The Constitution

1. What is an uncodified constitution?

Not written in one place

1. Why is an uncodified constitution not judiciable?

Uncodified constitution is not sovereign and therefore not justiciable

1. Where is sovereignty in the UK system?

Parliament

1. What is meant by the phrase executive sovereignty?

In the UK because of the fusion of powers and FPTP the executive dominates parliament through a majority. This means the reality is that the executive is sovereign rather than parliament.

1. What powers are fused in the UK?

Legislature/Executive

1. What is meant by the term elective dictatorship?

Similar to executive sovereignty. Dues to FPTP and the fusion of powers the government though democratically elected has few limitations on its power. Elective dictatorship

1. Name three Acts that protect rights in the UK.

Human Rights Act, Equalities Act, Freedom of Information Act

1. What did the HRA incorporate into British Law?

European Convention on Human Rights

1. What is Judicial Review?

The legal process through which decisions of the government can be challenged

1. In what circumstances does the SC state a government has acted ultra vires?

When the government’s actions are not supported in law. They have acted unlawfully. Even the government is subject to the rule of law

1. What is the usual response of the government in these circumstances?

They accept the decision

1. What is a declaration of incompatibility?

The declaration by the SC that two laws conflict on the same issue. They are asking parliament to resolve the matter

1. Why do Liberty claim the HRA is not a strong protection of rights?

It is not entrenched and easy to change/circumvent

1. Give 3 recent (in the last three years) examples of rights being eroded

Rights of protest ( locking on/blocking major infrastructure/police consent for protest, no protest around parliament) Police Crime Sentencing and Courts 2021 Act Voter ID introduced ( Elections Act 2022), No appeal to SC for immigration cases ( Judicial Review and Courts Act)

1. Give two reasons why the Conservative party is considering replacing the HRA?

They call it 1, a criminal’s charter and 2, complain that a democratically elected government is being blocked by an unelected supreme court in implementing policy that they have a mandate to carry out.

1. What is meant by judicial overreach?

A phrase similar to the US term legislating from the bench. It means that the courts is straying into public policy decisions that should be made by elected representatives

1. What is the strength of an advisory British Bill of Rights

Decisions made by elected representatives not judges. The new BoR will reflect British values not those that were decided in 1951 ( ECHR)

1. What is its weakness?

Critics claim it will have no legal force and so rights will be easily overridden, even more so than now. That it will remove a crucial check on executive power

1. Explain how national security and individual rights can conflict. Give an example of a case to demonstrate this.

Belmarsh. The righst of the individuals versus the threat to national security.

Investigatory Powers Act 2016 – Data being stored on everyone top prevent terrorism

Abu Qatada

1. How did the CRA 2005 alter the SC. ( Think building, separation of powers and appointment system)

Removed them from the HL into the new SC building, split role of Lord Chancellor into 3 ( Minister of Justice, Speaker of the Lords, Lord Chief Justice) ended appointment system by PM on advice of Lord Chancellor ( who was a political appointment) and passed appointment to judicial Appointments Committee JAC

1. Give three reasons why the UK Constitution should be codified?

Clarity, Better protection of rights, Remove outdated elements ( Lords for example, Bishops in the Lords)

1. For each of the reasons in 22 give a logical paired counter argument.
2. Clarity is no guarantee from a codified constitution. All that happens is an unelected SC accrues more power and is charged with interpreting the vague parts of the Constitution. 2. Rights were and are not better protected in US. 3. Outdated elements still work ( Lords) or the Constitution will enshrine a set of principles that will themselves be out of date at some point. Better to have a flexible constitution that can evolve over time
3. In your view what is the greatest strength of the UK Constitution
4. In your view what is the greatest weakness of the UK Constitution

House of Lords Reform

1. What did the House of Lords Reform Act do (Think composition and appointment system)

Reduced hereditary peers to 92, introduced an appointment system – PM nominates HLAC vets the appointments ( and nominates some as does leader of Oppostioon)

1. What are crossbenchers and roughly how many are there?

180. Not members of a political party

1. Give two reasons why the whip system can be less effective in the Lords?

Whip system relies on ‘carrot and stick’. Most Lords are older and so promotion does not interest them. They are appointed for life so threats of deselection do not have any impact

1. Give examples of the expertise of individual peers?

Lord Adewobale ( Addiction/) Baroness Lawrence ( Race issues) Dame Tanni Grey Thompson ( Disability issues) Lord Ken Macdonald ( prison reform)

1. How does the Lords address representational deficits?

A representational deficit can occur in a democratically elected chamber like the Commons because parties have to produce policies that are popular with the majority. The appointment system in the Lords allows people with expertise in areas that may be unpopular to give a voice to such an issue – Lord Adewopbale/ Lord Macdonald above

1. What three restrictions on the Lords power flow from the fact it is unelected?

Parliament Act 1911/49, Commons Financial privilege, Salisbury Convention

1. What is meant by Commons supremacy?

As the elected chamber the Commons has more power – final say on all legislative matters

1. What is meant by Commons Financial privilege

Lords cannot debate money bills

1. Why may the powers of the Lords have to be changed if it was elected?

If elected, it would have more legitimacy and its reduced powers would make no sense.

1. Why can the current HL be considered descriptively unrepresentative – three reasons.

Geographically biased toward London, Old, BAME improving but still below national ratios

1. What is the most compelling argument for an elected House of Lords?

Checks on executive power. Its powers would be enhanced – it would end the elective dictatorship etc

1. What is cronyism?

PMs nominating peers who are supporters rather than experts

1. Give three examples of cronyism?

Tony’s Cronies, Evgeny Lebedev, Peter Cruddas, Joe Johnson,

1. How could this be addressed without having an elected HL?

Give HLAC full powers of appointment.

1. Give three further questions that would arise if the HL was elected (Think powers, terms, electoral systems and the problems that may flow from these

What powers would the Lords have – could end up with gridlock as they do in the US, what terms should peers have, what electoral system to use. Similar terms and using FPTP may result in a mirror image chamber, different terms and electoral systems may damage legitimacy of Lords. In general would it cause more problems than it solves

1. What do you think is the most compelling argument for a non elected Lords?

Question should have said non elected Lords – Answer could be loss of expertise of chamber. Unlikely such people would run for elected office. Could end up with second rate politicians but there are other arguments. You need to decide.

1. What is the most compelling reason for keeping the Lords appointed?

Answered above

1. How could the problem of the size of the Lords be addressed without having an elected Lords?

Take peerages away from those that do not attend

1. What is Starmer’s position on the HL?

Fully elected. No details on this though

Devolution

1. Give three reasons why devolution was granted to Scotland in 1997.

Blair wanted to decentralise power, Blair wanted to stem growth in support of SNP which was damaging Labour, wanted to strengthen the Union

1. Why was Wales granted devolution?

Because Scotland was. There was no equivalent nationalist feeling in Wales. Plaid Cymru never a big force in Welsh politics

1. Why was NI given devolution

As part of the peace process ( Good Friday Agreement) an attempt to end violence and secure peace in NI

1. Explain how devolution addressed the legitimacy deficit in Scotland and Wales

Scotland and Wales never vote conservative. So when there is a conservative UK govt there is a legitimacy crisis in both nations. Since devolution they have both elected left wing governments that better reflect their political views a nation

1. Explain why it addressed the legitimacy deficit in NI

NI parties are different to UK ones. Conservative, Labour and Lib dem do not exist in NI. Therefore a power sharing executive of NIO parties has more legitimacy

1. What is meant by asymmetric devolution

The idea that Scotland Wales and NI all had different powers and England none at all.

1. What is the West Lothian question?

Scottish and Welsh MPS can vote on English only issues.

1. What was EVEL and why did Johnson abandon it?

Convention the only English MPs would vote on English issues. Abandoned because it was difficult to ascertain what was an English only issue

1. Give two examples of devolution in England.

Metro mayors, GLA

1. What additional powers were given to Scotland in 2016?

More variation on tax,

1. Why were they given these powers?

Part of a deal made by Cameron prior to independence referendum in 2014

1. Why have the devolved nations better levels of representation than England?

More elections and more proportional voting systems

1. Why have electoral systems used in each of the devolved nations improved democratic representation? Give examples in Scotland and NI of parties that have benefitted under the new electoral systems. The answer is NOT the SNP in Scotland

AMS in Scotland – Conservatives do better as do Greens who are now in coalition with SNP

STV in NI has led to representation for nationalist/republican parties in the power sharing executive- Sinn Fein and formerly the SDLP

1. Give an example of regional sensitive decisions made in Scotland and Wales

Tuition fees, ban on smoking in public places, greater funding of adult social care

Wales – organ donation

1. What have been the turnout levels in Scottish and Wels elections. Give examples since 2011

Below 50% mostly.

1. What conclusions can be drawn about the legitimacy of those governments

They lack legitimacy

1. Give a counter argument to your answer to 16

Opinion polls consistently show people are satisfied with devolution

1. How did Brexit complicate devolution in Scotland?

Scotland voted 62/38 remain. They are angry that they are being forced to leave. Another issue has arisen re the transfer of powers back to the UK that used to be governed by the EU. The Internal Markest Bill addressed this but has been ‘rejected by both Welsh and Scottish parliaments

1. How did Brexit complicate devolution in NI

NI is no longer part of the single market. The GFA says there can be no hard border between NI and Republic of Ireland. However the EU needs to ensure that goods cannot flow from non EU country GB and NI into Ireland. This resulted in Johnson signing the Northern Ireland protocol to get Brexit Done. However this in effect created a border in the Irish sea with goods being checked on arrival in NI. The DUP are opposed to this and Sunak’s Windsor framework which attempted to solve it. They are refusing to join a new power sharing executive in NI because NI is being treated differently to other parts of the UK. There is currently no functioning govt in NI

1. Why does the current NI assembly remain suspended

See above. DUP refusing to join it.

1. What is the most compelling reason for devolution being a success?

Peace in NI perhaps

1. Give two reasons why it may be considered a failure

Has caused a series of constitutional problems - West Lothian, EVEL, Barnett Formula and funding, has been placed under strain due to Brexit in NI and Scotland. Will it end with the break up of the Union the very thing Blair wanted to protect

1. How has the recent by election in Scotland potentially changed the narrative on the success of devolution in Scotland

Labour win in by election may mean claims for full independence may by dying. If so this would end one of the major criticisms of devolution – that it made the break up of the union more likely

1. Why is the Barnett Formula controversial?

Gives more money to Scotland than some poorer English areas