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**Civics 101**

**Life Stages: School**

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**Nick Capodice** [00:00:07] Do you like middle school?

**Hannah McCarthy** [00:00:10] I loved middle school. That's why I really came into my own in theater. I did great in middle school. How about you, Nick?

**Nick Capodice** [00:00:18] This was so...this was like the apex of my mediocrity as a human. Like I had a tough time in middle school.

**Hannah McCarthy** [00:00:27] Mediocrity, what does that even mean.

**Nick Capodice** [00:00:30] I was just like this was like when I was the most awkward. Had no idea who I was or what I was doing.

**Hannah McCarthy** [00:00:37] But that's every human being on the face of the planet!

**Nick Capodice** [00:01:16] I'm Nick Capodice

**Hannah McCarthy** [00:01:17] And I'm Hannah McCarthy.

**Nick Capodice** [00:01:19] This is Civics 101, our Life Stages series. And today we're going to school. If I sounded a little pathetic there it's because Hannah and I weren't just visiting a random middle school, we were visiting my old school. Merrimack Valley Middle School. Which was a great school! I played logo. I watched all the president's men. But it had been 25 years and it smelled exactly the same and all that stuff just came flooding back.

**Hannah McCarthy** [00:01:43] I wonder can you just opt out. Do you even have to go to school.

**Dan Cassino** [00:01:49] No.

**Hannah McCarthy** [00:01:51] I know that no.

**Nick Capodice** [00:01:52] Yeah. That's Dan Cassino political science professor at Fairleigh Dickinson University.

**Dan Cassino** [00:01:56] And this actually kind of weird. This is one of those ways in which America is exceptional, that we're different than other parts of the world. So if you were in France you wouldn't have a choice about whether or not your kid was going to public school. Everyone goes to school. You don't have a choice. If you want send your kid to church afterwards, great. Have a blast. But you have to send your kid to public school. Everyone has to get an education. In the United States, we've actually relaxed that. That was the law in most states up until the 1960s. What happened was the Amish.

**SCOTUS archival** [00:02:26] The Amish are in a fortunate position respecting the schooling which they conduct for children beyond the 8th grade. It is learning by doing. An ideal system.

**Dan Cassino** [00:02:36] The Amish do send their kids to school but they typically take their kids out of school around eighth grade. The state of Wisconsin started going to Amish families in fining them for truancy saying your kid is not showing up to school you're going to get a fine for truancy and your kid has to go to school whether you like it or not because everyone has to go to school. The Amish then sued, saying this was an infringement on their religious rights. Saying look we don't want our kids to learn about all the sinful stuff you learn in 10th grade I don't know. It's not really in the curriculum but there were, they didn't want the kids exposed to what was going on in high school.

**SCOTUS archival** [00:03:08] The lack in modern education of a clear connection between learning and doing is responsible for much of the student actions we have today.

**Nick Capodice** [00:03:17] This is from the argument in the Supreme Court case Wisconsin v. Yoder, the 1972 decision of which set the precedent that as long as you're receiving a "adequate education" you do not have to go to public school. This is what allows for private schools and home schooling in every state.

**Hannah McCarthy** [00:03:35] What is an adequate education?

**Nick Capodice** [00:03:38] Well each state decides what that word adequate means. Because when it comes to federal laws about schools it is slim pickings.

**Campbell Scribner** [00:03:47] So constitutionally of course the American Constitution does not mention education at all. There's no mention of schools in it.

**Nick Capodice** [00:03:54] This is Campbell Scribner. He's a professor at the College of Education at the University of Maryland.

**Campbell Scribner** [00:03:58] And therefore traditionally the sort of governing principle has been the 10th Amendment which is the amendment that basically says any rights or responsibilities not specifically mentioned in the Constitution revert to the states. And so education usually is conceived as a state responsibility.

**Nick Capodice** [00:04:16] Quick historical diversion here Hannah

**Hannah McCarthy** [00:04:18] Are you going to use the horse and carriage sound effect again.

**Nick Capodice** [00:04:22] I'm just one man Hannah.

**Nick Capodice** [00:04:27] Cast your mind back to the 20s. Andrew Jackson is elected president in 1829. And at that time in most states you didn't just have to be a white man to vote you had to be a white man who owned property. But the Jacksonians push for the "common man" to be part of our democracy. And by 1850 the landowning requirement is dropped nationally. So now there's this grave concern. Can we trust the common man to vote well if he isn't educated? And we have education advocates like Horace Mann who created the first public school system in Massachusetts that is a model for other New England states to copy. But it is radically different in different parts of the country.

**Hannah McCarthy** [00:05:06] So it sounds like the federal government had very little influence when it came to schools.

**Nick Capodice** [00:05:13] And it does today as well. Most of the decisions about what's taught and funding for schools all happens on a state and local level. Most funding for schools comes from property taxes. But there are a few ways the federal government gets involved.

**Dan Cassino** [00:05:26] It's like road laws. Every state can do whatever it wants with those roads and the federal government has nothing to do with that. But wait, you're saying. The federal government has lots to do with roads. They set the speed limit. They're doing all sorts of stuff with the roads. And the answer is yes. But they're not allowed to do it, they have to get the states to voluntarily agree to let the federal government come in and do that, and they do that by withholding funding. So in the 1980s if you wanted funding for your highways you had to reduce your speed limit and you had to increase your drinking age to 21. There are a couple of states that held out; do Arizona didn't increase the drinking age of 21 till later than everyone else. New Hampshire didn't either. But guess what, eventually they folded because they wanted that sweet sweet federal money. The same holds true for schools. The federal government can't actually tell the schools what to do. What it can do is tie school funding to certain programs and tell the states if you want this money you have to do X Y and Z.

**Hannah McCarthy** [00:06:19] What kind of programs is he talking about.

**Nick Capodice** [00:06:22] This is stuff like sex education and the federal government defines rules about what gets taught. And it changes under different administrations. So for example, programs that promoted abstinence only sex education got billions of dollars over the last 20 years and then starting in 08 that shifted to programs about preventing pregnancy and STIs.And this is how it works for things like federal funding for afterschool programs or even school lunch.

**Dan Cassino** [00:06:48] So the government says we're going to give you this money for school lunch, with the proviso that when you get this money you have to turn around and give free or reduced cost lunch to a lot of kids. Now how do we pass that through Congress? It turns out that the school lunch program is mostly a subsidy for American farmers. So when the price of crops gets too low farmers go out of business. So the Federal Government has price guarantees; the price gets too low, the federal government comes in and buys a bunch that crop. So what do they do with that crop? Well part of it gets shipped overseas. That's where food aid comes from. And the school lunch program we buy up all this extra corn and soybeans all these extra food products and we ship them off to schools so schools get all of that food for free as long as they agree to go ahead and give some of this food to kids for nothing.

**Nick Capodice** [00:07:33] All that said the federal government accounts for under 10 percent of funding for schools.

**Hannah McCarthy** [00:07:37] What about things like when kids have to go to school? You know like the start time, how many days a year, vacation all that stuff.

**Nick Capodice** [00:07:45] All right so school start time is chosen by your local school board and over the last 20 years there has been a concerted movement to get schools to start later in the day since young minds need sleep. But do you know why we have summer vacatio, Hannah?

**Hannah McCarthy** [00:07:57] I have always been told that it's because families needed help farming in the summer.

**Nick Capodice** [00:08:02] I was taught the same thing. But it turns out that is one of the Great Education Myths. Spring and fall are planting and harvest time respectively and the summer vacation starts due to wealthy families and cities in the late 1800's. Schools in the city were ruthlessly hot in these days before air conditioning, and well heeled families would book it to the country for a few months, leaving the poorest students to swelter in July and August. The summer vacation was created so everyone goes to school the same amount of time. Today in the U.S. there are about 4 percent of schools that do year-round schooling.

**Hannah McCarthy** [00:08:40] But speaking of kids helping out with the family farm. When did we start making kids go to school?

**Adam Laats** [00:08:48] Well say it once and then I'll try not to keep repeating it but for school stuff, the main question is who you are and where you lived.

**Nick Capodice** [00:08:57] This is Adam Laats. He is professor of education at SUNY Binghamton.

**Adam Laats** [00:09:01] You know so if you were a sort of affluent kid in the Northeast you went to school. And from fairly early on you know and in places like Massachusetts and Connecticut it's as soon as the English people land they establish pretty formal schools like Harvard for example, and then village schools where you know literacy was pretty common in terms of you know teaching kids formally to read, and then sending a few kids on to college although the college would be very different from what we would expect.

**Hannah McCarthy** [00:09:39] Is this exclusively men that Adam is referencing here?

**Nick Capodice** [00:09:44] I incorrectly assumed it was. I thought way more men went to school than women in early America.

**Adam Laats** [00:09:49] By and large girls in America have always gone to more school than boys. You'd think that because of the you know the unfair treatment of girls and women that they would be also deprived of school as they've been deprived of the vote you know in other other basic rights. But with school that's never been the case. Again I'm speaking population-wise, not specifics. And they've always done way better at school by every measure. Girls have always been measured better at school than boys. And that's true across ethnic groups so Latin-x African-American White Asian and every group girls have always done better and done more formal school than boys.

**Campbell Scribner** [00:10:34] But for the most part education was sort of dropped in and you dropped out.

**Nick Capodice** [00:10:37] This is Campbell Scribner again.

**Campbell Scribner** [00:10:39] You know there was not a K-12 system at all. There was no public funding. There was basically no oversight. And it was sort of that people would attend as long as they wanted and they would get the skills that they wanted. And then they would go off and work. And the virtue of that I guess was that people weren't compelled to do things that they didn't want to do, right? And so the students perhaps were a little bit more motivated in that sense. And for those of us who sort of felt like high school was a huge waste of four years of our lives, kids could actually get right into the workforce, right. There was no there was no compulsory attendance.

**Nick Capodice** [00:11:14] Massachusetts had mandatory attendance laws in 1850. But Campbell told me that nobody enforced those until the turn of the 20th century.

**Campbell Scribner** [00:11:21] Child labor of course became unpopular at the end of the 19th century and people wanted to get kids out of coal mines and out of factories because they were getting maimed. But really they lacked the ability to really enforce those laws until the first decades of the 20th century.

**Nick Capodice** [00:11:36] But during the Great Depression kids aren't working because there are so few jobs to go around. And that is when things start to shift.

**Campbell Scribner** [00:11:42] It's only by the 1930s that high school attendance becomes more or less universal. Until then you know up through the 19-teens only 10 percent of kids were even in high school and only 4 percent graduated. So for most of us we don't have to go back too far in our family history to find the first high school graduate.

**Adam Laats** [00:12:02] But when it comes to say everybody the other huge dividing line is your race and ethnicity. For African-Americans. Not only were they, if they were enslaved, not only were they not schooled before the Civil War and Emancipation but as you're probably aware starting in the 1740s there were more and more laws banning, forbidding by threat of legal punishment formal schooling for for African-Americans, for enslaved people.

**Campbell Scribner** [00:12:32] It's always been fraught frankly. And I'll include Native Americans in that in that same category although there are some differences. Basically since the beginning you've had racial progressives of various stripes, originally people who would want to sort of abolish slavery and then re colonize former slaves back to Africa that was seen as the progressive position up through the 1830s and eventually just straight up abolitionists who want to end slavery and have a multiracial society. But both of these groups do see education as sort of uplifting what they see as a benighted race in African-Americans and slaves. And the hope is that you could eventually again sort of make citizens. The problem is that even the best of these reformers were awfully, I mean in my language you can hear it, they were awfully paternalistic in how they approached it right. They did assume that there was sort of racial differences, most of them. And that African-Americans were either incapable of learning or at least delayed.

**Nick Capodice** [00:13:36] Which Campbell pointed out, we shouldn't even have to say it, is complete nonsense. But when African-Americans are finally given access to education it doesn't grant them the same benefits as it does to whites.

**Campbell Scribner** [00:13:50] You find all of these testimonies where they basically write into newspapers they speak it at meetings and they say it's a sham. I've done everything I'm supposed to do and white owners still won't hire me for a job. I still get disrespected. I still get disenfranchised. And so that sort of complaint which we hear echoes of it today. Of course it was there from the very beginning. And while schools have always sort of wrestled with inclusion or exclusion even in places where African-American kids were included and the possibility of schooling, a lot of times they didn't reap the results.

**Nick Capodice** [00:14:28] Coming up how students and teachers constitutional rights change when they cross the schoolhouse gate.

**Hannah McCarthy** [00:14:35] Nick you've been saying that federal laws are few and far between when it comes to school. But aren't there some things that public school teachers cannot teach.

**Nick Capodice** [00:14:45] What are you talking about exactly.

**Hannah McCarthy** [00:14:46] I'm talking about you know like teaching religion and teaching like passages from the Bible you know because of the whole separation of church and state thing. Right?

**Nick Capodice** [00:14:55] Right there is lots of Supreme Court precedent about that separation in public schools. But what happens in the classrooms themselves is an entirely different matter. For example I asked Adam what are the rules when it comes to teaching creationism and evolution in American schools.

**Adam Laats** [00:15:09] Yeah I can do it in three words. No one knows. The Supreme Court doesn't know, your local principal doesn't know, the kids in school have no idea. My, when my daughter was in fourth grade her new best friend just transferred from Catholic school into her public school and were walking home and I was like how is school, you know how is your new school. She was like, it was OK. But at one point someone sneezed? And I said bless you? And then I was like sorry. I don't know if you can say bless you in a public school.

**Adam Laats** [00:15:43] So I think when it comes to what the law is ever since the Scopes Trial of 1925 and before no one knows what you can do with religion in schools.

**Spencer Tracy** [00:15:54] In a child's power to master the multiplication table there is more sanctity than your shouted amens and holy holies and hosannahs.

**Nick Capodice** [00:16:05] State of Tennessee v. John Thomas Scopes often referred to as the Scopes Monkey Trial, wonderfully depicted in the 1960 classic Inherit the Wind. It was a case about whether a Tennessee Act that forbade teaching evolution was unconstitutional. And it started this conversation nationally but precedent wasn't set until the 1960s.

**Adam Laats** [00:16:25] So for example, can a science teacher teach creationism? Well we know that by by Supreme Court precedent and other court precedents there's a really clear answer and that answer is a resounding no. But we also know they surveyed a ton of high school biology teachers and very few of them teach only evolution. Sixty percent of them say they sort of mix it up, 13 or 14 percent teach only creationism. So the Supreme Court is clear. But what goes on in classrooms is anything but clear when it comes to creationism.

**Hannah McCarthy** [00:16:59] What about students, their rights? Is it any clearer when it comes to them?

**Nick Capodice** [00:17:04] You and I have done several shows about First Amendment rights in schools. But we should do in the future about Fourth Amendment rights in schools, like can a teacher look in your locker or tell you to unlock your phone. The quickest summary of that is I can't go to your house Hannah and look in your closet. But a teacher can ask you to open your locker. The Supreme Court has ruled that teachers maintaining order outweighs a student's right to privacy at school if they have reasonable grounds.

**Mary Beth Tinker** [00:17:30] As I like to explain to students all of the rights of the Bill of Rights and in our constitution have limitations.

**Hannah McCarthy** [00:17:38] Who is that.

**Nick Capodice** [00:17:39] That is a personal hero is who that is.

**Mary Beth Tinker** [00:17:41] My name is Mary Beth Tinker. And when I was 13 years old I became a plaintiff in what became aU.S. Supreme Court ruling for students rights called Tinker vs. Des Moines.

**Hannah McCarthy** [00:17:54] The Mary Beth Tinker?

**SCOTUS archival** [00:17:55] Number 21, John Tinker and Mary Beth Tinker, minors, et cetera et al, petitioners vs Des Moines community School District et al.

**Nick Capodice** [00:18:08] If any of you were unfamiliar with the Supreme Court case Tinker v. Des Moines from 1969. It was the topic of Hannah and my first episode together, which we called IRL1. Mary Beth Tinker and her brother John and others were suspended for wearing black armbands to mourn the dead on both sides of the Vietnam War and their case went to the Supreme Court. The Tinkers won. And in the opinion of Justice Abe Fortas he wrote "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." And today Mary Beth travels the country advocating for students rights.

**Mary Beth Tinker** [00:18:45] Young people have unique qualities. They have incredible creativity. They have energy. They're willing to take risk. And it's no wonder that they've been in the lead of movements through history to stand up for justice and for equality and all of our democratic values. Because another great quality of young people is that they have a sense of fairness. And adults are too quick to tell kids you know that life's not fair and get used to it. But I always tell kids, don't get used to it. Life should be fair. And when you see something that's not fair you can use your first amendment rights; the right to free speech free press to assemble the right to petition the right to have your own beliefs your own religion to do something about things that you see are not fair and to take action.

**Nick Capodice** [00:19:37] Even a class action, right now students in Rhode Island are suing their state for not providing them an adequate civics education. Their argument is they are not being provided the opportunity to be prepared voters, jurors, participants in the political system. Hannah in your birth episode you talked about how children and students aren't recognized constitutionally. But the Tinker ruling changes that.

**Mary Beth Tinker** [00:19:59] One of my favorite parts of the ruling is that students are persons under our Constitution with the rights and responsibilities of persons. Abe Fortas writing for the majority also said that schools should not be enclaves of totalitarianism, and that there might be some discomfort at times when people express their First Amendment rights or use their rights. But that's a discomfort that we are willing to pay in our democracy.

**Nick Capodice** [00:20:25] There are some exceptions though under the First Amendment.

**Mary Beth Tinker** [00:20:28] Number one, substantial disruption of school. You could have your first amendment rights and free speech but you could not substantially disrupt school in the process of using those rights. And number two impinging on the rights of others would not be covered by the First Amendment rights of students. Now whatever that means and that's been debated ever since.

**Nick Capodice** [00:20:55] When we were walking through Merrimack Valley Middle School I talked to principal Kara Lamontagne about speech restrictions. And it started with the dress code.

**Kara Lamontagne** [00:21:04] Morning Jake. Don't forget to take that hood off when you're ready...

**Nick Capodice** [00:21:04] Are you not allowed to wear hoods? Why not?

**Kara Lamontagne** [00:21:19] Just to be able to see faces, to be able to make eye contact with students. Kind of help us read their body language little better. When they cover up and cover their face. You know it's hard to have any of that.

**Nick Capodice** [00:21:29] And their code is pretty consistent with schools that I asked across the country. No hoods or hats, no clothing with profanity, no clothing that advocates drug or alcohol use.

**Kara Lamontagne** [00:21:41] And then there are some limitations around. I guess skin visibility. Just to help students be respectful of their bodies as they're trying to figure things out as middle schoolers. You know so we do have like some limitations around how shorts have to be a certain lengh, your skirts have to be a certain length, we don't want to see undergarments and that's just not the place for that. But every place I've worked the dress code for middle school is very similar. And you know it's really just about having an appropriate non-disruptive environment. Sometimes the students don't understand that, you know, how come my skirt being too short is disruptive to the learning environment. But it can be and it's hard to explain that to them. The students do talk about, you're sexualizing us. That's the word that I hear often from from the girls.

**Hannah McCarthy** [00:22:32] It's interesting that these young women use the words you know you're sexualizing me I would never have thought to do that. It just speaks to how much the culture has shifted and I guess kind of empowered young women to use these terms.

**Kara Lamontagne** [00:22:46] And I would agree cause this is my 20th year as an administrator I was an assistant principal for a long time and did the discipline. Ninety five percent of it. And I didn't used to hear that language. It's hard. I mean because I understand that perspective and I I really respect the students that I work with. But we have we have this rule for a reason it's just a hard one for them to grasp.

**Nick Capodice** [00:23:08] And if you note, Kara used the word disruptive which is the exact word used in that tinker ruling.

**Hannah McCarthy** [00:23:14] What about other kinds of disruption. I can think of some politically charged statements on a shirt or a hat that could get students pretty riled up.

**Nick Capodice** [00:23:23] You said it.

**News Report** [00:23:23] High school student in Oregon who was suspended for wearing a pro Trump T-shirt is getting the last laugh and a lot of money.

**Nick Capodice** [00:23:29] In 2018 a student was suspended for refusing to remove a pro border wall T-shirt. And the courts ruled it unconstitutional and the school had to pay him twenty five thousand dollars and write him a letter of apology. This is a juggling act creating a respectful environment, without disruption, that enforces student protection, and their rights. And if there's a takeaway from all of this it's that this juggling act is very difficult.

**Campbell Scribner** [00:23:59] One of the classic problems with American schools is that because we live in a liberal democracy, a free society, it puts a lot of weight on education. We say that we have a free market right and people will rise or fall based on their effort and their talents. And you know we don't have strong social programs because we basically imply that if you're poor you just didn't work hard enough or you aren't smart enough or whatever for that system to hold. We have to, we have to assume that kids do have a fair shot at the beginning, right. That we have a strong educational system that that's allowing meritocracy to thrive and allowing people to rise and fall. We obviously don't have that. I mean clearly we can see that schools pass on opportunities to rich kids, to white kids, to suburban kids, whatever, that they deny to immigrants and students of color. I think we need be more realistic with the way we expect them to do.

**Hannah McCarthy** [00:24:50] So not only are schools juggling rights but they're also bearing the weight of expectations and the flaws in our system.

**Campbell Scribner** [00:24:59] If we could all agree that schools were supposed to do one thing they could do it. If we all merely wanted the kids or students to know, you know, the three branches of government and basic civics, I'm sure that schools could teach all children that. But as it is we expect them to do that and all the other subjects. And to have a winning football team and provide health care to students and hot lunch and to you know do job training and a million other things. It's not a surprise that they're not doing them all well. And even when they do start to do one of them well it's not hard to pick another one out and sort of cherry pick where they're failing. So I think before we even propose how to improve schools as a nation we need to be much more serious with how we deliberate about their purpose and what we actually think are supposed to be doing to begin with.

**Nick Capodice** [00:25:47] Adam Laats told me that his family and friends have banned him from talking about education at the dinner table. And I said you're unbanned here, what is the thing you want America to know about our school system.

**Adam Laats** [00:25:59] Oh I got it. I got it. Sorry I'm shouting. All right. So here's a question I want everyone to ask themselves and that is do you think. And say you're walking down the street you're minding your own business. A guy jumps out of an alley and says this. Do you think American public education is in a crisis right now. What would you say. So what would you say. Do you feel like American public education writ large is in a crisis?

**Nick Capodice** [00:26:25] Do you?

**Hannah McCarthy** [00:26:26] No.

**Nick Capodice** [00:26:26] why not?

**Hannah McCarthy** [00:26:29] There are more kids entering into higher education. There are more kids being educated now than have ever been educated. I think there are difficulties but there are always difficulties, there are always controversies, but more people having access to education I say that's always a good thing. Do you think that public schools are in crisis?

**Nick Capodice** [00:26:51] I think I do.

**Hannah McCarthy** [00:26:53] Why?

**Nick Capodice** [00:26:53] Well Adam asked me the same thing. There's a school 15 minutes away from my house where they can't play basketball in the gym because it rains asbestos on the kids in the band room below. And I brought up lots of media. I brought up the Wire season four and half Nelson.

**Adam Laats** [00:27:08] There's this sense that there are these not just problems but really devastating and immediate crises. We might call it a state of emergency. Other countries are doing way better on math tests without spending as much money we're told. Teachers from L.A. to Denver to West Virginia to you name it Oklahoma are on strike. And the pictures of the the resources that they're showing from 2018 and this year are just, this is why they're winning because nobody wants kids to go to schools that are that bad. So other countries seem like they're doing better the teacher pay seems like it is not just pay but the condition of public schools seems like it's in certainly crisis state. And then we have these savage inequalities as Jonathan Kozol called them where some kids go to very high schools and five miles away in any urban district you can go to a school that feels and looks like not just a nice prison but a terrible prison. So on the one hand yes there's no doubt American schools are in a crisis. Yet on the other hand you aren't. I'm not. We are correct on both counts. American schools really are in crisis. And yet American schools, public schools are fantastic. I think the kicker is it depends who you are, where you are and most importantly who your parents are. And that it's a fundamental divide in America that is running right down the middle of our public schools.

**Hannah McCarthy** [00:28:49] It sounds like he's saying that inequality writ large is the issue in public school. If a parent can afford to live somewhere that has a great school they'll do that. And you know I'll be honest I know that my parents partially selected our hometown because they could and because they researched the school systems and found out that it had decent schools.

**Nick Capodice** [00:29:11] I did the same exact thing. Our little hypothetical American in the series so far has been born and educated. But what next? When they're gainfully employed? What do they need to know before their soul is fettered to an office stool?

**Hannah McCarthy** [00:29:28] That's next time on Civics 101.