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

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CONSTITUTIONAL DELIBERATION IN CONGRESS: THE IMPACT OF JUDICIAL REVIEW IN A SEPARATED SYSTEM. BY J. MITCHELL PICKERILL. DURHAM, N.C.: DUKE UNIVERSITY PRESS, 2004. Pp. xiii + 153. Appendices, notes, bibliography, index. USD\$74.95 cloth, USD\$21.95 paperback.

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after the Court struck down the *Voting Rights Act* in *Oregon v. Mitchell*), to acceptance, when Congress amended or repealed and re-enacted the legislation in question.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.
