

REVIEW SECTION

Citizens, Courts and Confirmations: Positivity Theory and the Judgments of the American People by James L. Gibson and Gregory A. Caldeira. Princeton, NJ: Princeton University Press, 2009. 178 pp.

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As one might expect from these two highly distinguished judicial scholars, this book makes a significant contribution to the examination of public opinion and the Supreme Court. Using panel data, Gibson and Caldeira examine public support of Justice Samuel Alito's confirmation and attempt to measure public support of the Supreme Court before, during, and after this very salient event. The authors' purpose is to determine if information gained during this important and highly visible event invokes any change in opinions of the Supreme Court (p. 7). As the authors surmise, this temporal analysis provides a unique examination of how receiving information may influence opinion of the courts. While this book raises several new questions and challenges, it provides an insight into an important area of scholarship and will be thought provoking for academics, legal practitioners, and the public alike.

Chapter 1 sets up the purpose of the book and introduces the authors' main theme of positivity bias, or Positivity Theory (p. 7). This theory presumes that even during controversial events involving the Supreme Court, legitimizing symbols associated with the judiciary are often used in court discussions. These legitimizing symbols reinforce preexisting positive opinions about the courts. Legitimizing symbols may include the court's nonpolitical nature, the reverence to precedent, and the solemn procedures used in court settings (such as black robes). The more information one receives about the courts, the more one is exposed to these symbols, and thus opinion about the Supreme Court's legitimacy increases. This is not necessarily a new concept, as the authors have explored this theory together and with others in prior works, and many of these early sections reiterate those prior findings.

Chapter 2 provides an insightful reexamination of public knowledge concerning the courts. While this chapter is again largely a summary of previous research, particularly the authors' own 2001 survey findings, the authors do an excellent job of making the reader reconsider one's notions of the public's awareness of the judiciary. The authors show that how you ask the questions largely determines how we construe public knowledge. For example, most know that respondents fair rather poorly in open-ended questions about the courts, such as "Name a current member of the Supreme Court." However, if researchers provide respondents with reference points, such as using multiple-choice questions, most respondents are able to identify Supreme Court justices by name (p. 25). Likewise, if a researcher asks respondents a broader procedural question, such as whether Supreme Court justices are appointed or elected, the public largely gets it right (pp. 27-28). This is an enlightening chapter as it makes the reader consider carefully how research methodology can greatly influence

survey results. This discussion transcends judicial politics, as one could apply the authors' point to public knowledge of other institutions outside of the courts.

Chapter 3 discusses institutional legitimacy and examines the Supreme Court and popular opinion. The authors present an array of descriptive statistics from their 2005 survey. In overall terms, they show that support for the Supreme Court is relatively high, with few people saying they want to "do away" with the Court (p. 45). This complies with their 2001 findings where support remained high, even after the controversial *Bush v. Gore* ruling. After concluding that aggregate support for the Supreme Court is relatively high and stable, the authors then switch into an analysis of individual characteristics and support of the high court. The authors find that neither individual partisanship nor ideology possesses much influence on support of the Supreme Court. Other characteristics such as race, level of education, and political knowledge likewise have little impact.

The beginning of chapter 4 provides a largely descriptive summary of Samuel Alito's confirmation process, discussing the background and "spin" on both sides. They then present their hypotheses concerning public support for Alito. Their main theory is that support for Alito will be driven by ideology or opinions of Alito's "judiciousness" (or both) or the nominee's judicial qualifications, temperament, and whether the nominee is viewed as an activist or restraintist (p. 65). Most would expect that respondents will tend to support nominees they perceive as ideologically similar to themselves. However, respondents will also support candidates they feel are highly qualified and otherwise viewed as judicious. In many ways, this reminds me of Cameron, Cover, and Segal's (1990) examination of Senate voting for Supreme Court nominees, where the authors suggest that the success of a judicial nominee in the Senate is based on a combination of perceived qualifications and ideology (see C. M. Cameron, A. D. Cover, and J. A. Segal [1990], "Senate Voting on Supreme Court Nominees: A Neoinstitutional Model," 84 *American Political Science Review* 525-534). To conclude chapter 4, Gibson and Caldeira model various factors influencing support for Alito, finding that the ideological distance between the respondent and Alito's perceived ideology is important, but so are perceptions of Alito's judiciousness. Alito's perceived judiciousness, however, had more impact on those respondents that already supported the Court. Therefore, similar to prior findings concerning confirmation support by political elites, public support for a nominee is a mixture of not only ideological congruency but also perceptions of the nominee's professional qualifications and judicial temperament.

Chapter 5 makes perhaps the most substantial step forward in this work by examining how exposure to the confirmation process may change opinions about the Court. Here the authors test the positivity bias, suggesting that those respondents who paid more attention to the confirmation process (i.e., gained more information about the Court) would increase their support for the Court. However, here the authors find that we cannot treat all information equally. The exposure to advertisements concerning Alito had a detrimental effect on Supreme Court support (p. 112). Those who reported not seeing many of the private ads concerning the nomination but who did

pay attention to the process did increase their support for the Court. This suggests some support for positivity bias. However, viewing advertisements concerning the nomination negated any positive effects of viewing legitimizing symbols that may have been seen in the process.

While there is much to offer in this work and the authors generally make a persuasive case, one possible point of contention could be their sweeping claim in chapter 3 that “no relationship exists between ideology and Court support for most Americans” (p. 54) and their summary dismissal of these considerations from any further analysis. It would have been very interesting if the authors had asked the respondents in their 2005 survey to place the current Supreme Court on an ideological spectrum. These responses could be used as a better method of examining the interaction between perceived ideology of the Court and support for the Court. In fact, the authors do examine respondents’ ideological assessment of Alito in their analysis of support for his nomination (p. 87). It would have been interesting to do a similar analysis for the entire Court to determine if (perceived) ideological distance influences support. Perhaps there is indeed no difference, but perhaps those who see the Court far away from their own ideology are less trusting of the judiciary. We also cannot base this on objective measures of current Supreme Court ideology, such as a presumption that liberals will be less supportive of the current conservative Supreme Court. Perhaps when thinking of the Supreme Court ideology, liberal respondents may automatically think about *Roe v. Wade* or defendant’s rights cases, wrongly believing the current Court possesses more liberal leanings than it perhaps does. Therefore, we would need to tap into the respondents’ subjective views of the high court’s contemporary ideology. Perhaps the authors feel this has been sufficiently explored in their prior works, but it would be worth more emphasis here.

Likewise, while a strong case is made that ads seem to hurt legitimacy, there is not much detail about what information may help. The authors asked how closely the respondents followed the news about the appointment (p. 108). However, it may have been helpful to find out more on the sources of information, aside from advertisements. We do not know if respondents received their information solely from news accounts, watched any part of the confirmation hearings, heard other political elites speak on the confirmation, or received information from other sources. If we know attack ads hurt institutional legitimacy, it would also be interesting to find out (presuming the positivity bias exists) what information or sources may increase feelings of support.

Overall, this well-written book is worth reading for those studying the courts, public opinion, or others interested in the topic. As mentioned above, some of the issues in this study extend well beyond the judicial context. As the authors astutely note in their concluding chapter, this work also raises the importance of continual surveying and variation in methodology to understand public opinion of the courts and its importance. **jsj**