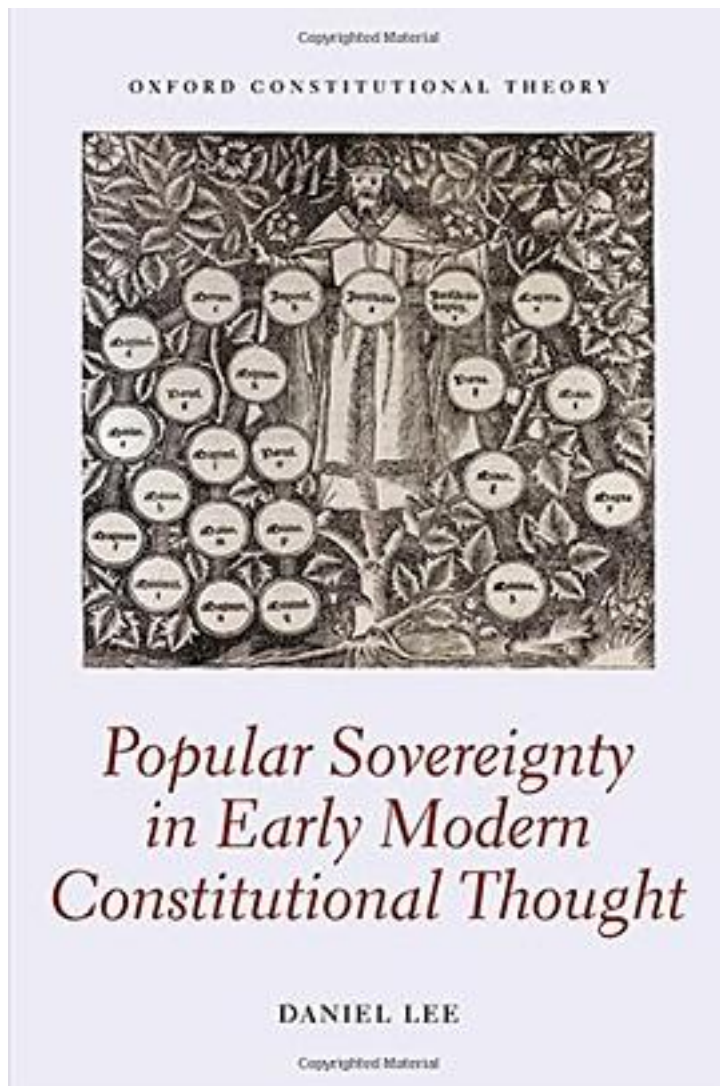


Popular Sovereignty in Early Modern Constitutional Thought



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Popular sovereignty - the doctrine that the public powers of state originate in a concessive grant of power from 'the people' - is perhaps the cardinal doctrine of modern constitutional theory, placing full constitutional authority in the people at large, rather than in the hands of judges, kings, or a political elite. Although its classic formulation is to be found in the major theoretical treatments of the modern state, such as in the treatises of Hobbes, Locke, and Rousseau, this book explores the intellectual origins of this doctrine and investigates its chief source in late medieval and early modern thought.

Long regarded the principal source for modern legal reasoning, Roman law had a profound impact on the major architects of popular sovereignty such as Francois Hotman, Jean Bodin, and Hugo Grotius. Adopting the juridical language of obligations, property, and personality as well as the model of the Roman constitution, these jurists crafted a uniform theory that located the right of sovereignty in the people at large as the legal owners of state authority. In recovering the origins of popular sovereignty, the book demonstrates the importance of the Roman law as a chief source of modern constitutional thought.

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标签

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评论

非常好，又是一本打通关节的研究。重要的点：首先，民权概念是欧洲前现代主权国家形成中的构成概念，不是启蒙运动后惯常理解的为了限权而发明的概念。其次，民权的思路来自于罗马法民法传统在前现代欧洲的复兴。罗马法民法中陈述财产法的语言成为“民”这个抽象主体在早期现代欧洲得以成为合法性概念的前提。最后，罗马法民法在早期现代欧洲复兴，成为超越宗教派别以及团体利益分歧之上的一个共享的有关国家理论的语言基础。在构成西方现代“公权”和宪政理论中扮演着核心作用。可以接着读Straumann的Crisis and Constitutionalism: Roman Political Thought from the Fall of the Republic to the Age of Revolution

这本书太厉害了，沿着这个方向往前走，能做的东西好多

mark

终于读完，堪称思想史研究范文，但最后对霍布斯的处理嘛……

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