# Posse Comitatus

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

**Hannah McCarthy:** [00:00:04] Nick, a while back, a couple of our listeners visited the station and one of them, Barbara, when she stopped by our desks. She brought up something called the Posse Comitatus Act and asked us to do an episode on it. Do you remember this?

**Nick Capodice:** [00:00:21] I do remember. And we put it on the long list of things we were going to do at Civics 101.

**Hannah McCarthy:** [00:00:26] But then, of course, the pandemic changed everything, including our schedule. Plans were shifted, things were delayed. And then earlier this month, we got an email from Barbara and it just said, "is now a good time to talk about Posse Comitatus?"

**Archival:** [00:00:44] We're going to begin with breaking news tonight out of Minneapolis, where the National Guard is being mobilized after violent protests erupted overnight over the death of George Floyd.

**Archival:** [00:00:54] The use of force against peaceful protesters in Lafayette Square by federal law enforcement backed by the [00:01:00] U.S. military's National Guard, sparked a nationwide debate about the role of the military and civil society.

[00:01:06] And Trump is threatening to deploy heavily armed soldiers to restore peace if local authorities don't act.

[00:01:12] I will deploy the United States military and quickly solve the problem for them.

[00:01:18] And the answer, Barbara, is yes. And thanks. I'm Hannah McCarthy.

**Nick Capodice:** [00:01:28] I'm Nick Capodice.

**Hannah McCarthy:** [00:01:29] And today on Civics 101 we're tackling this seemingly obscure Latin term and why it is particularly relevant these days.

**Nick Capodice:** [00:01:38] Let's get that Latin out of the way, please.

**Ashley Farmer:** [00:01:40] Directly translated from Latin, it just means power of the county. But in relation to this act, it refers to any group of armed persons meant to address lawlessness.

[00:01:50] This is Ashley Farmer.

[00:01:51] I'm an assistant professor in criminal justice sciences at Illinois State University. And my work really centers on policing, police, community [00:02:00] relations. And as part of that, I've also studied police militarization.

**Hannah McCarthy:** [00:02:03] Right. So if you hadn't already guessed the term Posse Comitatus in the context of an act of Congress has something to do with policing of a sort.

**Ashley Farmer:** [00:02:15] So the provisions most directly say that it is just not lawful to use the army of the United States as a posse comitatus or a group of armed persons for the purpose of carrying out laws. So the initial purpose of the act was just to limit the federal government's power to use the military for policing.

**Nick Capodice:** [00:02:33] All right. Got it. This is where the president comes in. He says he's going to send troops to enforce things. And people are saying, well, you can't because of this act. Right?

**Hannah McCarthy:** [00:02:43] Right. And the thing is, that is not really true. We're going to get to that in a minute. First, what is the story of the Posse Comitatus Act?

**Ashley Farmer:** [00:02:58] This actually came about [00:03:00] at the end of the reconstruction era after the Civil War. And it was really a result of the compromise of 1877, which addressed the very hotly contested presidential election of 1876 because there were allegations that federal troops had interfered with that election.

**Nick Capodice:** [00:03:19] Right. I know this story. This is the Hayes-Tilden election. Right. Samuel Tilden, a Democrat, is running against Rutherford B. Hayes, a Republican. And Tilden won the popular vote and was leading in the Electoral College. But there were a bunch of contested electoral votes and widespread allegations of voter fraud.

**Ashley Farmer:** [00:03:38] So there were disputes as to whether or not the winner was Hayes or Tilden. So a congressional commission awarded Hayes the electoral votes needed for him to win that election. But in order to do that, he needed to make some concessions. And one of those concessions was that he had to agree to withdraw federal troops from the south.

**Hannah McCarthy:** [00:03:58] Right. This is happening [00:04:00] during the reconstruction period following the Civil War. Congress had passed a series of acts on top of the reconstruction amendments to protect the civil rights of black Americans. But federal troops were needed to enforce those rights and to prevent another mass uprising of white southerners while they figured out how to reconstitute these rebel states. It should also be noted, by the way, that these troops could not prevent the continued everyday incidents of racially motivated violence against black Americans in the South. So the Hayes-Tilden election happens. Democrats, that's Tilden's party, want these troops out of there. They also think that the troops somehow influenced the election by enforcing people's rights at polling places. Hayes party. The Republicans wanted the presidency, so they made a deal.

[00:04:54] Hayes got the presidency and he pulled the troops out of the south.

**Ashley Farmer:** [00:04:59] And once he did [00:05:00] this, the reconstruction era completely collapsed. And as a result, the civil rights that blacks had been promised in the south never came about. So it was originally intended to make it difficult for federal forces to execute those criminal laws in the south, which they had been doing all throughout the Reconstruction era.

**Nick Capodice:** [00:05:18] So Congress passed the Posse Comitatus Act in response to the use of troops in the South. But it also sounds like it allowed for the environment to basically rollback all enforcement of the reconstruction amendments.

**Hannah McCarthy:** [00:05:32] Yeah, it certainly helped to make room for the Jim Crow era south. This was a period of state and local laws that enforced segregation and fostered violence and oppression toward black Americans.

**Nick Capodice:** [00:05:44] Hello, everyone. We just wanted to take a quick second to share a podcast that civics one of our listeners might enjoy. And it's about losers.

**Hannah McCarthy:** [00:05:55] The show is called Long Shots. And in it, former foreign correspondent and CNN [00:06:00] contributor Connor Powell explores eight presidential contenders, men and women whose losing campaign had a massive impact on our politics.

**Nick Capodice:** [00:06:09] These are people like Pat Robertson, whose 1988 campaign showed the way for a new Republican right or Victoria

[00:06:15] Woodhull, who ran on a free love feminist platform in '72, 1872.

**Hannah McCarthy:** [00:06:21] You can listen to longshots wherever you get your podcasts or on their Web site. LongShotspodcast.com

**Nick Capodice:** [00:06:30] Hold it. I'm also thinking of how Jim Crow laws specifically were protested and challenged sometimes by the federal government and how sometimes a Southern governor would send in the National Guard to enforce that Jim Crow law, even if it was in violation of federal civil rights law. Like with Governor Orval Faubus using the Arkansas National Guard to prevent Little Rock high school desegregation.

**Archival:** [00:06:56] National Guard troops continue to surround Central High School tomorrow morning?

**Governor Orval Faubus:** [00:07:01] Well, the troops will still be on duty tomorrow morning. [00:07:00]

**Archival:** [00:07:01] They will be.

**Nick Capodice:** [00:07:04] Isn't that a violation of Posse Comitatus?

**Ashley Farmer:** [00:07:06] No.

[00:07:08] The National Guard and the U.S. Coast Guard are not included in this unless they are drawn up by the president. And in order to do that, the president would have to use the Insurrection Act. However, if the National Guard is called up by the state governor, because technically that's you can't call them up, then it does not fall under the Posse Comitatus Act. So that's why we've seen the National Guard respond to protests most recently in states, because the governors have asked them to come. We saw this after Ferguson as well. We also saw it after standing rock with the protest against the Dakota access pipeline.

**Hannah McCarthy:** [00:07:46] I should note, the act only officially pertains to the army and the Air Force, but there are extensions in place for the Navy and the Marines and the Coast Guard and the Space Force have similar provisions. And if we think about the basics [00:08:00] of the Posse Comitatus Act right? The fact that it's meant to separate the military, a federal operation from essentially policing, a state and local operation, then we also have to ask how and if the act is meaningfully being enforced today.

**Ashley Farmer:** [00:08:18] I think that in contemporary times you can go back to the 1960s when we had a lot of racial unrest in America.

**Ashley Farmer:** [00:08:27] You had the Watts uprisings in Los Angeles, which was protesting the unequal treatment and violence at the hands of police. So very similar to things that are still happening today.

**Archival:** [00:08:38] A curfew and blockade of the entire area was imposed and lasted in excess of 48 hours. National Guard troops were billeted in schools, armories, and in the famous Hollywood Park, race track, which was a major staging area for National Guard troops.

**Ashley Farmer:** [00:08:54] And the government responded with increasing the police power. It was also during the 1960s that we saw the creation [00:09:00] of the first SWAT team. Also in Los Angeles. The SWAT team was created through consultation with military officials to learn how to deal with snipers. If you keep going through history, then up through the 70s and 80s, we of course have the war on drugs.

**Hannah McCarthy:** [00:09:14] This is a big one. And I just want to point out, it's not just that we launched something called the war on Drugs. It's the fact that we called it the war on drugs. Police engaging in a war.

**Ashley Farmer:** [00:09:30] Absolutely. That is one of the dimensions of police militarization has to do with cultural beliefs. And that includes language. How we talk about crime, the war on crime, as he mentioned, the war on drugs. So even the language that we use to talk about these crime problems is very focused and very militaristic.

**Nick Capodice:** [00:09:48] What did this consulting with the military actually practically do to the police?

**Ashley Farmer:** [00:09:55] So when you have these PPUs or police paramilitary units like SWAT teams, [00:10:00] they started to do more and more routine police work like drug raids, search warrants for drugs. And those types of things really increased during the war on drugs.

[00:10:11] You saw also as part of this no knock raids by SWAT teams, which is where they used dynamic entry like this element of surprise in order to capture people in the act. It doesn't give them time to sort of get rid of evidence, for example. But we've also seen a lot of problems with no knock raids. Most recently with the police killing of Breonna Taylor in Louisville, Kentucky. That was the result of a no-knock raid.

[00:10:36] You also had something in the early 80s as part of the war on drugs that relates to this act. It was called the Military Cooperation with Law Enforcement Officials Act in 1981. This meant that military personnel were allowed to distribute information about illegal drugs to local police departments, which had this clear relationship formed between them then and just further [00:11:00] blurred those lines between the military and the police.

**Hannah McCarthy:** [00:11:03] It's not just information sharing either.

[00:11:06] In order to aid in the police war on drugs and crime and poverty, the military provide the police with gear, too.

**Ashley Farmer:** [00:11:14] And so the Department of Defense supplied local law enforcement agencies with military gear and military training to help with that drug activity and to be a part of the war on drugs. So this was done through a program called the 1033 program. It was originally created in 1989, and it was meant to be a temporary funding program for local police agencies. But in 1997, this was made permanent.

**Archival:** [00:11:40] Local police are becoming ever more heavily armed or as many put it, militarized. It looks like a military operation. And that's because police departments in the St. Louis area, like those across the country, are arming their officers with equipment

[00:11:57] once on the battlefields of Iraq and Afghanistan [00:12:00]. Many have been talking about how military equipment is making its way from the Department of Defense to police departments around the country.

**Ashley Farmer:** [00:12:08] And so this statute, along with that earlier act in 1981, kind of continued to blur those lines.

[00:12:16] And then you had 9/11. So now we not only have the war on drugs and the war on crime, but you also have the war on terrorism.

**Nick Capodice:** [00:12:23] When Ashley says the police are getting gear from the military, what kind of gear are we talking about?

**Ashley Farmer:** [00:12:29] You know, mundane things like office supplies all the way up to military vehicles, night vision goggles. Of course, weapons and ammunition are included in this as well. And there's really no oversight or guidelines in place for how police departments use it once acquired. They do have to use the equipment within one year. But what that means is if they don't have an apparent purpose right away, they'll find a way to use it. And, you know, it's funny because sometimes the way we see them use it or the way I've seen small police departments [00:13:00] use things like this in the past parades. Right. You know, kids come take a picture with this military vehicle that has our police department logo on it.

**Archival:** [00:13:07] We do a lot of demos. We'll go out to different community events. And kids just love to get around and see it jump in the back and just sit where an actual officer, SWAT officer sits.

**Ashley Farmer:** [00:13:19] They can find

[00:13:19] very creative ways to use these materials. These military surplus equipment so that they can justify keeping it.

**Nick Capodice:** [00:13:33] To explain to me how, given Posse Comitatus, the military, a federal entity, is allowed to work with police.

**Hannah McCarthy:** [00:13:41] Ashley basically explained it as well. It's not the military policing. It's police becoming militarized. And she did want to make this distinction.

**Ashley Farmer:** [00:13:53] I think it's important to remember that the military and the police have very different mandates and very different purposes. The military are trained [00:14:00] for war. They're trained to kill the enemy. Police are technically supposed to be trained to protect and serve communities. Those are very different goals. And so trying to blur those lines and say that they can work together like this really doesn't make sense in terms of what their mandates are.

**Nick Capodice:** [00:14:17] All right. There is a reason, though, that we've seen Posse Comitatus come up a lot recently. Right? We've seen it on Twitter. There's a reason we got that listener question from Barbara. Posse Comitatus does prevent the president from using the military to enforce laws in the U.S., doesn't it?

**Hannah McCarthy:** [00:14:39] Not really.

**Ashley Farmer:** [00:14:40] Basically, so there are different ways that the president can get around it. As I mentioned, the Insurrection Act. States can get around it by using the National Guard or the U.S. Coast Guard. We've seen that happen multiple times. And, of course, you can also authorize it by the Constitution or through acts of Congress.

**Archival:** [00:14:58] A couple of blocks north of the White [00:15:00] House.

[00:15:00] You got National Guard down the next block. All kinds of Washington metro police here. I've seen Humvees down the end of this street and the next street. We've had Blackhawk helicopters flying literally just above rooftop level of these low rise office buildings and not a demonstrator in sight, at least not in the vicinity of the White House. They are marching...

**Hannah McCarthy:** [00:15:19] The Insurrection Act, by the way, says that the president can go deploy U.S. military and federalize the National Guard to suppress civil disorder, insurrection and rebellion. It was invoked fairly regularly during the civil rights era. It was how President John F. Kennedy enforced desegregation in Alabama schools. And it's been used a couple of times since during disorder, following Hurricane Hugo in 1989 and during the 1992 L.A. uprising that was following the brutal beating of Rodney King at the hands of police officers. Those last two happened under President George Bush [00:16:00] Senior.

**Nick Capodice:** [00:16:01] So what I'm getting and correct me if I'm wrong here, what I'm getting is that Posse Comitatus means a lot on paper, but might not in reality. Has Congress ever made attempts to strengthen the act so it actually meant something?

**Ashley Farmer:** [00:16:15] This is interesting because after the protest in Ferguson, the Obama administration did try to prohibit certain types of equipment going to local law enforcement agencies. The police department and Ferguson was heavily militarized. I mean, we saw what that looked like several years ago in response to those protests there. And so he did create some oversight in terms of the ten thirty three program that helped lower the misuse of acquired military equipment. But those have not been rolled back in the Trump administration.

**Hannah McCarthy:** [00:16:47] So all of this for Americans who read or know about this act and believe it should be enforced in a particular way is possibly distressing. Right. Like, [00:17:00] what's the point of it if it isn't being used to effect? And Ashley basically pointed out that, well, part of the point is that questions are being asked. The fact that this act is being brought up at all means that the public is noticing a lack of a divide between a federal and state force.

**Ashley Farmer:** [00:17:24] In terms of invoking it today

[00:17:25] I mean, I do think that anytime we see a heavily militarized police response or we see National Guard troops interacting with citizens on the street as sort of police officers or at the very least they're sort of monitoring the situation on the street between police and protesters. It's going to raise questions. And so this is an act that sort of says, hey, you have to have this strong divide between the military and the police. But, of course, historically speaking, that divide has become more and more blurred throughout the recent decades.

**Archival:** [00:18:03] In [00:18:00] the largest public safety operation in Minnesota's history, local and state police and 4000 members of the National Guard took a stand.

[00:18:13] Aggressively using tear gas, pepper spray and drawn weapons in a desperate attempt to squelch days of escalating chaos. There's another flash bang grenade. There definitely esc-- The police are escalating... Rubber bullet rounds. And they hurt.

[00:18:34] He just was pepper sprayed, right there. Police. Police today. Tear gas or smoke, tear gas or smoke.

[00:19:13] Today's [00:19:00] episode was produced by me, Hannah McCarthy with Nick Capodice. Our staff includes Felix Poon and Jacqui Fulton. Erica Janik wages war on poor word choice and historical inaccuracies. Maureen McMurray, eats insurrection for breakfast. Music in this episode by Xylo Xico, Parallel Park, Meydn, Future Mano and Rage. School's out, but if you're hankering for deeper dives into some civics 101 episodes, you can still check out our Learn at home page. That's at Civics101podcast.org. Learn at home. We've got lessons, games and tons of resources to while away those summer hours with some good old fashioned civics knowledge. Civics 101 is supported in part by the Corporation for Public Broadcasting and as a production of NHPR, New Hampshire Public Radio.

[00:20:18] From PRX. [00:20:00]