**Gonzales v. Raich – “The Quality of Mercy Shall Not Be Strained...”**

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**Simple Facts**

The *Gonzales v. Raich* case on the use of the illegal drug marijuana for medical purposes provides a superb example of the disparities between ethics, pragmatism and the law.

The simple facts of the case are that Californian citizen, Angel Raich, used homegrown marijuana for medical purposes to help keep her alive from excruciating pain. Contrary to the laws within the State of California, the Federal Government under the Controlled Substances Act (CSA) does not recognize the medical use of marijuana. Further, the Federal Government contended in this case that locally grown marijuana affects the interstate market of marijuana. Since interstate commerce is regulated by the Federal Government under the Commerce Clause of the Constitution, it claimed it had grounds for prohibiting Raich’s domestic growth and consumption of marijuana.

**Three Critical Factors**

*Supremacy Clause*

Three critical factors frame this case. The first is the Supremacy Clause of the United States Constitution that allows federal law to override state law in certain instances. The existence of the Supremacy Clause presents the possibility that a citizen who behaves quite legally within the framework of state law can get caught in the cross-fire when federal law overrides state law or claims state law illegal. The Raich case is a clear example of this legal untidiness. Here a Californian citizen, who was acting within the state law of California, was found to be acting illegally under federal law by using homegrown marijuana for medical purposes. What kind of legal nonsense is it to allow states to create legislation if
that legislation can not only be overturned, but deemed illegal in the eyes of the federal government? The term “law-abiding” now becomes subject to a power struggle between the federal government and the local states, or should we rather say a power struggle between state and federal attorneys? Where should the “law-abiding” citizen turn to for justice?

**Homegrown Produce**

The second critical factor in this case is that “homegrown” produce, whether it is legal produce such as wheat, or illegal produce, such as marijuana, is considered the result of an act of commerce. The government’s “commerce” argument is that if wheat or marijuana had not been homegrown and consumed, it would have to be purchased from someone. Therefore, applying the universal (or aggregate) principle, if everyone were allowed to consume their own goods it would affect the interstate market for those goods. The Commerce Clause of the Constitution grants the federal government power to regulate interstate commerce. Interpreting the commerce clause in this way, the Supreme Court concluded in the Raich case that the Drug Enforcement Administration (DEA) acted within their legitimate authority when they destroyed Raich’s plants.

Here we have to question the rationality of the “commerce” argument. Does this mean that if anyone homegrows anything it is an act of commerce and has the potential of interfering with the interstate market? If there is no exchange of value can an action be deemed a commercial one? What if one has a small vegetable garden on one’s land? Is that affecting the interstate market for vegetables? Does the Federal Government have the right to arrive at people’s homes and destroy their vegetable patches? Does the law apply to all vegetables or only some? Which ones? Then again, what if there is only one bushel that is homegrown, say a bushel of parsley or mint? Is one bushel okay? How many bushels does it take to interfere with interstate markets? What if the interference of state markets is positive? Where should a reasonable citizen turn to understand these limits? Is the United States not a free capitalist society operating under free market principles where people can enter and leave the market at will?

**Justice and Mercy**

The third critical factor of this case is the issue of justice and mercy. The Controlled Substances Act (CSA) does not recognize the medical use of marijuana. The Federal Government argues that exceptions to
applying this law would make the law unenforceable in practice. In the Raich case, the Court argued that the CSA should be upheld as a valid exercise of federal power. But is federal power really the issue? To be sure, the federal government has the power to enforce this law. And doubtless, this law was established to protect citizens from the abuse of drugs and its dangerous and debilitating side effects. This was a law to protect the majority. What about exceptions? Do exceptions get a voice? In this case, the ethical question is whether the Federal Government's power has been used justly. What is justice if it ignores the need for compassion? Because it may be difficult to incorporate exceptions when it comes to applying the law, does justice rule out exceptions? Did Angel Raich have to be punished because of the entrepreneurial approach to legislation in California? Why not, as Justice O'Connor dissented in the ruling of this case, allow “room for experiment” for States concerned with the life and liberties of their people? With all the power in the world, what justice is it to snatch the hand of mercy from a dying woman?

**Summing-Up**

If we review the three critical factors outlined and the Court’s ruling of this case we are left with the following scenario: A woman who is literally “dying” of pain; whose quality of life is already severely compromised is being legally penalized for trying to take care of herself by home growing her own marijuana. This woman is a law-abiding Californian citizen. By all accounts she is not trafficking in drugs or luring others into drug taking habits. She tried other prescription medicines before she and her doctor opted for the marijuana alternative. She has consulted a bona fide doctor who is prepared to stand by her under oath and state that her life is at risk. In return for her pains she is caught in a quagmire of legal power tussling and bureaucratic rule enforcement. The California State’s hand of gentle justice has been snatched away by the Federal Government’s powers and rather than being taken care of, if she continues to use marijuana for health reasons, she is vulnerable to prosecution and arrest.

**Help from the Past?**

If we were to turn to the ethical sages of the ages for their commentary on this case we would surely receive some interesting responses. Aristotle would argue for the use of pragmatic wisdom. He would probe for evidence of the application of moderation and balance as defined by the golden mean. Aristotle also believed that it is difficult to legislate for
ethics since human affairs are messy. He claimed a good judge knew when to apply equity as a corrective to legal justice, since true justice might sometimes mean treating people unequally. I think he would argue for leniency in the case of Raich.

Immanuel Kant who placed such emphasis on duty and the universal applicability of the moral law would have approached the problem differently. He would have asked whether Raich had a good will and intended to be a dutiful citizen. He would also have questioned whether Raich was being treated as an end or as means to others’ ends. In response we could probably argue that by Californian standards, Raich was a dutiful citizen. Whether she was being treated as an end is a little less clear cut, however, it does not appear from the details of the case that she was considered as a valued person in her own right. One could argue she was being used as a means to the Federal Government’s ends to enforce its powers over Californian law.

If we refer to the Golden rule – do unto others as you would have them do unto you – we would undoubtedly argue for mercy and compassion for Raich. No one would deny someone else relief from excruciating pain if there was the slightest possibility the tables could be turned and at some stage they might have to walk in that person’s shoes.

Utilitarianism, on the other hand, claims that morality lies in doing the greatest good for the greatest number. John Mill in, *Utilitarianism*, proposed that the ‘greatest happiness principle,’ being the ultimate end for the sake of which all other things are desirable, is an existence exempt as far as possible from pain, and as rich as possible in enjoyments. Harm and pain are therefore to be avoided if at all possible. One of the critiques of utilitarianism is that it favors the majority and that the minority voice and individual freedom are often disregarded in calculating utility. Therefore, the harms and the loss of freedom of the individual are often forsaken in favor of what benefits the majority. It appears as if the law was leaning into classic utilitarian arguments for its case.

The so-called feminist ethic of care would certainly argue in favor of Raich having her plants, and being able to take medicinal marijuana to alleviate her pain. Since morality is essentially about relationships, an ethic of care ranks caring for relationships as the primary moral obligation.

Harvard philosopher, John Rawls sought to develop guidelines for justly resolving disputes while balancing freedom and equality. He rejected the use of utilitarian principles believing that citizens have certain fundamental rights no matter what. Rawls advocated that, a) each
person should have an equal right to the same basic liberties, b) all persons should experience conditions of fair equality of opportunity, and c) where differences between people exist priority should be given to meeting the needs of the disadvantaged. I think we could argue that in the Raich case, she was clearly a disadvantaged person that according to Rawls had the right to as much of a pain free life as possible and therefore, deserved to have her needs taken care of.

The Angel Raich case is a sad one. It is not only sad for Raich, but sad for all of us in that it makes a travesty of justice, revealing only the cold, legal, power-seeking, bureaucratic and merciless hand of the law.