

# Popular sovereignty

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**Popular sovereignty** or the **sovereignty of the people** is the belief that the legitimacy of the state is created by the will or consent of its people, who are the source of all political power. It is closely associated to the social contract philosophers, among whom are Thomas Hobbes, John Locke and Jean-Jacques Rousseau. Popular sovereignty expresses a concept and does not necessarily reflect or describe a political reality.<sup>[1]</sup> It is often contrasted with the concept of parliamentary sovereignty, and with individual sovereignty.

Benjamin Franklin expressed the concept when he wrote, "In free governments, the rulers are the servants and the people their superiors and sovereigns."<sup>[2]</sup>

The term "squatter sovereignty" is used by Jefferson Davis in his book *A Short History of the Confederate States of America*. This probably derogatory term referred to the influx of new citizens in order to manipulate the ultimate sovereign votes.

## History

The Declaration of Arbroath of 1320 makes clear that the King of Scots at the time, Robert the Bruce, only held his position as monarch subject to him resisting English attempts to control Scotland and makes clear that another king would be chosen if he failed to live up to this responsibility. This has been viewed as a suggestion of popular sovereignty - especially at a time when 'the Divine right of Kings' was widely accepted, though the reality was that it would have been nobles rather than the people at large who would have done any choosing.<sup>[3]</sup>

Popular sovereignty is an idea that also dates to the social contracts school (mid-17th to mid-18th centuries), represented by Thomas Hobbes (1588–1679), John Locke (1632–1704), and Jean-Jacques Rousseau (1712–1778), author of *The Social Contract*, a prominent literary work that clearly highlighted the ideals of "general will" and further matured the idea of popular sovereignty. The central tenet is that legitimacy of rule or of law is based on the consent of the governed. Popular sovereignty is thus a basic tenet of most democracies. Hobbes and Rousseau were the most influential thinkers of this school, all postulating that individuals choose to enter into a social contract with one another, thus voluntarily giving up some rights in return for protection from the dangers.

A parallel development of a theory of popular sovereignty can be found among the School of Salamanca (see e.g. Francisco de Vitoria (1483–1546) or Francisco Suarez (1548–1617)), who (like the theorists of the divine right of kings) saw sovereignty as emanating originally from God, but (unlike those theorists) passing from God to all people equally, not only to monarchs.

Republics and popular monarchies are theoretically based on popular sovereignty. However, a legalistic notion of popular sovereignty does not necessarily imply an effective, functioning democracy: a party or even an individual dictator may claim to represent the will of the people, and rule in its name, pretending to detain *auctoritas*.

## Popular sovereignty in the United States

The application of the doctrine of popular sovereignty receives particular emphasis in American history, notes historian Christian G. Fritz's *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War*, a study of the early history of American constitutionalism.<sup>[4]</sup> In describing how Americans attempted to apply this doctrine prior to the territorial struggle over slavery that led to the Civil War, political scientist Donald S. Lutz noted the variety of American applications:

To speak of popular sovereignty is to place ultimate authority in the people. There are a variety of ways in which sovereignty may be expressed. It may be immediate in the sense that the people make the law themselves, or mediated through representatives who are subject to election and recall; it may be ultimate in the sense that the people have a negative or veto over legislation, or it may be something much less dramatic.

In short, popular sovereignty covers a multitude of institutional possibilities. In each case, however, popular sovereignty assumes the existence of some form of popular consent, and it is for this reason that every definition of republican government implies a theory of consent.

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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 King George III, with a collective sovereign—composed of the people. Thenceforth, American revolutionaries generally 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.<sup>[6]</sup> This idea—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.<sup>[7]</sup>

In the decades before the American Civil War, the term "popular sovereignty" was often used to suggest that residents of U.S. territories should be able to decide by voting whether or not slavery would be allowed in the territory. This concept was associated with such politicians as Lewis Cass and Stephen A. Douglas.

## Further reading

- Klunder, Willard Carl. "Lewis Cass, Stephen Douglas, and Popular Sovereignty: The Demise of Democratic Party Unity," in *Politics and Culture of the Civil War Era* ed by Daniel J. McDonough and Kenneth W. Noe, (2006) pp. 129-53

## Notes

- [1] Leonard Levy, ed., *Encyclopedia of the American Constitution* (Nathan Tarcov), "Popular Sovereignty (in Democratic Political Theory), vol 3, p. 1426, 1426 (1986) ISBN 9780028648804 (Noting of the "doctrine" of popular sovereignty that it "relates primarily not to the Constitution's [actual] operation but to its source of authority and supremacy, ratification, amendment, and possible abolition.")
- [2] Thomas Jefferson (<http://etext.virginia.edu/jefferson/quotations/jeff0300.htm>) UVa Library
- [3] The Declaration of Arbroath: Pedigree of a Nation? (<http://eprints.gla.ac.uk/3710/01/arbroath2.pdf>), Dauvit Broun, University of Glasgow, Conference on Declaration of Arbroath, 20 October 2001: The declaration of Arbroath: pedigree of a nation? In Barrow, G. (Eds) *The Declaration of Arbroath: History, Significance, Setting*, Chap 1, pages pp. 1-12. First published in *The Declaration of Arbroath: History, Significance, Setting*: Society of Antiquaries of Scotland (2003)
- [4] Christian G. Fritz, *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War* ([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](http://books.google.com/books?id=ZpKCvUacmSwC&pg=RA1-PA168&lpg=RA1-PA168&dq=christian+g+fritz+\)) (Cambridge University Press, 2008) at p. 290, 400. ISBN 978-0-521-88188-3
- [5] Donald S. Lutz, *Popular Consent and Popular Control: Whig Political Theory in the Early State Constitutions* (Louisiana State Univ. Press, 1980) at p. 38 ISBN 978-0807105962 Additional support for the centrality of popular sovereignty include: Ronald M. Peters, Jr., *The Massachusetts Constitution of 1780: A Social Compact* (Univ. of Massachusetts Press, 1978) at p.1 ISBN 978-0807115060 (suggests the following as embodying the meaning of popular sovereignty for Americans - "The concept of popular sovereignty holds simply that in a society organized for political action, the will of the people as a whole is the only right standard of political action."); Donald S. Lutz, *The Origins of American Constitutionalism* (Louisiana State Univ. Press, 1988) at p. 10 ISBN 978-0807115060 (suggests that popular sovereignty came to have meaning in "the way Americans viewed themselves as a people. They firmly believed that on their own authority they could form themselves into a community, create or replace a government to order their community, select and replace those who hold government office, determine which values bind them as a community and thus which values should guide them those in government when making decisions for the community, and replace political institutions at variance with these values."); Joel H. Silbey, ed., *Encyclopedia of the American Legislative System* (3 vols., Charles Scribner's Sons, 1994) Vol. I, p. 37 ISBN 978-0684192437 (entry for "Constitutional Conventions," states "The justification of the American Revolution and republican government—as opposed to the monarchical forms of government in Europe—rested on the theory of popular sovereignty. In essence, that theory established the basic premise of American political life: the ultimate and sole legitimacy of government rests on the consent of 'the people.' Defining 'the people' became one of the central issues in the development of the American experience, but soon after declaring independence, American revolutionaries came to agree that popular sovereignty underlay America's republican governments. If identifying 'the people' and their role in changing government took many decades, the problem of how to locate popular sovereignty was solved relatively quickly by the institutional device of the constitutional convention.")

- [6] 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 9780253201980 (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 978-0742520691 (asserting that statements of the “principle” of the people’s sovereignty “expressed the very heart of the consensus among the victors of 1776”).
- [7] 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 0393306232
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