Episode Book

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Same Pills, Same Gun, New State, New Crime

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SYNOPSIS

The United States is a plurilegal federal union — conflict-of-laws scholar Symeon Symeonides' term for a country where American judges encounter roughly five thousand conflict-of-laws cases a year, far more than the EU, Canada, or Australia. This episode works through why that divergence is constitutionally legal, which everyday behaviors carry real criminal risk across state lines, and whether states reaching across borders threatens the Union itself. From magazine capacity and concealed-carry reciprocity to post-Dobbs abortion prosecutions and the live Louisiana v. FDA mifepristone case, we trace what happens when "the United States" turns out to be fifty legal spaces wearing one name.

TRANSCRIPT



Corn

Here's the take you'll hear from basically everyone who writes about American federalism. It's a strength. Fifty laboratories of democracy, each one trying something different, the good ideas spreading, the bad ones dying where they were born. That's the line.



Corn

And it's mostly true. But it skips the part where you drive twenty minutes down the highway and commit a felony without changing anything about your behavior except your zip code. Same pills in your bag. Same gun in your trunk. Same body. New state. New crime.



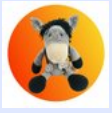
Corn

Daniel wrote in about this. He says we mentioned on an episode about mandated arrest that you can drive between states and the legal entitlement to arrest changes, and he wants to push on that. His question, roughly: how aligned are state laws really? What are the dangerous examples, the ones where a citizen of one state unknowingly violates another's law? He's not interested in the trivia. He specifically flags the rest law and single-party consent recording as interesting but low-stakes, and he wants the realistic cases. Then two bigger questions. Do jurists and theorists actually argue this undermines the Union? And how does this compare to other countries, because it's not typical to find this much variation inside one country.



Corn

So let's start with the structural fact that makes all of this possible.



Herman

The phrase I'd reach for is Symeon Symeonides'. He's a conflict-of-laws scholar, wrote the Oxford treatise on choice of law, and he describes the American system as a plurilegal federal union. Plural legal systems under one roof. And he puts a number on it that I think is the whole episode in one line: American judges encounter conflict-of-laws cases about five thousand times a year.



Corn

Five thousand.



Herman

Nowhere else in the world comes close. Not the EU, not Canada, not Australia. And the reason isn't that Americans are unusually litigious. It's that the United States is the only major federation where this much substantive lawmaking happens below the national level.



Corn

Why is that the default? Because people hear federalism and think it's a choice somebody made in a room.



Herman

It's closer to a structural consequence. The federal government has enumerated powers. Article One, Section Eight, the list. And the Supreme Court has been clear that direct control of medical practice in the states is beyond the power of the federal government. There's no general federal police power over health, education, welfare. Those are state domains by default. So when Congress hasn't legislated, and it often can't, the states fill the space. Fifty legislatures, fifty answers.



Corn

And they don't coordinate.



Herman

They don't coordinate, and they're not supposed to. Which is what Daniel's driving at with the unified-country thing. We say "the United States" and picture one legal space. It isn't one. It's fifty, plus territories, plus the federal layer sitting on top of all of them.



Corn

So the arc here. We look at the doctrine that makes divergence legal, then the dangerous examples, then the escalation from different rules to states reaching across borders, then whether this threatens the Union, then the international comparison.



Herman

Good.



Corn

Start with the doctrine. Because the obvious objection is, doesn't the Constitution require states to respect each other?



Herman

It requires them to respect each other's public acts, records, and judicial proceedings. Article Four, Section One. Full Faith and Credit. And the crucial move is that the Supreme Court reads that clause as doing two very different things depending on what's being credited.



Corn

Judgments versus laws.



Herman

Judgments get near-absolute credit. If a court in Georgia enters a judgment against you, Wyoming has to enforce it. You can't relitigate it. That part is close to absolute.



Corn

And laws?



Herman

Laws get much weaker credit. There's a public policy exception. Pacific Employers Insurance versus Industrial Accident Commission in 1939 is the classic case, and Franchise Tax Board versus Hyatt in 2003 restates it. The holding, in plain terms: a state does not have to substitute another state's conflicting statute for its own.



Corn

So California can say, we recognize your court's ruling, we do not recognize your legislature's choice.



Herman

Exactly that. And that's the engine. That's why divergence is legal rather than a constitutional violation. States must honor each other's courts. They need not honor each other's statutes.



Corn

Which means the Framers thought about this.



Herman

They did. Madison, Federalist Forty-Two, calls the clause a very convenient instrument of justice, and then he adds, particularly beneficial on the borders of contiguous states. He's anticipating border friction. He's saying the clause exists because states sitting next to each other will have conflicts.



Corn

The remedy was always partial, though.



Herman

Always partial. And James Wilson at the Constitutional Convention is the one who says the quiet part. He warned that without congressional action, the clause would amount to nothing more than what now takes place among all independent nations.



Corn

Independent nations. That's the whole question Daniel's asking, and Wilson said it in 1787.



Herman

He did. The clause was designed to prevent the states from behaving like foreign countries toward each other. And Wilson's point was that a clause on paper doesn't do that by itself.



Corn

So that's the doctrine. Now the examples, and this is where Daniel's instinct is right, because the recording-consent stuff is real but it's the kind of thing that bites a journalist or a call-center operator. The dangerous cases are the ones where the conduct is ordinary and unavoidable.



Herman

Travel, pregnancy, carrying a lawfully-owned object, seeking medical care. Those four.



Corn

Firearms first.



Herman

Magazine capacity is the cleanest illustration. A thirty-round magazine is legal to possess in most states. In California, under Proposition Sixty-Three, it's a felony or misdemeanor depending on the circumstances. In Massachusetts, anything over ten rounds is illegal to possess, full stop. In Connecticut, an unregistered large-capacity magazine is a Class D felony. Colorado caps at fifteen. Illinois at ten or fifteen depending on the magazine. Maryland, New Jersey, New York, Hawaii, Delaware at seventeen. Same object. Different legal status every time you cross a line.



Corn

And it's not just magazines.



Herman

Assault-weapon definitions are worse, because the definition itself varies. A rifle that's perfectly legal in Arizona or Texas can be a banned assault weapon in California, Illinois, Massachusetts, Maryland, New Jersey, Connecticut, Delaware, or New York. And California is explicit about it. If you're a new resident, you're prohibited from importing weapons that were lawful in the state you just left.



Corn

So the state is telling you, the thing you legally owned last week, don't bring it here.



Herman

And concealed carry is a patchwork on top of that. The line I keep coming back to is Idaho recognizes an Oregon permit, but Oregon does not recognize an Idaho permit.



Corn

That's not reciprocity, that's a one-way door.



Herman

It's a one-way door. Some states recognize no out-of-state permits at all. So a permit holder driving cross-country can commit a crime simply by entering the wrong state armed. And there's a structural feature underneath all of it. Printz versus United States, 1997. State and local police are not obligated to enforce federal gun law. So you have fifty state regimes, a federal layer, and no obligation for the two to talk to each other.



Corn

The firearms case is striking. But abortion is where this gets dangerous, and where the live litigation is.



Herman

It's the paradigm case. Post-Dobbs, June 24, 2022, thirteen states have criminal penalties for performing abortions. The penalties run from a Class A felony in Alabama, ten years to life, down to two to five years in Idaho. Texas makes performing an abortion a first-degree felony, five to ninety-nine years, if the fetus dies.



Corn

And Idaho does something the others don't.



Herman

Idaho criminalizes the patient. Purposely terminating a pregnancy other than by live birth is a felony, one to five years. So a woman who takes abortion pills in Idaho commits a crime. The same act in neighboring Washington or Oregon is fully legal.



Corn

Same pills. Same person. A line on a map.



Herman

And the scale of movement is what makes it more than a thought experiment. In 2024, about one hundred fifty-five thousand people crossed state lines for abortions. That's double the 2020 figure.



Corn

Double.



Herman

Double. Kansas, New Mexico, and DC now perform more than half their abortions for out-of-state residents. Illinois performed the most out-of-state abortions, twenty-three percent of its total, roughly thirty-four thousand nine hundred cases.



Corn

So you have a legal service in one state whose customer base is substantially residents of states where the same service is a felony.



Herman

And that's where it stops being "different rules" and becomes states reaching across borders. Eight states with legal telemedicine abortion passed shield laws protecting providers who mail pills into ban states. So now a Texas or Louisiana prosecutor may try to reach a provider in California or New York. And there's no clean answer to whether they can. It raises unresolved questions under Full Faith and Credit and under the Extradition Clause.



Corn

Which is the thing Wilson was worried about. States trying to govern conduct inside other states.



Herman

That's the fault line. And there's a live case. Louisiana versus FDA, filed October 2025, challenges the FDA's 2023 mifepristone REMS rules. Twenty-one Republican attorneys general joined. On May 1, 2026, the Fifth Circuit unanimously blocked the 2023 REMS, which would have prevented mailing mifepristone nationwide. The Supreme Court stayed that order on May 14, 2026, with Alito and Thomas dissenting.



Corn

So for two weeks in May, one circuit's ruling threatened to override the law of every state that permits the drug.



Herman

Two weeks. That's how close it came. And that's the live test case for Daniel's question. If the Fifth Circuit's view prevails nationwide, you've got one circuit determining the legal status of a medication in states that voted the other way.



Corn

There are other categories worth naming, because Daniel asked for the realistic ones.



Herman

Louisiana classified mifepristone and misoprostol as controlled substances in May 2024. So possessing a drug that's ordinary prescription medication in most of the country becomes a state crime there. Physician-assisted death is legal in about ten states and a felony in most others, so a family that travels for it can expose itself to prosecution on return.



Corn

Cannabis.



Herman

Cannabis is the classic. Legal recreationally in about twenty-four states, still federally illegal and criminal in others. And the collateral consequences are the part people miss. You're a federal employee, you're exposed. You fill out Form Four Four Seven Three to buy a gun, you're attesting to something that can be a federal crime.



Corn

And fetal homicide laws.



Herman

The jurisprudence on whether personhood laws can be used to prosecute women who obtain abortions is unsettled, variable, and in some states, unclear. That's the phrase from the source material and it's the honest one. Unclear.



Corn

Unclear is worse than illegal, in a way. You can't plan around unclear. So to Daniel's bigger question. Have jurists and theorists actually argued this undermines the Union?



Herman

Yes, and the answer runs deeper than most people expect. The Framers themselves worried about it. Madison's Federalist Forty-Two and Wilson's warning show the clause was designed to prevent the states from behaving like independent nations. The very existence of the Full Faith and Credit and Privileges and Immunities Clauses is an admission that divergence threatens cohesion. You don't write a clause about something that isn't a problem.



Corn

And the public policy exception is the doctrinal fault line.



Herman

Because states may refuse to apply each other's laws, as opposed to judgments. The Supreme Court has effectively constitutionalized a limited right to disagree. The Union tolerates deep legal pluralism by design.



Corn

Which is fine when it's contract law. It gets harder when it's criminal law.



Herman

That's the modern critique. When states use criminal law extraterritorially. Bounty statutes like Texas SB Eight. Shield laws. Subpoena fights over out-of-state medical records. Threatened extradition. The conflict moves from different rules to states trying to govern conduct inside other states. And that's the point at which theorists argue the differences stop being federalism and start being a contest over the meaning of the Union itself.



Corn

Now the international comparison, because Daniel asked, and this is where the US really is the outlier.



Herman

It's the outlier among developed federations. The five thousand conflicts cases a year figure is the headline. No other country generates that volume of internal legal conflict.



Corn

And the EU has gone the other direction.



Herman

Actively harmonizing. Brussels Convention in 1968 on jurisdiction. Rome One on contracts. Rome Two on torts, 2007. Rome Three on divorce, 2010. The EU treats cross-border legal divergence as a problem to be solved. The US treats it as a feature to be managed.



Corn

Australia borrowed our clause.



Herman

Constitution Section One Eighteen, closely following the US wording. Which is interesting, because they borrowed the text and didn't end up with our volume of conflict. Part of that is size. Part of it is that they don't have fifty legislatures pushing in opposite directions on criminal law.



Corn

And unitary states. France, Germany, the UK.



Herman

Far less internal variation because lawmaking is centralized. Though the UK is a partial counterexample. Scotland has its own legal system, Northern Ireland has its own arrangements. But it's nothing like fifty states.



Corn

There's a framing I want to put on the table, because it answers the "what does this say about us" part. It's from a comment on Hacker News, from a Bangladeshi immigrant, and it got widely upvoted. He says most countries are ethnostates. In the US, there is no common ethnic tie. America is a credo nation. And his argument is that the US is more homogeneous than the EU but more heterogeneous than France, Germany, or the UK.



Herman

That's a sharp way to put it.



Corn

Which is exactly why the legal divergence is more tolerable politically but more jarring conceptually. There's no ethnic glue holding it together, so the creed has to do the work. And the creed is abstract, so the fifty different criminal codes feel like a contradiction of it.



Herman

The creed says one thing. The statute book says fifty.



Corn

Right.



Corn

How so?



Hilbert

Most people who get caught aren't unknowing. They know the rule changed. They just don't know where the line is. I drove a van for a medical courier outfit for a while. We ran prescription refills from a depot in one state into three others. Every route had a different set of rules about what could be in the van and who could sign for it. The dispatcher kept a laminated card taped to the dash. Four columns, one per state.



Corn

And the card was the law?



Hilbert

The card was the dispatcher's best guess at the law. One of the states changed a rule about controlled substances and nobody told us for about six weeks. We were running a route that had been legal the whole time and then wasn't. Nobody got arrested. A state trooper pulled one of our drivers over, looked at the manifest, looked at the card, and let him go. But the card was wrong for six weeks and we didn't know.



Herman

So the enforcement discretion is what saved you.



Hilbert

Enforcement discretion is what saves everybody. The statute is one thing. What the guy on the shoulder of the road decides to do is another. That's the part that never makes it into the analysis. You can have a felony on the books and a trooper who's had a long shift and doesn't want the paperwork. The law is the ceiling. The floor is whatever the officer had for breakfast.



Corn

That's a real gap between the statute and the practice.



Hilbert

It's most of the gap. The other part is that the people who write these laws don't drive the routes. The people who drive the routes don't read the laws. The card on the dash is the whole legal system as far as the driver is concerned.



Herman

When the card is wrong?



Hilbert

When the card is wrong, you find out at the side of the road. Or you don't find out, and you keep driving, and you're a felon for six weeks without knowing it. That's the part that doesn't show up in the case law. The case law is the guy who got caught. Nobody writes about the six weeks nobody got caught.



Corn

I want to pull on the six weeks. Because that's the thing the doctrine doesn't capture. The doctrine is about which state's law applies. Your card is about which state's law applies today, and whether anyone told you it changed.



Hilbert

Nobody tells you. That's not a thing that happens.



Herman

There's a whole category here that the legal literature underweights, which is notification. A state can change a criminal statute and there's no mechanism that reaches a driver in another state. The card is the mechanism. The card is a laminated index card.



Hilbert

The card was laminated. I laminated it myself.



Corn

Of course you did.



Hilbert

I'm going to bring the levels up on Herman for the last segment. He's been sitting back from the mic.



Herman

The theorists have been worried about this since the Framing. But what does it actually mean for someone navigating it on the ground?



Corn

It means the map matters more than the law. And the map is fifty different answers to the same question.



Herman

The answers are moving. That's the part that makes Daniel's question sharper than it looks. It's not that the states disagree. It's that they disagree and the disagreement is live. The mifepristone case is the clearest example. You had a circuit ruling that would have changed the legal status of a medication in every state for two weeks in May before the Supreme Court stepped in.



Corn

Which raises the question of what happens if the Fifth Circuit's view prevails nationwide. Not on the stay, on the merits.



Herman

Then you've got one circuit determining the answer for states that legislated the other way. And the states that permit the drug have to decide whether to comply, whether to pass shield laws, whether to litigate. That's the escalation from different rules to a contest over who gets to decide.



Corn

The unknowing violation problem only grows. Because as states polarize on criminal-law issues, abortion, firearms, drug scheduling, gender-affirming care, the number of ordinary activities that flip legal status at a state line goes up.



Herman

It goes up. And the laboratories of democracy defense starts to strain. Because a laboratory that produces felonies isn't the same as a laboratory that produces a better way to pave a road.



Corn

If you take one thing from this, it's that the United States is not a unified legal space. It's a plurilegal union, and the pluralism is constitutional, not accidental.



Herman

The question isn't whether that's a feature or a bug. It's whether the distinction survives contact with a laboratory that produces felonies.



Corn

The live test case is the mifepristone litigation. Watch what the Fifth Circuit does on the merits.



Herman

Watch whether the shield-law states hold.



Corn

Thanks to Hilbert Flumingtop, our producer, who has laminated more documents than the average state legislature.



Herman

This has been My Weird Prompts. If you want to send us a prompt, email us at show at my weird prompts dot com. We read everything.



Corn

We'll be back soon.



Herman

See you tomorrow.