

Q1. (a) What is a constitution?

A constitution is a set of rules and principles on how a country is governed. Competition for political power in most countries is fierce, so rules are needed to control the competition for power to ensure it takes place within satisfactory limits.

Professor KC Wheare defines the constitution of a state as:

...the whole system of a government of a country, the collection of rules, which establish and regulate or govern the government. (Barnett, P7)

An older definition, that of Thomas Paine, reveals a more complex set of ideas:

A constitution is not the act of a government, but of a people constituting a government, and a government without a constitution is a power without right...A constitution is a thing antecedent to a government; and a government is the only creature of a constitution. (Barnett, P7)

To look at the Constitution of the United Kingdom requires an awareness of a variety of historical, legal, and political factors, which, have gradually evolved over centuries. It would be difficult to understand or appreciate the British Constitution, as it exists today, without attempting to gain knowledge of its history, evolution and development.

Although constitutions are thought of as a relatively recent development, and the British Constitution is largely uncodified, it is made up of major statutory sources. These sources are separated into two categories. One category of legal sources, the other Non-legal. The evolution of the British Constitution and its Legal sources can be traced back to the Bill of Rights of 1689 and the Act of Settlement of 1701; it can even go as far back as the Magna Carta (1215).

The British Constitution, in contrast with other states, is the product of *mostly* peaceful evolution. It was the Plantagenet period that saw three major conflicts at home and abroad. It was from this period Parliament emerged and grew, while the judicial reforms that begun in the reign of King Henry II were continued and completed by Edward I.

Q1. (b) Distinguish between a codified and an uncodified constitution.

In contrast to the evolution of an uncodified British Constitution, The codified Constitution of the United States of America comes from revolutionary times.

All legislative powers herein granted shall be vested in a congress of the United States. (US Constitution)

The US constitution is a single codified document. US congress like the British Parliament is also a Bi-cameral system with two chambers.

In the United States of America constitution is sovereign. The Presidential Executive System is there by constitution. As there is no written British Constitution, many powers of the monarch have passed to the Prime Minister. We now have a Prime Ministerial Style of government. It could be said that some believe this role is changing into a Presidential one.

The basic function of any written constitution will define how the constitution itself can be amended. It will establish the rights of the citizens whilst defining the nature of citizenship

Differences between the Unitary (excluding recent devolution) Constitution of the UK and the Federal Constitution of the US are clear. Laws in the US have to be written from the main constitution. It can be hard to change law in the US because of 'entrenchment'. A written constitution is a rigid, fixed document.

By being uncodified, the British Constitution is not entrenched; it can be flexible, broad and general as circumstances and society changes.

Q1. (c) How adequate is the UK constitution in checking executive power?

Consistent with the doctrine of responsible government, the answerability of government towards the legislature is of core importance in ensuring that the government acts under the law and within the principles of constitutionalism. Policy proposals, executive actions and expenditure of governments are all permissible subjects for scrutiny and criticism by parliament.

Question Time in the House of Commons is the fundamental means by which information is acquired from ministers by Members of Parliament. A rota determines that most departments would feature for questions on a regular basis. Questions that are given to ministers may be answered in oral or written form. Members that wish to ask questions must give up to three days sitting notice to enable ministers to prepare answers.

This secures a degree of ministerial accountability to Parliament. It would be most rare for these debates to have an actual impact on upon government policy although it does force the government to explain and vindicate its actions.

Prime Ministerial Question Time is where any matter that the Prime Minister has direct responsibility for, or is not covered by another minister, will be debated. There are more oral questions for the Prime Minister than any of his colleagues, with wide ranging topics on the issues of the day.

There are different committees that also scrutinise the executive. There are specialised and departmental committees. A specialised committee helps make information available which may not have been before. Select committees cover the matters of the main government departments. Ministers may be asked to attend and be asked to verify

information; senior civil service staff may also be called upon. It has been said that the government are not always as co-operative as they could be in these matters.

In comparison, US select committees employ their own experts to advise, this is carried out by congress. The system of checking executive power in the UK is adequate, however it does make some question if 'adequate' is enough whilst relying only on civil service experts.

Q3. (a) What is sovereignty?

The word sovereignty is used principally to define a form of political power, whether manifested in an individual, a king, a nation state or for example international bodies of law. In democracies the people are supposedly sovereign. Yet no democracies exist where this right is not set down in the law of the state, enacted through the mechanisms of political representation and enforced. The concept of sovereignty is sometimes controversial, as many people have different definitions, and it can exist in many formats.

The holder of sovereignty possesses authority. Authority is what the philosopher R.P. Wolff proposed: "the right to command and correlatively the right to be obeyed." (Wolff, P20). This holder of sovereignty procures authority from an acknowledged source of legitimacy, i.e. a constitution, natural law, hereditary law or international law. The holder would be superior to all authorities under its realm.

It is possible today for an authority to be sovereign over partial matters within a region but not all. For example EU member states non-absoluteness. Whilst not sovereign in governing there polices for trade, social welfare and defence, which as set in EU law are administered in co-operation with EU authorities, they are sovereign in the governing of defence.

It would be John Locke's (1632-1704) perceptions, in particular from his writings from the Second Treatise of Government, published in 1690 that are closer to the view of British sovereignty.

Many western democracies base their governments on popular sovereignty. This is sovereignty for the common people. In the UK for example, it could be said that the people are sovereign since it is they that have the power to decide who will rule. It could be questioned however that once the elected members are in place, how much of this power is in the hands of the people that placed them there? Short of a revolution, control by the people of their own authority is minimal.

Q3. (b) In what way is parliament sovereign?

When the Bill of Rights was passed in 1689, it specified that laws could only be made or repealed by Parliament and not by the Monarch alone. Parliament has gradually taken control over many of the powers previously exercised by the Monarch. The Monarch now has a constitutional role, which means that their actions are governed by convention.

It is convention and tradition, along with Authoritative works from Walter Bagehot, Erskine May and AV Dicey that are the Non-legal sources of the uncodified British Constitution. Bagehot says that the Monarch can advise, counsel and warn.

The Constitutional Monarchy as we know it today, has developed from the 18th and 19th century. In these times a Monarch had much political power, but now this power has corroded. Whilst the Monarch remains the head of state, control is in the hands of the Prime Minister and his government. It is this control that makes parliament sovereign.

The Queen personifies the state. In law, she is head of the executive, an integral part of the legislature, head of the judiciary, the commander-in-chief of the armed forces of the crown and the "supreme governor" of the established Church of England. As a result, of a long process of evolution during which the monarchy's power has been progressively reduced, the Queen acts on the advise of her ministers. Britain is governed by her majesty's government in the name of the Queen. (HMSO 1994,P8)

The Monarch is required by the government to assent all bills. This is called The Royal Assent. This is a process that allows a bill to become a statute. The role of the Monarch in this process is again by convention only. It would be an aide that 'rubber stamps' an item, which will then become legislation. There has not been a refusal to sign since Queen Anne in 1704.

Under the principles of parliamentary sovereignty it is parliament only that can make UK law. There is no other body which can change any laws that parliament have made. This principle is one of convention, it is not written down in any particular document that would inform us that this is the case. Courts in Britain must enforce law that is passed by parliament. In contrast, in the United States of America, the Supreme Court could deem a law that has been passed by congress as unconstitutional.

Q3. (c) Examine the constitutional implications of the UK's membership of the European Union.

The British Constitution is constantly being added to by the signing of international treaties and agreements, such as with the UN and NATO. The most significant new source of the Constitution more recently has been the EU. The Treaty of Rome was signed in 1972, effectively gaining superiority over parliamentary sovereignty. Under the provisions of this treaty, any cases for appeal that reach the highest court in the United Kingdom, the House of Lords, must be referred to the European Court of Justice. The UK could leave the EU at any time it wishes, although this is unlikely. An example of this loss of power would be the Factortame Case (1990) where the European Court made a ruling, which overrode the House of Lords. If EU legislation requires it, the British Courts have the right to review/suspend statute law. Any judgements from the European Court of Justice become part of UK legislation.

Whilst parliamentary sovereignty in the United Kingdom still exists, it faces strong challenges from our membership of the European Union.

A constitution for the EU was agreed in Brussels on 18th June 2004. It was signed recently at the end of October 2004. The constitution brings together for the first time all of the treaties and agreements on which the EU is based. It will define the power of the EU, stating where the member states retain their right of veto. For instance, direct taxation, foreign and defence policies and the budget. It will also define the role of the EU institutions. The signing of the EU constitution has caused outrage amongst the opposition Conservative Party, particularly outspoken was its current leader Mr Michael Howard. Concerned that we would become part of a 'United States of Europe' and the effect it could have on British businesses. It will however allow those states that wish for closer relations to do so, for instance the states that have joined the single European currency, The Euro.

The EU Constitution will only become law if it is ratified in all 25-member states. This must be within two years of it being signed. If this progressed it could be possible to have a common foreign policy. Particularly useful as we live under constant threat from terrorism, would be a common defence policy. With many in disagreement over the war in Iraq for example, and the best defence and protection from terror, one common defence policy is unlikely.