



**General Certificate of Education
June 2011**

Government and Politics GOV4A

The Government of the USA

Unit 4A

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 candidates' 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 candidates' 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 candidates' 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 candidates 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. Candidates should be given credit for partially complete answers. Where appropriate, candidates 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 candidates 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 candidates may feel able bring to the discussion. Therefore the specification of requirements outlined in the mark schemes can only be indicative. Candidates 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 candidates' 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 candidates' 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 candidate 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 candidate'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 candidates 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 candidate demonstrates a comprehensive knowledge and understanding of political concepts, institutions and processes. The candidate 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 candidate 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 candidate 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 candidate demonstrates good knowledge and understanding of political concepts, institutions and processes. The candidate 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 candidate 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 candidate demonstrates limited knowledge and understanding of political concepts, institutions and processes. The candidate 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 candidate 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 candidate 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 candidate demonstrates little knowledge and understanding of political concepts, institutions and processes. The candidate 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 candidate 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 candidate 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 candidate 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 candidate 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 candidate 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 candidate 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 candidate 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 candidate 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 candidate 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 candidate 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. 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 candidate 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 candidate 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 candidate displays little awareness of the implications and demands of the question, and focus is lacking. Evaluation of political institutions, processes and behaviour is superficial. 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 which 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) Examine the process involved in amending the US Constitution.	<i>(10 marks)</i>
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There are two main ways to amend the US Constitution; these are outlined in Article IV of the Constitution.

The first method involves both the House of Representatives and the Senate to pass, by a two-thirds majority, a bill proposing an amendment to the Constitution. If this is achieved, the proposed amendment must then be supported by three-quarters of the 50 state legislatures. All of the 27 amendments to the US Constitution have been passed using this method.

The second method of amendment outlined in the Constitution: this is for a Constitutional Convention to be called by two-thirds of the legislatures of the states, and for that Convention to propose one or more amendments. These amendments are then sent to the states to be approved by three-quarters of the legislatures. This route has never been taken.

It is normal for a time limit (usually seven years) to be imposed for the process to be repeated, and this has led to some famous failures in attempting to amend the Constitution. The most notable example in recent times was the attempt to introduce an amendment promoting equal rights for women which expired, unratified, in 1982.

That there have only been 27 amendments to the US Constitution may be a testament to the difficulty in achieving such changes. It may be argued that the high barrier for change means that only those issues where there are high levels of public agreement are likely to succeed. That does not mean that controversial changes do not take place (such as prohibition and the 18th Amendment). It may be argued that it is rare to gain sufficient levels of consensus on a specific issue. As political opinion, especially, has become more polarised in recent decades, changes to the Constitution may be even more difficult to achieve in the future.

Top level responses may mention the informal way in which the US constitution may be amended. The growth in the power of the Supreme Court and its ability to interpret the constitution may be one example given here. Another might be the way in which other political institutions have adapted and grown for example the US presidency during the twentieth century. Mention might also be made of the development of the franchise during the nineteenth and twentieth centuries.

(02) 'The separation of powers hinders effective government in the United States.' Discuss.	<i>(30 marks)</i>
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Political power in the United States is distributed between the various institutions that exist at the federal level. Power is exercised at the state as well as the federal level of government. Each article of the US Constitution enumerates the powers of the various federal institutions, as well as the implications for the power of the various states in the Union. Candidates will be expected to demonstrate an understanding of the distribution of powers as outlined in the US Constitution, and might include an explanation of the manner in which these separated powers are interrelated. Candidates will be able to identify one or more of the following:

- the power of Congress to pass or reject legislation
- the power of the president to veto legislation passed by Congress
- the power of the Supreme Court to uphold the rights of citizens
- the powers of the states to exercise controls within their own jurisdictions.

Candidates should be able to conclude that such a separation of powers, combined with the checks and balances outlined above, makes it potentially difficult for government to move forward with its political agenda. This is clearly going to be the case when a Republican president has to work with a Congress dominated by the Democrats, as was the case after the 2006 mid-term elections. Even when the president's own party are dominant in Congress, there is no guarantee of the presidential policy agenda succeeding, as Bill Clinton found when his own party's Congressmen and Senators helped defeat his healthcare reforms. Barack Obama only managed to get his reforms through on this issue after making big concessions in the face of fierce criticism from Democrats and Republicans alike.

Candidates may draw the clear distinction with the UK political system, where there is no codified constitution and where, it may be argued, too much power resides in the hands of the party in government that controls a majority of MPs in the House of Commons. In this sense, there is no hindering of effective government in the United Kingdom. These points may be deployed in order to demonstrate synoptic skills.

In order to access the full range of marks available for this question, candidates need to be able to evaluate the arguments that may have been made in defending the contention in the quotation.

The Constitution is, in parts, very specific about the powers of the various political institutions in the United States. There are very clear descriptions of the advice and consent powers of the US Senate in Article II, for example. This does not mean, however, that the president is frequently unable to get his appointments ratified. The last time an appointment to the Supreme Court was rejected by the Senate was over 20 years ago. Similarly, the power of Congress to overturn a presidential veto is difficult to achieve and has been successful on relatively few occasions.

Another important evaluative argument is that the constitutional separation of powers has failed to prevent political power becoming overly concentrated in the hands of the executive, which has grown in influence considerably over the past 70 years. In particular, there has been much debate on what Arthur Schlesinger described as the 'imperial presidency', in response to the apparent accretion of presidential power in the 1960s. The extent to which this description still applies could be the subject of analysis and may be evidenced in some stronger responses to the question.

Good answers are likely to highlight the point that the Founding Fathers created the constitution with an aim to providing limited government. In this respect the checks and balances of the US constitution provide for government that would be seen as effective through their eyes. Top level responses might examine precisely what 'government' is. Government in its widest sense includes Congress (legislative branch of US government) and the Supreme Court (the judicial branch of US government) as well as the executive branch. Checks and balances may hinder one branch over another, but still provide for effective government overall.

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

(03) Explain the significance of the advice and consent powers of the US Senate. (10 marks)

The US Constitution describes a number of functions and powers that are exclusive to the Senate. In Article II, Section 2, a number of presidential powers are described as being subject to the powers of advice and consent of the Senate. These focus on two specific areas. In the first case, presidential appointments to the cabinet, the Supreme Court and other federal appointments such as the US Ambassador to the United Nations, are all subject to a confirmation process in the Senate. A simple majority of Senators is required for a nomination from the president to be confirmed. The second area concerns international treaties. Article II of the US Constitution gives the president the power to sign such treaties. The Senate is given the power to ratify or reject such treaties. Without ratification, the treaty cannot be incorporated into US law.

Both of these powers are significant in so far as, if deployed to block appointments or treaty ratification, they could limit the power of the president. During the twentieth century, the Senate rejected seven treaties. A famous early example was the rejection of the Treaty of Versailles in March 1920. A more recent example of the use of this power was in 1999, when the Senate rejected the Comprehensive Test Ban Treaty. In the case of blocking presidential appointments, Robert Bork's appointment to the bench of the Supreme Court was blocked by the Senate in 1987.

It may be argued that most appointments go through without being blocked and that, in practice, this power is not significant. A counter-argument to this might be to suggest that the reasons why most appointments go ahead is because the president is normally careful to nominate figures who are unlikely to prove controversial to Senators. In evaluating the power to reject treaties, it may be argued that successive presidents have circumvented this by signing executive agreements with the heads of foreign governments; these do not require the consent of the Senate.

(04) Assess the view that political parties have grown in importance in the US Congress. (30 marks)

It may be argued that the party system has grown in significance and importance in the US Congress. Traditionally, the political parties have been seen as less of a significant force in the US legislature than in the United Kingdom (synoptic analysis may be deployed here). One of the main reasons for this difference is the character of the US presidential political system. Unlike the UK, the USA does not have parliamentary government and therefore the US Congress does not fulfil the role of sustaining the executive in office. This has meant that, in the past, party cohesion in Congress has not been strong. In particular, the whips in Congress have never been as effective in maintaining party discipline as their counterparts in Westminster (synoptic analysis may be deployed here). Bipartisanship and cross-party co-operation and alliances were not uncommon. Sometimes legislation has been co-sponsored by figures from both the Democrat and Republican parties in order that it could gain widespread congressional support. An example of this was the McCain–Feingold reforms, which sought to tighten up the rules on election campaign expenditure. It has been asserted (McKay, 2009) that, traditionally, there has been a loose party relationship between the president and members of Congress.

Further limitations on the party system may be seen through the work of congressional committees, which demonstrate that much power is decentralised to influential committee chairs. In this respect, congressional party leaders have limited powers. Members of Congress do not simply toe the party line. Members of Congress (particularly those in the House of Representatives) have often been more influenced by the demands of their constituents than by the wishes of their party. Former Senate majority leader Bob Dole once described himself as a 'majority pleader'.

In evaluation, it may be argued that there has been an increasingly polarised character to Congress and that this has manifested itself in a Congress more divided along party lines. This was certainly true after 1994 with the Republicans' 'Contract with America', which tightened the party leadership's grip on its Congressmen who had just wrested power from the Democrats who had controlled the House for over 40 years, and in the run-up to the Clinton impeachment trial. Candidates may wish to examine more contemporary references by citing the Obama healthcare reforms and the failure of a single Republican Congressman to support the measures when the vote was taken in the House of Representatives.

It may be argued that the increase in partisanship is often more pronounced after the House of Congress changes political hands, such as the House of Representatives in 1995 and the Senate in 2007. Voting evidence shows that party voting increases for a period after such changes but then declines in the years that follow. The strongest candidates are likely to be able to make a counter-evaluation of the above points. Certainly, Barack Obama's problems in getting his reforms through Congress are to some extent caused by dissent from within his own party and not just from the partisan behaviour of the Republicans. Candidates should be able to identify the importance of ideological groupings within each of the parties in Congress, which indicates that the differences within the political parties in Congress are as significant as those between them.

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

(05)	Explain the main elements of bureaucratic power in US government.	<i>(10 marks)</i>
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There should be a correct identification of what constitutes the various elements of bureaucratic power in the USA. It is the administrative system of the national government that carries out policy. It is unelected and, in this sense, should be seen as distinct from the democratically elected part of the executive branch of the federal government. Candidates should be able to identify federal bureaucracy as the key element of bureaucratic power in the United States. The key broad categories of the federal bureaucracy are:

- Executive departments (such as the Department of State)
- Agencies (such as the Environment Protection Agency)
- Independent regulatory commissions (such as the Federal Aviation Administration)
- Government corporations (such as AMTRAK or the United States Postal Service)

By 2006, the federal bureaucracy had over two and a half million civilian employees and an annual payroll of just under 14 billion US dollars. Whilst much bureaucratic power is based in Washington DC, there are federal offices all across the United States. (It was one such office which was blown up in Oklahoma by Timothy McVeigh in 1995.)

One of the main themes in the study of US government is the growth in the size and scope of bureaucratic power. The federal bureaucracy grew significantly during the twentieth century. This was in large part due to an increase in the size and scope of government activity during those years. The years following the 'New Deal' brought federal government activity into areas hitherto untouched by the public authorities. In the post-war years, the USA's position as a world power ensured growth in both the defence and state departments as well as in the growth of federal agencies such as NASA. In recent years, new executive departments have been created to reflect the growing importance of the policy areas for which they are responsible. The department of Veterans' Affairs is one example, and another is the Department of Homeland Security, set up in the wake of the 11 September terror attacks.

Candidates who can accurately identify and illustrate the four component elements of the federal bureaucracy should be able to access level 4 marks. Credit will be given for references to the Executive Office of the President (EXOP).

(06)	'The president only has the power to persuade.' Discuss.	<i>(30 marks)</i>
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Richard Neustadt's analysis of presidential power is based on the notion that the power of the US president is not merely based upon what Article II of the Constitution states. Of equal, if not greater, importance are the bargaining skills that the president needs in order to achieve his goals. The power of the US government is vastly dispersed; the president cannot simply command and receive. Other levels of government have different constituencies and their own sources of power. The president must bargain and persuade others that what he wants is in their best interest. President Truman said of Eisenhower upon his election in 1952: 'He'll sit there all day saying "do this", "do that", and nothing will happen. Poor Ike, it won't be a bit like the military. He'll find it very frustrating'. A good example of the frustration felt at being unable to persuade was when Eisenhower failed to convince the governor of Arkansas to racially

integrate schools in the wake of the US Supreme Court's decision on the *Brown vs The Board of Education* case.

The above example indicates just one of the political arenas in which the president will test his powers of persuasion (with state governments). Clearly, another arena is the congressional one. The president needs the co-operation of Congress to get through the legislation that he proposes. This requires not just the ability to persuade those Senators and Congressmen from the other party but also to convince doubters within his own party. The issue of healthcare reform caused both Bill Clinton and Barack Obama major problems in Congress and, on both occasions, much of the criticism came from the president's own party. The president also needs the power of persuasion if he is to convince a potentially hostile Senate to ratify a treaty or confirm an appointment.

The best responses will be able to evaluate the arguments that the only power that the president has is that of persuasion. Not all of the president's skills come down to bargaining. The Constitution gives the president great powers, for example, as commander-in-chief. This power has been exercised to deadly effect by presidents such as Lyndon Johnson, Richard Nixon and George Bush. Further evaluation would indicate that the job of persuasion has become much more problematic in recent years. Former House Speaker Tom Foley argues that the sheer number of members of Congress with whom the president has to negotiate has made the task very difficult. This trend, coupled with the increased public expectation of the president, could perhaps be one reason why he may wish to appeal to the public over the heads of Congressmen and Senators, as Barack Obama did when he toured US states in the early months of his presidency to gather support from ordinary Americans for his policies. More worryingly, the increasing difficulty that presidents have in persuading other political actors may also be a factor in the number of controversies that have embroiled US politics in recent decades. The Iran–Contra scandal and the controversy over WMDs in Iraq perhaps demonstrate how far individuals within US administrations have been prepared to go to pursue certain policy goals. Even without these scandals, it is clear that the president enjoys greater latitude of power when it comes to foreign policy matters than in dealing with domestic issues, where his powers of persuasion may be seen as of greater importance.

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

(07) Explain the principle of judicial independence in US government.	(10 marks)
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The separation of powers is one of the fundamental principles underpinning the US Constitution and the independence of the judiciary was asserted very early on in the country's history. The Supreme Court is not an inferior branch of the US system of government. Although dependent upon the other two branches for appointment (the president appoints and the Senate confirms appointments), once in office, a Justice of the Supreme Court cannot be removed by the president and can only be removed by Congress in rare circumstances. This security of tenure enables judges to remain on the bench for decades, keeping them at arm's length from politicians and not subject to the capricious nature of political opinion among the public.

The Supreme Court can declare the actions of any federal or state official as unconstitutional; this includes the actions of the president. Since the *Marbury vs Madison* case in 1803, the Court has been able to strike down legislation, not only of state legislatures, but also of the US Congress. This is known as the power of judicial review. This is an interesting contrast to the United Kingdom, where judges cannot strike down legislation passed by Parliament (EU law permitting). This provides a useful illustration of synoptic analysis.

The concept of judicial independence has been subject to controversy in recent decades because it has been suggested that, far from being independent and detached from the political fray, successive courts have become embroiled in controversy. The Warren Court was both applauded and criticised in the 1950s for its interventions and judgements on racial segregation; a clear sign, in the eyes of some, of political interference. Conservatives and pro-life activists were outraged at the *Roe vs Wade* judgement in 1973. Liberals were equally outraged at the decision of the Supreme Court in the *Bush vs Gore* case in 2000, which delivered the US presidency to George W Bush. Far from being independent, it may be argued that the US judiciary is embroiled in political life. Indeed, it has led some commentators to refer to the Supreme Court as 'politicians in robes'.

(08) Evaluate the role of the Supreme Court in protecting the rights and liberties of US citizens.	(30 marks)
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The Supreme Court's powers of judicial review enable it to declare the action of either a federal or state official unconstitutional. Furthermore, it can declare acts of Congress unconstitutional. For those proponents of limited government, the Supreme Court protects the citizen from the state.

The Bill of Rights contains the essential rights that US citizens enjoy. Later amendments (such as 14 and 15) extend these rights further. Candidates will be able to cite a number of cases which might illustrate the way in which the Supreme Court has upheld these rights. The following are indicative examples; others could be used. It could be argued that the Supreme Court is effective in protecting these rights. The freedom of expression as outlined in the First Amendment was protected by the Supreme Court in 1989 in the *Texas vs Johnson* case, which determined that the prohibitions on desecrating the US flag, which were in place in all but two of the US states, were contrary to the freedom of expression. The decision of the Supreme Court to uphold the due process clause of the US Constitution in the *Roe vs Wade*

ruling of 1973, effectively barred state legislators such as Texas from preventing women from having abortions. Pro-life groups argue that the rights of the unborn child are not protected as a result of the Supreme Court's decision in this case. In the case of *District of Columbia vs Heller* in 2008, the Supreme Court upheld the right of US citizens to own guns in a landmark ruling, interpreting the Second Amendment of the US Constitution.

In order to achieve high marks, candidates should be able to evaluate the chosen case(s). They should explain why the Supreme Court does not protect the civil rights and liberties of US citizens. Arguments might include the following: Supreme Court decisions might be seen to uphold one right but not another. The case of *Citizens United vs Federal Election Commission* upholds the right of commercial organisations to pay for political advertising, as freedom of expression (Amendment 1). It might be argued that such advertising could adversely affect political parties that have fewer or no connections with big business and that essentially this will be a default help to the Republican Party. It could be argued that freedom of speech depends on the depth of one's pockets.

Some amendments to the US Constitution which sought to protect the rights of citizens were never properly upheld by the Supreme Court. The 15th Amendment on ensuring all races had the vote was effectively violated by many (mainly) southern states, which introduced their own restrictions (such as literacy) on voter eligibility. Voter registration procedures came under scrutiny in Florida in 2000, when African American activists claimed that many black citizens found it difficult to register to vote.

The decision of the Court in the *Bush vs Gore* case in 2000 outraged many citizens because they believed that the Court had effectively denied the rights of Americans to a fair election result because of a narrow interpretation of whether a re-count of votes in the state of Florida should be allowed to proceed.

Finally, the Court cannot contradict the Constitution and its amendments, no matter how perverse they may be. The 18th Amendment, prohibiting the sale and consumption of alcohol, would be seen in most western, liberal societies as an affront to individual civil liberties. In the United States it was not seen as such because it was, for a time, part of the Constitution.

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
AO1	4	12	16
AO2	4	12	16
AO3	2	6	8
Total	10	30	40

Converting Marks into UMS marks

Convert raw marks into Uniform Mark Scale (UMS) marks by using the link below.

UMS conversion calculator www.aqa.org.uk/umsconversion