

## ARE 309 Unit 2 Sources of Law

- Constitutional government
  - Highest source of law
    - Federal government
    - North Carolina government
  - Relationship between federal and state government

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## Federalism

- Source of federal power
  - Constitution
  - Ceded by states upon ratification
  - States did not cede all power (sovereignty)
  - Principle of dual sovereigns (States are **not** units of the federal government)

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## Federalism

- Federal government one of limited powers
  - Limited to those granted in the Constitution
- State power limited only by:
  - Respective state constitutions
  - Explicit or implicit limits in the federal Constitution

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## Federalism

- Supremacy clause (Article VI)
  - concurrent authority
  - preemption

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## Constitutional sources of federal environmental law

- No environment clause
- Commerce clause
  - authority for most federal environmental laws
- Spending power
- Others
  - Admiralty power

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## Constitutional limitations on federal & state environmental powers

- Contract
  - Limitation on the ability of states to impair contracts
- 5th Amendment takings clause (applied to states through 14th)
- 4th Amendment (applied to states through 14th)
  - prohibition against unreasonable searches and seizures
- 5th and 14th Amendment due process clauses
- Equal protection clause (14th Amendment)

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## NC Constitution

- No explicit prohibition against uncompensated takings
  - alone among 50 states
  - implicit prohibition
- Explicit environmental protection clause
  - Art. XIV, sec. 5. Conservation of natural resources
  - No private right of action created

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## Treaty making power

- Art. II, sec. 2
  - President makes treaty
  - Advice & consent of Senate (2/3 vote)
- Absent consent of Congress, states may not:
  - make treaties
  - agreements with other states (interstate compacts)

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## Legislative power

- Federal
  - vested in Congress
  - subject to Presidential veto
- State
  - vested in General Assembly
  - subject to limited veto by Governor

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**Judicial power**

- Federal
  - vested in U.S. Supreme Court & inferior courts
- State
  - vested in NC Supreme Court & inferior courts

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**Judicial power**

- “common law” vs “civil code” systems
- *stare decisis*
- precedent

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**Executive power**

- President
  - power to make treaties and issue executive orders
- Governor
  - power to issue executive orders

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## **Administrative agencies**

- Federal and state
  - issue regulations

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## **County and municipal governments, health boards, special districts**

- ordinances
- rules

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