



E-ISSN 2332-886X

Available online at

<https://scholasticahq.com/criminology-criminal-justice-law-society/>

The Illusion of Supremacy: A Theory of Indifference

Joseph Hoft^a

^a *University of Lynchburg*

ABSTRACT AND ARTICLE INFORMATION

The Supremacy Clause establishes that federal law takes precedence over conflicting state law and can consequently nullify state legislation. However, the inconsistent enforcement of the Supremacy Clause regarding the coexistence of conflicting state and federal cannabis laws raises questions about the legitimacy of the federal government. By drawing on the contrasting views of social conflict theory and consensus theory, a new indifference theory better encompasses the rare phenomenon of the federal government choosing not to invoke the Supremacy Clause when it has the means to. This highlights the potential for delegitimization in the federal government due to the inconsistency in enforcing the Supremacy Clause, leading to the public's potential noncompliance of federal law. The federal government must address these inconsistencies to retain a strong legitimate legal system.

Article History:

Received July 8, 2023

Received in revised form October 16,
2023

Accepted November 20, 2023

Keywords:

supremacy clause, consensus theory, conflict theory, cannabis law, marijuana
legalization

Political legitimacy refers to people's beliefs about political authority and the willingness to obey it. It relies on the acknowledgement, acceptance, and active participation of a society (Peter, 2017). In the United States, federal and state laws operate mostly independently; however, the federal Constitution can overthrow state law through what is commonly known as the Supremacy Clause. This provision effectively prohibits states from assuming functions reserved for the federal government or from encroaching on the federal government's power (Ramsey, 2013). Consequently, the Supremacy Clause is a tool used at the federal government's disposal that ensures the legitimacy of federal authority.

The Supremacy Clause plays a crucial role in maintaining the balance of power between federal and state governments. Additionally, the clause safeguards the federal government's ability to execute powers over the states. This is meant to resolve potential conflicts and address national issues, such as national security, foreign relations, and interstate commerce, without interference from individual states (Latanich, 2022; Sendlenski, 2001; Ward, 2006). This prevents any fragmentation of uniform legal principles within the nation and reinforces the perception of political legitimacy.

However, while the federal government holds higher power, it also recognizes state autonomy, where states retain the power to govern their own affairs and can enact laws within their own borders, provided this does not conflict with federal law (Gardner, 2019; Hartnett, 2020). This balance upholds the principles of federalism by ensuring that states can address local political and legal concerns while simultaneously respecting the federal government's authority.

The Supremacy Clause establishes that the Constitution, and federal laws made pursuant to it, represent the highest law of the land. This allows the federal government to nullify any possible conflicting state legislation (Clark, 2003; Ranjan, 2023). Respecting this relationship, state legislatures often pass laws that mirror federal laws under the assumption that federal law cannot be disregarded (Chin & Miller, 2011); however, when a state's law conflicts with federal law, then the Supremacy Clause comes into effect.

Enforcement of the Supremacy Clause can lack consistency based on specific circumstances and current political climate and is usually not invoked unless matters of national security or international relations are at stake (Ward, 2006). One notable example is when Arizona's SB 1070 immigration law, which aimed to increase local law enforcement powers for immigration control, was invalidated under the

Supremacy Clause for interfering with federal authority over immigration (Chin & Miller, 2011; Magana, 2013).

The Supremacy Clause was enforced in this example because of the law's encroachment of the federal government's authority to regulate immigration, particularly because of the law's international implications (Kouroutakis, 2016). This case highlights the significance in the Supremacy Clause's power in resolving conflict and the crucial role played by the federal government in maintaining its political legitimacy.

There is a current coexistence of conflicting federal and state legislation addressing marijuana legalization. As of June 1, 2023, the District of Columbia and 21 states regulate cannabis for adult non-medical use. Maryland and Minnesota will become the 22nd and 23rd states, respectively, by the end of 2023. In four states, marijuana is fully illegal, and in seven states, it is illegal with minor exceptions (e.g., in Georgia it is legal in some cities and legal to possess CBD oil with less than five percent THC). All other states have passed legislation for medicinal use or have decriminalized the drug outright (National Conference of State Legislatures, 2023). This legislation directly contradicts federal laws, which continue to criminalize the drug. Specifically, federal law categorizes the possession, sale, and cultivation of marijuana as punishable offenses, subjecting offenders to sanctions that range from less than a year of incarceration and a maximum fine of \$1,000 for a first possession conviction to life in prison and a maximum fine of \$1,000,000 for the sale of 1,000 kilograms or more. This discrepancy raises questions regarding the interpretation of legality for citizens, as well as sparking challenges for marijuana growers and business owners.

The federal government has remained lenient towards the enforcement of federal marijuana laws despite the risks associated with potential drug trafficking across states (Chemerinsky et al., 2015). This has resulted in conflicting state and federal laws and practices, leaving a legal gray area. While states and their citizens may perceive their actions as legitimate under their own laws, the lack of uniformity under the federal government raises questions about federal legitimacy. The evolving nature of marijuana legislation and the lack of federal enforcement create challenges for citizens and marijuana business owners navigating the legal landscape. A comprehensive examination of the enforcement of the Supremacy Clause in this context benefits a greater understanding of the relationship between state and federal law and identify citizen's perception of federal legitimacy.

Supremacy Clause and its Power

The United States operates under a dual-sovereign system where both the federal government and individual states maintain their own legal jurisdiction. This allows states to manage their own constitutions and extend broader rights to their citizens under the principles of federalism (Smith, 2005). Consequently, there is a degree of legal variation from state to state; however, state autonomy is limited by the Supremacy Clause. While states are allowed legal diversity and regional variations, the federal government holds power to overturn conflicting state law. Because state constitutions are subordinate to the U.S. Constitution, state courts are bound by the Supremacy Clause (Clark, 2003; Woolhandler & Collins, 2020). That is, if there are any contradictions between a state and federal law, then the latter takes precedence and can enforce the legitimacy of federal law.

The scope of the Supremacy Clause has been shaped through several landmark Supreme Court decisions. In *Martin v. Hunter's Lessee* (1816), the Supreme Court asserted its own power to review state court decisions and override them when necessary. *Ableman v. Booth* (1859) decided that state courts cannot issue rulings that contradict federal court decisions. Lastly, *Edgar v. MITE Corp.* (1982) clarified that any state statute that conflicts with a federal statute is rendered invalid. Collectively, these Supreme Court decisions have reinforced the authority of the Supremacy Clause over state law.

Federalism

The structure of the U.S. government is rooted in the concept of federalism, a system that divides authority between a central governing body (the federal government) and individual state governments. This dynamic enables the country to maintain a unified political entity while simultaneously preserving state integrities and legal experimentation (Ahrens, 2020; Elazar, 1987). The classical theory of federalism, also called layer cake federalism, grants states a certain degree of autonomy in forming and enforcing criminal laws within their respective territories, as long as these laws do not conflict with federal legislation (Chemerinsky, 2006; Hartnett, 2020; Tariq & Rizwan, 2018). This dual-tiered system births jurisdictional competition, which empowers states to implement diverse criminal policies and practices, leading to a variety of legal standards across different regions (Watts, 2006). This practice combines the cooperative and competitive aspects of federalism where states shape their individual legal landscapes.

Federalism theory is broad and primarily categorized into two overarching perspectives: origin theories and functional theories. These perspectives explore historical roots and practical functions of federalism, although scholarly consensus on the preeminence of specific theories remains limited. Origin theories delve into historical contexts that shaped the establishment and implementation of federal systems and include sociological, political, and cooperative factors (Paleker, 2006; Tariq & Rizwan, 2018). This area identifies the influence of social norms and practices during the inception of government systems.

Functional theories are geared towards understanding contemporary challenges faced by modern federalism. While traditional dual theory emphasizes the independence of federal and state governments, functional theories acknowledge a more nuanced and dynamic landscape. Federal and state governments often function as interdependent partners and engage in complex interactions by relying on each other to maintain a smooth and operational society (Burgess, 2006). This recognition of mutual dependence tends to challenge the static nature of classical dualism and highlights the evolving nature of federal-state relationships. These theories provide a more comprehensive understanding of the complex interplay between federal and state governments while retaining the core foundation of the dual system.

In the realm of drug policy, federal law retains a punitive stance, and the complex framework of federalism favors criminalization (Ahrens, 2020). For example, in drug cases that involve pregnant women, federal prosecutors have used existing homicide and child-abuse statutes to press charges against them, specifically for pregnant women using opioids. Medical experts widely criticize this method and advocate for supportive therapy for pregnant women in lieu of criminal punishment. Research supports this approach and indicates that supportive therapy significantly decreases the incidence of babies being born with neonatal abstinence syndrome, a condition arising from maternal drug use during pregnancy (Crawford et al., 2022). However, punitive measures continue to dominate state-level policies primarily due to the intricate web of jurisdictional overlap, where state-level initiatives, such as treatment over punishment, can be challenged at the federal level. This predicament creates a challenge for states seeking innovative, non-criminal solutions to address drug-related issues. Within this dynamic, federalism hinders states' abilities to experiment in alternative strategies until a paradigm shift occurs for drug policies at the national level.

Most criminal drug offenses retain concurrent jurisdiction where both federal and state

governments have authority over drug-related criminal prosecution. This duality creates a nuanced scenario where unanimous agreement across all levels of government is essential to avoid the looming threat of prosecution. Recent waves of state decriminalization and legalization of cannabis have sparked a complex conflict between state-level acceptance and federal prohibition, marking a pivotal federalism dispute.

Illusion of Legitimacy

Conflicting federal and state laws regarding the use, sale, and possession of cannabis create a complex and rare legal phenomenon where federal law categorizes cannabis as a Schedule I drug (dangerous and without medical uses), yet nearly all states have passed legislation that decriminalizes or legalizes the medical and recreational use of marijuana (Carter et al., 2011; Sandler et al., 2019). This creates an unconventional and unprecedented legal phenomenon. Cannabis dispensaries and businesses that operate in legal states are not officially recognized by the federal government. However, although operating illegally, U.S. attorneys have been directed indefinitely not to prosecute businesses so long as they are in compliance with state law (Cambron et al., 2017). Similarly, business owners must navigate legal complexities where federal law criminalizes their operations while state law provides certain protections (Powell et al., 2018), creating an ambiguous legal landscape.

States have gained significant ground in this battle largely due to widespread public support for marijuana legalization. However, ongoing indirect federal influence continues to pose substantial challenges for cannabis-related practices. For example, conflicting federal and state regulations limit banking services available for marijuana-related businesses. Due to the federal ban, many financial institutions opt out of providing banking services, and these businesses are forced into cash-only operations. This leads to logistical challenges, such as securing capital, obtaining necessary funds for expansion, reliance on short-term loans, and the need to store large sums of cash on site (Hill, 2015). This cash-centric restraint creates potential risks for employees, surrounding communities, and business operations. Additionally, the reliance on cash transactions complicates state tax regulations as cash-based businesses tend to underreport earnings, which leads to discrepancies in tax filings (Benshalom, 2012). These discrepancies affect state revenue and can create a distorted economic landscape.

Legally, federal and state governments appear to be in conflict, but in practice, they retain a nuanced form of cooperation. This ambiguous dynamic results in a perplexing and confusing

interpretation of the current legal landscape surrounding cannabis. Despite widespread public support for cannabis legalization (Mancini & Budd, 2022) and the federal government retaining a hands-off approach, this situation continues to erode the federal government's legitimacy. Unlike the case of Arizona's immigration law, where the federal government's intervention provided a clear stance, the absence of federal intervention leaves room for varying interpretations and practices, which further complicates the issue. The resulting ambiguity hampers the development of a cohesive national policy and highlights contradictory state policies. Consequently, the federal government's legitimacy is undermined as it struggles to assert authority in an incongruent landscape.

Legitimacy in law and political power refers to the foundation of which governmental power is exercised and encompasses the government's awareness of its rightful power and recognition of its authority by the governed (Sternberger, 1968). A government is legitimate when it possesses the inherent right to exercise power. This right may derive from various sources, such as a constitution, laws, or political mandate, and it is through the public acceptance of this right that legitimacy of the government is established.

However, legitimacy is contingent upon public perception and acceptance of power. If citizens do not recognize a government's authority to exercise power, then the legitimacy of the government is called into question. A lack of recognition can stem from various factors, including a lack of understanding of the law or the belief that states offer legal protection. That is, if state courts freely disregard federal law, then the Supremacy Clause is rendered meaningless (Bonaccorso, 2015). If the federal government does not maintain and reinforce their own legitimacy, then they risk resistance from the governed. When people believe that the law is legitimate, then they are more likely to follow its provisions (Sunshine & Tyler, 2003; Tyler & Jackson, 2014). Conversely, if people doubt the law's legitimacy, then they may resist. Consequently, if the federal government does not invoke the Supremacy Clause when the opportunity arises, it can undermine its own legitimacy.

Consistency influences public perception of governmental legitimacy. That is, when individuals have a diminished understanding of their legislation due to inconsistencies, it directly correlates to a decrease in the government's perceived legitimacy (Berger & Luckmann, 1966). Governmental legitimacy can only strengthen if citizens recognize a government's right to enforce law. While there may be a normative consensus in the lawmaking process (assuming citizens are not ignorant of the law), the

absence of regular and stable consistency in the use of the Supremacy Clause results in the federal government's delegitimization. That is, the lack of consistency regarding which laws must be followed and which can be disregarded undermines public trust and can lead to a decreased willingness to comply with federal legal norms.

Berger and Luckmann (1966) observed that as the complexity and ambiguity of law increase, the perceived legitimacy of the law tends to decrease. Legitimacy is contingent upon citizens' recognition of a government's right to rule, and the Supremacy Clause plays a crucial role in enforcing this. If the federal government does not consistently utilize the Supremacy Clause to address conflicting state laws, it inadvertently acknowledges the legitimacy of conflicting practices. In turn, this erodes the legitimacy of the federal government.

The existence of conflicting federal and state law, combined with the lack of enforcement of the Supremacy Clause, creates a complex landscape that can be further explored through the lenses of contrasting social conflict theory and consensus theory. Social conflict theory, first conceptualized by Karl Marx, posits that society consists of competing groups and the group with the most power dictates the laws that govern society (Barrios et al., 2016; Petrocelli et al., 2003; Siegel, 2011). This provides a framework through which social order and stability are maintained under the hegemony of a dominant group, such as the federal government, while allowing states a degree of autonomy. However, the federal government maintains a transparent assertion of supreme law over the states, articulated in the Supremacy Clause (Hartnett, 2020). Consequently, individuals that engage in unacceptable behaviors are labeled criminals.

However, the complexity of the evolving cannabis legal landscape cannot be fully captured by social conflict theory alone. Shifting public attitudes deeply rooted in education, scientific understanding, empathy for those facing severe sanctions, and advocacy efforts have challenged traditional power structures surrounding cannabis policy (Chiu et al., 2022; Sznitman & Bretteville-Jensen, 2015). In response, state legislations have supported public opinion by decriminalizing and legalizing cannabis outside of federal influence, effectively disrupting the power dynamics traditionally governed by social conflict theory.

Conversely, consensus theory asserts that laws are shaped by a society's collective agreement and moral values of right and wrong (Durkheim, 1964; Ross, 1901; Sumner, 1906; Weber, 1954). That is, while consensus perspectives acknowledge the presence of competing groups, it argues that society is

organized to represent the interests of the majority of its members (Black, 2014). Although consensus theory was more prominent in the early 20th century, it has received relatively less attention compared to subsequent consensus perspectives such as strain theory, and it now exists in the shadow of Durkheim's functionalist perspective (Akers et al., 2020). However, consensus theory emphasizes the role of societal consensus in law-making. According to this perspective, laws are not imposed upon society by those in power, but instead are the product of collective societal agreement on what constitutes morally acceptable behavior. This implies that laws are a reflection of prevailing norms shared by the majority, mirrored by the current dynamics of the cannabis legalization movement.

Consensus theory highlights the phenomenon that the decriminalization of marijuana represents a widespread normative consensus across the country, reflecting the shared interest of the current culture. This perspective suggests that changing public attitudes and beliefs surrounding cannabis have paved the way for its decriminalization and legalization in many states. However, this theory falls short in fully encapsulating the current cannabis dynamic where federal law, exercising its supreme power over the states, presents a conflicting and consensus position. The threat of federal prosecution, a real possibility under federal law, does not emerge from a product of collective societal agreement. Instead, it represents an imposition of law by those in power, highlighting the complex interplay between societal consensus and governmental authority. In the cannabis context, the federal government has adopted a selective enforcement approach and choose not to rigorously enforce cannabis laws due to both political considerations and shifting public opinions on marijuana. Similar examples of incongruence between political actors' preferences and written law are not a new phenomenon and have been extensively researched (Dalton, 2015; Golder & Ferland, 2017; Golder & Stramski, 2009; Pitkin, 1967). Recent examples, such as Pennsylvania Governor Josh Shapiro's refusal to sign execution warrants in early 2023, underscore the complexities of aligning political preferences with written law. However, this selective approach does not signify complete alignment with public opinion. The threat of federal prosecution remains a tangible reality for cannabis activities, and federal legislation has not taken significant steps to harmonize with state decriminalization policies. This results in a paradoxical federal stance where the federal government remains congruent in practice yet incongruent in policy decisions, which have not fully embraced public opinion. This dissonance further

exacerbates the ambiguous legal landscape surrounding cannabis laws.

In the context of conflicting federal and state laws, a state of indifference emerges where neither conflict nor consensus theory fully encapsulate the dynamics of society. That is, the absence of consistent enforcement of the Supremacy Clause creates ambiguity between federal law, which criminalizes certain activities such as possession and distribution of cannabis, and state law, which allows the use and sale of marijuana. This is not to imply that the federal government has remained static during the period of state decriminalization and legalization. Federal approaches began evolving as early as 2009 when the enforcement of cannabis activities was reduced for individuals acting in compliance with state law. This trend continued under President Trump primarily due to budgetary constraints.

However, the prospect of the federal government adopting a more proactive approach to cannabis policy remains unlikely due to challenges of Congress reaching a consensus to replace the current prohibition (Mikos, 2020). Consequently, the federal government has actively chosen to largely avoid prosecuting individuals in cannabis-legal states and will likely continue to persist in a predominantly hands-off approach.

Under the Controlled Substances Act (CSA), the federal government retains the authority to prosecute citizens engaged in state-legal drug behavior, and state courts find themselves unable or unwilling to prevent federal prosecution (Ahrens, 2020; Brown, 2005) if the federal government opts to enforce existing law. Currently, the federal government maintains a lack of preference regarding whether to prosecute these crimes or establish legislation that expressly permits these practices, leaving both citizens and legal experts in a state of ambiguity.

The interplay between consensus and conflict theory within the context of the federal government's ambiguous stance on cannabis legislation creates a complex legal landscape that gives rise to an "indifference" theory. This theory arises when citizens consent to state laws that align with their moral agreements (consensus theory), but is contradicted by federal law, which holds superior power and can criminalize these same activities (conflict theory). Both classical and modern theories of federalism acknowledge and encourage the preservation of state autonomy while emphasizing a collaborative partnership between state and federal governments. However, this framework often overlooks the role of the Supremacy Clause, a critical component that grants the federal government the authority to intervene in state matters. While jurisdictional

competition usually remains harmonious, the current contradictory cannabis policies and practices create an intricate web of ambiguity. The looming threat of federal intervention under the Supremacy Clause further complicates this landscape. Indifference theory complements federalism by addressing this dynamic.

As the name implies, indifference theory observes that citizens engaging in cannabis activities, such as drug use and business operations, exhibit a notable lack of concern for federal legislation. Simultaneously, federal law enforcement and legislation exhibit a lack of interest in pursuing legal action for or against these federally illegal activities, resulting in a mutual disinterest among all parties involved. The crucial factor that contributes to indifference theory is the lack of federal enforcement when state laws conflict with federal laws. In this legal gray area, citizens engage in activities that are permitted by the state but technically remain illegal under federal law.

Indifference theory is contingent upon four key principles that include (a) the existence of a federal law, (b) the presence of a conflicting state law, (c) state citizens participating in the activities allowed by state law, and (d) a lack of federal enforcement addressing the conflicting federal law. When these elements align, individuals perceive that they can participate in federally illegal activities within the state without facing legal consequences, despite federal laws that would otherwise warrant enforcement. It is important to note that federal enforcement has been implemented in states that have not passed laws permitting cannabis activities (Schuster & Bird, 2021), illustrating the inconsistencies in the enforcement of federal law. Enforcement uncertainty further complicates the landscape of a unified legal system and consequently decreases legitimacy in the federal government.

Indifference theory does not fully capture the dynamic nature of the relationship between federal and state governments. In the past, the authority to regulate interstate commerce has influenced the federal government's stance on enforcing federal cannabis laws. However, the cannabis market, including the sale and distribution of cannabis, remain confined within state boundaries. That is, there is currently no legal trade of cannabis across state lines. If and until this occurs, the federal government is likely to maintain a non-intervention position in legal states. The Constitution was deliberately crafted to establish a balance between federal power and state autonomy, where states retain the authority to determine their own laws and regulations, provided they do not conflict with federal law. This allows states to tailor policies according to their specific societal needs and values. However, states are not completely

independent sovereign entities. They are expected to serve their own interests as well as broader national goals and objectives. This dual-sovereign structure allows variation in laws and regulations across different states, reflecting diverse social, cultural, and political landscapes, while maintaining the priority of supporting national law.

Additionally, a lack of federal intervention is not unheard of, and the Senate has started to introduce legislation that would federally decriminalize marijuana. Notably, the Rohrabacher-Farr amendment serves as a significant federal measure, preventing the Justice Department from allocating funds to interfere with state laws pertaining to medical cannabis (Shu-Acquaye, 2019). Despite these steps, marijuana remains illegal under federal law. Consequently, financial institutions face the threat of potential criminal and civil charges if they provide services to the marijuana industry, compelling them to avoid state-legal marijuana businesses.

The absence of federal legislation legalizing cannabis undermines the legitimacy of the federal government. While citizens anticipate consistency in the law, this reality is not always uniform. This inconsistency between the justifications behind a law and its actual enforcement introduces ambiguity and uncertainty regarding public legal obligations (Donelson, 2019). Such discrepancies can ultimately undermine the legitimacy of the federal government and erode public confidence.

Conclusion

To uphold the legitimacy of the federal legal structure, it is imperative to foster consistency. By invalidating state laws, the federal system can reinforce its authority and maintain its societal trust. Addressing this issue requires a comprehensive evaluation of the relationship between federal and state laws, along with consistent enforcement practices. Clarifying the role of federal enforcement under the Supremacy Clause in response to conflicting state laws can foster a more coherent and legitimate legal system.

Indifference theory's four principles shed light on how the federal government may inadvertently delegitimize itself. The Supremacy Clause was initially conceived to establish the federal government's authority over states; however, when the federal government allows for ambivalence and inconsistency without taking proper legal action, its legitimacy can be called into question. It is crucial for the federal government to carefully consider how its current approach may encourage states to continue contradicting federal law, particularly if the citizens of those states support alternative practices. As Supreme

Court Justice Clarence Thomas (2021) remarked, "The federal government's current approach is a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana" (as cited in Snowden, 2022, p. 1397). In essence, perhaps it is accurate to characterize the federal government's position as one of indifference, and to retain its own legitimacy, the federal government should prioritize and establish a clear stance on the issue of marijuana, whether in support or opposition.

References

- Ableman v. Booth, 62 U.S. 506 (1859).
- Ahrens, D. (2020). Safe consumption sites and the perverse dynamics of federalism in the aftermath of the War on Drugs. *Dickinson Law Review*, 124(3), 559–590. <https://ideas.dickinsonlaw.psu.edu/dlr/vol124/iss3/2>
- Akers, R. L., Sellers, C. S., & Jennings, W. G. (2020). *Criminological theories: Introduction, evaluation, and application* (8th ed.). Oxford University Press.
- Barrios, A., de Valck, K., Shultz, C. J., Sibai, O., Husemann, K. C., Maxwell-Smith, M., & Luedicke, M. K. (2016). Marketing as means to transformative social conflict resolution: Lessons from transitioning war economies and the Colombian coffee marketing system. *Journal of Public Policy & Marketing*, 35(2), 159–322. <https://doi.org/10.1509/jppm.15.151>
- Benshalom, I. (2012). Taxing cash. *Columbia Journal of Tax Law*, 4(1), 65–93.
- Berger, P. L., & Luckmann, T. (1966). *The social construction of reality*. Anchor.
- Black, P. (2014). Conflict theories of crime. In M. Miller (Ed.), *The encyclopedia of criminology and criminal justice*. Wiley Blackwell.
- Bonaccorso, S. U. (2015). State court resistance to federal arbitration law. *Stanford Law Review*, 67(5), 1145–1172. https://www.stanfordlawreview.org/wp-content/uploads/sites/3/2015/05/67_Stan_L_Rev_1145_Bonaccorso.pdf
- Brown, G. D. (2005). Counterrevolution? National criminal law after Raich. *Ohio State Law Journal*, 66(5), 947–1013. <https://ssrn.com/abstract=820165>
- Burgess, M. (2006). *Comparative federalism: Theory and practice*. Routledge.
- Cambron, C., Guttmanova, K., & Fleming, C. B. (2017). State and national contexts in evaluating cannabis laws: A case study of Washington state. *Journal of Drug Issues*,

- 47(1), 74–90.
<https://doi.org/10.1177/0022042616678607>
- Carter, G. T., Flanagan, A. M., Earleywine, M., Abrams, D. I., Aggarwal, S. K., & Grinspoon, L. (2011). Cannabis in palliative medicine: Improving care and reducing opioid-related morbidity. *American Journal of Hospice & Palliative Medicine*, 28(5), 297–303.
<https://doi.org/10.1177/1049909111402318>
- Chemerinsky, E. (2006). The assumptions of federalism. *Stanford Law Review*, 58, 1763–1792.
<https://www.stanfordlawreview.org/wp-content/uploads/sites/3/2010/04/chemerinsky.pdf>
- Chemerinsky, E., Forman, J., Hopper, A., & Kamin, S. (2015). Cooperative federalism and marijuana regulation. *UCLA Law Review*, 62(1), 74–122.
<https://www.uclalawreview.org/cooperative-federalism-and-marijuana-regulation-2/>
- Chin, G. J., & Miller, M. L. (2011). The unconstitutionality of state regulation of immigration through criminal law. *Duke Law Journal*, 61(2), 251–314.
<https://scholarship.law.duke.edu/dlj/vol61/iss2/1>
- Chiu, V., Hall, W., Chan, G., Hides, L., & Leung, J. (2022). A systematic review of trends in U.S. attitudes toward cannabis legalization. *Substance Use & Misuse*, 57(7), 1052–1061.
<https://doi.org/10.1080/10826084.2022.2063893>
- Clark, B. R. (2003). The supremacy clause as a constraint on federal power. *George Washington Law Review*, 71(1), 91–130.
<http://dx.doi.org/10.2139/ssrn.449420>
- Crawford, A. D., McGlothen-Bell, K., Recto, P., McGrath, J. M., Scott, L., Brownell, E. A., & Cleveland, L. M. (2022). Stigmatization of pregnant individuals with opioid use disorder. *Women's Health Reports*, 3(1), 172–179.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8896218/pdf/whr.2021.0112.pdf>
- Dalton, R. J. (2015). Party representation across multiple issue dimensions. *Party Politics*, 23(6), 609–622.
<https://doi.org/10.1177/1354068815614515>
- Donelson, R. (2019). Legal inconsistencies. *Tulsa Law Review*, 55(1), 15–44.
https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=1436&context=faculty_scholarship
- Durkheim, E. (1964). *The division of labor in society*. Free Press.
- Edgar v. MITE Corp., 457 U.S. 624 (1982).
- Elazar, D. J. (1987). *Exploring federalism*. University of Alabama Press.
- Gardner, J. A. (2021). Subnational constitutionalism in the United States. In P. Popelier, G. Delledonne, & N. Aroney (Eds.), *Routledge handbook of subnational constitutions and constitutionalism*. Routledge.
<https://www.routledgehandbooks.com/doi/10.4324/9781003052111-19>
- Golder, M., & Ferland, B. (2017). Electoral systems and citizen-elite ideological congruence. In E. S. Herron (Ed.), *The Oxford handbook of electoral systems* (pp. 213–246). Oxford.
- Golder, M., & Stramski, J. (2009). Ideological congruence and electoral institutions. *American Journal of Political Science*, 54(1), 90–106.
<https://doi.org/10.1111/j.1540-5907.2009.00420.x>
- Hartnett, E. A. (2020). Distinguishing permissible preemption from unconstitutional commandeering. *Notre Dame Law Review*, 96(1), 351–394.
<https://scholarship.law.nd.edu/ndlr/vol96/iss1/7>
- Hill, J. A. (2015). Banks, marijuana, and federalism. *Case Western Reserve Law Review*, 65(3), 597–647.
<https://scholarlycommons.law.case.edu/caselrev/vol65/iss3/7>
- Kouroutakis, A. (2016). The prevailing culture over immigration: Centralized immigration and policies between attrition and accommodation. *Seton Hall Circuit Review*, 13(1), 5–20.
https://scholarship.shu.edu/circuit_review/vol13/iss1/2
- Latanich, M. (2022). A frightening display of power: The tenth amendment, the supremacy clause, and the constitutional case for limiting the federal government's law enforcement powers in sovereign states. *Widener Commonwealth Law Review*, 31(2), 215–254.
- Magana, L. (2013). Arizona's immigration policies and SB 1070. In L. Magana & E. Lee (Eds.), *Latino politics and Arizona's immigration law SB 1070* (pp. 19–26). Springer.
- Mancini, C., & Budd, K. M. (2022). Legalize it, criticize it, or something else? Americans' attitudes toward federal recreational marijuana legislation (RML). *Crime & Delinquency*. Advance online publication.
<https://doi.org/10.1177/00111287221118022>

- Martin v. Hunter's Lessee, 14 U.S. 304 (1816).
- Mikos, R. A. (2020). The evolving federal response to state marijuana reforms. *Widener Law Review*, 26(1), 1–20. <https://ssrn.com/abstract=3478299>
- National Conference of State Legislatures. (2023). *State medical cannabis laws*. <https://www.ncsl.org/health/state-medical-cannabis-laws>
- Paleker, S. A. (2006). Federalism: A conceptual analysis. *The Indian Journal of Political Science*, 67(2), 303–310. <https://www.jstor.org/stable/41854876>
- Peter, F. (2017). Political legitimacy. In E. N. Zalta (Ed.), *The Stanford encyclopedia of philosophy*. The Metaphysics Research Lab. <https://plato.stanford.edu/entries/legitimacy/>
- Petrocelli, M., Piquero, A. R., & Smith, M. R. (2003). Conflict theory and racial profiling: An empirical analysis of police traffic stop data. *Journal of Criminal Justice*, 31, 1–11. [https://doi.org/10.1016/S0047-2352\(02\)00195-2](https://doi.org/10.1016/S0047-2352(02)00195-2)
- Pitkin, H. F. (1967). *The concept of representation*. University of California Press.
- Powell, D., Pacula, R. L., & Jacobson, M. (2018). Do medical marijuana laws reduce addictions and deaths related to pain killers? *Journal of Health Economics*, 58, 29–42. <https://doi.org/10.1016/j.jhealeco.2017.12.007>
- Ramsey, M. D. (2013). The supremacy clause, original meaning, and modern law. *Ohio State Law Journal*, 74(4), 559–622. <https://ssrn.com/abstract=2290580>
- Ranjan, D. P. (2023). Harmonizing federal immunities. *Virginia Law Review*, 109(2), 427–464. <https://ssrn.com/abstract=4365231>
- Ross, E. A. (1901). *Social control*. Macmillan.
- Sandler, L. N., Beckerman, J. L., Whitford, F., & Gibson, K. A. (2019). Cannabis as conundrum. *Crop Protection*, 117, 37–44. <https://doi.org/10.1016/j.cropro.2018.11.003>
- Schuster, M. & Bird, R. (2021). Legal strategy during legal uncertainty: The case of cannabis regulation. *Stanford Journal of Law, Business & Finance*, 26(2), 362–412. <https://ssrn.com/abstract=3778860>
- Sendlenski, A. (2001). Taking our money and going home: State development policy and the foreign affairs, foreign commerce, and supremacy clauses. *Suffolk Transnational Law Review*, 24(2), 317–352.
- Shu-Acquaye, F. (2019). Rohrabacher-Blumenauer amendment, case law and the department of justice: Who prevails in the medical marijuana legalization debate? *Gonzaga Law Review*, 54(1), 127–154. https://nsuworks.nova.edu/law_facarticles/366
- Siegel, L. J. (2011). *Criminology: Theories, patterns, and typologies*. Cengage Learning.
- Smith, D. B. (2005). Federalism in the United States. *Duquesne Law Review*, 43(4), 519–538. <https://dsc.duq.edu/dlr/vol43/iss4/4>
- Sznitman, S. R., & Bretteville-Jensen, A. L. (2015). Public opinion and medical cannabis policies: Examining the role of underlying beliefs and national medical cannabis policies. *Harm Reduction Journal*, 12(46), 1–10. <https://doi.org/10.1186/s12954-015-0082-x>
- Snowden, S. (2022). Play hot pot-ato: Does Biden's presidency signal the end of federal marijuana prohibition? *Mercer Law Review*, 73(4), 1383–1417. https://digitalcommons.law.mercer.edu/jour_mlr/vol73/iss4/18
- Sternberger, D. (1968). Legitimacy. In D. C. Sills (Ed.), *International encyclopedia of the social sciences* (pp. 244–248). Macmillan.
- Sumner, W. G. (1906). *Folkways: A study of the sociological importance of usages, manners, customs, mores, and morals*. Ginn & Company.
- Sunshine, J., & Tyler, T. R. (2003). The role of procedural justice and legitimacy in shaping public support for policing. *Law & Society Review*, 37(3), 513–548. <https://doi.org/10.1111/1540-5893.3703002>
- Tariq, M., & Rizwan, M. (2018). An analysis of the major theories of federalism. *Global Social Sciences Review*, 3(4), 400–412. [https://doi.org/10.31703/gssr.2018\(iii-iv\).27](https://doi.org/10.31703/gssr.2018(iii-iv).27)
- Tyler, T. R., & Jackson, J. (2014). Popular legitimacy and the exercise of legal authority: Motivating compliance, cooperation, and engagement. *Psychology, Public Policy, and Law*, 20(1), 78–95. <https://doi.org/10.1037/a0034514>
- Ward, A. A. (2006). Circumventing the supremacy clause? Understanding the constitutional implications of the United States' treatment of treaty obligations through an analysis of the New York convention. *San Diego International Law Journal*, 7(2), 491–522. <https://digital.sandiego.edu/ilj/vol7/iss2/11>
- Watts, R. L. (2006). Origins of cooperative and competitive federalism. In S. L. Greer (Ed.), *Territory, democracy and justice* (pp. 201–223). Palgrave Macmillan.

- Weber, M. (1954). *Max Weber on law in economy and society*. Harvard University Press.
- Woolhandler, A., & Collins, M. G. (2020). State jurisdictional independence and federal supremacy. *Florida Law Review*, 72(1), 73–126.
<https://scholarship.law.ufl.edu/flr/vol72/iss1/3>

About the Authors

Joseph Hoft, Ph.D., is an Assistant Professor of Criminology at University of Lynchburg. His research has focused on criminal-psychological risk behavior, false guilt, and theory-based analysis of federal law and courtroom procedure.