Daniel Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, Oxford: Oxford University Press, 2016, 361 pp, hb £60.00

Sovereignty and asserting the power of the people were unusually prominent themes in the news in 2016. While the title of Daniel Lee's book suggests a purely historical focus, the author is an assistant professor in political science and makes references to important wider issues in political science at appropriate points. Consequently it would be a pity if this book were read only by historical specialists. There is much of value here for political scientists wishing to look beyond purely modern literature, those interested in the interaction between law and political thought, and intellectual history more generally.

The book covers a range of writers on the boundary of legal and political thought, ranging from medieval civilians to Thomas Hobbes, in more or less chronological order. Most are well-known in their fields. For all these writers Lee stresses the role of Roman law language, concepts and ideas in their ideas and theories of sovereignty and in shaping the terms of discussion (providing a 'grammar' as Lee puts it) in debates on sovereignty more generally, through to the modern day.

This is not an easy book, but it contains much good material worth making the effort to find. Legal material and arguments derived from it can be complex. Lee navigates through the material well. There is some repetition in explaining points of Roman law in different chapters, but readers without much background in Roman law may find this helpful in reminding them of key legal concepts at appropriate points.

Because the arguments of the various theorists were intricate and legalistic, much of the book is not directly about popular sovereignty, but early-modern sovereignty theory more generally, with popular sovereignty as a specific aspect of that wider idea. I suspect that Lee recognised this issue; the beginning of the discussion of Jean

Bodin's theory of popular sovereignty begins with a telling observation that the chapter has 'finally' reached Bodin's theory of sovereignty in a popular state (p.217). This is not to say that the material about sovereignty more broadly is unwelcome or unhelpful. Quite the contrary. However, sometimes it only becomes clear how the wider discussion becomes relevant to issues of popular sovereignty at a late stage. Readers will need to be patient at times.

This patience, though, itself reveals an important observation about ideas of popular sovereignty in medieval and early-modern Europe. While popular sovereignty is now largely taken for granted as an essential aspect of constituting political authority, this was emphatically not the case several centuries ago. Sovereignty itself was a contested idea, and popular sovereignty more contested still. Any claims as to its role had to be carefully justified. In a crucial respect, Lee's book is about charting the development of European thought from this contestation to a more familiar (for modern readers) acceptance of popular sovereignty. By the later seventeenth century the idea that 'the people' necessarily had some sort of role in creating political authority was much more widely accepted, perhaps even dominant.

This change is reflected by an important section in Chapter 9 (the final substantive chapter). It is only here that a significant question for popular sovereignty becomes a significant theme in the debate: who or what constituted 'the people' for popular sovereignty. Although Lee does not express this observation, the late emergence of this issue seems to reflect the change acceptability of the idea of popular sovereignty itself. Chapter 9 is concerned with ideas popular sovereignty in the first of the seventeenth century in England. By this point, popular sovereignty was increasingly acceptable and opponents challenged less the idea and more the possibility of its application, in part by querying whether it were ever possible for 'the people' to exercise (or have exercised) that sovereignty.

Aside from the growing acceptance of popular sovereignty, there are two particularly important points to take from this book. Both of them arise at various points and are more observations on centuries of thinking and discussion than conclusions. Both, however, provoke further questions. The first observation is the possibility of separating the idea of popular sovereignty from democracy. As Lee shows, in the discussion of popular sovereignty, and brought out with characteristic clarity by Jean Bodin, sovereignty was antecedent to the particular constitutional model of a particular state. For Bodin, sovereignty was definitional for a state, which could then choose from a range of possible models of government, which could be monarchical, oligarchical or popular. While Bodin did not insist upon sovereignty being popular, later theorists did, but accepted Bodin's insight about constitutional structure.

For these later theorists, the sovereign people could consequently establish institutions of government which were not democratic. They could even exercise their popular sovereignty to create a monarchy. In such a state all political authority derived ultimately from the people, even if the people could not themselves exercise political or governmental power. The people could, for example, create a form of state in which the popular will (frequently an object of terror to the early-modern elites, including many of the writers considered in this volume) could be resisted. To move outside of the particular points raised by the writers in the book, a sovereign people could, for example, create a system in which the popular will as enacted through democratic legislation might be blocked by an unelected legislative chamber or overturned by a court. Such actions would not be democratic, but they would be grounded in popular sovereignty.

The second important observation is simply the importance of (Roman) law in the history of ideas of sovereignty, and more specifically popular sovereignty. The medieval and early-modern writers were happy mixing ideas from public and

private law, making this a complex set of texts. Lee is to be congratulated, in particular, for trying to engage with the legal material on its own terms, unlike some other writers in the history of political thought. Roman law was a crucial means for rendering ideas of sovereignty, and particularly popular sovereignty, acceptable.

I thought the engagement with the legal ideas could have been taken further. For example, some theorists described the people as exercising their sovereignty but giving governmental power to an individual. They reached for Roman models to explain the relationships between the people and the governing individual. That individual could be described as standing in the position of a guardian to the people (and thereby owing them obligations, as in Roman law). Other theorists used the idea of usufruct, with the people as the 'owner' of sovereignty, and the government having the right to use it. But Roman law only allowed a limited range of perpetual guardianship, and usufructs could never be perpetual. Did these models then lead to requirements that at some point 'the people' would have to exercise their sovereignty again? This issue is only mentioned in relation to Johannes Althusius (p.237) and not directly linked to his Roman law ideas. The absence in the rest of the book left me uncertain whether the other theorists did not raise this issue, or Lee made a decision not to include it. This the absence of discussion provoked an interesting question: might this have been where the Roman law ideas manipulated by writers to develop their ideas of sovereignty broke down, and what might that tell us about how Roman law was and could be used in developing political ideas?

Even more significant in relation to the use of Roman law, I thought an important question was begged and never addressed: why use legal material, language and ideas at all? This leads to a wider question about methodology for the authors being considered. Was legal material being used instrumentally, to justify conclusions reached (or sought) for other reasons, or did the legal material determine the conclusions? Lee never raises this issue, and it may be that different authors

considered in the volume would yield different answers. A purely instrumental use of the civil law does not make the law unimportant, but perhaps renders it less important than if it drove the initial development of ideas. Nonetheless, Lee does demonstrate that even if the civil law was initially used instrumentally, it clearly did influence the 'grammar' (as Lee puts it) of later discourse. There are hints that Lee views the use of legal material as instrumental, used to justify or support existing ideas and developments (eg p.98, with the emergence of sovereignty theory reacting to the trend to 'the centralization of public authority'), but if law were used instrumentally, why was law thought to be the suitable instrument? There are doubtless no simple answers to any of these questions. Nonetheless, Lees only demonstrates, but does not explain, the importance of Roman law which is an essential theme of the book. That is an important gap.

A second omission is simply the wider context in which these theories, and uses of civilian ideas, occurred. While Lee discusses theorists who can be seen to make use of the civil law, he does not consider other possible sources for sovereignty ideas which may have been relevant to other early-modern theorists. What about other possible sources of political power? Divine right ideas receive very scant discussion (p.282), and theology is hardly mentioned (eg p.157). These were hardly unimportant intellectual influences in early-modern Europe and to overlook them almost entirely makes the claims about the importance of civil law appear one-sided.

There are other, smaller, omissions which sometimes suggest a similar skewing of the argument to stress the civil law tradition and its practitioners at the expense of others. As a minor example, in the chapter on English developments, Lee begins by focusing particularly on two civilians, the Italian émigré Alberico Gentili and John Cowell. Lee makes much of John Cowell's equation of prerogative with *maiestas* in his controversial 1607 work, *The Interpreter* (p.280). Nowhere does Lee mention that common lawyers, not civilians, had begun to refer to the *maiestas* of the monarch in

the 1590s. I am not sure how this would affect the argument, but failing to mention it at all gives an impression of omissions which may be significant.

There are minor quibbles and editorial concerns (especially near-contradictory statements, such as p.274, referring to early-modern England as 'generally immune from the influence of civil law' and p.275, where 'Roman law made a considerable intellectual and social impact in England'; see also p.166 n.3 and 167). But these do not detract from the value of the many worthwhile points and observations in the book, which deserve to be considered by a wide range of readers.