

4.2 Government of the USA

The US Supreme Court.

Aspect: Approaches to legal reasoning: precedents and analogies; judicial restraint and strict constructionism v. judicial activism.

Key aims, themes and concepts

- To identify the differing approaches that Supreme Court Justices take to legal reasoning.
- To illustrate the impact this may have on the Court's decisions.

Assessment objectives covered

AO1

Demonstrate knowledge and understanding of relevant institutions, processes, political concepts, theories and issues – through an identification of approaches to legal reasoning.

AO2

Interpret and apply political information to identify and explain relevant similarities, differences, and connections – through an examination of the connections between approaches to legal reasoning and ideological outlooks.

AO3

Analyse and evaluate the areas of government and politics studied to construct arguments, make substantiated judgements and draw conclusions – through critical analysis of the ways in which different approaches to legal reasoning may impact on Supreme Courts decisions.

Introduction

Start the session by ensuring students are familiar with the constitutional role of the Supreme Court as it has developed through the power of judicial review (reference may be made to the case of *Marbury v. Madison*, 1803). You should point out that the Court has become an important political as well as legal institution through asserting its power to decide upon the constitutionality of laws. In so doing it relies upon both precedent and analogy. It is also important to observe that Justices have distinctive judicial philosophies, based upon their ideological outlooks. These may be reflected in the way they approach legal arguments and decisions.



Activity:

You should introduce students to the concepts of precedent and analogy as they apply to legal arguments (this may be done through a *PowerPoint* presentation).

- If two cases involve the same legal principle, the earlier case establishes a *precedent* that the later case can follow.
- If two cases are similar, then through *analogy*, the decision in the earlier case determines that reached in the later case.

Main lesson

Introduce students to the following different approaches to legal reasoning:

- *Strict Constructionist* – Justices adopting this philosophy rely upon a literal interpretation of the Constitution as their guide to judicial decision-making. They attempt to discover the Founder's original intent and are more inclined to support states' rights than side with federal authority. This philosophy may be associated with the *judicial restraint* typically adopted by conservative (Republican) appointees to the Court.



Activity:

Students should research who amongst the current Justices may be considered strict constructionists (Chief Justice Roberts, together with Associate Justices Thomas and Alito and potentially Gorsuch).

- *Loose constructionist*– Justices adopting this philosophy are prepared to view the Constitution in a contemporary context, allowing a broad interpretation of the Founder's intent, as it applies to current political, social and cultural concerns, as their guide to judicial decision-making. They are inclined to emphasise the powers granted to the federal government rather than side with states' rights arguments. This philosophy may be associated with the *judicial activism* typically adopted by liberal (Democrat) appointees to the Court.



Activity:

Students should research who amongst the current Justices may be considered loose constructionists (Associate Justices Ginsburg, Breyer, Sotomayer and Kagan).

You should note that Associate Justice Kennedy (President Reagan's nominee after the rejection of Robert Bork and seen as a moderate conservative) is currently the "median" justice, not rigidly adhering to either philosophy and typically casting the decisive vote in the Court's 5-4 majority decisions.

Key terms introduced or developed in this session

Judicial review, precedent and analogy, strict constructionist, loose constructionist, judicial restraint, judicial activism.

Conclusions

The prevailing judicial philosophy adopted by the Court in its approach to legal reasoning is critical in defining its role within the American political system. An activist Court sees itself as a co-equal partner in the political process, with an important part to play in shaping American society. At the same time, through exercising judicial restraint, the Court may have an equally significant impact on the nation's politics and culture. The question of whether, whatever its approach to legal reasoning, nine unelected judges should have the power to overturn laws passed by a majority in a democratically elected legislature and approved by a democratically elected chief executive also remains an important matter of political debate.

Extension work:



Students may discuss the Court's use of the concepts of precedent and analogy in reaching decisions. Are two cases ever identical in terms of using precedent? How similar should cases be in order that one is analogous to the other? Why should a decision in one case influence the decision in another?

Students may examine the way in which the Court's approach to legal reasoning has changed from the dominant philosophy of loose construction/judicial activism during the 1950s and 1960s (the Warren Court) to the strict construction/judicial restraint that has characterised the Court since the 1980s (the Rehnquist and Roberts Courts). Reference should be made to key decisions that illustrate the Court's different approaches to legal reasoning.