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Justice Scalia, the Church, and the Death Penalty

Joe Ferullo | Aug. 19, 2009 NCR Today

Thought-provoking **article posted Wednesday [1]**in the online magazine "The Daily Beast." Written by famed lawyer and author Alan Dershowitz, "Scalia's Catholic Betrayal" takes the Supereme Court Justice to task for remarks made earlier in the week regarding a death penalty case.

Here is an excerpt from Dershowitz,who challenges Scalia not only on Constitutional grounds, but on Catholic moral grounds.

From Dershowitz:

"I never thought I would live to see the day when a justice of the Supreme Court would publish the following words:

'This court has never held that the Constitution forbids the execution of a convicted defendant who has had a full and fair trial but is later able to convince a habeas court that he is ?actually? innocent. Quite to the contrary, we have repeatedly left that question unresolved, while expressing considerable doubt that any claim based on alleged ?actual innocence? is constitutionally cognizable.'

Yet these words appeared in a dissenting opinion issued by Justices Antonin Scalia and Clarence Thomas on Monday. Let us be clear precisely what this means. If a defendant were convicted, after a constitutionally unflawed trial, of murdering his wife, and then came to the Supreme Court with his very much alive wife at his side, and sought a new trial based on newly discovered evidence (namely that his wife was alive), these two justices would tell him, in effect: 'Look, your wife may be alive as a matter of fact, but as a matter of constitutional law, she?s dead, and as for you, Mr. Innocent Defendant, you?re dead, too, since there is no constitutional right not to be executed merely because you?re innocent.'

It would be shocking enough for any justice of the Supreme Court to issue such a truly outrageous opinion, but it is particularly indefensible for Justices Scalia and Thomas, both of whom claim to be practicing Catholics, bound by the teaching of their church, to do moral justice."

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Links:
[1] http://www.thedailybeast.com/blogs-and-stories/2009-08-18/scalias-catholic-betrayal/?cid=hp:mainpromo2