

A2 US Government & Politics

Governing the USA

Student Workbook

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Introduction

This workbook is designed to support and complement classroom work on the US Constitution and the principal institutions that comprise the government of the USA. The exercises can be used as part of the learning process or as a basis for revision in the run-up to the examination. Although the questions do not reflect the structure and style of examination questions, they require students to show broad knowledge and understanding of the core topics. Extension questions are provided at the end of some exercises and more advanced students can be encouraged to give full and comprehensive answers to these. At the end of each section a ‘guided essay’ question is set, including tips on how to tackle the question. These guided essays are designed to bring together much of the work that has already been covered and to prepare students for the types of questions asked in A2 examination papers. No answers are provided for these.

These notes offer suggested answers. At A2, however, there is scope for legitimate disagreement and teachers may wish to offer alternative answers and perspectives to those offered here. Similarly, students may interpret some of the ideas and arguments that are outlined in the workbook in different ways. As long as they support the case that they put forward, all students should be encouraged to do this. The material in the workbook is intended as a starting point only.

The US Constitution

Rules and principles

- 1 a A codified constitution is written in a single document.
- b A constitution is entrenched if special procedures are set out for its amendment.
- c Sovereignty refers to the ultimate source of legal or political power.

Extension question

- 2 The major differences are that the UK Constitution is neither codified nor entrenched unlike that of the USA; in the UK, Parliament is sovereign rather than the Constitution; and the UK Constitution includes no bill of rights (although the UK now has the Human Rights Act it is not entrenched as part of the constitution in the same way as the US Bill of Rights).

The three branches of government and the separation of powers

- 3 In the USA, the **legislature**, the body which makes the law, is **Congress**. It is **bicameral**, consisting of the **Senate** and the **House of Representatives**. The **president** holds **executive** power and is therefore responsible for implementation of the law. The **Supreme Court** is at the head of the federal judiciary responsible for interpreting and applying the law.

The **Founding Fathers** applied a strict separation of powers. The three branches are **independent** in that no individual can simultaneously be a member of more than one branch, but are also **interdependent** in that each cannot effectively operate without the cooperation of the other two.

The separation of powers is also ensured by a system of **staggered** elections, which is designed to prevent a populist group taking possession of all governmental institutions at the same time. The 435 members of the **House of Representatives** are all elected every **2 years**. There are 100 **senators** who each serve **6-year** terms, with one third elected every **2 years**. The **president** serves for a term of **4 years** and can serve a maximum of **two terms**. Members of the **Supreme Court** are appointed by the **president**, but their appointment must be ratified by the **Senate**. They hold their position for **life**.

Checks and balances

- 4 The table should be completed as follows:

Checks on the executive: 1 Congress can override a presidential veto; 2 congressional 'power of the purse'; 3 congressional impeachment; 4 Senate confirmation of treaties and appointments; 5 Supreme Court can declare presidential action unconstitutional.

Checks on the legislature: 1 presidential veto; 2 Supreme Court can declare legislation unconstitutional.

Checks on the judiciary: 1 congressional impeachment; 2 constitutional amendment; 3 presidential appointment plus need for Senate ratification.

Extension question

- 5 a** Possibility of *gridlock*. If each branch takes full advantage of the checks at its disposal, does government grind to halt? e.g. consider unsuccessful legislation/unsuccessful judicial or executive appointments/importance of party influence and divided government.
- b** *Loopholes*, e.g. might consider executive agreements replacing treaties, recess appointments to avoid Senate confirmations; troop deployments to replace war; ‘national security’ issues bypassing congressional oversight.
- c** *Strengthened political parties*, e.g. did a Republican-controlled Congress fail to fulfil its oversight function for much of the Bush era?
- d** *Power to unelected judiciary*. In particular that some Supreme Courts (e.g. Warren) have used their position to pursue moral and social causes in a fashion that many would argue was not the intention of the Founding Fathers.

Federalism

- 6 a** A federal system of government is one in which legal sovereignty is shared between the national government and individual state governments.
- b** Specification of certain enumerated powers of federal government implies that other powers are reserved for the states — and hence a federal system.
- c** The 10th Amendment made explicit that any powers not specifically granted to the federal government were reserved for the states.
- d** Division of power between federal and state governments is not entirely clear because of the ‘elastic clause’ within which the ‘necessary and proper’ statement is open to flexible interpretation; and also because various Supreme Court rulings have effectively altered the relationship.

Amending the Constitution

- 7** The US Constitution is difficult to amend largely because the Founding Fathers wanted it that way in order to prevent a concentration of power and the possibility of tyranny. There is also the practical difficulty of gaining a two-thirds majority in each House of Congress plus ratification by three-quarters of states.

Extension question

- 8** Even if there is little likelihood of an amendment being successful, there might still be an incentive to propose an amendment, in order to gain media publicity and profile for a particular issue; in order to satisfy supporters (consider Bush’s ‘defence of marriage’ amendment) or even to raise one’s own political profile.

The Bill of Rights

- 9** The relevant amendments are as follows: (a) Amendment VIII; (b) Amendment II; (c) Amendment I; (d) Amendment V.

More recent amendments

10 The table should be ticked as follows:

Amendments which 'extended citizens' rights':

XIII; XV; XIX; XXVI

Amendments which could be viewed as 'tidying up' the Constitution:

XVII; XX; XXII; XXV; XXVII

Congress

Introduction to Congress

1 a Congress is the **legislative** branch of US federal government. It is **bicameral** with 435 **congressmen** sitting in the **House of Representatives**, allocated to each state proportionately to its **population**, and 100 members of the **Senate**, with **two** from each state. The powers of Congress are laid down in **Article I** of the Constitution. However, because of the **checks** and **balances** set out in the Constitution, as well as the traditional lack of **party** voting, Congress can be characterised by **gridlock**. As well as the legislative function, Congress also performs a **representative** function. **Congressmen** are often assumed to be particularly **representative** since they are held **accountable** by the electorate every **two** years. **Senators** serve 6-year terms. Congress is also important for providing **oversight** of the other two branches.

2 Checks and balances on Congress: presidential veto; judicial review.

Extension question

3 Lack of party voting might lead to gridlock (no legislation being passed) due to difficulty in getting a majority in either house and then difficulty in getting the other house to agree. There is then also the possibility of presidential veto.

The legislative process

4 a The statements should be placed in the following order: 5, 2, 4, 1, 6, 3.

b The House Rules Committee allocates time for a bill to be debated on the floor of the House and assigns a 'rule' determining the possibility for amendment. Conference committees are formed to find a compromise between bills that have passed through the House and the Senate and have emerged in different forms.

c Stages where a bill might 'fail': it may be allocated to an 'unfriendly committee' and pigeon-holed; it may be defeated on the floor of either chamber; it may fall to the filibuster in the Senate (be talked out of time); the 'compromise version' of the bill negotiated by the conference committee might be defeated in either chamber; it may be vetoed by the president (and not overridden by a two-thirds majority in each chamber).

Congressional committees

- 5 a** Committees have a legislative function — gathering information, holding hearings with witnesses, identifying policy problems and amending bills; and an oversight function — investigating important issues or perceived policy failings within their jurisdiction.
- b** The ‘advice and consent’ powers of some Senate committees refers to their ability to ‘advise’ the president in making appointments or signing treaties, and then to approve, or give their assent to such decisions.
- c** The main benefit of committee work is that it allows for development of policy specialists and therefore the more efficient consideration of bills; the main disadvantage is that it makes the adoption of a coherent, or ‘joined-up’, legislative programme difficult.

Extension question

- 6** An advantage of term limits for committee chairs is that it enables able members to be promoted to positions of responsibility. A disadvantage is that the experience of a chair who has reached his term limit is lost. Another effect might be that as the power of appointment is shifted to party caucuses, party loyalty and cohesion may well be encouraged, a situation which might be viewed as either an advantage or a disadvantage depending upon the perspective.

The socioeconomic composition of Congress

- 7 a** The table should be completed as follows:

	US House (numbers)	US House (% of total)	US Senate (numbers)	US Senate (% of total)	US nation (approx. % of total population)
Men	365	84	84	84	49
Women	70	16	16	16	51
White	364	84	94	94	69.1
Black	40	9	1	1	12.1
Hispanic	23	5	3	3	
Asian	5	1	2	2	3.6

- b** Neither the House nor the Senate ‘looks like America’. Members of both are older, whiter and more male than American society. In terms of gender, both are equally unrepresentative — with only 16% women as opposed to a small majority in the wider population. In terms of race, the Senate is more unrepresentative than the House, with a smaller proportion of both black people and Hispanics but a slightly larger proportion of Asians. With no statistics for the overall population of Hispanics, black people appear to be the most under-represented ethnic minority.
- c** It might not matter whether or not Congress resembles US society, since individual members are perfectly able to represent the interests of all genders and races — as shown by the fact that a ‘white’ Congress passed the civil rights legislation of the 1960s.

- d** Efforts should be made to make Congress look more like America since a white male will never fully understand the needs and struggles of women and ethnic minority groups, since they have never shared in them. The failure to pass an equal rights amendment might be viewed as evidence of this.

Pork barrel politics

- 8 a** ‘Pork barrel politics’ refers to the adding of earmarks to bills that serve to satisfy the ‘folks back home’.
- b** Congressmen are under more pressure to secure earmarks than senators since they must satisfy the electorate of their district whom they must appeal to for re-election every 2 years — rather than every 6 years for senators.
- c** Many politicians are keen to reduce the number of earmarks because they tend to increase overall federal government spending, they result in federal projects being unfairly distributed to those areas with the most influential senators or congressmen, and they can hide corruption.

Extension questions

- 9** ‘Pork barrel politics’ may be seen as a sign of a healthy democracy since it shows that elected representatives are responsive to the demands and needs of their constituents and are aware of their accountability to them.
- 10** It is difficult to reduce earmarks since to do so would require the consent of the legislature: the very members of Congress who push for them and benefit from them through the ballot box. While many members might argue for a general reduction in earmarks they are not so keen on their individual ‘pork’ being restricted.

The role of parties in Congress

- 11 a** Statements of why parties traditionally have little role to play in Congress: 1, 2, 6, 9, 10.
- b** Evidence that parties have grown in influence: 3, 4, 5, 7, 8, 11.

Voting behaviour in Congress

- 12** Factors other than party that might influence voting behaviour in Congress: views of the ‘folks back home’; views of congressional staff; pressure of lobbyists on behalf of pressure groups; direct campaigning by pressure groups; the president’s view; personal beliefs.

Extension question

- 13 a** Possible reasons why congressmen might originally have opposed the bank ‘bail out’ bill include: impending congressional elections and views of the ‘folks back home’ about using taxpayers’ money to bail out ‘fat-cat’ bankers; congressmen themselves might have shared this view; others might have objected to it on the ideological grounds of ‘creeping socialism’; influence of pressure groups on behalf of taxpayers; the support of the president for the bill — President Bush was massively unpopular at the time.

- b** Some congressmen might have shifted their position to support the bill because they felt that they had ‘made their point’ to their constituents, but now had to operate in the best interests of the nation; the revisions to the bill might have satisfied their previous concerns; they may have come under pressure from lobbyists of banks and other big businesses; they were probably also more inclined to vote in favour of the bill because it had already received the support of the Senate.

Congressional oversight and the ‘broken branch’

- 14 a** Congressional oversight means that Congress exerts ‘checks and balances’ on, or scrutinises, the executive. It is achieved through oversight hearings by committees, the power of impeachment and the Senate’s advice and consent powers.
- b** Evidence of a collapse of oversight can be taken from a decline in the number of oversight hearings; a decline in the significance of those hearings — there were none concerning Afghanistan during 2003–04, and only nine on Iraq up until 2006.
- c** Collapse of oversight potentially results in ‘bad’ government — and policy mistakes such as were evident over Hurricane Katrina — since the executive paid little attention to Congress in pursuing its policies.

Extension question

- 15** The collapse of oversight might be explained by growing partisanship within Congress — and 6 years of a Bush presidency during which there was mostly Republican control of Congress — as well as a sense of loyalty to the president during what was perceived as a period of national emergency.

Democratic Congress from 2007

- 16 a** Support for the idea that the ‘broken branch’ has been mended comes from statements 1, 3, 8, 9, 10.
- b** Support for the idea that Congress is still the ‘broken branch’ comes from statements 2, 4, 5, 6, 7, 11, 12.

The presidency

The constitutional powers of — and checks on — the president

- 1** Article II of the US Constitution states that ‘**executive** power shall be vested in a president of the United States of America’. The Constitution gives him power as **commander-in-chief** of the armed forces, the power to sign **treaties** with other countries, and the power to appoint senior government officials including **federal judges**. Although he is not part of the **legislature**, the Constitution also gives him the power to propose **legislation** as well as to **veto** bills

passed by the **legislature**. The president also has the power to grant **pardons** for offences against the United States.

However, the president's constitutional powers are balanced by countervailing powers that the **Founding Fathers** assigned to **Congress**. Thus only **Congress** has the power to declare war. Moreover, all **treaties** signed by the president are subject to the **advice and consent** of the **Senate**, as are his major **appointments**. A presidential **veto** can be overturned by a two-thirds majority in each of the **House of Representatives** and the **Senate**. In addition, since **Congress** holds the 'power of the purse', funding issues can thwart a president's ambitions. Ultimately **Congress** can remove a president from office by a process of **impeachment** for 'high crimes and misdemeanours'.

Since the Constitution was written, the president has acquired further powers that are largely unchecked by Congress. Most notably he is able to conclude **executive agreements** with the heads of foreign governments that, unlike **treaties**, do not require **Senate** ratification. In addition, the president can issue **executive orders**, which are directives that stem from legislation or from the president's constitutional powers.

Presidential resources: the executive branch

- 2 a** Four factors that might restrict the president in choosing his cabinet: they must not be part of the legislature (separation of powers); they must be acceptable to the Senate; they must have relevant expertise; they collectively must be reasonably diverse in terms of region, race, gender and ideology.
- b** For the cabinet 'the whole is less than the sum of its parts' in that collectively the body may have little importance, but individually the members of the cabinet hold very important positions — controlling huge departments with huge budgets, and having significant influence over specific policy areas.

Extension questions

- 3** A president may wish to hold cabinet meetings in order to engender 'team spirit' and loyalty; to present an image of an open and consultative government; to promote coherent 'joined-up' government; to disseminate information and to set out broad ideological goals; to address any interdepartmental disputes.
- 4** The EXOP has an advantage over the cabinet with respect to its proximity to the president. Members of the EXOP may be more trusted by the president when they are his long-term confidantes and trusted advisers and since they have no conflicts of interest, whereas cabinet members may 'go native' and put the interests of their department ahead of the broader interest of the government. However, cabinet members have more independent power through the departments that they control. They also have greater legitimacy and authority stemming from their Senate ratification.

Presidential power in practice

5 The table should be completed as follows:

Detail	IP/PP	Example
Particular presidents have taken actions that enlarged the scope of the office and set a precedent.	IP	(b)
The US became a military 'hyperpower'. This dramatically transformed the president's role as commander-in-chief.	IP	(g)
Under the federal system, the states have a large degree of fiscal and legislative autonomy, which therefore acts as a check on the role of the federal government.	PP	(i)
Supreme Court rulings have bolstered presidential power.	IP	(d)
Since the 1970s the media have become more frequently hostile towards presidents.	PP	(h)
Pressure groups may heavily fund a presidential election campaign and then expect 'payback' when their candidate takes office.	PP	(f)
Both congressmen and senators have a tradition of acting independently of their party, and may even oppose a president from their own party — particularly when he is unpopular with the electorate.	PP	(j)
The Executive Office of the President (EXOP) has become a large-scale institution.	IP	(c)
The federal bureaucracy consists of around 3 million employees. They tend to be heavily departmentally focused and can frustrate the intentions of a president.	PP	(a)
Since Roosevelt's New Deal in the 1930s it has been accepted that federal government has an important role to play in times of economic hardship.	IP	(e)

The president's relationship with Congress

- 6 a** Presidents who achieved the greatest success: Kennedy, Johnson, Carter (when taking George W. Bush's ratings as an average).
- b** Presidents who achieved the least success: Bush Snr, Ford, Clinton (57.6 average).
- c** Presidents appear to enjoy a 'honeymoon period' in the first couple of years of office, when they have a very good relationship with Congress and a high CQ rating. The CQ rating then seems to drop (it fell more dramatically for Clinton than for Bush) — although it doesn't seem to decline in a steady fashion for the remainder of their time in office.

Extension questions

- 7** Both Clinton's and Bush's CQ ratings collapsed when their party lost control of Congress in mid-term elections.
- 8** A president's CQ rating will be high if he avoids taking a clear position on controversial legislation.

The art of persuasion

- 9 a** Circumstances that might benefit a president in his dealings with Congress are: personal ties with members of Congress; large margin of victory in presidential election; Congress controlled by president's party and high level of party unity; high public approval ratings.

- b** Tactics that a president might employ in his dealings with Congress are: building coalitions of supporters in Congress; mobilising interest groups in support of legislative agenda; choosing executive colleagues with congressional contacts; developing personal ties with members of Congress; campaigning on behalf of members who are facing re-election.

The imperial presidency

- 10 a** The 'New Deal' established an enhanced role for federal government in economic management and in creating and maintaining a welfare state.
- b** The 'Truman Doctrine' established an enhanced role for the president in foreign policy: it established America's role as the world's policeman and laid the foundation for increased intervention overseas.
- c** The 'Gulf of Tonkin Resolution' essentially gave President Johnson the freedom to pursue the Vietnam War without the need for congressional approval.
- d** The term 'imperial presidency' refers to a president with unchecked power — particularly in foreign policy.

The imperilled presidency

- 11 a** The Watergate crisis and defeat in Vietnam damaged the institution of the presidency in the 1970s.
- b** Congress attempted to restrict the scope for unchecked presidential power in foreign affairs through the Case-Zablocki Act, which required the president to inform Congress of foreign policy decisions; the War Powers Act which required congressional authorisation for the deployment of troops; the Budget and Impoundment Control Act which restricted the scope for financial manoeuvres by the president; and more generally by increased congressional oversight.

'Two presidencies'

Extension questions

- 12** There may be fewer checks on the president in foreign policy since the Founding Fathers simply did not appreciate the scope of foreign policy in the eighteenth century, or the central role that the USA would develop in global affairs as the world's superpower. Also, because Congress — with 535 members — is not a suitable forum for making foreign policy decisions which often require a rapid response; and anyway, members of Congress are less interested in foreign affairs since their re-election chances are more connected to domestic policy.
- 13** Congress may have failed to invoke the War Powers Act simply because it agreed with George W. Bush's actions. More likely it failed to act because it did not want to appear unpatriotic: to put the troops already deployed in danger or to give a boost to the 'enemy'. Since this argument is always likely to be valid to a greater or lesser extent, this suggests that the War Powers Act does not provide an effective check on presidential power as commander-in-chief.

Signing statements

- 14 a** Signing statements are statements issued by the president when passing a bill into law, in which he is able to assert his reservations about part of the legislation, or even to assert how the legislation should be interpreted and applied.
- b** A line-item veto allows the president to veto certain clauses in a piece of legislation without vetoing the entire act.
- 15** Bush was keen to issue signing statements because in effect it gave him legislative power, and undermined the checks which Congress attempted to place on him — in the examples given, he effectively chose to ignore the law regarding the number of troops in Columbia, as well as the law banning ‘harsh interrogation techniques’.
- 16** The ABA opposes the use of signing statements since it views them as potentially undermining the rule of law: in effect Congress is passing laws, but the president, through the issuing of a signing statement is choosing not to be subject to it. The ABA also fears that it undermines the separation of powers since Congress loses ultimate legislative authority: it is unable to override a presidential signing statement in the same way that it can override a presidential veto.

Extension question

- 17** The line-item veto was declared unconstitutional because it blurred the separation of powers — by giving the president the power, in effect, to write his own version of legislation.

Assessing the Bush Presidency

- 18 a** Statements supporting the idea that there was a big increase in presidential power under Bush: 1, 2, 6, 7, 8, 10, 12, 13.
- b** Statements which provide evidence of Bush’s weakness: 3, 4, 5, 9, 11, 14, 15, 16, 17.
- c** Statements which might be used to suggest an erosion of rights under Bush: 6, 7, 10, 12. With a little bit of explanation and extension, statements 1, 2, 8 and 17 might also be discussed. However, statements 15 and 17 could be viewed as evidence of the Supreme Court effectively upholding rights and statements 3 and 4 could be seen as the electorate holding President Bush to account for the perceived loss of rights.

The vice-presidency and Dick Cheney

- 19 a** The constitutional powers of the VP are to preside over the Senate, to cast a deciding vote in the Senate if the vote is tied, to count and announce the result of the electoral college vote, to assume the role of the president if the office becomes vacant and, since the 25th Amendment, to become acting president if the president becomes disabled.
- b** The role of the VP has grown over time because the role of the president has increased, particularly in foreign policy, and he has turned to the VP for help; because there has been an increase in the number of presidents with no experience of federal government; and because longer and more expensive election campaigns have given running mates an important electioneering and fundraising role.

- c** Dick Cheney played an enhanced role as VP by providing connections within Congress that enabled Bush to get his legislation passed; by drawing up a shortlist of Supreme Court justice nominees and personally vetting them; by coordinating the emergency response on 9/11; by orchestrating the concentration of executive power that followed 9/11; and by effectively becoming the spokesperson for the administration on important policy areas.

Extension question

- 20** The Cheney vice-presidency might be a ‘one-off’ since: he was unusual in being a VP with no presidential ambitions and therefore unthreatening to Bush’s position; he was so much more experienced than Bush; the events of 9/11 gave him an unusual environment in which to operate. Such a group of circumstances is not likely to be repeated.

The Supreme Court

The role of the Supreme Court

- 1 a** The term ‘judicial review’ describes the power of the Supreme Court to assess whether any law or action undertaken by federal or state governments meets with the requirements of the Constitution — and to strike it down if it does not.
- b** The power of judicial review was established not by the Constitution but by the *Marbury v Madison* ruling of 1803.
- c** Argument in favour of judicial review: it enables the judiciary to check the power of the other two branches of government adequately. Argument against: it puts political power into the hands of unelected judges at the expense of elected political officials.

Extension question

- 2** Justices are appointed for life rather than elected for fixed terms because this means that they are not accountable either to the public or to the politicians who appointed them. This assures their independence and gives them the freedom to rule on cases solely on judicial grounds rather than having to consider political factors.

Supreme Court procedures

- 3 a** An appellate court can only hear appeals passed to it from lower courts, whereas original jurisdiction gives the power to hear original cases for the first time.
- b** The ‘rule of four’ means that no appeal is heard unless at least four of the Supreme Court justices agree to it.
- c** The majority and minority opinions give details of why justices came to a particular conclusion. This can give an indication of how they might be likely to rule on future cases.

The decision-making process

- 4 a** Strict constructionism implies a fairly literal and narrow interpretation of the Constitution, and in particular is likely to be keen to protect states' rights. Loose constructionism attempts to interpret how the framers of the Constitution intended it to be applied to changing social and economic circumstances.
- b** Judicial activism refers to Supreme Court justices who are willing to shape public policy through their rulings rather than always adhering to precedent. Judicial restraint implies that the job of the Supreme Court is merely to interpret the Constitution neutrally in deciding cases.
- c** *Amicus curiae* briefs are papers that are submitted by interest groups and other interested parties such as businesses and the administration, in an attempt to influence the Supreme Court in a particular decision. They can provide useful expertise as well as a reflection of public opinion.

Extension question

- 5** The Warren Court was particularly loose constructionist in its interpretation of the constitution as well as being judicially active and eager to shape public policy in a liberal fashion. It felt that social circumstances had changed to the extent that it did not feel bound by the earlier *Plessy v Ferguson* ruling. Its ruling was in line with shifting public opinion at the time. It might also have been better informed on the issues than the earlier Fuller Court. In particular, the NAACP were active in the 1950s and are likely to have sent many *amicus curiae* briefs in support of their arguments.

Interpretation of some key Supreme Court rulings

- 6 a** The table should be filled in as follows:

Brown v Board of Education of Topeka (1954): JA/LC

Engel v Vitale (1962): JA/LC

Gideon v Wainwright (1963): JA/LC

Swann v Charlotte-Mecklenburg Board of Education (1971): JA/LC

Furman v Georgia (1972): JA/LC

Roe v Wade (1973): JA/LC

Bush v Gore (2000): JA/LC

Casey v Planned Parenthood (1992): JR/LC

Van Orden v Perry (2005): JR/SC

- b** On the basis of the cases presented here, we would conclude that both the Warren and Burger Courts were judicially active (passing many key rulings that ignored precedent and effectively shaped future public policy) and loose constructionist (overriding the power of the states to determine their own policy in many areas of 'civil rights'). Interpretation of the philosophy of the Rehnquist Court is more ambiguous: with the exception of *Bush v Gore* it seems to be judicially restrained — passing rulings that maintain the status quo.

The *Van Orden v Perry* ruling seems to be ‘strict constructionist’ in that it is concerned with upholding states’ rights, whereas the other two rulings limit states’ rights.

Limitations to Supreme Court power

- 7 a** The Supreme Court is very powerful in that it can strike down as unconstitutional not only laws but the actions of government. Its rulings can only be overturned by constitutional amendment and this rarely happens. The Court has authority and prestige, hence its rulings are rarely challenged by those who disagree with the decision and because they are not elected, Supreme Court justices are able to make controversial decisions.
- b ii** Since its legitimacy depends upon its public credibility, the Supreme Court cannot, in the long run, disregard public opinion.
- iii** Judges themselves often exercise a degree of ‘judicial restraint’, arguing that the court should defer to the elected branches of government.
- iv** The Supreme Court is bound by the principle of precedent — *stare decisis*.
- v** Congress could, if it wished, alter the number of justices on the Supreme Court in order to alter the balance of the Court.

The Supreme Court appointment procedure

- 8** Supreme Court justices are appointed by the **president** after a hearing in front of the **Senate Judicial Committee** and confirmation by the **Senate**. The support of only a simple **majority** of senators is required although there is the opportunity to **filibuster**. There is an expectation that nominees will have extensive judicial experience at either **federal** or **state** level. **Pressure groups** are likely to campaign heavily in support of or in opposition to a nomination. **Geography**, **race** and **gender** are all important considerations and a degree of **balance** is usually sought. There is at present one **black** Supreme Court justice and one **female** justice. Appointments are overtly **political**, almost all being drawn from the **party** of the **president**. Attitude to **abortion** seems to have become the ‘litmus test’ for nominees.

Important Supreme Court nominations

- 9 a** The failure of Harriet Miers’ nomination suggests that judicial experience is very important — she had none. However, Bork’s failure to be confirmed by the Senate suggests that judicial experience in itself is not enough to ensure success, since he was judged to be ‘well qualified’ by the ABA. Both Roberts and Alito had a strong judicial record.
- b** The candidate’s ideology, particularly regarding issues such as abortion, seems to be very important. Bork was rejected largely because he was perceived as excessively conservative by Democrats in the Senate. In contrast, with no judicial record, both conservatives and liberals were concerned about Miers’ ideology. Alito managed to play down his conservative ideology during Senate hearings.
- c** The ‘balance of the Court’ and who a nominee is replacing seem to be important. Roberts was relatively uncontroversial because, although conservative, he was seen as a ‘straight

swap' for Rehnquist. However, Miers and Alito were more controversial because they were replacing the 'swing justice' Sandra Day O'Connor, and could therefore potentially change the balance of the Court. Alito's appointment suggests that 'diversity' does not matter as much as is usually assumed, since it rather distorted the Court in terms of the number of Roman Catholics, the number of Italian-Americans and the number of women.

- d** Party composition in the Senate seems to be important, since in recent confirmations, Senators have displayed a tendency to vote along party lines, particularly where the ideological balance of the Court is at stake. The Alito confirmation was almost a complete 'party vote'. Roberts had the support of all Republican senators and half of the Democrats.

The Roberts Court: a conservative revolution?

10 The boxes should be completed as follows:

Liberal	Moderate conservative	Conservative	Extreme conservative
Stevens			
Souter	Kennedy	Roberts	Scalia
Ginsburg		Alito	Thomas
Breyer			

Some key rulings by the Roberts Court

11 a Liberal rulings in the table are: *Gonzales v Oregon*; *Hamden v Rumsfeld*; *Panetti v Quarterman*; *Boumediene v Bush*.

Conservative rulings in the table are: *Gonzales v Carhart*; *Parents Involved in Community Schools Districts v Seattle School District No. 1*; *Morse v Frederick*; *Baze v Rees*; *District of Columbia v Heller*.

- b** There seems to be no clear direction to the Roberts Court in its early years, with both liberal and conservative rulings being passed on 'culture wars' issues such as abortion, assisted suicide, guns and the death penalty. The Supreme Court seems to be split, with 5:4 rulings being very common and Kennedy passing the casting vote (although this is not clear from the table). A notable exception is the *Baze v Rees* ruling where some of the liberal justices found in favour of the death penalty. The Supreme Court dealt significant blows to Bush's 'war on terror' with the *Hamden v Rumsfeld* and the *Boumediene v Bush* rulings.

Federalism

The nature of federalism

- 1 a** The federal system of government was designed as a 'middle ground' between those at the Philadelphia Convention who wanted a strong nation state to provide authority, economic

strength and international power (the federalists) and those who wanted power to remain with the states (the anti-federalists).

- b** Enumerated or delegated powers are those given, under the Constitution, to federal government, e.g. coining money, maintaining troops, negotiating treaties and taxing imports.
- c** Reserved powers are those retained by the states; according to the 10th Amendment they are all powers that are not specifically granted to federal government.
- d** States' rights are protected under the Constitution by the requirement that any amendment be ratified by three-quarters of states, by equal representation in the Senate, and their role within the Electoral College for choosing the president.
- e** The term dual (or layer-cake) federalism refers to a system, as envisaged by the Founding Fathers, whereby there is a clear distinction between powers held by federal government and powers held by the states.
- f** The 'elastic clause' is the end of Clause I of the Constitution. It gives the federal authorities the power to 'make all laws which shall be necessary and proper for carrying into execution the foregoing powers'. Since what is 'necessary and proper' to carrying out their delegated powers is open to interpretation, this has allowed the extension of federal government beyond that envisaged by 'dual federalism'.

The growth of federal government

- 2** In the 1930s, dual federalism proved inadequate to meet the needs of the **Great Depression**. Roosevelt's **New Deal** saw a massive expansion in the role of **federal government** in areas such as welfare and education provision that were traditionally within the remit of the states. This was seen as destroying the system of dual federalism and heralding a new era of cooperative, or marble-cake federalism, within which the traditional distinction between the powers of federal and state governments was much less clear.

In the 1960s President **Lyndon Johnson** went even further in expanding the scope of **federal government** with his **Great Society Programme**, which included such initiatives as the 'War on Poverty Scheme'. Johnson talked of creative federalism: a more active form of cooperative federalism. Federal aid to states more than quadrupled between 1960 and 1978 and much of this extra aid was in the form of **categorical grants**, which were given to the states for a specific purpose; the states had no independent say in how the money was spent.

In addition over this period, several **Supreme Court** rulings further enhanced the federal government's role. **Loose constructionist** justices within the Warren and Burger Courts directly restricted the role of the states in order to protect the perceived fundamental rights of citizens. For example, *Brown v Board of Education* (1954) ruled that states could not pursue desegregationist policies within schools; *Baker v Carr* (1962) established that electoral districts for state legislatures had to be drawn on the basis of population; *Gideon v*

Wainwright (1963) ruled that defendants who could not afford a lawyer were entitled to one provided by the state in order to ensure a fair trial as required by the **6th Amendment**; *Furman v Georgia* (1972) temporarily ended all existing death penalty laws; and *Roe v Wade* (1973) prevented states from stopping women having legal abortions.

Reasserting states' rights

- 3 a i** **Federal bureaucracy** is the administrative machinery that implements the policies of the federal government.
 - ii** **Big government** refers to the extension of federal government powers beyond what was envisaged by the Founding Fathers.
 - iii** **New federalism** refers to the attempts by the Nixon and Reagan administrations in particular to limit the scope of the federal government.
 - iv** **Revenue sharing** is a system under which individual states receive a share of federal tax dollars to spend as they wish.
 - v** **Block grants** are sums of money given by the federal government to the states for the states to spend as they wish.
 - vi** **Centralising tendencies** refer to actions that serve to enhance the role of federal government at the expense of the states.
- b** Reagan furthered the cause of new federalism by reducing federal grants-in-aid as a proportion of states' overall expenditure and by replacing some categorical grants by block grants.
 - c** Reagan failed to shift responsibility for welfare schemes such as food stamps to the states, and he also shifted some power to the centre, e.g. by supporting an Act that effectively removed from states the power to set the legal drinking age.

A culture of innovation

- 4 a** *New York v United States* ruling meant that federal government could not force states to provide sites for the disposal of radioactive waste; *US v Lopez* ruling took a more restrictive interpretation of the interstate commerce clause than in the past and concluded that federal government could not prohibit the carrying of guns within 1,000 feet of a school; *Kimel v Florida Board of Regents* ruled that age discrimination cases could only be pursued at a state level.
- b** A reduction in unfunded mandates meant that states were imposed upon less often to provide funds to undertake actions ordered by federal government; states were given more independence, for example in deciding who should receive welfare, under the Personal Responsibility and Work Opportunity Reconciliation Act.
- c** States have asserted their independence in areas such as taxation, education (e.g. school vouchers in Vermont), crime prevention (e.g. zero tolerance in New York City, harsher penalties in Texas), gay marriage (legal in Massachusetts), healthcare (e.g. universal private insurance in Massachusetts) and assisted suicide (legal in Oregon).

Extension question

5 Fundamentally, although the late twentieth century did see some reassertion of states' rights by the states themselves and some protection of states' rights by both the Supreme Court and Congress, there was no return to the 'dual federalism' of the nineteenth century, since not only has there been an inexorable growth of federal government since that time but there is no clear demarcation between the sphere of federal government and state government responsibilities. The cake remains very much 'marbled' as opposed to 'layered'.

Federalism under George W. Bush

- 6 a** A continuation of independent and innovative policies by the states is shown by statements 3, 6 and 10.
- b** Economic problems forcing an increased role for federal government is shown by statements 4 and 9.
- c** Increase of federal government role in response to 'war on terror' is shown by statements 1 and 5.
- d** President Bush increasing the role of federal government in order to achieve his policy priorities is shown by statements 2 and 8.
- e** Supreme Court rulings enhancing the role of federal government is shown by statements 7 and 8.

Arguments for and against states' rights

7 The table should be ticked as follows: Statements that support the case for states' rights (SR) are: a, b, f, h and i. Statements that support the case for more centralised government (C) are: c, d, e, g and j.

Extension question

- 8** Critical evaluation may take many forms, so the following are merely suggestions:
- a** Improvements in communication technology mean that Washington DC is more accessible than ever before.
 - b** Policy experimentation — such as policy trials — is possible within a unitary system.
 - c** Federalism, by allowing for the satisfaction of different cultures and interests, is as likely to stabilise as to destabilise the union.
 - d** Even following the civil rights amendments, the federal government failed to enforce their adherence for many years.
 - e** Individual states such as California have arguably done more to initiate environmental protection in recent years than has the federal government.
 - f** The checks and balances within the federal branch of government have always provided adequate protection against tyranny.
 - g** Citizens are actually pretty clear about which issues are the responsibilities of federal and state governments.

- h** Differing cultures and traditions have in the past been used as an excuse to subjugate fundamental human rights — e.g. the Jim Crow Laws.
- i** The USA risks pluralist stagnation, and in fact at all levels of government certain interest groups are always likely to be more powerful than others.
- j** It is an individual's right to choose not to vote. Turnout in federal elections is not always particularly high either.



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