Book Notes: Constitutional Deliberation in Congress: The Impact of Judicial Review in a Separated System, by J. Mitchell Pickerill

Timothy Fitzsimmons

Follow this and additional works at: http://digitalcommons.osgoode.yorku.ca/ohlj

Part of the Law Commons

Book Note

Citation Information

This Book Note is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

BY TIMOTHY FITZSIMMONS

The authority of the United States Supreme Court to judicially review acts of the U.S. Congress is not found in the U.S. Constitution, but was established in Marbury v. Madison and reaffirmed in Cooper v. Aaron. In Constitution Deliberation in Congress, Professor Pickerill examines the exercise of this power and the resulting legislative “dialogue” between the Congress and the Supreme Court.

Congressional responses to the striking down of legislation have ranged from indifference (after the Court invalidated one-house legislative vetoes over administrative agency decisions in INS v. Chadha), to reversal (Congress amended the U.S. Constitution after the Court struck down the Voting Rights Act in Oregon v. Mitchell), to acceptance, when Congress amended or repealed and re-enacted the legislation in question.

By examining case law, testimony, debates, speeches, voting records, and in interviews with current and former members of Congress, Pickerill considers how the Court’s review has impacted Congress’s consideration of constitutional issues. Further, Pickerill focuses on the decisions and judicial scrutiny of the Rehnquist Court regarding state sovereignty and the limitations of federal power. Pickerill traces this renewed scrutiny—which the author says came after a 60-year period of “darkness of judicial deference”—in four pieces of legislation: the Gun-Free School Zones Act (1990), the Brady Bill (1994), the Violence Against Women Act (1994), and the Hate Crimes Bill (not enacted).

While the Rehnquist Court may be more active in scrutinizing the Federal Government’s exercise of power, Pickerill illustrates that for lawmakers—all of whom are concerned about getting elected and re-elected—constitutional deliberation is at the bottom of a long list of legislative and political concerns. For example, one member of Congress summed up the lawmaking process this way: “Policy issues first … six other things, then constitutionality.”

However, despite the political machinations that go into lawmaking, Pickerill demonstrates that there is a continuing dialogue between Congress and the Court. It is a subtle, routine, and on-going process, in which both institutions play important roles in a system of divided powers.