

difficult to access in English. This book is an excellent and reliable entry point to what may otherwise be an elusive subject.

MINDY CHEN-WISHART  YING-CHIEH WU\*

*Constitutional Idolatry and Democracy: Challenging the Infatuation with Writtenness* by BRIAN CHRISTOPHER JONES [Edward Elgar, 2020, 208pp, ISBN 978-1788971096, £75 (h/bk)]

Brian Christopher Jones has written a fascinating and important book exploring the limits of written constitutions and the ways in which they are idolised. This is an impressive critique of dominant constitutional thinking, and is all the more welcome because it asks questions about written constitutions which are increasingly unasked. The idea that a State's constitution should be codified in a written text, which has supremacy over most other legal rules and is often enforced by the courts, is clearly the modern global norm. Inevitably there are differences in how these ideas are implemented in varying national contexts, and a few countries, such as the UK, New Zealand and Israel, remain (to differing extents) reluctant adopters. Yet the idea of the written constitution appears to be a magnetic force at the centre of constitutional studies, to which even outlier states will eventually be drawn. Or, at the very least, the dominance of the written constitution requires continuous justification of the decision to maintain the uncoded model, while prompting reductive and unfulfilling debates about whether a State can have a constitution at all without a single written text.

Jones presents a powerful challenge to the idea of the written constitution, seeking to unsettle mainstream assumptions about the superiority of such constitutional texts. The book approaches this task in an ambitious way, setting out to assess the broader impact of written constitutions on democracy, on politics and on citizens. The willingness to engage with the effectiveness of written constitutions is a particular strength—Jones' detailed deconstruction of the educative function of written constitutions in Chapter 3 is concerning and illuminating in equal measure, and his sceptical analysis of 'We the People' myths raises some crucial concerns about the democratic character of modern constitutionalism. There are also powerful arguments in Chapters 5 and 6 demonstrating the extent to which written constitutions protecting entrenched individual rights have placated citizens rather than reinvigorated democracy, and the weak connection between the quality of a written constitution and the success or survival of a State.

These are rich lines of argument, and there are others, such as his finding that the language of constitutional 'guardianship' has enjoyed a modern resurgence, and that its unwelcome paternalism (especially when such terms are attached to the judiciary) may engender constitutional complacency in citizens. All of these different strands combine effectively in support of the most important contribution Jones makes in his book. This is his development of the idea of constitutional idolatry, so that it applies not only to particular constitutions in particular States, but to the concept of the written constitution itself. Jones provides ample evidence to challenge the contemporary infatuation with written constitutions, and shows a number of the risks of overstating what this form of constitutionalism can achieve.

Jones makes a persuasive case against constitutional idolatry but—at the risk of focusing on what he has not written about—those overall conclusions raise some challenging questions for the future. In particular, and indeed perhaps because I am highly sympathetic to the critique made by Jones, the book left me thinking: if not written constitutions, then what? In broad terms Jones has an answer to this, arguing that we need to end the idolisation of written constitutions, and reassert faith in

\*Mindy Chen-Wishart is a Professor of the Law of Contract and the Dean of the Faculty of Law at Oxford University, [mindy.chen-wishart@merton.ox.ac.uk](mailto:mindy.chen-wishart@merton.ox.ac.uk); Ying-Chieh Wu is an Assistant Professor of Comparative Private Law at Seoul National University, School of Law, [bras2145@snu.ac.kr](mailto:bras2145@snu.ac.kr).

democratic politics. Yet there at least a couple of complications raised by this when set against the wider context of Jones' book. And these are difficulties not just for Jones, but for anyone who agrees with him (as I do) that constitutionalism needs to find ways to revitalise democratic practice.

First, what is the role for constitutional law in reasserting faith in politics? If this means new institutions, new processes, or new rules, these are generally creatures of law, and delivered through written legal instruments (whether formal codified constitutions, or constitutional legislation). Jones defends political systems based on legislative rather than constitutional supremacy as being democratically preferable, a position I also accept. But it seems increasingly clear that while a defence of parliamentary sovereignty, based on the absence of legal limits on democratic authority, might be a baseline for democratic government, that alone cannot be sufficient to generate a rich or deep democratic political culture. If that is the case, the challenge becomes to what extent and in what ways should the constitutional model of legislative sovereignty be reformed to enhance democratic practice, and whether that model of legislative sovereignty can survive a reform process which uses law to diversify political power beyond a central legislature.

Second, even if we focus on enhancing the democratic credentials of the constitutional model of legislative sovereignty, is constitutional idolatry not possible in a political system with an uncodified constitution too? Recent experience in the UK suggests that the absence of a written constitution may still lead to the idolisation of the values of constitutionalism. Here, the UK courts are increasingly constructing a web of explicitly 'constitutional' principles, statutes, instruments, rights and values, which may ultimately lay the groundwork for an eventual challenge to parliamentary sovereignty as the foundational norm of the UK constitution. So even constitutional systems without a written constitution may be pulled ever closer to embracing the aspirations and myths which animate written constitutionalism. If idolatry of 'the constitutional' is possible even without 'the constitution', it shows both the dominance of the kind of constitutional thought which Jones wants us to reject, and the consequent challenges for developing new constitutional models which mitigate the flaws of the 'written' paradigm.

There are challenges ahead, therefore, for sceptics of written constitutionalism. Nevertheless, in this book Jones has shown the value of adopting a critical attitude toward the structures and principles of much mainstream constitutional thinking, and the need to lower our expectations of what (written) constitutions can achieve. His book will also hopefully influence any future codification debate, most notably in the UK, where the written constitution can be too readily presented by its advocates as simultaneously a neutral vehicle for widescale reform, while also a device to impose stronger legal limits on public power, without the contradiction between these two claims being exposed or evaluated.

MICHAEL GORDON\*

\*Professor of Constitutional Law, University of Liverpool, [michael.gordon@liverpool.ac.uk](mailto:michael.gordon@liverpool.ac.uk).