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### Scalia says there's nothing unconstitutional about executing the innocent.

By [Ian Millhiser](#) on Aug 17th, 2009 at 5:00 pm

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Almost two decades ago, Troy Anthony Davis was convicted of murder and sentenced to die. Since then, seven of the witnesses against him [have recanted their testimony](#), and some have even implicated Sylvester “Redd” Coles, a witness who testified that Davis was the shooter. In light of the very real evidence that Davis could be innocent of the crime that placed him on death row, the Supreme Court today invoked a rarely used procedure giving Davis an [opportunity to challenge his conviction](#). Joined by Justice Clarence Thomas in dissent, however, Justice Antonin Scalia [criticized his colleagues](#) for thinking that mere innocence is grounds to overturn a conviction:

**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.

So in Justice Scalia’s world, the law has no problem with sending an innocent man to die. One wonders why we even bother to have a Constitution.

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