

# Federalism

Daniel J. Mallinson

School of Public Affairs  
Penn State Harrisburg  
mallinson@psu.edu

PLSC 1

# Road map

- History of Drug Policy
- How does contemporary marijuana policy help us understand the implications of federalism?

# Turn of 20th Century



Figure: [Source Link](#)

Civil war (morphine addiction), addiction as moral failing - for some, wild west of drugs



# Controlling the “Other”

## Mexican “Dream Drug” Feared Here, Wafts User Into Condition of Coma And Leads, in the End, to Insanity

Allen countians learned more about the marihuana weed today. Officials who returned from the meeting of Kansas peace officers in Topeka found that the menace was not local but on the other hand, statewide.

The Allen countians attending the meeting heard sheriff Jess Langford, of Reno county, declare, “We have discovered that our boys and girls are buying cigarettes adulterated with it from Mexicans before throwing a party.”

“We had a little girl in jail for

the use of marihuana among prisoners.

“Not long ago we found the prison junk yard choked with weeds of a strange kind,” he said. “We found that they were marihuana plants. We pulled them up and threw them over the fence, not realizing that we merely were drying them for smoking by the prisoners.

“Investigation disclosed that the prison farm was overrun with the plants. Even now the men try to cultivate the rapidly growing weed



Figure: [Source Link](#)

Figure: [Source Link](#)



# Counterculture, Civil Rights, the War on Drugs



Figure: [Source Link](#)



Figure: [Source Link](#)



# Controlled Substances Act of 1970

## Schedule I

No accepted medical use and high potential for abuse: heroin, LSD, marijuana, ecstasy, methaqualone, peyote

## Schedule II

High potential for abuse and dependence: hydrcodone (Vicodin), cocain, meth, methadone, hydromorphone, meperidine (Demerol), oxycodone, fentanyl, Dexedrine, Adderall, and Ritalin

## Schedule III

Moderate to low potential for dependence: products with 90 mg or less of codeine (e.g., some Tylenol), ketamine, anabolic steroids, testosterone

## Schedule IV

Low potential for abuse: Xanax, Soma, Darvon, Darvocet, Valium, Ativan, Talwin, Ambien, Tramadol

## Schedule IV

Lower potential for abuse: Cough syrup with less than 200 mg codine (Robitussin AC), Lomotil, Motofen, Lyrica, Parepectolin

Source: [DEA](#)

# Federal Powers and the CSA

Why could the federal government limit drug legality?

- CSA is, in part, a response to international treaties
  - Single Convention on Narcotic Drugs (1961)
  - Convention on Psychotropic Substances (1971)
  - UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1990)

# Federal Powers and the CSA

Why could the federal government limit drug legality?

- BUT, even a response to treaties must be constitutional (*Reid v. Covert* 1957)
- Co-opting the states:
  - Uniform Controlled Substances Act (all states)



# Federal Powers and the CSA

Why could the federal government limit drug legality?

- BUT, even a response to treaties must be constitutional (*Reid v. Covert* 1957)
- Co-opting the states:
  - Uniform Controlled Substances Act (all states)

Why else might it be legal for the U.S. Gov't to regulate drugs?

# Gonzales v. Raich 2005

- California's medical program (14 other states)
- Raich had chronic pain
- Narrow focus on regulation of medical use
- Ban is legal as means to limit non-medical usages
- Scalia concurrence - Necessary and Proper and Commerce Clauses
- O'Connor and Thomas dissents



# Poll

# Should marijuana be legalized?

- Yes
- No



# Changing Times

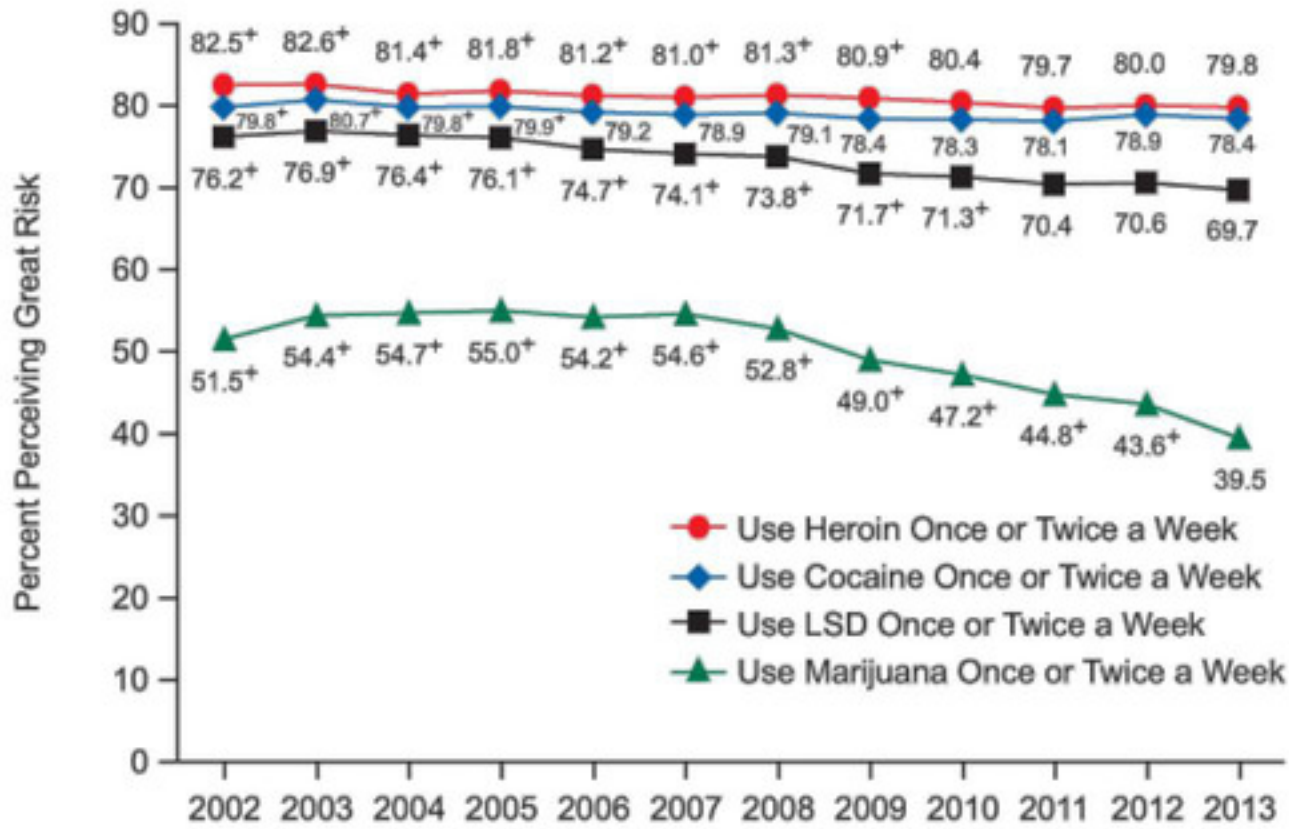


Figure: [Source Link](#)

Figure 31. Perceived Great Risk from Substance Use among People Aged 12 or Older: Percentages, 2017

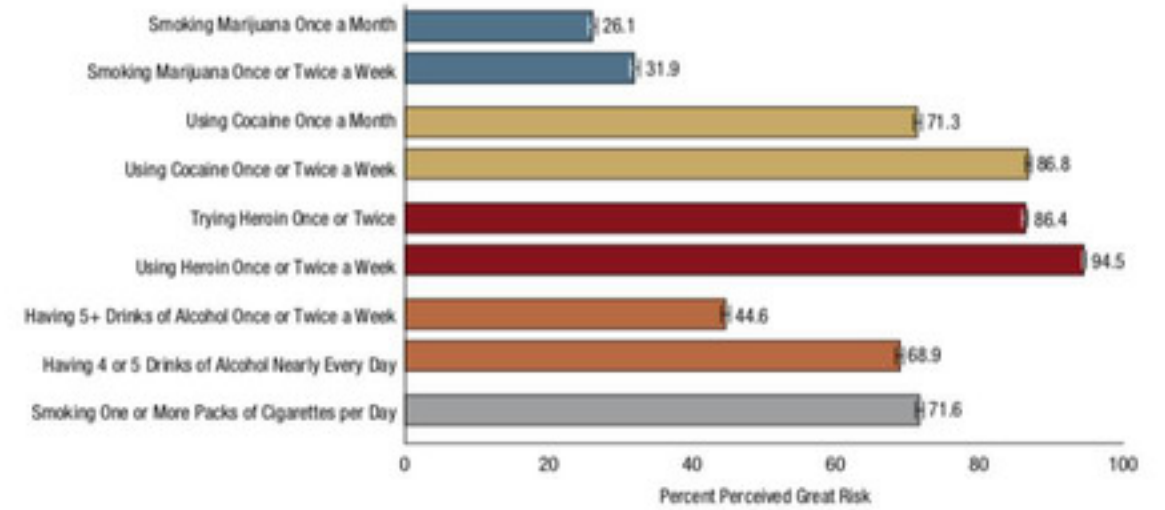


Figure: [Source Link](#)



# MAP OF MARIJUANA LEGALITY BY STATE

## WONDERING WHAT THE MARIJUANA LAWS ARE IN YOUR STATE?



Marijuana laws are changing at a rapid pace across the U.S., which can be a bit confusing at times. In order to keep up with the ever-changing laws, DISA has provided you with information on legalization, medical use, recreational use, and anything in between.

**Are you wondering what the marijuana laws are in your state?**

<https://disa.com/map-of-marijuana-legality-by-state>

monthly basis. It's important to understand and respect the rules that vary across the U.S. regarding marijuana use, and whether you're a visiting tourist, or a resident the following information will help you steer clear of any misunderstandings or trouble. Scroll over each state to learn more about their individual legalization laws.

**Not sure where to start with Drug Testing?**



# Are These Legal?

Marble Cake Federalism

## 10th Amendment

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

# Are These Legal?

## Commandeering

- *Prigg v. PA* (1842) - Fugitive Slave Law
- *New York v. US* (1992) - Radioactive Waste Disposal
  - Can coerce with funds (grants, crossover sanctions), not command
- *Printz v. US* (1997) - Brady Act
- *Murphy v. NCAA* (2018) - Sports Betting



# Are These Legal?

## Commandeering

- *Prigg v. PA* (1842) - Fugitive Slave Law
- *New York v. US* (1992) - Radioactive Waste Disposal
  - Can coerce with funds (grants, crossover sanctions), not command
- *Printz v. US* (1997) - Brady Act
- *Murphy v. NCAA* (2018) - Sports Betting

State action or inaction?

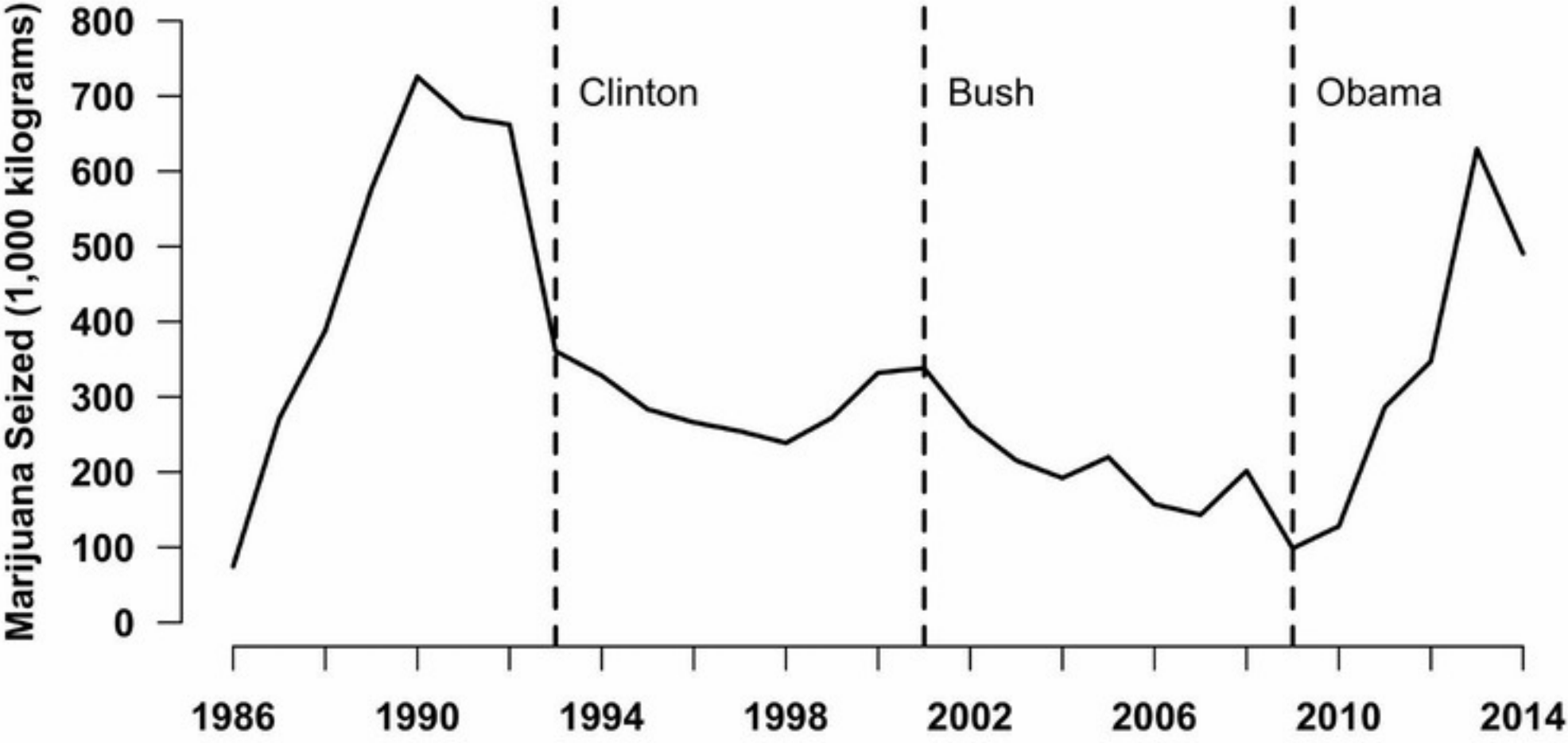
# Poll

**Do you think state marijuana programs are legal because states are refusing to enforce federal law or illegal because they violate federal supremacy?**

- Legal
- Illegal



# Federal Enforcement



Note: 2014 data are preliminary

# Problems of Federal-State Morass

## Banking

Illegal for banks to loan money, hold money for industry.

## Criminal Justice

What to do about War on Drugs?

## Spillovers and Black Market

Black market not gone, spillovers common

# Benefits eralism

What are the benefits of having a federal governmental structure?

## Collaborate!

## Benefits of Federalism



# Benefits of Federalism

- Difficulty of tyranny
- Policy diversity
- Conflict management (cooperation)
- Dispersed power
- Increased participation
- Increased efficiency (maybe)
- Responsiveness
- Innovation

# Drawbacks of Federalism



What are the drawbacks of having a federal governmental structure?

**Collaborate!**

## Drawbacks of Federalism

# Challenges of Federalism

- Coordination among and across levels
- Tug-of-war over power (defiance)
- National vs. local preferences



# How Does This Apply to Other Issues?

## Immigration Sanctuary

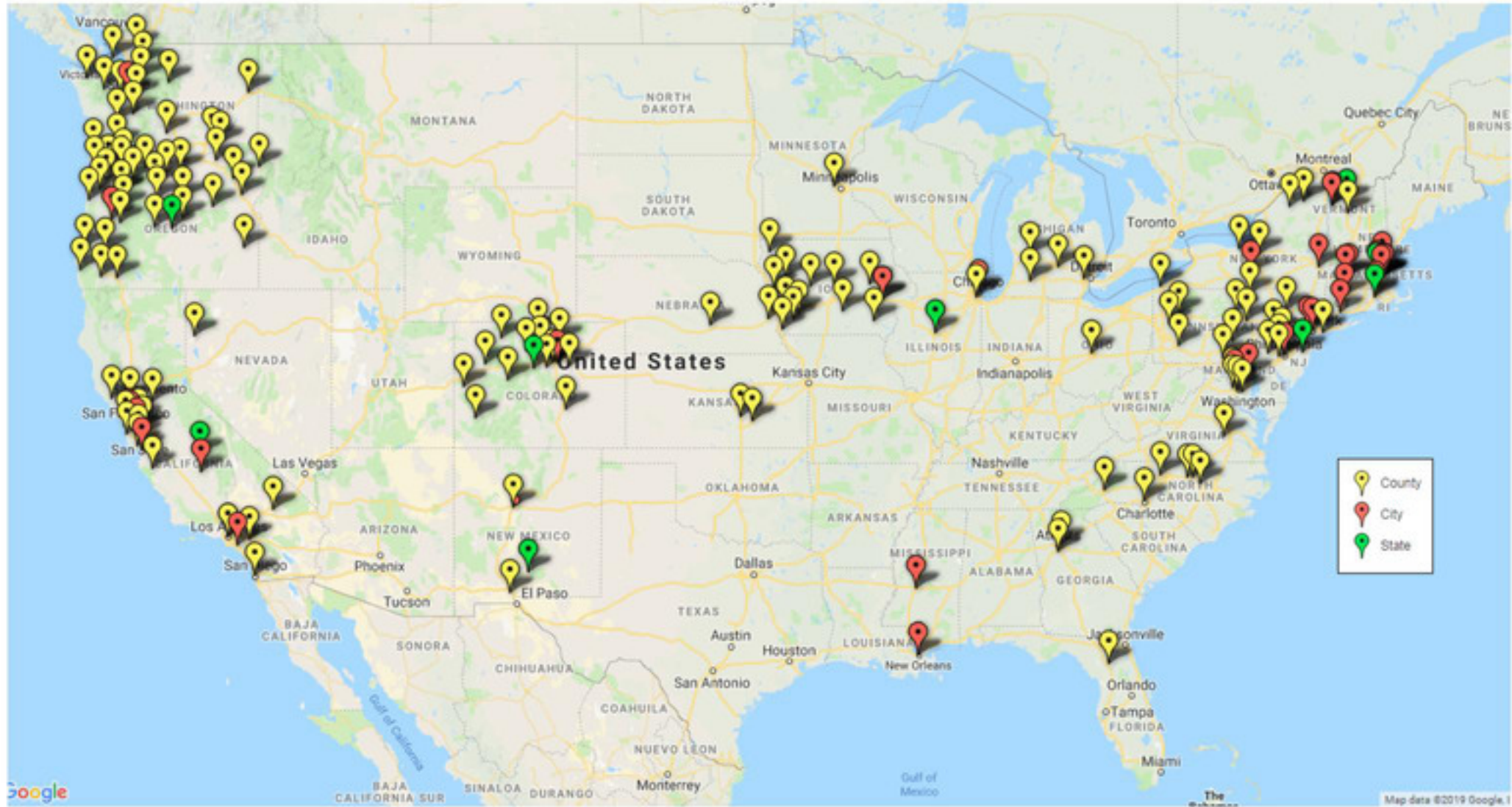


Figure:

<https://cis.org/sites/default/files/2019-04/sanctuary-map-042419.png>