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**General Certificate of Education
June 2013**

Government and Politics GOV4A

The Government of the USA

Unit 4A

Final

Mark Scheme

Mark schemes are prepared by the Principal Examiner and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation meeting attended by all examiners and is the scheme which was used by them in this examination. The standardisation meeting ensures that the mark scheme covers the students' responses to questions and that every examiner understands and applies it in the same correct way. As preparation for the standardisation meeting each examiner analyses a number of students' scripts: alternative answers not already covered by the mark scheme are discussed at the meeting and legislated for. If, after this meeting, examiners encounter unusual answers which have not been discussed at the meeting they are required to refer these to the Principal Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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CRITERIA FOR MARKING AS/A2 GOVERNMENT AND POLITICS

Introduction

AQA's revised Government and Politics specification has been designed to be objectives-led in that questions are set which address the assessment objectives published in the specification. The assessment objectives for A Level and AS are the same, but the weightings are different at AS and A2. Details of the weightings are given in Section 4.2 of the specification.

The schemes of marking reflect these objectives. The mark scheme which follows is of the *levels-of-response* type showing that students are expected to demonstrate their mastery of the skills required in the context of their knowledge and understanding of Government and Politics. Mark schemes provide the necessary framework for examiners but they cannot cover all eventualities. Students should be given credit for partially complete answers. Where appropriate, students should be given credit for referring to recent and contemporary developments in Government and Politics.

Consistency of marking is of the essence in all public examinations. It is therefore of vital importance that assistant examiners apply the mark scheme as directed by the Principal Examiner in order to facilitate comparability with the marking of other options.

Before scrutinising and applying the detail of the specific mark scheme which follows, assistant examiners are required to familiarise themselves with the general principles of the mark scheme as contained in the Assessment Matrix.

At A2, generally speaking, there is no unambiguously 'right' or 'wrong' answer to the 30-mark questions. Answers will be judged on factors such as quality of the argument, depth of knowledge and understanding, a synoptic grasp of the subject, appropriateness of the examples and internal logic of the discussion. Where students are presented with a proposition to be discussed they may support it, reject it or adopt a balanced position.

There are no limits to the areas of knowledge that students may feel able bring to the discussion. Therefore the specification of requirements outlined in the mark schemes can only be indicative. Students are not expected to include all the material presented in order to access the full range of available marks. At the same time they may successfully include material from their particular studies which is not indicated in the scheme.

Using a levels-of-response mark scheme

Good examining is about the consistent application of judgement. Mark schemes provide a framework within which examiners exercise their judgement. This is especially so in subjects like Government and Politics, which in part rely upon analysis, evaluation, argument and explanation. With this in mind, examiners should use the Assessment Matrix alongside the detailed mark scheme for each question. The Assessment Matrix provides a framework ensuring a consistent, generic source from which the detailed mark schemes are derived. This supporting framework ensures a consistent approach within which students' responses are marked according to the level of demand and context of each question.

Examiners should initially make a decision about which Level any given response should be placed in. Having determined the appropriate Level the examiners must then choose the precise mark to be given within that Level. In making a decision about a specific mark to award, it is vitally important to think first of the mid-range within the Level, where that Level covers more than two marks. Comparison with other students' responses to the same question might then suggest whether the middle mark is unduly generous or severe.

In making decisions away from the middle of the Level, examiners should ask themselves questions relating to student attainment, including the quality of language. The more positive the answers, the higher should be the mark awarded. We want to avoid 'bunching' of marks.

Levels mark schemes can produce regression to the mean, which should be avoided. A student's script should be considered by asking 'is it:

- precise in its use of factual information?
- appropriately detailed?
- factually accurate?
- appropriately balanced or markedly better in some areas than others?
- generally coherent in expression and cogent in development (as appropriate to the level awarded)?
- well presented as to general quality of language?'

The overall aim is to mark positively, giving credit for what students know, understand and can do.

A2 GOVERNMENT AND POLITICS**GENERIC MARK SCHEME for questions with a total of 10 marks**

Knowledge and Understanding: Recall, Select & Deploy	Skills: Analysis & Evaluation	Communication
AO1	AO2	AO3
<p>Level 4 (4 marks) The student demonstrates a comprehensive knowledge and understanding of political concepts, institutions and processes. The student fully addresses the requirements of the question and provides developed and effective to comprehensive interpretation. The answer also provides clear to accurate evidence and, where appropriate, good to excellent examples to illustrate points made.</p>	<p>Level 4 (4 marks) The student applies an excellent range of developed concepts and uses appropriate political theory to construct a clear and cogent explanation or argument.</p>	<p>Levels 3-4 (2 marks) The student communicates clearly and effectively in a sustained and structured manner, using appropriate political vocabulary. There are few, if any, errors of spelling, punctuation and grammar and the response should be legible.</p>
<p>Level 3 (3 marks) The student demonstrates good knowledge and understanding of political concepts, institutions and processes. The student clearly addresses the requirements of the question and provides sound interpretation and contextual awareness. The answer includes good examples to illustrate points made.</p>	<p>Level 3 (3 marks) The student applies a good range of developed concepts and uses appropriate political theory to construct a clear and cogent explanation or argument.</p>	<p>The answer has a clear sense of direction, is focused on the question and, where appropriate, has a conclusion which flows from the discussion.</p>
<p>Level 2 (2 marks) The student demonstrates limited knowledge and understanding of political concepts, institutions and processes. The student makes a limited attempt to address the requirements of the question and provides little to partial, but reasonably effective, interpretation. Answers offer limited evidence and few, or inaccurate, examples to illustrate points made.</p>	<p>Level 2 (2 marks) The student applies a limited range of concepts and makes limited use of political theory or ideas in developing an explanation or argument.</p>	<p>Levels 1-2 (1 mark) The student communicates explanations or arguments with limited clarity and effectiveness, using limited political vocabulary. The answer may lack either a clear focus on the question or a sense of direction.</p>
<p>Level 1 (1 mark) The student demonstrates little knowledge and understanding of political concepts, institutions and processes. The student makes little attempt to address the requirements of the question and provides little interpretation. Answers offer little evidence and few, or inaccurate, examples to illustrate points made.</p>	<p>Level 1 (1 mark) The student applies few concepts and makes little use of political theory or ideas in developing an explanation or argument.</p>	<p>There are frequent errors of spelling, punctuation and grammar and legibility may be a problem. A conclusion, where appropriate, may be offered but its relationship to the preceding discussion is modest or implicit.</p>
<p>0 marks No relevant response.</p>	<p>0 marks No relevant response.</p>	<p>0 marks No relevant response.</p>

A2 GOVERNMENT AND POLITICS**GENERIC MARK SCHEME for questions with a total of 30 marks**

Knowledge and Understanding: Recall, Select & Deploy	Skills: Analysis & Evaluation	Communication
AO1	AO2	AO3
<p>Level 4 (10–12 marks) The student demonstrates a comprehensive knowledge and understanding of political concepts/theories/institutions and processes and the relationships between them. A synoptic approach is fully developed, drawing appropriately on knowledge, perspectives and examples from a wide range of studies in government and politics. The answer fully addresses the requirements of the question and demonstrates excellent contextual awareness. The answer includes excellent examples to illustrate points made. The answer includes detailed and comprehensive interpretations or explanations, as well as accurate evidence and relevant examples, to illustrate points made.</p>	<p>Level 4 (10–12 marks) The student displays excellent awareness of the implications and demands of the question. There is an excellent and sustained focus on the specific question asked. There is clear and full evaluation of political institutions, processes and behaviour which displays a sophisticated awareness of differing viewpoints and recognition of issues. Appropriate parallels and connections are clearly identified, together with well-developed comparisons. A wide range of concepts is used and developed.</p>	<p>Level 4 (6 marks) The student communicates structured and sustained arguments, explanations and conclusions with clarity. Excellent use is made of political vocabulary to construct cogent and coherent arguments and explanations. The response should be legible, with few, if any, errors of spelling, punctuation and grammar. The answer has a clear sense of direction, culminating in a conclusion that flows from the preceding discussion.</p>
<p>Level 3 (7–9 marks) The student demonstrates sound knowledge and understanding of political concepts/theories/institutions and processes and the relationships between them. A synoptic approach is well developed, using a range of knowledge, perspectives and examples gained elsewhere in the study of government and politics. The answer clearly addresses the requirements of the question and demonstrates sound contextual awareness. The answer includes developed and effective interpretations or explanations and also clear evidence and good examples to illustrate points made.</p>	<p>Level 3 (7–9 marks) The student displays sound awareness of the implications and demands of the question. There is a clear focus on the question. There is a sound evaluation of political institutions, processes and behaviour which displays good awareness of differing viewpoints and recognition of issues. There is good recognition of parallels and comparisons. Appropriate concepts are used and developed.</p>	<p>Level 3 (4–5 marks) The student communicates arguments, explanations and conclusions well. Good use is made of political vocabulary to construct clear arguments and explanations. The response should be legible but there may be occasional errors of spelling, punctuation and grammar. The student produces an answer with a conclusion linked to the preceding discussion.</p>

GENERIC MARK SCHEME for questions with a total of 30 marks (continued)

Knowledge and Understanding: Recall, Select & Deploy	Skills: Analysis & Evaluation	Communication
AO1	AO2	AO3
<p>Level 2 (4–6 marks) The student demonstrates outline knowledge and understanding of political concepts/theories/institutions and processes and some awareness of the relationships between them. The answer makes a limited attempt to address the question and demonstrates contextual awareness covering part of the question. An attempt to develop a synoptic approach is made, using a limited range of knowledge, perspectives and examples gained more broadly in the study of government and politics. The answer includes a partial and reasonably effective attempt at interpretation or explanation, with some examples to illustrate points made.</p>	<p>Level 2 (4–6 marks) The student displays little awareness of the implications and demands of the question, resulting in a restricted focus. There is a limited evaluation of political institutions, processes and behaviour, which displays a partial awareness of differing viewpoints and issues.</p> <p>There is some recognition of basic parallels and comparisons. Arguments and explanations are undeveloped, with a limited use of concepts.</p>	<p>Level 2 (2–3 marks) The student communicates arguments and conclusions adequately, with a limited use of political vocabulary. There are frequent errors of spelling, punctuation and grammar and legibility may be a problem. A conclusion is offered but its relationship to the preceding discussion may be modest or implicit.</p>
<p>Level 1 (1–3 marks) The student demonstrates a slight and incomplete knowledge and understanding of political institutions and processes and a limited awareness of the relationships between them. A very limited attempt at synopticity is made, sometimes using superficial or inaccurate knowledge, perspectives and examples cited from elsewhere in their study of government and politics. There is little attempt to address the requirements of the question. There is only superficial awareness, if any, of the context of the question, with little interpretation and few, if any, examples, often inaccurately reported or inappropriately used.</p>	<p>Level 1 (1–3 marks) The student displays little awareness of the implications and demands of the question, and focus is lacking. Evaluation of political institutions, processes and behaviour is superficial.</p> <p>Analysis shows little awareness of differing viewpoints and issues. There is little, if any, recognition of parallels and comparisons. Arguments, explanations and use of concepts are superficial and naïve.</p>	<p>Level 1 (1 mark) The answer relies upon narrative that is not fully coherent. There is little or no use of political vocabulary. Errors in spelling, punctuation and grammar may be intrusive and the response may not be legible. A conclusion, if present, is not adequately related to the preceding discussion.</p>
<p>0 marks No relevant response.</p>	<p>0 marks No relevant response.</p>	<p>0 marks No relevant response.</p>

Topic 1 The Constitutional Framework of US Government**Total for this topic: 40 marks**

(01) Consider the importance of the Bill of Rights in the USA.

(10 marks)

It is anticipated that responses at all levels will be able to correctly identify the Bill of Rights as part of the US Constitution. Furthermore, most responses will be able to define it more precisely as the first ten constitutional amendments to be ratified. Level 2 responses are likely to be able to provide examples of the rights that are identified in the Bill of Rights, perhaps even being able to associate specific amendments to specific rights (for example Amendment 1 and freedom of expression, Amendment 2 and the right to bear arms, Amendment 6 and the right to a fair trial). Better responses should be able to consider the importance of the Bill of Rights in the sense that these are part of the constitution and therefore require the rigorous process of constitutional amendment in order to be changed. As such, these rights are entrenched and protected from abuse by the political institutions. Candidates may make a synoptic point by comparing the status of these rights in the USA with those in the UK which are contained within an Act of Parliament and therefore relatively easily changed by the government. Furthermore, the rights of citizens in the USA are upheld by the Supreme Court and better responses should be able to offer an example of a ruling which has upheld such a right (eg *Citizens United v FEC* or *Heller v District of Columbia*).

In order to achieve the highest marks, candidates should be able to offer arguments in evaluation. There are occasions where the Bill of Rights does not clearly set out what a particular right is. There has been controversy about Amendment 2 and whether it does unequivocally guarantee the right of gun ownership to all citizens. Furthermore, Amendment 8 mentions 'cruel and unusual punishment' without any clear steer as to what this means. In these circumstances, it could be claimed that it is not the Bill of Rights that is important but the Supreme Court which has the job of interpreting these rights. Many critics argue that the lack of clarity in the Bill of Rights means that decisions about issues such as prayers and religious symbols in schools are left inappropriately to the justices of the Supreme Court.

It may also be pointed out that a number of constitutional rights are to be found elsewhere in the US Constitution. The issue of slavery was deliberately put to one side both when the constitution was drafted and when the Bill of Rights was appended. Later amendments (13–15) were ratified in the years following the end of the American Civil War in 1865. It may be argued that the Bill of Rights is not the sole repository of rights and freedoms within the constitution.

02 Assess the significance of federalism in the USA.

(30 marks)

In order to access marks at even the lowest level of achievement, students need to have at least a basic understanding of what federalism is. Federalism involves the sharing of powers between different levels of government. In the United States this relates to the government at national level (the federal government) and those at the level of the state. (Some responses may mention government at an even more local level, but this is not a requirement to achieve a particular level of marks.) Students may make the synoptic comparison with the United Kingdom, which is unitary in character and where the nature and distribution of power are determined by parliament.

Responses need to go beyond a definition of federalism and address the question of its significance in the United States. It is likely that students will make reference to the Founding Fathers and the drafting of the US Constitution in 1787. In many ways the new constitution was a compromise after the first constitutional attempt (Articles of Confederation) failed to ensure a workable balance between the rights of the former colonies and the power of a central authority. In 1787, a number of very important

considerations were debated. Included in those was the desire to limit the power of any single political institution in the new republic. Another was a means to safeguard the rights of the individual states from an over-powerful central government. The constitution is written in such a way as to define the roles of the central institutions of state. The powers of the state are not enumerated, however. Instead, Amendment 10 of the constitution declares that those powers not granted to the central institutions are assumed to remain at the level of the state (and the people).

It is likely that many students will outline some of the features of federalism in the United States by looking at specific powers and areas of responsibility of central and state government. Reference may be made to issues such as crime and punishment and the fact that the death penalty is determined at state level. There may also be reference to the powers of defence, diplomacy and war being vested at the central level. Students could also note that the power of taxation exists at both central and state level. These are three examples and examiners should credit the correct identification of other state and central powers. Better responses are likely to demonstrate why certain powers are based at state level and why others reside centrally. Disputes over the powers of the states and the authority of central government are settled through the judicial system and, ultimately, the Supreme Court is the final arbiter in such cases.

In order to achieve high marks, students must be able to do what the question asks and offer an assessment of federalism. Such responses are likely to focus on the manner in which the relationship between central and state levels has altered since the constitution was first written down. Students may conclude that power has shifted from the state to the central level over this time. Issues such as the growth of America, the outcome of the Civil War and the improvement in communications have all bound the country more tightly. Added to this has been an increased expectation of federal government in times of national crisis. In the 1930s, it was the government in Washington DC rather than those in the state capitals that offered the lead to deal with effects of the Great Depression. It may be argued that, in the decades that followed, there was a greater assumed role for central government than there had been before. In foreign policy too, the increased salience of central government became apparent in the decades of the Cold War and beyond.

Very good responses may attempt to explain the shifts in power by discussing the lack of clarity in the constitution in relation to central and state powers. This has been the subject of much discussion in the cases of the *Necessary and Proper Clause* – the so-called elastic clause of the constitution (in Article I, Section 8, Clause 18). Those who defend states' rights point to the clause enabling the US Congress to annexe decision-making when it feels there is the need. Defenders of the clause point to the fact that it relates only to those powers already enumerated in that section of Article I. Students may conclude that, although being a key principle of the framers of the constitution, federalism has been difficult to determine in practice.

In the way of a counter-evaluation, some students may identify more recent attempts to redefine federalism with the intention of strengthening the role of the states. Richard Nixon coined the phrase *new federalism* in an attempt to reverse the growth of the federal government in Washington DC. Gerald Ford, Ronald Reagan and George H W Bush followed in a similar direction. This was not continued under the presidency of George W Bush, during whose time in office federal expenditure soared. The international security situation, coupled with a rise in tension over the threat of terrorism at home, may offer some explanation for this phenomenon. There were also major increases in spending on domestic programmes as well. The expansion of Medicare and increased spending on education and the No Child Left Behind programme have led to some talk of 'big-government conservatism'.

Topic 2 The Legislative Branch of Government: US Congress Total for this topic: 40 marks

(03) Examine the roles of standing committees in the US Congress.

(10 marks)

Students at the lowest level of attainment should be able to identify that both houses of the United States work through Congress committees. These committees enable much of the more detailed work of Congress to be undertaken. The question is about standing committees and better students will examine the specific functions of these. These committees are organised along policy-specific lines. Students may also indicate that they are composed in proportion to the broader party strength in the House and the Senate. In the first instance, standing committees scrutinise legislation. After the first reading in Congress, a Bill is sent to the relevant committee where it is scrutinised. Witnesses are called and evidence is taken. Legislation can be altered quite significantly at the committee stage of legislation. Indeed, it is the stage where most legislation falls. The fact that this stage takes place before the first substantive discussion of the legislation also makes the standing committee very significant. The second major function of congressional standing committees is one of scrutiny. Each executive department faces scrutiny from specific committees in both houses in Congress. Students are expected to give examples of these committees (such as the Senate Foreign Relations Committee or the House Budget Committee). The work of departments is examined by the relevant standing committee and witnesses are called to give evidence in hearings. The Senate standing committees are also where the confirmation proceedings of presidential appointments begin, although it is up to the Senate as a whole to make the final decision. Students can achieve Level 3 marks by identifying both the legislative and scrutiny roles of the standing committees. High-level answers will also identify the additional role that is performed by standing committees in the US Senate.

Better responses will be able to highlight the differences between standing committees in the House and Senate. These differences may centre on the size (larger in the House than the Senate) or on the fact that much more work is carried out on the floor of the Senate than in the House, where the committees have a more significant role. Good responses are also likely to highlight the role of the House Rules Committee. The best students will offer some assessment of the significance of congressional standing committees. Credit should be awarded to candidates who compare the US standing committees to those in the UK that play a less comprehensive role.

(04) 'Members of the US Congress are too concerned with local matters and not concerned enough with issues affecting the whole country.' Discuss.

(30 marks)

In order to attract higher-level marks, students must not only distinguish between local and national matters but also be able to examine both houses separately. It is unlikely that a candidate can achieve a high mark for this question without being able to recognise the differences between the two houses of Congress. The very best answers are also likely to offer some analysis of congressional interest in international matters.

Most students will be able to focus on the frequency of congressional elections and argue that this is likely to focus the minds of members of Congress. This is particularly true of members of the House of Representatives, who serve two-year terms of office and whose work is by definition likely to be highly responsive to the needs and wishes of their constituents. Better responses may highlight the constitutional requirement that members of Congress must reside in the state they represent. Furthermore, a number of states insist on a 'locality rule', that House members reside in the congressional district that they represent. Typically, members of Congress have usually been born and

raised in the states they represent. It may be argued that, as a consequence, there can be a tendency towards parochial interests in the US Congress.

The volume of constituent letters and emails has steadily increased over the years. By 2004, the average for each member of Congress was 1000 per day. This requires not just written responses but the willingness on the part of the Congressman or Senator to spend regular time back in the constituency, which for many involves long and arduous weekend commutes. Appearing to ignore the interests of one's constituency can be politically damaging. Senator Elizabeth Dole's failure to be re-elected in North Carolina in 2008 has been explained by her opponents as the result of her failure to pay sufficient attention to the interests of her state.

There is evidence to suggest that the political make-up of the constituency itself might affect the behaviour of its elected representative. Texas Democrat member of the House, Ciro Rodriguez, found that redistricting of boundaries left him representing a district of San Antonio that was far more conservative than before. His voting record in the House has changed and has become more conservative in response to the views of his constituents.

In order to achieve marks in the higher levels, students should be able to offer an evaluation of the contention made in the question. There should be some ability to examine the differences between the House and the Senate. In the first instance, the House is elected for only two years, and this would make the immediacy of local constituency interest more apparent. Members of the Senate are elected for six years and it may be argued that this takes this sort of pressure off Senators. Indeed, there is evidence of Senators representing the same state having strikingly different voting records from one another, suggesting that forces other than those of local influence may be at work.

Better responses may highlight the Senate as an institution that is more deliberative and more likely to look at the bigger picture of national and international affairs. Furthermore, the 'Advice and Consent' powers of the Senate are likely to underline this view. When confirming presidential appointments to government or the Supreme Court, it is difficult to envisage how local considerations can be that significant. When ratifying treaties, the US Senate is by definition working at a national and international level of interest.

The best responses should be able to identify the importance of factors other than those at local level in influencing the work of members of Congress. The increased partisanship, particularly in the House of Representatives in the 1990s, may have altered the political priorities of many Congressmen. In 1995 (after the Republicans gained control of the House), the percentage of party votes in the House was at 73%. Critics of this thesis argue that this era might be considered to be an aberration, since this percentage fell back very quickly after 1995, to the level where it had previously been. There is no doubt, however, that the levels of party rivalry on major political issues have become more apparent and bitter. This could be seen in the debate and votes over Barack Obama's health care reforms, which failed to receive the support of a single Republican member of the House of Representatives.

Topic 3 The Executive Branch of Government**Total for this topic: 40 marks**

(05) Consider the role of the Vice-President in US Government.

(10 marks)

Students should be able to identify correctly the role of the Vice-President. It could be argued that, on a day-to-day basis, this is not a very significant role, mainly due to the fact that there is relatively little said about the Vice-President in the US Constitution and that presidents are reluctant to allow the growth of a potentially competing power base within the White House. The most important power likely to be identified by students is that he/she is effectively 'president-in-waiting' and that he/she assumes the role in the event of the death or resignation of the sitting president. The apparent paradox between the day-to-day powers of the Vice-President and his/her potential powers, in the event of the president's position becoming vacant, results in a paradox identified by John Adams (the first Vice-President), who commented on the role "in this I am nothing; but I may be everything". Students might also identify phrases as varied as "a heartbeat away from the presidency" and "not worth a bucket of spit".

Better students are likely to identify other roles performed by the Vice-President. His/her powers include being the presiding officer of the Senate (a role that is normally deputised to another member of the Senate). This role gives him/her the ability to break a tied vote in the Senate (performed 19 times between 1981 and 2009). This role also requires him/her to announce the result of the Electoral College votes following a presidential election. Students may consider the impact of the 25th Amendment that has resulted in three occasions when the Vice-President has become acting president when the president has been declared disabled.

Higher-level responses are likely offer some evaluation as to how, in practice, the role of Vice-President is more important than at first appears. Vice-presidents such as Al Gore and Joe Biden have attempted to carve out specific policy niches (in the environment and foreign affairs respectively). Dick Cheney played a pivotal role in the Bush era, providing a strong neo-conservative impetus in the aftermath of the 9/11 attacks. Moreover, there have been occasions when so-called outsider presidents such as Jimmy Carter, Ronald Reagan and George W Bush were balanced in office by vice-presidents very much seen as insider politicians, able to ease their presidents into life inside the Washington DC Beltway.

(06) 'In practice there are no constraints on the power of a popular US president.' Evaluate this statement.

(30 marks)

There will be a temptation by some students to answer this question simply by examining the powers and the constraints on the powers of the president, without proper reference to the question as set. Those responses are very unlikely to achieve marks above Level 2. In order to access the whole range of marks, responses should address the wording in the question, namely 'in practice' and 'popular'.

Students may choose to examine the nature of the limitations on the power of the US president. These include the role of the Senate in the confirmation of appointments and the ratification of treaties. Mention may also be made about congressional oversight of the executive branch; the ability of Congress (with sufficient support) to overturn a presidential veto; the power of Congress to limit a president's military ambitions and, ultimately, the power to impeach and remove a president from political office. Add to these limitations the ability of the Supreme Court to rule the actions of the president as unconstitutional.

It is important for students to test these limitations in reality. It could be argued that some of these checks do not work effectively in practice. The last time a presidential nomination to the bench of the Supreme Court was rejected was over 25 years ago. In the case of the ratification of treaties, presidents

have been able to circumvent this limitation by entering into executive agreements with the leaders of other nations.

The ability to override a presidential veto has been largely theoretical, with a quarter of all presidents having none of their vetoes overturned and with another quarter having a success rate of over 90%. It is interesting to compare Bill Clinton, who remained popular with the US electorate until the end of his second term in office and had only 2 of his 36 regular vetoes overturned, with his successor George W Bush, who had 4 of his 11 regular vetoes overturned.

The aftermath of the 9/11 attacks demonstrates that a popular president, with media backing and public opinion on his side, can embark on military adventures without too much difficulty. In spite of major international misgivings about invading Iraq, Bush was able to mobilise support for this action. The Supreme Court has the power of judicial review over presidential actions. It may be argued that here the popularity of the president has been largely irrelevant. The popular Bill Clinton suffered at the hands of the Supreme Court over the line-item veto. George W Bush was also on the wrong end of a Supreme Court ruling against the indefinite detention of prisoners at Guantanamo Bay. The Supreme Court ruling that ordered Richard Nixon to hand over White House recordings (rejecting his claim to executive privilege) during the Watergate crisis directly led to his resignation.

Stronger responses may conclude that popular presidents might find it easier in practice to overcome the constraints and limitations of their office, and the best responses are likely to conclude that this does not mean that the assertion in the question is correct. There are limitations that affect different presidents at different times and these might be overcome on occasions. There are many examples of even very popular presidents being limited in their powers. Additionally, mention may be made of the manner in which the popularity of the US president waxes and wanes, and the measurement of this popularity using approval ratings.

Topic 4 The Judicial Branch of Government: The Supreme Court Total for this topic: 40 marks

- (07) Explain the distinction between strict constructionism and loose constructionism in the USA.
(10 marks)

Students will need to be able to identify correctly the meanings of both of the terms in the question in order to achieve marks at the highest levels. These terms relate to the manner in which justices of the Supreme Court interpret the constitution. Strict constructionism means that justices interpret the constitution in a strict, literal sense. Loose constructionism is where justices interpret the constitution more liberally.

Strict constructionism has its origins in the early years of the republic. However, it has been the subject of much debate in recent decades. Successive Republican presidents since Richard Nixon have promised to appoint judges who adhered to the narrow, literal practice of strict constructionism, after a period where he and other conservatives believed that the Supreme Court had over-reached itself. Better students will understand the context of the debate between adherents of the two concepts. A number of Supreme Court cases between the 1950s and 1970s led to this conservative critique. On issues such as racial segregation, freedom of expression, rights of the accused and abortion, the court had ruled in a manner which infuriated the political right in the United States. To them the Supreme Court's interpretation had become too wide. This loose constructionism was also associated with judicial activism, a view of the constitution that as a co-equal branch of US Government, the Supreme Court had the right to interpret as it saw fit.

Strict constructionism then was a reaction to this. Many Republican politicians believed that the court needed to be reined in and the appointment of justices such as Rehnquist, Scalia and Thomas would do this. Many see the 1980s and 1990s as an era of strict constructionism where the Supreme Court was more restrained in its conduct.

The best students are likely to offer some evaluation of the Rehnquist and the Roberts courts to determine whether they have been as strict as many suggest. In truth, both courts have made controversial judgements which supporters would defend as adhering to strict constructionism, but whose opponents would condemn as political. Recent judgements on abortion, gun control and spending in election campaigns could be cited as examples. The controversial Supreme Court ruling in *Bush v Gore* in 2000 also suggests that the court is still ready to involve itself in political controversy at the highest level.

- (08) To what extent do the constraints on its powers prevent the Supreme Court from performing its functions effectively?
(30 marks)

In order to achieve marks at Level 2, students should be able to identify the main limitations on the powers of the Supreme Court. Contextual understanding will be demonstrated by students who can identify that, just in the same way that the other branches of US government are constrained by constitutional checks and balances, so too is the Supreme Court. The main thrust of the question is about the powers of the Supreme Court, however, and while some credit may be given for constitutional checks and balances that affect the court, better responses will recognise that there are other, quite specific, limitations that should be addressed.

Most students should be able to recognise that the Supreme Court is not a proactive institution; it cannot initiate proceedings, but must wait for cases to be referred to it. It may be argued that there are many instances where an Act of Congress or state law may be in violation of the constitution, but, because

these have not been referred to the Supreme Court, judgement cannot be made about them. The War Powers Act, 1973 has been described as unconstitutional, but the court has been unable to rule on this because no case has been referred to it.

Better students may also offer further limitations on the Supreme Court. Several thousand cases are sent for consideration by the Supreme Court each year, but it only has the capacity to hear about 100. Clearly, one could reasonably argue that the court cannot perform its role of constitutional interpretation, given its exposure to such a limited number of cases.

Another limitation which may be identified is the lack of enforcement powers. Even after ruling in a case, the court relies upon either Congress or the executive branch to ensure that the court's decision is upheld. Better responses may offer the example of the initial difficulties that were encountered enforcing the first *Brown v Board of Education* ruling in 1954.

Good responses may examine the argument that the Supreme Court cannot bind a future court and that, in this respect, its powers are very much in the present. The court may take decades to overturn an earlier case (such as with *Plessey v Ferguson*, 1896 and *Brown v Board of Education*, 1954) or the change may be more rapid (such as *Steinberg v Carhart*, 2000 and *Gonzales v Carhart*, 2007). In this sense, the Supreme Court may find its powers of constitutional interpretation are somewhat limited. The best responses to the question will offer sound evaluation as to why these limitations do not prevent the Supreme Court from performing its functions effectively. Students should be capable of identifying where the Supreme Court has been able to fulfil its functions. In order to achieve higher mark levels, responses should contain appropriate examples. This evaluation will include examining the work of the Supreme Court in interpreting the constitution and protecting citizens' rights. Examples of the latter may include civil rights areas such as: freedom of speech and expression (eg *Buckley v Valeo*, 1976 and *Texas v Johnson*, 1989); freedom of religion (eg *Engel v Vitale*, 1962); rights of arrested persons (eg *Gideon v Wainright*, 1963, *Miranda v Arizona*, 1966); rights for racial minorities (eg *Swann v Charlotte-Mecklenburg Board of Education*, 1971); abortion rights (*Roe v Wade*, 1973, *Gonzales v Cahart*, 2007). This list of rights and cases is not definitive and credit should be given to other rights and cases that are deployed appropriately.

Students may also identify constitutional constraints, as well as court self-restraint. Additionally, mention may also be made about the extent to which the court is responsive to public opinion.

ASSESSMENT OBJECTIVE GRID

A2 Assessment Objective	Marks allocated by Assessment Objective 10-mark question	Marks allocated by Assessment Objective 30-mark question	Total Marks by Assessment Objective
A01	4	12	16
A02	4	12	16
A03	2	6	8
Total	10	30	40