ARE 309 Unit 2
Sources of Law

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

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)

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
Federalism

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

Constitutional sources of federal environmental law

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

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)
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

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)

Legislative power

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

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

Judicial power

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

Executive power

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

- Federal and state
  - issue regulations

County and municipal governments, health boards, special districts

- ordinances
- rules