

ABSTRACT

CONSTITUTING POPULAR SOVEREIGNTY: CONTESTS OVER INSTITUTIONAL  
AUTHORITY IN THE EARLY AMERICAN REPUBLIC

The idea of popular sovereignty is a central concept in American constitutional theory and a core justification for the rise of federal judicial authority in American political development. Normative constitutional scholars have attempted to link the concept to constitutional law either through arguments about the origins of the constitutional text or through more innovative arguments about how “constitutional moments” lead to changes in constitutional law. For more empirically-minded scholars, the idea of popular sovereignty has been tied to Supreme Court politics and has been the basis for explanations about why judicial review arose in the United States and not (for example) in Great Britain.

In this dissertation, I argue that debates about the meaning of popular sovereignty provide insights into a wide-range of political practices in the development of the early American Republic, and not just court- or law-centered practices. Drawing on a new institutionalist literature that focuses on constitutional politics outside the courts, I examine the ways in which efforts to institutionalize the idea of popular sovereignty were at the heart, not just of judicial empowerment, but also of early American disagreements over a range of institutional powers and relationships, including claims of judicial supremacy, executive supremacy, legislative supremacy, departmental review, state interposition, the power of conventions, nullification, and even secession.

Through these debates we can appreciate how the basic institutional design of American politics remained dramatically unsettled all the way through the Civil War, despite the apparently settled nature of these questions as expressed in the formal constitutional law of the period. The eventual link between popular sovereignty and judicial power, therefore, requires a political explanation rather than merely a legal, normative, or interpretive one.