legislation. . . . [The issue of constitutionality] is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court." [792]

The problem with the VAWA findings was that they "relied heavily" on the reasoning rejected in Lopez—the "but-for causal chain from the initial occurrence of crime . . . to every attenuated effect upon interstate commerce." As the Court had explained in *Lopez*, acceptance of this reasoning would eliminate the distinction between what is truly national and what is truly local, and would allow Congress to regulate virtually any activity, and basically any crime.[793] Accordingly, the Court "reject[ed] the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." Resurrecting the dual federalism dichotomy, the Court could find "no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims." [794]

Yet the ultimate impact of these cases on Congress' power over commerce may be limited. In *Gonzales v. Raich*,[795] the Court reaffirmed an expansive application of *Wickard v. Filburn*, and signaled that its jurisprudence is unlikely to threaten the enforcement of broad regulatory schemes based on the Commerce Clause. In *Raich*, the Court considered whether the cultivation, distribution, or possession of marijuana for personal medical purposes pursuant to the California Compassionate Use Act of 1996 could be prosecuted under the federal Controlled Substances Act (CSA).[796] The respondents argued that this class of activities should be considered as separate and distinct from the drug-trafficking that was the focus of the CSA, and that regulation of this limited noncommercial use of marijuana should be evaluated separately.

In *Raich*, the Court declined the invitation to apply *Lopez* and *Morrison* to select applications of a statute, holding that the Court would defer to Congress if there was a rational basis to believe that regulation of home-consumed marijuana would affect the market for marijuana generally. The Court found that there was a "rational

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[792] 529 U.S. at 614.

[793] 529 U.S. at 615–16. Applying the principle of constitutional doubt, the Court in Jones v. United States, 529 U.S. 848 (2000), interpreted the federal arson statute as inapplicable to the arson of a private, owner-occupied residence. Were the statute interpreted to apply to such residences, the Court noted, "hardly a building in the land would fall outside [its] domain," and the statute's validity under *Lopez* would be squarely raised. 529 U.S. at 857.

[794] 529 U.S. at 618.

[795] 545 U.S. 1 (2005).

[796] 84 Stat. 1242, 21 U.S.C. §§ 801 *et seq*.