

Examiners' Report
June 2016

GCE Government & Politics 6GP04 4C

Edexcel and BTEC Qualifications

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

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



Giving you insight to inform next steps

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

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

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

Pearson: helping people progress, everywhere

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

June 2016

Publications Code 6GP04_4C_1606_ER

All the material in this publication is copyright
© Pearson Education Ltd 2016

Introduction

This exam proved to be a fair test of candidates' ability and knowledge, and it certainly allowed the most able to shine. Predictably, question 1 was the most popular short answer question and the best done, although in level of performance it was closely followed by question 4, which was the least popular. This was a question which candidates would probably not have specifically prepared for and required them to draw on their own resources: there is a tendency for candidates to 'play safe' and opt for questions which they know they have a set of textbook points for, but these answers infrequently make Level 3. Candidates who are prepared to think on their feet often end up doing better.

A feature of some answers, seen more often this series than previously, was comparisons with UK politics: candidates would contrast in question 5, for example, the differences in the amendment procedure for the US and UK constitutions. It is worth centres emphasising to their candidates that these can receive no reward.

Question 1

Questions on the powers and status of the two chambers of Congress are always welcomed by candidates, and the twist on this one was that it was asking them to make the case that the Senate is superior. This unsettled some who felt compelled to give 'the other side' which unfortunately was not rewardable. There were relatively few factual mistakes, although the myths of the Senate's exclusive power to declare war and the House's 'power of the purse' live on. Most candidates could make the distinction between power and status, and the difference between Level 2 and Level 3 answers often lay in the quality of the analysis: the basic answer simply stated that a six year term was preferable to a two year term, whereas the better answer made reference to the demands of campaigning and fund-raising to support the point. Likewise, the best answers referred to the power of the Supreme Court and the history of rejected nominees to explain why the power to confirm nominees is so significant.

Indicate your first question choice on this page.
You will be asked to indicate your second question choice on page 6.

Put a cross in the box indicating the first question that you have chosen. 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 Question 2 Question 3
Question 4 Question 5

It is often argued by political theorists and commentators that the Senate is superior in status and power to the House of Representatives.

One argument as to why this may be the case is that there are just 100 Senators compared to over ⁴³⁵400 in the House of Representatives and Senators are elected to represent the entirety of their states. This may mean that Senators can achieve seniority more quickly which is essential for Congresspeople wishing to exert influence over the legislative process. Furthermore, having been elected by an entire state and working in a smaller chamber may give Senators more of an elite status which subsequently, due to their larger mandate than house members, gives them more seniority in the legislative process.

Another argument as to why the Senate may be regarded as superior in status and power to the House is that Senators serve longer terms than members of the House and

Levels of reelection and incumbency rates are higher. This means that Senators may have more experience than their House counterparts regarding term length but are more likely to have been members of the legislature for longer. This gives them more status in regards to seniority and more power in that senior members are more likely to become heads of legislative committees.

One other reason why the Senate may be ^{regarded as} superior to the House in regards to power and status is that the Senate contains many ex-House members who see the Senate as career progression and many ex-Senators such as Obama and Kennedy have gone on to become President, along with vice-presidents like Joe Biden. It could be therefore argued that the Senate is superior in status and power as it is where House members desire to move to in furthering their political careers and it is regarded as a good breeding-ground for possible Presidential talents, enhancing its status and enhancing its power in turn when ex-Senators like Obama are elected to the office of President.

Furthermore, one argument as to why the Senate may be regarded as superior in status and power to the House

of Representative is that the Senate has exclusive powers such as the power to ratify treaties, or it failed to do, showing its strength with Carter's SALT II Treaty of 1979, Furthermore, even when as well as electing the vice-president if the electoral college is deadlocked, ~~the~~ although this power is virtually redundant. Furthermore, even when the Senate's powers are concurrent with the House such as both chambers needing a 2/3 majority on constitutional amendments, in terms of proportionality of power per vote, in a vote ~~requiring~~ requiring a super majority like a constitutional amendment, a Senator's vote is worth far more and is therefore more powerful than the vote of a House member.

In conclusion, I believe that the primary reasons that ~~the~~ the Senate may be regarded as superior in status and power to the House of Representative is that the Senate is smaller and more prestigious, votes count for more on a proportional basis, it is regarded as a breeding-ground for future ~~Presidents~~ Presidents and it has significant exclusive powers like the power to ratify treaties and elect the vice-president.



ResultsPlus

Examiner Comments

This is a very comprehensive answer and there are few relevant points it doesn't make. The explanation is detailed and full for the first few points and then, probably because the candidate's 15 minutes are coming to an end, rather briefer towards the end – perhaps ideally it would spend more time on the exclusive powers but this is still a very good mid-Level 3 answer.



ResultsPlus

Examiner Tip

Conclusions. A conclusion to a short answer does round it off but all this conclusion does is summarise the points already made and, since they can't be rewarded twice, it is not really the most productive use of time.

Question 2

This question elicited a lot of fairly similar answers and there were fewer Level 3 answers than on any of the other 15 mark questions. Some cited the lack of ambiguity in the constitution as a restraint on the Supreme Court but could rarely give a convincing example: certainly the second amendment, which was seen most frequently, was not a good choice. There is a recurring misconception that the court is only waiting for a War Powers Act case to declare it unconstitutional, when in fact it has had ample opportunity if it wanted to. Often the divide between Level 2 and Level 3 answers was the assessment of the limitation, and the simplest way to demonstrate this was a brief counter argument or qualification. For example, the lack of enforcement power as a limitation could be countered by the point that examples of non-enforcement are very rare indeed and therefore could not be seen as a major limitation on the power of the court.

Indicate your first question choice on this page.
You will be asked to indicate your second question choice on page 6.

Put a cross in the box indicating the first question that you have chosen. 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 Question 2 Question 3
 Question 4 Question 5

One of the limitations on the power of the Supreme court is the checks and balances written into the constitution. These include impeachment of a judge, trying to change the type of cases the court hears, and trying to change the size of the court. The impeachment is the most significant limitation although in practice this check isn't very relevant, with no judge ever being convicted of impeachment, with the 1st attempt in 1805, with the impeachment of ~~the~~ Samuel Chase. Similarly, the other checks aren't significant in terms of limiting the supreme court's power as the last time a President tried to ~~impeach~~ change the size of the court was in 1937, with F.D. Roosevelt trying to increase the number to 15. This didn't actually occur, and therefore, although there are some limitations in the form of checks, these are limited.

The supreme court is also limited in the fact that it requires other branches to act to carry out the rulings. Andrew Jackson famously stated: 'John Marshall has made his decision, not let him

enforce it. This was the case in the 1950s after *Brown v. Topeka* prevented segregation in schools, yet this wasn't carried out in practice until the President brought in Eisenhower brought in the Federal Reserve army to protect black students at Little Rock high school. This shows that the Supreme Court (SCOTUS) has power, but there is a significant limit placed upon it by the fact that other branches have to be used to enforce the rulings.

SCOTUS is also limited by the fact that there are practical checks such as public opinion. This was the case in the case of *Furman v. Georgia* in 1972 which placed a de facto ban on capital punishment, yet after their ruling 33 states passed new death penalty laws, and the ruling was overturned in *Gregg v. Georgia* in 1974, with the court citing 'societal endorsement' for the death penalty. This therefore shows that despite the supposed independence of the court there are still times in which public opinion forces them into a decision. This is a significant limitation on the court's power as they are supposed to be independent.

A fairly significant limitation on the power of SCOTUS is that their rulings can be overturned. As seen in *Gregg v. Georgia* they can overrule previous

decisions themselves, ~~and~~ ^{or they} can also be overruled by a constitutional amendment. The most famous case of this was the 16th amendment, which was introduced ~~and~~ in response to a SCOTUS ruling that a Federal income tax was unconstitutional. This shows it is possible for Congress and the States to limit the SCOTUS' power, although this is severely limited as amendments are so hard to pass, so in practice this limitation isn't as significant.



ResultsPlus Examiner Comments

This is one of the fuller answers to this question. As well as running through a number of different limitations, the candidate recognises that the question is asking for assessment, by consistently offering a judgment on their significance.



ResultsPlus Examiner Tip

'Assess'. If a question asks you to 'assess' an argument, or in this case limitation, it requires you to offer a judgment on its significance: if you just explain what the limitation is, you are losing out on marks which are not difficult to gain.

Question 3

Candidates usually welcome questions on the vice-president but, in focusing on the power of the two most recent incumbents, this question had a different angle from those which had been asked in previous series. Most candidates recognised that a review of the constitutional status of the office of vice-president and its historical evolution were not required but still struggled to engage with the key term of power. A lot of the material that candidates had prepared could be made relevant to the question, but in many cases the connection wasn't made: for example, most candidates knew that Cheney and Biden had more Washington and foreign policy experience than the president they served but didn't then show how this made them powerful. The vice president could be seen as powerful in a number of different ways, and it could be plausibly claimed, for example, that, in his traditional role as an 'attack dog', the vice-president had a powerful effect on the president's opponents. There were a lot of references to the notion of a balanced ticket which were hard to reward as it read, but even this could probably have been linked to power with a little ingenuity. This all reinforces a very familiar point, viz that exams are all about candidates making what they know relevant to the title.

Indicate your first question choice on this page.
You will be asked to indicate your second question choice on page 6.

Put a cross in the box indicating the first question that you have chosen. 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 Question 2 Question 3
Question 4 Question 5

Although vice presidents are often described as insignificant, the current Vice President Joe Biden can be seen as powerful through his media role ~~and behind the scenes~~, whilst the last Vice President Dick Cheney was seen as very powerful in his influence over the Senate and President Bush.

Biden can be seen as a powerful Vice President in terms of his media presence in speaking out against the opposition, a so-called 'attack dog'. He was used to attack the GOP on their partisanship in key areas such as causing the government shutdown in 2013, as well as criticising 2016 GOP Presidential candidates, such as Ben Carson & his views on homosexuality. In these ways Biden was able to criticise the opposition party and weaken their

reputation, particularly significant because ~~President~~ Obama, as President, is unable to criticise Republicans so freely because he should unite the nation. In doing this, Biden was also able to promote ~~key~~ important Democrat policy, playing an important role in advocating Obama in the media in 2010. Therefore, Biden can be said to be ~~important~~ powerful because of his roles as 'attack dog' against the GOP and 'cheerleader' for the Democrats.

Dick Cheney can be described as more powerful than Joe Biden because of his greater influence over the Senate. Although Vice Presidents have the power to cast the deciding vote in Senate ties, this opportunity has not come about for Biden, whereas it happened over 30 times for Cheney because ~~of~~ initially the Senate had equal numbers of each party, resulting in many dead votes because of a lack of bipartisan compromise. This enabled Cheney to pass



ResultsPlus
Examiner Comments

This answer keeps the focus on power throughout and, although the connection between the evidence and power is not always as explicit or convincing as it might be, the candidate does a pretty good job of making what they know relevant.



ResultsPlus
Examiner Tip

Answer the question – keep using the key terms of the question, such as 'powerful', to demonstrate to the examiner that you are answering the question in front of you and not the one you had hoped would come up.

Question 4

The Supreme Court is always a popular topic and candidates often show off their knowledge of individual cases when questions do not specifically require it, so this question offered them an outlet. The term 'public policy' may have disconcerted some but examiners interpreted it broadly and anything relating to political or societal impact was rewarded. A lot of answers wasted time describing the background to a case or the basis in the constitution for the judgment which could not be rewarded. Most were able to identify three Roberts court cases, although there were occasional mistakes, *Lawrence v Texas* perhaps being the most common. *Gonzales v Raich* was an unlucky choice for a few, since it was decided in June 2005, just a few months before John Roberts took over as chief justice. It paid candidates to think a bit about which cases offered the most scope, as those who chose one of the death penalty cases, for example, often found themselves with little to say beyond the judgement itself. In contrast, *Citizens United* gave the potential for a very full paragraph, explaining the effect of the arrival of super PACs and political attempts to overturn it. The law is a complex business and understandably some candidates tripped up over the details: *Heller* was a popular choice, but very few realised that it had no direct implications for gun control legislation beyond DC.

Indicate your second question choice on this page.
You will be asked to indicate your third question choice on page 9.

Put a cross in the box indicating the second question that you have chosen. 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 Question 2 Question 3
Question 4 Question 5

The Obergefell (2015) ruling has had a significant impact. The ruling which granted the rights for same sex marriage to be recognised in all states overturning US v. Windsor which ruled 'Don't Ask, Don't Tell' unconstitutional, has had a large impact on states. It has arguably limited state autonomy in the policy area forcing states to uphold and allow marriages of homosexuals to take place, ~~or~~ remaining all previous legislation banning it. This has led to drastic increases in gay marriage and has shown the federal government taking the lead at the expense of state rights.

A second ruling which has had significant impact is the Citizens United v FEC (2010) ruling which granted corporations, trade unions

You should start the answer to your third question choice on page 9

ect ^{able to donate} unlimited expenditure to advocating for and against a candidate striking down 2002 McCain-Feingold Act which said advertisements ~~regarding~~ regarding candidates could not be held 60 days before an election. The impact of such led to mass spending in the 2012 presidential election ~~the~~ following the creation of 'super PACs'. In particular, 'Restore our future' spent \$42m advocating Obama's defeat. This was significant as never before had such a large amount of money been spent on elections.

A third case which generated a significant impact was the National Federation v Sebelius (2012) ruling which upheld 'the individual mandate' of the Affordable Care Act. This ~~was~~ had a considerable impact as it meant the 16m people who had gained healthcare insurance remained as the requirement upheld the right for every citizen to have access to 'affordable care'. The ruling, although ensuring that states must

did not choose to expand healthcare
would not be punished, it is made
states set up 'exchanges' to carry out
the transaction. The impact of not using
upheld Obama's most significant achievement
are that Bush failed to achieve and
has saved many lives. ~~Afterwards~~
~~the answer~~



ResultsPlus

Examiner Comments

This question gave candidates a ready made structure of three paragraphs, one on each case, as can be seen in this answer. The candidate chooses three cases with plenty to say about and intelligently discusses their impact.

Question 5

Somewhat similarly to question 2, there were a lot of formulaic 'textbook' answers and relatively few made it to Level 3. Many candidates began their answers with a paragraph describing, generally accurately, the formal process and, while this was rewardable, it was more effectively used to support a point made later on. There were a lot of references to the 'living constitution' which were only indirectly relevant at best, and the alleged view of 'strict constructionists' that the constitution should never be changed was sometimes unhelpfully cited. The most basic answers, of which there were a number, consisted of two points, viz the amendment process is too hard but it works, and these tended just to creep into Level 2. A fuller explanation of the first point was that the process prevents short term or irrational amendments, although the prohibition amendments, which were sometimes then cited, weakened rather than strengthened the case. It was very often claimed that the process inhibited the 'tyranny of the majority' without ever explaining in what sense this was true, and those candidates who saw the process as allowing for a tyranny of the *minority* were often more convincing. Many also saw the continued existence of the 2nd amendment as cast-iron proof that the constitution cannot keep up with the times, when the failure of the most modest gun control legislation in Congress suggests that even a bare majority would not repeal it.

Question 6

Many candidates found this a demanding question, requiring them to keep several balls in the air at the same time. One major problem was that it needed a more precise knowledge of recent congressional history than most possessed, and consequently many answers were largely inaccurate. Many knew that the government shutdown of 2013 occurred during a period of divided control, but beyond that factual errors abounded: many candidates believed, for example, that the Affordable Care Act was passed and the Dream Act rejected by a divided Congress, and that the Patriot Act and the resolution authorising action against Iraq passed by a unified Congress. The fact that the evidence was wrong did not mean that the point being made became totally invalid, but the absence of valid evidence certainly weakened it. The relationship between the president and Congress could clearly be a significant part of the discussion, but in many answers party control of the presidency and Congress became the focus. The focus shifted onto the president in other ways, and candidates would explain that the president's failure to get legislation through a divided Congress led him to act unilaterally through executive orders: while certainly true, it was hard to tie this point convincingly to the question. Somewhat similarly, candidates discussed recent controversies over treaties and nominations in the Senate without being able to explain how these were created or affected by divided control. A promising point of engagement for better answers was the exact meaning of 'effective' in this context, and they developed the point that a divided Congress probably reflects a divided country and consequently a low volume of legislation does not of itself mean an ineffective Congress.

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 6 ☒

Question 7 ☒

Question 8 ☒

It can be argued that Congress is significantly less effective when different parties control the 2 chambers as it results in gridlock. However it can also be argued that through the ~~or~~ different parties controlling the senate and House an effective ~~agreement~~ ~~of powers~~ check on power takes place so that policy doesn't go through unscrutinised. Overall however it can be argued as seen by that last years of Congress that ultimately ~~it~~ ~~is~~ Congress performs ineffectively.

Firstly in the areas of legislation this most recent Congress has been seen to be unproductive due to the amount of legislation that has gone through. From the 112th and 113th Congress they were rated among the least productive with the 113 passing only 296 ^{laws} bills only a fraction higher than the 112th of 283. Furthermore the 112th Congress was named the 'do nothing' congress a name created by Eisenhower for the 80th congress which still managed to pass over 900 laws. This clearly shows that due to the Democrats losing the House in the 2010 mid-term so both chambers of Congress controlled by different parties that legislation was significantly impacted and ineffective due to conflicting ideas and ideologies within the 2 parties. Furthermore the fact that during Obamas 11th Congress where Democrats held both chambers significant legislation was passed it clearly shows that the ability to have control of both houses does lead to effectiveness as Obama was able to pass the ^{patient} protection and affordable care act along with Recovery and Reinvestment act. Furthermore after the

2014 mid-terms where the ^{GOP took control of Senate} Senate have been able to pass the Education Act (2015) which allows schools to limit time spent for children taking tests also proves that having chambers that are from the same party significantly increases chances of effectiveness.

However it can also be argued that ~~also~~ just because the same party have control of Congress doesn't mean it is any more effective. From January 2015 only 147 laws have been passed despite the GOP having control of both chambers. Therefore showing even when parties are aligned in chambers it isn't always effective. Furthermore although approval rating for congress have increased from their record low of 9% in 2013 they still haven't improved above 13% clearly showing that despite chambers being run by same party it isn't recognised as this by the public. Furthermore individual approval ratings of congressmen and women have highs of 96% showing that even ~~though~~ though in the 114th Congress the house + senate ~~are~~ ~~will~~ have GOP majority the issue of the ~~president's~~ executive being held by the democrats is what causes it to be less effective rather than if the 2 parties held different chambers. Additionally the fact that the GOP were finally able to submit a healthcare reform bill after 60 attempts show to some extent they've become more ~~effective~~ effective however ~~it~~ ultimately it was rejected as expected by the president and democrats.

Secondly the use of filibusters in the Senate clearly shows that by 2 parties having separate chambers it is ineffective. Filibustering is used to prolong a bill ~~by~~ by coming on talking until someone ~~agrees~~ ~~to~~ someone agrees to amend or abandon it. In order for this to happen 60 senators need to

agree, it is shown that by having 2 separate parties control chambers filibustering occurs more as they want to prevent partisan legislation going through. During the 112th Congress Mitch McConnell Filibustered 83 Democrat laws while he was majority house leader of GOP. This clearly shows that Congress is ineffective when this occurs and filibusters are just used as a point system to show retaliation towards a specific proposal. Furthermore the fact that for the GOP the vote with their party 96% of time in the House and 94% of time in Senate clearly shows compromise isn't likely when 2 chambers are held by ~~the~~ different parties.

However it can be argued that by having one party serve as the majority in one chamber and minority in the other that it provides an effective scrutiny function and prevents acts such as ~~Bill~~ George W. Bush's 2003-2005 reign of freedom over foreign policy ~~which occurred~~ as the Democrats had ~~control~~ control of both chambers. In turn this meant that only 10% of time was spent debating notions over war over issues like Afghanistan and Iraq. This clearly shows that when a vital check on power isn't provided detrimental consequences can occur therefore congress is more effective have 2 separate parties in control of the chambers as it prevents a tyranny of the majority.

For the duration of the 111th, 112th and 113th Congresses ~~there has not been~~ ~~no~~ there has been failure to produce a budget for the fiscal year on time. This clearly demonstrates that when ^{different} parties hold the separate chambers ~~the~~ gridlock appears leading to government shutdown. This was what occurred in 2013 when an agreement couldn't be made on the

appropriation bill therefore meaning both Congress and the Executive couldn't agree on budget. Because both chambers were in gridlock ~~and~~ the appropriation bill wouldn't be passed onto the 12 subcommittees. Furthermore a continuing resolution was ~~previously~~ previously used but even this couldn't solve the issue when GOP members who held the House of Representatives decided to use this as a democratic senate weakness proposing ~~repeal~~ ~~and~~ continuing resolution for repeal of Obama care. This led the government to fully shut down leaving 800,000 out of work clearly showing inefficiency when the 2 differing parties control ~~different~~ chambers.

However this issue was resolved in 2013 while ^{differing} parties still held ~~different~~ the chambers as ~~the~~ the centrist GOP members and moderate Dems were able to come to an ~~and~~ agreement ~~postponing~~ postponing the 2014 continuing resolution until 2015 October. This highlights that the parties can make compromise when necessary showing they are able to perform effectively.

Finally it can be argued that by having 2 differing parties controlling ^{branches of} Congress that it leads to inefficiency in the Supreme Court. In 2014 before the mid-term where the 1st case of Ebola hit US grounds there was no Surgeon General appointed as ~~the~~ Congress branches couldn't agree ~~on~~ on an appointee. ~~Moreover~~ Moreover leading to a criticism of inefficiency leaving the positions open to vulnerability risking the welfare of the public.

However it can be argued these issues still occur even when the chambers

have the same party in control which can be seen by the appointment of Merrick Garland in 2015 as he will continue to be rejected by the senate not due to limitations by Congress but due to partisan ideologies with the executive. Furthermore efficiencies of government appointments can be seen in the 11th Congress where Elena Kagan and Sonia Sotomayor were appointed without conflict while the democrats controlled senate and House. Furthermore executive orders 2 used in 11th and 7 used since 2015 showing what happens

In conclusion it is clear that Congress is significantly less effective when 2 differing parties control the Chambers. It is especially significant in legislation as it often leads to unproductiveness and inefficiency. However when push comes to shove, share parties can compromise.



ResultsPlus

Examiner Comments

This is one of the stronger answers seen to this question and it is quite impressive in the way the candidate is consistently wrestling with its key terms. It also illustrates some of the problems candidates encountered: the direction of argument becomes a little hard to follow at times, and there are one or two factual errors. Nevertheless, a very good mid-Level 3 answer.

Question 7

This was by some way the most popular 45 mark question and examiners saw a lot of good answers. Candidates were able to draw on a wide range of evidence, both from the Obama presidency and before. Since there was no reference to Neustadt in the question, the phrase 'power to persuade' was open to interpretation and, while most candidates took it to apply to the president's relationship with Congress, some extended it to foreign governments and even the electorate. A good number of answers devoted as much as two to three paragraphs to describing different means of the persuasion and, while rewardable they needed to be more sharply focused on their effectiveness. A distinction frequently made was that the power to persuade was much more significant for a president seeking to advance his domestic agenda than when operating outside the USA. The history of recent years was often treated contrastingly: some claimed that a hostile Republican Congress meant that the power to persuade was more important than ever for President Obama, while others argued that, given the Republicans' intransigence, it was pretty much irrelevant. Curiously, it was not uncommon to read that while the power to persuade is important, the power to nominate justices to the Supreme Court is more important, without any acknowledgment that the former might be relevant to the latter.

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

Chosen question number: Question 6

Question 7

Question 8

The ~~pro~~ President's power to persuade has, in the past, by several political commentators e.g. Neustadt, been seen as the President's most important and strongest power; his 'soft power'. However with the advent of polarisation and hyperpartisan belligerence this thesis has been undermined. It seems that the ~~President's~~ 'Imperial Presidency' thesis and the informal powers in which the President can undermine the separation of powers are now the most important.

In the days of the 1960s did the passage of the 'Great Society' reforms the power to persuade did seem to be the most important power. LBJ was ^{approved} ~~known~~ for his ability to "work congress" and it was this ability which enabled him to pass the Civil Rights Act of 1964 with 34 Republicans voting for it e.g. George Romney. In this sense the 'power to persuade and to play congress' was in the past.

been the most important ~~to~~ power to the president as congress is the pre-eminent branch. The same can be seen with Obama and specifically the congressional expertise of Biden. They managed to pass the Patient Protection and Affordable Care Act ~~is~~ with 0 Republican votes, mobilising every Democrat or Democrat leaning Senator, and all but 32 house democrats. ~~However, whilst~~ Therefore, Obama's greatest achievement ~~is~~ can be essentially linked to the power to persuade and therefore this does seem like a very important power.

However, Obama's failure to act as a 'post-partisan' President has been the cause of the failure of much more reform. The advent of polarisation ~~is~~ and hyperpartisanship has undermined the power to persuade. He has, time and time again failed to secure the House funding for the closure of Guantanamo Bay and his failure in being able to strike a 'Grand bargain' ²⁰¹⁵ with the Republicans led to the first Government

shutdown in 17 years. - with 800,000 federal employees being sent home without pay. However, this was not because Obama failed to persuade them it is because of a complete unwillingness for congress to work with him: comments such as "~~the~~ ~~the~~ the most important thing we must achieve is for Obama to be a one-term president" (Jan 2009) by Mitch McConnell were widespread. In the current 'broken branch' (Omnstein Mann) congressional climate the power to persuade is heavily limited, especially during times of divided government.

Instead, in the face of an inert and belligerent congress the most important powers of the president are those informal ones: e.g. Executive orders mandated by the 'Take Care' clause and prosecutorial discretion. ~~the~~ ~~to~~ Obama was succeeded somewhat in achieving his agenda by bypassing a Republican congress. ~~in 2010~~ He passed Executive Order ~~13659~~ which increased the minimum wage for federal contractors ~~by~~ to \$10.10 p/hr - the minimum wage had not increased since 2007 and

would not have passed in congress. Similarly he has used Prosecutorial Discretion ~~and~~ to implement his own de facto Immigration policy. e.g. ~~The~~ Deferred Action for Childhood Arrivals (DACA) in 2012 which allowed 800,000 illegal children (mostly DREAMers) to remain in the country and also Deferred Action for Parental Accountability (DAPA) in 2014 which expanded DACA to 3.7 m parents and granted them temporary work permits. These actions are clearly much more important than the power to persuade and have allowed Obama to circumvent a 'broken congress' and still govern effectively.

However, there are significant limits to these more informal powers. Both Executive Orders and Prosecutorial Discretion can both simply be repealed by the next sitting President or being overturned by a congressional law or Supreme Court ruling. *Youngstown Sheet Co. v Sawyer* 1952 firmly established a limit on Executive Orders whereby Truman was

seen to be making rather than clarifying a law. Similarly, GOP members have accused Obama's immigration policy (DACA or DAPA) as acting like an 'empowerer' in regards to his immigration initiatives (DACA and DAPA) and the Supreme Court has taken the case to rule on the constitutionality of Obama's actions. Therefore, whilst the power to persuade might be more important in the sense of congressional Acts carrying more power than these Executive actions, during a time of congressional inertia whereby bipartisanship is a relic of the past it's clear these more 'imperial powers' are more important.

One can also look at President's power to appoint judges and leave a lasting legacy in the Supreme Court as an important and permanent power. Despite political difficulty Obama was able to push liberal Sotomayor and Kagan through the Senate which led to victories for Obama such as *Obergefell v Hodges* 2015 - he was openly supportive of gay marriage since 2012. Clearly, and despite the embargo

placed on his nominations in the light of recently deceased Justice Scalia this has proved to be a very significant pass for Obama as although he may not have any support from Congress he's been able to ensure support from the Supreme Court and will leave a lasting legacy (life tenure). However, once again there are clear limitations here. One can never be sure how a Supreme Court Justice will act as their independence is sought at every turn and therefore they may not be the political allies Obama thought them to be. Famously Eisenhower appointed the once moderate Warren who went on to be chosen the most liberal activist Supreme Court in history - "biggest damned fool mistake I ever made". Similarly, although Reagan's appointment of Scalia was sound Kennedy proved to be a much less predictable. Therefore, in some sense the power to persuade is usurped by the power to appoint SCOTUS Justices. ~~as~~ ~~the~~

In conclusion, the importance of the power to persuade has been inordinately undermined by the current climate of polarisation and hyperpartisanship. Where it may have been in the 'Great Society' days it is no longer. ~~However~~ Instead, during the times of divided Government, the President's ~~power to~~ informal & more 'imperial' powers (Sleeper) are clearly more important as although limited and challengeable they still allow the President to govern. Similarly, other formal powers such as the power to appoint SCOTUS judges and leave a legacy in the courts add permanence and are more important in this time of polarisation and congressional inertia. Power to persuade is now not the most important.



ResultsPlus Examiner Comments

This answer has an impressively authoritative feel to it. It has a different approach to most Level 3 answers in that it doesn't look at foreign policy at all - no 45 minute answer on the president can be totally comprehensive though, and what it does do it does very well.



ResultsPlus Examiner Tip

Introductions - 45 mark answers must have an introduction and this is an effective example. There are just two sentences and this is all that is needed - the first sets the context for the debate and the second indicates the direction of the argument.

Question 8

Like question 7, this question focused on a key term, 'constitutional rights', which candidates could take in a number of ways. While the term might traditionally be thought to concern the rights of individuals, examiners were certainly happy to reward discussion of the tenth amendment rights of the states. Some candidates, however, expanded constitutional rights to include, for example, the right of a president to veto legislation or the right of Congress to declare war, and this was felt to be too broad a definition to be meaningful. Most candidates seemed to believe that constitutional rights are a given and confidently asserted, for example, that both Congress and the president intended to deny the second amendment rights of gun owners through gun control legislation: the idea that the second amendment might be the subject of competing interpretations seemed not to have occurred to them. The same rather simple approach was adopted in respect of the first amendment and cases such as *Citizens United*, and this was one question where structuring the answer around conservative and liberal perspectives worked well. It enabled candidates to argue that, whereas conservatives might regard a particular right as being protected, a liberal would not, and then to explain why: without some sort of structure like this, many answers became little more than a list of examples. A further issue was that candidates invoked a number of rights, for example to life or to healthcare, which are not usually credited to the constitution, and in arguing that the Supreme Court had not upheld rights candidates were often implicitly claiming they know the constitution better than the court itself.

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

Chosen question number: Question 6 Question 7 Question 8

~~In recent years, the three branches of government~~

Constitutional rights can be interpreted in different ways and the extent to which these have been protected will differ depending on interpretation. ~~Liberals might argue that on one hand the right to freedom of speech has not be protected~~

Liberals might argue that the right of freedom of speech has be eroded by the supreme court in the cases of Citizens united vs fec in 2012 and McCutcheon vs fee in 2014. They would argue that freedom of speech does not cover the political spending of corporations and labour groups and that state that it does reduce the speech of ordinary people.

Conversely Conservatives would agree that the 1st Amendment did not cover political spending and therefore that McCutcheon and Citizens United vs FEC were protecting the 1st Amendment.

On the other hand Liberals might argue that the 1st Amendment had been protected in *Hodges vs Obergefell* in 2015 by ~~allowing~~ removing laws banning same-sex marriage. On the other hand conservatives would argue that the decision restricts those who refuse to conduct such marriages on religious grounds from practicing their faith. Thus showing that the ~~same decision~~ the extent to which the 1st Amendment had been protected differs depending on one interpretation of the Constitution.

Conservatives would also agree that the Rights of States was not being protected. They point to decisions in cases such as *Obergefell vs*

Hedges and Acts such as Obamacare as reducing the states power to legislate for themselves, this ~~reduces~~ thereby arguing that the 8th Amendment was not being protected.

on the other hand Liberals would argue that that the three main branches of government are simply fulfilling their roles as outlined in the Constitution, such as the elastic clause which states that government shall "do all things necessary for the common defence and welfare." They therefore argue that no the rights of states are not being infringed upon.

~~However / Liberals~~ might argue that Conservatives would also agree that the rights to bear arms was also not being protected. They would use Obama's attempt to pass gun restrictions during his first term and the executive order he issued in 2016. ~~in order to~~ Conservatives would argue that this restricts

individuals rights to carry a gun and that therefore the 2nd Amendment was not being protected by federal government.

Liberals, ~~however~~ however might argue that the 2nd Amendment had been protected by Congress and the Supreme Court by Obama's failure to pass significant gun control reform through Congress and through cases such as Heller vs the City of New York which declared the cities ban on hand guns ~~was~~ unconstitutional. They might also argue that the 2nd Amendment was never intended to allow individual gun rights and that the right to bear arms refers to the preservation of a militia. Liberals would therefore argue that the 2nd Amendment had been protected by the three branches and some might argue that ~~the~~ the protection had gone too far

Therefore, the extent to which constitutional rights have been protected by the three branches of government can be seen to be small by conservatives. Conservatives with ^{most} significant infringements on aspects of the 1st, 2nd and 8th Amendments. However Liberals would agree, that although some parts of the 1st amendment have not been protected, that the 8th amendment has not been protected and the 2nd amendment has been to ~~thoroughly~~ thoroughly protected.



ResultsPlus
Examiner Comments

This answer is structured around liberal and conservative perspectives on constitutional rights and it is an approach that works well here. The candidate shows a really quite sophisticated understanding of competing interpretations of different rights: its weakness is that the scope is rather limited and Congress and the president are really only mentioned in passing.

Paper Summary

Based on their performance on this paper candidates are offered the following key pointers:

- Answer the question – it's really important to pay attention to the key words of the question, and in particular the instruction to 'assess' means that you must do more than simply explain a factor but additionally give a reasoned judgment on its significance, either relative to other factors or its changing significance over time, or to evidence which weakens it.
- First sentence of each paragraph – use this to show you're focused on the key terms of the question – if you keep mentioning the key terms, it reassures the examiner that you are answering the question in front of you and not the question you were hoping would come up.
- Essay structure – you can either structure your essay as two halves or as a series of arguments and counter-arguments. If you choose the second option, try to give the reader a sense of where your overall argument is headed, as otherwise they can be left feeling a little disorientated.
- Short answer structure – you need a balance between range and detail, so aim for three or four separate points.

Grade Boundaries

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

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

Ofqual



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



Pearson Education Limited. Registered company number 872828
with its registered office at 80 Strand, London WC2R 0RL.