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2. Christian G. Fritz’s *American Sovereigns: The People and America’s Constitutional Tradition Before the Civil War* is a useful resource on how the process of constitutional change was tamed during the early Republic. The American Revolution rested on the principle that the people were sovereign, but Fritz focuses on the subsequent debate about “whether ‘the people’ could express their sovereign will in changing constitutions only by using government-sanctioned procedures” (3) or whether mass action by informal bodies such as militias could bring about legitimate constitutional change. While some of this ground was covered in Larry Kramer’s 2004 book, *The People Themselves: Popular Constitutionalism and Judicial Review*, Fritz provides important new information and insights on this question.

3. The strength of this book is in its discussion of attempts to initiate constitutional change at the state level – some successful, some comical, and some tragic. Part One talks about the revolutionary spirit that led to sweeping constitutional revisions during the 1770s and 1780s. Most of these reforms were made without regard to established procedures, either because those procedures were inherited from the Crown (and thus deemed invalid) or because “[i]t was inconsistent with American constitutionalism at this early period to believe that a constitution took precedence over the will of its markers or otherwise bound the people to specified procedures” (31). The more amusing examples involve separatist movements within the thirteen states, such as Transylvania (now part of Kentucky and Tennessee) or Westsylvania (in the Appalachians) that are unknown even to well-informed lawyers and political scientists. Fritz’s most serious case study is Shays Rebellion, where armed citizens (mostly debtors) launched an unsuccessful attempt to overthrow the Massachusetts Constitution of 1780. He uses this example to raise a critical issue: When does the need for governmental stability trump the revolutionary rights of the people?

4. Part Two assesses the Federal Constitutional Convention of 1787, which ended up straddling the procedural and revolutionary visions of popular sovereignty, and
subsequent disputes among that generation about how constitutional change should occur. After all, the conclave that met in Philadelphia was an irregular institution that was not authorized under the procedures set forth in the Articles of Confederation. Moreover, the ratification of the new Constitution, through state conventions of delegates elected solely for that purpose, was flatly inconsistent with the procedures in the Articles and in the existing state constitutions. Nevertheless, the Framers were able to justify these extraordinary actions because, as Madison explained in Federalist #40, “[i]n all great changes of established governments, forms ought to give way to substance” (138-39).

On the other hand, the Framers also took the view that, henceforth, constitutional change must come about through the procedures in Article Five of the Constitution. Thus, when citizens in Pennsylvania rose up during the “Whisky Rebellion” of 1794 to protest the validity of federal excise taxes, President Washington rejected their activities as anarchy and led an army against them. And when they convened a convention to petition Congress, the President issued a proclamation calling the meeting “subversive of good order, contrary to the duty that every citizen owes to his country, and to the laws” (169). The protestors responded (unsuccessfully) that the Administration’s tactics reduced “the people to mere machines” and subverted “the very existence of liberty” (173). In effect, the United States was passing through the same problem that all revolutionary countries face, which is that popular sovereignty must at some point be channeled away from mob action into regular procedures that allow for broad and peaceful participation. Fritz also deftly explores this dilemma in relation to the Virginia and Kentucky Resolutions, in which Jefferson and Madison used an unorthodox approach to challenge the Alien and Sedition Acts, the Hartford Convention, through which various New England states threatened secession over President Jefferson and Madison’s policies, and the views of John C. Calhoun, who argued that the states could exercise their sovereignty by nullifying unconstitutional federal laws.

Part Three returns to state constitutional practices—this time during the mid-nineteenth century—and describes the continuing debate (now more evenly divided) about whether legitimate change could be grounded purely in popular expressions of dissatisfaction or must pass through lawful forms. That question reached a boiling point during the Dorr Rebellion of 1842, in which disgruntled Rhode Islanders sought to write a new constitution to replace the colonial charter, which was still in force and still required property ownership as a predicate for voting rights. When reformers convened a convention and held a referendum on their proposal, the established government refused to recognize its legitimacy and open warfare broke out. Fritz’s discussion of this episode, whose resolution was rather ambiguous on the sovereignty question, is particularly interesting and thoughtful.

There are two principal weaknesses in the book. The first is that Fritz relies exclusively on a rather narrow concept of constitutional change—new constitutional text. Thus, he fails to consider a middle ground between specific amendments that must pass through strict procedures and broad exercises of popular sovereignty that lead to new constitutions. Plenty of informal constitutional change occurred in ante-bellum America through court decisions, changes in custom, and institutional transformations that came about through a mix of procedural and popular pressure. Andrew Jackson’s destruction of the Second Bank of the United States or the Compromise of 1850 are two examples. Second, by omitting the secessionist conventions of 1860-61 from his discussion, Fritz
loses the chance to answer the question he raises – why did Americans eventually reject the idea that irregular bodies could produce new constitutional text? The answer, of course, is that the Civil War discredited the idea of popular action outside of established procedures with respect to constitutional reform. While the early decades of American history are worthy of careful study, they do always shed light on the Republic’s most profound controversies.

Gerard N. Magliocca is a Professor of Law at Indiana University–Indianapolis.