5.7 The US Supreme Court: Role, Appointment and Judicial Philosophy: 30-minute Pack

EDEXCEL 9PL0 · about 30 minutes

Total Marks

Name: _____ Date: ____ / ____ / _____

Answer ALL questions. For levels-marked questions write full sentences and structured argument. The two levels-marked essays/questions require developed analysis and evaluation. Spend about 30 minutes on the whole pack.

1 Evaluate the view that the process for appointing Supreme Court justices in the United States has become too political.

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(Total for Question 1 is 30 marks)

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Mark scheme · 5.7 The US Supreme Court: Role, Appointment and Judicial Philosophy: 30-minute Pack

Question 1

Level 0 No relevant content.	**0**
Level 1 Basic knowledge of appointment procedure with little or no developed analysis or evaluation. Arguments are generalised and examples, if present, are undeveloped or absent.	**1-6**
Level 2 Clear, accurate knowledge of the nomination and confirmation process with some developed analysis of politicisation. Evaluation present but may be one-sided or rely on limited examples.	**7-12**
Level 3 Detailed and accurate knowledge deployed in a sustained analysis that recognises multiple causes and effects of increased politicisation, uses well-selected examples, and offers a balanced evaluation though the judgement may be qualified.	**13-18**
Level 4 Sophisticated, wide-ranging knowledge used to construct a tightly argued evaluation weighing structural factors, historical change and consequences for legitimacy and independence, with strong, well-chosen examples and clear, evidence-based judgement.	**19-24**
Level 5 Excellent, comprehensive knowledge and sustained evaluation that integrates constitutional theory, empirical evidence and comparative insight, addresses counter-arguments, and reaches a clearly justified and nuanced judgement on the extent to which the process has become too political.	**25-30**

Indicative content:

- Arguments that the process has become too political: highly partisan Senate votes, extensive media and social media campaigns around nominees, increasing emphasis on judicial philosophy and likely policy outcomes rather than legal qualifications, and the use of confirmation timing strategically by Presidents and Senates.
- Supportive evidence: narrow confirmation margins in recent decades, contentious hearings widely covered by cable news and social media, the role of outside interest groups and fundraising in shaping opposition or support, and high-profile episodes such as the 2016 and 2020 nomination battles that intensified partisan polarisation.
- Arguments that the process is political by constitutional design: the Constitution deliberately divides nomination and advice and consent to allow democratic input and accountability; the Senate was intended to provide a check on presidential appointments and to reflect political judgement.
- Counter-arguments that it is not 'too' political: lifetime tenure of justices preserves judicial independence after confirmation; the Senate can act as a democratic brake; the focus on judicial philosophy is legitimate given the Court's power to affect public policy; norms such as blue slips, or the influence of the American Bar Association, have historically moderated extremes.
- Consideration of consequences: politicisation may undermine public confidence and the perceived impartiality of the Court, but it can also make the process more transparent and subject to democratic scrutiny; the trade-off between accountability and independence is central.
- Comparative or reform points: comparisons with other systems where judges are appointed more technocratically, or proposals such as fixed-term limits, supermajority requirements for confirmation, or an independent appointment commission, and the strengths and weaknesses of each approach.
- A reasoned conclusion should weigh whether the observed politicisation has crossed a threshold that damages legitimacy and independence, offering a balanced judgement and possible recommendations, for example whether institutional reforms are warranted or whether political contestation is an inevitable feature of a politicised constitutional system.

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