As Jacobsohn points out, there is on occasion "no escaping consideration of whether the proposed constitutional accretion should seek a ratification of what exists in the patterns of prevailing societal conduct or attempt to transform it" (p. 27). In deeply religious societies, constitutionalism can not only contain the total theologization of law, as Hirschl's work suggests; it can also reshape what after all are almost always contestable and conflicted religious traditions. National and religious identities are not given—this has become a cliché in both the humanities and the social sciences. What this means for constitutionalism both books—Jacobsohn's even more than Hirschl's—show admirably.

The Supreme Court and the Idea of Constitutionalism.
Edited by Steven Kautz, Arthur Melzer, Jerry Weinberger, and M. Richard Zinman. Philadelphia: University of Pennsylvania Press, 2009. 328p. $49.95.
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— Joseph M. Bessette, *Claremont McKenna College*

In introducing his contribution to this fine collection of essays, Justice Robert P. Young, Jr., of the Michigan Supreme Court calls "the Supreme Court and the idea of constitutionalism" a "very broad, daunting topic" (p. 170). And while another contributor, Gary Jeffrey Jacobsohn, notes that "[d]ebates in the United States over judicial activism long ago became tedious and predictable" (p. 130), the 12 diverse contributions collected here, which grew out of a lecture series at Michigan State University, show that there is still something new and interesting to say about the Supreme Court's role in the American constitutional order.

The editors have organized the essays into five sections. The opening essays, by Nathan Tarcov and Steven Kautz, broadly compare modern constitutionalism to its ancient predecessors, particularly as described in the writings of Plato and Aristotle. The next three, by Michael Zuckert, Leslie Friedman Goldstein, and James Stoner, examine the exercise of judicial power, and popular reactions against it, throughout American history, with a focus on the first decades under the Constitution. Essays by Mark Tushnet and Jacobsohn compare American constitutionalism and the Supreme Court's role within it with such other countries as New Zealand, the United Kingdom, Canada, and India. In the penultimate section, essays by Larry Alexander, Robert Young, and Rogers M. Smith examine the relationship of judicial power, and especially judicial review, to democracy. The book concludes with essays by Keith E. Whittington and Benjamin A. Kleinerman on how politics can enforce constitutional constraints.

No review of moderate length could give justice to the number and variety of important issues that the authors of these essays intelligently, and often provocatively, address and debate. Here is a list of some of the key ones: Why is the rule of law through constitutions superior to rule by the best man? Is the clash between the elites and the many the fundamental reality of politics, including constitutional politics? How broad a role did the Framers intend for the Supreme Court? Is the Supreme Court at its best when it goes beyond the words of the Constitution to discern deeper principles, or when it takes a more modest approach to constitutional interpretation by sticking with the manifest meaning of the words of the document? Which of these approaches best describes the jurisprudence of the Marshall Court? Who has ultimate authority over the Constitution: the courts or the people? Is popular resistance to Supreme Court decisions a good, and perhaps necessary, aspect of American constitutionalism? Should it be easier for the political branches in the United States to revise or overturn judicial decisions, as it is in other liberal democracies? How extensive is the Court's authority to elaborate and implement moral rights to restrain legislatures and the people? Does the modern Supreme Court function as an unelected oligarchy that embraces standardless constitutional doctrines and imposes its own moral code on the American people? Is the expansion of constitutional courts in new democracies consistent with democratic principles or an effort by elites to protect their hegemony? Is judicial review an element of the political contest over the Constitution's meaning, or does it rest on and effectuate transpolitical standards? Does judicial supremacy in constitutional interpretation distance the people from the Constitution and thereby sap the vitality of Congress by undermining political incentives for the members of Congress to oppose executive excesses?

Underlying many, perhaps most, of the essays here is dissatisfaction with the modern Court's self-understanding of its supreme position as interpreter of the meaning of the Constitution. Several authors specifically fault the Court for its assertion in *Cooper* v. *Aaron* (1958) that its interpretations of the Constitution are "the supreme law of the land." In the most pointed and extended criticism of the modern Court, Justice Young accuses its members—or at least many of them—of embracing "the 'Rorschach school' of interpretation [which] views the Constitution as a vague document incapable of definite meaning and open to no certain interpretation—like a Rorschach inkblot" (p. 174). "Our legal academics," he adds, "almost universally embrace and teach the Rorschach philosophy" (p. 174). He goes on to analyze and criticize the Court's decisions on capital punishment and sexual morality. Other contributors seem less concerned with specific decisions than with the difficulty of squaring judicial supremacy over constitutional interpretation with democratic self-government. Those who share these concerns will have a special interest both in Stoner's account of the "long tradition [in the United States] of constitutional resistance to judicial decisions" (p. 97), especially in the first half century under the Constitution, and in Tushnet's description of "weak-form" judicial review in other liberal democracies, where it is much easier than

in the United States for the political branches to revise or overturn judicial decisions. "Perhaps one can mount theoretical objections to weak-form review," Tushnet writes, "but its practice seems good enough—in the nations where it occurs" (p. 120).

Although most of the authors seem to share reservations about the role of the modern Supreme Court, the two early essays by Zuckert and Goldstein provide an interpretation of the Framers' intention (particularly James Madison's) and the jurisprudence of the Marshall Court that supports a more expansive role for the Court than would be justified by Young's "judicial traditionalism" (p. 175). Zuckert, for example, focuses on the failure of the Constitutional Convention to adopt two key provisions of the Virginia Plan ardently, if unsuccessfully, pushed by Madison in Philadelphia. One would have given the new national legislature the authority to veto state laws that violated federalism or individual rights. The other was a Council of Revision, composed of the new national executive and some number of federal judges, which would have a qualified veto over acts of the national legislature. Madison believed that both provisions were essential, and he viewed their defeat as perhaps fatal to the success of the Constitution. Zuckert notes, however, that when the delegates added restrictions on the states in Article I, Section 10, and other provisions on relations between the states in Article IV, they, "[w]ithout anybody quite planning it," made the Supreme Court "the recipient of an impressive array of powers" (p. 69).

In his conclusion, Zuckert appears to argue that the Constitution effectively vested the Court with key powers that the Virginia Plan had placed in the national legislature and the Council of Revision: to veto (by ruling unconstitutional) state laws and statutes of the national legislature. So constituted, the Court can choose to reach decisions on a "narrow legal basis" by "applying a strictly originalist approach to cases," or it can attempt "to fulfill the broader, political, trans-legal system needs thrown into its lap by the Constitution" (p. 77). It has, then, a "dual imperative": "the explicit duty to be nothing but a legal institution" and "the implicit duty to be more than a legal institution." "[T]he Court," Zuckert concludes, "is constantly driven beyond the bounds of strict legality in order to do its political work" (p. 77).

As if to illustrate Zuckert's point, Goldstein devotes one section of her essay to an analysis of "what was admirable" (p. 82) in the jurisprudence of John Marshall. She maintains that the lesson of such contract clause cases as *Fletcher* v. *Peck* (1810) and *Dartmouth College* v. *Woodward* (1819) is that Marshall saw "broader purposive principles within, or perhaps underneath, the clauses [of the Constitution] and explicated their broader reach, despite the limited wording of the clauses" (p. 83). This ability to find and explicate the deeper principles is "what makes Marshall's jurisprudence the icon that it is" (p. 84).

Young's defense of "judicial traditionalism" challenges these interpretations. First, Young notes early on that the delegates to the Constitutional Convention debated the Council of Revision four times, rejecting it again and again. Most delegates simply opposed having judges decide on the wisdom of legislation. The Council of Revision, he insists, was "repudiated . . . in favor of the traditional judicial role" (p. 179). Second, as *Marbury* v. *Madison* (1803) and *Gibbons* v. *Ogden* (1824) illustrate, the Marshall Court relied upon the "plain import" and the "obvious meaning" of the text of the Constitution. What mattered was how the words were understood by those who wrote them and those who ratified them. The Supreme Court's "starting point was the text of the Constitution and its emphasis was on how that text was originally understood at the time of its framing. . . [I]t cannot be said that [the Court] operated as a Council of Revision" (p. 185).

As this brief sampling of themes and issues illustrates, the editors of and contributors to this excellent volume have certainly done justice to their "very broad, daunting topic."

States, Citizens and the Privatization of Security. By Elke Krahmann. New York: Cambridge University Press, 2010. 318p. $90.00 cloth, $32.99 paper.
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— Allison Stanger, *Middlebury College*

The past decade has been marked by an explosion in the government deployment of private security contractors both at home and abroad. In this timely and thought-provoking new book, Elke Krahmann endeavors to expand our understanding of this twenty-first-century phenomenon through two analytical innovations. First, she probes national differences in the deployment of privatized force in a comparison of U.S., UK, and German policies. Second, she endeavors to shed light on changes in the democratic control of the use of force with a philosophically informed framework that highlights the role of ideas in shaping political choices.

Krahmann focuses on two competing ideologies or ideal types, republicanism and liberalism, which, she argues, have shaped the debate to date. Republicanism "advocates the centralization of the provision of security within the state and national armed forces comprised of conscripted soldiers." Liberalism "suggests the fragmentation and limitation of governmental powers and the political neutrality of professional armed forces" (p. 3). Each leads to differing models of civil–military relations: liberalism, which eschews conscription in Krahmann's depiction, facilitating the privatization of security, and republicanism, which embraces conscription, impeding it. In turn, conscription enhances democratic control of foreign policy, while reliance on an all-volunteer force undermines it. Each model has its own shortcomings: "The Republican