

A-LEVEL

Government and Politics

GOV4A The Government of the USA

Mark scheme

2150
June 2017

Version: 1.0 Final

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. 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 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>Level 2 (2 marks) The student demonstrates limited knowledge and understanding of political concepts, institutions and processes. The student 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. 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>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,</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>	

GENERIC MARK SCHEME for questions with a total of 10 marks (continued)

Knowledge and Understanding: Recall, Select & Deploy	Skills: Analysis & Evaluation	Communication
AO1	AO2	AO3
Level 1 (1 mark) (continued) examples to illustrate points made.		
0 marks No relevant response.	0 marks No relevant response.	0 marks No relevant response.

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)</p> <p>The student demonstrates a comprehensive knowledge and understanding of political concepts/theories/institutions and processes and the relationships between them.</p> <p>A synoptic approach is fully developed, drawing appropriately on knowledge, perspectives and examples from a wide range of studies in government and politics.</p> <p>The answer fully addresses the requirements of the question and demonstrates excellent contextual awareness.</p> <p>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)</p> <p>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.</p> <p>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)</p> <p>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.</p> <p>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)</p> <p>The student demonstrates sound knowledge and understanding of political concepts/theories/institutions and processes and the relationships between them.</p> <p>A synoptic approach is well</p>	<p>Level 3 (7–9 marks)</p> <p>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,</p>	<p>Level 3 (4–5 marks)</p> <p>The student communicates arguments, explanations and conclusions well. Good use is made of political vocabulary to construct clear arguments and explanations.</p> <p>The response should be legible</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 3 (7–9 marks) (continued) 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) (continued) 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) (continued) 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>
<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. 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>

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 1 (1–3 marks)</p> <p>The student demonstrates a slight and incomplete knowledge and understanding of political institutions and processes and a limited awareness of the relationships between them.</p> <p>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.</p> <p>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)</p> <p>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.</p> <p>Arguments, explanations and use of concepts are superficial and naïve.</p>	<p>Level 1 (1 mark)</p> <p>The answer relies upon narrative which is not fully coherent. There is little or no use of political vocabulary.</p> <p>Errors in spelling, punctuation and grammar may be intrusive and the response may not be legible.</p> <p>A conclusion, if present, is not adequately related to the preceding discussion.</p>
<p>0 marks</p> <p>No relevant response.</p>	<p>0 marks</p> <p>No relevant response.</p>	<p>0 marks</p> <p>No relevant response</p>

Topic 1: The Constitutional Framework of US Government

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 Explain the principle of limited government in the USA.**[10 marks]**

The principle of limited government is central to understanding the Framers' intentions in the drafting of the constitution. It is likely that students will identify the rejection of an over-powerful central government is inherent in the constitution and argue that sovereignty rests with the people. For context students may also argue that limited government was also a key concept in the 1776 Declaration of Independence.

For A01 and A02 students should be able to explain the term, that government is based on the consent of the governed and some may refer to Locke and classical liberalism. To illustrate how limited government is ensured students are likely to refer to some or all of the following:

- The safeguards in the separation of the powers, checks and balances and federalism.
- Entrenchment and the complex constitutional amendment process.
- The republican principle of electoral accountability in fixed but staggered elections.
- The Bill of Rights which strengthens the principle by enumerating specific rights in the first eight amendments and hammering home the limits of federal authority in the Ninth and Tenth Amendments.

Students do not need to cover all the safeguards to achieve top marks and may effectively focus on two or more to develop their explanation. Synoptic references may be made to the UK's unitary system where fusion can encourage a strong centralised executive. The written Constitution of the US delivers more limited government in comparison with the UK's uncodified Constitution.

Top level A02 responses may note that US government has evolved to challenge the Framers' aims particularly in regard to the expansion of the executive branch and changes in federalism. Some may make reference to the power of the Supreme Court here and/or the clash between the Tenth Amendment and the 'elastic clause' in Article 1. Some may briefly discuss the demands of conservatives, to return to the ideals of small government and their desire to close down several federal government departments.

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 'The Bill of Rights has stood the test of time.' Discuss.**[30 marks]**

For A01 marks it is likely that most answers will start with a definition of the Bill of Rights and some explanation of its inclusion in order to address the fears of the anti-federalists. Some may refer to the influence of Locke and Paine. Some may explain how Amendment 1 is specifically aimed at Congress, the next three curtail executive power, Amendment 5 to 8 deal with the judicial process and the final two reserve power to the people and the states at the expense of the federal government. Answers should examine several but not necessarily all amendments but those which focus almost exclusively on the perceived inadequacies of the Second and Eighth Amendments may prove to be Level 2 responses. Also responses must be more than a just list of the contents of the Bill of Rights, individual amendments identified must be accompanied by analysis and evaluation to gain high AO2 marks.

It is necessary for high A02 marks that students argue that the role of the Supreme Court and its prevailing philosophy is central to understanding the interpretation of amendments in landmark rulings, allowing for the evolution and clarification of rights over time. Some students may appreciate the importance of Amendment 14 in extending and applying the scope of rights to state as well as federal government policies, this argument could be used to support the view that the Bill of Rights has not stood the test of time.

For students to achieve Level 3 and 4 they must examine specific amendments, though not necessarily all and discuss how their provision has changed over time.

- Here the First Amendment provides several avenues of debate. Some students may focus on religious freedoms in the Establishment clause and refer to cases which have been clear in upholding such freedoms in, for example, banning school prayer in *Engel vs. Vitale*. Some may refer to the controversial decision to uphold the religious rights in *Burwell vs. Hobby Lobby*. While other students may analyse and evaluate freedom of speech and the press as encompassing the right to 'hate speech' while some may refer to flag-burning or *Citizens United* and campaign funding.
- Students may well discuss recent Court rulings on the right to bear arms and the controversial approach of the Roberts Court in such cases.
- Students may examine amendments protecting the criminally accused and the expansion of such provision by the Warren Court citing cases such as *Mapp*, *Miranda* and *Gideon* in contrast to more recent rulings in favour of police power. Here some may well raise the issue of electronic surveillance and the NSA as infringing the Fourth and Ninth Amendments.
- The Eighth Amendment may encourage some speculation about the meaning of 'cruel and unusual punishment' but better responses will explain how the death penalty was temporarily banned in the 1970s and the reasons behind the Burger rulings.
- Students may discuss the right to privacy in the Ninth Amendment and its modern application to matters of sexual choice in *Roe* and *Lawrence vs. Texas* and the controversies surrounding such rights.
- Some may discuss the pivotal importance of Amendment 10 in states' rights and the changing dynamic of federalism over recent decades.

A balanced answer will deal with the expansion of amendment rights in modern America but will also cite instances where the Bill of Rights has been found wanting such as with Jim Crow laws, the treatment of Japanese Americans during the war and controversies over incarceration in Guantanamo Bay. Synoptic references may be made to the UK and the relative weakness of human rights legislation in contrast to that afforded by the US Bill of Rights.

Topic 2: The Legislative Branch of Government: US Congress

0 3 Explain the significance of gridlock in the US federal government.

[10 marks]

For A01 marks students should start with the definition of gridlock as a breakdown in the working relations between two or more branches or levels of federal government or within the bi-cameral Congress. This can then result in real difficulties in passing legislation and/or pursuing policies and appointments, particularly in the judicial branch. Some students will also explain the increasing regularity of divided government in recent decades as well as the trend to hyper-partisanship between the Republicans and the Democrats since the 1990s. It is likely that Level 3 and 4 responses will give examples of gridlock using evidence from the mid-1990s, Bush and the Senate from 2006 or Obama and the House and fiscal cliffs from 2010. Higher level responses may refer to how 'advice and consent' has become 'search and destroy'.

For A02 it is likely that some may argue the constitution promotes such stalemate through checks and balances like the presidential veto or the Senate's use of the filibuster although arguably the Framers wanted to ensure a widespread consensus not stalemate. Again reference can be made to the role of mid-term elections in creating such deadlock. Some responses may cite FDR's clash with the Supreme Court in the 1930s. Better responses will refer to the possibility, of a Federal government shutdown and again examples can be cited from Clinton and Obama administrations. Some students may point out that UK government does not experience gridlock in the US sense and executive defeats in the legislature do happen but are very rare under governments with working majorities.

0 4 Evaluate the effectiveness of Congress in its oversight of the executive branch.

[30 marks]

Students need to recognise that oversight is a key function of legislatures in modern representative democracies and it pervades all other procedures and processes such as law-making and representation.

For A01 marks students must explain how this applies to congressional scrutiny of the executive branch including government departments and federal agencies as well as the actions of the president and EXOP. Students may write about the importance of the congressional standing committee system, with sub-committees dedicated to oversight. While some may refer to its importance in defending citizens' rights from federal interference while others may also explain objectives such as cutting waste and improving government efficiency. Higher level responses will also comment on the fact that oversight powers are only implied in the constitution although they have been upheld by several Supreme Court rulings.

For A02 marks, congressional effectiveness needs to be evaluated using examples of the process involved such as those relating to finance and budgets in authorisation and appropriation as well as investigative and legislative hearings, supported by congressional staff. Level 3 and 4 responses are likely to discuss the specialist investigations undertaken by select committees. Congressional control of federal agencies can be evaluated in several ways looking at the legislature's power to shape an agency's agenda and most importantly its

funding. Examples of Congress restricting an agency's jurisdiction may be used such as with EPA in the 1980s. Higher levels of response should also examine the Senate's special power of advice and consent in terms of the ratification of treaties and the confirmation of executive appointments. Well prepared students are likely to comment on the congressional review of Trump executive appointments including the confirmation of Jeff Sessions as Attorney General, Besty DeVos as Education Secretary and Federal Judge Neil Gorsuch as a replace for Antonin Scalia as a supreme court justice.

Level 3 and 4 answers will, however, challenge this rather rosy a view of congressional oversight. Some students may refer to congressional inertia before the 1970s which allowed for the expansion of the executive branch, particularly in terms of foreign policy. Some students may, therefore, refer to the reassertion of congressional authority after the Nixon presidency. Others may argue that, despite the occasional success of congressional investigators such as Watergate, oversight has not always been delivered, the War Powers Act is largely ignored and executive privilege is still alive and well. Students may comment on how presidents can 'negate' the Senate's power of advice and consent regarding treaty ratification by negotiating executive agreements.

The best responses may argue that oversight is compromised by expensive pork-barrel politics, iron triangles and the revolving door syndrome. They could also argue that oversight may be more effective under divided rather than united government. This approach may well see students arguing that scrutiny is pursued largely for party advantage such as with the rejection of Robert Bork as a supreme court justice, Bill Clinton's impeachment or the Benghazi hearings. Thus, given the regularity of divided government, partisanship and point-scoring may drive oversight more than constitutional propriety.

Topic 3: The Executive Branch of Government

0 5 Examine the concept of clientelism in the US federal bureaucracy.

[10 marks]

For A01 marks students must provide a clear definition of clientelism. It is likely that responses will focus on the some or all of the following themes:

- In a pluralist democracy like the USA, policy-making routinely involves consultation with pressure groups or their professional lobbyists. This is not in itself undemocratic but the development of iron triangles comprising of congressional committees, the federal bureaucracy and special interest groups may compromise democratic accountability. Thus federal agencies are accused of clientelism, of cultivating within their jurisdictions, special interest groups that prove to be worthy political allies.

For A02 marks, students should argue that clientelism then impacts on agency policy in that consumers as well as the executive are often excluded in the decision making process. This in turn gives even more power and influence to interest groups and special interests. It is likely students will use examples from agriculture or defence procurement or, the close relationship between the FDA and the pharmaceutical lobby or AARP and the Social Security Administration. To reinforce these examples some responses may refer to the revolving door syndrome in US government and the power of K Street, this should be rewarded. The best responses to this question will argue that clientelism results in agencies serving the interests of those whom they are supposed to be overseeing and that the watchdogs become lapdogs. They may use the terms 'agency capture' and/or 'going native'.

0 6 To what extent does the executive branch help or hinder US presidents?

[30 marks]

For A01 marks it can be expected that students will refer to the fact that modern presidents have four broad sources of personnel from which to draw support and to assist them in the delivery of presidential goals and policy initiatives. These are the vice president, the cabinet, EXOP and the federal bureaucracy. To achieve high A01 and A02 marks it is expected that responses should refer to all four although they may not always be addressed in equal measure.

- Students may describe the primary role of a vice president as being an electoral asset and, once in post, little more than a 'spare', echoing John Adams' comments on his time in the office. Level 3 and 4 responses will examine the development of the role since the 1950s and the fact that it increasingly attracts more high profile politicians as a route to the nomination. Some may make useful references to Cheney's pre-eminence under Bush while others may discuss Biden's role and experience in getting Obama's legislation through Congress and his particular strength in dealing with the Senate. Most students should be aware that as with most top jobs in the executive, the nature of the work demanded of the vice president is very much in the gift of the president. Very well prepared students may also comment on the role of Mike Pence

within the Trump administration.

- The role and importance of the cabinet as a body varies from one president to another and students may cite relevant examples here. The Obama Cabinet appears to have had a very modest role as a support mechanism as Obama's preference had been to deal directly with certain key players like Hilary Clinton, John Kerry and, until 2015, Arne Duncan. Some may refer to the concept of 'patronage' and the 'spoils system' and how presidents reward those who have helped them. Most responses should discuss the fact that, having appointed cabinet secretaries to deliver presidential policies, there is a tendency for presidents to then distrust them and suspect them of agency capture by the federal bureaucracy.
- Level 3 and 4 responses should discuss how presidents have come to increasingly rely on EXOP which is now often described as the institutional presidency especially the key staff in the West Wing as well as the OMB and NSC. Again students should show some understanding of the different areas of support these key players provide but top answers may refer to the dangers of presidents being too protected from political reality by over-zealous White House staff who in turn may be at odds with cabinet secretaries and agency directors. Here is the potential for tension and duplication as ex-cabinet ministers have described the bullying tactics of some White House advisers. It can be expected that the role of the Chief of Staff may be evaluated and its potential for too much influence as seen with Rahm Emanuel in Obama's first administration. Again, here some students may discuss the make-up of the Trump administration and the significance of individuals such as Steve Bannon in the delivery of policy.
- Lastly, responses need to evaluate the federal bureaucracy and the expertise of agencies and/or agency heads, some of which can be very powerful. It is likely that students will argue that it provides a counter-balance to EXOP and its alleged impregnability as a headless fourth branch of government. Although this caricature should not be taken too far, students may discuss its semi-autonomy with references to iron triangles and the preferences of some agencies to deal with congressional committees and interest groups.

Overall, a balanced response should weigh up and evaluate the relative degrees of support offered by various parts of the executive to the president.

Topic 4: The Judicial Branch of Government: The Supreme Court

- 0 7** Explain the concept of ‘original intent’ in the judicial philosophy of the US Supreme Court. **[10 marks]**

Students must offer a clear definition of the concept for A01 marks. Students should explain the concept as one that places great stress on precedent and which tries to discover the original meaning of the constitution. Thus the constitution is seen to be dead and the judiciary is not supposed to play a role in its evolution. It is popular among political conservatives in the US, and is associated with the late Antonin Scalia, Clarence Thomas and Robert Bork. It holds that interpretation should be consistent with what was meant by those who drafted and ratified it.

For high A01 and A02 marks students are likely to argue that to understand the court, it is important to understand the different judicial philosophies on constitutional interpretation employed by the justices. Courts can be judicially active or restrained and in turn apply loose or strict constructionism. The latter can be seen as a form of restraint which in turn stress the importance of original intent.

For high level A02 marks students may well argue that concept presumes that there is a single, unified intent yet the Philadelphia Convention was composed of over fifty men, who spent an entire summer compromising over provisions that were interpreted very differently the moment the constitution became public. Some may state that even if the Convention did have such intent, it is unclear how it could reliably be determined from two centuries’ distance; indeed, many of the clauses of the Constitution are themselves relative. The very best responses may discuss how the concept is associated with the equally controversial original meaning theory, that is, the view that interpretation of a written constitution or law should be based on what reasonable persons living at the time of its adoption would have declared the original meaning of the text to be. Cases such as *Obergefell v Hodges 2015* may well be used to illustrate the clashes between the views of the originalists such as Scalia and the more liberal judges such as Ginsburg.

- 0 8** ‘The Supreme Court is an increasingly politicised institution.’ Discuss. **[30 marks]**

This question asks students to address whether the Supreme Court is an increasingly political institution as well as a judicial body or even if the two are mutually exclusive. Students may well begin their discussion by stating that despite being co-equal with the other two branches, Article III of the US Constitution is the shortest and vaguest. Some Framers initially perceived it to be the weakest branch of government until the 1803 *Marbury vs. Madison* ruling when Jefferson declared the constitution could become a piece of wax in its hands.

For both A01 and A02 marks responses should address the adjective ‘politicised’ which can have various shades of meaning from political bias in an ideological sense through to holding set views on the nature of constitutional interpretation as with strict constructionism. Similarly with loose constructionism, the court can be accused of pursuing its own political or social agendas, which can be labelled either conservative or liberal depending on the ruling. In these instances the court can be accused of abusing its power and ‘legislating from the bench’. It is likely that most students may address the appointment process itself as being

progressively more partisan during periods of divided government so that appointments are perceived as politicised even if the appointee goes on to disappoint his nominating president. Some students may refer to the Obama nomination to replace Scalia, the refusal of the Republicans to hold confirmation hearings and then Trump's selection of Neil Gorsuch.

For high A02 marks students must also address the adverb 'increasingly'. It can be expected that students will examine the record of the Warren and Burger Court since the 1950s but Level 3 and 4 responses are likely to focus on the Roberts Court and argue for and against some of its more controversial rulings, as evidence of a political agenda or not, for example *Citizens v FEC* and the accusations of conservative activism. Here there are several cases which may be used to evaluate the nature of politicisation. Some may refer to pro-corporate rulings in preference to appeals from employee and consumer groups although there are cases favouring the latter suggesting that the court is equally a judicial body. Again students may argue that the court pursues its own 'political' agenda flying in the face of public opinion as with the Second Amendment while others might argue this upholds its independence. Others might counter allegations of conservatism by referring to rulings in favour of Obamacare as well as gay rights. Some may even argue for judicial naivety, citing Scalia's refusal to countenance the emergence of Super PACs after the *Citizens United* ruling and the political damage to minority voting rights since *Shelby Count vs. Holder*.

Top responses will interpret 'politicised' in the broadest sense in terms of allegations of judicial tyranny over the other two branches of government although they will also argue that in rulings against executive actions or in striking down an act of Congress, the court is upholding the integrity of the constitution especially in relation to the separation of powers. Some responses will argue the legislative and executive branches are often reluctant to take on the court but, in contrast, Chief Justices like Burger have argued the court is a convenient vehicle for unpopular decisions on wedge issues which the elected politicians can refuse to resolve. It can be expected that some students may also discuss the political nature of court rulings on the Tenth Amendment and state rights.

Overall, a well-balanced answer will argue that such criticisms of the Court can come from all shades of political opinion and often reflects the subjective disappointment of a critic with a particular ruling. Again top responses will note that the court is subject to constraints. It is an appellate court; it has no practical political power to enforce its rulings, which in turn can be checked by constitutional amendment.