

# **Examiners' Report**

## **June 2025**

**GCE Politics 9PL0 3A**

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# Introduction

This paper assesses the optional comparative element of the Politics specification, the government and politics of the USA.

2025 saw an interesting range of approaches to the different questions, particularly on the extended responses. It was especially notable that many candidates are embracing the contemporary nature of the subject, clearly reading and engaging with studies of Politics beyond the textbook.

More targeted advice on how to succeed can be found in the summary section at the end of this report.

## Question 1(a)

This was the more popular of the optional Question (Q) 01 choices.

The question asked candidates to discuss the differences between the powers of the Supreme Court in each country. The majority of candidates were able to keep their focus on differences rather than drifting on to similarities, which would not be credited.

There were, however, far fewer 'side-by-side' attempts to compare directly this year, with the majority of candidates able to compare and analyse the differences, thereby accessing marks for both Assessment Objectives (AO)1 and AO2. There was also a marked improvement in exemplification in many responses, with clear evidence taken from recent cases in both countries.

As with previous examination series, however, lower-level responses chose factors to consider that were not linked directly to the focus of the question in their AO2 analysis. For example, some candidates tried to compare the appointment processes. Whilst the knowledge and understanding may have been accurate, unless this was explained explicitly in relation to the differing powers of the courts, this would not have been credited.

Candidates must address the question focus throughout their response.

Some candidates are still wasting time by constructing their response to the 12-mark questions as essays, often with substantial introductions and conclusions that do not usually add anything creditable to the response. It is also still common to see unnecessary references to the comparative theories here. It is only a requirement to integrate the theories in Q02.

As with previous examination series, a number of misconceptions remain that centres should highlight with their candidates. For example, there is no Bill of Rights in the UK. Some candidates used this term, rather than referring to the Human Rights Act. There is legislation that protects rights in the US, rather than only offering protection via the Bill of Rights.

There was some confusion about the role of the US Supreme Court in the impeachment process, which was also evident in Q03(b).

Other common mistakes included stating that the:

- the UK Supreme Court has no power of judicial review
- UK Parliament 'ignored' the ruling on Rwanda
- full Bill was ruled incompatible with the Human Rights Act

In the case of the US, there was some confusion over whether rulings were related to executive orders, congressional legislation or state regulations, and the continuing mislabelling of Supreme Court justices as 'Republican' or 'Democrat'.

Overall, the key discriminators on this question were the AO2 comparison between the courts in each country, and the accuracy of the exemplification which, at times, was heavily focussed on one country, at the expense of the other.

Indicate which question you are answering by marking a cross in the box ☒. If you change your mind, put a line through the box ☒ and then indicate your new question with a cross ☒.

Chosen question number: Question 1(a) ☒ Question 1(b) ☒

One difference in the powers held by the Supreme courts in the USA and UK is how entrenched their powers are. In the US, the powers and existence of the Supreme Court is clearly outlined in Article 3 of the constitution, and it would take a complex amendment process to get rid of or alter the Supreme Courts powers -  $\frac{2}{3}$  of both houses of congress and  $\frac{3}{4}$  of the states would have to agree to any amending of their powers. This effectively entrenches their powers. In comparison, in the UK the Supreme Courts powers differ and are not entrenched. The Supreme Court was set up by a parliamentary statute law - the Constitutional reform act 2005 and can be taken away or reduced in powers merely with the simple process of a majority in parliament passing a law. This shows that the UK Supreme Court has less entrenched powers than the US supreme court, with this difference existing largely because the US codified constitution allows entrenchment of the USSC's powers, whereas the UK's uncodified

constitution based on parliamentary sovereignty means it is hard to entrench the judiciary's powers.

Another difference between the powers of the UK Supreme Court and US Supreme Court is the difference in strength of checks on the executive. In the US, the court has the power of judicial review, as decided in *Marbury v. Madison*, and can check any actions of the executive and rule them unconstitutional or out of their powers. For example, the Supreme Court struck down Biden's student loan forgiveness plans in *Biden v. Nebraska*, and struck down DACA (from Obama) in *US v. Texas*. In comparison, in the UK, the Supreme Court much more weakly checks the executive. Although the Supreme Court can rule that the executive is acting 'Ultra Vires', out of their powers, the dominance of the executive in parliament means they can easily get around this by passing a statute. For example, in *HM Treasury v. Ahmed*, after the Ultra Vires ruling, parliament simply passed an act giving the executive power to freeze terrorism suspects' assets. ~~However~~ This difference largely exists because the fused executive and legislature allows the UK executive to dominate parliament and easily bypass Supreme Court rulings using parliamentary sovereignty.

Another difference in the Powers held by the US and UK Supreme Courts is the difference in checks on the legislature. In the US, the Supreme Court effectively uses its power of Judicial review to declare acts of congress

unconstitutional, as it did by declaring part of DOMA unconstitutional. This is a strong check on the legislature and would require following the complex amendment process to get round. In comparison, in the UK the Supreme Court checks the legislature much weaker, being able to deliver declarations of incompatibility of legislation with the Human Rights Act, but these can be ignored by parliament, with them not making legislative change to 17/34 declarations of incompatibility. This difference exists because in the US the constitution is sovereign so the Supreme Court's interpretation of it is hard to bypass, whereas in the UK parliament is sovereign.

(Total for Question 1 = 12 marks)



This response has three well-developed points with good exemplification.

Point 1 does refer to the setting up of each Supreme Court, but this is a valid point because it is done with explicit links to power and good illustration of how power has been affected in each country eg with entrenchment/lack of/the amendments.

Whilst points 2 and 3 may appear to be similar, they are sufficiently different in terms of the focus and the carefully selected and accurate evidence used.

One focussed on checks on the executive, and one on checks on the legislature. Each paragraph meets the criteria for Level 4.

Level 4

Total: 12 marks



Make comparative links throughout your answer to help you reach the top levels: eg 'in comparison', or 'however, in the UK/US...', or 'whereas in the UK/US....' etc.

Indicate which question you are answering by marking a cross in the box ☒. If you change your mind, put a line through the box ☒ and then indicate your new question with a cross ☒.

Chosen question number: Question 1(a) ☒ Question 1(b) ☒

One difference between the powers of the USA supreme court and the UK supreme court is that in the US the supreme court can strike down legislation whereas the UK supreme court cannot. The UK supreme court can rule an action by a public body as ultra vires but not strike down any laws as parliament is sovereign and so statutes laws are sovereign too. For example, the supreme court ruled the Rwanda deportation plan was ~~ultra vires~~ not compatible with international law but parliament passed the Safety of Rwanda act to circumvent this. In contrast, the US supreme court can strike down any law or presidential action as the court interprets the constitution and the constitution is the highest form of USA law. For example, Shelby v Holder struck down part of the 1965 voting act due to it being unconstitutional.

Another difference between the powers of the UK supreme court and US supreme court is that the USA supreme court has more power over rights protections. In the UK the supreme court can only issue declarations of incompatibility on rights and rule on

rights based cases but ultimately parliament can create law that overrules this decision on rights. For example in Ahmed v Treasury the court protected the rights of people to not have their bank assets frozen but Brown's government passed laws to get around this. Whereas in the USA the supreme court ~~can~~ can protect rights fully due to interpreting the constitution and even give new rights protections. For example, Obergefell v Hodges essentially gave the right to same-sex marriage and Phelps v Synder upheld the right to free speech, therefore showing the USA supreme court has much stronger powers on rights based protections due to the constitution.



This is an example of a top Level 3 response.

It is directly comparative throughout, with some good exemplification, but lacks the range and detail required to access the top level.

Level 3

Total: 9 marks

## Question 1(b)

This question asked candidates to compare the legislative powers in each country.

As with Q01(a), a number of candidates did not keep their responses focussed on the question stem – comparing similarities in the legislative powers. Instead, they wrote about general similarities between the legislative branches or powers that were not legislative, such as impeachment/vote of no confidence. This limited the marks given both for AO1 knowledge and AO2 comparative analysis.

Another similar area candidates can be advised to improve on, is to avoid wasting time on unnecessary introductions and conclusions, and including the comparative theories where they are not required.

The majority of those candidates were able to identify some similarities in the legislative powers, most often related to the introduction of legislation and scrutiny.

However, a sizeable number of candidates found their mark limited because they tended to make simple statements, without including AO2 development of the points made. For example, they stated that each chamber in both countries has the power to propose legislation, and then went no further with their explanation.

As with Q01(a), it is not sufficient to assert a point and then move on to a second point: development is essential to access AO2 marks.

There was also a surprising lack of precise knowledge in many responses, where a significant number of candidates were unable to provide any evidence in their responses beyond the names of the chambers.

It also appeared that many candidates had revised a differences question, rather than similarities. Centres should take note that candidates should be prepared for both: there is no direction in the specification that any comparative topic will only focus on one.

It is also notable that the common mistake about the need for a supermajority to pass legislation in Congress persists as a feature of many responses.

Overall, the key discriminator on this question was the selection of AO1 points focussed on legislative powers to analyse, because this then fed into the development of the AO2 comparison between the countries.

Indicate which question you are answering by marking a cross in the box ☒. If you change your mind, put a line through the box ☒ and then indicate your new question with a cross ☒.

Chosen question number: Question 1(a) ☒ Question 1(b) ☒

One way in which the legislative powers of both legislatures are similar is over money bills. In the US, the House of Representatives (the 'lower' house) has the exclusive right to initiate appropriations bills, under the powers given to them by Article I of the Constitution. These bills set out the federal budget and spending packages for a given period of time. For example, Trump's Big Beautiful Bill, which would enact tax cuts and an increase in the debt ceiling/spending cap, was classed as an appropriations bill and ~~could~~ therefore ~~have~~ could only have been introduced in the House. Similarly, the lower house of the UK Parliament, the House of Commons, also has the exclusive right to introduce money bills. These include the annual Finance Bills that enact the government's budget, such as in 2024 which enacted increased NI contributions for employers and VAT on private school fees. Therefore, the legislative powers of these chambers are similar in their prerogative to initiate money bills.

In addition, the legislative powers are similar in that they can legislate on matters not given to other bodies. In the US, ~~that~~ <sup>these are</sup> the states - under the 10th Amendment, states have the powers not explicitly granted to them.

federal government by the Constitution, meaning that Congress can only legislate within its own <sup>constitutional</sup> bounds. For example, it could legislate over providing military aid to Ukraine as the federal government has power of the purse, but it could not legislate on ~~inter~~ intrastate commerce, as this is a power given to the states. Similarly, Parliament will only legislate on matters not given to the devolved bodies, under the Sewel Convention which requires Parliament to gain the consent of the devolved assembly first if it wishes to exercise its sovereignty over that devolved assembly. Therefore, Parliament can legislate on matters such as central government spending and immigration, but it will not typically legislate on devolved matters like healthcare and education in the devolved regions. As a result, the legislative powers are similar as the legislatures will not pass laws in conflict to the states/devolved bodies.

Thirdly, both legislatures require the consent of both houses in order to pass legislation. In both systems, each house must pass an identical version of the bill before it is signed into law or granted Royal Assent. This means that each house has broadly equal legislative powers, as a bill must receive approval from both before entering into force. In the US for example, Biden's major infrastructure bill faced difficulties passing through the House due to opposition by progressive Democrats, meaning that it could not have been signed into

law until this was resolved. Similarly, the previous UK government's bill to classify Rwanda as a "safe" third country, for the purposes of sending migrants there, was repeatedly held back in the Lords meaning that the government's Rwanda relocation policy had to be put on hold. Therefore, the legislative powers of Congress and Parliament are similar as both systems require the consent of both houses to pass laws.



This response makes three well-developed and well-substantiated points. It merits full marks.

Point 2 is not explicitly on the mark scheme, but should be credited because it is an alternative other valid point.

Level 4

Total: 12 marks



Include examples for both countries for each point, where relevant, to access the top level marks.

Underline or highlight the key question words to help make sure you answer the question. For example, here, the focus was on legislative **powers**, not the legislatures in general.

Indicate which question you are answering by marking a cross in the box ☒. If you change your mind, put a line through the box ☒ and then indicate your new question with a cross ☒.

Chosen question number: Question 1(a) ☒ Question 1(b) ☒

*powers of the*

~~A difference between the <sup>US</sup> and the Supreme Court is that the US is more powerful as it can~~

A similarity between the legislative powers of Congress and Parliament is that both vote on legislation proposed by the executive. In the US, Congress voted against the DREAM Act which would have allowed undocumented migrants brought to the US as a child to get the right paperwork. This is similar to the UK where Parliament ~~voted~~ voted down a May's Brexit Withdrawal Agreement in 2017.

both Congress and Parliament can delay the passage of a law. Another similarity is that ~~laws can be delayed by~~ <sup>both</sup> this was seen in the UK where the Hunting Act 2004 was delayed by the House of Lords for a year. This is similar to how in Congress <sup>1964</sup> Filibuster was able to delay the passage of the Civil Rights Act <sup>1964</sup> by talking for over ~~24~~ 24 hours. <sup>#</sup>

A final similarity is that both Parliament and Congress can remove the executive if they feel they are ineffective <sup>or have broken the law</sup>. In Parliament, a vote Boris Johnson and Theresa May survived votes of no confidence following May's failure to pass the Brexit Withdrawal Agreement and ~~Bar~~ <sup>this is similar to where</sup> Johnson's partygate scandal ~~in Congress~~ <sup>in the House and Senate</sup> the House and Senate can work together to impeach the President for breaking the law. Trump survived impeachment twice for inciting riots in Congress and for suspicion of corruption of the election. In both Parliament and Congress attempt to

remove the executive is are rarely successful

\* <sup>cases in</sup> 50th Congress and Parliament laws were only temporarily delayed  
as they were ultimately passed.



This is an example of a bottom Level 3 response.

There are two valid points of comparison here: point 3, however, is not a legislative power so is not relevant.

The points made are substantiated, and point 2 has sufficient development of AO2 to reach the bottom of Level 3.

Level 3

Total: 7 marks

## Question 2

As with Q01(a) and Q01(b), centres are advised to instruct candidates to avoid wasting time on unnecessary introductions and conclusions.

It **must** also be noted that this question carries a level cap. If there is no integrated discussion of at least one comparative theory, then Level 4 could not be given.

Centres are reminded that the comparative theory must have some explanation attached to the point being made, in this case about the differences between the constitutions, rather than simply being added on to the end of a point.

For example, such responses might analyse the differences in terms of the fact that the US constitution is entrenched and the UK constitution is not. Then they might end the point with something such as 'and this is a structural difference' with no further development. Such responses would remain in Level 3.

Similarly, the explanation of the comparative theory must apply to both countries, rather than simply stating 'this is a structural difference because the USA has a codified constitution.'

Centres are also reminded that there is no requirement to include all three theories, or to include one or more theory in every point of comparison. One developed and exemplified point, with one well-explained theory integrated into the comparative analysis of the difference, in this case, is sufficient to allow access to Level 4, as long as the other points made in the response are also well-explained.

Overall, there was a considerable number of strong responses, often based around entrenchment, codification and the location of sovereignty and with good exemplification for both countries.

Weaker responses tended to forego AO2 marks by describing the constitutions in a side-by-side approach, without drawing comparisons between the two.

Common errors included the assertion that the UK constitution is fully unwritten, conflating written/unwritten and entrenched/unentrenched. They spent too much time describing the origins of each constitution, rather than comparing them explicitly.

It was pleasing to see that the comparative theories are being included far more often in responses. However, there is still a tendency in the lower-level responses to 'bolt-on' the theories at the end of a paragraph, or at the end of the response, without any accompanying explanation.

For example, some responses analysed entrenchment/lack of entrenchment, and then stated simply: 'this is an example of a structural theory'. This is not sufficient to access Level 4. Similarly, starting a paragraph with something like 'the structural theory is that one is codified while the other is not' is also not sufficient to access Level 4, unless there is further analysis and integration of the theory into the comparison being made.

Overall, the key discriminating feature between the levels was the selection and quality of the AO1 points identified. The strongest responses could explain how the identified points differed in

each country, whilst weaker responses lacked the specific knowledge to be able to explain such differences.

## 2 Analyse how the US and the UK constitutions differ.

In your answer you must consider the relevance of at least one comparative theory.

(12)

One way the US and UK constitutions differ is the US constitution is entrenched, and the UK constitution isn't. In the US, its entrenchment means it is incredibly difficult to amend, and the only way an amendment can be passed is by  $\frac{2}{3}$  of Congress passing it, followed by  $\frac{3}{4}$  of the states to ratify this. This provides a large protection of rights due to the difficulty of altering the constitution. Whereas, in the UK, its unentrenched nature means Parliament can easily alter the constitution through a simple Act of Parliament. Due to gvt often holding large majorities in the HOC, caused by FPTP and the unionist bias, gvt can easily pass constitutional amendments. In the US, the entrenchment difficulty to amend can be seen as only 27 amendments have been passed since its creation! In the UK, gvt supermajorities make it easy to amend, eg Tony Blair's HOC Reform removing all but 92 hereditary peers. This has a contrasting significance on the 2 political systems. In the US, the entrenchment means it is harder for the gvt to update the constitution, and keep up with the societies development, leading to it being hard to remove outdated laws, such as the right to

to bear arms, which was upheld in the SC case *DC v Heller* 2008, showing entrenchment in action. Whereas in the UK, its significance is the easily passable amendments meaning people's rights could be infringed at any time in the future. This can be best explained by structural theory. Due to the location of sovereignty, in the US constitutional sovereignty means Congress cannot easily change the constitution, so remains entrenched - whereas in the UK, sovereignty lies with parliament meaning the constitution is unentrenched and can be easily altered.

Another difference in the US constitution is codified, and the UK constitution is not. This means that in the US, their ruling was found in 1 document, created by the Founding Fathers, which consists of 7000 words. This means that the constitution is easily referable and therefore non-disputable with the quasi-sovereign Supreme Court. Whereas in the UK, the constitution is uncoded. This means there is no single document, but instead the UK is governed over years of Statute law, common law and conventions. In the US, this can be seen with people knowing their rights extremely well, such as Article 2 - right to bear arms, ~~and~~ (as seen with *DC v Heller* 2008) and other Articles outlining presidential and congressional power. Whereas in the UK, the uncoded nature means it is not easily referable, and can often lead to a confusion

of people's rights as a result, such as Right to Family Life being abused by foreign criminals to stay in the UK and avoid deportation, whereas other changes may dispute this argument. This has contrasting impacts on both political systems. In the US, people are well aware of their rights, making them better protected and public as they're contained on 1 singular document. Whereas in the UK, the uncoded nature means people may be less aware of their rights as the constitution has been added to for hundreds of years, possibly leading to inadequate or ineffective rights protection as a result.

This demonstrates two significant differences between the UK and US constitutions, codification and entrenchment, or lack of each.

(Total for Question 2 = 12 marks)



This is an example of a Level 4 response.

Whilst on the surface there appears only to be two points made, the first section, in particular, is very well-detailed and developed. It covers a range of issues, so allowing this response to access the top level.

Level 4

Total: 10 marks



Remember to include one explanation of a comparative theory related to a point you have made, to access Level 4.

- 2 Analyse how the US and the UK constitutions differ. <sup>flexible / unflexible</sup>  
<sup>codified / uncoded</sup>  
<sup>higher law / no higher law.</sup>  
In your answer you must consider the relevance of at least one comparative theory.

(12)

One way in which the UK and US constitutions differ is the UK constitution is uncoded. This means instead of being written down in one place the UK constitution is derived from a number of different sources. For example, These include legislation, historic documents, authoritative texts and common law among other sources. This makes the UK constitution harder for members of the public to access as it is not written down in one place. Its ~~code~~ uncoded nature also means it is easy to amend and is more subject to interpretation. In contrast the US constitution is coded. It was created by the founding fathers <sup>in one single document,</sup> ~~in a single document,~~ <sup>unlike</sup> and ~~only has~~ <sup>the UK</sup> constitution only has one source. This means unlike the UK constitution it is easier to access as it is written in one place however, it is less flexible and can be less free to interpret.

Another way the US and UK constitutions differ is the UK constitution is flexible. It can easily be amended by passage of Act of parliament, creation of new conventions or creation of new common law. This was seen during the Brexit process as the UK constitution was fundamentally

changed by leaving the EU with just one act of parliament ratifying Boris Johnson's Brexit deal. In contrast the US constitution cannot be easily amended. ~~It requires~~ Amending the US constitution requires a  $\frac{2}{3}$  majority in both the congress and amongst the states. This makes it highly inflexible, especially in the current era of extreme political polarisation. This inflexibility is reflected by the fact that there have been less than 30 constitutional amendments since the constitution's creation. This difference reflects structural theory, the way it is due to the structure of the US and UK constitutions. The UK constitution is easier to amend because it is uncodified, and there is no higher law, allowing any parliament to amend it freely.

Finally, another way in which the UK and US constitutions differ is the UK constitution does ~~not~~ <sup>completely protect rights</sup> ~~not contain higher law~~ while the UK Constitution does ~~not~~ include the Human Rights Act 1998, it this is not considered to be above other legislation. Therefore, any legislation that contradicts it cannot be struck down by the Supreme Court, instead only a statement of incompatibility can be issued. This was illustrated by the passage of legislation like the Investigatory Powers Act which directly contradicts rights protected by the Human Rights Act. This is down to the principle of

parliamentary sovereignty, parliament can pass any law it wants. Even if this contradicts with the Human Rights Act. On the other hand the US Bill of Rights is protected by the constitution and considered higher law. This means any legislation<sup>or actions</sup> that contradicts it can be struck down by the US Supreme Court. This was seen in the case of Students for Fair Admissions vs Harvard 2023 where affirmative action was struck down by the Supreme Court due to violation of the Equal Protection Clause of the Constitution.



This response gives three detailed and directly comparative points.

The comparative theories are integrated into the arguments and explained well, so meriting full marks.

Level 4

Total: 12 marks

## Question 3(a)

This question asked candidates to evaluate the view that federalism is in decline in the USA, and was generally responded to, well. There was a range of interpretations of the nature of federalism and how it had changed in the USA, with some interesting areas of exemplification.

The majority of candidates were well-prepared for this question, and so had good knowledge and clear themes to discuss.

The most common themes were:

- the increasing role of the presidency during national crises
- Supreme Court rulings that have impacted on the nature of federalism
- how finances affect the relationship between the federal government and the states

Other interesting points included issues related to:

- presidential projects
- the use of executive orders and/or congressional legislation
- increasing state divergence over policy issues

However, a significant minority of candidates did not appear to understand what was meant by federalism. Such responses often confused the issue of federalism with the federal government, and as such, attempted to argue that the power of Congress and/or the presidency was in decline. Such responses gained little credit, because there was a fundamental misunderstanding of the question and so little to reward.

There was also a notable number of candidates who drew comparisons between the US and UK models of government in this question, which was not relevant and so gained no credit for such points.

The candidates' ability to analyse and evaluate effectively was the main differentiator on this question. Candidates need to consider carefully their argument to ensure that they are accessing the AO3 in particular.

A simplistic federalism is in decline/federalism is not in decline response will stay in the lower levels. Similarly, responses that make an assertive statement at the end of each point as a mini-judgment with no substantiation behind it eg 'this shows that federalism is in decline', will not meet the requirements for the higher levels.

A number of candidates now commonly use stock phrases such as 'this is a weak argument'. This can work well to embed AO3 evaluation, but only if this statement is then explained in full. It is not, however, expected that candidates use such phrases, and there is no set way for candidates to undertake AO3 evaluation.

Other phrasing is just as valid, provided that is explained well. Examples might be: "however, federalism may not be in decline because....", or "this does not mean that federalism is in decline because....", or "the view that federalism is in decline can be challenged by...".

Some responses were also limited by the very historical nature of the points identified for analysis and evaluation. Such responses relied heavily on descriptions of the development of federalism, some going back as far as the Founding Fathers, often citing Franklin D. Roosevelt and the New Deal, and Johnson's Great Society.

Whilst it would be relevant to use such examples as contrasting case studies to the modern position of federalism, responses that were built solely on historical exemplification would not advance far through the levels.

There was a tendency in weaker responses to attempt to evaluate the arguments presented through non-related issues. For example, some candidates attempted to contrast the role of the president in times of national crises to Supreme Court rulings that have handed power back to the states. Such comparisons were usually illogical and poorly-explained and so gained little credit for AO2 and AO3.

Another common error was to take the 'scatter-gun' approach, listing example-after-example without the development of analysis and evaluation required to access the higher levels. This was particularly evident in responses that focussed mostly on the Trump era, rather than drawing out common themes to discuss.

The strongest responses adopted clear thematic structures, rather than splitting the essay into two simplistic halves of decline/not in decline.

In addition to policy themes like health care, immigration and civil rights, many adopted a thematic approach such as:

- the influence of the judiciary
- focussing on Supreme Court rulings
- how a conservative bench affects state vs federal authority

Other strong themes included discussing executive and fiscal power, including the use of mandates, grants, and executive action to steer state behaviour, and state-level divergence, looking at contrasting state laws on abortion, guns, and climate policy.

Such responses embedded AO2 analysis by weighing how each theme supports or challenges the claim, included interim judgements and drew nuanced conclusions, gaining high marks for AO3. Top-level responses were able to evaluate and judge which of these examples was more significant.

Overall, a significant number of responses made excellent use of case studies as well as cases to illustrate their arguments. It was particularly pleasing to see so many up-to-date references from both the Biden and Trump eras.

Additionally, there were contrasting relevant examples from previous eras, such as contrasting Supreme Court rulings that appear to uphold federalism such as *Dobbs v Jackson Women's Health Organisation*, with those that seem to weaken federalism, such as *Obergefell v Hodges*.

Indicate the first question you are answering by marking a cross in the box ☒. If you change your mind, put a line through the box ☒ and then indicate your new question with a cross ☒.

Chosen question number: Question 3(a) ☒ Question 3(b) ☒ Question 3(c) ☒

As outlined in the constitution, there is shared sovereignty within the US political system between the Federal Government and the states, it can be argued that federalism is not in decline in the USA as seen with Supreme Court rulings, executive actions, and separate laws for the states. However, it can be argued that federalism is in decline in the USA due to overpowerful presidential actions, Supreme Court rulings which have infringed on states, and legislation which has unjustly neglected states rights. Therefore, as this has caused such a decline, federalism is clearly in decline in the USA.

It can be argued that federalism is not in decline in the USA. The actions of the current President, Donald Trump clearly compliment this argument, Trump has pledged to reduce the power of the federal government, returning to "limited" government. One of the ways he has committed to this is through the proposed disbanding of the Department of Education, this is a state power, and through the disbandment of the

federal agency, Trump made it clear he was intending to return further powers back to states, so this can increase their sovereignty and powers. This commitment shows a clear strive to increase federalism in the US, however there are limitations to this argument, Trump could potentially reduce education opportunities for those from minority backgrounds and special needs / disabilities, as they will no longer have federal grants and funding that states can't provide - showing a further decline in federalism as states can't provide greater educational opportunities. Furthermore President Trump can be cited as causing a decline in Federalism, in June 2025, following immigration crackdown raids by ICE, there were widespread protests in LA, Gavin Newsome, the California Governor, was against calling in the national guard as he believed this would only intensify the protests, against his feelings President Trump called in the national guard, this was the first time in 60 years, that the National Guard has been called in - against the wishes of the state. This extreme use of power by President Trump, highlights clearly how powerful the executive has become, showing a subsequent decline

in federalism in the US, as the President called in the National Guard against the wishes of the state, clearly overriding state power.

However, it can be argued that there hasn't been a decline in Federalism in the US, Supreme Court rulings have complimented this argument immensely. The 2022 Supreme Court ruling of *Dobbs vs Jackson*, highlights how there hasn't been a decline in federalism. It overturned *Roe vs Wade*, which guaranteed abortion up to a set number of weeks, and gave the powers of abortion control back to the states, this demonstrated a clear increase of state power and federalism as states had the clear right to deny or allow abortion away from federal interference, showing no decline. However, it can be argued that there has been and is a decline in the USA of federalism, the Supreme Court ruling of *Obergefell vs Hodges* in 2015, outlining gay marriage as legal, this overturned existing state laws in 13 states where it was banned. The Supreme Courts power to overturn state laws and prioritise federal laws, shows a huge decline on federalism as

federal power is prioritised over state, showing a clear decline.

However, it can be argued that there is not a decline in federalism, there are several states which possess laws that are contradictory of ~~state~~ federal law, yet the federal government respect state sovereignty and have not cracked down against it. For example, in 38 states, as of 2024, there are laws which have legalised cannabis for either recreational use or for medical. However, in all 38 states the federal government have not acted against the state, respecting state law - highlighting how there is not a decline in federalism as state power and law is respected by the federal government even if it contradicts federal law. However, it can be argued there is a decline in federalism in the USA, many acts of legislation have gone against state law and contradicted state power. Although, the Affordable Care Act of 2012 or "Obamacare", gave affordable health insurance and healthcare to millions of Americans, especially from

poorer/minority backgrounds, it also had a negative impact on the state structures of healthcare and insurance, in almost all cases elements of "Obamacare" superseded - showing a clear decline in federalism as state power is neglected in favour of Congressional Federal legislation such as "Obamacare".

Overall, throughout this essay there have been arguments to suggest that federalism is not in decline as seen with President Trump and the Department of Education, the *Dobbs vs Jackson* Supreme Court ruling, and the differing state laws. However, there have been arguments to suggest that federalism is in decline as seen with President Trump overruling state wishes, *Obergefell vs Hodges*, and the *Obamacare/Affordable Care Act* legislation of 2012. Overall, there is a clear suggestion that federalism is in decline in the USA, although Trump has made commitments for more state power, his actions in regards to California and Los Angeles suggests clearly he is clear in overruling state power, Supreme

Court rulings such as *Obegesev v Hodges* has led to state laws and power being neglected in favour of federal wide rulings, similarly the Obamacare shows a clear legislative goal by Congress to reduce state power and increase federal wide policies. Ultimately the clear policy of declining state power, clearly compliments the argument that there has been a decline in federalism.



This is an example of a Level 5 response.

The candidate sets out factors for consideration and gives a clear judgement in their introduction. They sustain this throughout their response, although not every section is fully developed in terms of AO2 analysis and AO3 evaluation.

Each paragraph makes a distinct point, with some exemplification and some AO3 evaluation, usually in the form of a mini-conclusion.

The conclusion also matches the initial judgement and arguments made throughout the essay.

Level 5

Total: 25 marks



Make sure the evaluation you include is related to the point you have tried to argue, rather than discussing a brand-new and separate point.

Indicate the first question you are answering by marking a cross in the box ☒. If you change your mind, put a line through the box ☒ and then indicate your new question with a cross ☒.

Chosen question number: Question 3(a) ☒ Question 3(b) ☒ Question 3(c) ☒

Overall, I don't think federalism is in decline in the USA. States still hold significant powers that are not yet ~~after~~ undermined by the federal government. These come in legislative power, electoral power and reinforcement from the supreme court.

One way that federalism isn't in decline is due to its legislative power. Under Donald Trump, the states have been allowed far more legislative rights, most significantly with the repealment of Roe v Wade, with Trump allowing states to make their own mind up regarding abortion. Here, we see an increase in federalism, as the states are increasingly granted more legislative powers. This comes in addition to states having legislative rights over capital punishment, marijuana and tax. However, it could be argued that the legislative power the states have is insignificant, with the federal government making far more important legislative decisions. The central government has power over foreign affairs and large scale decisions over healthcare, housing and welfare for example. Ultimately, despite the central government <sup>having</sup> ~~being~~ far

more legislative power, the states do retain perhaps an increasing amount of legislative power over some key issues.

Another reason why federalism isn't in decline is because of the states' electoral and representative power. The US is still inarguably federal, as the states elect representatives to congress. This is a significant power because it means the views of the people in the state are being represented in the highest level of government. ergo, the people of the states theoretically have a representative influence on legislation and the general goings on in congress. Also, electoral practices differ from state to state, reinforcing state independence. However it could be argued that the elected individuals in congress actually have very little to do with the state. After the Newt Gingrich agreement of 1994, the start of hyperpartisanship, it could<sup>be</sup> absolutely argued that one is voting for a party rather than an individual, therefore meaning the elected individual won't be making decisions based on the good of the people they represent, rather the party they are a part of, undermining federalism. In addition, there are many safe states and counties in the US, rendering any<sup>devolved</sup> elections useless. Ultimately,

although there are issues with safe seats and hyperpartisanship, the states do maintain electoral powers, suggesting federalism is alive and well.

The final reason why federalism isn't being undermined in the USA is the Supreme court.

Recently, the Supreme court has actively supported the power of the states and has struck down legislation that would undermine it. The support of the judicial branch is a big factor in why federalism remains, and is an important tool for maintaining it in the future. This is because the Supreme court has the power to declare any piece of legislation unconstitutional, barring it from passing. This power has recently worked in favour of the states, with the Supreme court favouring them.

However, this isn't reliable, as new personnel or the wrong piece of legislation could lead to the Supreme court switching their supposed allegiances away from the states. States cannot rely upon the Supreme court for support,

especially when Donald ~~Trump~~ Trump is seeking to undermine the power of the judiciary by using an unprecedented amount of executive orders to get his way. Ultimately, although it is unreliable to rely on the Supreme court for

reinforcement, federalism is supported by the supreme court, giving it an extra layer of protection.

In conclusion, federalism is not in decline. Federalism is upheld by legislative power, electoral power and the support of the supreme court. Despite threats, it is unlikely that federalism will ever be significantly undermined as it is protected by an entrenched constitution.



This is an example of a bottom Level 4 response.

The candidate sets out a clear judgement in the introduction, which is followed throughout the essay in every point and in the conclusion.

There are three analytical points on legislative power, electoral/representative power and then the Supreme Court and states' rights.

Some evidence is provided, although this is limited in places, making the AO1 weaker than the AO2.

Each paragraph attempts evaluation in a mini-conclusion, although this is not always well-explained.

The conclusion is summative rather than fully justified, so also making the AO3 weaker than AO2.

Level 4

Total: 19 marks

## Question 3(b)

This question asked candidates to evaluate the view that Congress fails to hold the president to account adequately. This was the most popular essay.

This question invited a broad range of responses, with the potential to reference a number of different themes for the evaluation of how adequately Congress can hold the president to account.

Common themes included impeachment, the legislative process, foreign policy and domestic policy, although it should be noted that there were many different, equally valid ways to approach this question.

The strongest responses selected themes carefully to build arguments around, that were explicitly targeted at the question. There was clear and direct discussion of how adequately the congressional methods identified within each given theme could hold the president to account.

This analysis was often used to good effect to reach sustained conclusions about the adequacy of the issues discussed in that theme.

Top-level responses had some reflection on the willingness of Congress to use its powers of oversight against the continued existence of presidential powers. They often considered the impact of the makeup of Congress and the political context of a president's term in office. Such responses carried a very clear judgement through each paragraph and considered different areas of policy in each sub-section as a means to generate illustrative themes.

However, a significant number of candidates did not evaluate the theme identified. Instead, some would attempt to develop their argument with a discussion of how another theme may/may not be a more adequate way of holding the president to account. For example, some candidates started with a discussion of impeachment and how it may not adequately hold the president to account. Then they contrasted this with how the power of the purse is more significant, as part of the same themed argument. Such responses were unable to access the higher levels because they did not demonstrate AO3 evaluation skills.

A common area of weakness for this question was answering as if it were a checks-and-balances question. For example, they discussed presidential appointments – often at great length – but did not explain how Congress failed/did not fail to use this to hold the President to account. Such responses received fewer AO2 and AO3 marks.

Another common mistake was to drift away from the focus on Congress holding the president to account and into discussing the role of the Supreme Court or elections. This was not the focus of the question, and so gained no credit.

Weaker candidates also tended to try to turn this into an imperial presidency question, and so often presented a list of presidential powers and how they have been used, rather than an analysis and evaluation of the role of Congress in holding the president to account.

Overall, it was clear that most candidates understood the broad requirements of the question and were generally able to demonstrate sound AO1 knowledge. However, many found it difficult

to access the higher levels due to weaker AO2 and AO3.

There remains a need to support candidates in moving beyond simply citing methods of holding the president to account or listing examples, and toward using them meaningfully, explaining their significance and drawing well-developed conclusions.

Phrases such as *"this therefore shows X"* were frequent but often lacked elaboration or depth. Improving candidates' ability to embed analytical and evaluative language – and to structure arguments clearly and persuasively – should be a continued focus in preparation moving forward, to embed the AO2 and AO3 skills that are required to access the higher levels.

\$700 mn National Defence Authorisation Act.

Indicate the second question you are answering by marking a cross in the box ☒. If you change your mind, put a line through the box ☒ and then indicate your new question with a cross ☒.

Chosen question number: Question 3(a) ☒ Question 3(b) ☒ Question 3(c) ☒

The Constitutional System of Checks and balances provides Congress with significant powers of oversight against the President; they have the power to impeach, share foreign policy powers, and can impede domestic policy decisions. However, these powers are not always used effectively, or frequently. Therefore Congress fails to adequately hold the President to account.

It could be argued that Congress holds significant checks over a President's domestic policy; instances of divided government make this especially prominent, and there have only actually been 16 cases of unified government since 1975. In 2019 Congress the Democratic House of Representatives refused to include funding for Trump's border wall in the budget; this led to a 35 day government shutdown, the longest in history. This shows that Congress have held the executive to account as they refused to ~~allow~~ facilitate financially irresponsible policies and proved that the President was unwilling to drop his demands. Furthermore, Congress overrode Trump's veto of the \$755 million National

Defence Authorisation Act. ~~As they~~ This shows that Congress has held the executive to account, as they have publically resisted his attempts to impede the legislative process, in a move that probably was publically embarrassing. However, Congress is still limited by ~~position~~ in its powers, as Presidents can use executive orders as a means to circumvent it and push unilaterally push through controversial laws. For example, Biden issued an executive order mandating the wearing of masks in federal buildings. This shows that Congress cannot hold the executive to account, as little can be done to challenge the use of executive orders; they can be ~~not~~ challenged in court, but Congress largely lacks power. ~~Unified govern~~ On balance, Congress fails to adequately hold the president to account because, in the ~~be~~ instance of an imperial president, ~~they~~ it lacks the power to fully prevent action; the President can ignore Congress over some areas of domestic policy.

It could also be argued that Congress effectively holds the executive to account in terms of foreign policy, as power is balanced between the two branches. ~~Congre~~ The War Powers Act ensures that the

President is accountable to Congress, as military action lasting more than ~~60~~ 60 days requires authorisation. Furthermore, the power of the purse means that Congress has the authority over facilitating action; in 2011, the House refused to pass a budget including funding for Obama's military action in Libya as he had failed to seek prior approval. This prevented the operation from going ahead; with Congress the funding, it could've lasted 1 year. This shows that Congress does hold the executive to account, as it has a range of powers that provide them with the ability to impede presidential decisions, especially if they have proven themselves to be acting in an 'imperial manner'. Congress can make or break US foreign policy, as it also reduced funding for Iraq from 2006. However, the power of Congress is limited; Presidents are still Commander-in-Chief and have found loopholes in the War Powers Act. Obama justified action in Libya, as it did not involve ground troops or 'hostilities' as defined by the WPA. Trump used a ~~the~~ similar justification for his 2017-18 ~~the~~ airstrikes on Syria. This shows that Congress cannot effectively hold the Executive to account, as it still holds significant power and can exploit loopholes in the WPA; it

arguably doesn't prevent quick, limited action as this doesn't really require additional funding from Congress. Therefore Congress does not adequately hold the Executive to account in foreign policy, as the System of Checks and Balances provides the president with some power: the War Powers Act is also not entirely in Congress' favour.

It could also be argued that Congress' power to investigate and impeach Presidents allows for effective Oversight. Congress' investigation into the Watergate Scandal left a stain on Nixon's legacy, and Clinton is also remembered for the Monica Lewinsky Scandal after he was impeached for lying about it, among other things. This shows that presidents are held to account by Congress, as Congress has the exclusive power to investigate and challenge their misconduct; even though they are unlikely to be convicted, this can still scar their political legacy and turn the public against them. However, the significance of the impeachment process has arguably declined over time. The Senate hasn't actually convicted a president in recent years, despite ~~outrageous~~ ~~outrageous~~ misconduct amongst most of them and actually being impeached does not ~~effect~~ affect a President as

much as we might expect, there is almost a cultural expectation that presidents will engage in misconduct. For example, the House impeached Trump twice; firstly for soliciting foreign interference in the 2020 election and trying to hinder the investigation by ignoring subpoenas, and secondly, for citing an insurrection on January 6<sup>th</sup> 2021. Despite this dubious political legacy, he was re-elected in 2024. This shows that Congress cannot effectively hold the President to account because a record of misconduct is not enough to deter public support; Congress no longer has the power to shape political legacies in the way it could with previous presidents. Ultimately, Congress fails to adequately hold the President to account as its typical powers are diminishing in significance as cultural expectations surrounding politicians change; Congress, realistically, needs the support of the people to actively enforce accountability.

While there is merit to the opposing view, ultimately the more convincing argument is that Congress fails to adequately hold the President to account. Firstly, it lacks the power to challenge ~~or~~ fully challenge executive action in domestic

policy. This argument is convincing because it shows that Executive power has instead curtailed Congressional power; they cannot counter the use of executive orders. Secondly, foreign policy power is balanced between the two branches and Congress has not entirely succeeded in increasing its own power. This argument is convincing because it shows that Presidents are able to make some independent decisions and Congress has failed to limit this. Finally, threats of impeachment, and actual impeachment, do not have a significant impact. This argument is convincing because it shows that Congress can no longer challenge misconduct and shape political futures. Therefore, Congress fails to adequately hold the President to account, as it lacks sufficient powers of oversight.



This is an example of a mid-Level 5 response.

A clear judgement is given in the introduction, with nominated factors for discussion, which are followed through in the main body of the essay.

Each paragraph sets out specific ways in which Congress may try to hold the president to account, with strong evidence and an evaluation of how this is limited.

It ends with a justification linked to the question in a mini-conclusion.

Level 5

Total: 27 marks

Indicate the second question you are answering by marking a cross in the box ☒. If you change your mind, put a line through the box ☒ and then indicate your new question with a cross ☒.

Chosen question number: Question 3(a) ☒ Question 3(b) ☒ Question 3(c) ☒

It can be argued that Congress fails to adequately hold the President to account in the US given that, especially over foreign policy, it <sup>can be</sup> ~~is~~ bypassed by the President without checks or approval. However, there are many systems in place to prevent executive overreach. Such as Congress holding the 'power of the purse' essentially controlling the budget and more specifically powers of the Senate who are able to ratify treaties and confirm appointments, ~~pro~~ aiming to adequately hold the President to account.

One way in which Congress may fail to adequately hold the President to account is through lack of power in foreign policy, an area often dictated by the President. Applying Schlesinger's <sup>(1973)</sup> 'Imperial Presidency' theory, often the President fulfils ~~his~~ their role as Commander-in-Chief, this simultaneously results in bypassing Congress. From Bush's creation of the Department of Homeland Security (2002) to Obama's drone strikes in Libya (2011) this shows how over foreign policy, the President often acts without any adequate check on their aims or actions, especially for Obama who required the approval of Congress before the strikes. Despite the War Powers Act (1973) aiming to reduce the power of the President dictating military decisions without being held to account, today we see this to be ineffective.

whereby the President almost always acts unilaterally over foreign policy decisions without being held to account by Congress.

However, it can adversely be argued that Congress can hold the President to account in other means, particularly through the 'power of the purse'. This means that Congress controls and regulates both budget and spending and which consequently impacts the extent to which President's can fund the implementation of their policies. A notable example of this would be Congress's refusal to provide funding for Trump's border wall between Mexico in the United States ~~2017~~ present in 2017. This exemplifies how Congress holds the power to hold the President to account and either grant or refuse funding to such President's desires as seen here, impacting the success of one of Trump's most well-known aims of as President implementing his immigration policy, which has been dictated by Congress, reducing presidential power.

Similarly, there are specific powers in place for the Senate to hold the President to account, notably their powers to ratify treaties and confirm appointments. An example of this would be the rejection of Merrick Garland to the Supreme Court, dismissing the President. Although the ratification of treaties is a seemingly important mechanism to hold the President to account, especially on a global front, in reality, it is common for the President to override Senate ratifications by implementing executive agreements instead. Rather than a ratified treaty, the Paris Climate

Agreement is an executive agreement in place to this day, in which presidents have either (re)joined or left depending on alignment with policies. This shows how despite it seeming as though the Senate can hold the president to account adequately, ultimately executive agreements are used as a means to bypass this, with limited check on the president which should be necessary especially when treaties are significant in creating a president's global image as to what they stand for, therefore congress does not ~~hold~~ adequately hold the president to account in this case.

To further this, when a president holds a strong majority with party domination, there is arguably weakened or limited checks and balances meaning the president is less likely to be held to account. This is fueled by the concept of gerrymandering in the US, exemplified by states such as North Carolina; district lines are drawn to favour certain demographics, manipulating the likelihood of certain parties / presidents being elected. This furthers the incumbency rate within congress which has averaged above 90% since 2000 despite frequent elections. Thus, Congress itself is actually stalled and fueled by party politics suggesting it may be incapable of holding the president to account.

Overall, despite systems being in place to hold the president to account such as Senate ratifications, confirmations and 'power of the purse', in reality, it is much too likely for the president to bypass these.

systems of oversight and accountability, which is supposed to be one of congress's main functions. Although there are some, arguably limited, mechanisms in place, it is not enough to adequately hold the President to account.



This is an example of a high Level 3 response.

The candidate covers several broad themes related to power, but tends to treat each theme as a separate argument, rather than drawing together relevant common areas for analysis and evaluation.

The response starts with foreign policy, but does not evaluate this.

It comes back to related issues with the power of the Senate to limit foreign policy powers, without making any links between them that would demonstrate the key criteria for AO3.

This keeps the response in Level 3.

Level 3

Total: 17 marks



Reach the top AO3 marks by discussing whether or not the point/factor/theme/method/idea you are arguing about is a strong/convincing/weak/limited argument.

Think about whether your argument actually works and has evidence to support it, to access the top levels.

## Question 3(c)

This question asked candidates to evaluate the view that civil and constitutional rights have been upheld successfully by the Supreme Court. This was the second-most popular question, and could be answered in a range of ways.

It is important to note here, however, that there was a significant minority of candidates who did not understand the difference between civil and constitutional rights, which then hindered their ability to address this question effectively.

Many candidates adopted a thematic approach, but it was equally valid to consider the role and powers of the Supreme Court in upholding rights.

Many candidates were able to build their response around a range of themes. These engaged well with why Theme 1 may suggest that the Supreme Court has effectively upheld civil and constitutional rights (usually based on one right/issue), but also has its problems/limitations/issues.

There was a mini-conclusion coming to an overall judgement for that factor. This related explicitly to the overall impact on how successfully rights have been upheld. Such responses scored highly on all AOs. However, a number of candidates 'sat on the fence' in their overall judgements on each factor, so limiting their AO3 mark.

Common factors included affirmative action, women's rights, states' rights, gun control, the ideological balance of the court, and federalism.

The strongest responses were able to substantiate their arguments with a range of evidence from different examples of civil and constitutional rights, rather than building their response around a single issue such as gun control or minorities' rights.

There was a number of responses with excellent up-to-date evidence. However, there is still a heavy reliance on outdated examples, with weaker responses still relying on a few examples such as *Brown v Board of Education*, *Topeka*, or simplistic statements about being able to declare legislation unconstitutional, with no supporting analysis or evaluation. Such responses would be limited on AO1 marks if this were the only evidence provided.

The key to success on this question – particularly with the thematic approach – was to keep bringing the points raised and analysis of the case evidence back to the question focus.

Candidates needed to state what the point and cases cited demonstrated about how successfully the Supreme Court was able to uphold rights in that particular theme/case. Using the key words in the question helped with this, because it reminded candidates that they were not simply writing a generalised essay about cases the Supreme Court has ruled on.

Less successful responses took a narrative approach, identifying issues and cases and describing them and their outcome briefly as the sole focus of the response. These lost marks for lack of range and breadth in AO1, as well as for AO2 analysis and AO3 evaluation.

There was also a number of responses where candidates took the simplistic positive/negative

approach. They stated that the Supreme Court has upheld rights successfully, but then that it has failed to uphold rights. Consequently, they did not interweave AO3 evaluation, and were unable to access the higher levels.

A common mistake was to confuse chronology when citing cases, which then undermined attempts to evaluate. For example, some candidates chose themes related to federalism when discussing civil and constitutional rights. They used *Dobbs v Jackson Women's Health Organisation* and *Obergefell v Hodges* as the examples to demonstrate how the Supreme Court may uphold constitutional rights at the expense of civil rights, or vice versa.

However, a number of such responses argued that the Supreme Court is now more likely to uphold civil rights, against federalist principles, because of *Obergefell*, which then became the overall conclusion for the point. This is not supported by the timings of such cases, because *Dobbs* was several years after *Obergefell*.

There was also a number of common mistakes made in relation to case law, with *Trump v Hawaii* and *Shelby County v Holder* frequently being misquoted in terms of outcome and impact.

Other common mistakes, as mentioned in Q01(a), included mislabelling justices as Republican or Democrat, or trying to evaluate with rights that were not clearly-linked, such as comparing abortion with gun control.

Finally, it is also important to note that simply stating an example is not sufficient to access marks. Evidence given should be part of the explanation of the argument to access AO2 marks in particular. For example, a number of responses would state something like “the Supreme Court successfully upheld rights when it allowed same-sex marriage”, or that “*Dobbs v Jackson* was bad for women's rights, so the Supreme Court does not successfully protect rights”. Without further discussion of why this demonstrates the perceived success/failure of the Supreme Court in relation to upholding rights, it is assertion, rather than a reasoned argument.

Overall, the strongest responses were able to analyse and explain the responsibilities and powers of the Supreme Court in the area of civil and constitutional protection but also were fully-aware of how the political make-up of the court can affect their decisions. They were able to analyse effectively and evaluate the different interpretations of these rights and how they can conflict. They considered both successes and failures in terms of specific occasions when the Supreme Court has supported civil rights and when it has reduced them.

Candidates should be reminded to explore the consequences of rulings — not just what the Supreme Court decided, but who benefitted, who lost out, and how rights may clash. As noted, highlighting how protecting one right may come at the expense of another, adds depth and subtlety to AO3 evaluation.

Indicate the second question you are answering by marking a cross in the box ☒. If you change your mind, put a line through the box ☒ and then indicate your new question with a cross ☒.

Chosen question number: Question 3(a) ☒ Question 3(b) ☒ Question 3(c) ☒

~~Implied~~ → constructionism  
~~Eroded~~ → willing to overturn  
~~Unbiased~~ → biased

The Civil and constitutional rights have not been successfully upheld by the USSC. Although there has been defence of implied rights and some willingness to overturn poor rights rulings, the biased, partisan court has lead to rights being actually eroded by the Supreme Court, and therefore clearly not successfully upheld.

One could argue that the Supreme Court successfully upheld civil and constitutional rights, as they have been willing to rule to defend only implied rights. Even though the right to privacy or abortion is not explicitly outlined in the US constitution, the Supreme Court interpreted both of these things to ensure protection of Women's right to an abortion in *Roe v Wade*. Similarly, although not explicitly outlined in the constitution, the Supreme Court were willing to interpret the Equal treatment

clause as justification for *Obergefell v Hodges* and the ruling of gay marriage as constitutional. Further, the Supreme Court are willing to interpret rights into the current situation, interpreting in *Riley v California* that a warrant is needed to search someone's phone. Therefore, as the Supreme Court has been willing to rule in favour of and defend only implied rights and interpret the constitution to the current day, the USSC has <sup>arguably</sup> successfully upheld civil and constitutional rights. However, this is a poor argument, as there has been a recent return to conservative, constructionist rulings that erode civil and constitutional rights, such as the overturning of *Roe v Wade* in *Dobbs v Jackson*. This constructionist, conservative ~~rulings~~ agenda is pushed by the predominately republican, nominated, conservative court, who have also ruled in cases such as *City of Grants pass v Johnson* that ~~penal~~ criminalising homeless people for sleeping outside in public areas is not cruel or unusual punishment and there has been strong push back against gun regulation, such as the overruling of handgun bans in *DC v Heller*, arguably eroding civil right of collective right of safety. Therefore, it is clear that the return to constructionism by the USSC has lead to

overturning of rulings protecting rights, and new ruling creating rights, meaning that the US Supreme Court has not successfully upheld civil and constitutional rights.

Further, the US Supreme Court has made many historical rulings that have really eroded rights. They ruled in *Korematsu v US* that detainment of Japanese Americans in camps was constitutional for National Security. They also ruled in *Bradwell v Illinois* that women do not have the right to practice as lawyers, as their primary role is to be mother and homemaker. This shows that the Supreme Court has definitely not successfully upheld, but rather eroded civil and constitutional rights. However, one could argue against this, saying that the Supreme Court has successfully upheld civil and constitutional rights as they have been willing to overturn past rulings that erode rights. For example, *Plessy v Ferguson*, ruling that segregation was unconstitutional, was overruled in *Brown v Board of Education*. The precedent in *Bradwell v Illinois* also no longer applies, with women being permitted the right to go to the bar. Perhaps, as the US Supreme Court is occasionally willing to overturn past rulings that erode rights, they

arguably successfully upheld civil and constitutional rights. However, this is a weak argument as the US Supreme Court has failed to overrule all precedents that erode rights. The precedent of *Korematsu v US* still stands and has been used to justify cases that erode rights, such as the ruling in favour of Trump's Travel ban in *Trump v Hawaii*. Further, the US Supreme Court does not have power of enforcement, and their rulings regarding rights can be ignored. This can be seen in the cases of Guantanamo bay, where repeatedly it was ruled in cases such as *Hamdi v Rumsfeld*, *Hamdan v Rumsfeld* and *Boumediene v Bush* that Guantanamo bay prisoners need to be granted a fair trial, but this was effectively ignored by the executive and very few got fair trials. ~~Therefore~~ Overall, even though the Supreme Court has pushed back on some rulings that harm rights, they have failed to get rid of all rulings that erode rights, and are weakened by the lack of power of enforcement in their ability to protect rights. Therefore, the USSC has not successfully upheld civil and constitutional rights.

Finally, one could argue that the US Supreme Court

is neutral and makes rulings protecting rights even if they are unpopular. They are not permitted to join parties and are a separate, uninfluenced branch of government which protects rights despite partisan pressure. This can be seen in *Texas v Johnson*, where they ruled in favour of free speech allowing you to burn the US flag, and in *Snyder v Phelps*, where homophobic abuse is permitted under free speech. Therefore, as the USSC is independent and protects rights even when unpopular (the *Texas v Johnson* ruling was met with uproar and an attempt to amend the constitution to make flag-burning illegal), it has successfully upheld civil and constitutional rights. However, this is a weak argument, as the Supreme Court is clearly partisan and rules when they have the ability for their own political ideology. The ~~republican~~ predominantly republican nominated, conservative court have clearly made decisions in this view, as seen by all those being nominated by ~~Biden~~<sup>democrats</sup> supporting him *Biden v Nebraska*, with all republicans against. With this bias, they do not rule for protection of rights but for their conservative, pro republican view point, as seen by the conservative court supporting Trump in *Trump v Hawaii* even though the case was arguably an ~~erosion~~<sup>erosion</sup>.

and travel ban was arguably an erosion of rights. Similarly, all conservatives voted for reversing the decision of *roe v wade* - not acting judicially neutral but rather going back on the judicial principle of *stare decisis* to get their <sup>conservative</sup> view through. Therefore, as the Supreme Court is clearly politically biased, it ~~does~~ has not successfully upheld civil and constitutional rights, and has eroded them in favour of their conservative bias.

In conclusion, the civil and constitutional rights have not been upheld by the USSC. Although they have defended rights to an extent, the conservative bias, return to constructionism and lack of power of enforcement make this defence weak, and show that the USSC rather erodes these rights. Therefore, civil and constitutional rights have not been successfully upheld by the US Supreme Court.



This is an example of a top Level 5 response, which is thorough and in-depth.

It has perceptive analysis, particularly in relation to the Koreamatsu case and current events, and fully relevant evaluation that is consistently substantiated.

It comes to a clear, effective judgement that is supported by the whole of the response.

Level 5

Total: 29 marks

Indicate the second question you are answering by marking a cross in the box ☒. If you change your mind, put a line through the box ☒ and then indicate your new question with a cross ☒.

Chosen question number: Question 3(a) ☒ Question 3(b) ☒ Question 3(c) ☒

Plan

- |                                      |                                         |
|--------------------------------------|-----------------------------------------|
| <u>Civil + constitutional rights</u> | <u>States rights</u>                    |
| ① Bill of rights                     | ② <del>Abortion and health rights</del> |
| → 2nd amendment                      |                                         |
| → freedom of religion                | ③ Civil rights → Brown vs Board         |
| → freedom of speech                  | → gay marriage → abortion               |

When evaluating whether civil and constitutional rights have been successfully upheld by the US Supreme Court it's important to consider the different aspects / areas in which rights must be upheld: the Bill of Rights, states rights and civil rights. I believe civil and constitutional rights have to a large extent successfully been upheld.

State: To a large extent civil and constitutional rights have been upheld by the US Supreme Court, particularly over the individual rights laid out in the Bill of Rights. The US Supreme Court has increasingly used its power of judicial review to interpret the amendments laid out in the Bill of Rights and ensure laws ~~and~~ or actions by other

branches don't infringe upon these. For instance, the current Roberts Supreme Court upheld and expanded upon the right to amendments in *DC vs Heller* 2008. It upheld and expanded the constitutional rights to bear arms, setting a new precedent that individuals have the right to bear arms. As well as this the ~~Roberts Court~~ Supreme Court upheld the constitutional rights to privacy in *Riley vs California*, where it ruled it was illegal for the federal government to hack mobile phones. This is the Supreme Court successfully upholding individuals constitutional rights to privacy, from the government in this case. Additionally, the Supreme Court ensures there isn't a law that prohibits people from wearing a hijab, upholding freedom of religion. Therefore, this shows why to a large extent the US Supreme Court has civil and constitutional rights have been successfully upheld by the US Supreme Court, as there are numerous recent rulings that have upheld or even expanded rights laid out in the Bill of Rights. However, there has been controversy over whether freedom of speech is actually allowed, suggesting the US Supreme Court perhaps isn't upholding constitutional rights. For instance in November 15<sup>th</sup> 2023, it was ordered that the

Students for Justice in the Palestine Group at Florida University were to be deactivated. This is an example of people's freedom of speech being taken away from them. Nevertheless, to a large extent the US Supreme Court has successfully upheld constitutional rights in the Bill of Rights, with notable cases like *Riley vs California*.

Another area in which it is evident to a large extent civil and constitutional rights have been successfully upheld by the US Supreme Court is states rights. ~~States~~ The 10th amendment outlines states rights, and the US Supreme Court has ruled on cases in which the rights of states have been upheld or restored. For example, in 1955 the Voting Rights Act was passed which restricted people states from setting their own election laws. However, in 2016 the Supreme Court case *Shelby County vs Holder* overturned this case, restoring the rights of states to set their own election laws. This shows how the US Supreme Court has restored and upheld states rights. However, in *Whole Woman's Health vs Hellerstedt* the US Supreme Court undermined states rights. This is because the court overturned a Texas state ruling on abortion clinics. Nevertheless, only one state

Supreme Court ruled in favour of women's health. Thereby, although states rights were undermined women's civil rights were upheld. Thereby, this shows why to a large extent civil and constitutional rights have been successfully upheld by the US Supreme Court.

Civil rights have also to a large extent been successfully upheld by the US Supreme Court, and expanded upon. For instance, black people's rights to attend an desegregated, equal education was upheld by the court. This was in Brown vs Board of Education 1954, whereby the state ruled segregation in education is unconstitutional. This overturned Plessy vs Ferguson, and is a clear example of the US Supreme Court successfully upholding civil rights, in this case black civil rights. Additionally, the US Supreme Court has successfully upheld health rights, in particularly women's health, giving them more control over their own bodies. For instance, 1972 Eisenstadt vs Baird saw birth control legalized for all Americans. Earlier, the Supreme Court made the birth control pill legal. This saw 11 million women in 1969 using the pill, which allowed many of

them to enter the workplace, forming the quiet revolution in the 1970s. Therefore, this shows how to a large extent civil rights have been successfully upheld by the US Supreme Court, as rights such as educational rights for black people, and health rights for women have been upheld. However, it is only to a large extent, as women's health rights have been recently undermined. In 1973 Roe vs Wade legalized abortion for all Americans. However, the Roberts court overturned this case in 2022 with Dobbs vs Jackson. This removal of abortion rights for women does represent an example of where civil and social rights haven't been successfully upheld. Despite this, I would still argue to a large extent civil and social rights have been successfully upheld. For instance, the Supreme Court recently ruled on Obergefell vs Hodges, legalising and enforcing gay marriage. The right to gay marriage is enforced on a federal level. Therefore, this shows why to a large extent, civil and constitutional rights have been successfully upheld by the US Supreme Court.

Overall, to a large extent civil and constitutional rights have been successfully upheld by the US Supreme Court. This is because it has upheld

One constitutional rights laid out in the Bill of Rights, with cases like *Riley vs California*. Also, the supreme court has seen to successfully uphold states rights such as with *Shelby County vs Holder*. Furthermore, women's civil rights like black educational rights have been upheld in great case *Brown vs Board*. However, it is only to a large extent as the recent *Dobbs vs Jackson* ruling does limit the extent to which ~~the~~ rights have been upheld.



This is an example of a high Level 3 response.

Whilst the response may seem convincingly well-written and detailed, the accurate and valid case law that is deployed is not supported by focussed and relevant analysis and evaluation.

The response drifts into comparisons that are not like-for-like, and so gain less credit.

There are also some issues with the chronology. For example it cites *Dobbs v Jackson Women's Health Organisation* and *Obergefell v Hodges* as if *Dobbs* came first.

This impacts on the accuracy of the AO2 and AO3, because the argument incorrectly 'flip-flops' between have not protected/have protected civil rights, in that order. The frequent back-and-forth nature of the analysis and evaluation limits the marks awarded to both, and so keeps this in Level 3.

Level 3

Total: 17 marks



Be careful with chronology when using multiple examples to prove a point.

Avoid undermining or disproving your own argument with conflicting evidence from different time-periods.

# Paper Summary

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

- 12-mark questions do not require an introduction or a conclusion, and must be directly and explicitly comparative between the US and the UK throughout the response
- Candidates must read the question carefully, to ensure they respond as effectively as possible eg looking for topic words or phrases, checking for similarities or differences
- Comparative theories are only required for Q02 and should be embedded within the points made for Q02, rather than simply referred to in passing, in order to reach Level 4
- Substantiation is essential to access high-level AO1 marks in all questions. For the 12-mark questions, evidence should be provided for both the UK and the US
- For extended-response questions (Q03(a), Q03(b) and Q03(c)), the strongest responses set out criteria for discussion in the introduction, the judgment and line of argument, then structured the essay around them, with debate and exemplification to support the arguments made
- 30-mark essay responses must consider both the view presented in the question, and arguments that may oppose this view, to access the higher levels; but this must be done evaluatively, rather than a simplistic agree/disagree structure
- It is advisable to start with the premise given in the question, rather than turning to an alternative factor/argument. This is to ensure that candidates follow a line of argument that addresses the question, rather than drifting into an answer for a question different from the one in the examination
- Analysis (AO2) and evaluation (AO3) should be integrated within the essay, rather than 'bolted-on' at the end
- Centres should remind candidates that the strongest responses include a range of relevant and contemporary evidence that directly and explicitly supports the arguments being made
- Candidates should be advised to check their revision notes very carefully for accuracy, especially if they choose to make use of resources found outside of lessons. Careless mistakes with key facts and evidence will lose valuable marks

## Grade boundaries

Grade boundaries for this, and all other papers, can be found on the website on this link:  
<https://qualifications.pearson.com/en/support/support-topics/results-certification/grade-boundaries.html>

