In the United States and many other places, our usage of the term “constitution” does indeed still contain some of this earlier meaning, for when we think of the Constitution we also think of the layout of the offices of governance. But we think of other things as well. In particular, the Constitution for us is a document, a written legal text, able to be adjudicated in court. The Constitution not only specifies the offices of governance, but also attempts to define, channel, and limit the powers of the government. These limits can be defined in any number of ways, but in general there is an effort to define what may be done, and what may not be done (for example, some constitutions, though not the U.S. Constitution, prohibit capital punishment). Constitutions also say how things may be done: for example, at the discretion of the accused, individuals may be convicted of serious crimes only via a jury trial. And finally, constitutions specify who may do what may be done: for example, the U.S. president is commander-in-chief of the nation’s armed forces. Thus, constitutions limit and channel power by specifying what may or may not be done, how it may be done, and who may do it. Constitutions that do all these things in a written text are what we will call “modern constitutions,” to distinguish them from the older notion of constitution found in the work of Plato or Aristotle. We will call political systems that operate according to these features “constitutionalist.”

Several of the crucial elements of this modern idea of constitutionalism arose in eighteenth-century America, which saw the birth of the idea of a constitution as a written and legally binding text under custody of a court. But other elements, such as the idea of separation of powers, arose earlier, probably first in seventeenth-century England. This is a fact of great subsequent importance, for those who emigrated from England to America brought with them the English ideas of constitutionalism that arose in the seventeenth century and then, ironically, applied them against the British in the years leading up to the American Revolution. As Wood and others make clear, the idea that courts may enforce constitutions against legislatures and executives arose well before Marbury v Madison.

The U.S. Constitution is perhaps the finest fruit of the American effort to apply these ideas to political practice. The Constitution is thoroughly marked by the aspiration to constitutionalism. One can find evidence of this throughout the document, but we will mention just three particularly important instances here. First, it is a document—a written text—which proclaims itself to be “the supreme law of the land,” that is, law, and a special kind of law at that. Second, in both the Fifth Amendment and the Fourteenth Amendment (both added after the original document was ratified) the Constitution affirms that no person shall be deprived of life, liberty, or property without due process of law. Neither the states under the Fourteenth Amendment nor the federal government under the Fifth may so deprive persons. This is a particularly important provision of constitutional aspiration, for it throws the cloak of law around all persons — not just citizens —on whom government may attempt to act. Government may do so only with “due process of law.” This clause, in effect, recognizes all human persons as rights-bearers, possessing the famous triad of rights to life, liberty, and property; government may treat persons and their property only in morally or legally permissible ways. We speak of “aspiration” rather than of constitutionalism simply because the American political system, like all such systems, sometimes falls short of the operational reality affirmed or aimed at in the Constitution.

A third part of the Constitution that reveals an aspiration to constitutionalism is the Tenth Amendment (added in 1791 as part of the so-called Bill of Rights): “The powers not delegated to the