

CONSTITUTIONAL CONSERVATISM: A SELF-INTERROGATION

ASANGA WELIKALA
Senior Lecturer in Public Law
University of Edinburgh

In the summer of 2019, I researched and wrote a paper on the British conservative tradition of constitutionalism, which was eventually published in 2023 as chapter 18 of *The Cambridge Constitutional History of the United Kingdom*, edited by Peter Cane and Harshan Kumarasingham. As a comparative constitutional lawyer, this was the first opportunity I had had to articulate what I thought was the distinctive character of British conservative constitutionalism – a way of thinking about both the British constitution and the wider Commonwealth constitutional tradition that has now almost entirely disappeared from the British legal academy.

While I still think I did a reasonable if unoriginal job of restating the nature of British conservative constitutionalism, I have had reason since 2019 to rethink my approach. Relying heavily on Oakeshott, the account I gave in my chapter was essentially that of a proceduralist theory of constitutionalism:

British constitutional conservatism is defined more by its incrementalist theory of constitutional evolution than by its commitments to any particular institutions. The normative conception of the good that it represents is immanent in the processes and practices of its constitutionalism. Non-dogmatism *is* its ideology...[What unites] most conservatives across space and time is the attitude to constitutional change, of which the essential elements are a starting presumption against change for the sake of change, and the placing of the burden of justification on those who seek change.

But this proceduralist account assumes an underlying substantive consensus about the nature of the British polity that is essentially conservative, which is to say, a conception relying on traditionalism, organicism, and anti-rationalist scepticism. This now seems to me a highly precarious assumption. Since the unceasing process of constitutional change began with the New Labour reforms of the 1990s, conservative proceduralism has accommodated constitutional liberalism to such an extent that it has nearly completely obliterated any substantively conservative conception of constitutionalism from political discourse. In doing so, it has abandoned virtue, prudence, moderation, and tradition, and negated its own purported strength as a theory of political limits.

A resurrection of conservative constitutionalism as a defence of the British constitution therefore may now require attention to a substantive conception of constitutionalism. In particular, this will require a re-articulation of the common good of the body politic that more sharply delineates the boundaries between conservatism, on the one hand, and individualism and egalitarianism on the other, and a restatement of the historically evolved British constitution as a unique, valuable, and still relevant instantiation of peace, order, and good government.