

# U.S. Constitution as a Source of Law

by Sophia



## WHAT'S COVERED

In this lesson, you will learn about the role and components of the Constitution as a primary source of law in the United States. Specifically, this lesson will cover:

## 1. Primary and Secondary Sources of Law

In the United States, our laws primarily come from:

- The U.S. Constitution and the state constitutions
- Statutory law from Congress, the state legislatures, and local legislative bodies
- Common law
- Administrative rules and regulations
- Executive orders and treaties

These are all **primary sources of law**. As is true in any democracy, U.S. law reflects the will of the people who vote for representatives to make the law. In this way, U.S. law is also a reflection of **public policy**.

**Secondary sources of law** include:

- **Restatements of the law**
- Law review and journal articles
- Uniform codes
- Treatises

These sources are created by legal scholars rather than by a recognized, legitimate law-creating authority. However, these sources are read by and often influence those who are in the position to create law.

### IN CONTEXT

Members of the **judiciary** may consult a restatement of law or law-review articles when making decisions. Likewise, state legislatures often adopt whole or parts of uniform acts, such as the **Uniform Commercial Code (UCC)**. When a body of secondary law is formally adopted by a legitimate lawmaking authority, then it becomes primary law. In this example, adoption of the UCC by a state legislature transforms the UCC from a secondary source of law (a model code) to a primary source of

law in that state— namely, a statute.



## TERMS TO KNOW

### Primary Sources of Law

Sources of law issued by courts, legislatures, government agencies, and other sources that create law, including published court decisions, statutes, court rules, government agency decisions, and the like.

### Secondary Sources of Law

Sources of law that are written by those who discuss the law that comes from primary sources.

### Public Policy

Generally accepted principles, mostly unwritten, on which society generally agrees. Occasionally, a court will base a decision on public policy concerns rather than black letter law.

### Restatements of the Law

Treatises on legal subject areas written by known legal scholars and published by the American Law Institute, containing a summary of primary sources of law for the purpose of stating the law in one volume. Although the restatements are a secondary source of law, they are so well-respected that courts and legal scholars view them almost as if they were primary source of law.

### Judiciary

The branch of government responsible for courts; the judges on a court.

### Uniform Commercial Code (UCC)

A uniform act relating to commercial law that has, over time, been adopted in all 50 states, the District of Columbia, and US territories. It is not a federal law, but its adoption throughout the US makes interstate commercial transactions harmonious, although not all states have adopted all parts of the UCC.

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## 2. Power and Limitations of the Constitution

The U.S. Constitution created the structure of our federal government. Among other things, it sets forth the three branches:

- Legislative branch
- Executive branch
- Judicial branch

It provides organizational and procedural requirements, defines the boundaries of each branch's jurisdiction, and creates "checks" on each branch by the other branches.

➞ **EXAMPLE** In Article II, Section 2, the President is the Commander in Chief of the armed forces, but he does not have the power to declare war. That duty falls to Congress.

The first ten amendments to the U.S. Constitution are known as the Bill of Rights. Some of the Founding Fathers did not believe that a Bill of Rights was necessary because the power granted to the federal government by the U.S. Constitution was expressly limited.

Any powers not expressly granted to the federal government by the U.S. Constitution are reserved to the states. This means that if the U.S. Constitution does not state that one of the federal branches of government has jurisdiction over a particular area, then that area falls to the states to regulate.

Despite the limited power granted to the federal government by the U.S. Constitution, as a condition of ratification, many states insisted on a written Bill of Rights that preserved certain individual civil rights and liberties. Today, business entities (such as corporations) that are treated as legal persons under the law enjoy many (but not all) of these rights and liberties, just as if they were natural human beings.

➔ **EXAMPLE** Corporations have First Amendment rights to political speech under the Supreme Court's decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), but they are not persons for purposes of voting.



#### TERMS TO KNOW

##### **Legislative Branch**

In the U.S., the legislative branch is known as the Congress and is composed of the House of Representatives, elected every 2 years, and the Senate, elected every 6 years (in staggered terms so that 1/3 of the body is elected every 2 years). The purpose of Congress is to pass federal laws.

##### **Executive Branch**

In the U.S., the executive branch is the US President, cabinet, and agencies, and staff. The purpose of the executive branch is to carry out all of the laws of Congress.

##### **Judicial Branch**

In the U.S., the judicial branch of government is the federal court system. Its purpose is to enforce the laws of Congress by addressing cases and controversies that come before it.

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## 3. State Constitutions and Federalism

Each state also has its own constitution, and those constitutions serve essentially the same function for each individual state government as the U.S. Constitution serves for the federal government. Specifically, they establish the limits of government power, create protections for fundamental rights, and establish the organization and duties of the different branches of government at the state level.

This dual system of government present in the United States is called **federalism**, which is a governance structure whereby the federal government and state governments coexist through a shared power scheme. State laws may not conflict with federal laws, including the U.S. Constitution. This is because the U.S. Constitution is the supreme law of the land.

Sometimes, students of U.S. law will question why the law is not uniform throughout the U.S., suggesting that this would be so much simpler than each state having different laws. This is a fair question, and the answer is complicated, based on the country's history of having fought the Revolutionary War against a tyrannical monarch for eight years, from 1775-1783, and based on the continuing advantages of federalism.

Among the benefits of federalism are:

1. The lack of centralized power, which is regarded as a protection against the danger of tyranny.

2. Increased citizen participation available when state and local governments have a strong role.
3. Increased efficiency since states are deemed better at solving local problems than a remote and out-of-touch federal bureaucracy.
4. Freedom of choice to live where one's beliefs and values are compatible with state laws.
5. The opportunity to try something out at the state level before implementing it nationwide.

The drawbacks of federalism are seen in disparities among states with respect to wealth, quality of education, availability of social services, and the inability of the federal government to address these problems. Today, at least three major governments thrive under a federalist system: Canada, the European Union, and the United States.



#### TERM TO KNOW

##### Federalism

The U.S. system of government whereby a separate federal sovereign, the federal government, exists simultaneously with individual, sovereign states as one political system.



#### SUMMARY

In this lesson, you learned that there are both **primary and secondary sources of law**. The U.S. Constitution - the supreme law of the land - is a primary source of law that provides the framework for the three branches of the federal government, the legislative, executive, and judicial branches, as well as a template for the many **state constitutions**.

**The Constitution has a great deal of power, but it also has several limitations** The Bill of Rights comprised of the first 10 Amendments to the Constitution limits the powers of the federal and state governments to infringe on fundamental civil rights and liberties of the people. All powers not expressly granted to the federal government in the Constitution are reserved for the states. The **federalist system of government** provides for limited centralized power in a federal government, while states have additional and concurrent powers independent of federal control.

Best of luck in your learning!

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