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American Sovereigns: The People and America's Constitutional Tradition Before the Civil War. By Christian G. Fritz (New York, Cambridge University Press, 2008) 447 pp. \$80.00

“Popular constitutionalism” is a hot topic among American constitutional theorists. Dismayed at the growing conservative dominance of the Supreme Court, a number of legal academics have challenged the preeminent role that judges have assumed in enforcing constitutional rules. They insist that the ultimate say on constitutional interpretation belongs to the sovereign people.¹ This view is sustained by a number of recent histories of antebellum constitutionalism.²

In this work, Fritz, looking at antebellum popular sovereignty, argues that modern Americans no longer understand what was once a vibrant concept that had practical consequences. The framers relied on it to justify shelving the Articles of Confederation and ratifying the new Constitution by processes other than those that it had specified. Fritz rejects the common view that this was a one-time use of a largely rhetorical device. State leaders regularly relied on the sovereignty of the people to justify departures from specified procedures for amending state constitutions. Most state constitutions explicitly affirmed the inherent right of the people to alter or abolish governments by any mode convenient to the public welfare. Constitutional guarantees of the right to assemble and petition for the redress of grievances reflected the notion that the people retained an active right to monitor government.

Most Americans saw popular sovereignty as mandating broad political participation in government and continued scrutiny of it. Public meetings to state grievances and consider how to secure their remedy therefore might presage extra-constitutional action, as they had in the run-up to the American Revolution. Calling popular “conventions” implied even more clearly the ultimate authority of the people over their government. In one of his most important contributions, Fritz recovers the variety of methods that James Madison said the people could use to “interpose” when they believed constitutional principles were being subverted. Such Madisonian interpositions were not “nullifications” of government action but interventions calculated to challenge the offending measures.

Americans divided over the legitimacy of such active exercises of popular sovereignty. A conservative minority insisted that popular sovereignty was exhausted once it created

¹ Larry D. Kramer, “The Supreme Court 2000 Term: Foreword: We the Court,” *Harvard Law Review*, CXV (2001), 4–168; Mark V. Tushnet, *Taking the Constitution Away from the Courts* (Princeton, 1999).

² Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (New York, 2004); Gerald Leonard, “Party as a Political Safeguard of Federalism: Martin Van Buren and the Constitutional Theory of Party Politics,” *Rutgers Law Review*, LIV (2001), 221–281; Gerald N. Magliocca, *Andrew Jackson and the Constitution: The Rise and Fall of Generational Regimes* (Lawrence, 2007); Wayne D. Moore, *Constitutional Rights and Powers of the People* (Princeton, 1996).

governments; thenceforth, the people could act only through formal procedures, which need not be pronouncedly democratic. In effect, government, rather than the people, became sovereign. These arguments were reiterated in conflicts ranging from what conservatives called Shays' Rebellion of 1787 in Massachusetts to the Pennsylvania "Whiskey Rebellion" of 1794 and "Dorr's Rebellion" of 1842 in Rhode Island. In all of these cases, conservatives denied the legitimacy of the people exercising sovereignty through mass meetings and conventions.

Fritz also closely considers different understandings of popular sovereignty over the United States government. He argues that Madison understood American sovereignty to rest in the people of the states acting collectively. This middle-ground concept faded as rival, polar notions emerged—the view of Daniel Webster that sovereignty resided in a single American people versus John C. Calhoun's idea that it lay in the people of each state.

In his study, Fritz relies entirely on conventional historical methods. He thoroughly investigates published public documents and controversial literature, as well as the historiography of key events. Despite the apparent relevance of his work to controversies concerning popular constitutionalism, however, his sole discussion of the concept occurs in the epilogue, and then only to distinguish the broad conception of collective sovereignty that he resurrected from the popular constitutionalism described by other legal scholars. Constitutional theorists will be disappointed in this failure to engage the theoretical literature. Only a short section of the epilogue deals with "jurisprudential implications" (296). Fritz briefly contends that if the Supreme Court properly understood Madison's ideas of federalism, it would have utilized different reasoning to overturn state-imposed term limits on elected members of Congress. If it understood the original concept of popular sovereignty, it would concede greater authority to the people to decide disputes between branches of government, and it would abandon its claim to judicial supremacy over constitutional controversies. But he concedes that "the collective sovereign today has no practical role to play in the operation of government" (298).

American Sovereigns can be cited by theorists challenging present-day judicial supremacy in constitutional interpretation. It is a good history retrieving long-lost understandings of the American constitutional system. But it is traditional in its approach and circumspect in suggesting present-day implications. It does not seem to have been conceived as an interdisciplinary project, and it must be judged for its significant contribution to history rather than for other purposes.

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