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GCE Government & Politics 6GP02 01

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Introduction

On the whole candidates approached the answering of questions in a sensible, organised manner. Obviously, knowledge, understanding and analytical skills varied a great deal, but there was evidence that the vast majority of candidates had been well prepared.

That said, there was a common fault, notably in Section B. This was a tendency to attempt to 'adapt' answers to conventional, common questions to fit the actual questions which were quite different. This was especially true of Question 3 (see below).

The quality of spelling continued to decline, but this was partly offset by improvements in the use of appropriate political vocabulary, as well as good, logical structuring of longer answers.

Question 1

Question 1 (a)

The vast majority of candidates were able to identify 2 functions from the passage. A small number referred to functions not mentioned in the source, for example representation. Full marks were awarded to candidates who identified 2 functions and, using the source, provided some explanation. An example of good practice was this:

"Its first function is demonstrated in the source as it comments on bills being passed through to make legislation. The Commons creates new laws and is the supreme legislator in our country. We also see how it takes amendments in to consideration from the subordinate House of Lords.....Another function of the House of Commons is to oversee, oppose and scrutinise the government of the day. We see this in the source as it talks about Questions to the Prime Minister but also the Report presented by the Foreign Affairs select committee..."

The most common fault was a failure either to refer explicitly to the source or merely to identify 2 functions without explaining them. Such responses attracted only 2 or 3 marks.

Question 1 (b)

Answers tended to fall in to two categories. Firstly, there were those which merely referred to the methods used by the Commons - select committees, questions to ministers, debates, opposition days, etc. The most common 'own knowledge' issues were votes of no confidence and voting against legislation. However, in many cases such responses did not explain *why* these methods controlled government (beyond stating the obvious that a government might be removed from power if defeated in a confidence motion). These responses were limited to level 2 marks, especially when offered uncritically. More marks could be garnered if candidates explained these are rarely used 'reserve' powers. Secondly were answers which *did* explore the nature of control, explaining why government will be sensitive to these methods.

A very good example of how 'control' could be explained fully and accurately was this:

"...one method the House of Commons uses to limit government is via accountability. This can be seen in PMQT. Holding the government to account via heated debate at PMQT makes government justify its actions. This serves to prevent government acting in an irresponsible way and/or prevent it overstepping its mandate. This is because government knows it will be questioned about all its errors which will in turn be made public and most probably be used against them by the opposition party at the next election. This controls government's power because it makes them think twice before creating legislation as well as implementing it."

There were some good explanations of why select committees can be an effective control mechanism, especially since the Wright Committee reforms, noting the publicity which the more controversial reports can achieve. A minority of candidates still confuse select committees with standing committees.

Question 1 (c)

As candidates were released from the need to refer to the source, many successfully broadened their discussion of the functions of the Commons to address this question. Many did well, for example, in discussing the representative function, pointing out that the Commons is neither socially, nor politically representative of the wider population. One particularly impressive piece of evaluation came from a candidate who said that, though women are under-represented in the Commons, this has not prevented the passage of a good deal of legislation improving the position of women in society. This extract illustrates this:

'The argument around social background may also be flawed as it is untrue to say you have to be of a certain background to pass laws in that group's interests. An example of this would be the laws passed in the 1970s to ban sex discrimination by a predominantly male Commons, or elected MP and aristocratic Labour member Tony Benn supporting so many measures to benefit workers.'

This is evaluation of the highest quality.

However, most candidates were simply critical of the unrepresentative nature of the Commons and this was rewarded. Stronger candidates were able to point out that one of the acknowledged benefits of the FPTP electoral system is that it provides a direct link between each MP and their constituency. Some were able to quote examples from their own locality and such examples were rewarded under AO1 (knowledge & understanding).

Many candidates produced good critical evaluations of the legislative process, referring to executive dominance, lack of debating, time etc, and of select committees, pointing out that they may still be influenced by the whips and party loyalties. The accusation that PMQT is merely 'Punch and Judy' politics was very common and good to see. Too many candidates assumed that questions to other ministers in general suffer from the same faults as PMQT. This is not always the case and so detracted from otherwise impressive evaluations.

An especially pleasing characteristic of a number of strong responses was the inclusion of 'legitimation' in an assessment of the Commons. On one level it can be said that the Commons passes legislation efficiently as a result of whipping. On another it was pointed out by some that the Commons is very good at legitimising legislation as there is widespread public support for the legislative process.

The main differentiation between competent and strong responses was the balance achieved in evaluations. Many were simply negative about the Commons, but the highest marks were awarded to those who could juxtapose weaknesses against strengths. A good example was:

"The executive usually gets its way with legislation. However Tony Blair's government suffered defeats over 90 day detention and religious hatred, despite a big majority and Gordon Brown suffered an embarrassing defeat when a Lib Dem Opposition Day motion on allowing all Gurkhas to settle in Britain was accepted. Such defeats are rare, but show that the Commons can be effective in challenging bad legislation."

Good response to this question.

Indicate your first question choice on this page.

Put a cross in the box indicating the first question that you have chosen.

If you change your mind, put a line through the box

and then indicate your new question with a cross .

Chosen Question Number: Question 1

Question 2

(a) The first function of the House of Commons is to pass legislation. The source clearly shows this when in January 2010, they were pushing through the 'Personal Care at Home' Bill in its final stages of Commons proceedings.

The second function of the Commons is to call the government to account. It does this in three main ways. Firstly is to debate legislation as seen with the Personal Care at Home Bill. Secondly through Question time as seen to questions to the Health Secretary, Prime Minister and Scotland Secretary. Finally through Committees as seen through the report presented the Foreign Affairs Committee.

(b) Firstly, the power of government is controlled by ~~scrutiny~~ scrutiny of bills and actions of the government. It gives MPs the opportunity to question government legislation going through for example in bill debates, question time, committees and letters to ministers. The success of this was shown when opposition by MPs forced Michael Gove to reverse his policy on ~~the~~ School Sport funding.*

Secondly, it is controlled by the representation of parties in the Commons. A party with a very high majority, like Tony Blair's first term in office would rarely see defeats. However if a party majority is only limited, then like ~~was~~ there was under Gordon Brown and the current Parliament, bills can be at defeats are more often. For example the proposal to raise the pre-detention charge to 42 days in 2008 was defeated showing a grip on power. **

((b) continued) Thirdly, the fall in party unity. Particularly now and under Gordon Brown, the fall in party unity has allowed the Commons to gain more of a grip on the executive and government. This comes in particularly in the light that one third of all Brown's policy in 2009 and 2010 faced a backbench rebellion. This shows more power to the Commons because MPs are more likely to think for themselves which undermines the influence in Parliament. For example 30 Conservative MPs voted against the ED Bill 2011 recently.

* This shows how the Commons controls the executive because scrutiny can lead to policy changes showing the influence the Commons still has.

** The representation of parties, particularly in this Parliament, is an important way for the Commons to control the executive because they can limit the chances of a bill passing. Like for example Tuition Fees got in on a slim majority.

(c) The Commons' functions are as follows. They are meant to represent the ~~them~~ It is ~~constituents~~ meant to represent the people, scrutinise legislation and pass legislation.

Representation is regularly updated around every 4 to 5 years, or under the new Fixed Term Parliaments Bill 5. People elect who one MP to represent them for whichever party. This creates a unique MP to constituency link which allows local concerns to ~~be~~ be better heard which would suggest the Commons fulfils this well, particularly as they are addressed at Question Time.

However, middle-aged, white males tend to dominate the Commons. This means that minorities are significantly under represented. Particularly Women for example. There are 143 ~~was~~ female MPs which makes up around 26% of the Commons. This is disproportionate to the number ~~of~~ 51% of the population who are female. Also the disproportionality of the FPTP electoral

((c) continued) system questions whether people's views are proportionally represented. For example, the lowest majority an MP got in the 2010 General Election was 4 votes. This would suggest the Commons is poor at representing people.

Passing legislation and making legislation is arguably done effectively. The majority party in the Commons can push through policy which it campaigned on and relatively quickly as well. For example, the Labour government in ~~2010~~¹⁹⁹⁸ was able to pass the ~~Financial Services Bill~~ Scotland Act allowing devolution to Scotland. ~~Non Private Members' Bills~~ are also considered. For example the Public Services Bill last year which was given attention. This suggests ~~Parliament~~ in the Commons fulfils this function.

However there is concern that the quick and efficient nature of passing legislation is due to Elective Dictatorship. This is the ability of the executive to push through any legislation.

((c) continued) of wants without much opposition. Arguably a massive failure for the Commons in this respect was the passing of the ~~Digital~~ Digital Economy Bill in the 2010 wash up period. It shows that how even in a sparsely attended Commons, it can push through a bill it would like. This suggests that the power of ~~more~~ making legislation is vested in the executive and no longer the Commons.

Finally, the Commons is supposed to scrutinise legislation. This is effective in the sense there are plenty of means to do so. For example debates, question time, committees and letters to ministers. The means to do this highlights faults with legislation. Most notably last year faults with Michael Gove's plans for the 'Building Schools for the Future' programme was amended due to raised scrutiny. The faults with the current EU Bill have also been exposed by some

((c) continued) MPs in failing to take away executive power for example. So it shows how the government is limited and can be held to account.

However

However, as David Cameron once described, "I want to get away from the 'Punch and Judy' politics" ~~indicate~~ - indicating his concern about how scrutiny for the most part can just be about partisan arguments trying to appear more popular. This is definitely seen in Prime Ministers' Questions where the aim of the Leader of the Opposition is to embarrass the Prime Minister. For example last week when Ed Miliband asked David Cameron on his progress with Bankers' Bonuses. Also due to the ~~gover~~ ~~again~~ this demonstrates a failure of the Commons to properly hold the government to account.

((c) continued) In Conclusion, it is true that to some extent that Commons carries out its functions. Although it can be said that for the most part this is not done incredibly well, particularly over the issue of scrutiny which for the most part is ineffective in the Commons aims and reveals this ~~idea~~^{image} that ~~Parliament~~ the Commons is just a partisan body trying to serve itself and not the people.



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Examiner Comments

Full marks were awarded to candidates who identified 2 functions and, using the source, provided some explanation. This is an example of good practice.



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Examiner Tip

Refer to the source explicitly in part a - ensuring that any examples given are built on in the explanation. In part b ensure there is a mix of points taken from the source and those developed from own knowledge.

Question 2

Question 2 (a)

Most candidates had little difficulty identifying 2 limitations on prime ministerial power from the source. Most were able to expand on the examples in the source to illustrate, especially when a prime minister loses the support of their cabinet. Candidates found it more difficult to explain the influence of the media and confined themselves to stating that Brown's experience was an example. The strongest responses tended to discuss Brown's loss of authority, once he suffered growing public criticism, for example with botched plots by his cabinet and party to remove him as leader.

Candidates who merely identified 2 limitations without expanding on them could only achieve 2 marks. Those who did not refer explicitly to the source gained 3-4 marks at best.

Question 2 (b)

Many candidates did not provide an explanation of the concept of prerogative powers. This could have been either because they did not understand them and/or were unaware that the question required such explanation. In view of such possible confusion examiners were able to award high marks if an implicit understanding of the prerogative was demonstrated.

Strong responses included two elements - the fact that these powers are delegated from the monarch and (less commonly) that they are essentially arbitrary and so not necessarily subject to parliamentary or cabinet sanction. A good example of a response addressing the first element was:

"The prime minister's prerogative powers are powers that originate from and technically lie with the reigning monarch. Using the royal prerogative the head of state - still legally the monarch - has the power to declare wars and dissolve parliament. In reality such powers lie with the prime minister in all but name."

A number of candidates confused prime ministerial roles (e.g. chairing cabinet meetings or heading government) with prerogative powers. A substantial number of candidates confined their answers to patronage powers or those mentioned in the source alone. Examiners accepted the power of dissolution as a prerogative power despite the coalition's proposed legislation on fixed term parliaments.

Question 2 (c)

There was a wide range of responses of varying quality to this question. Less strong candidates offered generalised overviews of how the prime minister might dominate and/or be constrained by their cabinet, without any illustration at all.

Stronger answers drew on examples from recent history to substantiate their analysis, with a pleasing number of candidates making reference to the coalition and how Cameron's premiership is constrained by the necessity to include 5 Lib Dem ministers in the cabinet, while balancing the remaining posts among the different wings of the Conservative Party. This was not however a requirement for a high mark and candidates who dealt with Thatcher, Major, Blair and/or Brown well could score very well.

Most candidates were able to analyse the effect of patronage power, but only stronger responses looked at the mechanisms of control, notably in terms of control of the agenda, the use of bilateral meetings/agreements with ministers, kitchen cabinets, etc. Cabinet committees were mentioned fairly often, but very few candidates were able to explain how these could be used to control cabinet.

The most typical weak responses tended to refer to the strengths of the prime minister balanced against the possibility that they might at any time be 'dumped' by the cabinet. When such answers went no further, marks awarded were inevitably modest.

A promising start to an answer is shown below:

"The prime minister has no constitutional role that determines how powerful he is. Therefore the role is open to interpretation by each different prime minister, often depending on the circumstances in which they are in power. This means that the extent to which the prime minister can control the cabinet fluctuates from prime minister to prime minister."

Such a thoughtful opening suggests good analysis will follow and recent examples will be effectively used. The fact that the relationship between prime minister is not static is, in itself, an example of analysis worthy of reward.

4/5 marks

(a) The prime minister powers are very great and subjective depending on how he or she uses its power. ~~According~~ with reference to the source prime minister power can be limited by the media as ~~the~~ if the prime minister is not confident and suitable with the media then the prime minister can be made to look "hostile", this has an massive damaging effect and limits the power of the primeminister.

Furthermore cabinet colleagues can turn against the prime minister, this will limit the prime minister power as the prime minister does not have the confidence and backing of its senior ministers. Although in theory the prime minister has its normal power either if the Cabinet agree or

((a) continued) disagree with the prime minister, in reality it is very hard to retain power as loss of confidence from Cabinet colleagues can be vital to the limitation of the prime minister power.

((b) continued) Throughout the last few centuries, the British prime minister has become more powerful and responsible after inheriting the "Royal prerogative" power from the monarch the queen. Although today the Queen is still recognised as superior to parliament and the monarch, through convention the prime minister now has the powers of the monarch.

With reference to the source as it mentions "Blair's invasion of Iraq 2003". This power of going to war without the consent of the Queen is an prerogative power.

Although by theory the prime minister should ask the Queen, in reality the prime minister can go ahead as the Queen cannot say no due to the prerogative power the prime minister holds.

Furthermore having relations with other countries in the world is also an prerogative power the prime minister holds. For instance when the prime minister goes to the UN summits to discuss matters

((b) continued) In the interest of Britain ~~there~~ is an prerogative power of with other leading countries, this is an prerogative power of the prime minister.

(c) The prime minister can 'control' the cabinet is an really controversial and not starkly justified matter.

Many people argue that yes the prime minister can control the cabinet as ~~the~~ by many senior politicians and writers the prime minister is see to be "first amongst best".

The prime minister is the most powerful figure in UK politics. Although many issues are discussed in cabinet for or against the ~~Cabinet~~ Prime minister, the prime minister has the power to overrule decisions in his favour without questions. For instance with the 2003 Iraq war, this issue was ~~Also through ministerial collective responsibility, through this the prime minister can control~~ an really controversial issue: many people & minister disagreed with Tony Blair the prime minister at that time. However being a prime minister he sided away the interests of the cabinet and went forward with his own interests.

((c) continued) Furthermore prime minister can control the cabinet through ministerial collective responsibility. This collective responsibility allows the prime minister to burden ministers to keep every issue discussed in the cabinet confidential. Also ministers are forced and pressured to vote in favour of the prime minister as if failed to do so can result to losing the job of an minister. The only way ministers are allowed to speak out against the prime minister and the cabinet is to resign; this is very rare as to leave the job as an minister is really a senior position to be in, so many ministers do give in to the prime minister due to ministerial collective responsibility.

Nevertheless the prime minister can control which ministers to discuss with more personally than other ministers. Favouritism is an big subject here. The prime minister can have sofa cabinets

((c) continued) Where one or two close ministers discuss about issues with the prime minister. In this way the prime minister controls ~~who~~ which minister to associate more with than other minister. We see more of an federal presidential style of ruling rather than the collective manner of discussing with the cabinet the prime minister should be doing. For example during Tony Blair's regime as prime minister, Tony Blair was seen to pick and choose which ministers he should be more close with than others. He was more of a sofa cabinet ~~to~~ person rather than an collective ~~&~~ cabinet type of person.

However to an extent in my opinion although in theory the prime minister can control the cabinet as the powers the prime minister has is supreme. In reality to abuse this power is really hard and not as simple as it sounds.

((c) continued) Firstly if the 'big beasts' otherwise known as the leading ministers in the cabinet such as the Chancellor of the exchequer, Foreign Secretary, Home Secretary. If these ministers do not agree with the prime minister and have an fallout or even to the extent decide to resign, then this will affect the prime minister greatly as this could lead to other ministers and the people of the UK to lose confidence of the prime minister. Therefore the prime minister this way does not control the cabinet as the 'big beasts' limits the power of the prime minister.

For example during Blair's Regime, Gordon Brown the Chancellor of exchequer at that time was completely independent from the prime minister. Gordon Brown did not let Tony Blair interfere with economic policies. This shows how powerful the big beasts can be and how they can diminish the prime

((c) continued) Minister power over the cabinet.

Prime minister can also lose their jobs if they are not in good terms with ministers. For instance Margaret Thatcher lost the confidence of her ministers whilst her regime as prime minister; this led to the downfall of her regime.

In conclusion I believe although in theory yes the prime minister can control the cabinet as the prime minister has the power to overrule what ministers say or suggest. However in reality when you look into the cabinet in depth the prime minister's powers over the cabinet are really limited as the ministers especially the "big beasts" play a huge role to the uphold and stability of the prime minister.



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Examiner Comments

The candidate has identified 2 limitations to a prime minister's power from the source, but only scores 4/5 for not making explicit reference to the examples given when developing them - there is nothing here about how Gordon Brown was weakened by hostile media coverage.



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Examiner Tip

Refer explicitly to the source, both to identify the 2 limitations required and to find the examples needed to help develop them.

Question 3

A major problem arose in the answering of this question. A high proportion of candidates chose to interpret it as a straightforward evaluation of whether or not the British Constitution should be codified. Certainly this issue is central to whether or not the Constitution is 'no longer fit for purpose', but there are other issues which are not directly concerned with codification. An example of this is the devolution process and its implications for the unitary nature of the constitution. Many candidates ignored this key element of Britain's constitutional arrangements. Similarly the issue of executive dominance is *partly* about codification, but it is also about political arrangements which may now be out of date and in need of modernising (or indeed codifying). Having said that, it was possible for a candidate who was essentially adapting a prepared answer on codification to the exigencies of this particular question, and did this well and comprehensively, to achieve low level 3 marks. Most answers which simply rehearsed the obvious codification arguments, however, tended to find themselves in the middle of level 2, their exact mark depending on the range of issues addressed, the strength of the analysis and evaluation and the quality of the writing.

Those who treated codification as only one (albeit the central) issue of the debate tended to produce stronger, more comprehensive answers. These better responses broadened the evaluation, raising such topics as the protection of human rights, executive power, the undemocratic nature of parliament and the electoral system and problems with the asymmetric devolution settlement and in our relations with the EU and the ECHR. In many cases they pointed out that updating and improving such constitutional arrangements might indeed involve codification, but that this was not the central proposition.

A good example of how codification could be made the central issue of an answer without being the sole argument is shown in this excellent piece of writing:

"The constitution in its current form is often criticised for failing to spell out the rights and responsibilities of the British people. Many liberals feel these would be entrenched if the constitution were codified, enabling a section to be drawn up clearly laying them out. Many see the current constitution as unfit for purpose because of the lack of protection it gives to individuals. The introduction of stop and search powers for the police, the banning of free protest around parliament and control orders for suspected terrorists show how easily rights can be eroded by governments. However there are those who argue that David Cameron's proposal for a British Bill of Rights to outline the rights and privileges enjoyed by British people would be unnecessary as our rights can be said to be protected by the ECHR.....and the ease with which this was incorporated in to the UK constitution can be seen both as evidence of its flexibility and that it is fit for purpose."

A further disappointment was how few candidates addressed the phrase 'no longer'. This ideally invited candidates to consider whether it was *once* fit for purpose, but no longer so. It is important that centres remind candidates to look carefully at the wording of a question and that they attempt to address all aspects of it.

Special praise can be reserved for some candidates who explored the situation surrounding the formation of the coalition, relating it to the Constitution. Some argued that it demonstrated how flexible it was (with the O'Donnell rules representing a new addition), while others suggested it demonstrated the need for codification. Either approach was valid and worthy of reward. The very best candidates pointed out that the experience of coalition could be used on either side of the argument.

Only a few very strong candidates were able to examine how circumstances have changed so much that the Constitution is indeed no longer fit for purpose. For example the West Lothian question demonstrates that devolution has changed the status of Westminster. Similarly the modern attention paid to the rights of individuals may need stronger constitutional and judicial arrangements.

Good response to this question, scoring 32/40.

Chosen Question Number: **Question 3**

Question 4

"The UK Constitution is no longer fit for purpose." discuss.

The statement above is referring to the nature of the British Constitution. Some have argued that it needs to become a codified constitution in order to keep up with modern society. However, there are arguments against the statement given. Conservatives in particular believe that the UK constitution should remain as it is. However, recent reforms have been made to not only modernise the constitution, but keep it fit for purpose.

There is a strong case that the UK constitution is not fit for purpose. A codified constitution would be the alternative model. Firstly, a codified constitution would nullify the notion of a lack of entrenchment. The UK constitution does have, to a large extent, an inadequate protection of rights. This is because of its uncodified nature. Citizens rights could be easily amended, as all that is needed is a simple act of Parliament. Human Rights are at risk because of the feature that the constitution is not written in a single, clear

organised document. Legislation is easily passed and a corrupt government could infringe on citizens rights. ~~Furthermore~~ ^{also,} Some have argued that there is too much executive power. This is due to the lack of checks and balances placed on the Prime Minister. The Prime Minister has the power to declare war and dissolve Parliament when he wants to call an election. These powers derive from the royal prerogative, and have become constitutional. The Prime Minister can also make decisions without the consent of his cabinet. For example, in 1997, Tony Blair granted the Bank of England semi-independence, ~~to~~ without the consent of his own cabinet. Furthermore, a lack of checks and balances on the Prime Minister means that the branches of government are unequal. In the USA for example, Congress, The President and the Supreme Court adhere to a strict separation of powers so not one branch of government exceeds their powers.

Also, there is a lack of clarity in the UK constitution, another reason why reformers may say that the UK constitution is not fit for purpose. ~~The~~ The UK constitution comes from a variety of sources, and is not held together in a single, clearly organised document. Therefore citizens may not even know if ~~the~~ their rights are being eroded or not.

A codified constitution would set out a citizen's rights clearly. The US Constitution has a "Bill of Rights", that almost all American citizens know, as well as a lot of British citizens too.

However, there have been arguments that the UK constitution is fit for its purpose. In fact, a lot of Traditional Conservatives, who value the importance of history and tradition within society, have argued that the constitution is fine as it is, and has worked for many years. Conservatives argue: "if it ain't broke, don't fix it."

Most importantly, people who are against reform argue that the UK constitution is flexible, and can meet the changing circumstances of British society. For example, after the Dunblane School Massacre, the government was able to pass an act on limiting legal gun ownership. However, ^{after the} Columbine Massacre in ~~Colorado~~ Colorado, USA, it ~~was~~ proved very difficult to pass laws on gun crime because of the fact that the US Constitution is entrenched. The recent attempted assassination of Gabriel Giffels in Tucson, Arizona, has only added fuel to the flame on this sensitive issue.

Furthermore, an ~~un~~ uncodified constitution leads to an effective government. For example, its flexible nature

Means the UK can pass legislation easily, whereas on the other hand, the USA often comes to a state of gridlock. Less checks and balances in this case, means that the Government in the UK can do its job and deliver an effective programme. This is not the case for the USA, where recently, as well as restricted by too many checks and balances thanks to a separation of powers, Barack Obama lost his majority in ~~the~~ ~~Senate~~ Congress to Republicans, while he himself is a Democrat. In this sense, the UK constitution is fit for purpose.

Lastly, the UK constitution is seen as fit for its purpose because it is democratic. Statute law, in this case, is interpreted by Parliament, who are elected. Therefore legislation passed can have the legitimate consent of the people, as Parliament adhere to a public mandate. In contrast, the USA constitution can only be interpreted by the Supreme Court, who are unelected. Therefore they cannot be held accountable for their actions.

Aside from reformers arguing that the constitution needs to be codified because it is not fit for its purpose, or those against reform who argue that it is, a number of reforms have been made that don't codify the constitution in the UK, but modernise it, so the

UK constitution can adapt, stay fit for its purpose, without codification. These include Devolution, ~~which~~ where Parliament spreads its sovereignty regionally. As a result, referendums, another form of reform have given Scotland its own Parliament, as well as ^{the} Northern Ireland Assembly, the Welsh Assembly, and an elected London mayor. Furthermore, electoral reforms have been made in conjunction with these devolved assemblies, ~~to~~ which has meant that the number of votes cast are largely proportional to the number of seats. This has meant that the UK constitution has been able to stay fit for purpose, without the need to reform.

In conclusion, the Statement has been the centre of ~~of~~ debate, for those who say that the constitution in the UK needs to be codified, so in particular, people's rights will be entrenched. However, this was met with resistance who have said that the UK constitution is fit for purpose because of its uncodified nature. Lastly, a number of reforms have ~~so~~ in fact modernised the constitution, so that it can frequently stay fit for its purpose, without the need of codification.



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Examiner Comments

While this candidate focuses on the arguments for and against codification, there has been a clear attempt to adapt this material to make it relevant to the question. In addition some reference is made to other pertinent issues widening the focus of the response.



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Examiner Tip

Candidates need to shape their material to the question set and not simply trot out a prepared response to a stock question. This candidate has done so with some success.

Question 4

As ever, the question on the judiciary was not popular. The continued ignoring of this question is now rather surprising as judicial issues have become so prominent (and, for many, interesting).

Answers tended to fit in to one of three categories.

Firstly, and generally weakest, were those that attempted to adapt material about the independence and/or neutrality of the judiciary to this question. These responses tended to say little more than either the judiciary is not sufficiently independent and/or neutral and therefore has too much power, or that it is independent and/or neutral and therefore we should give it more power. Often such answers were confined to the administration of justice rather than the 'political' role of the judiciary in protecting civil liberties or checking arbitrary government. This type of answer tended not to climb out of level 1.

Secondly, a generalised evaluation of the power of the judiciary, which tended to argue that the power of the judiciary has grown, especially through the HRA and judicial review. Better answers in this category showed understanding of the continuing sovereignty of parliament. These answers often deployed appropriate factual material but were still not really addressing the question of how much power judges *ought* to have. These responses tended to stay in level 2.

The third, generally stronger, type did ask whether judges *should* have more or less power and why. These discussed the unelected, unaccountable (and perhaps unrepresentative) nature of the judiciary, comparing the judges with elected, accountable politicians in parliament. Some particularly strong candidates argued that while some issues do require dispassionate consideration by judges, others are appropriate for political consideration. This was a highly sophisticated approach and very pleasing to see as this aspect of the judiciary has not recently been examined at AS level. Answers of this type, especially if supported with evidence, could achieve a high level 3 mark.

An example of a strong evaluation of the role of the judiciary was provided by this thoughtful conclusion:

"In summary the judiciary can have a considerable impact on British politics and the constitution without being elected, which suggests the judiciary is too powerful. However, compared to the USA for example, the judiciary has substantially less power. The judiciary could be said not to have enough power because it cannot effectively check the other two branches of government due to the fusion of powers and the fact that it cannot initiate judicial review. Weighing up the evidence, while not as powerful as judiciaries in other countries, the UK judiciary is too powerful in areas which affect politics and the constitution. In other areas, however, they are not powerful enough to check government and protect individual rights."

While this may not be the most sophisticated of passages, it does demonstrate an understanding of the question and provided an evaluation which had some nuance. As long as such a conclusion was supported by good evidence (which it was) it would round off a strong discussion.

Unfortunately a widespread weakness was lack of knowledge of recent cases - those candidates who could use the Belmarsh, Afghan Hijackers, stop and search and DNA database cases scored well in AO1. A small minority of candidates attributed to the judiciary the legislative role of the House of Lords, with some even claiming they could block legislation. Others remained ignorant of the Constitutional Reform Act and its consequences for the judiciary. Centres would be advised that these issues should be addressed when teaching the judiciary topic.

Very competent approach to this question.

Indicate your second question choice on this page.

Put a cross in the box indicating the second question that you have chosen.
If you change your mind, put a line through the box
and then indicate your new question with a cross .

Chosen Question Number: Question 3

Question 4

In the UK there are various arguments for and against the stance that the judiciary is too powerful. In order to adequately assess whether the judiciary is too powerful or isn't powerful enough the powers and limitations of the judiciary must be assessed.

Firstly, it may indeed be asserted that the judiciary is too powerful, the strongest reason for this is that judges are unelected and therefore ~~unaccountable~~ not accountable to the electorate, which is a ~~sharp~~ stark contrast to the government who is accountable to the electorate through Parliament. However this stance is ~~over~~ eradicated by the fact that judges must explain in writing their rulings, and ~~the~~ which means that they must be able to justify all their decisions.

Secondly, and of similar significance it may be argued that the judiciary is too powerful as judges, who are unelected, have the responsibility of interpreting the law i.e. the law means what judges ~~so~~ interpret it to mean and also in certain cases judges make law, known as Common Law or Case Law, which is law based on judicial precedent. Nevertheless, others may belittle this argument by retorting that judges aren't powerful enough. A strong argument for this stance is the fact that judges can only declare Parliament actions ~~incompat~~ 'incompatible' with the law, ~~which~~ unlike the US, where ~~the~~ judges may deem the actions of all public bodies ~~unconstitutional~~ 'unconstitutional'. Therefore, Parliament's legal sovereignty proves that judges aren't powerful enough. ~~as for~~ ^{Furthermore} even if judges declare ~~the~~ executive actions 'incompatible' ~~of~~ Parliament and the Government have no obligation to change the law and in addition, Common Law can be changed by Statute Law (Acts of Parliament).

A third position on the stance that judges exercise too much power is the argument that whilst before in the late 1980's the judiciary was reluctant to challenge ministers since the laws regarding ~~re judges~~ & judicial involvement in public policy were relaxed there has been a rise in independent judges. Most notable examples including Moyman, Woolfe, Bingham and Phillips. These judges have exercised power regarding Civil Liberties, Sentencing and the increased use of Judicial Review. For example Conservative Home Secretary Michael Howard was deemed to have acted 'ultra vires' over prison sentencing in 2005. ~~that~~ The power of independent judges may become a problem when judges are not independent (free from political constraints) or neutral (free from bias). For example the rulings of the 12 Law Lords that the former Chilean dictator Pinochet be extradited to ~~face~~ face these allegations of torture and genocide was overturned when Lord Moyman was found out to

They have links to the pressure group Amnesty International.

Whilst a direct response to rival this stance is challenging, those who advocate that the judiciary in fact are not too powerful may counter claim that ~~the~~ judges are not as powerful as they should be as there is no constitutional Bill of Rights in the UK where the rights of citizens are entrenched and cannot be altered.

For example after the 9/11 attacks the government changed regulations regarding the rights of ~~terror~~ suspected ~~subjects~~ terrorists.

This is unlike the ~~UK~~^{USA} where judges, who are ~~good~~ protectors of the constitution protect the rights of citizens which cannot be easily removed, although ~~the~~ citizens rights have been removed in the USA e.g the 18th Amendment introducing ~~the~~ Prohibition. Nevertheless, ~~the~~ the lack of a constitutional Bill of Rights in the UK does highlight the lack of the judiciary's power.

Finally, it may be asserted that the judiciary ~~was~~^{were} too powerful, ~~is~~ represented by

the former role of the 12 Law Lords, ~~in~~ who sat in the Lords merging the legislature and the judiciary and the role of the Lord Chief Justice who merged all three branches, the executive (cabinet minister), judiciary (head of the judiciary) and the Legislature (speaker in the Lords). However since the ~~eradicate~~ removal of the 12 ~~last~~ Law Lords from the House of Lords, as a result of the 2005 Constitutional Reform Act, in October 2009 with the formation of the Supreme Court as the highest court of appeal in addition ~~to~~ to the reduced role of the Lord Chancellor, who has been ~~&~~ replaced by the Lord Chief Justice as the head of the Judiciary, ~~as~~ and whose role has been fused with the Secretary of State for Constitutional Affairs, it may be argued that the judiciary is not too powerful.

Furthermore, ministers increased willingness to criticise judges decisions shows that Judges are not powerful enough.

For instance in 2005 Charles Clarke criticised the release of terrorist suspects

from Belmarsh Prison, in 2007 John Reid blasted the courts decision not to deport the murderer of London Headmaster Philip Lawrence after his release and minister deemed to release of the Afghan hijackers as 'bonkers'

On balance, the argument that judges do not have enough power is this stronger one as unlike the US there are certain mechanisms to prevent this, though this would be changed by an entrenched constitutional Bill of Rights.



ResultsPlus

Examiner Comments

This candidate understands the role of the judiciary vis a vis the executive and parliament and also makes useful reference to the USA to aid their assessment. The answer does include some relevant cases as illustration, though needed a few more up to date examples such as recent rulings on the DNA Database and stop & search, for example, as well as Belmarsh, the Afghan Hijackers etc. The candidate does try to assess whether judges are too powerful and attempts balance. However the candidate does not address whether or not judges used to be less powerful than they are today explicitly.



ResultsPlus

Examiner Tip

Focus on all parts of the question and try to include up to date examples to illustrate both sides of the argument. Good comparison with the USA can score well under A02.

Paper Summary

In Section A questions 1 and 2 attracted similar numbers of candidates. As in previous sessions a number of candidates were unable or unwilling to draw fully on the source(s) provided to answer parts a and b, although those that did were well rewarded. Some candidates struggled in Q1 to differentiate between the different functions of parliament as well as the mechanisms of carrying those functions out (eg the difference between standing and select committees was widely misunderstood). Freed from the restriction of using the source, many candidates fared better with the part c of both questions, although there is still a need for fuller and more amply substantiated responses. In Q2 the lack of references to Gordon Brown's premiership was surprising, although commendably many candidates were able to comment knowledgeably and incisively on the Coalition.

In Section B, Q3 on the constitution was much more popular than Q4 on the Judiciary. Both questions however saw a wide range of responses, with a substantial minority offering rehearsed responses to standard questions which could not score higher than low-mid level 2 at best. Candidates who tried to deal with the questions set could be credited, especially if they could draw on up to date examples by way of illustration.

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