

Tuesday, November 03, 2009

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The Inanity and Hypocrisy of Perfection

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TCS Daily 30, 31 Oct 2009

NOTE: Page numbers and footnotes in brackets refer to documentation in the detailed paper downloadable [here](#); those in parentheses refer to all other linked sources.

[Dishonest death penalty opponents](#) have made many false and inflated "exoneration" claims. But their Holy Grail [21] is to prove actual execution of an innocent person. Toward this end, [The New Yorker](#) recently trumpeted the 2004 Texas Todd Willingham execution. His alleged innocence has been [vigorously disputed](#). Not only have there been so many false "exoneration" *claims* that finding just one authentic modern instance of an executed innocent person has taken on the aura of a crusade - the very *premise* is inane and hypocritical.

The premise is that irrefutably proving just one wrongful execution would justify, indeed require, abolition of capital punishment. For example, in finally deciding it was always unconstitutional, [Justice Blackmun believed](#) (n8) that courts "are unable to prevent human error from condemning the innocent." The [New Mexico](#) and [New Jersey](#) Governors signed death penalty repeals partly on the stated ground that it is not "100-percent ... perfect...never [] wrong ... foolproof."

This is a red herring to confuse public opinion, which thus far has not been easily swayed [34]. The goal is not to protect the innocent, but guilty murderers found by juries to deserve execution. Those who demand perfection for murder convicts make no similar demand to protect the law-abiding public.

Inanity

To quote [Justice Scalia](#) (18): "Like other human institutions, courts and juries are not perfect. One cannot have a system of criminal punishment without accepting the possibility that someone will be punished mistakenly. That is a truism, not a revelation."

The utter inanity of the perfection premise becomes clear with just a brief focus on the obvious. Because there is no perfect human activity, life as we know it would come to a halt under such a requirement. Even [walking on a sidewalk](#) or [shopping](#), or [eating in a restaurant](#) can result in death. Those who insist upon death penalty perfection do not call for closing roads and [hospitals](#), or stopping all transportation because these enterprises result in vast numbers of deaths. Nor, in their purported quest to prevent all risk, do they seek an end to human reproduction. Inevitably, some normal babies will suffer serious or fatal injuries and diseases. Especially relevant here is that some will be raped and/or murdered by previously convicted rapists and murderers saved by death penalty opponents. Since having children entails risk, do abolitionists propose to sterilize everyone to prevent producing more people who will endure tragedy?

The commonsense objective in life, not perfection but the best that can be done, has been more than achieved to avoid executing the innocent. Not so for protecting the public from repeat violent offenders.

Dishonesty and Hypocrisy

Given its inanity, those demanding perfection exclusively for the death penalty are again dishonest because this is really a thinly disguised attempt to require its abolition for all

convicted murderers, no matter how heinous or numerous their crimes and how overwhelming the proof of guilt. The protection of such murderers is the true objective. With candor rare for abolitionists, Bedau and Radelet, leaders in alleging executions of the innocent [n11], openly proclaimed: "We ... oppose executions of the guilty [R]ejection of capital punishment, on moral grounds and on grounds of social policy, does not turn on ... risk of executing the innocent...." [n297]

Perfection is purportedly sought because [life is at stake](#). However, demanding perfection in order to have capital punishment utterly ignores the excruciation caused by the imperfection in not having it.

A Critical Distinction: The Whole and the Parts. Some convicted murderers, if kept alive, will kill again; even the most extravagant "exonerations" claims do not come close to the number of [well-documented](#) murders [committed by previously convicted murderers](#) [9-10, 41-42, 52, n272]. The particular convicted murderers who will kill again cannot be precisely identified, but it is absolutely certain that some of them will. For each individual convict, it can be said there is a risk. But for the group as a whole, it is not a risk but a perfect 100 percent certainty.

Abolitionists do not fret about not just risking but assuring sacrifice of lives of innocent, law-abiding people for the sake of keeping convicted murderers alive. In truth, advocates for violent convicts *justify* this guaranteed loss of innocent lives on the *very ground* that Holy Grail seekers reject in arguing for abolition.

To take but a handful of myriad examples:

- On March 14, 1996, elite unit Police Officer [Kevin Gillespie](#) was murdered by young parolees with a [long history of violence](#). Fifteen days later, the ACLU National Prison Project's Jenni Gainsborough told *Dateline*: "It's not a perfect situation. We cannot be right 100 percent of the time, but you have to take some risk. That's a part of human life. There is no way of avoiding risk."
- Innocent mothers [Ewa Berwid](#) and [Lisa Bianco](#) repeatedly pleaded for protection, expressing terror that their husbands would murder them if released (as Adam Berwid expressly promised in open court). Both husbands were nevertheless freed by all-knowing risk-taking "experts" and both promptly slaughtered their wives in front of their children. In [response](#) to the Bianco butchery, the ACLU Prison Project's Ed Koren did not demand an end to such releases until perfection was guaranteed: "Nobody can predict what somebody is going to do in the future. We have to rely on people's judgment. It's unfortunate that people get hurt in the process. But if you tighten these programs, prisoners will lose the opportunity to lead possibly productive lives." No concern about the loss of innocent lives here.
- N.Y. State Division for Youth Director Peter Edelman thought he knew better than the [judge](#) who urged that a violent offender not be prematurely released: "I looked into it very carefully and found ... he had made excellent progress." The release resulted in an attempted knifepoint robbery of a woman five days later. Edelman [rationalized new violence](#), including [murders](#) and attempted murders, by offenders released by his agency, saying it was "not always possible to predict correctly that a release will work out satisfactorily - you cannot be 100 percent right...."
- In 1978, Lawrence Singleton raped, tortured, cut off her forearms and left 15-year-old Mary Vincent to die by the side of a road. No thanks to him, she survived. On parole, Singleton committed murder in 1997. Naturally, there was [extenuation](#). Sex-crime "experts" labeled him an "anomaly" and added "*only* a small minority go on to commit murder." This "only" attitude was neatly captured by Georgia Polston: "We didn't like the idea that something had happened. But you can't make a big thing about it if you want to give people a chance."

"Giving people a chance," without concern for the guaranteed new but avoidable catastrophe this will cause for other people, is exactly what is being sought now.

"Second" Chance Imperfections

On November 9, the Supreme Court will be asked to declare unconstitutional Life Without Parole (LWOP) for juveniles convicted of violent non-homicide crimes, no matter how numerous or vicious. The justices will be implored to hold that juveniles must *always* be given a "second" chance. If the justices do, it is [likely](#) (n5) they will be asked to extend their ruling to juvenile murderers. Will they consider that Singleton was given a chance -- to murder successfully; and Mary Vincent also had another chance -- a [chance to live in terror](#) for 23 years until his death from natural causes and to live without forearms for the rest of her life? Will they consider that the Berwid and Bianco children never again had a chance to experience their mothers' love or to forget the nightmarish savagery committed before their very eyes by their extra chance fathers?

One [brief](#) (6) "provides examples of the important contributions that can be made by youth when they are given a second chance." This is misleading. First, the cases before the Supreme Court do not involve "second" chances but multiple chances after multiple violent crimes. Second, with all due respect to former Wyoming [Senator Simpson](#) (11-13), he shot mailboxes, set fire to abandoned federal property, was involved in a bar fight he did not start and resisted arrest. This does not remotely justify repeated chances for rapists, sadists, violent robbers and attempted murderers. It is simply [fatuous to analogize](#) (15, 19) reckless, unthinking teenage behavior with malicious and murderous sadism. Did Simpson ever even *think* about rape, assault, armed robbery or attempted murder? If not, his self-description as a "monster" drains the word of meaning and it is unpersuasive that he lent his good name to the likes of [Terrance Graham](#) (multiple armed robberies) (2ff) and [Joe Sullivan](#) (multiple violent crimes, including the double rape, beating, and robbery of an elderly woman) (3ff). A [brief](#) purporting to be "in Support of Neither Party" all but explicitly seeks a ruling for Graham and Sullivan on the ground that young brains are "structurally immature" and not yet fully developed (3-4). Why, then, aren't most juveniles vicious criminals?

Those who seek an end to LWOP [do not claim](#) (23, 26-27), because they cannot, that there is no risk in releasing felons who have committed multiple acts of violence. In arguing that "the vast majority of adolescents who engage in criminal ... behavior desist from crime as they mature," the [Brief for Graham](#) (45) implicitly concedes there are those who will not desist. Obviously, there is no place in the Graham brief for Officer Gillespie, whose murderers were well into their 20s after having commenced their "careers" in their teens. They surely did "mature" -- to the next level, murder of a policeman, illustrating Justice O'Connor's position [8] that youth can indicate a potential for greater rather than lesser future dangerousness. Nor is there room for the victims of [Richard Biegenwald](#) (committed murder at age 18 and multiple murders after parole at ages 41-42), [Grant Cooper](#) (murdered at 18, 36, 60) and [Reginald McFadden](#) ([murder at 16](#) plus rape and at least two murders 25 years later at 41, after "second chance" parole as "rehabilitated" and "[an excellent risk for release](#)"). Nor for [late bloomers](#), such as Clarence Ray Allen, who do not start murdering until middle age. For the chance taken to keep him alive after his first murder conviction, he made three more victims pay with their lives [n55]. (Allen's lawyers argued he should be spared because setting an execution date would cause him to have a heart attack [n362].)

So imperfection results in multiple deaths of people who never have committed any crimes. Yet when it comes to giving multiple extra chances to multiple violent offenders, their advocates, who demand perfection for the death penalty, here seek understanding of inevitable human fallibility and mistakes. The very word "chance" shows that the court is being urged to gamble, to play Russian roulette with people's lives.

Let's be very clear. A chance to do right is also a chance to do wrong. Some extra chance beneficiaries justify the faith placed in them. But others do not. If five or six justices seize from a supposedly self-governing society the right to decide who does or does not deserve *multiple* chances, a price will surely be paid by anonymous people not visible from the safety and security of a judicial ivory tower [9, 42, n305]. Many are themselves quite young today and living normal, healthy, law-abiding hope-filled lives. Renewed acts of violence by human time bombs dropped on an unsuspecting population from that ivory tower will irreversibly -- and [with no extra chances](#) -- cost these individuals their health, ability to function, normalcy, happiness and, for some, their very lives. There will be no second chance for the last group -- ever. But the champions of multiple chances for convicted violent criminals will not be demanding perfection to avoid this calamity.

Edelman [contended](#): "It is inevitable that there will be instances where tragedy occurs. But very seldom is a youth released who then commits a serious crime." But, because "very seldom" does not mean never, Edelman effectively condemns unknown innocents to the trauma of serious crime. This is a conscious tradeoff -- without 100 percent perfection for the innocent. Edelman is prepared to impose "tragedy," human sacrifice, for the cause of releasing violent youths. Moreover, "very seldom" -- and indeed far more rarely, if ever -- is the wrong person executed. As Justice Scalia [pointed out](#) (18), the possibility of mistaken execution "has been reduced to an insignificant minimum. This explains why those ideologically driven to ferret out and proclaim a mistaken modern execution have not a single verifiable case to point to" By contrast, as noted, innumerable innocent lives have been lost and ruined due to the imperfections in keeping convicted murderers alive and releasing others who have a proven capacity for vicious violence.

Manifestly, elites (media, defiant elected officials [33-34] and unaccountable judges) have been far more concerned with the almost non-existent imperfections in executing guilty murderers than with the major imperfections in unnecessarily inflicting suffering on victims who never should be victimized in the first place. In reality, the elite attitude toward the unnecessarily victimized has been virtually blasé, out-of-sight-out-of-mind.

Accordingly, with guilt uncontested, judges once [turned loose](#) upon a truly innocent population Joseph Frady, [originally sentenced to death by a jury](#) for bludgeoning his victim to death, on contract, so that one eye popped from its socket and a mixture of blood and brains came out.

The country, in the words of the four Frady dissenters, "should awake to what has taken place."

Conclusion

Given ginned up concern about convicting the innocent, it is altogether appropriate and necessary to refute inflated, unwarranted and utterly bogus "exoneration" claims by death penalty opponents. However, some day, they may find their Holy Grail. What then? When they make well-publicized shrill demands for abolition due to less than absolute perfection, they should be asked this: Will they agree to abolish any parole ever for violent convicts because the system can never come close to determining exactly who will not commit more (and more serious) violent crimes, and thus is unable to guarantee that no law-abiding person will ever again be brutally victimized at the hands of a person previously convicted of such crimes? If opponents do not agree, then their demand for perfection should be seen for what it is: a selective red herring hypocritically used by people obsessed with seeking to save murderers while not caring one whit about the vast imperfections that result in countless wholly avoidable rapes, mutilations and murders of the truly innocent.