

past's mad dimensions orthogonally onto the present to mark an ineluctable path forward. Here, Bernstein gratifies in a different way: by expertly complicating the deceptively simple.

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Christian Fritz, *American Sovereigns: The American Constitutional Tradition Before the Civil War*, New York: Cambridge University Press, 2008. Pp. xi + 427. \$31.00. (ISBN: 0-521-12560-4).  
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Over the last decade, Christian Fritz has authored a number of important articles on constitutional history and theory that attempt to refocus our attention on the importance of state constitutionalism to the American constitutional tradition. As Fritz sees it, our understanding of American constitutionalism has for too long been dominated by our obsession with the federal version. This has led us to naturalize that text, and see the state constitutions as anomalies. However, when we consider that more than 200 state constitutions have been written and revised since 1776, it is the federal constitution that appears to be anomalous. It is especially anomalous to center on the federal constitution in the pre-Civil War period when the states were far more central to American government and politics. *American Sovereigns* is the culmination of Fritz's revision, in which he outlines a constitutional tradition much different from the one we know today. The traditional story of American constitutionalism holds that the ratification of the federal constitution in 1789 marks the emergence of a liberal constitutionalism in which the rule of law (defined by judicial review) reigned. By contrast, Fritz argues that American constitutionalism before the Civil War was defined by popular sovereignty and the powers the people possessed.

The book is divided into three parts. Part I focuses on the emergence of popular sovereignty in the 1760s and 1770s. The intellectual roots of the new American constitutionalism, Fritz argues, can be traced to both natural law ideas and English constitutional doctrine. The origin, however, lies not in the individual and state of nature, but rather in the right of revolution and the common law right of redress. Both the law of redress and the right of revolution were rights possessed by the people rather than by individuals, and were invoked first to cast off the British government. Once independence was accomplished, Americans were unwilling to give up their newfound sovereignty, and directed their attention to creating new government "resting on

the actions of the people instead of the hypothetical bargain underlying the British constitution” (15). This raised the question, however, of how—indeed whether—a collective sovereign could act. The struggle over this question, Fritz argues, was the central dynamic animating American constitutional development before the Civil War. He suggests that there were two competing views, one focused on procedure and the other on direct action. The struggle over these two conceptions of popular sovereignty took place on a “constitutional middle ground” between revolution and judicial review, where the people, through their right to alter or abolish government, were the main agents of constitutional development. As constitution-maker, the people had no reason to resort to revolution and no use for judicial review. Rather, the principle problem was how to define “the people.”

Fritz uses this framework to offer fresh interpretations of well-studied episodes in American history. The remainder of Part I focuses on statehood (or “determinist”) movements and Shay’s Rebellion, which he uses to demonstrate the manifold uses of popular sovereignty. Part II picks up with the federal convention and “the effort to constrain the people,” or, the effort to define “the people” in narrow, procedural terms. The Whiskey Rebellion (Chapter 6) “tested” this understanding that the collective sovereign could act only through governmental institutions. Fritz concludes Part II by exploring whether the people could act extralegally in several well-studied debates over “federal sovereignty,” including especially the Virginia and Kentucky Resolutions and Nullification. Fritz ends his story in Part III, with the Dorr Rebellion in Rhode Island, which represents for him the culmination of the constitutional middle ground. In Rhode Island’s brief struggle, Dorrites eschewed the violence that typically characterizes revolution, and sought instead to pursue more orderly change. This forbearance demonstrated to many that the people could govern themselves without degenerating into anarchy.

Fritz deftly brings together state and federal constitutional history, as well constitutional theory and history, to offer fresh interpretations of well-known episodes, nicely demonstrating his synthetic skills. Too often, studies of state and federal constitutionalism are treated as if they are quarantined from each other. Fritz reminds us that we need to keep them in conversation with each other. However, the freshness of Fritz’s interpretation is offset by the staleness of some of his chosen subjects. So much has been written about the episodes in this study that it is easy for the mind to glaze over yet another interpretation of them. Although Fritz is right that popular sovereignty is the chief dynamic of early American constitutional development, we need to know more about how it operated in matters of governance, not just in discrete, if important, political episodes.

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