

LECTURE #4 – THE FEDERAL SYSTEM IN THE USA

Today's lecture is about the federal system in the US. How do we in the US manage to have 50 states and state governments with a state court system in each one, spread around a large country, and also at the same time right along side of it we have one federal government which operates its own federal courts right along side the state courts. And both of these operate at the same time as 85,000 local governments: municipal, county, township and village. It's an interesting question and it's caused a lot of concern in the US.

You remember we talked already about constant friction between the federal government and the state governments and the fact that there are some states more than others that have always wanted to have more state rights, and we even had a civil war 150 years ago to determine whether or not state governments had the right to nullify and ignore federal laws and to nullify and ignore the federal government and even secede from the federal government. Of course the states lost and so the federal status of supremacy over the states was pretty well established by the US Civil War of 1860. Article 1 of our Constitution says that the Constitution and laws of the US, meaning the federal government, shall be the supreme law of the land and any state law and any state judge trying to pass laws to the contrary, notwithstanding, the federal law is supreme. And so we have a doctrine called federal supremacy which states the fact that whenever the federal government has conflict with the state government federal wins.

We have a doctrine of preemption which removes state laws and preempts them, we say, whenever they come in conflict with a federal law. This does not happen as often as you might think it would happen, because the majority of business and daily legal matters for lawyers comes before state courts. The majority of court cases in our country are divorces, wills, probate inheritance matters, car accidents, hundred of car accidents, thousands of car accidents, this is true in most industrial countries – the majority of court cases are car accidents, divorces, and possibly disputes over commerce, business, matters – contracts and purchasing and selling of real property. These are handled by the state courts in the state court system in the US. We have a federal court system which operates right along side of it for federal matters that are governed by our Constitution. We have a saying in law and government, “Don't make a federal case out of it.” This is because federal matters are more important, bigger and the cost of lawyers to go to these is more. When a lawyer says, “I only handle federal court matters”, he is boasting that he has rich clients and handles important court cases.

Most of the federal matters are ones you would assume would be federal matters. Most matters of interstate commerce – anything where 2 states have commerce together is governed by federal law because we don't want one state trying to favor its citizens over another state. For instance, one state would put a tax on all the bread or all the milk from a neighboring state to keep that bread and milk out

and to favor its own farmers and its own bakers and its own citizens if that were allowed. So the federal government has very strong powers to keep states from doing that and to keep states from favoring its own citizens when it comes to commerce, which is a very broad clause and a very broad power, as you might imagine. Another example that comes to mind, and would be very relevant in Russia, is something that surprised me and that involved a state on the ocean, the state of Washington. Washington, passed state laws against oil spills, trying to stop oil tankers, oil ships, from spilling oil into the water and added numerous regulations and rules, and went to prosecute a ship that violated those rules and the ship company actually won the case on the basis that state laws are not able to be passed governing oil spills in ocean water because the subject of oil spills is maritime law, and maritime law is a matter of federal regulation. It is a matter of interstate commerce, trade among the states and trade among the nations. States are not allowed to pass laws that interfere with interstate commerce or with international trade. International trade and international commerce are subjects only for federal law. So a state law and state police cannot be used to govern them.

So already you get a flavor of why the history of the US and the development of just 200 years of law in the US has evolved from a country where states' rights were very important and states did not want to give up authority or power to the federal government except for matters like war and an army to the modern US today, which because of transportation, international trade, technology, the telephone, the rocket ship, the airplane, international commerce, and the globalization of trade; all this has placed so many subjects into the sphere of the federal government that it has become more and more clear that state governments are less and less important in the US than the federal government, whose laws and administrative agencies are more and more important.

1. **HIGHWAYS** - The federal government of the US regulates the highways. We have a very good highway system which allows someone to get on the highway and drive all the way from one side of the country on the Atlantic Ocean, New York City, to the other side of the country in California on the Pacific Ocean to San Francisco or Los Angeles, California in a very short time (3,200 miles). We have trucks and automobiles that can do that just through an interstate highway system that goes right straight through without 1 stoplight.
2. **SECURITIES** - The federal government regulates securities, stock, bonds, again obviously something that has to do with interstate commerce. People all over the country, inside and outside the US, are buying and purchasing stocks and bonds on Wall Street.
3. **TAXES** - The federal government's greatest power is its power of taxation through what we call the IRS, the Internal Revenue Service. It's probably the most feared agency in America and collects so much

money from taxes on income that it can get its way by offering states and cities money in return for actions the federal Congress wants – it gets its way by inducement rather than legislation.

4. SOCIAL SECURITY - And of course our pension system for elderly and disabled citizens, the Social Security System, is a federal matter.
5. INS - And the Immigration System is a federal matter.

So all these federal matters overlap and operate at the same time as the state matters. Now, what happens when there is an occasional case, which we call a diversity case, between citizens of different states? We use our federal government and our federal court system for lawsuits between citizens of different states. Someone in the state of New York gets into a car accident with someone in the state of California and they may even hit each other in the middle of the country in the state of Illinois – what happens when we have citizens of the state of NY driving one automobile and citizens of CA driving the other automobile and the place of the accident is Illinois – where does one bring the lawsuit? – because normally injury (torts) cases are in state courts. This is again, one of the subjects of federal court cases. We have a saying in America “Don’t make a federal case out of it”, meaning don’t make a big case out of it. So if it’s a big case between citizens of different states, it can be held in federal court. You can go to federal court if you’re a citizen of one state against a citizen of another state and the matter in controversy involves \$75,000 or more. You can’t do it for little cases. They don’t want little cases in federal court. That’s why lawyers who talk about only going to federal court are usually bragging. A lawyer who says, “I only practice in federal court – I only have clients who go to federal court.”, is telling you he has rich clients because they can afford to go to federal court and have matters involving millions of dollars. So a case involving a car accident between a NY and CA citizen is what we call a diversity of citizenship case – two different states. And that can be held in federal court. It can also be held in a state court, but can be held in the federal court if either side wants it to be. They can make the actual choice whether to go to one court or the other. Federal court requires more expensive lawyers, it’s more difficult to litigate in federal court, and it may be a matter of deciding if it will take longer to go through federal court or will it take longer to go through the state courts in Illinois, California, or New York.

Another question that comes up and which you see on the outline called *Erie v. Tompkins* – what law would apply if you have a citizen of the state of California suing a citizen of the state of New York for \$1 million because of a serious car accident in which several people were injured? Do you apply the law of California, which may limit the maximum amount of money you can recover in a car accident, which may be \$500,000 in California and in New York it might be unlimited – you could win \$10 million, or do you apply law of state where the

accident happened?. In New York you might have a law called contributory negligence; California may have the law of comparative negligence. Let me tell you the difference; comparative negligence means if the driver of one car is 25% negligent and the driver of the other car is 75% negligent, you take the entire jury verdict, let's say it is \$100,000, and the person suing has 25% of the verdict subtracted so he only wins \$75,000. That is what's called comparative negligence. In some states, however, we have contributory negligence. If the driver of an automobile is 1% or more negligent and he goes to sue, for instance he's not wearing a seat belt, and he goes to sue driver of car #2, who is 99% negligent and at fault, he cannot win one penny. He can be barred and lose the entire lawsuit. So it becomes very very important which law you are going to apply when you are going to sue a citizen of another state and it becomes very important whether or not you can go to federal court because you may be able to avoid some very burdensome laws or you may be able to choose some very favorable laws having to do with your car accident. (For instance some state laws allow the jury to know insurance will pay, others do not.)

Federal courts also handle serious white collar business and drug crimes. We have the situation where the majority of crimes are murder, robbery, burglary, rape, and those are prosecuted in state courts and those are the majority of crimes occupying the majority of criminal lawyers. In federal court we have the more serious white collar crimes; interstate and international drug dealing, and we have an interesting crime that is governed by federal law, because federal crimes can only be those involving inter state matters – something that takes place completely within one state is normally a state matter, unless it would happen to be something under securities, fraud, stock and bonds and that sort of thing, but something having to do with the use of the interstate highways – to deprive someone of civil rights for instance – is a federal crime. And so we have an unusual situation in the US where we've had people prosecuted for murder in several famous cases of civil rights workers trying to integrate the schools and restaurants in the state of Mississippi. They were found not guilty by state courts and juries. So what happens when the state finds someone not guilty of murder – can the person be tried again for murder? No, we have a system with a rule against double jeopardy, which is a matter of due process that says you cannot be put on trial more than once for the same crime. So how did they manage to later take a person found not guilty of murder, and put them on trial again. The federal government came along and prosecuted all these people for violations of civil rights and you can be tried a second time, not for murder, but for use of state authority to deprive someone of his civil rights – his rights to go upon the highways and to travel and to engage in the pursuit of normal business and living activities, a different crime. So the federal government does have crimes that are prosecuted in federal court and federal prosecutors will actually go to federal court and prosecute the same people who were prosecuted and found innocent of murder, they will prosecute them for violation of civil rights and many of those people have been found guilty – some as many as 20 years after the crime, courts

have come along and found them guilty. This was the subject of a famous movie, *Mississippi Burning*, which was based on a true case.

Basically the modern administrative state and the federal administrative agencies are now starting to exercise more and more influence because of technology, because of the consumer society, because of the need for greater information, and scientific information to protect the consumer and the public from dangers, the modern administrative state is becoming more important and the federal administrative agencies are starting to influence the states' administrative agencies to do things the federal government wants them to do. As you can imagine, there has been some friction and disagreement by the states. Let me give you some examples. In the US the federal administrative agencies tried to make the states take nuclear waste from nuclear power plants and make the states responsible to take this nuclear waste and dispose of it. That's a federal matter to dispose of nuclear waste and we actually have an administrative agency that governs and administers nuclear facilities and nuclear waste, and so the Federal Nuclear Regulatory Commission tried to make each state take responsibility for its nuclear waste and dispose of it and this became a subject of court dispute and the courts decided that the federal government cannot order local governments and state governments to police and to regulate and to dispose of nuclear waste. It was a federal matter and the federal government has to take care of it and dispose of it. But then the federal Congress used its power to collect taxes and distribute them to the states to pass a law saying if a state did not dispose of nuclear waste from its power plants then it would receive no federal highway money. So the states all agreed to do it, by reason of Congress' power of inducement.

A second matter that has become important in America is that America has a lot of guns. Everybody has guns. We have many gun stores. And so, the federal government tried to interfere in the sale of guns, which is a commercial matter, but not an interstate commerce matter - the sale of guns is a local matter and each state has its own laws and rules about who can buy a gun. The federal government, the Congress in Washington, decided that if any gun store in the entire US, in any one of the 50 states sold a gun, it would have to wait 3 days to complete the sale and deliver the gun while the store performed a background check to make sure that the purchaser of a gun was not a criminal, did not have any criminal record. So the owner of a gun store went to court and it was ruled that the federal government could not force states to police and do background checks on the sale of guns - again, the continuing American battle between state's rights and federal rights. So Congress quickly passed a law saying that any state which did not adopt a state law requiring a 3 day wait and criminal background check would not receive federal highway money. Congress has managed to start influencing the states more and more through the power of the purse - inducing the states with money to enact policies it wants

The federal government taxes and receives so much money: 1.) the income tax - an enormous amount of money comes into the federal government from income

taxes and 2.) our gasoline tax – 10 cents per gallon comes to the federal government from every gallon of gas sold in the US. That's an enormous amount of money. And that goes to build all the highways and to take care of the highways, to service them and make them better. So what Congress has started to do is to say they will not give federal highway money to a state unless the state does certain things and they then say the state must adopt gun laws regarding background checks and they've also forced states to adopt laws that no one can drink or purchase alcoholic beverages until they are 21 years old. Many states resisted this and wanted the age to be 18. And one of the most classic examples and important examples is the way that the Environmental Protection Agency enforces clean air standards around the US. The EPA adopted regulations administratively that said unless a state adopts clean air standards for the smoke stacks in factories in that state, only allowing them to emit a small amount of smoke, and it had to be clean smoke, and they had to burn off a lot of the carbon in that smoke, unless the states adopted those standards and enforced them the states would not receive federal highway money.

In some states political people and government officials think this is extortion. It's a way of the federal government requiring them to be subservient to them. Well, it is and it's something that is coming in the US slowly, so the civil war was in 1865 where the doctrine of state's rights, the doctrine of states nullifying and just ignoring federal law, the practice of states seceding from the US and going off on their own if they wanted to, it was decided by war that they could not. It is now being fought out in the courts and slowly but surely the federal government is exerting its influence especially as we find we all breathe the same air, drink the same water, and buy the same medicines no matter which of the 50 states we live in. Air does not just stay in one state. Air goes from one state to another. Water does not just stay in one state, so we need clean air and water standards all over the US. I'm sure that the same thing is happening in Russia. The fact that you have a strong federal system means you're probably better off than the US, which has had to evolve from a system of many states having many powers which they gave up to the federal central government. It's been very difficult and has taken a long time for the US central government, our federal government, to take over and become the strong power that it is. It has become accepted in the last 50 years because the American people now move around so much from state to state that there is very little local and state loyalty, today, as there was 100 years ago.