

# US Supreme Court Justice Scalia says Constitution allows torture

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US Supreme Court Justice Antonin Scalia, the longest-serving justice on the country's highest judicial body, has proclaimed torture legitimate and in accordance with the US Constitution.

Scalia's remarks were made last Wednesday, the day after the Senate Intelligence Committee released its report on CIA interrogations. The report documents depraved and sadistic methods of torture used against over 100 prisoners held by the intelligence agency, under the direction of the Bush administration. The techniques include forcing prisoners to stand chained to a wall for more than two weeks at a time, sometimes on broken limbs; keeping prisoners awake for more than two weeks; death threats; "ice baths;" repeated near-drowning ("waterboarding"); and a form of sexual assault known as "rectal rehydration."

"The Constitution says nothing whatever about torture," Scalia said in an interview with Swiss radio network RTS. "It speaks of punishment; 'cruel and unusual' punishments are forbidden."

In the warped legal reasoning of Scalia, generally considered the ideological leader of the five-member right-wing block on the court, the Eighth Amendment to the US Constitution ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted") is relevant only "if you condemn someone who has committed a crime to be tortured."

In other words, torture is constitutional if the person tortured has not been charged or convicted of any crime. Regarding torture during interrogations, Scalia said, "We have never held that that's contrary to the Constitution. I don't know what provision of the Constitution that would contravene."

Allow us to enlighten the Supreme Court justice. First, his attempt to interpret the Eighth Amendment to allow torture so long as it is not "punishment" is manifestly absurd, giving the government unlimited powers so long

as prisoners are not charged with anything. It renders the amendment meaningless, since on this basis the state could simply forego all legal processes to make its actions—torture or anything else—constitutional.

Torture is also barred by the Fifth Amendment protection against compulsory self-incrimination, which is inextricably linked to protection against forced confessions. Both the Fifth and Fourteenth Amendments, moreover, guarantee "due process of law."

Scalia accompanied his pseudo-legal sophistry with the standard "ticking time bomb" arguments for torture. "It is facile for people to say, 'Oh, torture is terrible,'" he said in his interview with RTS. "You posit the situation where a person that you know for sure knows the location of a nuclear bomb that has been planted in Los Angeles and will kill millions of people. You think it's an easy question? You think it's clear that you cannot use extreme measures to get that information out of that person? I don't think that's so clear at all."

Such fantastical scenarios are the standard arguments for every dictatorship. "National security," under extraordinary circumstances, requires the gutting of all democratic and constitutional rights. Nothing in Scalia's reasoning would bar the use of torture within the United States.

This is not Scalia's first statement defending torture. He made similar arguments in 2008, again citing a hidden bomb scenario to proclaim, "It would be absurd to say that you cannot use something under the fingernails, smack him in the face, it would be absurd to say you couldn't do that."

Scalia personifies the authoritarian outlook of the American ruling class as a whole, expressing in the most naked and stupid fashion the general contempt for democratic principles in the US judicial system. Among his more recent comments is the proclamation that the Constitution does not prohibit the government from

favoring “religion over non-religion,” and his statement that mass internments, such as that of Japanese-Americans during World War II, will happen again.

Scalia’s comments last week were followed by the equally ardent support for torture from former Vice President Dick Cheney, Scalia’s close friend and political associate. Speaking on “Meet the Press” over the weekend, Cheney defended the torture of innocent people (“I have no problem as long as we achieve our objective”), proclaimed the technique of “rectal rehydration” necessary for medical reasons, and declared that the prolonged confinement of a prisoner in a coffin-size box to be one of the “approved techniques.”

“I’d do it again in a minute,” Cheney said.

Cheney’s statements came only two days after CIA Director John Brennan, himself implicated in the Bush-era torture program, declared it legal and justifiable. Speaking of the possibility of future governments once again openly adopting a policy of torture, Brennan said he would “defer to the policy makers in future times when there is going to be the need to be able to ensure that this country stays safe if we face a similar type of crisis.”

That such statements can be made by the highest representatives of the American state reveals a political system in an advanced state of putrefaction. Crimes are exposed, and, far from being held accountable, the criminals openly defend their actions.

Scalia’s comments have gone almost completely unreported in the US media, nor have they been criticized by what passes for the liberal establishment. The *New York Times* has not noted the remarks, nor have the other major national newspapers. On Monday, Scalia joined Supreme Court Justice Elena Kagan (an Obama appointee) in a forum at the University of Mississippi School of Law, with the two proclaiming their affection for each other.



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