Chapter Thirteen Short Answer (Answers Below)

1. Explain the steps through which a bill goes in the legislature.

2. Compare and contrast the common reasons for a government to engage in direct democracy.

3. Compare and contrast how common-law and civil-law traditions deal with disputes of administrative law.

4. Define and explain what rights are.

5. Explain the different bases on which judicial review can judge government action to be unconstitutional.

Answers

1. The first step is presentation, in which the bill is first publicized and made available to legislators. It is then subject to the second stage, debate, in which the strengths and weaknesses of the bill can be identified (along with its most visible supporters and opponents). A complement to debate is scrutiny and testimony, in which the details of the bill are closely examined, and the view of those outside the legislature can be assessed. As a more intensive discussion, this stage usually takes place in the smaller context of the legislative committee given responsibility for the bill. Depending on the impact of debate, scrutiny, and testimony, the bill may be subject to amendment. The final form the bill takes will then be subject to decision, and it will either be voted down or passed into law.
2. The primary reason a government will engage in direct democracy is to demonstrate the legitimacy of the outcome. This kind of direct legitimation can take two primary forms. Where decisions are of particular importance (typically those involving constitutional or sovereignty issues), governments will refer them (or are required to refer them) to direct processes in order to demonstrate popular consent. A second aspect of the popular appeal for legitimacy can stem from controversy. Where issues are morally charged or divisive, a government can use direct democracy to pass on responsibility for the decision to the public itself. Rather than taking on a decision that will necessarily alienate a portion of the population, the government can make visible the fact that a majority of the population favoured one side of the debate over another. Another reason why a government may wish to engage in direct democracy is the public tendency towards conservatism; referendums are more likely to produce negative outcomes than positive ones. As such, if a government does not want to take action, but wants to be seen as having tried to act, it may refer issues to public referenda.
3. Both legal traditions draw on communities of experts in special legal proceedings. They are distinguished by the fact that in common law traditions, these special legal proceedings, or tribunals, consist of experts drawn from outside the legal profession. These tribunals are quasi-judicial in that while they function in a manner similar to a court, they are not presided over by a judge. In addition, such tribunals can engage in processes of alternative dispute resolution (mediation/arbitration), in the hope that it will reduce the time and cost involved in generating a decision. In the civil tradition, such issues are handled by judges in courts, albeit specialized courts with a focus on administrative law. While common law tends to limit the opportunity for appeals from tribunals, civil-code administrative courts often provide multiple opportunities for appeal proceedings.
4. Rights are entitlements that citizens can expect to be enforced against one another and against the state. As such, they involve our expectations about the exercise of authority. Rights also involve expectations we have about how the state *should not* use its authority—that is, that there are areas of private concern in which the state cannot intrude and which it is not permitted to regulate. In addition, they involve our expectations about the active use of sovereign power, that the state will use its power and authority to prevent other citizens from violating our rights. Rights are often considered inherent entitlements; they precede the authority of the state. They are, however, also embedded in law. As such, while they are not derived from state authority, we expect the state to use its authority to enforce them. In practice, it is important to recognize that rights are intensely political. Their precise definition varies from context to context, as does the ability (and willingness) of any particular state to enforce them.
5. The ability of a court to challenge the constitutionality of government action involves a challenge to the right of government to have acted (i.e., such a challenge suggests that government did not have authority to act the way it did). This, in turn, generally depends on one of the following criteria being met: The first criteria is that the acting portion of government assumed responsibilities properly belonging to another part of government (e.g., the executive took action reserved to the legislature); the second is that the acting portion of government violated jurisdiction (e.g., in a federal system, a national government passed a law in the jurisdiction of a sub-national government); and the third is that a constitutionally entrenched right has been infringed upon.