

1 Up in Smoke: Federalism Today

2 10 November 2014

### 3 **Up in Smoke: Federalism Today**

4 High drama is currently being played out in the United States court system regarding the  
5 issue of legalizing medical marijuana. This heated debate started in earnest when the state of  
6 California first legalized medical marijuana in 1996 (Blumenauer and Polis, 2013). Since then,  
7 over 20 states, along with the District of Columbia, have followed suit. However, while medical  
8 marijuana is legal in these states, it still remains illegal in the eyes of the federal government.  
9 Given this overlap of Federal and State laws, the question exists as to which level of government  
10 should have the final authority in determining the legality of medical marijuana. To address this  
11 complex and complicated issue of jurisdiction, it is important to examine current legislation on  
12 marijuana as well as the United States Constitution and legal precedence set by the Supreme  
13 Court.

#### 14 **Federal Legislation**

15 Marijuana was first used as a medical drug in the early 1900's. As a result, Congress  
16 passed the Marijuana Tax Act in 1937 which permitted possession of the drug to any person who  
17 paid an excise tax for the medical and industrial use of marijuana (Blumenauer and Polis, 2013).  
18 However, in 1951 Congress refuted the Marijuana Tax Act by passing the Boggs Act which  
19 classified marijuana as a narcotic and maintained that possession of this drug was a criminal  
20 offense that carried a heavy fine and stiff prison sentence of 2 to 10 years (Blumenauer and Polis,  
21 2013). Then, in 1970, with the passage of the Controlled Substances Act (CSA), Congress  
22 declared marijuana to be a Schedule 1 drug, placing it in the same category with other dangerous

1 and highly addictive drugs such as heroin and LSD (Blumenauer and Polis, 2013). The CSA is  
2 still being enforced today.

3         Blumenauer and Polis (2013) reported that in 1972 the bipartisan National Commission  
4 on Marijuana and Drug Abuse, also known as the Shafer Commission, recommended that  
5 possession of marijuana be decriminalized. Specifically, the Shafer Commission stated that  
6 possession of marijuana for personal use should no longer be an offense, and that the “casual  
7 distribution of small amounts of marijuana for no remuneration, or insignificant remuneration,  
8 was no longer an offense.” (Armentano, 2007, para. 4). Four years later, in 1976, legal  
9 precedent was set by a Federal Court in Washington, D.C. in the case of the United States v.  
10 Randall (Johnson, 2012). Robert Randall suffered from glaucoma and needed to use marijuana  
11 to treat this disease. He employed the common law doctrine of Necessity to successfully defend  
12 himself against the criminal charges of possessing and using marijuana (Johnson, 2012). Federal  
13 Judge James Washington ruled that Randall's use of marijuana did indeed constitute a medical  
14 necessity (Johnson, 2012). This landmark case resulted in the creation of the Compassionate  
15 Investigational New Drug Program which allows for a limited number of persons to receive  
16 medical marijuana from the Federal government (Guither, 2005). While this ruling opened the  
17 door for patients who met the criteria of the Investigational New Drug Program to legally receive  
18 medical marijuana, only very few patients are eligible. Following the recommendations of the  
19 Shafer Commission and the ruling passed down in U.S. v Randall, over 20 states passed laws to  
20 decriminalize the possession of small amounts of marijuana for medical use.

## 21 **The Dilemma**

22         The state laws on medical marijuana are not consistent with one another. Each state  
23 varies greatly in its criteria and implementation of these laws (Blumenauer and Polis, 2013). On

1 the federal level, Congress still contends that marijuana is a dangerous drug and that the illegal  
2 distribution and sale of it is a serious crime, under the CSA. The Department of Justice is  
3 committed to enforcing the CSA. Having both federal and state laws exist on the use and  
4 distribution of marijuana is very confusing and inconsistent. Blumenauer and Polis (2013)  
5 reported how the federal government does not currently overturn any state law that legalizes the  
6 use of medicinal marijuana but, those individuals who use marijuana as a medical treatment run  
7 the risk of legal action by the U.S. Drug Enforcement Administration or other federal agencies.  
8 In 2009, the Obama administration sent a memo to federal prosecutors encouraging them not to  
9 prosecute people who use and distribute marijuana for medicinal purposes in accordance with  
10 their own state law (Blumenauer and Polis, 2013). Even though the federal government has taken  
11 a somewhat hands off approach to small scale operations of medical marijuana usage, the fact  
12 remains that marijuana is an illegal drug in the eyes of the federal government.

### 13 **Federal v. State Authority**

14 The United States Constitution clearly outlines the authority of both the federal  
15 government and the state governments. When it comes to federal laws versus state laws, the  
16 federal laws are the supreme law of the land and take precedence over any laws adopted by  
17 states, as stated in the Supremacy Clause of the Constitution (U.S. Const., article 6, section. 2).  
18 The supremacy clause also contains the doctrine of pre-emption which says that the federal  
19 government wins in the case of conflicting legislation (Daunt, 2014). This clause balances the  
20 powers at the federal and state level and mandates that all state judges must follow federal law  
21 when a conflict arises between federal and state law (Daunt, 2014).

22 The Commerce Clause is the legal foundation of the U.S. government's regulatory  
23 authority and establishes the allowable scope of the power of the federal government. This

1 clause gives Congress the authorization to “regulate commerce ... among the several States”  
2 (U.S. Const., article 1, section 8, clause 3). It also represents one of the most fundamental  
3 powers delegated to the Congress by the founders and defines the balance of power between the  
4 federal government and the states. The Commerce Clause has been paired with the Necessary  
5 and Proper Clause to provide the constitutional basis for a wide variety of federal laws. The  
6 necessary and proper clause is one of the most powerful in the Constitution in that it allows the  
7 federal government to "make all laws which shall be necessary and proper for carrying into  
8 execution the foregoing powers, and all other powers vested by this constitution" (U.S. Const.,  
9 article 1, section 8, clause 18). Based on the authority outlined in the Commerce Clause and the  
10 Necessary and Proper Clause, the federal government has the legal authority to make laws  
11 regarding the use of medical marijuana and to regulate the buying and selling of medical  
12 marijuana.

13         The Tenth Amendment of the Constitution further defines the balance of power between  
14 the federal government and the states. This amendment emphasizes the principle of federalism  
15 by stating that the federal government has only specific powers granted by the Constitution  
16 which include the power to declare war, to collect taxes, and to regulate interstate and foreign  
17 commerce. The intent behind the Tenth Amendment was to limit the powers delegated to the  
18 federal government and to give more self-governing power to the states.

### 19 **Landmark Court Cases and Historic Events**

20         In addition to the federal authority outlined in the Constitution, precedent has been set in  
21 the following landmark cases defining the power and jurisdiction of the federal government.

22         In the case of *McCulloch v. Maryland* (1819), McCulloch claimed that the state of  
23 Maryland did not have the legal right to pass legislation that would impose state taxes on the

1 Second Bank of the United States which was a Federal bank chartered by Congress in 1816.  
2 The Supreme Court unanimously ruled that "Congress had the power to incorporate the bank and  
3 that Maryland could not tax instruments of the national government employed in the execution of  
4 constitutional powers" (*McCulloch v. Maryland*, 1819). Chief Justice Marshall went on to state  
5 in the court's decision that "Congress possessed unremunerated powers not explicitly outlined in  
6 the Constitution" (*McCulloch v. Maryland*, 1819). The court invoked the Necessary and Proper  
7 Clause of the Constitution which gives Congress the authority to make all laws that are  
8 "necessary and proper" (US Const., article 1, section 8, clause 18). This was a landmark case  
9 illustrating that the Supreme Court recognized the state's ability to tax but it did not override the  
10 Federal law which is supreme.

11 In the case of *Gibbons v. Ogden* (1824), the question was whether the state of New York  
12 overstepped federal authority when granting exclusive licenses to steamboat operators on waters  
13 within the state's jurisdiction. Thomas Gibbons, a steamboat owner who held a federal coastal  
14 license for doing business between New York and New Jersey, challenged the monopoly license  
15 granted by the state of New York to Aaron Ogden. The Supreme Court ruled that New York's  
16 licensing requirement for out-of-state operators was inconsistent with a congressional act  
17 regulating the coasting trade. Under the Supremacy Clause in the Constitution, the New York  
18 licensing law was ruled to be invalid. Chief Justice John Marshall extended the definition of the  
19 word commerce to include navigation on interstate waterways (*Gibbons v. Ogden*, 1824). He  
20 concluded that regulation of navigation by steamboat operators and others for purposes of  
21 conducting interstate commerce was a power reserved to and exercised by the Congress  
22 (*Gibbons v. Ogden*, 1824).

1           In the landmark case of *Wickard v. Filburn* (1942), the question was whether the federal  
2 government could legally enforce the Agricultural Adjustment Act which provided subsidies to  
3 farmers to restrict their crop acreage, even though this was a local activity. Filburn, a farmer in  
4 Ohio, was penalized for growing 12 acres over his allotment even though he claimed the  
5 additional output was only used to feed his livestock. In a unanimous decision, the Supreme  
6 Court ruled that, under the Commerce Clause, the federal government has the power to regulate  
7 the amount of wheat grown by a farmer for use on his own farm as interstate commerce, despite  
8 the fact that the wheat was never sold and never crossed state lines (*Wickard v. Filburn*, 1942).  
9 The Court went on to say that the Commerce Clause covers any action that “exerts a substantial  
10 economic impact on interstate commerce,” regardless of how direct or indirect that impact may  
11 be (*Wickard v. Filburn*, 1942). Basically, the U.S. Supreme Court ruled that the Commerce  
12 Clause could apply to local, non-commercial activity which might affect interstate commerce  
13 and this clause gives the federal government the authority to regulate private economic activity  
14 (*Wickard v. Filburn*, 1942).

15           The Commerce Clause was also cited in the Supreme Court decision of *Gonzales v.*  
16 *Raich* (2004). The case involved a California woman, Raich, who sued the federal Drug  
17 Enforcement Administration for destroying her medical marijuana crop that was being grown to  
18 treat her medical condition. It addressed the constitutionality of the Controlled Substance Act as  
19 it applied to individuals who grow marijuana for personal and medical use under California’s  
20 Compassionate Use Act (*Gonzales v. Raich*, 2004). Justice John Paul Stevens, along with a five  
21 member majority, ruled that, despite the fact that the plaintiffs’ conduct was intra-state and  
22 involved state-sanctioned medical activities, the commerce clause in the Constitution vested  
23 Congress with the power to reach purely personal and intra-state conduct (*Gonzales v. Raich*,

1 2004). This recent Supreme Court decision has important implications on expanding the limits  
2 of federal power, under the Commerce Clause of the Constitution.

3 In addition to court rulings which gave jurisdiction to the federal government, historic  
4 events also caused a major shift in the powers of government. The challenges brought about by  
5 the Great Depression and World War II necessitated stronger government involvement, in order  
6 to accelerate the country's economic recovery. This, in turn, caused the American government  
7 to move from dual federalism to more of a cooperative or shared federalism. This was evident in  
8 the New Deal policies of President Franklin Roosevelt which required stronger cooperation  
9 among the Federal and State governments in order to fund state programs. The various reforms  
10 involved in the New Deal were considered to be necessary and proper ratifications with the  
11 objective of regulating interstate commerce.

## 12 **Summary**

13 It is evident from the specific power granted by the Constitution (specifically the  
14 supremacy clause, commerce clause and necessary and proper clause), current federal legislation  
15 on medical marijuana, and various landmark cases decided by the Supreme Court, jurisdiction  
16 for medical marijuana remains with the Federal government. Up to now, the federal government  
17 has chosen to allow individual states to pass their own laws regarding medical marijuana but it  
18 also reserves the right to enforce federal law when necessary. In the meantime, medical  
19 marijuana users and distributors in each state are taking a risk. They are operating in a gray area  
20 where their actions could lead to prosecution under the purview of the Federal government. For  
21 example, even though Gerald Duval was protected under Michigan state law which allows the  
22 farming and use of medical marijuana, the federal government was able to successfully prosecute

1 him with a prison sentence for breaking the U.S. government's marijuana regulation (Daunt,  
2 2014). Since marijuana is illegal under the Controlled Substance Abuse Act, the federal  
3 government has the right to enforce this law even though medical marijuana is legal on the state  
4 level. When it comes to federal laws versus state laws, the federal laws are the supreme law of  
5 the land and take precedence over any laws adopted by states, as stated in the Supremacy Clause  
6 of the Constitution.



## 1 References

2 Armentano, P. (2007, March 1). 35 years of prohibition. Retrieved October 29, 2014.

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15 Kernell, S., Jacobson, G., Kousser, T., & Vavreck, L. (2014). *The logic of american politics*  
16 (6th ed.). Thousand Oaks, CA: CQ Press.

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21 July 11).

## Work Sample Evaluation

**Subject Area:** U.S. Government

**Task Title:** Up in Smoke: Federalism Today

**Student Work Sample Title:** Up in Smoke: Federalism Today

The document was scored using the CCR Task Bank Rubric. The final scores are indicated in the following chart.

Scoring Criteria	Insufficient Evidence	Developing	Progressing	Accomplished	Exceeds
Research and Investigation				X	
Ideas and Content				X	
Reading and Analysis					X
Communication				X	
Organization					X
Accuracy				X	

**Annotations:** The following evidence from the work sample and the reviewer’s comments support the scores above. Page and line numbers refer to the original work sample.

Scoring Criteria	Page #	Line #	Commentary about the work sample
<b>Research and Investigation:</b> <i>Locating resources independently and/or identifying information within provided texts</i>	9	2-21	The work sample incorporates 11 well-respected sources into the paper in an effective manner.
	1	5-7	The work sample briefly addresses the history of states legalizing marijuana (starting with CA in 1996)
	1	15-22	Through P2L2, author traces history of marijuana’s medical usage, prohibition under the MTA, the Boggs Act, and the CSA.
	2	3-20	The work sample continues to provide a thorough yet concise overview of the “legislative status” of marijuana from the Shafer Commission’s recommendation that it be decriminalized to the CINDP and subsequent legalization in over 20 states.
	3	4-12	The work sample explains the federal government’s approach to dealing with conflicting state laws.
	4-7		The work sample identifies four relevant court cases and explains how the opinions favored or opposed national government jurisdictional boundaries.
<b>Ideas and Content:</b> <i>Presenting a thesis and understanding concepts</i>	1	7-10	The work sample states the main issue of the paper/assignment. Marijuana legality in some states and prohibition by the federal government.
	2	22-23	The work sample identifies a main problem surrounding this issue, which is the incongruence of state laws on medical marijuana.
	3	1-4	The work sample identifies additional key issue that federal and state laws on medical marijuana are at odds with one another.
	7	15-16	The work sample reiterates that the jurisdiction for medical marijuana remains with the Federal government.
	8	4-6	Author again claims (after providing evidence) that federal laws trump state laws).

Scoring Criteria	Page #	Line #	Commentary about the work sample
<b>Reading and Analysis:</b> <i>Examining and evaluating sources, data, and/or supporting evidence</i>	3	14-21	The work sample explains how the Supremacy Clause and the doctrine of pre-emption give the federal government the upper hand in this issue.
	3	21	Through P4L12; author introduces the Commerce Clause and the Necessary and Proper clause, effectively explaining how they are used together in a powerful way to expand the power of the federal government.
	4	13-18	The work sample explains how the 10 <sup>th</sup> Amendment deals with the issue of federalism as it attempts to reign in the power of the federal government and protect state sovereignty.
	4		The work sample effectively introduces, summarizes and evaluates these primary sources.
	7	1-2	Author brings up important point regarding the implications of the <i>Gonzalez v. Raich</i> decision for the expansion of federal power.
	7	20	Through P8L2; author cites an important example of what can (and did) occur when an individual gets caught in the crosshair of conflicting jurisdictional boundaries.
<b>Communication:</b> <i>Using subject appropriate language and considering audience</i>	1	9-10	Author adeptly poses the question to the audience, “Given this overlap of Federal and State laws, the question...”
	3	21-23	The language used to introduce the Commerce Clause assumes an intelligent audience yet also clearly explains the role of this clause in establishing the scope of federal power.
<b>Organization:</b> <i>Structuring main ideas and incorporating supporting information</i>	1	10-13	Author organizes the rest of the paper in an elegant way by explaining how they will address the issue of jurisdiction.
	2	21	The work sample effectively incorporates the use of subheadings to guide the reader through the paper. (See also, P3L13, P4L19, etc.)
	3-4		The work sample moves smoothly through Constitutional evidence for the federal government’s power in comparison with state power. A lot of material is covered efficiently and effectively, gliding from one source to the next.
	4-6		With each additional court case, the author adds layers and paints a fuller picture of the development of federal power and the nationalization of policy.
	6	15	The work sample introduces the final case <i>Gonzales v. Raich</i> , which is obviously relevant to the issue of medical marijuana. This seems to provide a culminating point to the intentional (but not tedious) effort to portray the developing legal framework for federal jurisdiction.
	7	3-11	This paragraph is a useful addition, but perhaps should have had it’s own subheading or a connection could be made between the court cases and the discussion of the influence of historic events.

Scoring Criteria	Page #	Line #	Commentary about the work sample
<b>Accuracy:</b> <i>Attending to detail,            grammar, spelling,            conventions, citations,            and formatting</i>	2	8	There should not be a period from inside the quotation marks.
	3	6	There is a misplaced comma. The comma should come prior to the preposition “but.”
	5	17	Line should read “regulating the coastal trade.”