Record Nr. UNINA9910793848303321 Autore Malan Koos Titolo There is no supreme constitution: a critique of statist-individualist constitutionalism / / Koos Malan Pubbl/distr/stampa [Place of publication not identified]: .: Sun Press. , [2019] ©2019 **ISBN** 1-928480-27-6 Descrizione fisica 1 online resource (324 pages) Disciplina 342.68 Constitutional law - South Africa Soggetti Lingua di pubblicazione Inglese **Formato** Materiale a stampa Livello bibliografico Monografia Nota di contenuto Constitutionalism -- Statist-individualist constitutionalism -- Statistindividualist constitutionalism in post 1994 South Africa -- There is no supreme constitution -- The Constitution of the Republic of South Africa is not supreme and its rights not entrenched -- The changing South African constitution -- The unity of power and the dependence and partiality of the judiciary -- Constitutional supremacy and iudicial impartiality hermeneutically viewed -- The fiction of guaranteed rights -- Universal individual rights -- Beyond statist-constitutionalism --Pointers to politocratic constitutionalism. Sommario/riassunto None of the articles of faith of the South African Constitution is plausible. The Constitution is not supreme and entrenched. Vulnerable to potent socio-political forces it changes continuously and often profoundly regardless of stringent amendment requirements. The trite threefold separation of powers is more metaphorical than real and therefore unable to secure effective checks and balances. Though institutionally separated with their own personnel and functions, the three powers are ordinarily integrated in a single dominant political leadership, committed to achieving the same ideological goals. The bill of individual rights cannot guarantee justice, because rights are subject

to the ideologically-driven exercise of judicial interpretation, often with damaging consequences for those relying on the bill of rights. This situation does not only apply to South Africa, but to all Constitutions premised on the same articles of faith, in this book described as the

doctrine of statist-individualist constitutionalism. An improved mode of constitutionalism is called for - one which is equipped with a sounder system of checks and balances and better endowed towards the achievement of justice through a balanced constitution.