**Episode 60: Federalism**

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***[Virginia Prescott] I’m Virginia Prescott and this is Civics 101, a podcast refresher course on some of the basics of our democracy. We polled teachers across the United States to find out which subject they would most like to hear on Civics 101, and the overwhelming majority said federalism. What is it? How has it evolved? And what are the benefits and challenges of a system of shared powers. With us today to tackle the federalism giant is Professor John Dinan. He teaches at Wake Forest University and is editor of* Publius*, the American Journal of Federalism. John, teachers across America are waiting; ready to go?***

**[John Dinan]** I'm ready.

***[VP]*** ***Let's start off with the definition of federalism. What is it?***

**[JD]** Well there's various ways to come at this. One of the best ways is to think of a federal system as one is when power is shared between a central government and state or other subnational governments. Some countries refer to them as provinces some as regions but in the US of course power are shared between the national government and the state governments. And the key is is that the state governments have sovereignty that can't be taken away by the national government in some other nonfederal systems. There's a central government and then they'll parcel out power to departments say or other regional groups. But that's just by the grace of the central government. The key tenant of a federal system is that you have constitutionally protected powers for the federal government and constitutionally protected powers for the state governments. So it is not a system but it's also a political philosophy if I got that right it is I think that's the best way to put it is that some two dozen countries have adopted a federal system. Some other countries are moving in that direction but it does have theoretical roots. The reasons why people adopt a federal system versus some other system is because they approach things in a federal way of thinking one might say.

***[VP] So what are some of the countries that do have federal systems and some others that don't.***

**[JD]** What's interesting is is that all of the North American countries U.S. Mexico and Canada are all federal systems. But if we look around the continents in South America we have Brazil and Argentina both have federal systems but then other countries such as Colombia and Chile are not federal systems or if we go to Europe we have Germany Switzerland Austria our classic federal systems but then France is not a federal system and we could do the same exercise for Africa and other countries and other continents. So it really is sprinkled around the world of a division between federal and nonfederal countries with as I say about two dozen countries around the world now being classified as federal.

***[VP] All right. To make sure I have the terminology straight somebody who is a pro Federalist would believe in more power for the states or the central government.***

**[JD]** You know it's very interesting this terminology and we go back to the debates in the US in 1787 where they eventually decide they were going to have a federal system. But the group that wanted more power to rest at the federal level actually called themselves the Federalists and those who wanted more power to rest at the state level called themselves The antifederalists those terminology at the time people wondered if that was a fact of way of dividing things up. But today it's not the best way or those terms have lost their meaning. Probably the best way to think about this is in a federal system such as the U.S. or other countries. There will be some folks that would favor generally a centralization of power at the national level and those will be pro centralization and then there will be other groups that would favor decentralization of power all things considered. That is they would want more power to rest at the state or local level. So pro centralization pro decentralization is probably the best way to get a handle on some of the debates in the U.S. today.

***[VP] How about another term that we hear a lot in contemporary culture states rights like a States Rights Movement. How does that figure into this terminology?***

**[JD]** That terminology would have been very strong back in the 19th century. It would still have had some some supporters in the mid 20th century folks identify themselves as states rights supporters and they would be on the decentralization camp. They would be all things considered they would say if we're going to have a federal system that's OK but I want most of the autonomy and power to rest at the states. And I want as little as possible power to rest at the federal level that states rights camp would be part of that deep pro decentralization group what was the case for a federal system at the time of the founding.

***[VP] So what we're proponents of federalism arguing for?***

**[JD]** There are really three things on the table at the founding period. On the one hand there were some the Constitutional Convention Hamilton even could be classified in this group. There's one six hour speech that Hamilton made where he seemed to be suggesting maybe you could have a unitary system that is where the states really weren't serving much of a purpose. Not is not not a necessary purpose. A Hamiltonian system some of the delegates at the Constitutional Convention they would have had what we call a unitary system where all all power would have rested at the national level and might be parceled out locality as the as the national officials wanted. On the other end of the spectrum there were some supporters at the Constitution Convention who said we want a con federal government or a confederation that would be no. The power is at the states and the states are partial out powers they want to a national government in the middle of that. And then all of that spectrum between the unitary government on one end and the federal government there that was what emerged from the constitutional bench of 1787 and that is let's split the atom of sovereignty as folks have returned. Let's not wrest all power either on the national level or let's not wrest all power on the state level. Let's actually share power between the federal and state governments in a way that just creates a long standing invitation to struggle.

***[VP] We are going to be doing an episode focused on the Federalist Papers. But if you can briefly outline some of the big historic milestone starting with the Articles of Confederation.***

**[JD]** Sure. So the articles of Confederation was really the first governing document of of of in the country. And that really was Articles of Confederation that that's an accurate title. It was a confederation. That is it really was state governments enjoyed all or nearly all the power very limited power was given to a central government very limited only in a certain specific areas. That was in place from 1781 and then 1787 comes and that's not seen as adequate. And so we get the U.S. Constitution which takes effect in 1789 that creates a federal system. Now power is shared between the state and federal governments but the exact distribution of power between the state and central governments was left up for further development and debate. So the authors of The Federalist Papers said look the people will ultimately decide how much power they want a partial out to their state governments and how much to their federal government. And so in the course of the 19th century there were a number of debates and key moments when that balance shifted. None of those moments was more important in the Civil War and the post-Civil War amendments the 13th 14th and 15th Amendments which altered the original design of the US Constitution and granted much more power to the central government than had been present beforehand said that from now on the central government will be responsible for guaranteeing the equal protection of the laws to all its citizens guaranteeing due process of law to all its citizens. Slavery is no longer a state prerogative. Discrimination on the basis of voting by race is no longer a state prerogative. Discrimination on the basis of equal equal protection. This is now a central government responsibility. So in the 19th century there was a movement and no movement no period was more important than the Civil War and the Civil War Amendments which shifted the balance significantly toward the central government away from the state governments.

***[VP] Let's look at the 20th century. How did the federalist system evolve then.***

**[JD]** And again many moments that we could point to. But one of the key ones that would focus on will be the New Deal era in the aftermath of the Great Depression when they're back in the when they were designing the federal system and some Madison and Hamilton others that were debating they said I wonder what would be the conditions that would lead the people to want more power to flow to the central government right into the state governments. And they said well it could that could happen in times where the U.S. was under foreign attack or could happen in other times of crisis. And the Great Depression was one of those crises and in that time of crisis people felt that the state governments were not adequate to the task of responding to an economic depression. They wanted more power to flow to the national government. And so under Franklin Roosevelt the national government assumed responsibility for Social Security passing all kinds of laws related to minimum wage and labor unions. These were not matters that the central government had taken up before the New Deal period. They began taking it up and at that period. So there's there's been a gradual centralization of power that is of power flowing from states to the central government during the 20th century. The New Deal movement was a key point in that though there have been other points as well.

***[VP] What are the benefits and the challenges of a federalist system.***

**[JD]** One leading benefit that's put forward is is that when you have states that really have some meaningful power that they can really pass laws on matters that are within their purview. You could have experimentation in innovation for instance women's suffrage was first tried in various states and territories and only after a period of some decades did people say let's nationalize that and let's have women's suffrage across the country after first innovating and experimenting with granting women the right to suffrage. One could look at similar experiments on setting a minimum wage or setting how many hours a day someone can work. All of these innovations first emerged in states because they had the power to experiment and then later follow up to the national level.

**[JD]** Another benefit of having a shared power is that sometimes the federal government can can not be up to the task of governing effectively and sometimes they can the federal government can get things wrong in the minds of the people in the States people in the states can challenge the the federal government when they think that got it wrong.

**[JD]** We currently have a number of state attorneys general that are filing suit in just recent decades where they they believe that the federal government has exceeded its powers or is exercising powers improperly a federal system allows for that staging ground for people to balance out the power of the federal government just as we have a balance of powers within the federal government between the executive branch judicial branch and legislative branch. The federal system can be seen as providing a balance of power between state governments and central governments. One of the challenges. It can be a very messy system of governance who's actually in charge in various policy areas Well the answer sometimes is there's no one level of government that's in charge.

**[JD]** Some in some ways the central officials are in charge, some ways state governments in charge. It becomes messy. It can also be very difficult for voters to hold accountable officials precisely because suppose you're unhappy with health care in certain respects. Do you is that the fault of the federal officials or is that the fault of state officials so holding people accountable. It can also be a challenge that depending on where one crosses state lines in the US in one state one can be using marijuana and that can be legal and when it crosses over state lines five minutes and that activity is illegal.

***[VP] How does federalism traditionally relate to our two major parties in the US***.

**[JD]** So generally Republicans are seen as in favor of decentralizing power in states and Democrats favoring centralizing power in the central government. But it depends on which issue we're talking about. It depends which administration is in power whether we're talking the Republican president or a Democratic president. So one of the things about a federal system as it is allows for shifting alliances and different people and groups can avail themselves of the benefits of having power shared between federal and state government. So some share some agreement or dare I say common ground among Democrats and Republicans when it comes to centralism what is certainly one of the fascinating things is after the 2016 election one saw a number of Democratic state officials who had in recent years not been very big fans of decentralizing power they'd generally been been seeing the benefits of centralizing power. They took a look at the national government which now had a Republican president a Republican House a representative Republican Senate and they say that the check on that government might come from the state officials the ability of state attorneys general to file lawsuits if they believe that the the Republican controlled federal government is exceeding its power or may come if if if if increases in the minimum wage aren't going to come from a Republican dominated federal government. They would likely come from state governments. And so that's what we've seen as we've seen Democratic state governments and officials supporting Let's take it upon our own selves to to increase the minimum wage in our state. If the federal government is going to act, we'll take the lead

***[VP] Professor Dinon any misconceptions about federalism you'd like to address for audience.***

**[JD]** Well I guess one challenge that I often discusses is that oftentimes we expect to go back to the founding debates and to look in the Constitution the text of the Constitution and to see a very neat dividing lines to say oh well this is where power was expected this was expected to be at the central government. And this power was expected to be lodged at the state governments and we oftentimes do not find neat answers to those questions. Not in the debates in the Constitutional Convention not in the Federalist Papers. Basically we set up a federal system where we know the powers can be shared between national state governments. But we did not settle once and for all. In 1787 exactly where the power would be lodged in states and federal government that was left up as an invitation to struggle between state and federal governments. And it was left up to the people of the country to through their voting through other mechanisms to apportion out power. Let the federal government take on responsibility for some areas. Let's take our must take on responsible for others. So the bottom line there is we don't get clear fixed answers from the founding debates. Rather we have set up a federal system which allows power to flow depending on which way people would want to apportion that power at any given year.

***[VP] And it's been going on ever since. Thank you so much for speaking with us.***

**[JD]** Always enjoy talking federalism.