5.3 The US Constitution: Principles and the Amendment Process

Total Marks

EDEXCEL 9PL0 · about 60 minutes · Write-in edition

Name: _____ Date: ____ / ____ / _____

Answer ALL questions. Short-answer questions may be brief but must be precise. For levels-marked questions (the 12-mark source question and the 30-mark essay) write a developed response with evidence, clear reasoning and a concluding judgement.

1 State two methods by which an amendment to the US Constitution can be proposed under Article V (name both proposal routes).

(Total for Question 1 is 2 marks)

2 Explain what is meant by the US Constitution being 'entrenched' and give one consequence of entrenchment for constitutional change.

(Total for Question 2 is 3 marks)

3 Explain the principle of separation of powers in the US Constitution and name the three branches involved.

(Total for Question 3 is 3 marks)

4 Explain how the Bill of Rights contributes to the idea of limited government under the US Constitution.

(Total for Question 4 is 4 marks)

5 Evaluate the extent to which the US Constitution has proved too difficult to amend. In your answer, assess the design of Article V, the role of politics and federalism, and the impact of judicial interpretation as an alternative to formal amendment. Reach a reasoned judgement.

(Total for Question 5 is 30 marks)

6 Explain, with an example, how checks and balances operate between the President and Congress under the US Constitution.

(Total for Question 6 is 4 marks)

7 Using the two short extracts below about constitutional interpretation in the USA, analyse how each extract supports a different view of whether the Constitution is a 'living' document or must be interpreted only by originalist principles. Extract A: 'The Constitution is a framework created in 1787, containing broad phrases whose meaning must be adapted to changing social and technological conditions; judges should read provisions in light of contemporary realities.' Extract B: 'The Constitution's meaning was fixed at the time of its framing; judges must interpret the text according to original public meaning, leaving changes to the democratic amendment process rather than judicial innovation.' Using these extracts and your knowledge of the US constitutional debate, analyse the strengths of each position.

(Total for Question 7 is 12 marks)

Mark scheme · 5.3 The US Constitution: Principles and the Amendment Process

Question 1

Proposal by two-thirds of both Houses of Congress (House of Representatives and Senate) cao	**B1**
Proposal by a national constitutional convention called for by two-thirds of state legislatures	**B1**

Answer: Two methods: proposal by a two-thirds vote of both Houses of Congress; or proposal by a national constitutional convention called when two-thirds of state legislatures apply.

Question 2

Defines entrenchment, e.g. rights and rules are protected from ordinary law by requiring special procedures to change them	**B1**
Identifies a consequence, e.g. amendments require a supermajority making change difficult	**B1**
Explains the consequence, e.g. protecting minority rights but slowing policy adaptation	**B1**

Answer: Entrenchment means the Constitution and certain rights require special procedures, not ordinary legislation, to be altered. A consequence is that amendments need supermajorities in Congress and among states, which protects minority rights but makes adapting the document to new conditions slow and difficult.

Question 3

States separation of powers distributes government functions across branches to prevent concentration of power	**B1**
Names the three branches: legislative, executive, judicial cao	**B1**
Briefly explains the intended effect, e.g. checks abuse and protect liberty	**B1**

Answer: Separation of powers divides government functions between three branches, the legislative (Congress), the executive (President) and the judicial (federal courts), to prevent any one branch concentrating power and thereby protect liberty.

Question 4

Identifies that the Bill of Rights (first ten amendments, 1791) lists specific individual rights	**B1**
Explains that enumerated rights limit governmental powers by forbidding certain actions	**B1**
Provides an example, e.g. First Amendment protects free speech from government restriction	**B1**
Links to limited government principle, e.g. rights protect citizens and constrain state authority	**B1**

Answer: The Bill of Rights, the first ten amendments ratified in 1791, enumerates individual rights such as free speech and due process, thereby restricting what government may lawfully do. For example, the First Amendment prevents Congress from enacting laws that unduly restrict speech, illustrating the Constitution limits government power to protect citizens.

Question 5

Level 0 No relevant material.	**0**
Level 1 Basic, generalised knowledge of Article V and the amendment process with little or no analysis or evaluation. Limited or no examples.	**1-7**
Level 2 Clear knowledge of Article V, federal factors and alternative mechanisms, with some developed analysis and supporting examples. Evaluation is present but likely one-sided or not fully developed.	**8-15**
Level 3 Detailed, accurate knowledge applied to a sustained analysis that weighs reasons why amendment is difficult against counterarguments. Uses specific examples and considers the roles of politics, federalism and the courts; reaches a reasoned judgement.	**16-23**
Level 4 Sophisticated and balanced evaluation drawing on wide-ranging, accurate evidence and reasoning. Directly engages with the claim that the Constitution is too difficult to amend, evaluates institutional design, political behaviour and judicial alternatives, and reaches a clear, well-justified judgement.	**24-30**

Indicative content:

- Arguments that it is too difficult: Article V sets very high thresholds, two-thirds of both Houses or convention proposal plus three-quarters of states for ratification, which produces a strong status quo bias and explains only 27 amendments by 2026.
- Political explanations: polarization, divided government and partisan tribalism make cross-aisle supermajorities unlikely; powerful interest groups and state diversity can block national consensus.
- Federalism effects: diverse regional interests and the need for 38 state ratifications mean that changes affecting only some regions face blocking by others, amplifying the difficulty of national amendment.
- Institutional alternatives reduce pressure for amendment: Congress can pass laws, executive action can effect policy, and the Supreme Court can reinterpret the text, producing de facto constitutional change without Article V; this weakens incentives to pursue formal amendment.
- Counter-arguments that it is appropriately difficult: entrenchment protects minority rights and prevents transient majorities from making sweeping changes; stability and predictability are valuable constitutional goods.
- Counter-argument, democratic legitimacy: difficult amendment may frustrate democratic change and transfer power to courts or administrative bodies, raising concerns about legitimacy if policy is set by unelected judges rather than by amended text.
- Examples to support each side: successful amendments such as the Bill of Rights (1791) and Reconstruction Amendments (13th to 15th, post-1865) show amendment can succeed in major moments; 20th century proposals often failed due to politics (e.g. Equal Rights Amendment stalled despite congressional passage).
- Evaluation of the courts: judicial interpretation can adapt the Constitution but may be seen as substituting judicial policy-making for democratic amendment; the balance between adaptability and democratic process is central to the judgement.
- A strong conclusion weighs the trade-offs: while Article V makes amendment difficult in ordinary times, this design protects foundational principles and minority rights; however, modern polarization and the availability of non-amendment routes mean vital constitutional change often occurs outside Article V, which can be judged problematic for democratic legitimacy.
- Credit a clear, supported final judgement that takes account of institutional design, political reality and normative values about stability versus democratic change.

Question 6

Identifies a check, e.g. presidential veto of legislation	**B1**
Identifies a counter-check, e.g. congressional override by two-thirds of both Houses	**B1**
Explains the mutual constraint, e.g. veto encourages negotiation; override limits presidential power	**B1**
Gives an example or effect, e.g. recent vetoes and attempted overrides show practical operation	**B1**

Answer: An example: the President can veto bills passed by Congress, checking legislative action; Congress can respond by overriding a veto with a two-thirds vote in both Houses, checking the President. This reciprocal arrangement forces negotiation and prevents either branch imposing policy unilaterally.

Question 7

Level 0 No relevant material.	**0**
Level 1 Basic or descriptive points about one or both extracts with limited analysis and little supporting knowledge.	**1-3**
Level 2 Clear analysis of one position and some analysis of the other, using accurate constitutional examples or reasoning; links to strengths are present but not fully developed.	**4-6**
Level 3 Detailed analysis of both positions, using well-selected examples and constitutional reasoning to show why each position has persuasive force.	**7-9**
Level 4 Sophisticated, balanced analysis that evaluates the comparative strengths of both positions and reaches a supported judgement about their relative persuasiveness in practice.	**10-12**

Indicative content:

- Extract A supports the living constitution view: it allows constitutional provisions to be applied to novel situations such as digital privacy or modern military technology, giving courts flexibility to protect rights in changing circumstances.
- Strength of Extract A: judicial adaptability can protect minority rights against majoritarian inertia, for example applying Due Process or Equal Protection clauses to new forms of discrimination not envisaged in 1787.
- Strength of Extract A: broad phrasing like 'due process' or 'cruel and unusual punishment' invites interpretation, and a living approach can maintain the document's relevance without requiring difficult formal amendments.
- Limit of Extract A: critics argue it risks judicial overreach, substituting judges' policy preferences for democratic decisions and undermining separation of powers.
- Extract B supports originalism: it stresses democratic legitimacy by tying change to the Article V amendment process, arguing judges should not create new rights or policies beyond textually grounded meaning.
- Strength of Extract B: originalism constrains judicial discretion, offering predictable rules and respecting the role of elected branches and states in constitutional change.
- Strength of Extract B: originalist methods can check activist jurisprudence and help maintain stability in legal interpretation.
- Limit of Extract B: strict originalism can produce rigid outcomes that seem unjust or obsolete, for example if 18th century understandings do not easily address 21st century problems like surveillance or bioethics.
- Comparative evaluation: a balanced answer notes living constitutionalism offers adaptability and rights protection, while originalism offers democratic legitimacy and constraint; the better approach may depend on the constitutional question, political context and institutional design.
- Supported judgement examples: cite cases or debates (e.g. privacy rights development through judicial interpretation) to show how each approach has practical consequences and trade-offs.