

A-LEVEL

Government and Politics

GOV4A – The Government of the USA

Mark scheme

2151

June 2015

Version: V1 Final Mark Scheme

Mark schemes are prepared by the Lead Assessment Writer and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation events which all associates participate in and is the scheme which was used by them in this examination. The standardisation process ensures that the mark scheme covers the students' responses to questions and that every associate understands and applies it in the same correct way. As preparation for standardisation each associate analyses a number of students' scripts: alternative answers not already covered by the mark scheme are discussed and legislated for. If, after the standardisation process, associates encounter unusual answers which have not been raised they are required to refer these to the Lead Assessment Writer.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of students' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this Mark scheme are available from aqa.org.uk

CRITERIA FOR MARKING AS/A2 GOVERNMENT AND POLITICS

Introduction

AQA's revised Government and Politics specification has been designed to be objectives-led in that questions are set which address the assessment objectives published in the specification. The assessment objectives for A Level and AS are the same, but the weightings are different at AS and A2. Details of the weightings are given in Section 4.2 of the specification.

The schemes of marking reflect these objectives. The mark scheme which follows is of the levels-of-response type, showing that students are expected to demonstrate their mastery of the skills required in the context of their knowledge and understanding of Government and Politics. Mark schemes provide the necessary framework for examiners but they cannot cover all eventualities. Students should be given credit for partially complete answers. Where appropriate, students should be given credit for referring to recent and contemporary developments in Government and Politics.

Consistency of marking is of the essence in all public examinations. It is therefore of vital importance that examiners apply the mark scheme as directed by the Principal Examiner in order to facilitate comparability with the marking of other options.

Before scrutinising and applying the detail of the specific mark scheme which follows, examiners are required to familiarise themselves with the general principles of the mark scheme as contained in the Assessment Matrix.

There are no limits to the areas of knowledge that students may feel able bring to the discussion. Therefore the specification of requirements outlined in the mark schemes can only be indicative. Students are not expected to include all the material presented in order to access the full range of available marks. At the same time they may successfully include material from their particular studies which is not indicated in the scheme.

Using a levels-of-response mark scheme

Good examining is about the consistent application of judgement. Mark schemes provide a framework within which examiners exercise their judgement. This is especially so in subjects like Government and Politics, which in part rely upon analysis, evaluation, argument and explanation. With this in mind, examiners should use the Assessment Matrix alongside the detailed mark scheme for each question. The Assessment Matrix provides a framework ensuring a consistent, generic source from which the detailed mark schemes are derived. This supporting framework ensures a consistent approach within which students' responses are marked according to the level of demand and context of each question.

Examiners should initially make a decision about which level any given response should be placed in. Having determined the appropriate level the examiners must then choose the precise mark to be given within that level. In making a decision about a specific mark to award, it is vitally important to think first of the mid-range within the level, where that level covers more than two marks. Comparison with other students' responses to the same question might then suggest whether the middle mark is unduly generous or severe.

In making decisions away from the middle of the level, examiners should ask themselves questions relating to student attainment, including the quality of language. The more positive the answers, the higher should be the mark awarded. We want to avoid 'bunching' of marks.

Levels mark schemes can produce regression to the mean, which should be avoided. A student's script should be considered by asking 'Is it:

- precise in its use of factual information?
- appropriately detailed?
- factually accurate?
- appropriately balanced or markedly better in some areas than others?
- generally coherent in expression and cogent in development (as appropriate to the level awarded)?
- well presented as to general quality of language?

The overall aim is to mark positively, giving credit for what students know, understand and can do.

A2 GOVERNMENT AND POLITICS
GENERIC MARK SCHEME for questions with a total of 10 marks

Knowledge and Understanding: Recall, Select & Deploy	Skills: Analysis & Evaluation	Communication
AO1	AO2	AO3
<p>Level 4 (4 marks) The student demonstrates a comprehensive knowledge and understanding of political concepts, institutions and processes. The student fully addresses the requirements of the question and provides developed and effective to comprehensive interpretation. The answer also provides clear to accurate evidence and, where appropriate, good to excellent examples to illustrate points made.</p>	<p>Level 4 (4 marks) The student applies an excellent range of developed concepts and uses appropriate political theory to construct a clear and cogent explanation or argument.</p>	<p>Levels 3–4 (2 marks) The student communicates clearly and effectively in a sustained and structured manner, using appropriate political vocabulary. There are few, if any, errors of spelling, punctuation and grammar and the response should be legible.</p>
<p>Level 3 (3 marks) The student demonstrates good knowledge and understanding of political concepts, institutions and processes. The student clearly addresses the requirements of the question and provides sound interpretation and contextual awareness. The answer includes good examples to illustrate points made.</p>	<p>Level 3 (3 marks) The student applies a good range of developed concepts and uses appropriate political theory to construct a clear and cogent explanation or argument.</p>	<p>The answer has a clear sense of direction, is focused on the question and, where appropriate, has a conclusion which flows from the discussion.</p>
<p>Level 2 (2 marks) The student demonstrates limited knowledge and understanding of political concepts, institutions and processes. The candidate makes a limited attempt to address the requirements of the question and provides little to partial, but reasonably effective, interpretation. Answers offer limited evidence and few, or inaccurate, examples to illustrate points made.</p>	<p>Level 2 (2 marks) The student applies a limited range of concepts and makes limited use of political theory or ideas in developing an explanation or argument.</p>	<p>Levels 1–2 (1 mark) The student communicates explanations or arguments with limited clarity and effectiveness, using limited political vocabulary. The answer may lack either a clear focus on the question or a sense of direction.</p>
<p>Level 1 (1 mark) The student demonstrates little knowledge and understanding of political concepts, institutions and processes. The student makes little attempt to address the requirements of the question and provides little interpretation. Answers offer little evidence and few, or inaccurate, examples to illustrate points made.</p>	<p>Level 1 (1 mark) The student applies few concepts and makes little use of political theory or ideas in developing an explanation or argument.</p>	<p>There are frequent errors of spelling, punctuation and grammar and legibility may be a problem. A conclusion, where appropriate, may be offered but its relationship to the preceding discussion is modest or implicit.</p>
<p>0 marks No relevant response.</p>	<p>0 marks No relevant response.</p>	<p>0 marks No relevant response.</p>

A2 GOVERNMENT AND POLITICS**GENERIC MARK SCHEME for questions with a total of 30 marks**

Knowledge and Understanding: Recall, Select & Deploy	Skills: Analysis & Evaluation	Communication
AO1	AO2	AO3
<p>Level 4 (10–12 marks) The student demonstrates a comprehensive knowledge and understanding of political concepts/theories/institutions and processes and the relationships between them. A synoptic approach is fully developed, drawing appropriately on knowledge, perspectives and examples from a wide range of studies in government and politics. The answer fully addresses the requirements of the question and demonstrates excellent contextual awareness. The answer includes excellent examples to illustrate points made. The answer includes detailed and comprehensive interpretations or explanations, as well as accurate evidence and relevant examples, to illustrate points made.</p>	<p>Level 4 (10–12 marks) The student displays excellent awareness of the implications and demands of the question. There is an excellent and sustained focus on the specific question asked. There is clear and full evaluation of political institutions, processes and behaviour which displays a sophisticated awareness of differing viewpoints and recognition of issues. Appropriate parallels and connections are clearly identified, together with well-developed comparisons. A wide range of concepts is used and developed.</p>	<p>Level 4 (6 marks) The student communicates structured and sustained arguments, explanations and conclusions with clarity. Excellent use is made of political vocabulary to construct cogent and coherent arguments and explanations. The response should be legible with few, if any, errors of spelling, punctuation and grammar. The answer has a clear sense of direction, culminating in a conclusion that flows from the preceding discussion.</p>
<p>Level 3 (7–9 marks) The student demonstrates sound knowledge and understanding of political concepts/theories/institutions and processes and the relationships between them. A synoptic approach is well developed using a range of knowledge, perspectives and examples gained elsewhere in the study of government and politics. The answer clearly addresses the requirements of the question and demonstrates sound contextual awareness. The answer includes developed and effective interpretations or explanations and also clear evidence and good examples to illustrate points made.</p>	<p>Level 3 (7–9 marks) The student displays sound awareness of the implications and demands of the question. There is a clear focus on the question. There is a sound evaluation of political institutions, processes and behaviour which displays good awareness of differing viewpoints and recognition of issues. There is good recognition of parallels and comparisons. Appropriate concepts are used and developed.</p>	<p>Level 3 (4–5 marks) The student communicates arguments, explanations and conclusions well. Good use is made of political vocabulary to construct clear arguments and explanations. The response should be legible but there may be occasional errors of spelling, punctuation and grammar. The student produces an answer with a conclusion linked to the preceding discussion.</p>

GENERIC MARK SCHEME for questions with a total of 30 marks (continued)

Knowledge and Understanding: Recall, Select & Deploy	Skills: Analysis & Evaluation	Communication
AO1	AO2	AO3
<p>Level 2 (4–6 marks) The student demonstrates outline knowledge and understanding of political concepts/theories/institutions and processes and some awareness of the relationships between them. The answer makes a limited attempt to address the question and demonstrates contextual awareness covering part of the question. An attempt to develop a synoptic approach is made, using a limited range of knowledge, perspectives and examples gained more broadly in the study of government and politics. The answer includes a partial and reasonably effective attempt at interpretation or explanation with some examples to illustrate points made.</p>	<p>Level 2 (4–6 marks) The student displays little awareness of the implications and demands of the question, resulting in a restricted focus. There is a limited evaluation of political institutions, processes and behaviour which displays a partial awareness of differing viewpoints and issues.</p> <p>There is some recognition of basic parallels and comparisons. Arguments and explanations are undeveloped, with a limited use of concepts.</p>	<p>Level 2 (2–3 marks) The student communicates arguments and conclusions adequately, with a limited use of political vocabulary. There are frequent errors of spelling, punctuation and grammar and legibility may be a problem. A conclusion is offered but its relationship to the preceding discussion may be modest or implicit.</p>
<p>Level 1 (1–3 marks) The student demonstrates a slight and incomplete knowledge and understanding of political institutions and processes and a limited awareness of the relationships between them. A very limited attempt at synopticity is made, sometimes using superficial or inaccurate knowledge, perspectives and examples cited from elsewhere in their study of government and politics. There is little attempt to address the requirements of the question. There is only superficial awareness, if any, of the context of the question, with little interpretation and few, if any, examples often inaccurately reported or inappropriately used.</p>	<p>Level 1 (1–3 marks) The student displays little awareness of the implications and demands of the question, and focus is lacking. Evaluation of political institutions, processes and behaviour is superficial.</p> <p>Analysis shows little awareness of differing viewpoints and issues. There is little, if any, recognition of parallels and comparisons. Arguments, explanations and use of concepts are superficial and naïve.</p>	<p>Level 1 (1 mark) The answer relies upon narrative which is not fully coherent. There is little or no use of political vocabulary. Errors in spelling, punctuation and grammar may be intrusive and the response may not be legible. A conclusion, if present, is not adequately related to the preceding discussion.</p>
<p>0 marks No relevant response.</p>	<p>0 marks No relevant response.</p>	<p>0 marks No relevant response.</p>

Topic 1 The Constitutional Framework of US Government

(01) Explain the concept of the separation of powers as found in the USA.

[10 marks]

For AO1 students should show knowledge and understanding of features such as the following:

- relevant theories such as those of Locke and Montesquieu.
- arguments for separating governmental powers.
- the three governmental functions of law making, law execution and judging.
- US institutions charged with these functions.
- relevant concepts such as independence, judicial review, checks and balances.
- comparative reference.

For AO2. Students should explain the principle of the separation of powers. They should note that the purpose is to prevent tyranny. They should explain the way in which the structure of US government enshrines the separation of powers. In this they should also note the roles and functions of the institutions (i.e. Congress, the executive and judiciary). Higher-level responses may note that the US Constitution in part demonstrates the rejection of the monarchical rule of Britain. Higher-level answers may also discuss the ways in which the branches of government are independent, noting, for example, how members of Congress must give up their seats if they are to join the executive. Give credit where this is illustrated with examples. Students may introduce comparative analysis by noting that in Britain there is some fusion of the powers. There may also be students who note problems arising from the principle of separation of powers, such as gridlock or vetoes. Some students may also argue that the federal system itself can be seen as a form of the separation of powers. This may be credited but is not essential for top-level marks. However, some high-level students may argue that there is a separation of personnel rather than a true separation of powers: ie power-sharing and forced cooperation through checks and balances. This should be rewarded. Some top candidates may well also refer to the effects on the separation of powers by recent periods of hyper-partisanship or, in contrast, the occasional undermining of the principle during times of 'united government' such as the Bush administration from 2002-2006 when Washington was regularly described as a 'one party town.'

(02) 'The US Constitution was designed to resist change.' Discuss.

[30 marks]

For AO1 students should show knowledge and understanding of features such as the following:

- the essential purposes of a constitution.
- the concept of constitutional change.
- debates around the writing of the Constitution.
- arguments for constitutional flexibility.
- arguments for constitutional rigidity.
- codified and uncodified constitutions.
- fundamental law.
- illustrative comparative material from Britain.

- the process for making constitutional amendments.
- informal constitutional change.
- examples of constitutional changes.
- examples of failed attempts at constitutional change.
- examples of Supreme Court decisions leading to the constitutional change.
- judicial interpretation.
- relevant judicial rulings.

For AO2 students should recognise that a stable constitution is a prerequisite for democratic (or constitutional) government. They should also be able to note that the Founding Fathers were concerned to create a constitution that could withstand ephemeral and self-interested tinkering by temporary holders of power. They should explain that the laws forming the Constitution were placed above the ordinary legislative process. This they may emphasise by contrasting the position with that of Britain.

Answers will need to focus on the constitutional amendment process to consider whether it appears designed to resist change. Most competent responses will note that the Constitution has been amended only 27 times, with the first ten forming the Bill of Rights and ratified as early as 1791. Strong students should be expected to outline the amendment process, stressing its tortuous nature. Responses should offer details of the requirement for super majorities in both houses of Congress and ratification by three-quarters of the state legislatures. They should also note the power of 13 states to derail the process. Higher-level students should note how this process entails prolonged debate in a quest for consensus, making hasty decisions unlikely, if not impossible. Some high-level students may note that constitutional change could be made through a constitutional convention called by two-thirds of the states, which is even more difficult and has never been used.

Students at the highest levels should be able to cite examples of successful amendments, such as direct elections to the Senate (17th amendment) in 1913, and also would-be amendments that have failed, such as making certain activities (e.g. same-sex marriage, flag burning) unconstitutional.

Students should note that, while the formal amendment process does resist change, there are more informal ways in which the Constitution can, in effect, be changed. They should note that it is a short document and much of its language is framed somewhat vaguely. The same can be said of the amendments themselves. In this way the Founding Fathers may be said to have been allowing scope for modifications in the light of political and social developments. Students should note that this opens the door to interpretation and this task falls to the judges. Judicial interpretation by the Supreme Court can be said to produce 'interpretative amendments' which circumvent the formal amendment process. Students should note that this pattern has allowed a growth in presidential powers and a shift in authority from the states to the federal government. Constitutional change can also be effected by acts of Congress such as the 1964 Civil Rights Act.

Students may also note that, in the day-to-day practice of politics and government, conventions of behaviour emerge. They may note that these are particularly central in the case of Britain, but they are not absent from the USA. Students may argue that the working of the president's cabinet, the existence of the Executive Office of the President and the practice of judicial review have all evolved in this way. They should point out that, in many cases, such developments have reflected the circumstances and personalities of the times.

Students may conclude that the US Constitution was, or was not, designed to resist change. Either position is acceptable. The important factor is that the conclusion follows logically from the preceding discussion.

Topic 2 The Legislative Branch of Government: US Congress**(03)** Consider arguments for bicameralism as found in the USA.**[10 marks]**

For AO1 students should show knowledge and understanding of features such as the following:

- Arguments for bicameralism.
- Problems with bicameralism.
- Checks and balances.
- Forms of representation.
- Terms of office.
- Constitutional powers of House and Senate respectively.

For AO2 students should recognise that bicameralism as found in the USA means that the legislature comprises two houses, the House of Representatives and the Senate. This is a ten-mark question and students are not expected to embrace all possible arguments for bicameralism in order to access the highest levels. Nor are they expected to cover all the points below, and they may introduce other points worthy of credit. In explaining arguments for bicameralism students may make some reference to the deliberations of the Founding Fathers. This will be creditworthy but not necessary for marks at the highest level. The requirement in the question to ‘consider’ means that students should recognise that arguments for bicameralism can be open to question.

Students may consider the argument that bicameralism in the USA can exert a steadying and stabilising influence on the legislative process – a means of preventing the emergence of a popular tyranny, which some of the Founding Fathers feared.

Students may note that bicameralism allows for members to be elected from, and represent, different constituencies, the Senate representing all states equally and the House representing districts (reflecting popular feelings more directly). They may consider the argument that the House represents the nation at large while the Senate gives voice to the specific interests of the states. However, they may note that, while the Senate offers equality of representation in state terms, it could be seen as over-representing the smaller states. Some higher-level students may see significance in the fact that it was not until 1913 that the 17th Amendment established that senators would be elected by popular vote (rather than the state legislatures). Some students may make comparisons with the British parliamentary system, where the upper house remains unelected.

Students may also consider arguments for varying terms of office, such as the fact that shorter terms produce more electoral responsiveness, while longer ones for the Senate allow for long-term policy consideration, acting against the fickle opinions of the masses. However, students may also note the possibility of gridlock. Some may consider that the shorter terms can encourage practices such as pork barrelling. Students may also consider the arguments relating to age, with the Senate comprising older members. However, they may also ask whether the Senate is always the wiser house. This may lead to a consideration of whether the popular (House) voice should not be more influential.

Students may also note that bicameralism allows the houses to have different functions and powers, such as the fact that only the House can originate money bills and is the first to consider taxation, while the Senate has exclusive powers over matters of high importance such as the confirmation of presidential appointments and ratification of treaties.

Weaker students may tend merely to outline the structure and working of the two houses and this will gain marks largely in terms of AO1. Stronger students will focus more clearly on a consideration of the arguments for bicameralism.

(04) 'Congress in its committee rooms is Congress at work.' Discuss.

[30 marks]

For AO1 students should show knowledge and understanding of features such as the following.

- Congressional oversight.
- The role of committees in the legislative process.
- Confirmation of presidential appointments.
- Scrutiny of federal departments and agencies.
- Public hearings.
- Standing committee.
- Senate and House committees.
- Sub-committees.
- Examples to illustrate general points.
- The official staffs serving the committees.
- Examples of particular committees.
- Committee relationships with outside interests.
- Comparative reference.

For AO2 some students may note at the outset that the statement in the question is attributed to Woodrow Wilson. Such reference is creditworthy but is not necessary for marks awarded at the highest levels. Students should note that a committee is a body formed to assume some of the responsibilities of a larger parent body. These can also be devolved to sub-committees. Students should recognise that the question asks them to assess the importance of the committees within the US Congress. They should note how the main functions of Congress are accomplished through committee work. They may also note that this importance has been growing throughout history. Analysis may be enhanced by comparison with the role of committees in the British parliament, where they play a less central role.

In opening their analyses students will be expected to give an account of the structure of the congressional committees. They may note that there are various types, including standing committees, select committees and joint committees. However, the latter two are created largely to examine issues not lying within the remit of existing standing committee or that cut across boundaries, and it must be expected that students will concentrate on standing committees. Students should explain that the committees are composed to reflect the strengths of the parties in the houses and that the Senate committees are smaller than those in the House. They should also note that the members generally have various specialisms, which can be enhanced by the relative permanence of the committees. This is significant because it makes the committees more informed than their parent houses at large. Students may also point out that the committees can form important sub-committees. They may also note that the influence of the committees is enhanced by large official staffs. With high levels of expertise these can often challenge the executive. Students should note that the position of the committee chairs, who generally come from the majority party, confers great authority and incumbents can be significant figures within the political system. Examples of such figures may be credited. Students may also note problems in that committee membership offers opportunities for pork-barrelling and log-rolling.

Students should recognise the key part that committees play in the legislative process. They should note that after a first reading a bill is sent to the relevant committee, and then sub-committee, for detailed consideration. This can involve the calling of witnesses and other forms of evidence and proposed legislation can be subject to considerable change. Students are not required to give a detailed account of the passage of a bill through both houses. They may, however, note that the House standing committee stage presents a major hurdle at which many bills fall. They may also point out that the House Rules Committee makes the key decision on whether time will be allowed for debate on the floor of the House and, if this is not forthcoming, the bill dies. Examples should be credited.

Students should also consider the congressional oversight function of the committees, in which the work and policies of federal departments are examined to a level of detail which the full house could not accomplish. They should explain that witnesses are called before public hearings and can be subjected to rigorous questioning. They may give examples, the inclusion of which should be rewarded. However, students may also note that the committees can also develop strong relationships with federal departments, which can compromise the effectiveness of their scrutiny.

Students should also examine the committee hearings in which presidential appointments are considered prior to confirmation. They should note that these are the preserve of the Senate committees but must be confirmed by the full Senate. This process can lead to appointments being blocked. Examples of this process should be credited. Candidates may refer to the hyper-partisanship of recent Congresses and the effects this has had on committee membership selection as well as on the increased politicisation of senatorial confirmations.

Higher-level students may note problems with the dominant role played by the committees. They may argue that their growing autonomy has had the effect of fragmenting the power of their parent houses. They may argue that Congress ceases to be a unified institution, becoming instead a collection of semi-autonomous units unable to act in unison. This may be seen to weaken the legislative branch relative to the executive and judiciary.

In their conclusion students should address the proposition that congressional government is committee government. In other words, this is essentially the way Congress works. They may agree or disagree or may take a more nuanced position, noting that the committee domination is more prominent in the House than in the Senate, where more business remains on the floor of the house. The key feature in gaining high-level marks is that the conclusion follows logically from the preceding analysis.

Topic 3 The Executive Branch of Government

(05) Examine the operation of ‘iron triangles’ in US policy making.

[10 marks]

For AO1 students should show knowledge and understanding of features such as the following.

- Pressure groups.
- Military–industrial complex.
- Executive power.
- ‘Revolving-door syndrome’.
- Pluralism.
- Policy networks.
- Policy communities.

For AO2 students must recognise that the term ‘iron triangle’ relates to aspects of the governmental policy-making process. They should recognise the iron triangle as a three-sided relationship between members of Congressional Committees, Bureaucrats, and interest groups which aims to influence government policy to their mutual advantage. They should explain that, in a pluralist democracy such as the USA, policy formation normally involves negotiation with pressure groups. Such a process is not regarded as undemocratic. Some students may present theoretical arguments for pluralism, such as the fact that it gives people a form of participation beyond the limited participation offered by the ballot box. Students may also point out that pressure groups seek access points and that these are characteristically the elected representatives forming the legislature and the executive, including the officials or bureaucrats. Some students may describe these as policy communities or policy networks.

However, students may be expected to observe that the term ‘iron triangle’ is characteristically employed as a criticism of the way this pattern of negotiations and policy determination can develop. The relationship between key members of a pressure group, a federal department or agency and a congressional committee can subvert the democratic process. Negotiations can be in secret yet only the congressional committee members have been elected. The result can be government policies, contracts and expenditure that favour the interest groups at the expense of the population at large. Students will be very likely to mention the oft-cited example of the relationship between the Pentagon, the armed services committees and the defence contractors, which has been characterised as the ‘military–industrial complex’. Some students may cite other examples, such as the relationship between key members of the House and Senate committees on Agriculture, US Department of Agriculture officials, and lobbyists for the American Farm Bureau Federation. Such examples should be rewarded. High-level students may note how relationships can be cemented through the so-called ‘revolving-door syndrome’, when officials move from the bureaucracy to work for the interest groups. They may also consider the concepts of agency capture and clientelism. In addition, there is the danger that financial aid to election campaigns can be involved. Students are not asked to conclude with a position on the presence of iron triangles.

(06) 'The power and influence of the Executive Office of the President far exceed those of the cabinet.' Discuss.

[30 marks]

For AO1 students should show knowledge and understanding of features such as the following.

- The structures of the presidential cabinet and EXOP.
- The appointment processes.
- Roles and responsibilities of members.
- The concept of the 'spoils system'.
- Reasons for a presidential cabinet
- Reasons for EXOP.
- Key EXOP offices.
- Examples to illustrate general points.
- Material for comparative reference.

For AO2 students should explain the structure and functions of both the presidential cabinet and EXOP. For higher-level marks they should also identify and analyse problems in the way they operate.

On the presidential cabinet high-level students may note that its constitutional basis rests with Article 2. Students may recognise that the choice of members will set the style of a presidency. They may well draw a comparison with the British cabinet, noting that the president has greater freedom of choice. They may attach significance to the fact that a president can choose people from a wide variety backgrounds (academia, banking, business, commerce, the profession, the state and local governments, the law). Examples of key appointments should be credited (eg Nixon's choice of Henry Kissinger, a distinguished academic, as Secretary of State, Obama's appointment of Tim Geithner, one-time President of the New York Federal Reserve Bank, as Treasury Secretary). They may argue that this gives the president a body of highly qualified specialists rather than the generalists usually comprising the British cabinet. With their expertise and experience, the secretaries can be very influential. Students may give examples such as George W. Bush relying heavily on Dick Cheney and Condoleezza Rice. Moreover, the advice coming from the secretaries can be channelled up from the vast body of officials in their departments, reflecting a great depth of experience.

Students may note that the wide pool from which appointments can be made also gives a president a means of gaining political support. With bipartisan nominations he can gain cross-party support in Congress and appointments can be made to appease various social and interest groups. Students may offer examples such as Clinton, who wanted a cabinet that 'looked like America'.

Another important source of influence that students may recognise comes from the role of the secretaries in overseeing their departments and implementing presidential policy. In this they will also speak for their departments, appearing before congressional committees to argue for funds.

High-level students should recognise factors that limit cabinet power and influence. Unlike its British counterpart, it remains only advisory with no legitimate claim to influence. Moreover, members are not bound by collective responsibility so have little understanding of each other's

policies or the overall strategy of the government. When they advise, meetings will often be on a bilateral basis rather than in a full cabinet meeting. Some may argue that fear of political controversy can make presidents choose 'safe', rather than more influential characters.

Some students may take the line that secretaries can become too close to their departments and interest groups. They can enter 'iron triangles' and be subject to 'agency capture' that can weaken the value of their advice. Some high-level students may echo the sentiments of Hugh Heclo that 'it is significant that no President has ever left the Office extolling the virtues of cabinet Government'. However, high-level students should recognise that there is no set pattern to cabinet operation, its role varying with the style of a president. They may offer examples of various presidents, noting that some, such as Kennedy, rarely called full cabinet meetings.

In analysing the influence of EXOP students should note that it arose in recognition of the increasing demands upon the presidency. Many may note its location in the fabled West Wing. High-level students may note the influence of the Brownlow Committee in 1937. Students should note that EXOP has grown since its creation in 1939 to include an array of policy experts working in numerous offices, their proximity to the head of state signalled by titles such as Assistant to the President. Students may stress that the president has a freer hand in appointments since, unlike the cabinet secretaries, few are subject to Senate confirmation or congressional oversight.

Students may note that EXOP is sometimes seen as the president's personal bureaucracy, working under his direct control, directing and controlling the executive arm of government. High-level responses may be expected to include structural details. In particular they may identify the White House Office (comprising several sections), which is headed by a chief of staff and houses the president's closest aides. They may outline its key functions such as speech writing, controlling access to the president, news management, building support for the president in Congress and deciding policy strategies. Students may identify other important offices such as the National Security Council and the Office of the Management and Budget. They may note that these can come into conflict with the federal departments.

Students should recognise that EXOP provides a powerful alternative source of advice to that of the cabinet secretaries. They may argue that it is a more trusted source since members are more loyal to the president.

Students should include some analysis of difficulties with EXOP. They may, for example, argue that members are too close to the president and can become isolated from the outside world. They may also refer to accusations of 'cronyism'. Students may also argue that, being unelected, and not subject to congressional oversight or Senate confirmation, EXOP lacks the legitimacy to advise on policy. Students may also note that policy disagreements can arise with the department secretaries, leaving the president without a clear position.

In their conclusions students may support the proposition in the question or challenge it. They may argue that the cabinet, with certain powerful figures such as Henry Kissinger, Dick Cheney or John Kerry, can be the most powerful of the two institutions, or that EXOP, with its close and regular association with the president, exerts the greatest influence. Alternatively, they may argue that the position varies over time according to circumstances and personalities. All positions are acceptable but they must be supported by the preceding analysis.

Topic 4 The Judicial Branch of Government: The Supreme Court

(07) Explain the distinction between judicial activism and judicial restraint.

[10 marks]

For AO1 students should show knowledge and understanding of features such as the following.

- Judicial activism.
- Judicial restraint.
- Associate justices.
- Chief justice.
- Loose constructionism
- Strict constructionism
- Examples of relevant cases.
- Examples of relevant Courts.

For AO2 students should recognise that a debate over judicial activism and judicial restraint is fundamental to an understanding of the role of the Supreme Court in US government and politics. They should note that the Court consists of eight associate justices and a chief justice, after whose names the various courts are known. Students should explain that the members of the Supreme Court are nominated by the president and confirmed in office by the Senate. Because the composition changes over time the Court shows an evolving pattern in its consideration of cases. They should note that the terms 'judicial activism' and 'judicial restraint' arise from a consideration of this. It is likely that students will consider the two terms consecutively.

In the case of judicial activism students should note that judges tend to interpret the words of the Constitution in the light of social developments and contemporary conditions. The Constitution is viewed as a living thing which must evolve without formal amendment. Students may describe this as loose constructionism, which is creditworthy terminology. Loose constructionists take the view that the framers of the Constitution could not have been expected to foresee the way society would develop.

Students may point out that rulings made by loose constructionists tend to be of a socially liberal nature. They also make landmark rulings on civil rights. High-level students should be able to identify judicially activist courts such as the Warren Court and the Burger Court. They should also be able to cite landmark cases such as *Brown v. Board of Education*, *Miranda v. Arizona* and *Roe v. Wade*. There should also be some indication of the judgments themselves, but students are not expected to go into detail.

In contrast, students should explain that judicial restraint refers to the tendency to interpret the Constitution literally as originally written. Students should identify this as strict constructionism. They should explain that this approach is conservative in nature and less likely to lead to innovation. Judgments tend to favour state rights over civil rights and great emphasis is placed on the doctrine of precedent (*stare decisis*). High-level students should be able to identify courts regarded as acting with judicial restraint such as the Rehnquist Court and the Roberts Court. Cases which may be cited by these students might include *Grutter v. Bollinger*, *Bush v. Gore* and *Gonzales v. Carhart* (which some critics saw as eroding the rights secured in *Roe v. Wade*).

Students are not necessarily expected to cite the cases mentioned above and may cite others which, if valid, should be credited. High-level students may also point out that the composition of the Court changes over time and that its judgment cannot always be predicted. Some justices can swing between activism and restraint. Students are not asked to conclude with a position on the two forms of judicial behaviour.

(08) ‘Constitutionally separate but not outside the political battle.’ Evaluate this description of the role of the US Supreme Court.

[30 marks]

For AO1 students should show knowledge and understanding of features such as the following.

- Judicial independence.
- Judicial impartiality.
- Judicial review.
- Separation of powers.
- Judicial powers of legislation.
- Written/codified constitution.
- Judicial activism.
- Judicial appointments process.
- Comparative reference.

For AO2 students should recognise the paradoxical position of the judiciary in US government. They may argue that this is, in large measure, a result of the codified constitution, which gives the Supreme Court enormous power.

On the question of being constitutionally separate students should explain the relevance of the separation of powers. They may note that the Justices enjoy security of tenure (during good behaviour) so that they cannot be removed for political reasons or for their judgments. Not being politicians they do not need to court the electorate with enticements or respond to populist sentiments. As an independent judicial institution the Court is formally concerned with interpreting the words of the Constitution wherein rests the sovereignty of the state. It does not make the laws, it only enforces them.

However, on the question of being ‘outside the political battle’, some students may note the characterisation of the Supreme Court as ‘nine politicians in robes sitting on a bench’. They may note a significant degree of interdependence between the three branches of government through the associated checks and balances they place on each other. Thus students should note that the president nominates Justices for the Supreme Court, which the Senate considers and confirms. This opens up the possibility for political appointments. Students may reinforce the point by noting that Democratic presidents tend to nominate liberal loose constructionists while conservative strict constructionists are favoured by Republicans. Students may cite various political controversies over the confirmation process, which are particularly evident when the Senate and presidency differ in political ideology. Appropriate examples should be credited. In addition, students may argue that, given the Justices’ security of tenure, presidents can, through the appointments process, ensure that their political voice will echo on through future generations beyond their own limited terms of office.

High-level students may argue that the Supreme Court often provides constitutional solutions to what might be seen elsewhere as essentially political problems. They may note how the Bill of Rights allows the Court to adjudicate (and set precedents) over a wide range of issues such as abortion, freedom of speech, hand guns, the holding of terrorist suspects in Guantanamo Bay, the rights of minorities and matters concerning religion. Again, examples should be credited. Students may also argue that the process of judicial review gives powers of a political nature when the Court can review presidential, congressional and state actions. Students may also suggest that the judiciary has a quasi legislative role through the power to strike down legislation judged to be unconstitutional. High-level students may also be able to add weight to their arguments through comparison with the role of the judiciary in Britain where the doctrine of parliamentary (rather than constitutional) sovereignty, limits the role of the judiciary.

In their conclusions students may vary in their evaluations of the proposition in question. The important requirement is that the conclusion is logically derived from the preceding discussion.

ASSESSMENT OBJECTIVE GRID

A2 Assessment Objective	Marks allocated by Assessment Objective 10-mark questions	Marks allocated by Assessment Objective 30-mark questions	Total Marks by Assessment Objective
AO1	4	12	16
AO2	4	12	16
AO3	2	6	8
Total	10	30	40