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**UNIT CONSOLIDATION ACTIVITY**


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(allow 1 hour 30 minutes in total)

This Activity is in two parts. The first part gives you an opportunity to work out your own standpoint on a number of aspects of parliamentary supremacy. The second part enables you to consider whether parliamentary supremacy should still be considered an ‘absolute’ constitutional doctrine. We recommend that you tackle each part separately, comparing your answers with the relevant Comment. Once you have completed the whole Activity and have read the Comments, please follow the instructions then set out for reflecting on your study skills.

**PART 1****Working out your standpoint** (allow 30 minutes for this Part)

In studying Units 3 and 4 you have been asked to form your own views about a number of issues relating to parliamentary supremacy:

- whether limits on supremacy are practical or legal
- whether supremacy is naturally limited by fundamental values
- whether Parliament can bind its successors as to the content or procedure for future legislation
- whether fundamental rights can be constitutionally protected
- whether Parliament can give up its supremacy, wholly or in part, for example on a grant of independence
- whether Parliament has limited its supremacy, in relation to Scotland, or the European Union

The next step after forming a view on each of these issues, is to review your opinions to see whether they are consistent. Your general preferences for arguments based on logic, values, or historical and political fact should give you a basis for a consistent approach. This Consolidation Activity is intended to help you form such an approach.

Answer Yes or No to each of the following questions. Then plot your answers on the graph according to the instructions in the Comment section below. If you need to refresh your memory on any of the issues, please look back at the relevant Part of these Units.

- 1 Whatever the doctrine of parliamentary supremacy says now, no court should enforce an Act which subverts democracy. YES/NO
- 2 The truth of the matter is that the courts will in the end give effect to the will of the majority, whatever the lawyers may think. YES/NO
- 3 Once Parliament has laid down the rules for amending a Bill of Rights — such as a referendum — I can’t see why the courts shouldn’t enforce them against a future Parliament. YES/NO
- 4 To say that Parliament can legislate for another country after a grant of independence simply doesn’t make sense. YES/NO
- 5 It’s a very simple truth — the courts must give effect to whatever Parliament enacts. YES/NO
- 6 If Parliament were to pass an Act suppressing press criticisms of the government, the courts should not enforce the Act. YES/NO

- 7 If Parliament deliberately enacts an Act which is inconsistent with EU law, the courts should give effect to it. YES/NO
- 8 If the Act of Union says that some parts of it are unalterable, I can't see how Parliament could legally alter them. YES/NO
- 9 If a Scottish Parliament enacts laws on issues reserved to the UK Parliament, I think democratic legitimacy requires that the Scottish courts should enforce them, whatever the Scotland Act 1998 says. YES/NO
- 10 'For forms of government let fools contest; whate'er is best administered is best.' YES/NO

**COMMENT**

**Plotting your standpoint**

The diagram below records your answers on two axes:

- the vertical axis – law as command/values
- the horizontal axis – law as technique/politics.

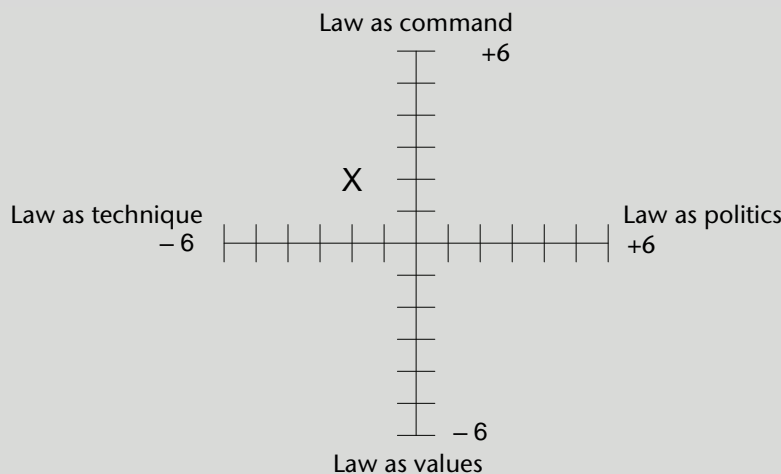
Start by calculating your score on the vertical axis as follows:

For each YES answer to questions 5 and 7 score +2 .....  
 For each YES answer to questions 1, 6 and 9 score – 2. ....  
 TOTAL .....

Then calculate your score on the horizontal axis as follows:

For each YES answer to questions 2, 4, 9 and 10 score +2 .....  
 For each YES answer to questions 3 and 8 score –2 .....  
 TOTAL .....

Now please plot your position on this graph. For example, if you scored a total of +2 on the vertical axis and –2 on the horizontal axis, your position would be x.



This is a necessarily crude way of measuring opinion. You would probably qualify many of the answers you have given, but the purpose of the exercise is to encourage you to be self-aware about the attitudes you are adopting.

The diagram analyses your answers in terms of two sets of opposites.

**Law as command/law as values**

You may see law as a hierarchy of rules which derive their authority from the fact that they are commanded and enforced by the organs of government (law as command).

Alternatively, you may think that laws exist for the purpose of promoting values such as equality or individual liberty, and that they derive their authority from this (law as values).

**Law as technique/law as politics**

You may think that the text of a rule should be a better guide to the way it operates than the motivation of the people who create and apply it (law as technique). Or you may take the opposite view — that laws have little effect on how political institutions really operate. Laws can be identified only in actual political behaviour (law as politics).

Whatever your standpoint, it is as well to be conscious of it, and to try to express it consistently. Of course your standpoint may change as a result of this module.

**PART 2**

**Is parliamentary supremacy still an ‘absolute’ constitutional doctrine?** (allow 1 hour for this Part)



Online

Using LexisLibrary (or another database if you prefer), please locate and read the following extracts from *R (Jackson) v. Attorney General* [2005] UKHL 56:

- the headnote, and
- the speech of Lord Steyn.

**Why did Lord Steyn consider that parliamentary supremacy was not absolute and could be limited by the courts in extreme circumstances?**

**COMMENT**

Lord Steyn said that the doctrine of parliamentary supremacy was a ‘construct of the common law’ (i.e. a principle created by the judges). The judges could therefore, in extreme circumstances, qualify the principle to prevent Parliament from legislating in a manner that was contrary to the rule of law.

Lord Steyn cited as an example if Parliament enacted legislation to abolish judicial review of executive action or, more generally, if Parliament abolished the role of the courts. In such circumstances the courts would strike down such legislation:

‘. . . it is not unthinkable that circumstances could arise where the courts may have to qualify [the doctrine of parliamentary supremacy] ... In exceptional circumstances involving an attempt to abolish judicial review or the ordinary role of the courts, the Appellate Committee of the House of Lords or a new Supreme Court may have to consider whether this is a constitutional fundamental which even a sovereign Parliament acting at the behest of a complaisant House of Commons cannot abolish.’

Lord Steyn’s views were echoed by obiter comments of Lord Hope:

‘The rule of law enforced by the courts is the ultimate controlling factor on which our constitution is based.’

Might these comments be taken to mean that the common law gives judges the power to strike down legislation that is incompatible with the rule of law or other fundamental constitutional values?

The answer was perhaps provided by observations of Lord Hoffmann in *R v. Secretary of State for the Home Department, ex parte Simms* [2000] 2 AC 115: