

Mark Scheme (Results)

Summer 2007

GCE

GCE Government and Politics (6492) 01

Unit 2 - 6492

1 (a)

Define the rule of law

The rule of law is the principle that the law should 'rule', in the sense that it establishes a framework to which all conduct and behaviour conform. As such, it is a core principle of liberal democracy, upholding limited government and preventing arbitrary government. It should apply equally to all members of society, regardless of whether they are private citizens or public officials. Its core features therefore include the idea of equality before the law; the stipulation that there should only be punishment for breaches of law, and the requirement that if the law is broken there should be a certainty of punishment.

In marking this questions, consider the following:

- Knowledge and understanding of the rule of law (AO1)
- Awareness of the role of the rule of law in limiting government power (AO1)

1 (b) Explain three ways by which judicial independence is maintained

Judicial independence is the principle that there should be a strict separation of powers between the judiciary and other branches of government, to ensure that judges make judgements without external interference. The principle is upheld in the UK in a variety of way, including the following. First, there are checks built into the appointment system for judges. Although judges have traditionally been appointed by the Lord Chancellor or the prime minister, on the former's advice, selection is meant to be based on merit and expertise, rather than on political or personal considerations. The new Judicial Appointment Commission will reduce the role of politicians in the appointment process. Second, judges enjoy security of tenure, ensuring that they cannot be pressurised by politicians or the government of the day by the possibility or reality of being sacking. Senior judges can only be removed by an 'address' of both Houses of Parliament. Third, there are conventions that restrict the public criticism of judicial actions, thereby preventing external pressure being exerted. These conventions apply particularly to what can be said in Parliament in relation to judicial matters and courts judgements.

In marking this questions, consider the following:

- Knowledge of the principle of judicial independence (AO1)
- Knowledge and understanding of mechanisms for ensuring judicial independence (AO1)
- Analysis of how the mechanisms safeguard judges from external pressures (AO2)

1 (c) To what extent do judges protect civil liberties?

Civil liberties are freedoms that citizens enjoy in relation to the state; they demarcate a sphere of self-willed action. The judiciary protects civil liberties to two main ways. First, they do this through judicial review, the review of the actions of ministers and other government officials to ensure that they conform to law. Ministerial decisions and actions can be declared unlawful when they are 'ultra vires', when the minister is action beyond his or her allotted powers. There is a clear tendency for judges to be more willing to use this power, reflecting a general trend towards judicial activism and demonstrating greater concern about civil liberties in general. Recent prominent cases have focused on issues such as asylum and terrorism. However, judicial review only applies to delegated legislation: judges do not have the power, as they do in the USA, to strike down primary legislation (Acts of Parliament) that contravene civil liberties applies are lawful. Second, the passage of the Human Rights Act has expanded the capacity of the judiciary to protect civil liberties, notably those outlined in the European Convention of Human Rights. This enables judges to interpret statute law in the light of the ECHR. However, once again, this does not allow judges to strike down Acts of Parliament. A statute law can be declared to be 'incompatible with the Convention', but Parliament, and therefore the government of the day, are under no obligation to alter or remove the law.

In marking this questions, consider the following:

- Knowledge and understanding of how judges can protect civil liberties (AO1)
- Knowledge of examples of civil liberties being protected by the courts (AO1)
- Analysis and evaluation of the effectiveness of judges in protecting civil liberties (AO2)

2 (a) Distinguish between a unitary and a federal constitution

A constitution is a set of rules that govern government and allocate duties, powers and functions to the various government bodies. A unitary constitution is one in which sovereign power is vested in a single institution of central government. In the UK, this institution is Parliament, which exercises sovereignty, in that it can make or unmake any law it wishes. Peripheral; devolved or local institutions therefore exist at the pleasure of Parliament, these bodies having no constitutional autonomy. Federal constitutions, by contrast, are based on the principle of shared sovereignty, in that they establish two relatively autonomous levels of government. Each level posses powers that the other level cannot encroach upon. The classic example of a federal constitution is the US constitution, which divides sovereignty between the three institutions of federal government and reserves all other powers for 'the states and the people'.

In marking this questions, consider the following:

- Knowledge and understanding of a unitary constitution (AO1)
- Knowledge and understanding of a federal constitution (AO1)

2 (b) Explain, using examples, the sources of the UK constitution

The UK constitution has a variety of sources, the main ones being the following. . First, statute law is a major source of the constitution in that there is no higher constitutional law and the duties, powers and functions of government bodies are often laid out in Acts of Parliament. This applies in the case of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. Second, other constitutional powers are allocated by conventions, non-legal rules that widely accepted as binding (if vague). Examples include the use by the prime minister and other ministers of the Royal Prerogative. Third, common law, based on long-established custom, is another source of the UK constitution. The Royal Prerogative is rooted in common law. Case law, or 'judge-made' law, is also often identified as a source of the constitution. Fourth, works of constitutional authority (Dicey, Bagehot etc) and widely respected constitutional documents (Magna Carta) help to allocate constitutional roles and responsibility, the former particularly in clarification of convention. Fifth, European law and treaties have become an increasingly important source of the constitution, in that define the relationship between the EU and the UK and allow EU regulations and directives to have direct impact within the UK.

In marking this questions, consider the following:

- Knowledge of the major sources of the UK constitution (AO1)
- Knowledge of examples of the sources (AO1)
- Analysis of how the sources allocate duties and powers to government bodies or define the relationship between the state and the individual in the UK (AO2)

2 (c) Assess the strengths of the UK constitution

The UK constitution has a variety of alleged strengths; however, each of these has been subject to criticism. Relevant points would include the following. First, the UK constitution has been said to be flexible by virtue of its uncodified character. This allows it to be up-to-date and to remain relevant regardless of a changing political environment. On the other hand, flexibility could be a problem, in that it means that changes are ill-considered or that important principles lack safeguard. Second, the UK constitution may be regarded as democratic, in that, thanks to parliamentary sovereignty, ultimate constitutional responsibility is vested in Parliament, and in practice in the elected House of Commons. The counter argument here is that, as the Commons is in practice controlled by the executive, parliamentary sovereignty results in elective dictatorship, which is often seen as the key flaw in the UK's constitutional system. Third, the UK constitution reduces the constitutional role of non-elected judges, who cannot strike down Acts of Parliament. Critics of the constitution, however, would agree that judges, by virtue of their legal training and political impartiality, are the most suitable people to be the ultimate constitutional arbiters. Fourth, the UK constitution has been commended because its organic character, meaning that it is rooted in tradition and history. This may nevertheless mean that it contains out-dated elements, such as the royal prerogative.

In marking this questions, consider the following:

- Knowledge and understanding of key strengths of the UK constitution (AO1)

- Analysis and explanation of these key strengths (AO2)
- Evaluation and assessment of the strengths of the constitution in the light of counter-arguments (AO2)

3 (a) Outline the role of a minister

Ministers have a variety of roles. First, ministers usually (except those without portfolios) act as head government departments (in the case of senior minister, usually secretaries of state), or are members of the leading group within a department (in the case of junior ministers). As such, their role extends both to policy-making and administrative oversight within the department. Second, ministers have a parliamentary role, in that they must answer parliamentary questions (Question Time), provide minister statements and speak in parliamentary debates or relevant departmental matters. This may also extend to appearing before select committee. Ministers also have government roles; in the case of senior ministers this may extend to membership of the cabinet and cabinet committees. All ministers are obliged, in any case, to support official government policy.

In marking this questions, consider the following:

- Knowledge and understanding of the departmental role of a minister (AO1)
- Knowledge and understanding of the parliamentary and other roles of a minister (AO1)

3 (b) In what circumstances do ministers resign?

Ministers may resign in a number of circumstances. These are sometimes outlined by the conventions of ministerial responsibility. Under the convention of collective ministerial responsibility, ministers must resign, or face being sacked, if they fail to support official government policy in public or Parliament. Under the convention of individual ministerial responsibility, ministers should resign as a result of a policy failure or blunder made by their department. Whereas collective responsibility remains relevant to modern politics, individual responsibility, in its traditional sense, is widely ignored, example of resignations on its basis being very rare. Resignations are more commonly linked to personal failings and flaws on the part of ministers, particularly those that attract significant media criticism and exposure. In these circumstances, the survival of a minister is linked to the nature of the transgression, the damage that media criticism causes to the government and the majority party, and the support that the minister receives from the prime minister. Good answers are likely to be illustrated with up-to-date and relevant examples.

In marking this questions, consider the following:

- Knowledge and understanding of the circumstances of ministerial resignations (AO1)
- Knowledge of relevant examples (AO1)
- Analysis and evaluation of the significance of the different factors in leading to a resignation (AO2)

3 (c) Assess the limitations on the powers of the Prime Minister

Prime ministers are subject to a variety of limitations. These include the following. The cabinet is a limit on the PM in that decisions are made collectively and it is possible (although unlikely) for the PM to be out voted. Major cabinet figures, particularly ones with significant support within the party and considerable public reputation, act as a powerful limit on the PM (witness Brown or Blair). However, PMs also possess a variety of powers and controls through which they are usually able to neutralise cabinet resistance. Parliament is another limitation. Opposition parties can criticise the PM, but their influence is limited unless they are electorally strong and especially if the government's majority is small. Majority party backbenchers can limit the PM by threatening to vote against the government. Although this rarely, in recent years, has threatened the government with defeat, it has forced the PM and government to modify policies rather than abandon them. The House of Lords is a limit on the PM because the governing party does not have majority control of the second chamber. However, the legislative powers of the Lords are weak, and the Commons can always make use of the Parliament Act. Other limits on the PM include major pressure groups, especially those that possess financial or economic power; the mass media, as demonstrated by Blair's unwillingness to press ahead with Euro membership; international organisations, and most notably the European Union; and major trading partners and strategic allies, especially the USA as demonstrated by its influence on UK foreign policy in recent years.

In marking this questions, consider the following:

- Knowledge and understanding of the limitations on the power of the PM (AO1)
- Analysis of how factors limit PM power (AO2)
- Evaluation of the significance of different limitations on the PM (AO2)

4 (a) Outline two functions of Parliament

Parliament has a number of functions, including the following. First, Parliament makes laws: it is a sovereign legislature in that it can make and unmake any law it wishes. All law making power in the UK issues ultimately from Parliament. Second, Parliament has a representative function, helping to link government to the people. It carries out this function through elections to the House of Commons and through the constituency role of MPs. Third, Parliament carries out oversight and scrutiny of the executive, helping to ensure responsible government and accountability. Fourth, Parliament provides legitimacy, in that policies passed by the Parliament are more likely to be regarded as rightful and binding by UK citizens.

In marking this questions, consider the following:

- Knowledge and understanding of one function of Parliament (AO1)
- Knowledge and understanding of a second function of Parliament (AO2)

4 (b) Explain three ways in which Parliament carries out its scrutinizing role?

Parliament carries out its scrutinising role in a variety of ways. These include the following. First, Question Time provides a weekly opportunity for MPs to ask questions of the PM and also of other leading ministers. The occasion, nevertheless, often degenerates into point-scoring and 'ya-boo' politics, rather than the sober analysis of government policy. Second, a system of select committees have existed since 1980 to monitor the work of the main government departments. These committees can send for persons, papers and records, and receive evidence from ministers and civil servants. However, factors such as the government majority on the committees serve to limit their effectiveness. Third, opposition parties are able to use opposition days and closure motions to embarrass the government. Fourth, parliamentary programme to scrutiny. debates subject the governments powers, . . . , existed to

In marking this questions, consider the following:

- Knowledge and understanding of three forms of parliamentary scrutiny (AO1)
- Analysis of how these scrutinising mechanisms operate (AO2)
- Evaluation of their significance in checking government power (AO2)

4 (c) Has the UK Parliament become an irrelevant institution?

The UK Parliament is sometimes considered irrelevant. Those who argue this point to to the conjunction of three major factors. First, the Westminster electoral system is majoritarian and therefore tends to result in single party majority control in the House of Commons and thus single party government. Second, the party system tends to ensure that the governing party is cohesive and unified, allowing its leaders (ministers in government) to dictate in most cases to its MPs. Third, the House of Lords is a subordinate chamber, meaning that whichever party controls the Commons controls Parliament. The net result of this is what Hailsham dubbed 'elective dictatorship', a condition in which, once elected, governments can do anything they want until the next general elections – Parliament is irrelevant. This view is contested, however. Other point out that Parliament can influence government and government policy in a variety of ways. Majority party backbenchers are not always loyal and obedient, but being better education, they are increasingly critical and questioning of government. The Lords defeats the government more regularly than does the Commons, and governments often have to conciliate an upper chamber in which they do not have majority control. In this view, Parliament may not be a policy-making legislature, but it retains a policy-influencing role.

In marking this questions, consider the following:

- Knowledge and understanding of criticisms that have been made of Parliament (AO1)
- Analysis of how factors that affect Parliaments power and influence (AO2)
- Evaluation of the power and influence of Parliament (AO2)

