5.7 The US Supreme Court: Role, Appointment and Judicial Philosophy

EDEXCEL 9PL0 · about 55 minutes · Write-in edition

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 55 minutes on the whole pack.

1 State two formal steps in the US federal appointment process for a Supreme Court nominee, from presidential nomination to Senate action.

(Total for Question 1 is 2 marks)

2 State four institutional features of the Senate Judiciary Committee that shape the confirmation process for Supreme Court nominees.

(Total for Question 2 is 4 marks)

3 Using the two short extracts below about US Supreme Court appointments, analyse how the confirmation process can be both constitutional and political. Source A is an extract from a constitutional law textbook, Source B is a short opinion piece for a national newspaper. Use both extracts in your answer and refer to them directly.

Source A: "The Constitution requires only that the President nominates and, with the advice and consent of the Senate, appoints Justices to the Supreme Court. The framers left the details of the confirmation process to the Senate itself, creating a constitutional partnership that balances democratic input with lifetime judicial independence. Marbury v Madison established the Court's role as final arbiter of constitutional meaning but did not prescribe appointment procedures, which remain political by design."

Source B: "Recent confirmation battles show how nominations are fought as proxy wars over the Court's future. Senators scrutinise nominees' judicial philosophy, past writings and perceived policy leanings. Television and social media heighten public pressure, turning hearings into political theatre rather than a sober test of legal fitness. The result is that each nomination looks like a political event as much as a constitutional duty."

Context note: date your examples or references where relevant to 2024.

(Total for Question 3 is 12 marks)

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

(Total for Question 4 is 30 marks)

5 Explain two contrasting judicial philosophies, originalism/textualism and the living constitution approach, and how each affects judicial decision making on constitutional questions.

(Total for Question 5 is 5 marks)

Mark scheme · 5.7 The US Supreme Court: Role, Appointment and Judicial Philosophy

Question 1

identifies the President formally nominates a candidate **B1**

identifies the Senate gives advice and consent through hearings and a confirmation vote **B1**

Answer: The President formally nominates a candidate; the Senate undertakes advice and consent, typically with Judiciary Committee hearings followed by a full Senate confirmation vote.

Question 2

identifies that the Committee holds confirmation hearings where the nominee testifies **B1**

identifies that the Committee votes to report the nomination to the full Senate, positively, negatively or without recommendation **B1**

identifies use of the Committee to subpoena documents and witnesses **B1**

identifies the Committee's ability to shape the hearing agenda and questions **B1**

Answer: The Senate Judiciary Committee holds confirmation hearings where nominees testify and senators question them; it also votes to report the nomination to the full Senate, and it can subpoena documents and witnesses and otherwise shape the hearing agenda and lines of questioning.

Question 3

Level 0 No relevant content. **0**

Level 1 Limited analysis, paraphrases one source with little use of the other, and limited linkage to constitutional or political features. **1-3**

Level 2 Some analysis using both sources, with clear points about the constitutional framework and the political pressures, but discussion may be descriptive rather than analytical. **4-6**

Level 3 Good analysis using both sources to explain how the process is simultaneously constitutional and political, with developed explanation and contextual detail, though evaluation may be limited. **7-9**

Level 4 Detailed, well-balanced analysis driven by both sources that explains the constitutional basis, the Senate's role, and the political dynamics and media effects, with direct reference to the extracts and dated contextual examples where relevant to 2024. **10-12**

Indicative content:

- Source A emphasises the constitutional text: nomination by the President plus advice and consent by the Senate, and that the framers deliberately left procedural detail to the Senate, creating a constitutional partnership.
- Source A links the Court's judicial review role from Marbury v Madison to appointment processes, noting appointments are separate from judicial power yet shape the judiciary, underlining a tension between legal design and political reality.
- Source B highlights the political reality: intense scrutiny of judicial philosophy, media-driven public pressure and partisan framing turning hearings into proxy battles for the Court's future.
- Analysis can draw on both extracts to show the confirmation process is constitutional in structure but political in practice: the Constitution sets the roles but leaves discretion to the Senate whose behaviour is shaped by partisanship and public opinion.
- Reference to mechanisms mentioned in the pack: Senate Judiciary Committee hearings, media coverage, the role of interest groups and social media, and the strategic timing of nominations can be used to illustrate Source B's claim.
- Contextual 2024 example: note that high-profile confirmations in the 2010s and 2020s became nationally polarised events and that as of 2024 debates about the Court's composition are a central political issue, supporting Source B's contention about political theatre.
- A top-band answer integrates the sources, explaining how the constitutional design allows political factors to influence outcomes and how that can affect judicial independence and public legitimacy, with specific dated context where appropriate.

Question 4

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.

Question 5

identifies originalism/textualism as interpreting the Constitution according to original meaning or text	**B1**
explains how originalism/textualism constrains judges to the fixed meaning and can limit judicial policy making	**B1**
identifies the living constitution approach as interpreting the text in light of contemporary values and social change	**B1**
explains how the living constitution approach allows judges to adapt constitutional principles to modern circumstances	**B1**
explains a consequence, e.g. originalism may lead to narrower readings of rights while living constitutionalism may support broader, evolving protections	**B1**

Answer: Originalism or textualism interprets the Constitution according to its original public meaning or the ordinary meaning of the text, which tends to constrain judges to the framers' intent or the statute as written and can limit courts from reading new rights into the text. The living constitution approach treats the document as a dynamic instrument whose principles must be applied in light of contemporary values and problems, giving judges scope to adapt constitutional doctrines to modern circumstances; as a result originalism may produce narrower readings while living constitutionalism can yield broader, evolving protections.