

Repackaging Soft on Crime

February 10, 2011 10:52 AM | Posted by [Kent Scheidegger](#) | [1 Comment](#) |

The folks who want to repeat the sentencing mistakes of the 1960s are putting a lot of effort into the repackaging of old ideas. Today the Constitution Project announced with great fanfare [this report](#) titled with the repackagers' favorite term, "Smart on Crime." (**Every** con man tells you it would be smart to accept his deal, and you would be a fool to pass up the great opportunity.)

The bulk of the report is pro-thug. The death penalty chapter proposes eviscerating AEDPA, the exact opposite of the change actually needed. Astonishingly, the report asserts that "death sentences are disproportionately imposed on people of color." In a debate with me on [NPR on November 7, 2007](#), Constitution Project President Virginia Sloan said, "It's not the race of the defendant that is the major factor, and I don't think there are many studies that claim that." Right. The basis for the new, contrary assertion is our old friend, the Fallacy of the Irrelevant Denominator: "with African Americans comprising more than 40% of today's death-row inmates while constituting only 12% of the national population." If you use the relevant denominator, murderers, there is no disproportion.

The first chapter is on overcriminalization and overfederalization, legitimate beefs that I have noted here before. But they are fair-weather federalists. They call for increased federal involvement in juvenile justice, an issue with little legitimate federal role.

The Constitution Project claims a "diverse coalition" for their soft-on-crime proposals. Most of the coalition members listed on page vi are decidedly lefty, such as George Soros's Open Society Institute. They also list Cato Institute, a libertarian organization allied with conservative free-marketers on economic issues but listing left on criminal law issues (even though they deny it). Institute for Justice is similar.

Chapter 1 claims the Heritage Foundation as a contributor, and they do have a project on the overcriminalization and overfederalization issues, but Heritage is conspicuously missing from the coalition list on page vi. We will try to clarify where Heritage stands on this. I very much doubt they endorse the bulk of this report.