Popular sovereignty in the United States

The American Revolution marked a departure in the concept of popular sovereignty as it had been discussed and employed in the European historical context. With their Revolution, Americans substituted the sovereignty in the person of the English king, George III, with a collective sovereign—composed of the people. Henceforth, American revolutionaries by and large agreed and were committed to the principle that governments were legitimate only if they rested on popular sovereignty – that is, the sovereignty of the people.[1] In 18th century American political thought, "the people" excluded most of the population, such as women, African Americans, those lacking sufficient property, Native Americans, and children.[2]

This idea that the people were sovereign (often linked with the notion of the consent of the governed) was not invented by the American revolutionaries. Rather, the consent of the governed and the idea of the people as a sovereign had clear 17th and 18th century intellectual roots in English history.[3] The American contribution lay in what Americans did with the idea that the people were the sovereign—how they struggled with and put that idea into practice. Before the American Revolution, few examples existed of a people deliberately creating their own governments. Most people in the world experienced governments as an inheritance—whether monarchies or expressions of raw power.[4] What underscored the excitement surrounding the creation of constitutions establishing governments in America after Independence was the fact that Americans deliberately and self-consciously created governments at one single moment explicitly relying on the authority of the sovereignty of the people (or "popular sovereignty"). Having relied upon the people as the collective sovereign to establish their first state constitutions (and later the Federal constitution), numerous questions remained for Americans to answer. What did a collective sovereign mean? How did one recognize the voice or expression of that collective sovereign and in what ways could that collective sovereign act? Americans struggled and contested over the answers to these questions from the time they declared Independence to the eve of the Civil War. During this period the idea of the people as the sovereign both unified and divided Americans in thinking about government and the basis of the Union.[5] Historian Ronald Formisano notes that "assertions of the peoples' sovereignty over time contained an unintended dynamic of raising popular expectations for a greater degree of popular participation and that the peoples' will be satisfied." [6]

American usage of the term "popular sovereignty"

The doctrine known today as "popular sovereignty" was rooted in the American Revolutionary belief that a whole people, rather than a monarch or single individual, could serve as the sovereign of the nation. This was a matter of common agreement in America after the Revolution. As noted by legal historian Christian G. Fritz in *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War,* both before and after the Revolution, Americans believed "that the people in a republic, like a king in a monarchy, exercised plenary authority as the sovereign. This interpretation persisted from the revolutionary period up to the Civil War." [7] However as wide spread as this belief in the power of the people was, Americans infrequently used the term "popular sovereignty" to describe the idea.[8] Rather, in expressing this founding concept of rule by the people, they described how "the people" would exercise sovereignty in America and that American government would reflect the "sovereignty of the people." Use of the actual term "popular sovereignty" was infrequent before the 1840s.

Emergence of the term "popular sovereignty" and its pejorative connotation

In 1846, as the dispute over slavery in the United States developed in the wake of the Mexican-American War, the use of the term "popular sovereignty" began to gain currency as a method to resolve the status of slavery in the country. The war ended with the United States acquisition of lands once held by Mexico.[9] The effort to incorporate these lands into the United States uncovered long-simmering disputes about the extension of slavery – whether slavery would be permitted, protected, abolished, or perpetuated in these newly acquired areas.[10] Congressional

attempts to resolve this issue led to gridlock. Several congressional leaders, in an effort to resolve the "deadlock" over slavery as a term or condition for admission or administration of the territories, searched for a "middle ground." [11]

Some moderates asserted that slavery in the territories was not a matter for Congress to resolve. Rather, they argued, the people in each territory, like the people in each American state, were the sovereigns thereof, and as that sovereign they could determine the status of slavery for themselves.[12] In this way, the term "popular sovereignty" became part of the rhetoric for leaving it up to residents of the American territories (and not Congress) to decide whether or not to accept or reject slavery. In essence, this also left it up to the people of the territories to resolve the controversy over expansion of slavery in the United States. This formed a "middle ground" between proponents of an outright limitation on slavery's spread to the territories and those opposing limitation. The idea tied into the widespread assumption of Americans that the people were the sovereign.[13]

As explained by historian Michael Morrison, the "idea of local self-determination, or, as it would become known, popular sovereignty" began to occupy the attention of members of Congress in 1846 and 1847.[14] In modern historiography, Illinois U.S. Senator Stephen A. Douglas is most closely associated with the idea of popular sovereignty as a solution to the issue of the extension of slavery in the territories.[15] Douglas's biographer, the historian Robert W. Johannsen, observed that Douglas was

> chairman of the Committee on Territories in both the House and Senate, and he discharged the responsibilities of his position with single-minded devotion…. During the debates over the organization of the Mexican Cession, Douglas evolved his doctrine of popular sovereignty, and from that time on it was irrevocably linked to his interest in the territories and in the West. His commitment to popular sovereignty was the deeper because he recognized in it a formula that would (he hoped) bridge the differences between the North and South on the slavery question, thus preserving the Union.…[16]

The term "popular sovereignty" was not coined by Senator Douglas. Rather, in connection with slavery in the territories, the term was first used by presidential candidate and Michigan U.S. Senator Lewis Cass in his "Nicholson Letter" of 1847.[17] But the term "popular sovereignty" is now closely tied to Douglas's legacy. Ultimately, the connection of the doctrine of popular sovereignty with the failed attempt to accommodate slavery gives rise to its pejorative connotation today. Douglas

> ultimately became the victim of the very politics he sought to remove from territorial policy" by advancing the idea of popular sovereignty. "His efforts were not judged in terms of their impact on the needs and desires of the territories … rather they were appraised in terms of their relation to the power struggle between North and South and to the issue of slavery. Despite Douglas's intentions, the territories continued to be but pawns in a larger political controversy.[18]

Notes

[1] Paul K. Conkin, *Self-Evident Truths: Being a Discourse on the Origins & Development of the First Principles of American Government—Popular Sovereignty, Natural Rights, and Balance & Separation of Powers* (Indiana Univ. Press, 1974), at p. 52 ISBN 978-0-253-20198-0 (describing "the almost unanimous acceptance of popular sovereignty at the level of abstract principle"); Edmund S. Morgan, "The Problem of Popular Sovereignty," in *Aspects of American Liberty: Philosophical, Historical and Political* (The American Philosophical Society, 1977), at p. 101 (concluding the American Revolution "confirmed and completed the subordination of government to the will of the people"); Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era* (University of North Carolina Press, 1980), at p. 137 ISBN 978-0-7425-2069-1 (asserting that statements of the "principle" of the people's sovereignty "expressed the very heart of the consensus among the victors of 1776").

[2] Gary B. Nash, Gary B., *Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America* (Viking, 2005) ISBN 978-0-14-303720-0 (describing how the Revolution laid the groundwork for an expanding definition of who were deemed part of "the people.").

[3] On the English origins of the sovereignty of the people and consent as the basis of government, see John Phillip Reid, *Constitutional History of the American Revolution* (4 vols., University of Wisconsin Press, 1986-1993), Vol. III:97-101, 107-10 ISBN 0-299-13070-3 ; Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (W.W. Norton and Company, 1988) ISBN 0-393-30623-2

[4] Gordon S. Wood, *The Radicalism of the American Revolution* (Alfred A. Knopf, 1991), at p. 243 ISBN 978-0-679-73688-2 (noting that during their Revolution, Americans "became the first society in the modern world to bring ordinary people into the affairs of government—not just as voters but as actual rulers"); Pauline Maier, *American Scripture: Making the Declaration of Independence* (Alfred A. Knopf, 1997), at p. 34-35 ISBN 978-0-679-77908-7 (observing that in 1776 no governments existed "in which all authority rested on popular choice").

[5] This is the conclusion reached in Christian G. Fritz, *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War* (Cambridge University Press, 2008) [ISBN 978-0-521-88188-3] (In the prologue to this study, Fritz notes "In framing America's first constitutions, patriots celebrated the people's sovereignty. These ideas smoldered even after the Revolution ended and this heated revolutionary rhetoric soon permeated all regions and ranks of society. Government was no longer something that happened to people. In America it now became something the people — by their consent and volition — brought into being. The people gave their consent through their conduct and their active participation reinforced the message that the people were America's new sovereign." However, "Americans argued fiercely about the nature and the extent of their power as part of the collective sovereign, and seven decades later [after independence] they were no closer to agreement over what the people's sovereignty meant than they were during the Revolution.") Prologue, *American Sovereigns*, at p.l (http://books.google.com/books?id=ZpKCvUacmSwC&pg=RA1-PA168&lpg=RA1-PA168&dq=christian+g+fritz+ "american+sovereigns"&source=web&ots=UjY_WKHNjv&sig=Y2_7OZMg6ksk_866oiD44FArH-w&hl=en#PRA1-PA1,M1)

[6] Ronald P. Formisano, *For the People: American Populist Movements from the Revolution to the 1850s* (Univ. of North Carolina Press, 2008), at p. 43. [ISBN 978-0-8078-3172-4]

[7] Christian G. Fritz, *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War* (Cambridge University Press, 2008) at p.7 ISBN 978-0-521-88188-3

[8] *See, e.g.*, Leonard Levy, ed., *Encyclopedia of the American Constitution* (Nathan Tarcov, "Popular Sovereignty (in Democratic Political Theory), vol 3, p. 1426, 1428 (1986) (Noting of the doctrine of popular sovereignty before the Civil War that "the Founders tended not to call the doctrine expounded here as 'popular sovereignty.'")

[9] Mexican-American_War#Impact_of_the_War_in_the_United_States

[10] Wilmot Proviso

[11] Michael A. Morrsion, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War*, (University of North Carolina Press: 1997) at p. 78 (noting that congressional debate over slavery in the territory acquired from Mexico had reached a "deadlock" and that Whig party was "unwilling to meet the problem head-on.") & at p. 84 (noting that in the face of "extreme solutions" to the slavery question in the territories, "moderates in both parties began to search for middle ground.")

[12] Compromise_of_1850#Clay_and_Douglas_draft_compromise

[13] Stephen A. Douglas And The American Union (http://www.lib.uchicago.edu/e/spcl/excat/douglas5.html) (Website: University of Chicago Library) (May 14, 2008) ("Popular sovereignty had the potential for great public appeal because it was closely tied to the ideal of majority rule and the principles of American constitutionalism. For [Senator Stephen A.] Douglas, it had even more important political implications. By removing slavery from congressional debate and transferring it to geographically remote territorial legislatures, Douglas hoped to insulate the federal Union from further sectional conflict.")

[14] Michael A. Morrsion, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War*, at p. 84 (University of North Carolina Press: 1997) (noting that as a proposal for solving the question of slavery in the territories, "popular sovereignty endorsed the fundamental principle of self-government, [so that] its appeal was powerful. Of more immediate importance, Cass's [popular sovereignty] doctrine also held out the twin and seemingly paradoxical advantages of resolving the territorial issue and postponing its denouement. For although popular sovereignty proposed to remove this vexing question from Congress, Cass was as silent as the dumbest oracle on the precise stage of territorial development at which inhabitants were to regulate slavery.")

[15] Stephen A. Douglas (noting that "Douglas was well-known as a resourceful party leader, and an adroit, ready, skillful tactician in debate and passage of legislation. As chairman of the Committee on Territories, Douglas dominated the Senate in the 1850s. He was largely responsible for the Compromise of 1850 that apparently settled slavery issues. However, in 1854 he reopened the slavery question by the highly controversial Kansas-Nebraska Act that allowed the people of the new territories to decide for themselves whether or not to have slavery (which had been prohibited by earlier compromises). The protest movement against this became the Republican Party.")

[16] Robert W. Johannsen, *The Frontier, the Union and Stephen A. Douglas* (Univ. of Illinois Press: 1989) at p. 95-96 ISBN 0-252-01577-0

[17] Michael A. Morrsion, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War*, at p. 84 (University of North Carolina Press: 1997) (noting that "not until the presidential hopeful Lewis Cass made it his hobby was popular sovereignty put clearly before the people. As he delineated the doctrine in his 'Nicholson letter' of December 1847 [to Tennessee political supporter, A. O. P. Nicholson], Cass refused to take an explicit stand on Congress's power to regulate slavery in the territories. Rather, he contended that even if such power existed, it ought not be exercised. Congressional leadership, he argued, 'should be limited to the creation of popular governments and the necessary provision for their eventual admission into the Union; leaving in the meantime to the people inhabiting them to regulate their own internal concerns in their own way.'"); *see also* Willard Carl Klunder, *Lewis Cass and the Politics of Moderation* (Kent State University Press, 1996), at p. 168-70, 177-80, 241-43. ISBN 978-0-87338-536-7

[18] Robert W. Johannsen, *The Frontier, the Union and Stephen A. Douglas* (Univ. of Illinois Press: 1989) at p. 116-17 ISBN 0-252-01577-0

Further reading

- Childers, Christopher. "Interpreting Popular Sovereignty: A Historiographical Essay," *Civil War History* Volume 57, Number 1, March 2011 pp. 48–70 in Project MUSE (http://muse.jhu.edu/journals/civil_war_history/v057/57.1.childers.html)
- Etcheson, Nicole. "The Great Principle of Self-Government: Popular Sovereignty and Bleeding Kansas," *Kansas History* 27 (Spring-Summer 2004):14-29, links it to Jacksonian Democracy
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- Klunder, Willard Carl. "Lewis Cass and Slavery Expansion: 'The Father of Popular Sovereignty' and Ideological Infanticide," *Civil War History* 32 (1986): 293-317;
- Nichols, Roy F. "The Kansas-Nebraska Act: A Century of Historiography," *Mississippi Valley Historical Review* 43 (September 1956): 187-212 in JSTOR (http://www.jstor.org/stable/1902683)

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