

# US Supreme Court Justice Scalia on capital punishment: "Death is no big deal"

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5 July 2002

Recent rulings by the US Supreme Court on the death penalty have focused attention on the high court's attitude toward capital punishment—a practice still upheld by 38 US states. In a 6-3 decision June 20, the Court ruled that executing the mentally retarded is a violation of the Constitution's Eighth Amendment ban on "cruel and unusual punishment."

The decision incurred the ire of the three dissenting justices—Chief Justice William Rehnquist and Justices Antonin Scalia and Clarence Thomas, all known for their extreme-right views—who denounced the Court's majority for caving in to international and domestic public opinion opposing execution of the mentally retarded. In his dissenting opinion, Scalia argued that such individuals should not escape execution because "deservedness of the most severe retribution [the death penalty], depends not merely (if at all) upon the mental capacity of the criminal ... but also upon the depravity of the crime."

Reporting on the June 20 ruling, the British *Guardian* newspaper drew attention to remarks made earlier this year by Justice Scalia, which cast further light on the deeply reactionary outlook underpinning his support for the death penalty. Scalia spoke in January at the University of Chicago at the Pew Forum on Religion and Public Life, appearing on a panel with former Democratic Senator Paul Simon and Beth Wilkinson, lead prosecutor in the government's case against Timothy McVeigh. His comments have been virtually blacked out in the American press.

Scalia cited the New Testament to claim that government "derives its moral authority from God ... to execute wrath, including even wrath by the sword, which is unmistakably a reference to the death penalty." He then made the following remarkable declaration:

"Indeed, it seems to me that the more Christian a country is, the less likely it is to regard the death penalty as immoral. Abolition has taken its firmest hold in post-

Christian Europe and has least support in the church-going United States. I attribute that to the fact that for the believing Christian, death is no big deal."

Scalia went on to attribute any Christian opposition to the death penalty—including that of the Pope—to the "handiwork of Napoleon, Hegel and Freud."

"The post-Freudian secularist," he remarked, "is most inclined to think that people are what their history and circumstances have made them, and there is little sense in assigning blame." With these words the high court judge indicated his own view that crime is not to be explained as a phenomenon with social roots, but rather as the expression of the evil character of individuals.

Scalia continued: "You want to have a fair death penalty? You kill; you die. That's fair. You wouldn't have any of these problems about, you know, you kill a white person, you kill a black person. You want to make it fair? You kill; you die."

"Does [the death penalty] constitute cruel and unusual punishment?" Scalia asked. "The answer is no. It does not, even if you don't allow mitigating evidence in. I mean, my Court made up that requirement.... I don't think my Court is authorized to say, oh, it would be a good idea to have every jury be able to consider mitigating evidence and grant mercy. And, oh, it would be a good idea not to have mandatory death penalties..."

Scalia not only reiterated his support for the death penalty, but called on any judge who found the practice immoral to resign. "In my view," he said, "the choice for the judge who believes the death penalty to be immoral is resignation rather than simply ignoring duly enacted constitutional laws and sabotaging the death penalty."

With characteristic cynicism, Scalia quipped, "I am happy to have reached that conclusion [that the death penalty is not immoral] because I like my job and would rather not resign."

In response to a question from the audience at the

Chicago forum, Scalia espoused the following unconstitutional standpoint on the relationship of church and state: “You’re talking about whether the religious viewpoint should have a role in the legislative and political process,” he said. “Of course it should. It always has in this country.”

He went on to claim, “I don’t think any of my religious views have anything to do with how I do my job as a judge.” His vote last week for the majority in the Supreme Court decision authorizing vouchers for religious schools, however, demonstrates that his promotion of religion is an integral part of his anti-democratic political agenda.

Scalia’s appearance at the Chicago forum was remarkable on three counts. First, his shameless and brutal contempt for human life; second, his rejection of basic democratic and constitutional principles; and third, the lack of any challenge to his reactionary rant in the press or among what passes for the liberal establishment in America. Why is there no outrage?

It is instructive to contrast the non-reaction to Scalia’s comments to the treatment of Associate Justice William O. Douglas, who served on the high court for 36 years, beginning in 1939. Douglas, long known for his liberal views, faced impeachment charges in 1952 when he granted a stay of execution to Julius and Ethel Rosenberg. In 1970, then-House Minority Leader Gerald R. Ford led another unsuccessful impeachment effort against Douglas, attacking him for his encouragement of political dissent and his championing of civil rights and anti-war causes.

But Scalia’s remarks are not even reported, let alone opposed. The acceptance of his reactionary drivel as a reasonable outlook is one more indication of the absence of any constituency within the political establishment for the defense of humanist principles and democratic rights.



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