

Using examples, explain the limitations on the Supreme Court's powers.

The president and Congress both have the power to check the Supreme Court in various ways, this is known as 'checks and balances' and was inscribed into the Constitution to avoid tyranny and to encourage a spirit of bipartisanship between the three branches of government.

Congress has four significant checks on the Supreme Court. The Senate has the power to confirm or reject appointments made to the Supreme Court by the President, for example following Lewis Powell's retirement President Reagan nominated Robert Bork as associate judge. Lewis Powell was widely considered as a moderate and was often referred to as the 'swing vote' in close decisions; democrats feared the Court would shift the philosophical nature. In the Senate Judiciary Committee headed by Chairman Joe Biden voted 9-5 against the appointment. It is extremely unlikely for a nomination to get confirmed without the support of the committee. It was expected that Bork would withdraw his nomination, however he did not and the vote went to the Senate resulting in 58-42 against his appointment. Therefore it is evident that the President does not always get whom he wants on the Supreme Court and cannot determine the membership of the court and their philosophies of judicial review without the consent of the Senate. Not only does Congress get to decide who sits on the Supreme Court but also how many judges sit on the Court. Thereby giving the President the obligation to make new appointments and potentially altering the philosophical make-up of the Court. The Senate refused President Franklin D. Roosevelt's plan to increase the number of Supreme Court judges from 9 to 15 for this very reason- that by agreeing to such a plan, the nature of the Supreme Court would be altered. If the Senate suspects a judge to be tyrannical they may if they wish remove the judge from their post through impeachment. Even the threat of impeachment can be effective. In 1968 Associate Justice Abe Fortas resigned rather than face almost certain impeachment. Only one Supreme Court Justice has been impeached. Congress has the power to initiate constitutional amendments that can have the effect of negating a decision by the Court. The clearest example of this was the Court's 1895 decision of *Pollock v. Farmers' Loan and Trust Company*, when it declared federal income tax to be unconstitutional. As a result congress initiated, with the states ratification, the 16th Amendment, which stated: "The Congress shall have the power to lay and collect taxes on incomes." However recent attempts to initiate constitutional amendments to overturn the Court's decisions such as flag desecration, school prayers, abortion rights and congressional term limits have all failed. Overall Congress has the power to place judges on the Court, remove judges from the Court, and determine how many judges sit on the Court and from time to time initiate constitutional amendments.

The president has three significant checks on the Court. Most importantly is the power to nominate judges to the Court. By choosing justices of a certain political and judicial philosophy, the President may seek to change the nature of the Court. Also, the president can either throw his political weight behind a Court's decision or openly criticize the decision. President Eisenhower gave his political support to the Court's 1954 decision in *Brown v. Board of Education of*

Topeka, where the Court ruled that segregated schools were unconstitutional. Finally, the president has the power of pardon; a pardon is the forgiveness of a crime and the cancellation of the relevant penalty. The power of pardon for federal crimes is granted to the President of United States under Article II, Section II of the Constitution which states that the president “shall have power to grant reprieves and pardons for offenses against the United States, except cases of impeachment”. The power of pardon has become increasingly controversial in recent times. In *United States v. Richard Nixon* (1974), the Court ordered President Nixon to hand over the so-called White House tapes and thereby stop impeding investigation of the Watergate affair. Nixon obeyed, handed over the tapes and resigned within days once the tapes showed his involvement in an intricate cover-up. Upon Nixon’s resignation Vice- President Gerald Ford became president and granted Nixon a “full, free and absolute pardon”. Although Nixon was not officially impeached due to his resignation, he would most certainly have been impeached by Congress had he not resigned. It states in the Constitution the power of pardon is granted to the president “except in cases of impeachment”, therefore one might argue that Ford’s pardon was unconstitutional. However, due to the controversy generated by pardons, presidents have significantly decreased its usage and are mostly used in uncontroversial cases. On his final day of his presidency, President Clinton pardoned 140 people including fugitive Mark Rich, whose former wife had made large monetary donations to Clinton’s election campaigns and had given expensive personal gifts to the president and the first lady. In contrast, George W. Bush pardoned only 189 people in eight years.

There are further, though less significant, checks on the Supreme Court. The Supreme Court has no power of initiation; the Court must wait until a case is brought forward. Many presidents, politicians and commentators have been of the view that the War Powers Act (1973) may be unconstitutional. However, the Court has been unable to rule on the matter because no case regarding this Act has appeared before it. The Court possesses no powers of enforcement. In 1954 the Court announced in *Brown v. Board of Education of Topeka* that states should desegregate their schools ‘with all deliberate speed’, several years later the Court complained that desegregation was subject to ‘too much deliberation and not enough speed.’ The Court can amend- even overturn- decisions made by earlier Courts. For example, the 1954 *Brown v. Board of Education Topeka* decision stated that ‘separate educational facilities are inherently unequal’. However, the Court’s decision in the 1896 *Plessy v. Ferguson* case laid down what became known as the ‘separate but equal’ doctrine, which was accepted as law until the 1954. Finally the Constitution itself is a check on the Court, while some parts of the Constitution are open to interpretation – such as the 1st Amendment- others are explicit, allowing little, if any, room for interpretation by the Court.

The Constitution is the supreme law of the United States. The Supreme Court Justices interpret the meaning of the Constitution. Therefore, they are seen as the defenders of the Constitution. Supreme Court Justices have an extraordinary amount of power and in order to prevent the misuse of that power, the Constitution protects itself and the people of the United States from

tyranny by establishing a series of 'checks and balances' amongst the President, Congress and the Supreme Court.

Why, and to what extent, has there been disagreement about the constitutional importance of federalism?

How do Presidents veto legislation, and how significant is the presidential veto?

A presidential veto is a power vested in the president by Article II of the Constitution, by which he may return a bill to Congress unsigned, along with the reasons for his objection. Congress may override a presidential veto by a two-thirds vote in both houses.

The president has several options concerning legislation, he can sign the bill into law, 'leave the bill on his desk' or veto the bill. The president signs bills into law when he fully supports a bill and would like to take credit for the bill. The president may 'leave the bill on his desk' because they have position on the bill or because he would like to veto the bill but knows it would result in being overridden, this bill will become law without his signature within 10 congressional working days. Lastly the president may veto a bill, the president may do this because he strongly opposes a bill. Presidents use the threat of a veto as a bargaining tool with Congress. The president hopes that the threat of a veto will cause Congress to make the changes in the bill which the president has demanded. To veto a bill, the president must act within 10 congressional working days upon receiving a bill, otherwise the bill will become law. The president sends the bill back to its house of origin with a message explaining his objection. The president cannot veto sections of the bill; the whole bill must be vetoed. Congress has three options upon receiving a vetoed bill, it may put the right the 'wrongs' identified by the president in his veto message and return the bill for his signature. This is highly unlikely since as they would have been well aware of the president's objections prior to the drafting of the bill. Congress may attempt to override the presidential veto; however with the required two-thirds in both houses this is highly difficult and unlikely. Lastly Congress may realize that they both not have the required votes to override the veto, do nothing and accept that the president has won, this is the most likely overcome of a presidential veto. During Bill Clinton's eight years as president, he used the presidential veto on 36 occasions. Congress attempted to override 13 out of 36, it failed in 11 and only succeeded in just two. Thus, President Clinton won 34 out of 36 occasions when he vetoed legislation.

In order to override the presidential veto a required two-thirds majority in both of houses of Congress is needed, therefore the presidential veto is immensely significant. Due to the decrease in bipartisanship in Congress, a bill is unlikely to have the majority of support and while it may in the Senate, it may not in the House. The power of veto is inscribed into the Constitution to serve

as a check on Congress and encourage a spirit of bipartisanship between Congress and the president.

*How significant is the **role of political parties** within Congress?*

Section B:

To what extent is there disagreement about how effectively the Constitution protects freedom?

“Members of Congress are more concerned with local issues than with national or international issues.” Discuss.

“There are no effective checks on presidential power.” Discuss.