

Part. 1 The experience of the colonies prior to the Constitution was one of confusion & judicial arbitrariness. Without a unifying set of principles & precepts judges were attempting to use UK common ^{law} & lawyer's arguments on morality to decide cases there was an attempt to restrict the arbitrariness of the Court's by demanding

Equity not much of a restriction, only requires the Justices to do what is "fair" - still leaves room for similarly situated people to be treated differently. →

→ equity, but ^{this} achieved only minimal results.

Ques 2 Founders found themselves trying to resolve 3 things when each state sent delegates to the Constitutional Convention:

- 1) restrict arbitrary power & abuses (T. Jefferson inspired)
- 2) develop a modern understanding of statutes (to put too much ctrl in legisl. would be "tyranny of a most pervert"

kind"-Madison), and

3) fully embrace the consent theory of Locke

To accomplish resolution & meet the above listed goals the founders adopted the following ideas:

1) popular sovereignty (Locke's idea of consent of the governed finally realized)

2) a written Constitution

- 3) protection of precepts by periodic elections
(this concept of Leveller's finally put into practice)
- 4) embrace the foundation principles that will ensure the social contract people & govt
- 5) develop institutions to implement the ideals
- 6) put security in the institutions so free from flux of the more political branches (Hobbes

§ Hamilton both believe
people basically bad/"bad"
§ need to be restricted
→ all of above will be
implemented under the
rule of law.

The Resolution to the
Judiciary problem, § as
the best means of securing
minority rts., was Judicial
Review. It was an
embrace of Coke §
his decision in Bonham's
Case. Judicial Review was

the best possible way to ensure that the norms & precepts & morality of the Constitution would be forever protected.

Judicial Review would consist of:

- independent judges within a structural hierarchy
- under the supremacy Clause
- & whose jurisdiction

could be constrained
by Congress

The Result of the choices
of the Founders, including
judicial review was
a democratic system
of govt that embraced
nat'l law ideals for
a moral form of govt
answerable to the people

This was done by:

- allowing for constant
public input - preserved
by freedom of speech

§ the Press

- maintaining the norms & precepts of our Founders

- remembering that the presumption is liberty

Part 3 The choice to embrace judicial review was a product of both reflective logic & necessity. Choice was a product of reflective in that we embraced ~~the~~ Decl. of Indep. & impericism of

all Great Thinkers &
own experience in UK
that arbitrary ~~poor~~ decisions
result from unrestricted
powers. It was rational
thinking that helped us
to achieve a belief in
nat'l law & what those
principles were. It was
rational thinking that
led Lord Coke to void
an unjust law in
Bonham's Case & est.
judicial review

Judicial review was a necessity in that no one has a better solution for protecting liberty. Madison initially opposed the idea of judicial review as undemocratic. But later came to accept the view as the best possible way to preserve the morality of constitution the legislature being supreme wasn't an operative choice based

on our joint experiences w/ abuses of legislative authority in UK. As well as our deep desire to prevent a "tyranny of majority" by protecting minority rts. (Caroline Products Footnote - "discrete & insular minorities" ought to receive highest level of constitutional protection)

Either way you look at judicial review, the choice to embrace it

was brilliant & revolutionary
the Constitution continues
to be a viable protection
of our natural rights.