

The Sinister Secret of Abolitionists - Do death penalty opponents really oppose capital punishment?

TCS Daily 22, 23 Feb 2010

The Sinister Secret of Abolitionists Do death penalty opponents really oppose capital punishment?

By **Lester Jackson Ph.D.**

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. What follows refers only to activists, advocates and government policy makers (unaccountable judges; defiant elected and appointed officials).

"Recidivism among murderers does occasionally happen ... the only way to prevent all ... recidivism is to execute every convicted murderer - a policy no one seriously advocates ... Governments that respect ... justice and ... human dignity... do not use premeditated, violent homicide as an instrument of social policy"

-- [American Civil Liberties Union](#)

"Governor Huckabee "seemed genuinely surprised that he was held responsible for the criminal acts committed by those whose sentences he had commuted The notion ... seemed as foreign to him as the idea that he should refuse all leniency."

-- [former Huckabee campaign official](#)

AN ERSATZ ISSUE

Serious implications for the capital punishment struggle arise from the [hypocrisy of those who](#) demand absolute perfection for convicted murderers but expect, excuse and shrug off imperfections resulting in preventable brutalization of the law-abiding.

"From the beginning of our Nation," [Justice Brennan](#) observed, "the punishment of death has stirred acute public controversy." Nevertheless, perceived death penalty opponents and proponents have agreed on one point: that there *are* both opponents and proponents. This is wrong. Proponents have needlessly conceded a moral high ground to the self-styled and widely-believed-to-be opponents. The central fallacy is the belief that it is even possible to oppose the death penalty. It is not. The real issue is upon whom it should be imposed - the law abiding or the duly convicted.

The sinister secret of so-called "abolitionists" is that they actually support capital punishment. The only way to deny this is to disclaim any responsibility for a premeditated government policy of extensively sacrificing the safety and lives of myriad law-abiding individuals on behalf of convicted felons, including murderers. Clearly, state policy fostering repeat crime, including murder, should be seen as capital punishment of the innocent.

THEIR OWN WORDS APTLY DESCRIBE WHAT ABOLITIONISTS SUPPORT

Punishment is a penalty for wrongdoing. How, abolitionists might object, can murders of law-abiding victims who have done nothing wrong be called capital *punishment* or the death *penalty*, and thus how can they be said to support it? The answer requires no Clintonesque parsing. Opponents' own synonyms for these terms aptly apply to them. They support "[state-sponsored killing](#)" (2); "simple murder" [21]; "[foreseeable, state-sponsored murder](#)" (31), "[state-sponsored homicide](#)"; "[state killing](#)"; "[premeditated, violent homicide as an instrument of social policy](#)"; and/or "primitive ... ritual sacrifice" [n363].

"STATE-SPONSORED" RECIDIVIST HOMICIDE

A staple of the death penalty "debate" is whether it is an effective deterrent. This has been [hotly contested](#) [n278]. While [doubt](#) has been [expressed](#) that it sets an example to deter would-be murderers, it obviously deters the murderer himself from ever again committing murder or any

other crime. This is not trivial and deserves more than the second-class cliché status of what is often a frustrated last-resort afterthought. Given the certainty of more murders by saved murderers, refusing to condemn the convicted condemns law-abiding victims to execution in their stead. Avoiding this is surely sufficient; deterring those other than the murderer is an additional rather than essential benefit.

Compare executions against recidivist homicides. 723,000 murders and nonnegligent manslaughters in 37 years ([1972-2008](#)) resulted in [1,188 lawful executions](#) (0.165%). Nevertheless, aghast at even one such execution [54; n297], abolitionists have used terms like "[flood](#)," "substantial" and "skyrocketing" [n283] to refer to the 1,188, even labeling fifteen a "flood" [n223]. So how would they describe the far greater number of preventable unlawful homicides caused by policy they advocate?

As a consequence of decisions of government (all branches, all levels), there is immensely more capital punishment imposed on the blameless than the predatory. That is made clear by available research.

For example, "[o]f the roughly 52,000 state prison inmates serving time for murder in 1984, an estimated 810 had previously been convicted of murder [1.56%] and had killed 821 persons following those convictions" [n272]. As of the end of 2005, [166,700](#) were in state prison for murder (21). The same 1.56% would suggest about 2,600 new murders by murder convicts. At the end of 2007, of 3,215 prisoners under sentence of death, 8.3% had prior homicide convictions ([tables 4, 8](#)). That's at least 267 innocent lives. Finally, myriad murders [committed by previously convicted murderers](#) have been [well-documented](#) [9-10, 41-42, 52, n272].

This data shows how misleading is the frequent abolitionist claim that, of all felons, murderers are least likely to repeat. A small percentage of a very large number can be striking, and certainly hugely greater than the most [farfetched "exonerations" claims](#) (recently [139](#)).

State capital punishment of the innocent extends beyond saving convicted murderers. It includes repeated release of non-homicide convicts with full awareness that some would commit thousands of additional murders. 65.5% of the year 2007 condemned had prior felony convictions. It is safe to assume that a significant percentage of those convicted of homicide but not sentenced to death also had prior felony convictions. A Bureau of Justice Statistics [study](#) (1) of 272,111 prisoners (2/3 of all, about 408,166) released in 1994 revealed that 0.8% (between 2,177 and 3,265) were rearrested for homicide within three years (9). A prior [study](#) (1) of 108,580 prisoners (57% of all, about 190,500) released in 1983 found 1.6% (between 1,737 and 3,048) rearrested for homicide within three years (6). These figures omit homicides after the study periods and involve but two years' releasees. Studies for all years would show a staggering recidivist homicide total, probably between 60,000 and 110,000 in the 37-year period noted.

2005 is now being studied. Since the 1990s, the [prison population](#) has grown and crime has decreased. It does not follow that the [policy of releasing violent convicts](#) has stopped or that recidivist crime has ended. The Nov. 2009 murders, discussed below, of four police officers by a Huckabee-freed violent felon illustrate the point; as do the upcoming Connecticut [trials of two violent parolees](#) for a triple rape/arson-murder. Less horror is still horror, not ecstasy. [Recent data](#) show 1,382,012 violent crimes in 2008 vs. 1,932,274 in 1992, including 16,272 murders vs. 23,760. Also, there were 144,500 state prisoners sentenced for murder at [year-end 2006](#) (37) vs. 166,700 at [year-end 2005](#) (21), a decline of 22,200. Just [53 executions in 2006](#) contributed to that decrease.

Judge [Kozinski](#) (8044-47) compiled a "long, dreary list" of "tragedies [that] could have been averted," eloquently and graphically highlighting the painful cost, in life and suffering, of failing to incapacitate repeat violent felons. Clearly, state policy fostering repeat crime, including murder, should be seen as capital punishment of the innocent.

(On January 19, five justices cited one murderer's recidivism in seeking to rescue another convicted murderer, guilt uncontested [3]. They oxymoronically [complained](#) that a juror's "sister had been murdered by a man after he completed serving a life sentence (n1)." They did not explain how, short of dying, one could "complete serving" [a true life sentence](#) [9-10].)

STATE RESPONSIBILITY FOR PUBLIC SAFETY: DO AS I SAY NOT AS I DO?

The screeching protest can be heard. [Second chance rehabilitation](#) is a noble goal. When convicted felons who have been or are in government custody commit new violence, including murder, it is not government's fault but simply an unintended, [unavoidable](#) and thus acceptable tragedy.

Let's see what the state itself says and does about that.

The Supreme Court has [held no affirmative Constitutional duty exists](#) to protect the law-abiding public (although, given modern judicial values, convicted criminals must be protected from their professional colleagues - even [cigarette smoke](#) assault). However, the [Preamble](#) states that one purpose of the Constitution is to "insure domestic Tranquility." Moreover, government's responsibility for public safety has been repeatedly recognized. Gov. [Schwarzenegger](#) declared: "The first duty and highest obligation of government ... is to protect public safety." [Examples are endless](#).

Furthermore, government has been sued for failure to provide protection. In 1999, Buford Furrow, while on parole, shot five children and murdered a postal worker. In 2008, Washington State [agreed to pay](#) \$2.25 million to settle a \$15 million lawsuit for negligent supervision of the violent parolee. In 1984, career recidivist [George Agosto](#), with one homicide already under his belt, shot three New York City police officers, murdering [Thomas Ruotolo](#). Agosto himself was [puzzled](#) by his parole: "the law's mistake. It's crazy, I don't know. Why take the chance on me?" The two surviving officers and Ruotolo's widow sued New York State for wrongfully allowing Agosto to remain on parole. Two case dismissals were followed by two statute amendments to allow the suit. Finally yielding, the state's [highest court noted](#) that the legislature had found and demonstrated "an adequate moral obligation."

Despite the widespread view that public safety is a critical *government* function, for [decades](#), responsibility has been shifted to private individuals and businesses. Property owners and business establishments have always been liable for physical hazards causing accidents (e.g., defective sidewalks, failure to clear ice, slippery floors, etc.) (226). However, in 1974, singing star Connie Francis was raped in a motel, which she sued for failure to provide a secure lock. After a [jury awarded](#) her \$2.5 million, she [settled for](#) \$1.5 million (2). The rapist was [never caught](#) and hence went unpunished. [Landlords](#) and [restaurateurs](#) (227) similarly have been required to provide security to protect tenants and patrons in "high-crime" areas (which they might not be but for freed recidivists). And [bar owners](#) are responsible for deaths and injuries caused by inebriated [recidivist](#) (15) [patrons](#) (n5). (At the same time, the Supreme Court considers repeat drunk drivers to be [non-violent](#). That should comfort victims.)

The ultimate example of expecting private in place of public security is the government forcing private businesses to pay damages for [hiring unleashed recidivists](#) in reliance on the government. In 1980, Maria Salinas was robbed and raped in front of her children by cab driver Robert Jenkins, a multiple recidivist under indictment for attempted murder. When she sued the Fort Worth Cab & Baggage Company for hiring him, the Texas Supreme Court held the company should have independently investigated Jenkins' background instead of relying on a police-granted taxi driver permit.

"The [common thread](#) (227) in all these cases is foreseeability." The person or business sued is presumed to be able to foresee a likelihood of crime and take steps to prevent it. In 1970, the District of Columbia Circuit Court of Appeals, in assigning liability to landlords, [explained](#) (22) foreseeability: "It would be folly to impose liability for mere possibilities. But we must reach the

question of liability for attacks which are foreseeable in the sense that they are *probable* and *predictable*."

That seems to make sense and this piece is assuredly not an argument against private security. But shouldn't the state at least be held to what it demands of those outside government? Since recidivism is clearly foreseeable, even guaranteed, isn't the state responsible for avoidable crime resulting from laxity in preventing recidivism?

One type of second degree murder involves "[a depraved indifference to human life](#)" manifested by "a grave risk of death to another person," causing that person's death. According to [the law's authors](#): "depraved indifference murder is 'extremely dangerous and fatal conduct performed without specific homicidal intent but with a depraved kind of wantonness: for example, shooting into a crowd, placing a time bomb in a public place, or opening the door of the lions' cage in the zoo'"

Isn't that a perfect description of what the state does when it frees recidivists?

(Is there something wrong with this picture? The state holds private individuals and businesses liable for recidivist crime inflicted on the public by the state itself, expecting them to foresee and prevent what it can foresee and prevent but does not. The state repeatedly releases a criminal, issues a permit indicating that he is qualified for a job, and then orders a private employer to pay damages for hiring him; employers granting freed convicts the second chance sought by rehabilitation theorists are condemned. When the state is sued, as in the Furrow case, [taxpayers](#) pay damages awarded for crime caused by state policies and decisions (advocated by activists who have no direct personal liability). In other words, the state unleashes preventable crime on taxpayers paying to be protected, who must then pay for government failure to provide what they paid for.)

THE COLD CRUELTY OF COMPASSION

The landlord court [asserted](#) (27) that "every segment of society has obligations to aid in law enforcement and to minimize the opportunities for crime." Obviously, executing murderers and keeping violent convicts permanently incarcerated would "minimize the opportunities for crime." That is indisputably very harsh - and likely unthinkable for today's dominant judicial and media elites. "Compassion" is their *zeitgeist*.

What, then, do they think *is* thinkable? Keep murderers alive; free the violent. That is compassion for the thoughtful. But do they ever think about the cruelty inflicted by their compassion? Condemning to rape, torture, maiming and murder those who have never harmed anyone? That is the tragic result of what they think is thinkable - except, of course, the elites would rather not think of victims at all [1, 5-7]. Indeed, there are U.S. Supreme Court Justices who have all but explicitly stated that they value the lives of murderers far more highly than those of innocent victims [43, 47ff.; n282], even to the point of seeking to deny victim status to many who suffer the most [n305].

How can a state policy of imposing suffering, including murder, upon new victims be viewed as anything but capital punishment of the innocent? Is this any different from "shooting into a crowd, placing a time bomb in a public place, or opening the door of the lions' cage"? How can advocates of such policy credibly deny they support capital punishment of the law-abiding?

If the "abolitionists" actually oppose "foreseeable, state-sponsored murder," shouldn't they oppose policy that guarantees recidivism?

Let a [defiant](#) Mike Huckabee label "disgusting" his being blamed for freeing, over a [prosecutor's vehement protest](#), Maurice Clemmons from a 99-year prison sentence. The fact is that, in exercising his official state authority as governor and [to see himself as compassionate](#), he condemned to death [four police officers](#) and inflicted lifelong suffering on the parents, spouses, children, siblings and friends of Officers Tina Griswold, 40, Ronald Owens, 37, Greg Richards, 42,

and Sgt. Mark Renninger, 39. This was [not](#) Huckabee's [first](#) official imposition of a death sentence upon unknown future innocent victims; previously, Carol Sue Shields, 39, and Sara Andrasek, 23 [n49] suffered the consequences of Huckabee's compassion. When Norman Mailer and his fellow literati succeeded in freeing Jack Abbott [nn.50, 324], they condemned to death newly married Richard Adan, a 22-year-old with his whole life ahead of him. When, in 1972, [after 175 years](#), in a bare 5-4 epiphany, Justices Douglas, Brennan, Stewart, White and Marshall [suddenly found](#) the death penalty was unconstitutional and saved the lives of numerous convicted murderers, including Kenneth McDuff, they simultaneously condemned to death countless [new victims](#) (e.g., young pregnant mother Melissa Ann Northrup, 22, and popular accountant Colleen Reed, 28).

The litany never ends [9-10]. Suffice it to say, when government officials and activists pursue policy guaranteed to cause the death of innocent people, they effectively have sentenced those people to death.

The policy succeeds partly because the victims have no faces and no names when sentenced. Although victims receive scant attention, a feeble effort was made here to name a tiny few because the theft of personhood is cruelty's ally. It is less easy to be "compassionate" if one must confront the agony of compassion's victims- once vital, upstanding, loving human-beings, brutally and prematurely robbed of life in the interest of granting mercy to the merciless [e.g.: 2-3, 54; n315]. In an ideal world, the "abolitionists" would have to think about all of them. They don't. Lip service, absolutely; but not more.

Concern by the likes of Mike Huckabee, [Sister Prejean](#) [2, 38] and Bryan Stevenson [41, 54] is for the most brutal. To them, victims are "chopped liver." Justice Ginsburg has shed [tears](#) and felt [stress](#) for executed murderers; a search for any sign of similar concern by her for their victims would likely yield the same results as Diogenes' quest for an honest man.

If hoteliers, landlords, employers, bar owners, etc., are responsible for the safety of strangers victimized by the crimes and negligence of other strangers, why aren't Huckabee, Mailer, the [ACLU](#), the [DPIC](#) and, above all, judges and justices responsible for the multiple repeat crimes they cause?

To use a cliché, there is no free lunch. There can be no generosity to criminals without creating new victims, destroying their well-being and very lives. Compassion for the cruel is itself cruelty - cruelty to the good and decent.

This all answers the mystery of what kind of people fanatically protest 1,188 executions of convicted murderers for 723,000 homicides but not the incalculably greater number of executions of the law-abiding resulting from endless state recidivist leniency. Why, of course, they are the compassionate - the cold, cruel compassionate.

"DEATH ELIGIBILITY" FOR "SERIOUS" ADVOCATES

The ACLU [avers](#): "no one seriously advocates" a policy of executing all convicted murderers in order to prevent "occasional[]" recidivist homicides by some of them. "Occasional" recidivist murders are thus implicitly acceptable. (Imagine the reaction if a car maker said we must accept "occasional" highway fatalities in lieu of making safer automobiles.) In plain English, for the "serious advocate," the proper policy, which we now have, is: for the greater good of convicted murderers, others must be condemned to death. Just who are they?

In eviscerating capital punishment [1, 29-30, 43] for convicted murderers, the Supreme Court concocted and repeatedly "narrowed" the notion of "death eligibility" [38]. Justices boast [n250] of rendering entire categories of murderers death penalty "ineligible." For example: the allegedly mentally retarded who capably plot rape and then murder to avoid victim testimony [11-13]; 17½-year-olds who commit premeditated torture murder (they have a "right" to "attain a mature understanding of [their] own humanity") [7-8]; those who commit insufficiently

depraved murder (e.g., one using a rifle to kill his wife and slowly reload to first terrorize and then literally blow his mother-in-law's head off and brain out) [n288]; rapists who have already committed murder and attempted murder (thus avoiding any punishment at all for the new rape) [n265]; murderers serving life who commit new murders [42], etc., etc.

By judicial fiat, nearly all convicted murderers are not "eligible" for the death penalty. But eligibility has not been narrowed for those upon whom abolitionist style capital punishment is imposed. They are law-abiding, preferably far away in space and time, chosen at random [44] and anonymous - most especially, anonymous. They [must not be visible](#) to the people, especially judges, who protect murderers, so that the protectors do not have to think about the consequences or acknowledge their complicity in causing unimaginable and unspeakable avoidable suffering [42]. Accordingly, these death-eligible are sentenced and condemned *in absentia*, and denied any right to a lawyer, any trial (let alone multiple trials) and endless appeals lasting decades.

In sum, death penalty eligibility is severely restricted for duly convicted murderers but unlimited for everyone else. The first is a penalty for the guilty; the second is reserved for the innocent.

Accepting [highly dubious](#) and [dishonest](#) "exoneration" claims, Carl M. Cannon [declared](#) that "the right question" is whether government should execute murder convicts "knowing to a certainty that some of them are innocent." That has been [answered](#). The truly "right question" is whether government should pursue policy it "know[s] to a certainty" will cause the execution of law-abiding people who have never been convicted of anything - and in astronomically greater numbers than the bogus alleged "exonerations" and lawful executions.

THE BOTTOM LINE

Like Gov. Huckabee, the Pontius Pilates of abolitionism will seek to wash their hands of responsibility for the inevitable results of their zealotry. Denial is their right. But the rest of us must understand what they really stand for.

A policy of unleashing the brutal to attack the tame, clearly recognizing that this will result in new vicious crimes, including numerous murders, is government imposition of the death penalty. In abolitionist argot, it is "premeditated, violent homicide as an instrument of social policy."

If the values of the elites in charge of our society dictate that the law-abiding should suffer death to advance the interests of convicted criminals, so be it. But there should be no pretense that there is a "debate" in which one side favors "state killing" and the other opposes it.

Self-styled death penalty opponents are fully aware of the consequences of the policy they promote. The government adopts and pursues it, also with full realization. Can we then accept that advocates and government bear no responsibility and this is not a knowing state sentence of death upon countless innocent people?

At the end of the day, the horrific reality is clear. Abolitionists oppose the death penalty for those who have been convicted of murder. But they support "state-sponsored murder" of the law-abiding - a calculated policy "ritual" of "human sacrifice" on the altar of pretenders to sainthood whose compulsion to compassion extends only to the barbaric and the murderous - and not at all to tortured innocent victims.

Posted by Homicide Survivors at [3/2/2010 7:03 AM](#)

Categories: [Supreme Court](#), [Death Penalty](#), [Lester Jackson PhD](#), [Recidivism](#)

Tags: [Abolitionists Propaganda](#) [Ethics](#) [Recidivism](#)