the 57 employees she hired – even secretaries and interns!

This history did not stop either [Brennan](#) or [Ginsburg](#) from shamelessly pontificating on the [dubious](#) virtues “benign” discrimination, i.e., in favor of women and minorities and against men, whites and non-designated minorities (e.g., Asians).

Justices Scalia and Thomas did not meekly turn the other cheek.

Referring to a law so clear as to be “a [model](#) of ... draftsmanship,” Scalia [excoriated](#) justices for “convert[ing a] statute designed to establish a color-blind and gender-blind workplace ... into a powerful engine of *racism* and *sexism*, not merely permitting intentional race- and sex-based discrimination, but often [compelling] it....” [Emphasis added.] But Scalia seems positively diplomatic compared to Thomas.

First, Thomas [upbraided](#) justices for “uphold[ing] ... racial discrimination.” Second, he berated justices for believing that “anything ... predominantly black [must be inferior](#)” and that “there must be [something inferior about blacks](#)”; and for deciding cases “based upon a theory of black inferiority.” (Is that why, in relative obscurity as a circuit judge, Ginsburg refused to hire a single black in 13 years?) Third, as to such decisions, just as Thomas protested against justices who, lacking Constitutional authority, illegitimately protect murderers, here too, he long ago objected to justices’ “[usurpation](#),” “[overreaching](#)” and “[extravagant](#) use” of judicial power “beyond its [constitutionally mandated role.]” In doing so, he suggested, they assumed they were “omniscient.”

Fourth, he [denounced](#) justices’ distinction between “benign” and “malign” discrimination as “noxious ... poisonous and pernicious,” explaining that “such programs ... provoke resentment among those who believe that they have been wronged by the government's use of race [and] stamp minorities with a badge of inferiority... [E]very racial classification helps ... some races and hurts others. ... ‘benign’ or ‘malign’ ... turns on ‘whose ox is gored[.]’” Finally “government-sponsored racial discrimination based on benign prejudice ... is racial discrimination, plain and simple”

On January 13, 2013, Justice Sotomayor punctuated this point, displaying almost willful obtuseness. She [expressed](#) distress that anyone would think it improper that Princeton University admitted her based on ethnicity, [despite her](#) deficient vocabulary and “meager writing and critical-thinking skills” and *without even considering* the number one and two students in her high school class!! As she complained, a school nurse “thought there was something wrong with them looking at me and not looking at those other two students.”

Sotomayor defends affirmative action as helping the poor. After all, “for me, it was a door opener that changed the course of my life.” She does not say that, for the others, it was a “door closer,” so that she got her chance at their expense. Equating ethnicity with disadvantage, it does not appear to have crossed her self-centered mind that the two students sacrificed for belonging to the wrong ethnic group might also have been poor. Sotomayor shows no sign of caring what *their* circumstances were or what became of *them*. Instead, she whines that, because she received a preference, her capability was questioned: “We have to prove ourself [sic]. And we have to work hard at doing it.” This self-styled “[wise Latina](#)” apparently believes, not only that her ethnicity makes her a better judge than white males, but also other ethnics do not have to work hard.

Can there be a better illustration of Thomas’ objection to judicially imposed noxious and poisonous

resentment?

In one of his last opinions, longtime *liberal* Justice Douglas forcefully stated what is obvious to all but ethnic quota advocates. Because there are [also](#) poor whites, Asians, etc., aid to poor people should be granted regardless of race rather than by excluding some based on race. Using almost identical language, Douglas presciently preceded Thomas by two decades: “minority admissions policy is certainly [not benign](#) with respect to nonminority students who are displaced by it ... A segregated admissions process creates suggestions of stigma and caste ... that blacks or browns cannot make it on their individual merit. That is [an impermissible] [stamp of inferiority](#)[.]” While Thomas called “benign prejudice ... racial discrimination, plain and simple,” Douglas declared that any ethnic discrimination or [preference](#) was unconstitutionally “invidious.”

On February 27, 2013, echoing Thomas, Sotomayor [removed any doubt](#) (14) that she is an utter hypocrite, declaring: “Discrimination is discrimination ... discrimination is still discrimination[.]” Except, of course, when, based solely on ethnicity, she is given a preference by denying opportunities to others with superior qualifications. After all, how can anyone think that *that* is unfair?

V

CONCLUSION

Given what Supreme Court justices do, the gushing televised praise by Justices Thomas and Scalia of their colleagues is unwarranted. This is most powerfully demonstrated by what Thomas and Scalia themselves have written.

How can an institution be separated from the performance of its members – and vice versa? Even on television, when asked if the country is “well served” by the Court, Scalia [urged](#) reliance on a “British stiff upper lip” because “it is the only Supreme Court we have.” That defines “damning with faint praise.”

Repeatedly in writing, sometimes explicitly and often implicitly but unmistakably, Thomas and Scalia have questioned the integrity of their colleagues; and accused them of arrogance, lawlessness, license, illegitimate abuse of power, basing decisions on no more than their own personal values, contempt for the Constitution, sowing confusion rather than providing clarity, hypocritically pretending to defend the weak against the powerful while actually favoring the powerful at the expense of the weak, protecting “inconsequential” expression while disdaining the “heart” of the first amendment (the right to criticize

officeholders), poisonous and pernicious racism and sexism, belief in black inferiority, placing at risk the lives of good innocent people in order to save the lives of the most vicious and depraved, placing the welfare of terrorists above the lives of soldiers combatting them, mandating “infanticide” (the barbaric killing of “human children”), and other sins too numerous to discuss here.

To say the least, these are very strange criteria for “good ... honest ... fabulous” justices.

It may be unrealistic to expect Thomas and Scalia to criticize sharply in public those with whom they must work. If so, that is a one way street. [As noted](#), when given a chance to put to rest an utterly false oft-repeated slander of Scalia, Justice Ginsburg, instead, shamelessly attempted to validate it.

More importantly, even if Scalia and Thomas deem it inappropriate to be publicly negative about other justices, cordial working conditions do not require going to the other extreme. There is surely no reason to give lay people the impression that rabid leftist ideologues are magnificent. This can only confer unmerited legitimacy upon an institution infected by rampant judicial arrogance, dishonesty and lawless abuse of power.

In turn, that can only grossly disserve the cause of constitutional government to which Thomas and Scalia have been so otherwise tirelessly dedicated.

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