Abductive Principles of the British Constitution

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Abstract. This article investigates how principles such as responsible government and democracy enter the British constitution. Principles do not enter the British constitution by being enacted in statute or laid down in judicial decisions. Nor do they become part of the constitution by being accepted and followed by constitutional actors. Instead, principles enter the constitution by figuring in the best explanation for constitutional rules and practices. So understood, British constitutional principles are stated in the conclusion of an abductive argument, also known as an inference to the best explanation. As well as correctly diagnosing which principles are part of the constitution, the abductive account can resolve several puzzles about constitutional principles, including why they resist deliberate change.

1. What makes a principle part of the constitution?

The United Kingdom constitution includes two types of norms or standards. The first are rules, such as the statutory rules that create the Supreme Court or the conventional rules that regulate the choice of Prime Minister. The second are principles. While not everyone agrees on all the principles that belong to the constitution, certain principles would be on anyone's list: democracy, responsible government, and the rule of law. Other commonly mentioned principles of our constitution are judicial independence, the separation of powers, accountability, comity, subsidiarity, equality, and good government. Most discussions of constitutional principles are about what these principles demand or their legal significance. My focus is a less discussed issue: what makes a principle part of the United Kingdom constitution in the first place. The issue is relatively neglected, yet fundamental. We need to know whether a principle belongs to the constitution before we can know whether we, as students of the constitution, should concern ourselves with its content and legal roles.

The beginnings of an answer are obvious enough. To be part of the constitution, a principle must be about the things that constitutions are about – the structure of government.[1] The principle must have the right subject matter, in other words. Democracy, responsible government, and the rule of law all satisfy this condition. The difficulty is that this condition is also satisfied by principles that are *not* part of our constitution. For example, secularism, socialism, and federalism are all principles that concern the sort of things that constitutions concern. All are part of constitutions elsewhere in the world. Plainly, though, these principles are not part of *our* constitution. They are not *our* principles. Having the right subject matter is necessary for a principle's membership in the British constitution. It is not sufficient. Something else is needed.

The missing element is not a principle's moral validity. Even assuming that secularism was a morally valid principle, that principle would still not be part of our constitution – not while the King is head of the Church of England, bishops sit as of right in the House of Lords, and Church measures are supervised by Parliament. Moral merits are not even directly relevant to whether a principle is part of our constitution. Think of the debate in philosophy about whether the rule of law has moral merit.[2] I don't know who is right in that debate. I do know that the reasons for believing that the rule of law figures in the British constitution will be no stronger or weaker depending on how it is resolved. Or consider the fact that studies in political science sometimes suggest that democratic regimes achieve worse policy outcomes than autocratic regimes.[3] These studies could shed light on democracy's moral merits. It would still be

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★University of Oxford. Please note that this is a draft and some things are still missing, including citations. Comments are very welcome at adam.perry@law.ox.ac.uk. My thanks to Richard Ekins, Sherif Girgis, Randy Kozel, Angelo Ryu, Philip Sales, and Lael Weis for their comments.

[1] T Endicott, *Administrative Law* (5th edn, OUP 2021) 15. For a discussion of the subject matter appropriate to constitutional statutes, see F Ahmed and A Perry, 'Constitutional Statutes' (2017) 37 OJLS 461, 466-7.

[2] e.g. M Kramer, 'On the Moral Status of the Rule of Law' (2004) 63 *Cambridge Law Journal* 65; N Simmonds, 'Law as a Moral Idea' (2005) 55 *University of Toronto Law Journal* 61.

[3] e.g. A Saiz, 'Dictatorships and Highways' (2006) 36 Regional Science and Urban Economics 187; J Gerring, H Gjerlow, CH Knutsen, 'Regimes and Industralization' (2022) 152 World Development 1.

bizarre to cite them as evidence of what the British constitution in fact requires.

What, then, *is* the missing element, which together with the right subject matter suffices to make a principle part of our constitution? Timothy Endicott has a good idea. Before we can conclude that a principle is part of the constitution, he says, we 'must find support for it in … [our] constitutional institutions' conduct'[4]. Here 'conduct' should be taken to include both conduct itself and the rules and practices it produces. Socialism, secularism, and federalism have no real support in our institutions' conduct. Democracy, responsible government, and the rule of law are deeply rooted in political and legal life here. That explains why only the latter are part of our constitution.

I agree with Endicott that a principle is part of the constitution only if it has institutional support. But this idea still needs clarifying. What type of institutional support, precisely, makes a principle with the right subject matter part of the constitution? I will not try to spell out all the types of institutional support that *could* suffice to make a principle part of our constitution. That would be too ambitious. My aim is more modest. It is to specify the type of institutional support that our existing principles enjoy, such that they are part of the constitution. In other words, my aim is to identify the institutional route by which our existing principles have entered the constitution.

Here is how I proceed. After explaining some key features of principles, I consider three accounts of the institutional route a principle might take into the constitution. The first says that our principles are part of the constitution because they were enacted in statute; the second because they were prescribed in judicial precedent; the third because they acquired the status of customs among officials. All these accounts fail. In one respect, these failures deepen the mystery. It is not obvious what forms of institutional support for principles are left. In other ways, the failures help. They show some of the pitfalls an account needs to avoid. And they reveal some of the features of constitutional principles that a good account would explain.

[4] T Endicott, *Administrative Law* (5th edn, OUP 2021) 15.

In the second half of the article, I present my own account. My account will be easier to understand with the background in place, but the rough idea is this. Principles are part of the constitution because they figure in the best explanation for why our constitutional rules and practices are justified, assuming they are indeed justified. Rules and practices support principles in a similar way as confirmatory evidence supports a hypothesis. Like puddles on a pavement suggest that it rained, the fact that rules and practices are justified suggests that the principle they serve is valid. An argument that what best explains certain phenomena is true is an "abductive" argument. With some terminological license, we can then describe British constitutional principles as "abductive principles".

2. What is a principle?

Before thinking more about what makes a principle constitutional, it helps to fix the general notion of a principle in our minds. While a lot about the nature of principles is controversial, two things are widely accepted, and those are enough for my purposes.

First, principles are norms. As norms, principles govern conduct. They tell people what they must or may or can do. The content of a norm – what the norm says – can be expressed in a sentence of a certain form. For norms that tell people what to do, the sentence has the form "So-and-so ought to do such-and-such".[5] The principles I listed in section 1, for example, can be stated roughly as follows:

> The principle of democracy: people ought to have an equal say at an important stage of government decision-making.[6]
>
> The principle of responsible government: government ought to be responsible to Parliament.
>
> The principle of the rule of law: people ought to be governed by and under law.[7]

I'm sure these statements could be improved and refined. My point is that it possible to state the principles in the appropriate form.

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[5] GH von Wright, *Norm and Action* (Routledge & Kegan Paul 1963) 100-102.

[6] See, e.g., T Christiano and S Bajaj, 'Democracy' in E Zalta and U Nodelman (eds), *Stanford Encyclopedia of Philosophy* (Summer 2024 edition) <https://plato.stanford.edu/archives/sum2024/entries/democracy/> accessed 2 October 2025.

[7] Useful overviews can be found in A Marmor, 'The Rule of Law and its Limits' (2004) 23 Law & Philosophy 1; G Lamond, 'The Rule of Law' in A Marmor, *Routledge Companion to the Philosophy of Law* (Routledge 2012).

Because they are norms, principles are not truth-apt.[8] It is true or false that there is a certain principle and that a principle is part of a specific constitution. A principle's content – e.g. that the people ought to have an equal say at an important stage of government decision-making – might also be true or false. A principle itself is neither. Just as it makes no sense to say things like "Orange is true" or "π is false", it makes no sense to say, "Democracy is true", "The rule of law is false", and so on.

Not all norms are principles. Rules are norms, yet rules are not principles. What is the difference between principles and rules? This takes me to the second important feature of principles. Principles regulate conduct that can be performed in a great many different types of ways. Rules, by contrast, regulate conduct that can be performed in fewer ways.[9] "People ought to be governed by and under law" states a principle. "Compete form 231B if an asylum seeker did not apply for asylum within 40 days of arrival" is a statement of a rule. There are many ways to govern by and under law. There are not many ways to complete form 231B in the relevant circumstances. I will capture this feature of principles – that they require conduct that can be performed in a vast number of ways – by saying that they are "highly general".

In the last section, I listed clear examples of British constitutional principles. One thing I did not list there was parliamentary sovereignty. Let me explain why. Parliamentary sovereignty is a doctrine, meaning a set of interlocking norms. These norms give power to a certain institution (Parliament) to make laws via certain procedures. They impose a duty on another specific institution (the courts) to apply those laws. There are not so many ways to arrange our governing structures to fulfil these norms. That makes the norms rules, not principles. And rules do not belong on a list of principles.

I suspect that those who call parliamentary sovereignty a 'principle' would mostly agree that it is less general than, say, the rule of law. They use 'principle' to call attention, not to the doctrine's generality, but its importance. That is a confusing use of language, however. The

[8] I Reiland, 'Regulative Rules' (2024) 108 Philosophy & Phenomenological Research 772.
[9] Joseph Raz 'Legal Principles and the Limits of Law' 834 (1972) 81 Yale Law Journal 823, 838.

important/unimportant distinction is orthogonal to the principle/rule distinction. There are important rules, e.g., rules against violence. There are unimportant principles, e.g., principles of etiquette. As a result, it is consistent to deny that parliamentary sovereignty is a principle yet affirm – as I do – that it is a central part of our constitution.

I grant that principles may have features I haven't mentioned. For example, principles may have a 'dimension of weight'[10], as Ronald Dworkin thought.[11] I leave aside these possibilities here. For my purposes, it is enough that principles are highly general norms.

3. Statute

I said that to belong to the British constitution a principle will have support in our institutions' conduct. The question is what support. In other jurisdictions, the answer would be easier. Constitutional principles would typically be explicit or implicit in the formal, capital-"C" constitution.[12] The same is obviously not true in Britain, so we need to look elsewhere for the answer.

For inspiration, we might consider how *rules* enter the constitution. Our constitutional rules also require support in our institutions' conduct. There is no mystery about the form that support takes. Most constitutional rules are prescribed in statute or in judicial decisions. The rest are practised by officials, making them customary rules. A natural thought is that something similar may be true of constitutional principles. Constitutional principles would then be statutory, common law, or customary norms. While the thought is natural, it is also mistaken, as I'll show.

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[10] Ronald Dworkin, 'The Model of Rules I' in *Taking Rights Seriously* (Bloomsbury 2013; first published 1977) 43.

[11] Dworkin believed, not only that principles have a dimension of weight, but that rules do not. This further claim is mistaken. See J Raz 'Legal Principles and the Limits of Law' 834 (1972) 81 Yale Law Journal 823, 834; F Schauer, *Playing by the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life* (OUP 1991) 115.

[12] See W Sinnott-Armstrong, 'Two Ways to Derive Implied Constitutional Rights' in J Goldsworthy and T Campbell (eds), *Legal Interpretation in Democratic States* (Aldershot 2002); J Goldsworthy, 'The Implicit and the Implied in a Written Constitution' in R Dixon and A Stone (eds), *The Invisible Constitution in Comparative Perspective* (CUP 2018).

To start, consider the view that our constitutional principles are laid down in statute. The theory *could* be true. Parliament *could* enact a constitutional principle. All it would have to do is prescribe a very general norm on the right subject. In practice, though, Parliament has not done this. No statute lays down a constitutional principle, either expressly or by implication. Some statutes *recognise* constitutional principles. For instance, s 1 of the Constitutional Reform Act 2005 recognises that the rule of law is part of the constitution. But acknowledging an existing situation is different than bringing it about. Other statutes promote principles. The Reform Acts promote democracy for example, while the Act of Settlement 1701 promotes the rule of law. Promotion is not, however, the same as enactment.

There are two other problems with the statutory account. Since they also afflict the common law account, which is otherwise more plausible, I'll present them in the next section.

4. Common law

In truth, no one claims that existing constitutional principles are statutory norms. Things seem to be different when it comes to the common law. Courts and commentators *do* say that principles like democracy, responsible government, and the rule of law are 'common law' principles.[13] There are two ways to read such claims. Read one way, the claim is that democracy, the rule of law, and similar principles are *legal* norms because courts have prescribed them. That claim is not at issue here. Read another way, the view is that such principles are *constitutional* norms because courts have prescribed them. Read in this second way, the claim is mistaken, for several reasons.

One reason is the range of evidence that we use to show that a principle is part of the constitution. Take democracy. The evidence that this principle is part of our constitution includes at least that the people are entitled to vote in parliamentary and local elections; that Parliament has the

[13] E Ryder, 'Securing Open Justice' (Max Planck Institute Luxembourg for Procedural Law 2018) <https://www.judiciary.uk/wp-content/uploads/2018/02/ryder-spt-open-justice-luxembourg-feb-2018.pdf> accessed 3 October 2025 ('long-established common law constitutional principle of the rule of law'); *R (Miller) v The Prime Minister* [2019] UKSC 41, [39]-[41] (responsible government or parliamentary accountability as a common law principle).

power to make or unmake law on any subject; that the unelected House of Lords must defer to the elected House of Commons on many issues; and that the government requires the Commons' support. None of these rights and duties are a matter of judicial prescription. Voting rights are conferred by statute. Relations between the Houses of Parliament are governed by statute and convention. It is also a convention that the government requires the Commons' support. Parliament's powers are conferred by the ultimate rule of recognition.[14] If democracy is a constitutional principle because of rights and duties not due to judicial prescription, then democracy is not a constitutional principle due to judicial prescription. Common law norms are a matter of judicial prescription.[15] So, democracy is not a common law norm. Something similar could be said of responsible government, the rule of law, and so on.

The second objection to the common law account concerns chronology. Constitutional principles often figure in the constitution before judges have engaged with them. The principle of responsible government is a good example.[16] In the 18th century, ministers wrested control over key aspects of the prerogative from the monarch. Cabinet gradually became a cohesive entity. Ministers came to be accountable to Parliament. After the first Reform Acts were passed, it was accepted that a government required Commons' support. By the mid-19th century, the main elements of responsible government were in place. Judicial engagement with that principle, on the other hand, is rare until the 20th century – long after the principle earned its place in the constitution.[17]

The final problem with the common law account concerns how norms can be overridden and abolished. Parliament can abolish common law norms, just by saying so. If our principles are part of the constitution in virtue of being common law norms, then Parliament could abolish our constitutional principles. All it would need to do is pass a statute. In fact, Parliament cannot do this.[18] It does not have the power to abolish the

[14] See, e.g., J Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (OUP 2001) 237ff.
[15] Different notions of the common law
[16] See, e.g., AH Birch, *Representative and Responsible Government* (George Allen & Unwin 1964) ch 1; GW Cox, 'The Development of Collective Responsibility in the United Kingdom' (1994) 13 Parliamentary History 32.
[17] The earliest cases seem to be *ex p Ramsay* (1852) 18 QB 174, 192; *Phillips v Eyre* (1968-69) LR 4 QB 225, 243; *Rustomjee v The Queen* (1876) 1 QBD 487, 497.
[18] T Endicott, *Administrative Law* (5th edn, OUP 2021 15.

principles of democracy, responsible government, or rule of law just by saying so. Parliament can undermine the mechanisms that support these constitutional principles. In this way, Parliament can chip away at principles. What Parliament cannot do is eliminate them by fiat. It follows that constitutional principles are not common law norms.

A defender of the common law account might respond as follows. True, democracy, responsible government, and the rule of law are not common law principles. Neither are judicial independence, subsidiarity, comity, etc. But some other principles *are* common law creations. For example, Paul Craig describes the 'common law constitutional principle … that the inherent power of the courts should not readily be taken to be wholly excluded from review'[19]. Aidan O'Neill says that there is a 'common law constitutional principle … that the legislature should not be presumed to empower the executive to overrule the courts'[20]. The Human Rights Joint Committee said the 'principle of legality' is a 'common law, constitutional principle'[21].

Despite the description in the last paragraph, the listed items are not principles. They are not even norms. They do not impose duties on anyone. Rather, they are interpretive presumptions. An interpretive presumption is a claim about what Parliament probably intended.[22] Probably, Parliament did not intend to exclude judicial review. Probably, it did not intend to empower the executive to overrule courts or to trespass on basic rights. To show that Parliament really did intend such things, strong evidence will be needed, usually found in the statute itself. That is why these so-called "principles" can all be rebutted by clear statutory wording.

The first and third objection in this section apply equally to the statutory theory. For instance, to show that responsible government is part of the constitution, we point to rules that require ministers to answer questions in Parliament, that require government to resign or seek an election if it loses the confidence of the House of Commons, and that empower

[19] P Craig, 'Ultra Vires and the Foundations of Judicial Review' (1998) 57 CLJ 64, 72.
[20] A O'Neill, 'Not Waving, but Drowning? EU Law, Common Law Fundamental Rights and the UK Supreme Court' (2014) 5 UK Supreme Court Yearbook 171, 179.
[21] Human Rights Joint Committee, 'The Implications for Access to Justice of the Government's Proposals to Reform Legal Aid' (2013), Annex.
[22] O Jones, *Bennion on Statutory Interpretation* (6th edn, LexisNexis 2013) 779; J Goldsworthy, *Parliamentary Sovereignty: Contemporary Debates* (CUP 2010) 241.

Parliament to supervise delegated legislation. All these are conventions or rules of parliamentary procedure. None are statutory norms. Further, just as Parliament can abolish any common law norm, it can repeal any statute. Were our principles part of the constitution due to an Act of Parliament, they could be abolished by Act of Parliament – which, as I've said, is not possible.

5. Custom

If constitutional principles are not prescribed, could they arise from a practise or custom instead?[23] The custom that gives rise to a norm has two elements. The first is a pattern of people in a group complying with the (putative) norm. The second is a pattern of people in that group accepting the (putative) norm.[24] In this context, the relevant group is made up of constitutional officials: ministers, the monarch, MPs, etc.

There are things to like about an account of constitutional principles as customs. First, it can explain why we draw on such a wide range of evidence to show that principles belong to the constitution. By pointing to such evidence, we show that officials do not uphold the principle merely on this or that occasion. They generally do so. The account can also explain why constitutional principles often seem to emerge slowly, through the incremental accumulation of supporting material. Customs require patterns of actions and attitudes. Patterns take time to form.

Despite these virtues, the customary account ultimately fails, for two reasons. The first reason is about who can – and cannot – comply with a norm. To comply with a norm is to do as it says. Officials cannot do as principles say, at least when it comes to principles that are clearly part of the constitution. No official can, on their own, make it so that the law rules or that the people have a say at important stages of decision-making. Nor does any official have the power to make it so that the government is responsible to the legislature. It takes many people across many parts of government working together to accomplish these things. If no official can comply with these principles, then obviously officials cannot

[23] For a suggestion along these lines with respect to the separation of powers, see JWF Allison, *The English Historical Constitution* (CUP 2007) 76.
[24] HLA Hart, *The Concept of Law* (2nd edn, OUP 1994) 55-57.

generally do so. Thus, these principles cannot be customs among officials.

To be clear, I accept that individual officials can promote constitutional principles. That is, they can contribute to a state of affairs in which the law rules, the government is responsible, and so on. For instance, a minister who submits to parliamentary cross-examination contributes, in a small but meaningful way, to responsible government. But contributing to a state in which a norm is satisfied is not the same as satisfying it. For example, I promise to dinner. I buy the necessary groceries, but nothing more. I have taken a step towards fulfilling my promise. But I have not fulfilled it, as my hungry dinner companion will point out.

I imagine someone might respond as follows. Surely (I imagine them saying) constitutional principles *are* complied with, at least sometimes. In Britain, there is not perfect compliance with principles such as democracy and the rule of law. But there is *sometimes* compliance. And if there is sometimes compliance, there must sometimes be compliance by individual officials. So, the objection to the customary account, which says that individual compliance with constitutional principles is impossible, must be mistaken.

I grant for the sake of argument that there is sometimes compliance with constitutional principles.[25] The response in the last paragraph relies on another assumption – that only individual officials can comply with constitutional principles. That assumption is dubious. There is at least one other body that could, in theory, comply with constitutional principles: the state itself. Many philosophers and political theorists see the state as an agent, which can do things that none of its members can do on their own.[26] If that is right, then there need be no conflict between the claim that principles are complied with and the claim that they are not complied with by officials. They are compatible if the state, acting through its officials, complies with our constitutional principles.[27]

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[25] For discussion, see my [redacted for peer review].

[26] e.g. P Pettit and C List, *Group Agency* (OUP 2011) 40; S Collins, *Group Duties* (OUP 2019) 14; H Lawford-Smith, *Not in Their Name* (OUP 2019).

[27] It is important to distinguish between principles and the rules that give them effect. Sometimes, officials can comply with the rules giving effect to a principle, even though they cannot comply with the principle itself. For instance, no official can comply with the principle of responsible government. But some officials can comply with the convention of individual ministerial accountability, which gives effect to that principle.

So far, I have been discussing my first objection to the customary account, based on the impossibility of individual compliance with constitutional principles. A second problem with the customary account is about the boundaries of the group in which a custom would exist. Suppose we want to know whether there is a custom in a club or school. We will at whether current members and current students accept and comply with the relevant norm. We will not look at what former members or students thought and did. They do not belong to the group anymore. Their attitudes and actions no longer count.

When we want to show that a principle is part of our constitution, we often point to rules enacted and laid down centuries ago (e.g., the Bill of Rights 1689, the Act of Settlement 1701, the Reform Act 1832). Those rules do not show the views of *current* constitutional officials. It was not current officials who proposed those rules, argued for them, voted for them, etc. The rules may show *former* officials' views (e.g., officials circa 1689, 1701, or 1832). But former officials' views and actions are not relevant to the customs that exist now. So, there is a mismatch. There are factors showing that a principle is a custom. There are factors showing that a principle is constitutional. These factors are not the same. So, constitutionality cannot turn on customary status.

6. Abduction

To summarise the discussion so far, principles belong to the constitution because they have a certain kind of institutional support. It seemed natural to think that this support would take one of the forms it does in the case of constitutional rules. That would mean principles enter the constitution through prescription or practice. On investigation, it turns out that current constitutional principles have not entered the constitution by either route. That leaves us in search of a better account. Eventually, I want to propose an alternative form of institutional support, based on the notion of abduction. In this section, I lay the groundwork by explaining abduction generally.

In an abductive argument, the conclusion is presented as the best explanation for the facts (data, evidence, etc.) in the premises.[28] The form of an abductive argument is:

1. Hypothesis H explains facts F_1, F_2, … F_n.
2. No other candidate hypothesis explains F_1, F_2, … F_n as well as H.
3. Therefore, H is true [or probable or plausible]. [29]

Peter Lipton gives a simple example. 'Faced with fresh tracks in the snow of a peculiar shape, I infer that a person on snowshoes passed this way'[30]. Although '[t]here are other possibilities', 'I make this inference because it is the best explanation that I see'[31].

A more complex example is from RG Collingwood's story, 'Who Killed John Doe?'[32] One morning, John Doe is found at his desk with a dagger in his heart. There is a smudge of green paint on the dagger's hilt. On the afternoon of his death, John Doe had painted the gate between his house and the Rector's house green. The day after the murder, the Rector's daughter confessed to killing John Doe. However, she is physically weak, and the dagger was inserted with great force. There are two people the daughter might be trying to protect. One is her fiancée, who was staying in the Rector's house on the night of the murder. The fiancée was outside in the night and will not say why. But his tracks are visible in the mud going to and from the gate, and no mud was found in John Doe's house. The daughter could be trying to protect her father. The Rector had green paint on his coat sleeve – a coat he donated to charity the day after the murder. The charred remains of his gloves were in the fireplace. Of the three hypotheses – the daughter did it, the fiancée did it, or the Rector did it – the last best explains the evidence. So, probably the Rector killed John Doe.

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[28] For overviews, see P Lipton, 'Inference to the Best Explanation' in WH Newton-Smith, *A Companion to the Philosophy of Science* (Blackwell 2000); I Douven, 'Abduction' in E Zalta and U Nodelman (eds), *Stanford Encyclopedia of Philosophy* (Summer 2025 Edn) <https://plato.stanford.edu/entries/abduction/> accessed 2 October 2025. There is an excellent discussion of abduction in relation to legal principles in C Michelon, 'Inference to the Best Legal Principle' (2019) 39 OJLS 878.

[29] Adapted from W Lycan, *Judgement and Justification* (CUP 1988) 129.

[30] P Lipton 'Causation Outside the Law' in H Gross and R Harrison (eds), *Jurisprudence: Cambridge Essays* (OUP 1992) 22.

[31] ibid.

[32] RG Collingwood, *The Idea of History* (OUP 1994) 266-273; discussed in K Abimbola, 'Abductive Reasoning in Law: Taxonomy and Inference to the Best Explanation' (2001) 22 Cardozo Law Review 1683, 1687.

As these examples show, an abductive argument is 'risky'[33] or 'ampliative'[34]. The premises do not guarantee the truth of the conclusion, as in a deductive argument. The peculiar tracks in the snow could have been made by an animal or the wind. It is possible that John Doe was killed by the Rector's daughter, her fiancée, or someone else. Moreover, abductive arguments are non-monotonic.[35] Adding further premises, in the form of further facts, can undermine a formerly cogent abductive argument. Imagine that the Rector had broken both arms the week before the murder. Now the hypothesis that he killed John Doe no longer best explains the facts. The additional information turns what was a good inference into a bad one.

An essential step in an abductive argument is that the hypothesis "better" explains the facts than other candidate hypotheses. A hypothesis is a better explanation based on how well it satisfies explanatory criteria. These criteria include not the fit between the hypothesis and the facts. But they also include pragmatic virtues such as simplicity and modesty. (I say more about explanatory criteria in the next section.) In the John Doe case, the hypothesis that the fiancée and the Rector cooperated to kill John Doe also fits the facts. The hypothesis that the Rector did it alone is preferable because it is simpler. In Lipton's example, the hypotheses that an alien with big feet walked this way might also fit the facts. Since that hypothesis relies on exotic phenomena, it is less modest than the hypothesis that a person wearing snowshoes passed by. That makes the alien hypothesis worse *qua* explanation than the snowshoe hypothesis.

7. Abductive principles

With the basics of abduction in place, I want to introduce abductive principles. Let us say that a rule, practice, decision, act, etc. ("conduct", for short) is *justified* when there is a normative reason for it. The reason could be decisive or merely pro tanto. If conduct is justified, then one can ask: why is it justified rather than unjustified? A possible answer is that the conduct promotes a valid principle, where a principle is *valid* if it provides a normative reason for conduct that falls under it. For

[33] I Hacking, *An Introduction to Probability and Inductive Logic* (CUP 2000) 18.
[34] Douven (n 28) §1.1.
[35] ibid.

example, suppose that freedom of contract is a valid principle and that the rules of offer and acceptance promote this principle. The principle justifies the rules and therefore explains why they are justified. In answer to the question "Why are the rules of offer and acceptance justified?", one could answer, "They promote freedom of contract". One could also simply state the principle's content: "People ought to be able to choose their primary obligations".

We can sometimes work backwards from the justification of conduct to the validity of the principle that justifies it. Let me spell this out, drawing on Claudio Michelon's recent work on abductive legal principles. We start with instances of justified conduct.[36] We take candidate principles – principles which, were they valid, might explain why at least some of the conduct in question is justified. We compare these principles in terms of the explanatory criteria. The principle that ranks highest provides the best explanation for why the conduct is justified. The conclusion is that the principle is valid. Schematically, the argument goes like this (where *P* is a principle and C_1, C_2, … C_n are instances of conduct):

1. *P*'s validity explains why C_1, C_2, … C_n are justified.
2. No other candidate principle's validity explains why C_1, C_2, … C_n are justified as well as *P*'s validity.
3. Therefore, *P* is [probably] valid.[37]

Explanations for why conduct is justified do not have to be single principles. They can be sets of principles. The question will then be what principles together best explain why the conduct is justified. Call a principle that figures in the best explanation for why conduct is justified an *abductive principle*.

Let me return to the criteria for choosing the "best" explanation. While many criteria are mentioned in the literature on abduction, five are specially relevant to single-principle explanations.[38] These are:

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[36] Michelon (n 28). I do not attribute the argument scheme later in this paragraph to Michelon. While Michelon favours something similar (891), there are differences. For instance, Michelon's form of argument does not presuppose that the relevant rules or conduct are justified.

[37] This argument assumes that the only candidate explanations for why conduct is justified are principles. That is a useful simplification; nothing turns on it.

[38] For lists of explanatory criteria (not always with these labels), see G Harman, 'Inference to the Best Explanation' (1965) 74 Philosophical Review 88, 89 (simplicity, explanatory power, non-arbitrariness); WV Quine and JS Ullian, *The Web of Belief* (McGraw-Hill 1978) ch 6; W Lycan, 'Explanation and Explanationism' in P Moser, *The Oxford*

1. Explanatory power*:* A principle is a better explanation the more relevant conduct it justifies and the less conduct it counts against.
2. Simplicity: A principle is a better explanation the simpler it is. One principle is simpler than another if it relies on fewer concepts, assumes fewer entities (e.g., institutions), contains fewer exceptions and qualifications, etc.
3. Modesty: A principle is a better explanation the more modest it is. One principle is more modest than another if the first realises the second but not the other way around (e.g., representative democracy is more modest than democracy).[39] A principle is also more modest the more 'humdrum'[40] it is – the more it relies on familiar concepts, institutions, etc.
4. Breadth: A principle is a better explanation the broader it is. A principle's breadth depends on how many types, and how varied the types, of conduct it explains.
5. Non-arbitrariness: A principle is a better explanation the less arbitrary it is. A principle is less arbitrary the less *ad hoc*, gerrymandered, etc it is.

All the criteria should be read as containing an implicit *ceteris paribus* clause.

Note one criterion *not* on this list: objective moral validity. The reason is simple. Explanatory criteria implicitly figure as premises in an abductive argument. The argument's conclusion is that a principle is valid. Here, "valid" means the same as "objectively valid". If the context is a moral one, it means the same as "objectively morally valid". For objective moral validity to figure in both the premise and the conclusion of the argument would be viciously circular. It would amount to treating the validity of a principle as a reason for concluding that it is valid.

Similar criteria apply to multi-principle explanations, though there are some differences. To assess the simplicity of a set of principles, we need to ask how many principles the set contains. Other things being equal, an

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Handbook of Epistemology (OUP 2005) 415 (explanatory power, simplicity, conservatism, and others); A Mackonis, 'Inference to the Best Explanation, Coherence and other Explanatory Virtues' (2013) 190 Synthese 975 (overview of a range of criteria including breadth and simplicity); T Williamson, 'Abductive Philosophy' (2016) 47 Philosophical Forum 263, 266 (explanatory power, simplicity, elegance, non-arbitrariness).

[39] Quine and Ullian (n 37) __.

[40] Quine and Ullian (n 37) __.

explanation is simpler the fewer principles it employs. Also, an explanation that appeals to a set of principles is better the more consistent those principles are with one another. The principles in a set might together justify a wide range of conduct. But it will provide a poor overall explanation if the principles contradict each other.

The principles favoured by abductive inference are not necessarily the principles identified through a process of 'reflective equilibrium'. As John Rawls and others describe that process, we start with a set of judgments about which acts, rules, and so on are justified.[41] We seek a principle or set of principles that might account for those judgments. Perhaps a principle fits them perfectly. If not, we can adjust the principle to fit our judgments. Or we can adjust our judgments to fit the principle. Through incremental adjustments, we reach an equilibrium, where our final principles account for our final judgments.

Crucially, reflective equilibrium can be reached by altering our view as to whether a rule or act is justified. That is not how abduction works. An inference to the best principle treats the justified (or unjustified) status of conduct as fixed starting points. We do not alter our view as to whether these things are justified if a candidate principle fails to account for it, any more than a scientist rejects evidence that does not fit their theory.

8. Principles from a point of view

An abductive principle explains why certain conduct is justified. If conduct is not justified, there is nothing to explain. Sometimes, though, we want to say what principle *would* justify conduct *were* it justified. In that case, we rely on an argument of the form:

1. *P*'s validity would explain why C_1, C_2, … C_n are justified, were C_1, C_2, … C_n justified.
2. No other candidate principle's validity would explain why C_1, C_2, … C_n are justified as well, were C_1, C_2, … C_n justified.
3. Therefore, *P* [probably] would be a valid principle, were C_1, C_2, … C_n justified.

A principle stated by the conclusion of an argument with this form is a *hypothetical abductive principle*.

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[41] J Rawls, *A Theory of Justice* (Harvard University Press 1971) 17-19.

It is often a mouthful to talk about what is true given certain assumptions. Simpler, usually, to talk about what is true from a "point of view". I'll borrow a term from HLA Hart and say that person who accepts conduct as justified takes the 'internal point of view'[42] towards that conduct. I stipulate that a statement of the form "*P* would be a valid principle, were C_1, C_2,… C_n justified" is equivalent to "*P* is a valid principle for someone who takes the internal point of view towards C_1, C_2,… C_n". When the context makes clear that what is being explained is the conduct's justified status, we can be more concise. We can say: "From an internal point of view, *P* best explains C_1, C_2,… C_n".

9. The abductive account of constitutional principles

To recall, the task is to identify the institutional condition that our actual constitutional principles satisfy, such that they are part of the constitution. Earlier sections rejected several possible accounts. Now, having introduced the idea of abductive principles, I want to set out my alternative.

Our current constitutional principles are the principles that would best explain why our constitutional rules and practices are justified, were they justified. We can state the claim more simply if we assume that what is being explained is the justified status of the rules and practices. We can say that our current constitutional principles are the principles which best explain our constitutional rules and practices from the internal point of view. Institutional conduct provides support for our principles. It does so by figuring in the premise of what, from the internal point of view, would be a sound abductive argument for a principle's validity. Call this the *abductive account*.

One way to think of the abductive account is in terms of a rationally unified perspective. We posit someone who accepts our constitution's rules and practices. They take what we might call the "constitutional point of view". Since the best explanation for our rules and practices is that certain principles are valid, the person, who we assume is aware of this, rationally ought to accept those principles as well. Thus, our constitution includes the principles that accepting the rest of the constitution makes it rational to accept as well.

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[42] HLA Hart, *The Concept Law* (2nd edn, OUP 1994) 89.

A. Clarifications

Several points need clarification. First, the "internal point of view" is a construct, like the perspective of the reasonable person. It does not matter whether anyone in fact takes that point of view. Second, "practices" refers to any well-established pattern of conduct. For example, ministers generally respect judicial declarations. Parliamentary counsel generally draft statutes clearly. Judges generally defer to Parliament. All are constitutional practices.

Third, the principles picked out by the abductive account are *hypothetical* abductive principles. Whether they are also genuine abductive principles depends on whether our rules and practices are, in fact, justified. Now, I tend to think that our constitutional rules and practices are justified. My point of view is close to the internal point of view. So, I'm inclined to think that our constitutional principles can genuinely be abduced from our rules and practices. But I do not insist on this. Indeed, I see it as a strength of the abductive account that it allows people who disagree about whether rules and practices are justified agree about which principles are constitutional.

Fourth, abductive constitutional principles explain why we *should have* our constitutional norms and practices (assuming we should). They do not claim to explain why *there are* those rules and practices. Imagine that a Marxist theory of class struggle accurately predicts which rules and practices figure in our constitution. That theory would be a good answer to the question: Why does the constitution include the rules and practices it does? But a theory of class struggle does not (I take it) offer reasons in favour of our rules and practices. That makes it a bad answer to the question that abductive principles claim to answer: What justifies the constitution's rules and practices?

B. Why endorse the abductive account?

The case for the abductive account is that it better explains the relevant facts than alternative accounts do. Let me briefly review those facts. Our constitution includes principles such as democracy, responsible government, and the rule of law. It excludes many other principles, like secularism, socialism, and federalism. There are also the lessons learned from sections 3-5: one principle can depend on a wide range of sources;

principles can take many years to develop; and Parliament cannot abolish a constitutional principle. It is impossible for the statutory, common law, or customary account to explain these facts. It is possible for the abductive account.

Consider, first, how we establish that a principle – e.g., democracy – is part of the constitution. We start with constitutional rules, including:

1. Voting rights: Almost all adults have the right to vote in parliamentary and local government elections.[43]
2. Parliamentary sovereignty: Parliament has the power to make law on any subject, and no body has the power to set aside its laws.
3. The House of Commons' primacy: The House of Lords lacks the power to veto most bills.[44]
4. Restriction on royal assent: The monarch must grant assent to bills passed by Parliament.[45]
5. Government formation and termination: The government must command the confidence of a majority in the House of Commons.[46]
6. Cardinal convention: The monarch must exercise most prerogative powers as, and only as, ministers advise.[47]
7. Devolution: Devolved legislatures are elected, have law-making powers, and control the shape of devolved governments.[48]

All these rules promote democracy. Voting rights give the people a say over who represents them in Parliament and local government.

[43] Representation of the People Act 1983, s 1-2.

[44] The Parliament Acts 1911 and 1949 prevent the Lords from blocking money bills originate in the Commons and bills that have been passed in two successive sessions. The Salisbury convention prohibits the Lords from blocking bills that give effect to the governing party's manifesto commitments. Other conventions require the Lords to consider Commons' business in good time and to defer to the Commons on financial legislation. See Joint Committee on Conventions, *Conventions of the UK Parliament* (vol 1, HL Paper 265-I, HC 1212-I, 2005-06).

[45] Prime Minister's Office, No 10 Downing St, draft letter to Mr McWhirter, 21 September 1972: TNA PREM 15/1183, quoted in Anne Twomey, *The Veiled Sceptre* (CUP 2018) 628-29.

[46] Cabinet Office, *The Cabinet Manual* (London 2011) §2.7-§2.17; A Perry, *The Conventional Constitution* (OUP 2025) 45-53.

[47] The term 'cardinal convention' is from R Brazier, *Ministers of the Crown* (OUP 1997) 203.

[48] e.g. the Scotland Act 1998 provides for elections to the Scottish Parliament, grants the Parliament lawmaking powers on devolved matters, and sets out the procedure by which it can nominate one of its members as First Minister.

Parliament has the final say over the laws of the United Kingdom. Within Parliament, the elected Commons is dominant over the unelected Lords. Beyond lawmaking, monarch's use of the prerogative is subject to government control. Government's shape is determined by the Commons' composition, and thus indirectly by the people's votes. Similar points are true of the devolved governments. In all these ways, the people are given a role at important stages of decision-making.

Because the principle of democracy can, if valid, justify all the rules in question, the principle has great explanatory power. Because the principle draws together statutory rules, official customs, and constitutional conventions, it has impressive breadth as well. Some other principles would, if valid, have these two virtues. For example, the principle "The people ought to have a say in government decision-making between 1700-2100" would, if valid, justify the same rules. But this principle is *ad hoc*. The principle "Justice ought to be done" might cover the listed rules. But this principle is more general than is needed. It is therefore immodest. Rejecting such alternatives, we conclude that, from the internal point of view, the best explanation for these rules is the principle of democracy. On the abductive account, it follows that democracy is a principle of our constitution.

I won't go through the rule of law and responsible government in the same detail. We could, however, tell a similar story about each. The principle of responsible government weaves together, among other things, the convention that ministers must answer questions in Parliament[49]; the convention that ministers must hold (or be expected to soon hold) a seat in Parliament[50]; the standing orders that empower Parliament and its committees to supervise some delegated legislation[51]; and the orders that empower parliamentary committees to call ministers to appear. The rule of law, meanwhile, is promoted in many forms. It is promoted by practices, such as the practices of drafting statutes clearly and publicising

[49] Cabinet Office, *Ministerial Code* (2022) §1.3; *Journal of the House of Commons*, vol 253 (Stationery Office 1997) 328-329 (resolution affirming the importance of truthful answers).
[50] A Todd, *On Parliamentary Government in England*, vol II (2nd edn, Longmans, Green & Co 1859) 293; Public Administration Committee, *Goats and Tsars: Ministerial and other appointments from outside Parliament* (HC 2009-10, 330) [6]-[8]; Rodney Brazier, *Constitutional Practice* (3rd edn, OUP 1999) 57-9.
[51] David Natzler and Mark Hutton (eds), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (25th edn, LexisNexis 2019) §31.8-26.

them widely. It is promoted in the common law, including through in the presumption against retroactivity and the application of tort and criminal law rules to officials[52]. Parliamentary rules such as the *sub judice* rule[53] and statutory protections including for judicial independence[54] also promote the rule of law. If you view these rules and practices as justified, the implication is that responsible government and the rule of law are valid principles. That makes both part of the British constitution.

The abductive account can explain why principles are *not* part of our constitution. Take secularism. The principle justifies no rules of our constitution. On the contrary, it *conflicts* with the rules that make the monarch the head of the Church of England, provide for a certain number of bishops in the House of Lords, etc. Secularism may be a valid principle. But its validity is not something that a person who takes the internal point of view towards the rules of the British constitution could rationally accept.

We can also use the abductive account to help resolve borderline cases. Consider the separation of powers. Some say the principle is part of the British constitution.[55] Others deny this.[56] Who has the better argument? My view: the deniers. I grant that some constitutional rules and practices conform to the separation of powers. My reason for siding with the deniers is that these features can be justified by other principles, which have a stronger claim to constitutional status. The separation of powers is an argument for policies that 'ought to be supported … on other grounds'[57]. For instance, we do not need the separation of powers to justify security of judicial tenure, an impartial judicial appointments process, the creation of a Supreme Court, and so on. The principle of judicial

[52] e.g. *Entick v Carrington* (1765) 19 St. Tr. 1030 (KB).
[53] David Natzler and Mark Hutton (eds), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (25th edn, LexisNexis 2019) §20.19 (citing to House of Commons' resolutions of 1963, 1972, and 2001).
[54] For instance, security of tenure is protected through the Senior Courts Act 1981, s 11 (most senior judges) and Constitutional Reform Act 2005, s 33 (UK Supreme Court judges). Section 3 of the CRA obligates ministers to uphold judicial independence. The Human Rights Act 1998 provides protection for the right in Article 6 of the European Convention on Human Rights to a trial before an 'independent and impartial tribunal'.
[55] e.g. E Barendt, 'Separation of Powers and Constitutional Government' [1995] Public Law 599; N Barber, *The United Kingdom Constitution* (OUP 2021) 206-13.
[56] e.g. JAG Griffith and H Street, *Principles of Administrative Law* (Pitman & Sons Ltd 1951) 16. For an overview, see A Tomkins, *Public Law* (OUP 2003) 36-9.
[57] W Bagehot, *The English Constitution* (first published 1867, CUP 2001) 11.

independence does the job. We do not need the separation of powers to justify the 'checks' imposed on the executive by the legislature. The principles of democracy, accountability, and responsible government already justify them. The division between law-making and law-application is required by the separation of powers; but it is also required by the rule of law.[58] Moreover, the separation of powers at least arguably conflicts with a central feature of the constitution, namely, the 'nearly complete fusion of the executive and legislative powers'[59]. Overall, a set of principles that includes only the rule of law, democracy, responsible government, etc. seems to have about the same explanatory power as one that includes all these principles plus the separation of powers. But because the former set contains fewer principles, it is simpler. And because it is simpler, it is better *qua* explanation. Thus, we ought to exclude the separation of powers from the stock of constitutional principles.

The abductive account can also solve another mystery: why Parliament is unable to abolish constitutional principles. Parliament has the power to make or unmake any *legal* norm. But it has no power to abolish other norms, at least not by fiat. If constitutional principles are not legal norms (or if not all are legal norms), then it would make sense that Parliament cannot abolish them (or all of them) by fiat. Unlike the statutory or common law accounts, the abductive account is not committed to constitutional principles being laws. So, unlike these other accounts, the abductive account is consistent with Parliament's inability to abolish constitutional principles just by saying so.

To be clear, while Parliament cannot abolish constitutional principles just by saying so, it can achieve a similar result indirectly. Suppose that Parliament wanted to see to it that democracy is no longer a principle of our constitution. Passing a statute saying "The principle of democracy is hereby abolished" would not work. Instead, Parliament would have to take aim at the rules and practices that sustain the principle. If Parliament repeated the Representation of the People Act, repealed the Parliament Acts, made the Scottish First Minister an autocrat, and prohibited officials from following democratic conventions – then, perhaps, it would have achieved its undemocratic aim.

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[58] J Waldron, 'Separation of Powers in Thought and Practice' (2013) 54 Boston College Law Review 433, 456-9.
[59] G Marshall, *Constitutional Theory* (OUP 1971) 124.

If constitutional principles are (at least sometimes) not laws, how do they differ from constitutional conventions, which are also not laws? First, constitutional conventions are rules, and rules are not principles.[60] Consider what many regard as the 'core'[61] convention of the constitution: that the government resigns or seeks a dissolution if it loses the confidence of the House of Commons. There are not so many ways for a government to resign or seek an election in these circumstances. There are far fewer ways than there are institutional arrangements that satisfy, say, the rule of law. Second, if the abductive account is correct, then constitutional conventions and constitutional conventions arise in different ways. Constitutional conventions are customary or social norms.[62] They arise from acceptance and compliance within the constitutional community. Constitutional principles are not customary norms, as I explained in section 5. They arise from the explanatory relationship they bear to rules and practices.

I conclude that the abductive account is consistent with the facts of our constitution. It is also quite simple and avoids raising difficult questions, including questions about which principles are morally valid. Most importantly, it succeeds where other accounts fail.

C. Dworkinian principles

Let me end by distinguishing the abductive account from a Dworkinian account of constitutional principles. The account I sketch below is "Dworkinian" because it is inspired by Dworkin's work. I do not, however, attribute the account to him or anyone else.[63]

According to the Dworkinian account, our constitutional principles are the principles that best fit and justify our constitutional rules and practices. A principle better "fits" our rules and practices the more of them it would justify, were it morally correct. A principle better "justifies" our rules and practices the closer it approximates a morally correct principle.

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[60] A Perry, *The Conventional Constitution* (OUP 2025) 12-13.
[61] A Tomkins, *Our Republican Constitution* (Hart 2005) 1.
[62] AL Lowell, The Government of England, vol 1 (Macmillan & Co. 1910) 5ff; J Jaconelli, 'The Nature of Constitutional Conventions' (1999) 19 Cambridge Law Journal 24, 28-31.
[63] See especially R Dworkin, *Taking Rights Seriously* (Bloomsbury 1997; first published 1977), chapter 4.

For example, on this account, we might say that the rule of law is part of the British constitution because it broadly fits our rules and practices, and is a morally correct principle. Note that, while Dworkin's own focus was on *legal* principles, the account sketched here concerns a principle's *constitutional* membership.

My account shares with the Dworkinian account an emphasis on fit with constitutional rules and practices. It differs from that account in two main ways. One is that it includes criteria that the Dworkinian account does not: simplicity, modesty, breadth, and so on.[64] The other difference is that my account does not treat as relevant a principle's degree of moral correctness. These criterial differences can lead to extensional differences. For instance, if two principles fit our constitutional material equally well, and one is complicated while the other is morally suboptimal, then (other things being equal) my account will say that the former figures in our constitution; the Dworkinian account will say that the latter does.

Why prefer the abductive account over the Dworkinian one? The answer takes me back to a point I made in section 1: we do not directly invoke a principle's moral merits when trying to determine whether it is part of our constitution. At most, we use moral merits indirectly, as evidence that the criterion of fit is satisfied. For example, the badness of a principle may make us wonder people really did give it effect through their rules and practices. We might think: would people not have known better than to create such rules and engage in such practices? We might be led to double-check whether the principle is as bad as we thought. As a result, we should often be slow to conclude that a bad principle truly belongs to the constitution. Slow – but, on the abductive account, not unwilling.

10. The desirability of abductive principles

In this final section, I want to briefly consider, not how principles come to be part of the constitution, but whether it is desirable that abduction is one way for them to do so. To be clear, I am not discussing the merits of any specific principle, or the merits of treating or engaging with principles in certain ways (e.g., enforcing them). My interest is whether, of all

[64] On the place of simplicity or non-arbitrariness in Dworkin's own account, see L Alexander and K Kress, 'Against Legal Principles' (1997) 82 Iowa Law Review 739, 765.

the ways that principles could enter the constitution, abduction has anything to recommend it specifically.

One possible virtue of abductive principles is the coherence they bring to the constitution. There are many definitions of coherence, but it is common to think that a system of norms is more coherent, other things being equal, if the rules within the system realise a common set of principles, and those principles are themselves part of the system.[65] If that is right, then abductive principles would make the British constitution more coherent. From the internal point of view, the norms of the constitution would form a unified whole, justifying and being justified by each other. The difficulty is that, while coherence *seems* to be of value, it is not easy to say precisely what is of value about it. Abductive principles increase the constitution's coherence; but someone might ask, so what? Perhaps there is ultimately a good answer to that question. Here I want to investigate another possibility.

Observe that abductive constitutional principles look both backwards and forwards. They look backwards in that they draw together previously created rules and practices. They look forwards because, as norms, they give direction as to what to do. In this way, abductive constitutional principles present the best explanation for the past as being the best guide to the future. The message they send to constitutional actors is: Carry on as you have been going. (The analogy is to common law norms, which treat the resolution of past cases as a constraint on the resolution of future cases.)

The bidirectional nature of abductive constitutional principles counts in their favour, in several ways. First, it increases predictability. People can look to the past to learn about the future. Second, bidirectionality makes abductive principles self-reinforcing. Our rules and practices are best explained by a principle. The principle then informs the choice of new rules and practices. Those new developments "fit" the principle which informed their selection. The result is an increase in the principle's explanatory power. For example, the principle of democracy motivates the creation of new rules, e.g., the devolution settlements and referendum requirements. Those reforms fit with the principle, which further secures

[65] See J Dickson, 'Interpretation and Coherence in Legal Reasoning' in E Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition) <https://plato.stanford.edu/entries/legal-reas-interpret/> accessed 3 October 2025.

the principle's place in the constitution. Why is self-reinforcement valuable? It makes the constitution more stable, where stability is important for familiar reasons, including the contribution it makes to planning, coordination, and compliance.[66]

A third point is about conflict. Adapting some terms from Raz, I will say that two rules 'normatively conflict' if they cannot both be satisfied. Two rules 'pragmatically conflict' if they promote principles that cannot both be fully satisfied.[67] For example, on some understandings, the principle of the separation of powers prohibits overlap in personnel across branches of government. It is impossible to fully satisfy that principle as well as the principle of responsible government, which requires the government to be drawn from the legislature. The rules that are designed to promote each principle pragmatically conflict. Pragmatic conflicts are undesirable.

There may be multiple ways to minimise pragmatic conflicts, but one tool is this: we treat the principles that best explain our current rules as *our* principles, as principles of *our* constitution. Our principles will serve to put certain 'issues beyond the agenda of day-to-day politics'[68], including the choice about whether to introduce rules that would make the realisation of our principles impossible. Pragmatic conflicts between our current rules and new rules will be less likely as a result. For instance, if we treat responsible government as a constitutional principle, we will be less likely to adopt rules that promote a strict separation of personnel. We will therefore be less likely to adopt rules that pragmatically conflict with the rules that promote responsible government. In essence, pragmatic consistency among our rules is achieved by staying true to the principles that best explain our rules.

I have focused on the distinctive virtues of abductive constitutional principles. Nothing I say should be taken to deny that abductive principles have distinctive vices, too, or that other types of constitutional principles have their own considerable virtues.

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[66] For an influential treatment of the importance of stability, see L Fuller, *The Morality of Law* (Yale University Press 1964) 37.
[67] J Raz, *The Authority of Law* (2nd edn, OUP 2009) 201.
[68] T Endicott, *Administrative Law* (5th edn, OUP 2021) 15.

11. Conclusion

What makes a principle part of the British constitution? The answer starts with subject matter, but it does not end there. Constitutional principles also require support in our institutions' conduct. The issue is the form that support takes. Principles have not entered the constitution by being enacted in statute, prescribed by judges, or accepted and followed by officials. Instead, the principles of our constitution are the best explanation for our institutions' rules and practices, as viewed from an internal perspective. This account correctly diagnoses which principles are part of the British constitution. It also resolves several puzzles about the origins of principles and their resistance to change.