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BOOK REVIEWS

Sceptical Perspectives on the Changing Constitution of the United Kingdom. Edited by Richard Johnson and Yuan Yi Zhu. [Oxford: Hart Publishing, 2023. xiii + 394 pp. Hardback £90.00. ISBN 978-1-50996-371-3.]

"Nowadays", says one of the contributors to this volume, "almost any problem or hiccup that occurs with the UK constitution brings talk of a potential written document as a solution" (Brian Christopher Jones, p. 33). He is not wrong, though codification is not the only reform that is regularly called for. Even after the high-water mark of New Labour's constitutional reforms – the Human Rights Act ("HRA"), devolution, a Supreme Court, the removal of (most) hereditary Peers from the House of Lords – talk of radical constitutional change has never really been off the agenda. Reformers see little normative justification for the status quo. In the words of the pop band D:Ream (providing New Labour's 1997 campaign anthem), things can only get better.

Not so for the editors of this collection. Johnson and Zhu have curated a collection of essays that seek to re-examine the values underlying the traditional "political" constitution of the UK. In this way, the volume is truly radical, going back to the values lying at the root of the UK's constitutional settlement. From this radical position, a sceptical critique of constitutional reforms, proposed or realised, is advanced. The volume's attitude is, in this sense, conservative. But while some readers might be tempted to go further and characterise it as reactionary, the range of writers and topics from both ends of the political spectrum should make them think again.

The book is divided into three parts. The first, concerned with political constitutionalism and its relationship with constitutional law, is the strongest overall. The breadth of contributors to the volume is seen right from the start, with Carol Harlow writing on the socialist political constitutionalist J.A.G. Griffith (pp. 37–53) and Policy Exchange's Richard Ekins on parliamentary sovereignty (pp. 55–75). Sir Robert Buckland, a former Lord Chancellor, offers an insightful analysis of that office (pp. 107–21). But there are two chapters here that are particularly deserving of comment. Brian Christopher Jones argues (pp. 19–36) that the lack of a "constitutional supremacy" in the UK, in the sense of a hierarchically superior, codified constitution against which all other law is judged, means the UK is profoundly more democratic overall. While much of Jones's argument is, as Jones himself admits, rather brief in its development, its combination of empirical evidence and normative argument makes a strong case for why judicial review of legislation, bills of rights and so on might be said to weaken democracy and the protection of human rights overall.

Michael Foran's chapter, "A Great Forgetting: Common Law, Natural Law and the Human Rights Act" (pp. 77–105) is a highlight, not just of this collection, but of human rights scholarship more broadly. Foran shows with both analytical insight and philosophical depth that the way rights are protected under the European Convention on Human Rights ("ECHR") and HRA does not just differ from the traditional common law approach in both substance and extent, but more radically in the way human rights are situated within the law's broader scheme.

Foran argues that "human rights" values, substantively similar because rooted in the natural law, are protected by both the ECHR and the classical common law. But because such values are nebulous, there will inevitably be reasonable disagreement as to how they are to be given concrete effect and reconciled with other values and interests. Whereas the common law has traditionally tried to give more detailed determination of these values by converting them into highly specific legal duties that bind public officials and give rise to clear correlative entitlements ("rights" in the Hohfeldian sense), the ECHR and HRA err by elevating such values to the centre of the adjudicative process. At common law, for example, the underlying values of liberty and legality are given concrete form in administrative law's rules of procedural fairness (p. 85). But under the ECHR, claimants appeal directly to Article 6's promise of a fair and public hearing, enforcing it through the prism of proportionality analysis. In this way, the very concept of rights as a *legal* phenomenon is transformed, "expanding to include extremely broad interest claims, unmoored from the idea of duty or obligation in any strict sense" (p. 79). The effect of this is to confer significantly more power on judges, requiring them to grapple with contestable value claims for which they lack the epistemological, institutional and democratic credentials to resolve convincingly. Much more could be said on this nuanced and perceptive chapter, and it certainly bears reading in full. But it serves to show how sceptics of the ECHR and HRA project should not be dismissed as reactionary nationalists or constitutional stick-in-the-muds. So-called "rights scepticism" is not inherently rooted in a dismissal of the importance of the values underpinning Convention rights, but in much more fundamental convictions about the concepts of law, justice and rights.

The second part of the volume is concerned with the relationship between Parliament and the executive. Robert Craig's chapter on the short-lived Fixed-term Parliaments Act 2011 is informative, though readers will note the author was beaten to the post in his aim of burying the Act (p. 125) by the Dissolution and Calling of Parliaments Act 2022. Craig nonetheless makes significant points as to how the 2011 Act threatened the reciprocity between the executive and the legislature and the "organic system of accountability" that lies at the heart of the political constitution (p. 128). Tony McNulty's chapter on House of Commons reform (pp. 151–72) is equally astute. McNulty notes that recent proposals for Commons reform have lacked any grounding in deep reflection on the role and purpose of the lower House. The 2010 Wright Committee on House of Commons reform, for example, proceeded on the idea that the Government's control of Commons' business is unarguably problematic. Yet others might see this as central to the UK's constitutional settlement, the Commons existing principally to provide a government and serve its policy goals by producing legislation. In a similar vein, Lord Norton suggests in his chapter (pp. 173–87) that the Coalition Government's attempt at House of Lords reform failed, at least in part, because it rested on the false idea that questions concerning legitimacy of input (i.e. whether the House of Lords should be elected) could be separated from questions as to legitimacy of output. If the constitutional role of the House of Lords is to hold the Government to account, act as an independent voice in the legislative process, all while refraining from challenging the primacy of the Commons, there are strong constitutional reasons for its unelected character. In addition to Jasper

Miles's defence of the first-past-the-post electoral system (pp. 189–205) and Hayley J. Hooper's analysis of some of the constitutional difficulties inherent in delegated legislation (pp. 207–23), a particular note should be made of Conor Casey's excellent chapter on the office of Attorney General (pp. 225–45). Casey argues that the dual legal-political nature of the Attorney General puts him in a uniquely strong position to act as a buffer between politicians and lawyers. His role as a government minister means he is able to offer independent legal advice in a way that is sensitive to the goals and priorities of the Government. His role in the legislature ensures the great influence he wields over important areas of policy is married with direct political accountability.

Unfortunately certain chapters in the book do not quite attain the same levels of constructive critique as shown in the chapters just mentioned. This is certainly true of the latter chapters of Part II. While John Bowers's exploration of the public appointments system (pp. 247–67) addresses issues often overlooked by public law scholarship, it is too descriptive overall. Gillian Peele's chapter on standards and integrity in public life (pp. 269–87) engages with similar topics in a more critical fashion, but it covers some of the ground already covered by Bowers a chapter earlier.

This diminution in critical engagement continues in the third part of the book, on devolution and EU membership. Sir Vernon Bogdanor's chapter on devolution (pp. 291–305) makes some interesting points on how re-establishing a single internal market for a post-Brexit UK threatens destabilisation of the 1998 devolution settlement. But his calls for a written constitution and constitutional protection of social and economic "rights" (p. 305) sit uneasily with the thrust of the volume overall. Peter Reid and Asanga Welikala's analysis of what they call "secession diplomacy" casts new light on Scotland's history in the UK and the UK's unique approach to threatened secession. Reid and Welikala show how many of the responses to secession threats and the resulting devolution settlement have been too ad hoc and piecemeal, lacking any coherent vision for devolution. Their call for a more conscious Union statecraft should be heeded, though the authors would have done well to offer a fuller sense of the principles and values that might underpin it. Baroness Hoey's defence of the Unionist cause in Northern Ireland (pp. 331–42), while passionate, might be said to underplay the constitutional ructions initiated by Brexit itself. The suggestion that a trade barrier between Northern Ireland and Great Britain might be compared to hypothetical customs checks between the East and West Midlands (p. 337) is too simplistic and a disservice to the unique historical, social and constitutional differences of Northern Ireland on which the author is so clearly an authority. Joanna George and Baroness Stuart's chapter on the ways the changing constitutional structure of the EU had an impact on the UK's constitution would again have benefitted from less description and more analysis. Part III, and so the book overall, does however end on a real high. Richard Tuck's exploration of divergent forms of political representation, and how they map onto different voting systems, roots what can sometimes be a rather stale debate on voting reform in deep political theory. His defence of first-past-the-post is thoroughly convincing, at least to this reader, though one might balk at his call for the introduction of *more* referendums to UK political practice.

Are there omissions here? While Harlow touches on it, the volume calls out for a chapter more squarely focussing on the Supreme Court's prorogation judgment, *R. (Miller) v Prime Minister; Cherry v Advocate General for Scotland* [2019] UKSC 41, [2020] A.C. 373. The decision is the bête noire of many a political constitutionalist, and its treatment of the royal prerogative and the Bill of Rights would be a good subject for the sceptical approach adopted throughout the book. The increasing willingness to give some legal recognition, perhaps enforcement, to constitutional conventions would also have been a worthwhile topic.

Overall, however, Johnson and Zhu are to be congratulated for gathering such a broad range of authors and topics under one heading. In an academic field that, like most academic fields, tends to be dominated by a certain liberal consensus, readers are unlikely to agree with every word of the volume. But that is surely the point. *Sceptical Perspectives* reminds us that established constitutional norms and practices can be just as deep-rooted in fundamental values as any proposed constitutional reform. It reinforces the need for critical attention to underlying principles. And, perhaps most importantly, it encourages us to listen to a diversity of views when embarking on our scholarship and studies.

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Criminal Fraud and Election Disinformation: Law and Politics. By Jeremy Horder. [Oxford University Press, 2022. xvii + 187 pp. Hardback £87.00. ISBN 978-0-19284-454-5.]

In *Criminal Fraud and Election Disinformation: Law and Politics*, Jeremy Horder embarks on a pioneering endeavour to advance a broad framework for the regulation of "intentionally false or misleading political speech ('disinformation')" (p. 1). As one of the first to advance a comprehensive normative theory as to the regulatory treatment of all forms of political disinformation, Horder's ambitions are commendable. The book is a timely response to concerns surrounding disinformation during the 2016 EU Referendum ("Brexit"), the 2016 and 2020 US Presidential Elections, and the January 2021 attack on the US Capitol.

The book is also a necessary engagement with emerging legal regulation of online political disinformation and its consequential harms. The book engages with the German Network Enforcement Act 2017 ("NetzDG") and the UK's Online Safety Bill (now the Online Safety Act 2023). Further legal developments have emerged following the book's publication, including the EU's Digital Services Act ("DSA"). These legal developments have sought to address a range of harms associated with online communication, whilst contending with the challenge of balancing such regulation with the right to freedom of expression.

Amidst the debates on how to regulate harms associated with political disinformation in a manner consistent with the right to freedom of expression, the book proposes an elegant solution. This solution is based on a distinction Horder draws between two types of political disinformation: electoral participation disinformation and political viewpoint disinformation. This taxonomy is important in that it serves to support Horder's normative claim that these two