Medicinal marijuana in general and *Gonzales v. Raich*, in particular, raise many troubling and interesting ethical issues that I will eventually discuss. But as per the nature of this publication, I want to initially focus on how this case could be used to teach ethics. Aside from the ethical implications, there are legal, political, medical, social, psychological, and even botanical implications that must be addressed. Discussion of the medicinal marijuana issue must be interdisciplinary in character if it is to be any good. In fact, because of its interdisciplinary nature, the case I am commenting on lends itself to teaching one of the most important lessons in an ethics course: how far ethics reaches and how deep it goes.

The author of the case ends with the Supreme Court’s conclusion that, “Well settled law controls our answer. The CSA is a valid exercise of federal power, even as applied to the troubling facts of this case.” The key thing here to point out to an ethics class is that the word “valid” here is used only in its legalistic sense. The issue before the Court was not whether medical patients should be allowed to use an illegal Schedule I narcotic to ease their pain, but rather whether the federal government, in enforcing the Controlled Substances Act, was acting beyond its power in regulating local commerce (since the Constitution only gives it power to regulate interstate commerce). Challenged for this reason, enforcement of the act against medical patients using marijuana for pain relief was valid. Challenged for another reason, perhaps the enforcement would not be legal. The upshot is that the Court did not render a verdict on the legality of medicinal marijuana in any direct sense here. The only thing they addressed directly was a particular interpretation of the Commerce Clause in the United States Constitution that has an effect on the legality of medicinal marijuana.

However, this is not what the average citizen takes away from a Supreme Court ruling. When the decision has been released, often before
anyone could have read any of the judicial opinions, the news media pro-
nounces, “Supreme Court Allows Prosecution of Medical Marijuana”.¹ Extra detail is provided in the text of the article, but the article also con-
nects the issue to issues that have nothing to do with the Court’s decision such as possible connections between terrorists and drug smugglers. Most of the American public is left with the idea that the Court has decided that the Controlled Substance Act is a just law even if it pre-
cludes medical patients from using medical marijuana for pain relief — that using the CSA against these patients is a valid use of federal power. They do not take home the idea that what the Court really did was reject one particular reason for making medicinal marijuana legal — that this particular challenge was legally invalid on a common reading of the Com-
merce Clause.

I stress this view of Supreme Court verdicts, in particular Gonzales v. Raich, because it provides a very teachable moment about the distinction not only between legality and morality but the difference between legal-
ity-in-the-U.S.-system-of-Constitutional-law and ethics. Many of my stu-
dents come to a course in bioethics or business ethics believing they will be taught about the law. They are somewhat surprised that the ethical permissibility of abortion needs a defense over and above Roe v. Wade.² Of course it is irresponsible not to teach them about the law in contro-
versial matters, but it is equally (if not more) irresponsible to teach them only about the law. One reason it is irresponsible — perhaps the stron-
gest reason — is because certain laws may be unjust. As highly educated people, many ethics teachers may too often take this point for granted. But ethics teachers must show students that laws are not struck down or upheld by the Supreme Court for consequentialist or deontological rea-
sons or reasons involving virtue. They must show students that laws are not even considered in any kind of total sense, and cases may even be thrown out if the challenge to the law is too broad. Above all, they must show students that a particular challenge may not be legally valid, but that does not mean the law in question is valid full stop. The Supreme Court may even be required to uphold an unjust law if it is challenged for the wrong reason (and even if that reason is the best legal reason).

Gonzales v. Raich looks like a case of this, where the CSA (as a use of federal power) is valid under the prevailing interpretation of the Com-
merce Clause (or more accurately, not invalid due to challenges that invoke the Commerce Clause in this way), but perhaps still an invalid use of federal power by any decent moral standard. A good way to illustrate the distinction further would be to describe a game with a set of arbitrary
rules that happen to be unfair in some way or another (maybe Monopoly in which the last player to take his or her turn receives $100 rather than the standard $200). If the only criterion for being a valid rule is that the rule is written on the box, then a challenge to the unfair rule based on moral grounds will not be legally valid, but there may still be good reason to change the rules.

The overall lesson is that ethics has a much broader reach than law, politics, medicine, or even botany. It does not leave off where the law starts, or when physicians are practicing medicine, or when politics take over to guide legislators’ votes or judges’ opinions. Rather, it is present throughout these other disciplines because it is an aspect of almost every social practice. If it is going to be taken seriously at all, it must be the highest court. This makes ethics one of the most curious corners of human knowledge, for it is necessary, deep, and practical.

The case as written would actually be an excellent way to introduce a course in professional ethics or ethical theory. Once one had sorted out the distinction between legality and ethics by discussing the Court’s verdict in *Gonzales v. Raich*, one could go on to explore the more interesting ethical aspects of permitting or restricting medicinal marijuana.

The notion of absolutism is certainly invoked. There are traditional strong mores against illegal drug use, but absolutism may make much less sense when illegal drugs can be used in an irresponsible, self-destructive way or in a way that gives relief to people who desperately need it and can find it no other way. Perhaps this shows that some rules have exceptions. This same argument can be used to show how consequentialism is an alternative to absolutism and judges outcomes based on whether more or less valuable states of affairs are produced. The depth of act-consequentialism or plain old rule-consequentialism could also be emphasized, as the government’s argument could be recast in consequentialist terms. Even if allowing medicinal marijuana were to give Ms. Raich and Ms. Monson relief from terrible pain, the exception made in their cases may necessarily create a big enough loophole to eventually allow all people to use marijuana, the vast majority of whom would use it in a self-destructive way. (I tend not to agree with this version of the consequentialist justification, but it illustrates how flexible consequentialism can be.)

The case would also be useful in the context of a bioethics course. The traditional model of healthcare is based on patient-physician interaction, but the case illustrates how big of a role society and government play as well. Even a physician’s best judgment about treatment can be overridden if the social and political contexts in which he or she is prac-
ticing interfere. One must be careful in such a discussion to isolate the idea of governmental interference in a patient’s treatment from the idea of either untrustworthy or alternative physicians giving their input.

Finally, in more advanced discussions of consequentialism, the case provides the background for a great discussion of the privacy of individual mental states and our need to rely on potentially unreliable reports of them to judge the worth of certain outcomes. How to weight the worth of these outcomes versus outcomes where effects on personal well-being are more certain is a question that makes tweaking consequentialist theories much more interesting.

In conclusion, the case of *Gonzales v. Raich* provides an exceptional platform on which to teach the scope and depth of ethics, in particular the connections and distinction between legality and ethics. Since it is an event in the real world, one need not worry about students’ inability to relate to it and most have some kind of pre-existing opinion on the legalization of drugs. But extended to the notion of medicinal marijuana in general, the case is also an excellent jumping off place for courses in ethics that discuss consequentialism, rule-consequentialism, and absolutism or courses in applied ethics such as bioethics.

**NOTES**


2. Perhaps not surprisingly, people who disagree with the current legal status of abortion tend to realize that legality is not sufficient for morality. However, it also seems that this realization is issue-specific. I don’t find that my students who disagree with *Roe v. Wade* are any more likely to see a need for justification of the immorality of assisted suicide beyond *Washington v. Glucksberg* (although, to be fair, Rehnquist’s argument does touch more on consequentialist concerns).