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Christian G. Fritz. *American Sovereigns: The People and American's Constitutional Tradition before the Civil War.* New York: Cambridge University Press, 2008. xi + 427 pp. $80.00 (cloth), ISBN 978-0-521-88188-3.

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Competing Conceptions of Collective Sovereignty in the Early American Republic

Scholars of American constitutionalism generally focus on the federal Constitution and view the key decisions about popular sovereignty as having been resolved in the constitutional convention of 1787. In *American Sovereigns*, Christian G. Fritz challenges this notion by showing that "the emergence of a dominant understanding about American constitutionalism was not the result of a single defining event such as the federal constitutional convention," but rather "developed incrementally through successive political controversies at the state and national level" (p. 2). In particular, Fritz argues that from the Revolution to the Civil War, Americans frequently debated whether "'the people' could express their sovereign will in changing constitutions only by using government-sanctioned procedures" (p. 3). Some Americans argued for a "constrained" view that "expected the existing government to be involved in the revision process," while many others articulated an "expansive" view according to which "a majority of the people possessed the inherent right to make constitutional changes, even independent of government" (pp. 4-5).

Fritz's purpose in this painstakingly researched and richly rewarding study is to show that a number of events in the early American Republic can only be fully understood by viewing them as episodes in a longstanding debate over competing conceptions of collective sovereignty. As he explains: "Understanding that many Americans, and not just the federal Framers, continued to grapple with the significance of the people as the sovereign offers a new perspective on constitutional events and episodes taking place before the 1850s. During that time, constitutional questions intertwined with political disputes and controversies. Rather than focusing on the political aspects of these controversies, the events examined in this book are viewed in the light they shed on the key question of constitutionalism–how Americans thought about their authority as America's collective sovereign" (p. 286). His aim throughout is to show that "events and constitutional practices now dismissed as unimportant assume a new significance when supplemented by the broader sweep of constitutional developments" and that "this broader framework makes sense of many things that existing studies cannot explain or dismiss as aberrational or illegitimate" (p. 286).

Toward this end, part 1 of *American Sovereigns* examines a series of state-level constitutional debates prior to 1787. Fritz notes the prevalence of clauses in early state constitutions guaranteeing people the right to alter or abolish governments. He argues that these provisions came to be seen as "permitting the people as the sovereign to control government and revise their constitutions without limit," even in the absence of explicit constitutional revision procedures (p. 25). So ingrained was this expansive conception of collective sovereignty during this period, he argues, that it generated a series of "determinist" movements, wherein residents in western regions of Virginia, North Carolina, and Pennsylvania sought to achieve independence from their existing state governments and create their own polities. These expansive interpretations of popular sovereignty did not go uncontested, however. Critics maintained that constitutional change could take place only through established governmental processes and warned that claims to the contrary risked bringing about governmental instability and popular confusion.

These pre-1787 state disputes over dueling interpretations of the Revolutionary commitment to collective sovereignty culminated in the debate over the legitimacy of the Massachusetts Regulator movement in 1786-87. Dissatisfied with the Massachusetts legislature's economic policies, Regulators assembled in conventions and called for the overturning of these policies. When their petitions had no effect, they forced the closing of various courthouses and eventually engaged in armed conflict with government troops under forces led, in part, by Daniel Shays. Fritz notes that the Regulators' recourse

to arms, by their own admission, "lacked the justification of the people's earlier acts of convening conventions and closing courts" (p. 111). But, he argues that the earlier conventions and court closings were not aberrational during this period. In fact, he argues, Regulators could lay claim to offering a legitimate (though not the only possible) interpretation of the Revolutionary principle of collective sovereignty, contrary to the arguments of their opponents, the Friends of Government, who viewed this principle as precluding popular resistance of this sort.

In part 2, Fritz examines the drafting of the federal Constitution and assorted controversies during the ensuing half century about diverging views on the legitimacy of the expression of collective sovereignty at the federal level. He considers a range of founding-era debates–whether to guarantee a right to instruct representatives, whether to include language securing the people's right to reform their government, and how to structure the constitutional amendment process. He shows that a more constrained interpretation of collective sovereignty prevailed in each instance. Nevertheless, and this is his distinctive contribution in this section, "the formation and ratification of the constitution confirmed the persistence of competing constitutional visions," insofar as "a different view of the people's sovereignty–one that posited a direct, active role for the people and stressed their ability to rule as well as be ruled–did not die with the constitution's ratification" (p. 152).

The continued vitality of the debate over competing visions of collective sovereignty at the federal level is especially evident, Fritz argues, in the protests against the federal whiskey excise tax of 1791 and ensuing reactions of Washington administration officials, as well as in debates over interposition in 1798-1800, 1814-15, and 1831-33. Critics of the federal excise tax called conventions where they drafted petitions demanding the tax's repeal, only to be met by statements from federal officials denouncing such conventions and petitions as an illegitimate exercise of popular sovereignty. Meanwhile, the Virginia and Kentucky resolutions, Hartford Convention, and nullification crisis are generally treated as "disputes concerning federalism," but Fritz contends that these episodes actually "involved much more because each shaped the ways the American sovereign could–as the concept of the people's sovereignty called for–monitor the constitutional operation of the national government" (p. 193). Although Fritz notes that several of the more expansive claims advanced during these episodes exceeded a legitimate interpretation of the collective sovereignty principle, and, therefore, lacked constitutional authority, he concludes that for many individuals at the time, "Interposition was inherent in American constitutionalism" (p. 232).

In the third and final part of the book, Fritz turns back to the state level to examine the early nineteenth-century state conventions that were held in the absence of explicit constitutional revision procedures, or, alternatively, were called "independent of the existing government" and, thus, "without permission of the legislature" (p. 240). The first kind of convention was held frequently in the early 1800s, at a time when a number of state constitutions did not make explicit provision for revision conventions. Although somewhat controversial at the time, these conventions have generally been viewed as legitimate by scholars. But, as Fritz shows, conventions of the second sort were also convened in a number of states and frequently justified as legitimate expressions of the people's sovereignty, despite the scholarly tendency to label these "self-created conventions 'illegal' or 'extra-legal"' (p. 239).

The legitimacy of this second type of state convention provoked a great deal of controversy at the time, and nowhere more so than in Rhode Island in 1841-42, when Thomas Wilson Dorr and his supporters not only called a convention but also went on to draft a constitution independent of the sitting government. As Fritz writes, this controversy raised what came to be called "the Rhode Island question": "whether, in America, a majority of the people as the sovereign was constitutionally entitled to alter their governments whenever and however they chose, even independent of the existing government" (p. 260). Dorr's "Law and Order" opponents, whose claims have been accepted by a number of modern scholars, viewed Dorr's arguments about the legitimacy of these acts as "long since discredited" (p. 268). But Fritz contends that "in accepting that characterization, scholars overlook the legitimacy of Dorr's constitutionalism. Dorr's views about the people's sovereignty could be traced back to the Revolution and they remained an integral part of American constitutional discourse and practice thereafter–even as those understandings increasingly competed with other constitutional views" (p. 268).

Other scholars have examined variations on the general question that Fritz poses about popular sovereignty in *American Sovereigns*. Akhil Amar has argued, for instance, that Article V does not set out the exclusive mechanisms for changing the federal Constitution. And, as Fritz discusses, Larry Kramer has recently made the case that the people, rather than judges, were originally expected to play a dominant role in constitutional interpre-

tation and enforcement. But Fritz's study is the first comprehensive analysis of the way that Americans prior to the Civil War understood popular sovereignty as authorizing constitutional change independent of established procedures. His framework of competing interpretations of collective sovereignty helps organize and make sense of a number of key developments in early American constitutional development, at both the state and federal levels. And he marshals an impressive amount of evidence in support of his ultimate conclusion that "the so-called rebellions named after Daniel Shays, the whiskey excise tax protestors, and Thomas Wilson Dorr ... were not, as generally portrayed today, aberrations. In each incident, Americans justified their actions through their authority as the sovereign people. This type of call for action was familiar from the Revolution. Its repeated use after the Revolution was unexceptional" (p. 285).

The one point that Fritz might have addressed to a somewhat greater extent is his decision to bring the current study to an end with the Civil War. He notes, at one point, that the war played a pivotal role because "as preserving the union became increasingly important to Americans, pressure mounted to restrict the role the people played as guardians of their sovereignty–at least in the context of the federal Constitution" (p. 233). But he also makes clear in an endnote that "the war and its aftermath seems not to have rendered" expansive conceptions of collective sovereignty "extinct" and that "those ideas can be traced in debates over the meaning of American constitutionalism well into the late nineteenth century. Ironically, many of the constitutional understandings traced in this book appear to have been displaced and rendered beyond the constitutional pale only in the course of the Progressive movement of the early twentieth century" (pp. 398-399 n9). Ultimately, he concludes that exploration "of how, when, and why" these ideas "went 'extinct"' "is the subject of a future book and beyond the scope of this present work" (pp. 398-399 n9). Fritz succeeds admirably in the current work in offering an original and insightful analysis of competing conceptions of popular sovereignty through the mid-nineteenth century, and scholars of American constitutional development will look forward to the successor volume for additional insight into the development of, continued debate over, and ultimate fate of expansive interpretations of popular sovereignty in subsequent years.

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