The US Constitution: Theory and Principles

1. **Constitutionalism**: Government limited in its powers and accountable for its actions (*Rule of Law*). There is a higher law above the policies and practices of transient leaders and ruling majorities.

2. **Purposes**: Government created by the consent of the governed (*Social Contract, “We The People”*). Social and political goals (*Preamble*) relatively free of ideological content and partisan rhetoric.

3. **Principles**:
   
a. **Separation of Powers**: Check consolidation of power in any one area of government (especially the executive). “Ambition must be made to counteract ambition.” Overlapping relationships among branches of government. (*checks and balances-controlling faction*) (fusion of power? Deadlock of democracy?)

   b. **Federalism**: Recognizes the existence of sub-national units (states) and leaves powers for them to exercise. (history of autonomy above unity, unitary systems?). Federal systems make constitutional governments when the constitution establishes effective *restraints* on all governmental power. (*14th Amendment, incorporation*).

   c. **Judicial Review**: Power of the judicial branch to review and, if necessary, invalidate legislation and executive action when it is inconsistent with the constitution----makes government *ultimately responsible to the limits of the Constitution*. (John Marshall: “Constitutional questions are justiciable)
d. **Republicanism:** Representative form of government to ensure “the medium of a chosen body of citizens.”

e. **Rights:** Political rights and civil liberties—limitations on what governments can do---have been called *negative rights* as they *prevent* governments from doing certain things that would violate the individual’s political and civil liberties (characteristic of Constitutions written in the 18th and 19th centuries).

Constitutional rights may be found in the *Bill of Rights* (*first ten Amendments*), guarantees which safeguard the individual from arbitrary government intrusion such as provisions for *habeas corpus* and protection from *ex post facto* laws and *bills of attainder* (*Article 1*), and Amendments since 1791.