# Federalism

**CPB:** [00:00:00] Civics 101 is supported in part by the Corporation for Public Broadcasting.

**Archival:** [00:00:09] It is my opinion that the south will be law abiding and will comply with the decision of the court and a step.

**Hannah McCarthy:** [00:00:17] In 1954, the Supreme Court handed down a landmark decision.

**Archival:** [00:00:22] People in the south are just as law abiding as anybody else. And other decisions have come down which they said they wouldn't like. And there's never been any trouble as a result of any of these decisions.

**Hannah McCarthy:** [00:00:34] Brown vs. Board of Education. Segregation in schools is unconstitutional, a violation of the Equal Protection Clause in the 14th Amendment. Separate but equal is not equal at all.

[00:00:46] Nine thousand negroes met together with no problem at all and discussed segregation and the ending of segregation. And that was in Mississippi.

**Hannah McCarthy:** [00:00:56] Three years later, a group of nine black students formally enrolled in an all white school in Little Rock, Arkansas.

**Nick Capodice:** [00:01:02] The Little Rock Nine.

**Hannah McCarthy:** [00:01:03] The Little Rock Nine.

**Archival:** [00:01:04] Units of the National Guard have been and are now being mobilized.

**Hannah McCarthy:** [00:01:12] And Governor Orval Faubus responded with military force.

**Archival:** [00:01:16] Advance units are already on duty on the grounds of Central High School.

**Hannah McCarthy:** [00:01:23] A mob of screaming white protesters lined the path as the nine students approached Central High School.

[00:01:28] They never did make it inside. The Arkansas National Guard, under orders from the governor, barred their entry.

**Archival:** [00:01:38] Then you see it as a state-federal conflict of authority.

[00:01:43] Oh, I don't think there's a question about that.

**Lisa Mannheim:** [00:01:44] This was clearly unconstitutional based on the Supreme Court's decision. But the states nevertheless argued that they did not need to be, in a sense, bound by the U.S. Supreme Court's decision. They disagreed with it. They said we don't we don't need to follow it.

**Hannah McCarthy:** [00:01:59] This is Lisa Mannheim. She's an associate professor of law at the University of Washington School of Law. So back in Arkansas in 1957, the governor tries to forcibly prevent enforcement of federal law.

**Lisa Mannheim:** [00:02:11] In response, the president, who at the time was President Eisenhower, sent in federal troops to escort these students into the state run school. So that would be an example of state government refusing to comply with federal law. And in response, the federal government here, both the court which concluded that the Arkansas was incorrect to think it had the power to do this, as well as the executive branch, the president here pushing back against the state in the sense forcing the state to comply with federal law.

**Hannah McCarthy:** [00:02:42] Eisenhower deputized as the National Guard to take it out of the governor's hands. And for the rest of the year, there is a military presence at the school enforcing the federal integration law.

**Nick Capodice:** [00:02:54] So Arkansas is forced to comply with desegregation.

**Hannah McCarthy:** [00:02:58] Actually, the events at Central High School were just the beginning before desegregation was going to happen in Arkansas.

[00:03:05] There was going to be a dance.

**Nick Capodice:** [00:03:06] What kind of dance?

**Hannah McCarthy:** [00:03:07] A dance of state and federal government in a constant swirl of conflict, negotiation and defiance. A dance otherwise known as federalism. And that is the subject of our show today. One big government and the 50 little governments that comprise it. I'm Hannah McCarthy.

**Nick Capodice:** [00:03:28] And I'm the Nick Capodice.

[00:03:29] And this is the Civics 101 starter kit on the delicate balance that keeps -- or tries to keep -- American democracy in order.

**Lisa Mannheim:** [00:03:37] The United States is a federation. And what that means is that we don't only have a national government. We also have a number of governments that operate, in a sense, underneath the federal government or alongside the federal government in. In the United States, this refers to the 50 separate state governments that exist along with the federal government. And it's important to understand that these state governments are their own independent governments. They are not just subsections of the federal government.

**Hannah McCarthy:** [00:04:11] Back in Arkansas in the 50s, Eisenhower sends the troops in and says, "waltz."

[00:04:18] But Governor Faubus is like, no way. You can't make me. Tango.

[00:04:27] Arkansas requests a delay on desegregation from the federal court system and they get it. But then the NAACP petitions the Supreme Court for an emergency overturn, Arkansas's case goes back to the federal courts. Governor Faubus won't budge. He calls an emergency session of the Arkansas General Assembly to consider 16 bills to forestall desegregation. The Supreme Court meets and orders immediate integration of Central High. Arkansas passes the segregation bills and closes the Little Rock High School system. For the next year, there is no integration in Little Rock high schools because there are no Little Rock high schools.

**Nick Capodice:** [00:05:32] Hannah, correct me if I'm wrong, but this is totally illegal, isn't it?

**Hannah McCarthy:** [00:05:36] Oh, yeah, it's totally illegal.

**Nick Capodice:** [00:05:38] But it happened.

**Hannah McCarthy:** [00:05:39] But it happened.

**Nick Capodice:** [00:05:40] How is it possible that it happened?

**Lisa Mannheim:** [00:05:42] If you think about a government as having its own independence, as working on its own.

[00:05:49] But at the same time, having to share a space, in a sense with a separate government, you are.

[00:05:58] Trying to work out a system whereby two sovereigns are somehow coexisting.

**Nick Capodice:** [00:06:11] Two sovereigns at once. It just seems impossible. It's hard for me to wrap my mind around the idea that two governments are in charge. We look at Arkansas. It doesn't seem like it could possibly work.

**Lisa Mannheim:** [00:06:22] It's very complicated. And there are three overarching principles that are helpful to keep in mind when it comes to this complicated idea of federalism.

**Hannah McCarthy:** [00:06:31] Principle number one.

**Lisa Mannheim:** [00:06:32] The first is that in the United States, the Constitution makes clear that the federal law wins if there's a conflict between the federal law and some sort of state law. If, for example, you think about a simple illustration, something like imagine there's a federal law that says if you package a certain product, the packaging needs to be blue. By contrast, you have a state law that purports to regulate the same product. And it says, no, if you package this sort of product. The packaging has to be red. In that case, it is impossible for a company to comply with both federal law and state law. There's a conflict. And as a result, the federal law controls. And the state law is no longer valid.

**Hannah McCarthy:** [00:07:13] Federal beats state. This is called the supremacy clause. The Constitution and federal law are the supreme law of the land.

**Hannah McCarthy:** [00:07:23] Principle number two?

**Lisa Mannheim:** [00:07:24] State governments are profoundly important in our country. And this is particularly true in areas where the federal government hasn't regulated very much, or maybe where the constitution doesn't allow the federal government to regulate very much or even in areas where the states just think it's very important to do some sort of lawmaking places where there in particular there's a lot of state law rather than federal law are in areas like family law relating to marriage and divorce and the like, criminal law, property law, as well as laws relating to contracts.

**Hannah McCarthy:** [00:07:58] States are your primary lawmakers. Where you live in this country matters because states govern the bulk of your life. So even though the federal government is the top law of the land, state laws are closer to you and there are more of them. Quantity over clout. All right.

[00:08:14] Principle number three.

**Lisa Mannheim:** [00:08:16] The last principle that is really helpful to keep in mind when it comes to federalism is that because state governments are independent of the federal government, they not only are, as a practical matter, able to push back from against the pie federal government if they so choose. They are also constitutionally protected in that sort of resistance. So if a state law disagrees with federal policy with respect to something like criminal law or immigration related law, the states retain a constitutionally protected power to, in a sense, refuse to cooperate with the federal government. By contrast, if the states agree with the federal law, they can voluntarily choose to cooperate. The states retain the ability to make that decision. Now there's limits to exactly how a state is able to do this. But the basic principle is embedded in the constitutional structure.

**Hannah McCarthy:** [00:09:12] For one thing, if state law contradicts federal law, the federal government can choose to enforce the supreme law of the land. Can being the operative word, it often opts not to. And then we've got the 10th Amendment. That's the one that says that the federal government only has the powers that are actually listed in the Constitution. All other powers are reserved for the state or the people to decide.

**Nick Capodice:** [00:09:42] Right. The 10th Amendment sort of follows the Ninth Amendment to address the concerns that Hamilton had and Madison had about your rights being constrained by the Constitution. The night says your rights are not limited to what's in the Constitution, and the tenth says whatever is not addressed here is left up to the states.

**Dave Robertson:** [00:09:57] Remember, the people who wrote the Constitution were first and foremost politicians. They weren't philosophers, they weren't saints. They certainly weren't political scientists, but they knew a lot about those things. What they were interested in was making sure that a new government could protect their states and accomplish national purposes. But the same time, not destroy the vital interests of their states.

**Hannah McCarthy:** [00:10:25] This is Dave Robertson.

**Dave Robertson:** [00:10:26] Chair of the Political Science Department at the University of Missouri, St. Lewis.

**Hannah McCarthy:** [00:10:33] Dave tells this story about a group of Russians visiting the university. The visitors are all interested in civics, and Dave is trying to explain how the U.S. government works through this principle of federalism.

**Dave Robertson:** [00:10:43] I started by showing them what they can see every day there in the United States. I showed them a variety of license plates because just about any place you'd go in the world, you have very boring license plates and they look similar to license plates in other countries. I think of Europe along those lines. Well, in the United States, if somebody is driving you around, you can see all of these fancy look. License plates of different colors, different sayings and different kinds of designs. And I try to explain if you want to understand federalism, you have to understand that states can do a whole lot of things differently that are not done differently and lots of other countries.

**Hannah McCarthy:** [00:11:30] Dave points out to his Russian visitors that the 50 disparate chunks of our country are called states like independent, self-governing mini countries inside of a bigger country. And the framers had just come through the Revolutionary War where they broke off from Britain, this big, powerful government. Just try and tell some of these scrappy little states that you're going to impose a big, strong federal government on them. Some states were going to benefit. Others, though, would get short shrift it. Alexander Hamilton, for example, wanted a strong federal government because it would benefit his state, New York.

**Dave Robertson:** [00:12:03] He wanted lots of tools for the federal government to control trade and to help nurture economic development and to do other kinds of things that would build manufacturing in the United States. Madison and Jefferson represented Virginia, which was a state that made a lot of money by growing crops and shipping them overseas. Trade restrictions, tariffs. The development of a manufacturing economy would tend to benefit states like New York. Hamilton states. And it would disadvantage a state like Virginia and other southern states that grow crops for export to Europe and to elsewhere. Those economic differences, along with philosophical differences about which level of government exercise, which powers really help drive a wedge between Madison and Hamilton and help spur the creation of national political parties.

**Nick Capodice:** [00:13:09] Ok, so there's that north versus the south from the get go.

[00:13:13] And we all know what happened next.

**Dave Robertson:** [00:13:14] Because states decided that they could get out of the union. And that was contested, wasn't settled by a court. It wasn't settled by a political compromise. It was settled by bloodshed, lots of bloodshed and incredibly brutal war in which one side surrendered and surrendered that right to leave the union forever, at least as long as our constitution stays in effect.

**Hannah McCarthy:** [00:13:41] While the South was in secession, the Republicans, led by Lincoln, leveraged federal power to help industry, commerce, even education. The tendrils of strong government eventually led to a nationalized railroad system and telegraph system. The economy boomed. An industry ruled for years. But as farms dwindled, factories rose and the population exploded. You also started to see extreme poverty, and so state and federal government needed to start working together.

**Dave Robertson:** [00:14:10] The result was a progressive movement that aimed to help create partnerships between the national government, whose powers were limited by the Supreme Court and the states. So in that period, you saw lots of federal efforts to try to connect with the states, to build highways, to extend vocational education, even to extend for a time help for mothers and children. Almost any innovation you can think of that is now a federal program. Whether you're talking about welfare programs, you're talking about civil rights programs or talking about environmental programs. All of those things have been innovated often at the local level and cities then spreading to the states and finally being adopted by the federal government. That's part of the story of what happened in the 1960s and 70s with environmental policy.

**Nick Capodice:** [00:15:09] Wait, almost any federal program starts at the state level?

[00:15:13] What about something like Social Security?

**Dave Robertson:** [00:15:14] Aid to mothers with children? The stated innovated those things. Even unemployment compensation is a federal state program because the states of Ohio and Wisconsin had pioneered those before the federal government got involved.

**Nick Capodice:** [00:15:30] So what if the federal government kicks off a program that was like litmus tested in Iowa and Kansas says, no, heck no, we don't need a national speed limit.

**Hannah McCarthy:** [00:15:40] Well, for one thing, let's say the federal government is providing money to replace all the speed limit signs in your state. Kansas can be like we don't need your filthy money.

**Dave Robertson:** [00:15:49] Yes, there's lots of instances of that. There are states that reject the money because they don't want to deal with the regulations. But but that doesn't last long because there's often a provision that allows the federal government to come in and begin to implement the rules of if the state. Doesn't decide to join in. That happened with the Clean Air Act. The state of Arizona didn't join in for a good number of years, and it has happened with a lot of more conservative states and the Affordable Care Act.

**Hannah McCarthy:** [00:16:27] And Dave says, even in cases of federal law, the bulk of the implementation of those laws tends to fall to the states.

**Dave Robertson:** [00:16:35] We think about all of those federal regulations that the EPA issues as being federal rules, and they are. But in case after case, the states actually administer those laws so that the states regulate about 90 percent of most of the regulations of the environment that the federal government issues. The states do things differently and they have a lot of power to do important things differently. It's not that in theory, federalism matters. It's in practice. States rule most of our lives in many everyday ways, from birth to death.

**Archival:** [00:17:20] New Yorkers won't have to choose between just two gender categories and a birth certificate.

[00:17:24] Yesterday asked the Florida House passed a bill the Senate had already passed that creates the state's 5th school voucher program. They're introduced at the Ohio State House. Could mean teenagers have to wait until they are 16 and a half years old to get their driver's Arkansas.

[00:17:38] Lawmakers could limit who would benefit from the minimum wage increase. That vote was first time.

[00:17:44] Louisiana has a minimum age for marriage.

[00:17:47] 60 year old Vermont physician assisted dying legislation approved by the legislature. The law making the provision permanent.

**Nick Capodice:** [00:18:05] I keep coming back in my mind to the Little Rock Nine. They were forced out of the school and then the school was shut down by illegal measures. How did Arkansas get away with it?

**Hannah McCarthy:** [00:18:18] In the end, they didn't. Federal law ended up beating state law as it's supposed to. In 1959, a federal court struck down Governor Faubus as school closing law. And that August, Little Rock's white schools opened with black students in attendance. The state public school system was fully integrated by 1972.

**Nick Capodice:** [00:18:36] But that is so long.

[00:18:39] That's what 15 years to implement a federal law and one of the most significant federal laws our country has ever witnessed. Separate but equal is not equal.

[00:18:50] I feel I feel Hannah to an extent.

[00:18:54] If it weren't for this given take between the state and the federal where obstinate racism was given its say on the state level, those schools would have integrated a lot sooner. I mean, is federalism actually good for American democracy?

**Nick Capodice:** [00:19:08] It's essential for democracy to have a competing party that is protected from eradication and. In the United States, state governments help provide a place where opponents of the incumbent administration can thrive, where they can really build up a coalition of opposition to the people in power. Sometimes, you know, we often being partisans don't like that. Some Democrats didn't like opposition from conservative states to Barack Obama. Some conservatives now don't like opposition to Donald Trump. But in the end, we have to have a system where a president doesn't have the power to eliminate his opponents. There is a great photograph from 2012 where Barack Obama is on a tarmac in Arizona and the diminutive governor of Arizona, a woman, is lecturing him and pointing her finger at his chest. She is opposing him. She's criticizing him for all kinds of things, including Obamacare. But as I tell visitors from other countries like Russia, Barack Obama cannot fire her. He can't get rid of the legislature in the state of Arizona. He can't eradicate that opposition. And if there's one thing that democracy needs that our republic needs, its opposition to, anybody who's in power.

**Nick Capodice:** [00:20:51] It feels like federalism is like the firewall of our democracy.

[00:20:56] It is ambiguous and frustrating, and imperfect. But it helps keep this bird up in the air.

**Hannah McCarthy:** [00:21:04] Yeah, I think even though so many of us bristle at it. It's essential that we are a country that is not of one mind. And sometimes that's really ugly. But so long as we're allowed not only to disagree, but disagree to the point of combating laws and taking those laws to court and even finding our own way to use those laws to govern ourselves. That decentralized power is what makes this country so unusual. It's a mess. It's chaotic. But that's the way it's supposed to work.

**Archival:** [00:21:49] And I've enjoyed weed since Vietnam. And I think it's time for that whole United States to federally to legalize it.

[00:22:02] When did it become unconstitutional to exclude homosexual couples from marriage?

[00:22:09] The States Living Infants Fairness and Equality or Life Act bans all abortions after a fetal heartbeat is detected so far.

[00:22:17] Eight states and Washington, D.C. have legalized the drug for recreational use.

[00:22:21] The unborn deserves a up and down vote right yet to live.

[00:22:25] In Salt Lake City, yet another victory for gay rights advocates across the nation.

[00:22:30] Marijuana has long been classified as a Schedule 1 drug. That's the same classification for drugs such as heroin.

[00:22:37] A lot of them are pretty obviously contradictory to Roe v. Wade and other Supreme Court precedents on abortion.

[00:22:42] They say of California now wants to allow same sex marriage. They can repeal that constitutional amendment.

[00:22:48] My body, my choice, her body, her choice.

[00:22:54] I'm just I'm just excited to get home, get out of the cold and finally get to use legally for the first time ever.

**Hannah McCarthy:** [00:23:15] Civics 101 was produced this week by me. Hannah McCarthy with you, Nick Capodice Our staff includes Jackie Fulton and Ben Henry.

**Nick Capodice:** [00:23:21] Erika Janik is our executive producer and Supreme Law of the Land. Maureen McMurray is a federation unto herself.

**Hannah McCarthy:** [00:23:28] Music in this episode by Chris Zabriskie, Metre. Cooper Cannell and Bio Unit.

**Nick Capodice:** [00:23:32] Hannah and I have so much to share from our research into episodes that doesn't make it into the episode.

[00:23:37] But lucky enough, we have a newsletter where we can put all that good stuff: civics101podcast.org/extracredit.

**Hannah McCarthy:** [00:23:40] Civics 101 is supported in part by the Corporation for Public Broadcasting and is a production of NHPR, New Hampshire Public Radio.