When the rug was pulled from under the thirteen sovereign nation states, just as a rug would leave splinters of cloth under your couch or your favorite chair, splinters of (old) and (current) English constitutional traditions remained within, or strands of, throughout these states. In addition to this, the state each had it's own state Constitution, put together by the representatives of the sovereign and free people the best they could. In addition to that, these states came or were "created" out of a background of natural law that had its formulative years starting back with the Hebrews who rescued their way to writ and codify their laws. And in addition to all of these were the principles of democracy and justice and logic they had all learned (whether they knew it or not) from Antiquity. What was most important to all of these citizens was that they protect their liberties and freedoms, especially for the minorities whom had no voice; and they wanted to protect unalienable and yet unknown rights for their children in the future -- but how does they protect these special rights when they don't even know what they are? There was also that Common law tradition some were accustomed to or knew about in England -- Case-by-case, issue by issue, determined and impartial judges would shape the law that people would respect -- again -- what else could they do. So, when that rug was pulled, the question necessarily was: how would they, and who would they select to establish the ultimate basis of their legal power, a voice that would reflect both the will and the consent of the sovereign people to protect all of these rights that are so important to them?

codes 1. At first it seemed logical to go with the codes. Each state would, under its own Constitution, enact statutes that would govern peoples actions within the states. For example, statutes were enacted on proper law governing how and when to sell land or to start up a business and to borrow money. This might work fine for awhile, but what happens if these people want to do business with say, a state to their left or right of them -- well, enact a statute that

would govern that transaction. And so it went, thirteen states enacting statutes governing in state transactions and transactions with each other. One big problem quickly became apparent -- states statutes were different, because 1) not all state Constitutions were the same and 2) states' needs varied. Soon, problems were everywhere: States were not keeping contracts with sister states, the currency was different, states were taxing each other without any controls, fighting over waterways -- yikes. Another problem with the legislature and the statute system was that the Judges in courts each interpreted their statutes in their own cases differently -- in a different light. The statute basis of establishing legal authority upon which these states would each run itself clearly could not work. Clearly.

State judges 2. For a time, the states tried to harness their judges and make them interpret the law more consistently in their states and with other states (in other words, try and work out problem #1). Clearly this could not work. For one thing, besides each state's Constitution being somewhat different from its sister's -- there really was no Common law yet in each state and the judges had to, out of necessity, refer back to English common law. Also, if I remember correctly -- the new States were not abundant with law libraries and legal theories -- in fact as the states were operating under or gave some of the credit to their functioning to Locke (right of individual man, Sovereign states need settled law to Function + courts + impartial judges, equal protection, "the individual," property rights and honor God) -- Blackstone had confused the issue with a different line of legal thinking; so the judges did not really know what the law was or even what it should be. Judicial decisions became oh so subjective. Without precedent in a new world and with various legal theories some untested, some falling short -- this clearly was not the answer. Not to say that judges can be bribed, but certainly the idea came up.

What in the world are we going to do here? Well, a guy doesn't know where he's

going if he doesn't Know where he's been. "Let's look at our history" (someone said).

IS Constitution Judicial Review 3. The Declaration of Independence was the preamble to the US Constitution. All of the people, under God, will protect their liberties, their freedoms, their happinesses -- their property, their families in the future. All men are created equal. All men being created in the image and likeness of God so that each man is equal to each other man therefore each man has the same obligation to each and every other man/woman. All of the, all of the! trials and tragedies and heroic ages that brought us up to this point are standing right in front of us and now it is up to us to take the torch and, like the people in the desert back in 1500BC, like the Levellers who before their time tried to do this, like the thirty-or-so men that sat around that wooden table in those hot July nights -- we must find a Solution because we have all come so far. "Human dignity" - the "law of the Goring Ox" is telling us that there is no other way but reason this carefully through -- and there can be no other way than -- Lord Coke.

Lord Coke had the correct ideas when it came to developing a basis of governing authority. From his cases, we discovered how important Common law is -- Common law made by judges is #1 law; Common law can declare legislation void; from Lord Coke we also learned about Stare decisis -- Keep decisions from past cases and using them as precedents; and we also learned that even though courts do not say the words "natural law" - it's in there -- "natural law" is by some "equity" is by some "fundamental" is by some "due process" -- all the same. (We also remember that statutes are forward-looking). Anyway, the people in the new America may not have had all of their proper legal libraries, may have had courtrooms full of unsettled law, may have had disputes up to their tall ceilings -- but they had the desire to fulfill their destinies and they had lessons learned from England. Judicial Review was their answer.

Judicial Review 4. The States embraced Judicial review -- and did they ever. Judicial review, out of

practical necessity -- was the resolution they embraced. This made complete practical logical sense -- it would be declared that it would be "the province of the Court to say what the law is". Judges are lawyers, lawyers know how to read and interpret the law (better than say, an office worker, mail carrier, farmer, politician). Judges can be objective. Other "judges" would not be; Madison was afraid of the State's legislatures going hay-wire and Amending the US Constitution; Madison was afraid of Factions and the Majority trampling the minorities; Lincoln was afraid of the dollar $ buying a man as easily "here" as from across that big river -- so many reasons why Judicial Review, out of necessity, was the resolution as the ultimate basis for legal power! I will try to list:

1. impartial Judges know how to interpret law/constitutions
2. Common law was made by Judges; seems very appropriate
3. Constitution as seen as organic/growing with society Jmarshall felt so Someone dependable needs to interpret
4. tried other schemes - codes, loose judges -- did not work
5. minorities need to be protected from Majority rule
6. humanitarian reasons; natural law rights/unalienable rights need protection
7. the Founders, after all of mankind's struggles, got democracy and individual rights, melded together, under the blessed of umbrellas -- the US Constitution and this in itself demands the ultimate in protection: Judicial Review.