

Examiners' Report
June 2013

GCE Government and Politics 6GP04 4C

Edexcel and BTEC Qualifications

Edexcel and BTEC qualifications come from Pearson, the UK's largest awarding body. We provide a wide range of qualifications including academic, vocational, occupational and specific programmes for employers. For further information visit our qualifications websites at www.edexcel.com or www.btec.co.uk.

Alternatively, you can get in touch with us using the details on our contact us page at www.edexcel.com/contactus.



Giving you insight to inform next steps

ResultsPlus is Pearson's free online service giving instant and detailed analysis of your students' exam results.

- See students' scores for every exam question.
- Understand how your students' performance compares with class and national averages.
- Identify potential topics, skills and types of question where students may need to develop their learning further.

For more information on ResultsPlus, or to log in, visit www.edexcel.com/resultsplus. Your exams officer will be able to set up your ResultsPlus account in minutes via Edexcel Online.

Pearson: helping people progress, everywhere

Pearson aspires to be the world's leading learning company. Our aim is to help everyone progress in their lives through education. We believe in every kind of learning, for all kinds of people, wherever they are in the world. We've been involved in education for over 150 years, and by working across 70 countries, in 100 languages, we have built an international reputation for our commitment to high standards and raising achievement through innovation in education. Find out more about how we can help you and your students at: www.pearson.com/uk.

June 2013

Publications Code UA036101

All the material in this publication is copyright
© Pearson Education Ltd 2013

Introduction

On the whole, this paper worked much as expected. Question 1 proved surprisingly testing and question 7 surprisingly unpopular, but all of the questions allowed both stronger and weaker candidates to show what they could do. The main reason why some candidates failed to do themselves justice was- unsurprisingly - insufficient attention to the wording of the questions and, in a number of the questions on the paper, there was a key word or term which had to form the focus of the answer.

A number of other lessons emerged, most of which will be familiar to readers of previous reports. Introductions to short answers are almost always a waste of time; candidates typically list the points which they then go on to make at greater length later on, and the same point cannot be rewarded twice. It is unwise to rely on one textbook; however good one book may be, it can only offer one perspective on the subject and candidates need a variety of sources and approaches to draw on, from which they can synthesise their own understanding. A number of students continue to attempt to frame issues both in short and long answers around liberal and conservative perspectives, when they would have almost always been better off directly engaging with the question. Questions 6 and 8 raised an issue for centres where the teaching of a single unit is shared; these questions both ranged across all four units of the specification, and teachers need to be aware of possible overlaps and students made to think broadly, rather than just about the separate topics.

Question 1

The term 'principles of the constitution' is an explicit and central part of the specification, but this question proved surprisingly testing. Some candidates seemed never to have come across the term before, and their answers often consisted of a list of the contents of each article of the constitution. The separation of powers and checks and balances were the two principles most frequently discussed, but they were frequently confused and conflated. Only the clearer-thinking candidates were able to explain firstly, that the separation of powers entails separate institutions for each of the three branches of government, run by separate groups of officials, and secondly, that the introduction of checks and balances undermines this principle by giving each branch a share of the power of the others. Thus the president's veto over congressional legislation gives him (or her) a role in the legislative process and takes away part of Congress's separated legislative power. The distinction between a principle and a feature of the constitution was frequently not appreciated, and features such as the Electoral College could receive very little reward. Some answers cited just one principle, usually the protection of individual rights, and then devoted several paragraphs to it with different examples; where no other principle was mentioned at all, such answers had to remain in Level 1. Anti-majoritarianism as a principle, evident in such features as an unelected Senate and the indirect election of the president, was not widely known; for anyone who has not come across it, the introduction by Isaac Kramnick to the Penguin edition of 'The Federalist Papers' can be recommended as background to the history and thinking behind the principles of the constitution. Stronger answers could nominate three or four principles, explain their origin and purpose, and how they are embodied in the constitution.

The Constitution is a document that underlies the workings of the US Political System. It was established at a ~~assembly~~ at the Philadelphia Convention and replaced the Articles of Confederation.

One of the main principles of the Constitution is that it sets out the separation of powers. This is the idea that the three branches of government: the executive (President), Congress the legislative (Congress) and the Judiciary should be kept separate in order to prevent one branch becoming too powerful. Due to the separation of powers there must also be a separation of personnel meaning that no person can be a member of more than one branch. Due to this, Barack Obama had to resign from Congress when he became President. Similarly, Elena Kagan had to resign from the Cabinet ~~from~~ Executive upon her appointment to the Supreme Court.

Another principle of the ~~Supreme~~ Constitution is the system of checks and balances. In this way, checks and balances make sure that each of the three branches of government do not exercise excessive power and in fact balance each other's power. An example of a check on Congress by the Executive is the President's power of veto. The veto is a tool that the President uses when he does not approve of a set of legislation and he can return it to Congress with a message outlining his objections. Congress balances out this check by having the power to override this veto in that they can overturn the veto with a two thirds majority in both houses in favour. Due to this ~~principle~~ principle, the Constitution and the American political system is often better described as a system of 'shared powers' rather than separation of powers as that many of the powers are interdependent.

A further principle of the US Constitution is that it promotes its federalist nature. Articles I, II, and III outline the powers of the three branches of government and the tenth amendment outlines the states' powers. This principle is a compromise between the two previous workings of government - the unitary system under British rule and the confederative nature outlined in the Articles of Confederation. This principle involves the idea of decentralising and disperses political power between the states to avoid a centralisation or concentration of power in the federal government. The idea of federalism outlined by the 10th Amendment is consistently referred to particularly by Republicans

when they feel the Central Government is intervening too much in state power.

A final principle of the constitution is the idea that rights should be protected. This was a principle that stemmed from the views of the anti-federalist people who feared the central government exercising too much power on the people and breaching their rights. Through the amendment process the bill of rights was created and the source of constitutional rights mainly comes from here. Examples are the second amendment (the right to bear arms) and the first amendment (which gives the people freedom of association, religion, speech etc.).



ResultsPlus

Examiner Comments

This is an impressive answer. It explains four of the main principles of the constitution very clearly; it not only understands the difference between separation of powers and checks and balances but explains the tension between them, and links this tension to the much quoted phrase, 'separated institutions sharing powers'. It is difficult to imagine that this question could be answered any better and it was awarded full marks, 15/15.



ResultsPlus

Examiner Tip

Structure - this answer is an excellent model to follow to structure a short answer: four clearly separated paragraphs, each dealing with a different point. It instantly conveys to the examiner that you know what you are doing and thinking clearly.

Question 2

This question was a case study in the importance for candidates of looking at the actual words in the question rather than the ones they wish were there. The key words in this question were 'assess' and 'factors' but a significant number of candidates simply ignored them and wrote out their prepared answer on the role of the vice-president. Often these answers could not be placed above Level 1. The key skill to success in exams is adapting one's knowledge to the question on the paper, and examiners were keen to reward candidates who showed they were thinking on their feet, even when some of the 'factors' cited were not particularly plausible. Those most frequently discussed included the expansion of government and presidential responsibility, the political experience and expertise of the vice-president and president, and the vice-president's electoral aspirations. A factor which could receive only limited reward though was the importance of a balanced ticket, as it really applies much more to a running mate than a vice president, and would have been more relevant in a unit 3 answer; in this connection, the qualities of Sarah Palin and Paul Ryan were sometimes discussed but since neither has yet been vice-president, points relating to them could not be rewarded.

The role of the Vice President is affected by various factors. Most importantly in a modern context is ~~that~~ the experience of the President. This is because outsider Presidents to Washington D.C., such as Clinton and G.W. Bush have been seen to depend more on their Vice-President for advice in policy-making and pushing through legislation. ~~Also~~ Indeed, Cheney organised the war on terror, and negotiated the Military Commissions Act with Congress 2006. Biden has also had far more experience than Obama, so was seen as a highly important negotiator to push Obamacare through Congress 2010. This was because whereas Obama had only been in the Senate a few years, Biden had served as the Chairman of the Judiciary Committee, so ~~he~~ knew more members and could persuade them more easily. However, unlike Cheney, Biden can be seen as clearly only pushing through Obama's policy rather than his own. Thus although experience can make a President powerful, other factors depend on how much of this is independent power from the President.

indeed, what really made Cheney powerful was that he was a close friend of Bush's ~~father~~ father, and he also did not have any ~~pre~~ presidential aims of his own. This means that Bush ~~confided~~ confided in him more and could trust him not to be a political rival. It also meant Cheney ~~he~~ was not cautious not to give himself a bad reputation that might affect a ~~pre~~ Presidential prospect. ~~This~~ This was exacerbated by opportunity; Cheney was the main senior White House official in D.C. ~~at~~ at the time of 9/11 and ordered Bush not to return. He was then able to organise the 'war on terror' and introduce controversial legislation, such as over detentions to Guantanamo Bay which no other Vice-President had the opportunity for. For example, Clinton's Vice-President, Al Gore did not have these opportunities and also wanted to run for President 2000, limiting the controversial areas with which he would want to be affiliated. Thus, the fact that neither he nor Biden have had nearly as much power as Cheney it shows that it is events and unusual circumstances and relationship with the President (all informal factors) that essentially determine his power.

A Vice-President obviously becomes most powerful if the President dies or resigns, as then they become President, such as Johnson or Ford. Thus as John Adams noted 'I am nothing; but I may be everything'. This is the way in which a President's Vice-President can become really powerful, but again is determined by events, making this the most significant factor.

Finally, this is however the ~~for~~ most significant formal power that can give a Vice-President influence.

There are other formal powers that may give the Vice-President influence. For example, he votes if the Senate is tied. This is more important than his largely symbolic role as Presiding Officer of the Senate. ~~However~~ Cheney voted for Bush's tax cuts in 2001. However, this depends on how partisan and split Congress is, and Biden has not yet voted. This again demonstrates that it is essentially external events and factors that determine power, although personality and opportunity are important. This power is likely to be on the decline, as filibusters appear more common when the Senate is divided, leading to a bill being killed rather than the Vice-President voting. Indeed, the 112th Congress had the most filibusters ever.

(Total for Question = 15 marks)



ResultsPlus Examiner Comments

This is another very good Level 3 answer. What is particularly impressive is that the candidate is assessing the factors which shape the role of the vice-president from the outset, and there is a real sense of intelligent engagement with the question throughout. Three vice-presidents are referred to and there is an excellent range of supporting detail. It was given 14 marks.

Question 3

Any centres surprised by the appearance of three questions relating to the constitution in this paper may not have realised that the subject of question 3, 'New Federalism', is a key concept in the presidency section of the specification. Most candidates understood what New Federalism was, although a few took it to be a movement to strengthen the federal government, and there were a range of views on when it started. Often answers began with a quite detailed definition but this was not really rewardable, and the time could have been more efficiently used in directly addressing the question. As always seems to be the case with any question on federalism, some answers wanted to rehearse the story of federalism from 1787 and had too much unrewardable detail on earlier variants. A lot of answers showed accurate knowledge of revenue sharing and block and categorical grants under Presidents Nixon and Reagan, but could offer little assessment of how successful these had been in pushing power back to the states. Many candidates described the growth of the federal government under the two most recent presidents, and referred rewardably to the developments such as the creation of the Department of Homeland Security, the passage of the Medicare prescription drug benefit and the Affordable Care Act. Often though this was simply assumed to have had an impact on the power of the states, and an explicit recognition of the extent of this impact would have gained more reward.

Federalism is defined as the distribution of power between the states and federal government. New federalism was the idea of reigning in the power and control of federal government and ~~or~~ giving increasing amounts of power to the states.

It can be argued that new federalism achieved some of its goals of rewarding more power to the states. Following the Big Society Programme of the 1960's resulting Presidents all supported the reduction of the size of federal government. Nixon, Reagan and Clinton all supported the notion of new federalism and all sought to hand more power to the states. Reagan famously stated that "the states made the federal government, the federal government didn't make the states". This notion was supported by Clinton who stated that "the era of big government is over". This clearly

shows their was political support and action being taken to ensure the revival of state power.

Moreover the states where able to become financially more independant of federal government in the high point of New Federalism in the 1990's. Following settlements with tobacco companies the states recieved \$26.7 billion over the next decade. Moreover the country was experiencing an economic boom and social calm. This enabled the states to become, increasingly, financially independant of federal government.

However it can be argued that New federalism did not achieve its goal of increasing state power and independence. Despite supporting ^{new federalism} ~~the~~ union actually expanded the federal government by opening the EPA in the 1970's moreover he also imposed the first national speed limit, a visible example of the national power of federal government.

Moreover world events such as the cold war and the Oklahoma city bombings 1995 kept the president as the figurehead of national politics. Such events reemphasised the importance of the federal government over national issues and their importance in Foreign Policy.

New Federalism was also said to have ended under George Bush, who greatly expanded the remit of federal government. The "No Child Left Behind Policy" 2003

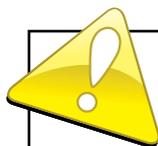
established a national curriculum and actually removed the states power to control education. Bush also created a new federal department, by the Homeland Security Agency, and he increased federal spending by 37%.

Overall we can see that despite gaining political support and making financial advances New Federalism essentially failed its main objective of reducing the power of federal government and increasing that of the states.



ResultsPlus Examiner Comments

This answer illustrates some of the problems candidates had with this question. Firstly, although reference is made to the intentions of three presidents who supported the principles of New Federalism, little evidence is cited to show how far they were successful. Secondly, the focus throughout the answer is on the federal government rather than the states themselves; it would not be impossible presumably for the federal government to expand in ways which had very little impact on the states. Nevertheless, a sound answer which was awarded 10 marks.



ResultsPlus Examiner Tip

Key concepts - New Federalism is a key concept of the specification and any of the key concepts could be the subject of a question, so they are well worth revising.

Question 4

This was probably the most straightforward question on the paper; it offered candidates few opportunities to trip themselves up, and most could cover three or four factors with some measure of credible evidence. That said, a small number took it to be a unit 3 question, and focused on factors influencing voters when they vote for congressional candidates, rather than the factors which influence the members of Congress themselves. The most commonly cited factors were pressure groups, party loyalty, district or state interests and presidential persuasion; a number of candidates discussed personal beliefs as an influence, but they often found it difficult to separate it from other factors, or give a convincing example; Democratic support for the Stupak-Pitts amendment might be considered to be one. As was true for all questions, the strongest answers not only presented three or four factors but could also assess the extent of their influence. This could be done in a number of ways, for example looking at the extent to which the influence of a factor has changed over time (the growth of partisanship was often discussed in this way), comparing different factors to show which was more important, or comparing different policy issues or political scenarios, to show how different factors may be more or less important in different situations. The recent Senate vote on the Manchin-Toomey amendment provided a good example of the tension between party and state loyalties. Most answers focused on voting on legislation, but some made rewardable reference to Senate votes on Supreme Court nominees, which certainly provided evidence of increasing partisanship.

- PLAN:
- ① Interest groups
 - ② political party - partisanship
 - ③ constituents
 - ④ president - "power to persuade."

Congress is bi-cameral and is made up of the House of Representatives⁽⁴³⁵⁾ and senate. They are the legislative body of the US federal government. There are 435 congressmen and 100 senators within congress.

The first factor that influences the way members of congress vote are interest groups who are a group of like minded individuals that have a common goal. Interest groups can influence congress by helping endorse them, fund their election campaigns through Political action committees (PAC's) or help them with an important piece of legislation. The revolving door syndrome which is when ~~the~~ senators and congressmen are offered a

job by a lobbying firm, this is seen beneficial to members of congress so they will stay loyal to that pressure group e.g. NRA National Rifle Association supported by republicans. Also Abrahamoff a famous lobbyist said "congress is the joint money can buy" directly stating that members of congress would do anything support or reject a bill if it meant financial gains.

The second factor which influence the way in which members of congress vote are political parties. As the US is a two-party system consisting of Republicans and Democrats. House members are less likely to toe party lines as they are elected every 2-years however, the ~~sensates~~ ^{sensates} which are elected every 6-years are likely to show partisanship and seem united. Those members of congress that may want promotion can be seen to show partisanship.

The third factor which influence ways in which members of congress vote are constituents. This is especially true for the congressman who are elected every 2-years so need the support of the electorate more frequently than the senators. Also this encourages pork-barrel politics from congressmen which is getting legislation passed which will support that congressional district.

The fourth influence on the way in which members of congress vote is by the president - chief of executive. He uses

his "power to persuade" on members of congress.

All these factors have a major influence on the way members of congress vote



ResultsPlus

Examiner Comments

This is a very typical mid-Level 2 answer. There are four valid points and some degree of explanation and development. On the debit side, there are very few examples; there is a lack of clarity in places and the candidate wastes time with their introduction and definition of an interest group. It was awarded 9 marks.



ResultsPlus

Examiner Tip

Introductions waste time in short answers, it is much more productive to focus directly on the question.

Question 4

There are many factors which influence voting in congress as, unlike in the UK, the US do not operate as ~~strict~~ strict whipping systems allowing more freedom in voting patterns.

Firstly, parties ~~do~~ influence voting in Congress. Although in the past parties have been very decentralised and bipartisanship common, recently there has been a greater shift towards partisanship. Indeed on votes for confirmation a clear pattern can be seen between republican senators voting for ~~reput~~ conservative nominees and democrat senators voting for liberal nominees. In addition when a party is a minority in either house, parties play a much larger role in their voting behaviour than if they are a majority.

However parties are not the only factor, as can be seen in the recent vote on background checks on gun ownership where Max Baucus, ~~not~~ along with 4 other senators, swung the vote against its passage by voting out of party lines. He has from a solid red state and is thus under pressure from his constituents to vote in a certain way. Indeed last week a ^{Congressman} ~~Senator~~ stated that he would 'much rather vote ~~or~~ for the desires of his district than his party'. The high incumbency rates of both houses (90% in senate, 80% in House) and the presence of safe and gerrymandered

states means that many congressmen only face a challenge in primaries. Consequently, they wish to make their primary voters happy and are thus more likely to vote in line with their state's desires. This can also be seen in cases of pork barreling, ~~where~~ such as the Bridge to Nowhere in Alaska, where Congressmen appear to value their state's needs over national interest.

Pressure groups may also affect voting in Congress as they are often large funders of individuals' campaigns. Consequently, pressure groups such as the NRA have a strong influence over how individuals vote.

Public opinion also comes under this category, and congressmen and senators may be influenced by this. Similarly, the President can appeal on his weekly radio broadcast to urge people to encourage their representatives to vote in a certain way and his ~~use~~ ultimate threat of veto can change how members of Congress vote.

In conclusion, the most significant factors affecting votes of members of Congress are parties (particularly more recently), the views of their region/geographical influences, pressure groups and presidential power of persuasion. However, it could be argued that members, particularly those members who only serve 2 year terms, are most ~~to~~ influenced

by region when voting in Congress



ResultsPlus

Examiner Comments

The strengths of this answer are the range of factors it discusses, and, for a couple at least, the depth of its analysis. The point on the second side about gerrymandered districts (the candidate makes a slip and writes states) and the need to please primary voters is particularly well made. There are places where some well-chosen evidence would have added considerably to the answer, for example in the discussion on confirmation votes, but overall a good answer; it was awarded 12 marks.



ResultsPlus

Examiner Tip

Recent evidence - always try and support each point you make with evidence, and the most recent evidence is usually the strongest. The point this answer makes about confirmation votes is a good one, but it would have been strengthened by reference to the votes for President Obama's most recent nominees to the Supreme Court.

Question 5

Nearly all candidates were able to identify the nature of judicial review, although it sometimes only emerged through the course of the discussion on the controversy surrounding it, rather than from the initial definition. In fact a number of candidates decided against providing a definition at all which, since the question explicitly asked for one, was a poor strategy. Some strong answers pointed out that although judicial review often involves federal or state institutions, constitutional questions can also be thrown up by cases involving non-governmental parties, as was the case with *Snyder v Phelps*. Most candidates were able to adapt their knowledge to the notion of controversy, and the most popular factors credited with inciting controversy were the self-given nature of judicial review, the extent of the power of an unelected court, its quasi legislative function, the use of judicial review to promote an ideological agenda, and the challenge to the legitimacy of the court when earlier decisions were overturned. Some candidates unrewardably discussed ways in which judicial review might *not* be considered controversial, and this highlights again the need to think through exactly what each question is asking. Weaker answers simply listed judgements and explained why these were controversial; while this approach was not unrewardable, an explicit link to judicial review would obviously have been stronger. Somewhat similarly, some answers drifted off into a discussion of judicial philosophies, again with insufficient direct connection to the controversy about judicial review. Only the occasional candidate confused judicial review with judicial activism.

Plan - J.D. - ^{Marbury v. Madison} interpret const. → become too political.
- takes powers away from gov't

Answer

Judicial review is the process/ability that the Supreme court utilises, of declaring an act or legislation unconstitutional. It is ~~is~~ consider controversial, firstly, because it ~~is not a p~~ allows them to be an uncheckable authority over a wide range of policy, such as: affirmative action - *Cutter v. Bollinger* (2003) / *Fisher v. Texas* (2012/13), rights of minorities - *Brown v. Board of Education Topeka* and abortion rights - *Roe v. Wade* (1973). This ability to declare actions unconstitutional also means that they interpret what the constitution means granting them potential power over the other two branches

of the Federal Government, ~~but~~ despite the fact that Federal Government was set up with a separation of powers in mind, which is controversial as it can potentially set up an 'imperial judiciary'.

~~The~~ Another reason why the power of judicial review is controversial is the fact that it is not a power granted to the judiciary by the constitution, it is not a constitutional power. The Judiciary granted itself this power in 1803 ~~with~~ in the Marbury v. Madison case, ~~and since~~ and since then has limited the other two branches of government with this self-appointed power.

Judicial review is also controversial because ~~cases~~ cases such as Bush v. Gore (2000) and Citizens United v. FEC (2010) force this unelected branch of government to enter the 'political thicket'. This is controversial as it can set up an elitist institution which dictates what the constitution means and are also unaccountable to the electorate, as they ~~do not~~ have no influence over which judge gets appointed - the Senate decides whether a nominee is appointed or not.



ResultsPlus

Examiner Comments

This is an example of a top Level 2 answer. The definition of judicial review is adequate, although would certainly benefit from more development and detail. There are three points made, all rewardable, although the explanation just lacks the clarity which would push it into Level 3. It was awarded 10 marks.



ResultsPlus

Examiner Tip

Definitions - writing out definitions is not usually an efficient use of time, but if the question explicitly asks for one, it is best to give one.

Question 6

An important word in this question is 'now', which should have alerted candidates to the need not just to consider the provisions of the constitution but how current political practice has evolved from them. A number of candidates began their answers with a reprise of their answer to question 1 which sometimes worked well but more often led them into a cul de sac. Once again, assessment was the key to a good answer; weaker answers typically explained a feature such as entrenchment, with perhaps only a single sentence at the end of the paragraph asserting that this showed a strength or a weakness, and little or no attempt to analyse *why* this was the case. The strongest answers could present a range of arguments for and against, with a good focus on changes over time. Some contemporary developments that were particularly worth discussing included increased partisanship in Congress, the rise of the President's war powers and the Supreme Court's increased politicisation. One contemporary development that was less successfully handled was the debate on the role of guns in US society in the wake of the shootings in Newtown; many candidates argued that this atrocity was in itself proof that the constitution was defective, with no recognition that the majority of Americans are supportive of gun rights and the second amendment.

The US constitution is both entrenched and codified, basically meaning it is difficult to change / amend and is written down in one single document. The constitution was drawn up by the Founding Fathers after the American War of Independence of the 1770s. After defeating the British, the Founding Fathers were worried about having 'an elected monarch' and so incorporated the separation of powers to the constitution. Due to being under British rule, the constitution also incorporated many anti-tyranny measures. This is why many of the early amendments refer to peoples freedoms such as the 1st, 2nd and 3rd. The first 10 amendments were collectively known as the Bill of Rights. Since then the country has only seen a further 17 amendments in its 200+ year history showing that the amendment process is very difficult and perhaps not even used very often anyway. There are many contrasting view points on

how the constitution should be interpreted. Generally conservatives seek a more 'originalist' view and say the constitution should be read and interpreted as it is in the original document. More liberal viewpoints suggest that the constitution was purposely made vague by the founding fathers so that it could evolve with time and be interpreted freely with changing times. This is known as 'Judicial Review'. It is the main power of the judiciary branch of government and more precisely the Supreme Court. Despite not being mentioned in the constitution judicial review allows for the Supreme Court to interpret the constitution and apply it to legal cases or declare actions of the other branches of government unconstitutional. For example, the famous Bipartisan Campaign Reform Act was actually struck down by the Supreme Court as unconstitutional which therefore allowed for campaign donors to give as much as they wanted as well as giving freedom to use 'issue ads' for or against candidates. This was the famous case of Citizens United v FEC. This shows a clear benefit as the process of judicial review allowed a solution to a problem of recent times and one which could not be imagined by the founding fathers. The Supreme Court can also block legislation or deem Congress' or the executives' actions unconstitutional. For example, when Bill Clinton was president in the 1990s the court ruled that Clinton's ~~top~~ technique of the 'line-item' veto

was unconstitutional.

A simple benefit to the US constitution is how simple ~~it~~ ~~is~~ and clear it is. All citizens have it to refer to and can each ensure that their personal rights and civil liberties aren't infringed. Problems with people not knowing their rights, like in the UK, is less of a problem in America.

Despite its difficulty the constitution can be amended but is a complicated process. Either $\frac{2}{3}$ of both Houses of Congress, or $\frac{2}{3}$ of a national constitutional convention must confirm an amendment before $\frac{3}{4}$ of the state legislatures or $\frac{3}{4}$ of the state constitutional convention must ratify it. Although difficult, it is possible and in US history has ensured many rights such as ~~to~~ ensuring the voting age is 18, women's voting and civil rights as well as the rights of minorities. It makes frivolous amendments less likely but ensures amendments require broad support.

On the other hand there are various weaknesses to the constitution. Several people feel that the amendment process is too difficult and can stop important change such as the Equal Rights Act. It also shows that even with various amendments having broad based support, they won't necessarily be passed. For example, the Flag Desecration Act and School Prayer Amendments never got passed but were proposed.

Other amendments also become 'fossilized' meaning they can't be changed easily but are also very redundant in some cases, such as the 3rd. This states that no soldier has the right to stay in homes of property owners without permission and due course.

The 2nd amendment is heavily debated due to the amount of gun crime in the US eg. Sandy Hook Massacre. However as President Obama has seen, due to the constitution and the ~~power~~ actions of powerful groups like the N.R.A Americans have the right to 'keep and bear arms'. In the eyes of some this has blocked important legislation, such as Obama's proposed ~~new~~ gun control laws.

The constitution is also not immune to wanes of popular sentiment as proved by the 18th (the imposition of prohibition 1919) and the 21st amendment (the repeal of prohibition 1933) only 14 years later. This would suggest it can be manipulated.

In conclusion, liberals tend to see the constitution as out dated and only there to protect wealthy property owners whereas conservatives see it as an opportunity ~~to~~ ~~see~~ for the Supreme Court to exert its liberal values on people. Ultimately I feel these criticisms are weak and the US constitution's strengths do outweigh its weaknesses. It's the longest surviving type of its kind and is available to change through both judicial

review and formal amendments which are important for such a country, as times are always changing.



ResultsPlus Examiner Comments

The message that emerges from reading this answer is the importance of planning. Even when a candidate's knowledge is limited, a clear structure will impress an examiner and boost the final mark. This answer gives every impression that the candidate has not thought through what they are going to say, with the result that the answer has a meandering and sometimes confused quality. There is some knowledge here but it could be deployed to better effect. It was awarded 22 marks.



ResultsPlus Examiner Tip

Plan! In the frenzy of an exam it is easy to succumb to panic and begin writing furiously as soon as you see the questions, but a couple of minutes planning what you are going to say, especially for the essay questions, are essential.

Question 7

Somewhat surprisingly, this question was not only the least popular of the essay questions but the least popular by a considerable margin. There can be few topics more central to the study of the Supreme Court than the ideological direction of the current court, and candidates are usually keen to demonstrate their knowledge of individual cases, which this question gave them ample opportunity to do. In fact, an odd feature of some answers was a desire to speculate on cases yet to be decided, such as *Fisher v Texas* and *Hollingsworth v Perry*; unfortunately, even where this ultimately proved to be correct - and at least one candidate forecast that *Fisher* would see the end of affirmative action - it was unrewardable at the time of marking. A problem at the other end was that a small number discussed cases which were decided by the Rehnquist court; *Lawrence* got several mentions, as did, more unexpectedly, *US v Lopez*. It may have been the term 'conservative activism' which deterred candidates, and certainly weaker answers tended to focus on one element only, either 'conservative' or 'activism', the majority choosing the 'conservative' element. One reason the concept of activism poses recurring problems for candidates is perhaps that it has no agreed definition; it is often used loosely in the press, and their deep disappointment with the outcome moved some conservatives, for example, to describe *National Federation v Sebelius*, endorsing the constitutionality of the individual mandate, as an activist decision. Since the verdict upheld the law at issue, which is usually what conservatives like, it is hard to see 'activist' here as anything other than a term of abuse; if activism is to mean anything, it must entail *action*, and in the context of the Supreme Court cases, that has to be overturning something, most typically state or congressional legislation, or one of the court's own precedents. Probably that is about as far as an objective definition can go; if candidates had then this combined with conservatism, as a few did, to make conservative activism equate to overturning with conservative outcomes, they would have had a workable definition to assess the record of the Roberts court. At the time candidates were writing, the key decisions the strongest answers discussed were, on the conservative activist side, *Citizens United* and *Heller*, and on the non-conservative activist side, *National Federation v Sebelius*. Now that they have actually been decided, this summer's decisions in *Shelby v Holder*, *US v Windsor*, *Hollingsworth v. Perry* and *Fisher v Texas* will be further evidence for candidates to use in future Supreme Court answers.

Judicial activism is an approach to judicial decision making that emphasizes the Supreme Court and the judicial branch as an equal co-branch of government in America.

Unlike the classical judicial activism associated with the Warren and Burger courts that saw decisions such as *Brown v. Topeka* (1954) that ended segregation and *Roe v Wade* (1973) that gave the constitutional right to abortion, the most recent courts of ~~Roberts~~ Rehnquist and Roberts from 2005 has arguably shown a revival of conservative activism in the judicial branch.

Conservative ~~activist~~ judicial activism is an approach that establishes the Supreme Court as a co-equal branch of

government however in the decisions there appears to be an underlying conservative agenda that ~~is~~ could be explained by the ideological balance of the Roberts court of conservative originalists.

Arguably the Roberts Court acted in a conservatively active manner in the *DC v. Heller* (2008) case, whereby the Supreme Court ruled it is an individual's right to bear arms and not just that of well-regulated militia as stated in the 2nd amendment, overturning a Washington DC government policy banning concealed weapons. This is described as judicial conservative activism because the Roberts Court went against legislation made by another branch of government that is politically accountable to the voters. This ~~case~~ ^{decision} also promotes the conservative viewpoints of pressure groups and think tanks such as the National Rifle Association that believes "the way to stop bad guys with guns is good guys with guns". A viewpoint that is not necessarily shared with liberals in America today.

The Roberts Court has also arguably seen a revival of conservative activism illustrated by the 2009 case of *Ricci v. DeStefano* that prohibited affirmative action in the workplace. This case saw that minority groups couldn't be promoted instead of white people just because they are 'disadvantaged', a viewpoint that is typically conservative in America. This case saw the balancing of minority rights with majority rights and effectively chipped away at affirmative action in the US without explicitly declaring it unconstitutional, suggesting the Roberts Court has seen a revival of conservative activism.

Another example of conservative activism in the Roberts Court, that has been in place since 2005 is when Chief Justice Roberts was appointed by George W. Bush, is the

decision of *Citizens United v. FEC* (2010). This case saw the Supreme Court declare elements of the McCain - Feingold Act (2002) unconstitutional as violating the 1st amendment meaning wealthy, powerful interest groups could form Super PACs and possibly influence the outcomes of elections. Dworkin and Obama himself declared this decision as "profoundly undemocratic for American society", illustrating the conservative possible conservative agenda behind the court evident by the conservatively active decision.

However, the Roberts court arguably does not promote a revival of conservative activism shown through many case examples of protecting minority rights and exercising judicial restraint.

An example of the Roberts court not reviving conservative activism but protecting minority civil liberties is the *Arizona v. US* (2012) case where the Supreme Court declared elements of Arizona's SB1070 Law as unconstitutional for violating the 4th amendment and the ability for the federal government to regulate immigration. This ~~shows that~~ theoretically shows the Supreme Court is not explicitly reviving conservative activism but decides impartially on what the justices believe to be right. Scalia, appointed by Reagan in 1986 said "The Supreme Court is not political. I do not believe my colleagues vote the way they do for political reasons", suggesting that the Roberts court is not promoting a conservative agenda as by exercising judicial conservative activism.

The Roberts court has also exercised judicial restraint many times. An approach to judicial decision making that holds that judges should defer to the elected branches of government, with emphasis on precedent through "stare decisis". An example of this restraint that challenges the whitewashed revival of conservative activism is *Concepcion v. Castor* (2007),

where the Supreme Court upheld the Partial Birth Abortion Act of 2003, restricting the access to late term abortions, chipping away at the constitutional right to abortion given in the *Roe v. Wade* (1973) case. Although, this case is evidence of judicial restraint, ~~it~~ the decision does have a conservative undercurrent possibly due to the conservative ideological balance of the Court after Roberts and Alito's ~~to~~ appointments in 2005 and 2006 respectively, suggesting that the Court ~~has~~ has not been reviving conservative activism.

In 2012, the Roberts Court arguably acted in a judicially restrained manner in the *NFIB v. Sebelius* case, whereby the Court declared affirmed the Affordable Care Act (Obamacare) as constitutional as it is compatible with Congress's taxing authority, even though Republicans in Congress and other conservatives were not particularly happy with the legislation because of increased taxes and the allocation of federal funds. This illustrates the argument that the Court has not witnessed a revival of conservative activism but has been exercising the opposing judicial theory associated with conservative originalist justices such as those on the Roberts Court of judicial restraint.

The Roberts Court has been both described as judicially restrained and as reviving judicial conservative activism and ~~for~~ there are valid arguments for both and because of this, the extent to which the Roberts Court has witnessed the revival of conservative activism is therefore subjective and depends on how much one believes the Court to promote an underlying conservative political agenda in American politics today.



ResultsPlus Examiner Comments

This is an unusually lucid answer to this question. It shows a clear understanding of the key term of the question, 'conservative activism', and then applies it intelligently to a good range of cases, all of which are accurately explained. Looking for ways in which it might be improved, the analysis of the cases could in some instances be a little more detailed and the conclusion is a touch anodyne. Nevertheless, a very good answer and worth 36 marks.



ResultsPlus Examiner Tip

Conclusions - a strong conclusion leaves a positive final impression in the examiner's mind. A good conclusion should repeat the point of view you have been arguing for and remind the examiner of the key arguments which underpin it.

Question 8

This was a broad question which allowed candidates to draw on their knowledge of all aspects of the unit 4 specification, and it produced some outstanding answers. As was true of all questions, candidates did worst when they made little attempt to adapt what they know to the question and stuck with a plan for an answer to a different question. Some for example structured their answer around the functions of Congress, which was not completely unrewardable but became unconvincing by the time they reached representation. Others spent most of their time outlining key roles or powers, with little assessment of the extent of power or direct comparison with other branches. Again, attention to key words in the question was important; it was common for candidates to see this question as asking, 'how powerful is Congress?', concentrating on the constitutional powers, with only limited recognition of the presence of 'become' in the question and the concept of change over time. A few believed Congress to be just the House of Representatives, with the Senate being discussed as a separate branch. Stronger answers showed an assured awareness of the key powers and limits of Congress, and then considered how contemporary developments, such as increased partisanship within Congress, the development of the 'imperial presidency' and the increased politicisation of the Supreme Court have affected them. The use of recent evidence, such as the verdict in *National Federation v Sebelius* and the resolution of the fiscal cliff, was particularly effective here, although some candidates perhaps tried to be a little too up to date in their discussion of the revelations of the PRISM program, when they weren't entirely clear which direction they pointed in. A lot of candidates used cases such as *Roe* and *Lawrence* to illustrate the power of the Supreme Court, without apparently being aware that in both cases it was not congressional legislation that was being overruled. Recent congressional gridlock was used by different candidates both to argue that Congress was and wasn't the weakest branch, and both cases could be convincingly made.

In the constitution, Congress, whose powers are delineated in Article I, was originally intended to be arguably the most powerful branch of government, with the role of the executive and judiciary much smaller than it is today. Many claim that Congress in modern times is now the least powerful branch of government.

Constitutionally, the president already has significant checks on Congress, most notably the veto of any legislation. This has proven to be effective in recent times, with Congress only able to override 2 of Clinton's 32 regular vetoes. Additionally, Congress is powerless to do anything about the president's use of a pocket veto at the end of a legislative session.

These existing constitutional limits on Congress's power are compounded by the president's increasing power and autonomy over foreign policy, an area that Congress is supposed to be relatively powerful in, with the power to Declare War residing solely in it. The War Powers Act of 1973 allows the president, as commander-in-chief, to command troops for 60 days without any congressional oversight, which has since been frequently exploited to the detriment of Congressional power. For example, Obama had no congressional authorisation for his deployment of troops to Libya in April 2011, and George H.W. Bush moved 500,000 into Saudi Arabia in the first Gulf War without Congress's consent. Furthermore, President Clinton carried out a bombing campaign in Kosovo in 1999 with the explicit refusal of Congress to authorise these actions. All this demonstrates that, in foreign affairs, Congress is not powerful at all. It is notable that its power to declare War has only been used 5 times, most recently in 1941 during World War 2, and that the Senate's power to confirm treaties has to some extent been usurped by executive agreements, made possible after the US v. Belmont (1938) and US v. Pink (1932) decisions.

Therefore, in comparison to the executive Congress can be considered not very powerful, on both a domestic front through the president's power of the veto, and on a foreign front through its increasingly restricted role in foreign policy.

However, it does still demonstrate its power in relation to the executive, for example by the Senate's rejection by 48-51 of the Comprehensive Test Ban Treaty in 1999, a significant blow to Clinton's agenda. Constitutionally a number of powers still remain significant, such as the power of the purse, which effectively ended the war in Vietnam and was threatened during the Iraq war in 2007. The threat of this power is often enough to have a significant impact on the executive.

Domestically, it is important to remember that Congress must confirm every presidential appointment to the executive, including those of cabinet ~~members~~ ^{members}, though it is true that Congress has not rejected a cabinet member since 1989, when it rejected John Tower as Secretary of Defense. Legislation

has also frequently passed in spite of the executive, such as the sanctions on South Africa in 1986 and the Helms-Burton Act in ~~1990~~ 1995, both of which were opposed by the president.

Many point out that whilst Congressional power may have diminished in relation to the executive, but as S.E. Finer puts it, Congress and the executive are still "two sides of the same bankrupt, both useless without the other," and it is clear that Congress retains important powers in the form of checks on the executive.

Congress can be seen to be weak in comparison to the judiciary primarily because of the system of judicial review, whereby the Supreme Court can strike down acts of Congress as unconstitutional. This has been evident recently in the Supreme Court's 2010 ~~the~~ Citizens United v. FEC decision, striking down ^{almost} all of the 2002 Bipartisan Campaign Reform Act, an enormously important piece of bipartisan legislation which enjoyed a broad consensus of congressional support.

However, Congress's checks on the judiciary are relatively extensive, including its power to confirm all members of the federal judiciary, including Supreme Court justices. ~~It has~~ Congress has demonstrated this power 12 times in its history, in ^{rejecting} ~~striking down~~ Supreme Court justices, most recently Robert Bork in 1987. The Senate Judiciary Committee plays an important role in the vetting of even eventually successful candidates, leading to the highly controversial Clarence Thomas appointment in 1991.

Congress also has the power to increase or reduce the size of the Court at its discretion, though this has rarely happened.

Therefore in comparison to the judiciary, whilst ~~the~~ Congress is limited by its power, it has significant checks of its own and therefore has a good deal of power in this area.

Over all, it is evident that the power of Congress has been significantly weakened over the last century, and is certainly weaker in comparison to the other branches than the Founding Fathers intended. However, I don't believe it's accurate to say it is the weakest branch of government. As Richard Neustadt astutely observed, the branches

are better described as "separated institutions"



ResultsPlus

Examiner Comments

This is another very good answer. The argument is cogently developed, and there is the sense that the candidate is in charge of their material throughout. In the section on the president in particular there is some excellent supporting detail. If it has a weakness, the treatment of the two branches is a little unbalanced, and ideally there would be a bit more on the Supreme Court. Nevertheless, a really good answer and worth 36 marks.



ResultsPlus

Examiner Tip

Introductions - an introduction should explain the context of the debate the question sets up, and state the view the essay is going to argue for. This answer does the first but not the second, leaving the examiner to work out for themselves which direction the argument is going in.

Based on their performance on this paper, candidates are offered the following advice:

- Keep up to date with the news:
- Look very carefully at every word in the question:
- Don't bother with an introduction for short answers:
- Your conclusion should restate your answer to the question and the main arguments which support it.

Grade Boundaries

Grade boundaries for this, and all other papers, can be found on the website on this link:

<http://www.edexcel.com/iwantto/Pages/grade-boundaries.aspx>

Ofqual



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



Pearson Education Limited. Registered company number 872828
with its registered office at Edinburgh Gate, Harlow, Essex CM20 2JE