



Written by [Warren Mass](#) on March 13, 2018

Trump Wants Death Penalty for Drug Dealers — But Is Federal War on Drugs Constitutional?

Speaking during a 75-minute March 10 rally in Moon Township, Pennsylvania, where he was stumping for Republican congressional candidate Rick Saccone, President Trump stated that he was in favor of allowing prosecutors to seek the death penalty for convicted drug dealers.



While Trump did not specifically say he was referring to prosecuting drug dealers and imposing the death penalty at the federal level, it would be fair to interpret his statement that way, since the policies put in place by the city, county, and state prosecutors across the nation (often called district attorneys) are determined at those levels of government. However, there is no provision in the U.S. Constitution for the federal government to be involved at all in drug enforcement — despite the fact that our federal government has had since 1973 an agency called the Drug Enforcement Administration (DEA). We will discuss the constitutionality of federal drug enforcement later.

Trump said that imposing the death penalty for drug dealers is “a discussion we have to start thinking about. I don’t know if this country’s ready for it.”

“We can’t just keep setting up blue-ribbon committees” that do nothing but “talk, talk, talk,” he told his Pennsylvania audience.

“Do you think the drug dealers who kill thousands of people during their lifetime, do you think they care who’s on a blue ribbon committee?” Trump asked. “The only way to solve the drug problem is through toughness. When you catch a drug dealer, you’ve got to put him away for a long time.”

This was the second time in nine days that the president suggested the death penalty for drug dealers. During a White House summit on opioid addiction on March 1, he told those gathered, “Some countries have a very tough penalty, the ultimate penalty, and they have much less of a drug problem than we do.”

At the March 1 summit, Trump used almost the same language as he had in Pennsylvania, saying, “If you shoot one person, you get life in prison. These people kill 1,000, 2,000 people, and nothing happens to them.”

Nine days later in Moon Township, he stated, “A drug dealer will kill 2,000, 3,000, 5,000 people in the



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course of his or her life.”

“And you wonder why we have a problem,” Trump said. “That’s why we have a problem, folks. I don’t think we should play games.”

During his talk, Trump cited China and Singapore as examples of countries that employed the death penalty to dissuade drug dealers. The fact that China is a communist dictatorship and that Singapore (though a parliamentary republic by definition) has scored very low in human rights indices — including those compiled by Reporters Without Borders and Freedom House — does not provide encouragement that these nations should serve as examples for our own government to emulate.

Trump said Chinese leader Xi Jinping told him that China has no problems with drugs because of its executions of drug dealers.

The president also said he spoke with Singaporean leaders about that country’s “zero tolerance policy” toward drug dealers.

“What does that mean?” Trump said. “That means if we catch a drug dealer — death penalty.”

The *Washington Post* reported that Singaporean representatives have briefed senior White House officials on their country’s drug policies, which include treatment and education, but also the death penalty, and they have provided a PowerPoint presentation on that country’s laws.

“That is seen as the holistic approach that approximates what this White House is trying to do,” the official said.

Perhaps the most important point to keep in mind is not whether or not drug dealers deserve to receive the death penalty or life in prison, since their crimes are heinous and justice demands harsh penalties for them. The key issue, in our constitutional republic, is that the jurisdiction to punish crime is carefully described in our Constitution. The only crimes Congress is specifically authorized to punish are piracies and felonies on the high seas, counterfeiting, and treason. In general, federal criminal laws pertain to conduct that occurs on federal property or conduct involving federal employees, currency, coin, treason, national security, rights secured by the Constitution, or commerce that crosses state lines. Laws pertaining to other crimes against persons and property, and establishing penalties for breaking those laws, are reserved to the states under the 10th Amendment.

We noted earlier that our federal government established the Drug Enforcement Administration (DEA) in 1973. An article about the history of federal drug enforcement on the DEA website notes:

The Harrison Narcotic Act, establishing the foundations of federal drug law enforcement, was signed into law by President Woodrow Wilson on Dec. 17, 1914. There was little political reaction for it or against it, because nobody knew what it meant; it was broadly believed that any federal regulation of the medical profession would be unconstitutional—an infringement on states rights. For this reason the new law, at least on the face of it, was no more than a revenue measure, providing for the registration and taxation of those who manufactured or distributed opium, morphine, heroin, or coca products, which have since been included within the legal definition of narcotics.

Because the Constitution did not give the federal government the power to regulate individuals’ personal behavior, including the use of substances such as alcohol and drugs that may be harmful, it was necessary to amend the Constitution to allow the federal government to prohibit the manufacture, sale, or transportation of intoxicating liquors.



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Former U.S. Representative Ron Paul, known for his constitutionalist positions, made note of this fact in his article about federal laws criminalizing marijuana and other drugs reprinted by *The New American* on January 8. The article was critical of Attorney General Jeff Sessions (who is much respected for his strong stands enforcing immigration laws), who Paul believes has strayed far from the constitutional mark when it comes to drug law. Paul noted:

The US Constitution does not give the federal government any authority to criminalize marijuana. Thus, the question of whether marijuana is legal is one of the many issues reserved to the states under the Tenth Amendment. If the Constitution gives Congress the power to ban marijuana, then why was it necessary to amend the Constitution to give Congress the power to ban alcohol?

Sessions' usurpation of state marijuana laws is the type of federal intrusion into state issues usually opposed by conservatives. Sadly, too many conservatives are just as willing to sacrifice constitutional government and individual liberties for the war on drugs as they are for the war on terror.

If, as Paul maintains, the U.S. Constitution does not give the federal government any authority to criminalize marijuana, then it also does not give the federal government any authority to criminalize any other substances, nor to impose any penalties on those who sell those substances.

This defense of the Constitution should by no means be viewed as an endorsement of drug use, or that those who profit by selling harmful substances (especially to vulnerable young people) should not be dealt with harshly. However, such regulation and punishment properly belongs to the states and other jurisdictions within the states, such as counties.

We need not give up the freedom we enjoy under our Constitution to combat harmful drugs or live in a country that resembles the communist tyranny of China or the authoritarian state of Singapore, where personal freedoms are often harshly restricted.

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