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## Antony Davies & James R. Harrigan: Trump, drug dealers & rule of law

ANTONY DAVIES & JAMES R. HARRIGAN | Saturday, March 17, 2018, 5:33 p.m.



Students from St. Paul's University, a Roman Catholic school, tie red ribbons as they come out from their campus to protest the killings being perpetrated in the unrelenting

'War on Drugs' campaign of President Rodrigo Duterte, Friday, Sept. 30, 2016 in Manila, Philippines. (AP Photo | Bullit Marquez)

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Information recently leaked that the Trump administration is considering a [new policy](https://www.washingtonpost.com/amhtml/national/trump-administration-studying-possibility-of-seeking-death-penalty-for-drug-dealers/2018/03/09/4d9cc994-23c3-11e8-94da-ebf9d112159c_story.html?utm_term) ([https://www.washingtonpost.com/amhtml/national/trump-administration-studying-possibility-of-seeking-death-penalty-for-drug-dealers/2018/03/09/4d9cc994-23c3-11e8-94da-ebf9d112159c\\_story.html?utm\\_term](https://www.washingtonpost.com/amhtml/national/trump-administration-studying-possibility-of-seeking-death-penalty-for-drug-dealers/2018/03/09/4d9cc994-23c3-11e8-94da-ebf9d112159c_story.html?utm_term)) that would allow prosecutors to seek the death penalty for drug dealers. President Trump privately expressed interest in Singapore's approach to its own drug problem, which includes everything from education and treatment to executions. He also publicly praised Philippines President Rodrigo Duterte's heavy-handed anti-drug crusade, which has resulted in the deaths of thousands of people in the form of state-sanctioned extrajudicial killings by police.

It might seem odd that an American president would praise Singapore and the Philippines for their law-enforcement efforts. But there aren't many examples of seeking to raise drug crimes to a capital offense. Only [58 countries](https://www.telegraph.co.uk/travel/maps-and-graphics/countries-that-still-have-the-death-penalty/) (<https://www.telegraph.co.uk/travel/maps-and-graphics/countries-that-still-have-the-death-penalty/>) still exercise capital punishment at all, and the United States should not be taking its cues from any of them. Japan is the only major developed country on the list. The rest, countries such as Iraq, Iran, North Korea and China, feature neither liberty nor the rule of law. Even in the U.S., the death penalty is illegal in 19 states and the District of Columbia.

That leaves 31 U.S. states in which the death penalty is available, but only in cases in which a life is taken. In a 50-year series of cases, the U.S. Supreme Court has been very clear that any other application of the death penalty is disproportionate to the crime, and thus unconstitutional. There was even a time when the Supreme Court ruled that all applications of the death penalty, as implemented, were unconstitutional. In *Furman v. Georgia* (1972), the court reduced death sentences nationwide to life in prison. By 1977, many states had addressed the court's concerns, and the death penalty was once again available to those states' prosecutors.

The Trump administration's move toward expanding the list of capital offenses runs exactly counter to the Supreme Court's 50-year history of jurisprudence. Trump is apparently inclined to address the U.S. opioid problem by executing American citizens. This puts him firmly [in line](https://deathpenaltyinfo.org/death-penalty-international-perspective) (<https://deathpenaltyinfo.org/death-penalty-international-perspective>) with the dictators of the world, and at odds with every rights-respecting nation on the planet. What Trump wants is clear. The American people, on the other hand, might be more interested in the humane rule of law than is their president.

Trump would do well to remember that the federal government has overstepped in making drug policy from the first. There is no clear grant of power in the Constitution for the federal government to do much of anything where drugs are concerned. It is, or should rightfully be, a state concern. Further, the Supreme Court has been quite clear on how the death penalty can be administered, and drug charges simply do not pass constitutional muster — absent a new ruling to that effect. And the chances of that happening are effectively zero.

Trump took an oath to uphold and defend the U.S. Constitution. It is time he took its dictates a good deal more seriously than he does. A healthy respect for the rule of law would be a fitting first step.

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