

Confirmation Politics and The Legitimacy of the U.S. Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination

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Gibson, Caldeira, and Spence (2003a, 2003b, 2005) expound the theory of positivity bias in their analysis of the legitimacy of the U.S. Supreme Court in the aftermath of Bush v. Gore. This theory asserts that preexisting institutional loyalty shapes perceptions of and judgments about court decisions and events. In this article, we use the theory of positivity bias to investigate the preferences of Americans regarding the confirmation of Judge Samuel Alito as an associate justice of the Supreme Court. More specifically, from the theory of positivity bias, we derive the hypothesis that preferences on the Alito confirmation are shaped by anterior commitments to the Supreme Court. Based on an analysis of a national panel survey, we find that those who have a high level of loyalty toward the Supreme Court rely much more heavily on what we term judiciousness—in contrast to ideology, policy, and partisanship—in forming their opinions on whether to confirm Alito. Thus, institutional loyalty provides a decisive frame through which Americans view the activity of their Supreme Court.

On January 31, 2006, Judge Samuel Alito was confirmed as the 115th justice of the United States Supreme Court. The vote in the Senate was 58 in favor, 42 opposed, which makes the Alito confirmation one of the more controversial and divisive in recent times. Judge Alito is expected, and so far has proven, to be among the most conservative justices to sit on the Supreme Court in the modern era. With the country closely divided on so many ideological and partisan dimensions, the confirmation of Alito to a seat on the high court may have vast and lasting political consequences.

One plausible explanation for the success of President Bush's nomination is that the mass public was convinced that Judge Alito was not too extreme or intemperate to sit on the High Court. If indeed Americans came to view Alito as sufficiently moderate and temperate, it is not due to lack of effort on the part of the Democrats and liberal interest groups. For instance, all told, liberal interest groups spent \$1,365,857 on advertising in trying to convince the American people that Alito should not be confirmed (and conservatives spent \$1,041,535 in favor of his confirmation), making this one of the more expensive

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confirmation fights ever.¹ As a result of the Republicans' successful campaign, the charge that Judge Alito was outside the ideological mainstream seemed to resonate with only a minority of Americans.

The American public may have formed its preferences on the nomination on the basis of two types of considerations. People either (1) decided to evaluate Alito on relatively nonpartisan grounds, asking only whether he possessed the legal and technical qualifications necessary to be a good judge, or (2) decided that the judge's ideology was indeed relevant to making a decision on his confirmation, but that his ideological position, although conservative, sits squarely within the mainstream of American politics. Indeed, perhaps these two decision-making processes are not independent but are instead crucially interrelated: If judicial qualifications are clear, ideological questions are muted; if the nominee's qualifications are called into doubt, then a second-stage dimension—defined by ideology, policy, and partisanship—becomes relevant. It seems that for most Americans, Alito possessed the appropriate judicial skills and temperament, and therefore questions of ideology became less relevant. And for those who questioned Alito's judicial qualifications, scrutiny of his ideology led many to the conclusion that he is not an extremist.

Of course, this view of how ordinary people form their preferences is highly speculative. In fact, we know precious little about how citizens evaluate Supreme Court nominees. The public opinion industry deems citizens' views important in confirmation fights and therefore pays some attention to their opinions (e.g., Pew Research Center 2005), but in-depth analyses are practically nonexistent. Academic research on citizen decision making is also relatively rare, in part owing to the difficulty of mounting and executing major surveys within the confines of the relatively short period between a vacancy on the Court and a Senate vote on the successor. Consequently, although we know something about how familiar demographic variables and partisanship/ideology relate to confirmation preferences, we understand virtually nothing about how ordinary citizens view the process and form their opinions.

A recently developed theory—the theory of positivity bias—may provide a useful framework for analyzing mass opinion formation. This theory was created in part to account for the U.S. Supreme Court's unexpected success at protecting its institutional legitimacy even while awarding the presidency to George Bush in a bold and highly controversial 5–4 decision (*Bush v. Gore*). According to Gibson, Caldeira, and Spence (2003a), when

ordinary citizens become motivated to pay attention to the U.S. Supreme Court—when their attitudes come out of hibernation—they approach the context with preexisting beliefs about law and politics. Some have in the past developed strong loyalty to judicial institutions, a loyalty that makes them particularly receptive to the legitimizing judicial symbols that envelope any event or controversy attracting the attention of the mass media. These citizens may initially pay attention to the court out of dissatisfaction and displeasure. But, because they are susceptible to (predisposed to) the influence of strong legitimizing legal symbols, they tend to wind up accepting the argument that courts are different from other political institutions and that “politics” plays a limited role in the judicial process. Suspicions about partisan and ideological influences on legal processes are dispelled, owing to the frame created by standing commitments to the Court. In this bias we see the powerful influence of institutional legitimacy: To the extent that an institution has built a loyal constituency, it possesses a “reservoir of goodwill” that allows it to “get away with” unpopular decisions. This is precisely what Gibson, Caldeira, and Spence (2003a) argue happened in the fabled *Bush v. Gore*.

Are confirmation processes analogous to highly salient and controversial court decisions? Yes. In the typical confirmation controversy, one side alleges that the candidate lacks the qualities of a good judge. Opponents may ground this contention in any of several factual contexts: The nominee is prejudiced, has associated with biased or extremist groups (e.g., memberships in discriminatory clubs), is dogmatic, and/or is outside the broad ideological consensus in the country. Proponents of the nominee seek to emphasize the “judiciousness” of the candidate,² arguing in terms of judicial qualifications, temperament, and role orientations (e.g., judicial restraintism), typically making extensive use of the potent symbols of judicial legitimacy. Thus, in a contentious confirmation, the American people confront two competing *frames* for evaluating nominees: the frame of judiciousness and that of ideology and partisanship. Understanding which frame comes to dominate in the minds of ordinary Americans in any particular confirmation fight is an issue of considerable theoretical and practical importance.

The purpose of this article is therefore to investigate the nature of the confirmation decisions made by the American public in the Alito confirmation. Based

¹Data compiled by the Brennan Center: See <http://www.brennan-center.org/programs/scnominations/Alito%20state%20chart%20.pdf> [accessed 4/12/2006].

²During the Alito hearings, Anthony Kronman provided a useful understanding of “judiciousness” (DCH e-Media 2006): “The temperament of the judge, as I see it, is marked by modesty, by caution, by deference to others, in different roles with different responsibilities, by an acute appreciation of the limitations of his own office, and by a deep and abiding respect for the past. There is a name that we give to all of these qualities taken together. We call them judiciousness.”

on a nationally representative panel survey, initiated in 2005 and followed with extensive reinterviews conducted during the heat of the Alito controversy, we explore the hypothesis that the framing of positivity bias accounts for public preferences on Alito's confirmation. We begin by recounting the highlights of the confirmation fight. We next argue that the theory of positivity bias is relevant to the dispute, and we derive hypotheses from that theory. In the empirical portion of the article, we contrast two models of confirmation preferences, one based on ideological, policy, and partisan considerations; the other, on what we term "judiciousness"—the satisfaction of legalistic expectations citizens hold of judges. Our initial analysis reveals that both models are useful predictors of preferences. We next test the crucial conditional hypothesis: preexisting institutional loyalty structures the decision-making processes citizens use in evaluating confirmation controversies. In line with the theory of positivity bias, those with strong loyalty to the Supreme Court weigh judiciousness much more heavily in their calculus, even if they are similar to those with less loyalty in their use of ideological and partisan considerations in forming their opinions.

We conclude the article by reconnecting the findings to the theory. Institutional loyalty provides a frame through which people perceive and judge events. In the case of the U.S. Supreme Court, that frame centers on law, not politics. The Court has a large constituency that is prepared to accept the argument that "courts are different," that courts are not typical political institutions. So long as a controversy is associated with sufficient reinforcing stimuli—emphasizing the powerful and persuasive symbols of the judiciary—opponents will find it difficult to substitute an alternative frame centered on ideology and partisanship. In terms of future nominations to the Court, we predict that this theory is so well understood (*de facto*) by the central actors in the confirmation process that, other things being equal (e.g., control of the Senate), it will be difficult indeed for even a determined minority to succeed in blocking a president's nomination—that is, so long as the Supreme Court is able to maintain its extraordinary store of institutional legitimacy within the American mass public.

The Confirmation of Samuel Alito to The Supreme Court

For the Supreme Court, 2005 was a year of great speculation and anticipation—about retirements and resignations, Chief Justice Rehnquist's health, potential

battles over nominees, and long lists of aspiring candidates. Public interest picked up markedly when, in August of 2004, Rehnquist announced that he had cancer and was undergoing treatment. As if to dramatize the possibilities of massive change, the frail Chief Justice administered the oath to President Bush in mid-January of 2005 and quickly left the stands, thereby fueling comment on how long he would remain on the Court. To the surprise of most, Rehnquist was not the first departure. Justice O'Connor announced her retirement in June. In July, President Bush sent up Judge John Roberts to the Senate as her replacement. Roberts's nomination proceeded smoothly through the summer and seemed to be well poised for the Judiciary Committee's hearings in September. Then, in September, Rehnquist died; and after an interval, the president switched Roberts to the Chief Justiceship. A month later, to the shock of most observers, Bush named his chief of staff, Harriet Miers, to replace O'Connor. This nomination was doomed from the outset and was withdrawn after three weeks, largely on the basis of conflict among the Republicans. Judge Alito, who had been on the short list for the previous openings, received the nomination from the president on October 31, 2005.

Despite a last-minute effort by Senate liberals to mount a filibuster against Judge Alito, and great exertions by liberal interest groups, the Senate confirmed him at the end of January on a vote of 58–42. In the end, Judge Alito seemed to be successful in gaining the fairly robust support of the American people, including most Democrats. Those who managed the campaign, including in particular Alito's testimony before the Senate Judiciary Committee, executed a nearly perfect, textbook example of how to get a president's nominee confirmed (on presidential public relations efforts, see Maltese 1995). A significant part of this victory had to do with effectiveness in portraying Alito as conservative, but as a mainstream conservative, certainly not an extremist. As important was their success at focusing the debate, not on ideology, but instead on Alito's professional accomplishments and judicial qualifications.

The Theory of Positivity Bias

Yet, another large part of the confirmation story has to do with preexisting attitudes toward the Supreme Court. As it has been developed, the theory of institutional loyalty and positivity bias suggests that standing commitments to an institution generate a bias in expectations and perceptions of confirmation struggles that predisposes people to emphasize certain criteria and ultimately to accept

judicial nominees. Because the theory of positivity bias is so central to our analysis, we consider it in some detail.

What is positivity bias? As Gibson, Caldeira, and Spence (2003a, 2003b) explain it, positivity bias is a frame through which contemporary political conflicts are judged. In their theory, the process goes something like the following. People become attentive to courts in the context of policy controversies (e.g., *Bush v. Gore*) or events like confirmation hearings. In such circumstances, judicial symbols proliferate—in part because elites and interest groups realize the power of such symbols and attempt to manipulate them—so it is impossible for attentive citizens to avoid exposure to them.

Legitimizing symbols likely activate loyalty toward the institution, where it exists, as well as reinforce the understanding that courts are different from other political institutions. Consequently, although policy concerns may provide the initial impetus for attention to a court (see Gimpel and Ringel 1995, 146), a second dimension, judiciousness, is often stimulated and, for some, becomes the dominant frame for judging the confirmation.

Is positivity bias associated with any substantive views of the judicial process? We believe that positivity bias is closely connected to the view that courts are different from other political institutions and that judicial decision making is largely a nonpolitical process. This conception is quite similar to what Scheb and Lyons refer to as the “myth of legality,” by which they mean “the belief that judicial decisions are based on autonomous legal principles” and “that cases are decided by application of legal rules formulated and applied through a politically and philosophically neutral process of legal reasoning” (Scheb and Lyons 2000, 929). We hypothesize that those characterized by strong loyalty to courts tend to subscribe more completely to the myth of legality and therefore are more likely to view courts as relatively distinct, nonpolitical institutions.

How does positivity bias arise? Our understanding of the origins of positivity bias begins by positing that citizens do not naturally differentiate between the judiciary and the other branches of government. That courts are special and different must be learned.³ Thus, those most ignorant about politics in general, and with little exposure to judicial politics in particular, are likely to see courts and

other political institutions as quite similar: Courts are not seen as special and unique.

Exposure to legitimizing judicial symbols reinforces the process of distinguishing courts from other political institutions. The message of these powerful symbols is that “courts are different,” and owing to these differences, courts are worthy of more respect, deference, and obedience—in short, legitimacy. Because courts use “nonpolitical,” principled processes of decision making (and since the American people do not necessarily approve of the decision-making procedures commonplace in political institutions—see Hibbing and Theiss-Morse 1995), and since judicial institutions associate themselves with symbols of impartiality and insulation from ordinary political pressures, those more exposed to courts come to accept the “myth of legality.” This process of social learning explains why citizens who are more knowledgeable about courts tend to adopt less realistic views of how these institutions operate and make decisions (e.g., Scheb and Lyons 2000).⁴

How does positivity bias influence perceptions of decisions and events? A positivity bias is little more than a frame through which events are perceived and evaluated. “Issue framing effects refer to situations where, by emphasizing a subset of potentially relevant considerations, a speaker leads individuals to focus on these considerations when constructing their opinions” (Druckman 2004, 672). Framing is a process by which the salience or accessibility of different criteria or dimensions by which an event or a case might be judged varies according to established characteristics of the individual. Stimuli activate a frame, and the frame influences how the world is perceived and judged. Elites often compete in proffering frames to the mass public (e.g., Sniderman and Theriault 2004), which typically results in competing frames being available in the marketplace. Framing effects are not inevitable (Druckman 2004), preexisting attitudes do not always exist, and it is seldom easy to predict which frames will dominate, but the battle for public opinion is often, if not typically, a battle of one frame against another.

Confirmation controversies provide a classic example of competing frames. On one side, the frame of legality

³Long ago, Casey (1974) demonstrated that the more one knows about law and courts, the *less* realistic are perceptions of judicial decision (i.e., the more one is likely to believe in the theory of mechanical jurisprudence). Something about being exposed to information about courts contributes to people embracing this traditional mythology of judicial decision making (see also Brisbin 1996; Scheb and Lyons 2000). We will have more to say about this hypothesis below.

⁴Hibbing and Theiss-Morse (1995) have shown that greater awareness of the Supreme Court leads to *more* support for it, whereas greater awareness of the Congress is associated with *less* support for that institution. (Kritzer and Voelker (1998) make a similar argument. Caldeira and Gibson (1992, 1995) have shown in several contexts that greater awareness of judicial institutions is related to a greater willingness to extend legitimacy to courts; Gibson, Caldeira, and Baird (1998) have confirmed this finding in research in roughly 20 countries.

is advanced, typically by proponents of the nominee.⁵ Their argument is that the nominee ought to be judged primarily (if not exclusively) on legalistic criteria like judiciousness. On occasion, the opponents will take issue with the nominee's judiciousness; but more likely is an attempt to substitute a frame defined by political considerations such as ideology, partisanship, and policy. Which frame comes to dominate depends in part on the nominee and the elements of the specific context, but also in part on whether citizens have preexisting commitments (loyalty) to the institution that the proponents can activate. In the case of the U.S. Supreme Court, the outcome of a confirmation controversy depends in significant part on the degree to which citizens subscribe to the myth of legality, which is of course a central element of positivity bias.⁶

⁵While it is beyond the scope of this article to assess where frames originate, we acknowledge that various groups, the president, and the Senate itself seek to shape how ordinary people view the candidate and the confirmation process. Senate hearings definitely vary in their content, focus, and contentiousness (for content analyses of Senate confirmation hearings, see Guliuzza, Reagan, and Barrett 1994, and Ward 2007, and, specifically on the Alito hearings, Ward 2008), and the content of those hearings no doubt produces frames that filter down to the American people. Our own view, however, is that the Senate frames inevitably tend to emphasize legalistic aspects of the nomination (in part owing to a nominee's refusal to answer questions with a sharper political focus), such as earlier decisions and precedents (including "super-duper" precedents), judicial philosophy, and even fairly arcane points of law. Undoubtedly, the Senate hearings differ dramatically from the advertisements run by interest groups (see Gibson and Caldeira 2007). Ward's analysis of the Alito hearings (and our own review of the hearings) gives some credence to this view. Although he did not code any of the statements, questions, or answers with regard to civility or political tone, the overall impressions one gets from his analysis are (1) there is a great deal of talk about substantive legal issues (e.g., the unitary executive), (2) including judicial philosophies and theories of judging (e.g., *stare decisis*), (3) with the discussions often characterized by disagreements, even strong disagreement, (4) but with considerable civility, including use of the title "Judge," and decidedly nonpointed disagreement and muted attacks (from the lamb, not the lion, Ted Kennedy: "I have serious doubts that you'd be that kind of justice"), (5) the relatively rare use of innuendo, direct personal attacks, and character assassination, (6) and, perhaps most important, a generalized impression that disagreements were principled, rather than strategic, self-aggrandizing, and partisan. To consider the source of frames further, however, goes beyond the scope of this article.

⁶For a useful earlier effort to use framing theory to account for how the Americans viewed the Supreme Court's decision in *Bush v. Gore*, see Nicholson and Howard 2003. They analyze three competing frames for the decision: partisan, legal, and election. One of their more interesting findings is that the partisan frame—through which they tried to persuade their respondents that the Supreme Court's decision was made on the basis of partisanship and politics—failed entirely to influence the legitimacy of the Supreme Court, even though the election frame—stressing the role of the Supreme Court in bringing the election to an end—had some limited effect. Their research also strongly confirms Druckman's

This theory of framing is also entirely compatible with theories of motivated reasoning (e.g., Taber and Lodge 2006). One element of that body of work has to do with confirmation bias: "the prediction that people, especially those who feel the strongest and know the most, will seek out confirmatory evidence and avoid what they suspect might be disconfirming evidence" (Taber and Lodge 2006, 759). This confirmation bias means that contrary evidence—such as evidence that a Supreme Court nominee has strong partisan and ideological preferences and objectives—battles against preexisting attitudes based on the myth of legality and the presumed criteria of the judiciousness of nominees.

During confirmation fights, citizens are offered the opportunity to get a view of how the Supreme Court actually operates. Since many actors are focusing on the ideology of the nominee, considerable potential exists for the myth of legality—according to which judges make decisions not on the basis of their ideologies but rather strictly according to the syllogisms of *stare decisis*—to be placed under strain during confirmation hearings. Debates are certainly confused by discussions of "judicial activism," but few close observers of the process doubt the importance of ideologies. Thus, the central legitimizing symbols upon which the Courts relies—its impartiality and its strict adherence to the law—are potentially compromised during politicized confirmation processes.⁷

argument that scholars ought to focus on the conditions under which issue frames are effective. Perhaps one such condition is related to whether the frame activates well-established, but dormant, political beliefs and attitudes.

⁷Unfortunately, resignations and deaths of Supreme Court justices typically occur without much advance notice, and, consequently, we know little about how citizens view confirmation fights, and even less about how attitudes toward the institution affect and are affected by the process (for one of the best exceptions, see Caldeira and Smith 1996). Since practical issues of timing make it extremely difficult to design and implement a rigorous research design, scholars have been forced to rely upon data collected for other purposes (e.g., Gimpel and Ringel 1995), and in particular on extremely weak measures of the concept "legitimacy." For instance, as clever as their research is, Gimpel and Wolpert (1996) are faced with two substantial limitations in their analysis of mass opinion on the Rehnquist, Bork, Souter, and Thomas nominations: (1) the data sources available include only cross-sectional ("snapshot") polls, and (2) the questions asked in the surveys are limited to simple opinion holding and approval of each of the nominees. No valid measures of the perceived legitimacy of the Court itself are included in any of the earlier analyses of confirmation fights, which is important because Gibson, Caldeira, and Spence (2003b) have shown that the commonly used "confidence in the leaders of the Supreme Court" indicator is far from being a valid and reliable measure of legitimacy. Consequently, little research has considered how preexisting commitments to the Supreme Court affect judgments of confirmation controversies.

Positivity frames may be able to override attempts to politicize confirmation processes.⁸ The job of the successful nominee and his or her proponents is to activate the legal rather than political frame through which ordinary citizens perceive and judge the confirmation process. We hypothesize that to the extent legal expectations are satisfied, the influence of ideology, policy, and partisanship is minimized, which is typically the preferred strategy of policy-minded presidents.

Thus, the central hypothesis emerging from the theory of positivity frames is that preexisting institutional loyalty plays a crucial role in how people perceive and judge confirmation processes. Of course, facts and contexts are important; how people perceive the details of confirmation fights is crucial to the formation of their preferences. But we hypothesize that institutional loyalty interacts with events surrounding the confirmation, leading citizens with a sense of loyalty toward the Court to rely primarily upon criteria of judiciousness in judging the nominee. In contrast, those without a sense of institutional loyalty are likely to judge the confirmation process largely in terms of ordinary political criteria.

Summarizing the Processes and Hypotheses

In sum, our view of citizen preference formation in the confirmation process is as follows:

- Those holding strong institutional commitments to the U.S. Supreme Court tend toward accepting the myth of legality, rejecting the view that courts are ordinary political institutions.
- Both institutional loyalty and belief in the myth of legality generate a particular set of expectations about the desirable qualities of a Supreme Court nominee and how the confirmation process ought to unfold. The central element of these expectations is that judges and courts are different from ordinary politics. We refer to this package of expectations as “judiciousness.”
- Intelligent confirmation strategies exploit predispositions to perceive nominees as judicious and not political. With prominent exceptions, the opposition tends not to directly challenge the

⁸This sentence should not be taken to mean that we believe that any nominations can be best understood as “nonpolitical.” Presidents always seek to advance their political goals, whatever they may be at the moment, through their nominees to the Supreme Court. When we refer to the politicization of a process, we mean simply that some parties to the controversy attempt to substitute a political frame for a legal frame and thus to change the criteria (or dimensions) on which the process is judged.

judiciousness of the candidate, focusing instead on trying to exploit the political dimension. But predispositions to see nominees in nonpolitical frames are strong and difficult to overcome.

- Our most important general hypothesis is thus that institutional loyalty tends to shield candidates from ideological scrutiny (and therefore we posit a conditional/interactive relationship).

The Survey

This research is based primarily on a nationally representative sample interviewed face-to-face from mid-May until mid-July 2005. A total of 1,001 interviews was completed, with a response rate of 40.03% (AAPOR Response Rate #3). No respondent substitution was allowed; up to six callbacks were executed. The average length of interview was 83.8 minutes (with a standard deviation of 23.9 minutes). The data were subjected to some minor “poststratification,” with the proviso that the weighted numbers of cases correspond to the actual number of completed interviews. Interviews were offered in both English and Spanish (the Spanish version was prepared through conventional translation/back-translation procedures). Samples such as this have a margin of error of roughly $\pm 3.08\%$.

During the course of the Alito confirmation process, we sought to reinterview the respondents from the 2005 survey.⁹ The fieldwork began on January 19, 2006, and was completed on February 13, 2006. A total of 335 individuals from the 2005 survey was reinterviewed.¹⁰

Since t_2 interviews were completed with only one-third of the original respondents, questions about the representativeness of the subsample naturally arise. We have considered this issue in some detail, in a statistical investigation available from the authors. The analysis supports two general conclusions. First, the t_2 subsample is reasonably representative on its face, and second, with minor poststratification, the 2006 subsample closely mirrors the 2005 population from which it was drawn (reflecting, of course, one of the most useful assets of panel designs). We therefore believe population

⁹We decided to exclude two categories of individuals from the second-wave project: (1) those for whom the initial interview was in Spanish, and (2) those living in areas decimated by Hurricane Katrina. This resulted in 969 individuals being eligible for reinterviewing.

¹⁰If we were to treat this as an entirely new survey, not a reinterview, and apply the AAPOR criteria to calculate the widely used Modified Response Rate #3, the rate would be 53.2%.

inferences can confidently be drawn from these panel data.

Assessments of the Confirmation Process

What were the preferences of the American people on Judge Alito: Should he have been confirmed? We asked the respondents their views on this question and the evidence is unequivocal: A substantial majority of Americans (62%) supported Alito's confirmation. Only 26% felt that the nominee should not be confirmed. Perhaps somewhat surprisingly, only 12% of the respondents had no opinion about Judge Alito. In a follow-up question asking how important it is to the respondents that their senator vote their preferred way on the nomination, nearly one-third (32%) thought the senator's vote very important and another 45% rated it somewhat important, while only 4% judged how their senator voted on the nomination as not important at all. In general, the Alito nomination was salient and significant to the American people,¹¹ and a substantial majority favored the ascension of Alito to the high bench.

For the purposes of this analysis, the dependent variable under scrutiny is preferences on whether Judge Alito should be confirmed to the Supreme Court. The specific measure we analyze in this article is an index that combines the responses to the question about whether Judge Alito ought to be confirmed with the replies to a query about the importance of the issue to the respondent. This measure is a continuous variable, which we rescaled to range from zero to one. The mean of the index is .61, and it is correlated with the five-point Alito preference measure at .99, and with a preference trichotomy (favor, don't know, oppose) at .94. Thus, this measure captures the intensity of support or opposition to Alito's nomination and therefore can serve as a useful dependent variable for the analysis that follows.¹²

¹¹One-half (51.9%) of our respondents claimed to have followed the events either very or somewhat closely, with 22.2% admitting that they paid relatively little attention to the process ("not at all closely"). Perhaps more telling, 62.5% of the respondents said that they had in fact seen or heard an advertisement on TV, on the radio, or in the newspapers concerning whether Alito should be confirmed. Earlier research has shown that confirmation hearings can be extremely visible to the American people. For instance, 95% of the American people held an opinion about whether Clarence Thomas should be confirmed to the U.S. Supreme Court. See Gimpel and Wolpert 1996 and Wolpert and Gimpel 1997. See also Hutchings 2001.

¹²Note that we have replicated all of the analysis that follows using the simple five-point preference indicator as the dependent

The Models

Our analysis focuses on two major classes of explanations of preferences on the confirmation process. The first we term the Policy Agreement Model, the second a Model of Judiciousness.

The Policy Agreement Model

The simplest way to think about how confirmation preferences are formed is to focus on policy and ideological agreement. We hypothesize that those who perceive the nominee's policy and ideological positions as congruent with their own will support the nominee's confirmation. The greater the policy distance between the respondent and the perceived location of the nominee, the less likely will the respondent be to support the confirmation.

We measured congruence along two dimensions. The first is broad ideological agreement. Using a scale ranging from (0) extremely liberal to (10) extremely conservative, we asked the respondents to locate themselves, President Bush, and Judge Alito in ideological space. The results indicate that the opponents of Judge Alito failed in their efforts to paint the nominee as an extreme conservative. With the center on this 11-point scale at 5.5, the average American places herself or himself very near the middle of the continuum (5.8); Bush is only somewhat to the right (6.3); and Alito is only very slightly to the right of Bush (6.5).¹³ On average, the American people viewed Judge Alito as 0.7 points more conservative than themselves, based on an 11-point scale. It is perhaps odd that Bush is not seen as a quite conservative president, but, most important for this analysis, Alito is *clearly not* perceived as an extreme conservative. Only 9.8% of the respondents placed Alito at the most extreme point (10) on the liberalism-conservatism continuum. Were we to treat scores of 8 through 10 as indicative of being quite conservative, only 35.2% of our respondents rated Alito as quite conservative. The data seem to indicate that the Americans see Alito as conservative, but not as excessively or unacceptably so.¹⁴

variable and the differences in the resulting various coefficients are minuscule.

¹³Fully 92% of the respondents were able to assign Judge Alito a position on this continuum.

¹⁴For our purposes, we can remain agnostic about Alito's true ideological location. However, according to Segal (2006), using Segal and Cover's (1989) methodology, Alito scores at .10. In comparison, Scalia has a score of 0 and Thomas has a score of .16, both of whom are commonly perceived to be extremely conservative members of the Court. Thus, it appears that Alito could very well

TABLE 1 Relative Ideological Positions

	More Liberal	About the Same	More Conservative	Total
Alito compared to me (N = 304)	13.3	60.9	25.8	100%
Alito compared to Bush (N = 304)	12.3	70.7	17.0	100%
Bush compared to me (N = 321)	22.1	45.6	32.3	100%

Note: Rows total to 100% (except for rounding error). "About the Same" = ± 2 points away.

Another way to parse these data is to compare the respondent's own position to his or her perception of Bush and Alito. The data in Table 1 show whether Bush and Alito are seen as more liberal than the respondent, more conservative, or about the same. The latter category is defined as being within plus or minus two points from the respondent's own position on the 11-point scale. Thus, if the respondent places herself at 6, then scores from 4 through 8 are categorized as "about the same."

The compelling finding in Table 1 is of course the 60.9% of the respondents who see Alito as being relatively close to their own ideological position. That figure strikes us as emblematic of the opposition's abject failure at portraying Alito as excessively and illegitimately conservative. By an almost two-to-one margin, the respondents who do not share Alito's ideology see him as more conservative, but this is within the context of six out of ten Americans perceiving themselves to hold roughly the same ideological position as the judge.¹⁵

So the evidence from this survey is that Bush was perceived to have nominated someone of roughly his own ideological position to the Court. This seems to fit with the

become one of the more extreme conservative justices serving on the Court (and Alito's votes to date bear out this conjecture).

¹⁵The average of the absolute values of the distance between the respondent and Judge Alito is 2.4 (standard deviation = 2.3). When the differences are collapsed, we find that 28% of the respondents saw Alito as more liberal than themselves, 50% saw him as more conservative, and 22% rated him as having exactly the same score on the ideological continuum. The respective figures for the differences between the respondents and President Bush are 32%, 16%, and 52%. If we narrow the measure of the ideological distance between the respondent and Judge Alito to only a single point (plus or minus) on the 11-point scale, we find that 43% of the respondents differ little from their perceptions of the judge's ideological position. Owing to space limitations, the survey did not ask any questions about other sitting justices or the Court itself. Note that in the statistical analysis that follows we, of course, use the uncollapsed measure of ideological distance. The categorical variables we discuss here are used for illustrative purposes only.

oft-heard argument that "Bush won the election, therefore he gets to pick the judges," so long as they are not too extreme. Clearly, Alito was not perceived by most as an extremist. It is therefore not very surprising that a majority of Americans supported Alito's confirmation and that the Senate vote turned out the way it did.

Our survey also posed several questions about policy preferences, beginning by asking the respondent to rate six policy areas on their importance to her or him.¹⁶ The issues are (1) abortion, (2) affirmative action, (3) issues related to homosexuality, (4) the amount of money courts can award in personal injury lawsuits, (5) whether to allow religious displays on government property, and (6) whether the government has the right to record the telephone calls and monitor the e-mail of private U.S. citizens in order to prevent people from planning terrorist or criminal acts. Next, we asked the respondent to identify the most important issue of this group.

The most important court-related issue to these respondents is the government's right to circumvent the privacy of citizens in order to deal with terrorism and crime, with 63.8% of the respondents assigning the issue the highest importance rating ("very important"), and more than one-third rating this as their most important issue. The perennial conflict over abortion follows, with over one-half of the respondents rating it as very important, and one-fourth judging abortion to be the most important issue before the Supreme Court. Perhaps most interesting is the relatively low salience of issues of homosexuality, affirmative action, and even so-called tort reform, none of which attracts a very large constituency. Indeed, twice as many respondents ascribe the greatest importance to the issue of whether to allow religious displays on government property as compared to affirmative action. Homosexuality is even less significant to these respondents.

The respondents were also asked to indicate their positions on the judicial issue they deem to be most important. Considerable variability exists in the percentages of respondents adopting the modal position on each issue. For instance, a very large percentage (84.6%) of those rating the public display of religious symbols as most important wants to allow such displays. Similarly, most (73.1%) of those rating the civil liberties issue as most important would limit the government's right to monitor citizens' telephone calls and e-mail. But, those who mention abortion as the most important issue are closely

¹⁶The question stem read: "As I read some issues the Supreme Court may rule on over the coming years, please tell me how important each issue is to you personally. Are court decisions on [INSERT ITEM] very important, somewhat important, not very important, or not important at all to you?"

divided between those who would restrict abortion rights versus those who would expand them (with the remainder not wishing to change current policy). These figures are of course not for the population as a whole, but are rather the preferences of those who rated the specific issue as the most important on the list.

We also measured the respondents' perceptions of Judge Alito's position *on the issue they consider to be most important*. For instance, among those viewing the religious display issue as most important, 43.2% view Judge Alito as inclined to favor allowing such displays, which is of course the preferred position of nearly all of those who assign priority to this controversy. Generally, the modal perception on five of the six issues is conservative, with the somewhat puzzling exception that 50.3% of those rating issues of homosexuality as most important asserting that an "Alito Court" would expand gay rights (in contrast to 42.1% who believe gay rights would be reduced). Interestingly, very large percentages of Americans believe they know Judge Alito's position on the issue of greatest importance to them (even if not necessarily on all issues). The largest exception to this assertion is on the issue of religious displays, but even here, of those rating this issue as most important, nearly three-fourths believe they can identify Judge Alito's position. At the other extreme, only 6.9% of those rating abortion as most important are uncertain about the judge's stance on that judicial policy.

We were able to score virtually all respondents in the degree of perceived agreement with the Alito Court on the policy matter to which the respondent assigned highest priority. We differentiate in this analysis between ordinary disagreement and strong disagreement by distinguishing between those who take an entirely contrary position to Alito (e.g., expand versus restrict civil liberties) and those who differ only in that either the respondent or Alito favors "no change" in current policy, while the other favors a change in substantive position. The distribution of the variable is as follows:

In agreement with Alito	41.2%
Disagreement with Alito	11.1%
Strong disagreement with Alito	34.5%
Uncertainty over Alito	13.3%
Total	100.0% (N = 319)

Thus, specific policy agreement with Alito is less widespread than general ideological congruence, with only four in ten Americans expecting an Alito Court to make the policy preferred by the respondent on her or his most important issue. However, only slightly more than one-third take a substantive policy view opposite of

that which they perceive Alito to hold. Once again, a remarkably high percentage of the American people believe they know the judge's position on the issue of greatest importance to them.¹⁷

The Judiciousness Model

Judiciousness is an alternative to ideology as a criterion for preference formation and is based on the qualities the respondent views as important for being a good judge. We began consideration of the respondents' expectations with the following text: "Now I would like you to focus on thinking about the characteristics of a good Supreme Court judge, that is, what a good judge ought to be like. First, how important would you say it is for a good Supreme Court judge to [INSERT ITEM]?" The characteristics about which we queried the respondents are reported in the bottom portion of Table 2. The data clearly reveal that Americans expect their Supreme Court justices to maintain the appearance of fairness and impartiality (75.5%, as well as, no doubt, to actually act in a fair and impartial way), to be especially concerned about protecting people without power from those with power (71.7%), and to uphold long-standing constitutional values (67.4%). Given the ballyhoo from elites about precedent and "super-precedents," perhaps the most surprising finding in these data is the relatively small weight the Americans give to respecting existing Supreme Court decisions (only 37.3% rate it as very important). Across the set of items, the average number of characteristics judged to be extremely important is 3.7 (with a median of 4). Virtually all respondents found something on our list to rate as very important.

These expectations are interesting in and of themselves, and we will have more to say about them at a later point in our research. For the purposes of this

¹⁷This finding of relatively high claimed knowledge about Alito's policy positions seems to be at odds with the general conclusion that the American people know precious little about their courts and judges. It seems likely that our findings reflect our focus on the policy issues that are important to the individual respondent, rather than on issues that are preselected by the researchers. When we allow the respondents to tell us which issues are important to them, we touch on highly salient concerns and consequently find remarkably high levels of information about the perceived policy location of the nominee. Moreover, a new revisionist literature is developing that shows that the American people are vastly more knowledgeable about courts than heretofore thought (e.g., Gibson and Caldeira 2009). In the second-wave survey, for example, three knowledge questions were asked about the United States Supreme Court (how the justices are selected, the length of their terms, and who has the "last say" in interpreting the Constitution). Fully 46% of the respondent, gave correct answers to all three knowledge measures.

TABLE 2 Disappointment/Satisfaction with Judge Alito

Characteristic	Disappointment/Satisfaction			Correlation with Confirmation Preference
	Mean ^a	Std. Dev.	N	
Strictly follow the law	.69	.29	207	.53
Appear fair & impartial	.74	.27	253	.42
Protect people without power	.60	.30	239	.43
Independent of president & government	.59	.31	201	.45
Respect existing decisions	.70	.29	122	.27
Uphold constitutional values	.73	.28	226	.44

The items read:

Strictly follow the law no matter what people in the country may want.

Try to maintain the appearance of being fair and impartial no matter what the cost.

Be especially concerned about protecting people without power from people and groups with power.

Stay entirely independent of the president and the government.

Respect existing Supreme Court decisions by changing the law as little as possible.

Uphold the values of those who wrote our constitution two hundred years ago.

^aThe disappointment/satisfaction measure ranges from 0—completely dissatisfied to 1—completely satisfied. High scores indicate the greater satisfaction of expectations.

analysis, however, the primary function of these variables is to allow an expectancy-based method of analyzing judiciousness. Consequently, we asked the respondents to evaluate Judge Alito on each of these criteria, and we used their replies to calculate an index of satisfaction/disappointment for each of the characteristics about which we asked. The index is scored only for those respondents rating the attribute as very important. On this measure, disappointment is most widespread on whether Alito will be independent of the president and the government and whether he will be concerned to protect the powerless (10.5% scored as very disappointed), and is least widespread on whether the justice will uphold constitutional values (4.9% very disappointed, 42.0% very satisfied)—among those rating the attribute as very important. Table 2 reports the mean satisfaction/disappointment scores (with high scores indicating greater satisfaction). The column labeled “N” is the number of respondents on which the mean is based, which is the number of people rating the characteristics as “very important” in the role expectations questions.

The data reveal that, in general, the Americans are reasonably satisfied with Judge Alito, since all the means are greater than .5 (which is the score for uncertainty about Alito). In every instance, Judge Alito is judged to be at least somewhat likely to behave as the respondent expects him to behave. With scores like these, it is little wonder that a majority of Americans favored Judge Alito’s confirmation.

Table 2 also reports the bivariate correlation between the disappointment/satisfaction measure and opinions

on whether Alito ought to be confirmed. Several interesting findings emerge from these coefficients. First, some variability exists across the attributes, ranging from a correlation of .53 for satisfaction that Alito will strictly follow the law, to a significantly smaller coefficient of .27 for respecting existing decisions. In general, the more an expectation is satisfied, the more likely the respondent is to support the confirmation of Judge Alito.

A very strong bivariate relationship exists between the average disappointment/satisfaction score and support for confirming Judge Alito to the U.S. Supreme Court: $r = .56$ ($N = 321$, $p < .000$). Those whose expectations of Alito are satisfied—in a “running tally” of a sort—are vastly more likely to support his confirmation. This is quite strong evidence in support of the expectancy model.

Summary

To this point in the analysis, we have developed three important independent variables and their associated hypotheses:

- H1:* Support for Alito’s confirmation is expected to be inversely related to the degree to which general ideological disagreement with Alito is perceived.
- H2:* Support for Alito’s confirmation is expected to be inversely related to the degree to which the citizen perceives policy disagreement with Judge Alito on the issue of greatest importance to the citizen.

TABLE 3 Ideology and Policy Agreement as Predictors of Alito Confirmation Preferences

Predictor	r	Model 1			Model 2			Model 3		
		b	s.e.	β	b	s.e.	β	b	s.e.	β
Ideological Distance	-.37	-.02	.00	-.37***	-.02	.00	-.35***	-.02	.00	-.32***
Policy—Disagreement	-.01				.01	.22	.00	.06	.21	.02
Policy—Strong Disagreement	-.16				-.19	.16	-.07	-.13	.15	-.05
Policy—Don't Know	.05				.03	.26	.01	.02	.25	.00
Party Identification	-.32							-.16	.03	-.26***
Intercept		3.69	.08		3.74	.10		4.40	.17	
Standard Deviation— Dependent Variable		1.22			1.22			1.22		
Standard Error of Estimate		1.14			1.14			1.10		
R ²				.14***				.14***		.21***
N		293			293			293		

Note: Standardized Regression Coefficients (β): *** $p < .001$, ** $p < .01$, * $p < .05$.

H3: Support for Alito’s confirmation is expected to be positively related to the degree to which Judge Alito is perceived to satisfy the respondent’s expectations of judiciousness.

We turn next to our analysis of confirmation preferences.

Determinants of Confirmation Preferences

We begin the analysis with a simple set of equations positing that confirmation preferences are no more than a function of ideological and partisan disagreement. Table 3 reports three nested regression models. Model I hypothesizes that confirmation preferences are a function of the general ideological distance (measured as a continuous variable) between the respondent and Judge Alito. Model II adds policy disagreements to the equation. Because we do not necessarily hypothesize linear effects of policy disagreements, we nominalized the variable and include in the equation three dummy variables: policy disagreement, strong policy disagreement, and uncertainty over whether disagreement exists with Judge Alito’s policies. The excluded category for this set of dummy variables is agreement with Alito. Finally, in Model III we add the respondent’s party identification (measured using the conventional 7-point scale) to the equation, hypothesizing that Democrats are less likely to prefer Alito than Republicans.

Several telling conclusions emerge from the three models analyzed in Table 3. First, ideological disagreement has a moderately strong impact on confirmation preferences: where the ideological distance between the respondent and Alito is greater, the respondent is more likely to oppose confirmation. Second, however, virtually no *independent* impact can be found from specific policy disagreement. We note that a significant bivariate correlation between strong policy disagreement and opinions exists ($r = -.16$), indicating that greater policy disagreement is associated with less support for confirmation, but the effect of this variable is entirely subsumed in the multivariate equation by the measure of ideological distance. Opposition to Judge Alito’s confirmation therefore had less to do with any specific policy disagreements with the judge and more to do with broader ideological conflict (although of course the former is a component of the latter).¹⁸

The contribution of Model III is to demonstrate that partisanship influences confirmation opinions over and above simple ideological disagreement. As expected, the independent effects of both ideological distance and partisanship on confirmation preferences are smaller than their bivariate effects; nonetheless, both variables exert a moderately strong impact on views of whether Alito should be confirmed. In this instance, partisanship and ideology are separate bases on which one might oppose

¹⁸These results are not influenced by multicollinearity. The strongest bivariate correlation among the independent variables is only .32, and the variance-inflation factors (VIF) only slightly exceed 1.0 (with the largest VIF of only 1.24). Clearly, multicollinearity is not a problem in this analysis.

or support the elevation of Judge Alito to the Supreme Court.

Thus, at this point in the analysis, it appears that opinions on the Alito confirmation are fairly simple: Democrats and those perceiving strong ideological differences with the judge (mainly but not exclusively liberals) tend to oppose him. The equation has reasonable predictive power (explaining 21% of the variance in confirmation preferences). But is this simple model of ideology and partisanship all there is to the confirmation controversy?

Adding Judiciousness to the Equation

To what degree does failure to satisfy the role expectations of the respondent influence confirmation preferences? As we have noted, the answer provided by these data is that preferences are strongly influenced by expectations: $r = .56$. Those who perceived Judge Alito as satisfying their expectations are considerably more likely to favor his confirmation. Moreover, this relationship eclipses the ideology/partisanship equation in its ability to predict opinions.

Ideology and partisanship alone (excluding policy disagreement) can explain about 21% of the variance in confirmation preferences. When the measure of expectation satisfaction is added to that equation, *another 18% of the variance is explained* (for a total of 39%). Table 4 reports the full regression results.¹⁹

The addition of role expectations to the equation significantly reduces the impact of ideological distance and partisanship on preferences, although the relationships remain highly statistically and substantively significant. But the primary importance of Table 4 is that it demonstrates an extraordinarily strong and independent impact of the satisfaction of role expectations on confirmation preferences. Those whose expectations of Alito are satisfied more strongly are *much more* supportive of his confirmation than those holding unrequited expectations. Thus, the conclusion to draw from this table is that confirmation preferences are a function of three major considerations: (1) whether Judge Alito is seen as having the characteristics of a good judge, as defined and perceived by the citizen; (2) the perceived ideological distance between Alito and the citizen; and (3) the citizen's partisanship. Perhaps the most important finding is that

¹⁹The strongest bivariate correlation among the independent variables is only $-.34$, and the variance-inflation factors (VIF) only slightly exceed 1.0 (with the largest VIF of only 1.18).

TABLE 4 Ideology, Partisanship, and Role Expectations as Predictors of Alito Confirmation Preferences

Predictor	Model I			
	r	b	s. e.	β
Ideological Distance	-.38	-.01	.00	-.19***
Partisanship	-.31	-.10	.03	-.16***
Satisfaction of Role Expectations	.57	2.48	.27	.47***
Intercept		2.33	.26	
Standard Deviation— Dependent Variable		1.22		
Standard Error of Estimate		.96		
R ²				.39***
N		284		

Note: Standardized Regression Coefficients (β): *** $p < .001$, ** $p < .01$, * $p < .05$.

confirmation preferences clearly are shaped by much more than just ideology and partisanship.²⁰

Finally, we have considered whether the relationships depicted in Table 4 are affected when a variety of demographic characteristics and other attitudes are added to the equation. Specifically, we control for (1) whether the respondent is an African American; (2) gender; (3) level of education; (4) income; (5) age; (6) knowledge of the Supreme Court; and (7) confidence in President Bush. In this expanded equation, the coefficients for the three substantive variables reported in Table 4 are virtually identical. The only control variable with a significant effect on the preference for whether Alito should be confirmed is gender; none of the other variables comes close to having a statistically or substantively significant independent impact. *Ceteris paribus*, men are more likely to support Alito. Because gender is uncorrelated with the independent variables of primary substantive interest in this analysis, the reduced equation, which has the virtue

²⁰We acknowledge at least some ambiguity about the structure of causality involved in these relationships. Our preferred structure posits that citizens have expectations of Supreme Court justices, they learn from groups and the mass media attributes of nominees to the high bench, and they derive their position on the nomination by comparing their perceptions with their expectations. Alternative causal processes may characterize some citizens, however. And we even consider it possible that some citizens simply deduce their "perceptions" of nominees from more general attitudes such as support for the nominating president or other factors not grounded in actual perceptions of the nominee. Survey data such as these are inadequate for definitively establishing causal structures. We reiterate, however, that the causal model we adopt strikes us as an entirely reasonable guess about the process of preference making.

of simplicity, adequately and accurately represents these relationships. (The expanded analysis is available from the authors on request.)

The Conditional Effect of Institutional Loyalty

The theory of positivity bias suggests that those with certain predispositions are likely to view confirmation disputes in particular ways. More specifically, those expressing strong attachment to the Supreme Court are likely to hold a distinct set of expectations of judges and are also predisposed to accept arguments by the nominee and her or his advocates about the importance of judiciousness, especially in contrast to policy preferences, ideology, and partisanship.

Testing this hypothesis requires that we develop a measure of loyalty to the U.S. Supreme Court. Our thinking about operationalizing institutional loyalty follows a considerable body of research on theorizing about and measuring mass perceptions of high courts (see Caldeira and Gibson 1992, 1995; Gibson and Caldeira 1995, 1998, 2003; Gibson, Caldeira, and Baird 1998; Gibson 2007). That research conceptualizes loyalty as opposition to making fundamental structural and functional changes in the institution (see Boynton and Loewenberg 1973) and is grounded in the history of attacks by politicians against courts in the United States (see Caldeira 1987) and elsewhere (e.g., manipulation of their jurisdiction). As Caldeira and Gibson describe it, those who have little or no loyalty toward the Supreme Court are willing “to accept, make, or countenance major changes in the fundamental attributes of how the high bench functions or fits into the U.S. constitutional system” (1992, 638; see also Loewenberg 1971). Loyalty is also characterized by a generalized trust that the institution will perform acceptably in the future. To the extent people support fundamental structural changes in an institution, are willing to punish the institution for its policy outputs, and generally distrust it, they are extending little legitimacy to that institution. Conceptually, loyalty thus ranges from complete unwillingness to support the continued existence of the institution to staunch institutional fealty.

Following this body of research, we have measured institutional loyalty with a four-item index.²¹ We have

computed two such indices, one the average response to the four statements and another simply the number of supportive responses. Moreover, we calculate these loyalty indices from two sources: the 2005 survey (i.e., loyalty measured *prior to the Alito nomination*), and loyalty measured contemporaneously with the Alito questions (i.e., in the 2006 survey). The former of course have stronger claims to causality, but the relationships are attenuated by any change that might have occurred between the two interviews.²² The latter indicators should be stronger predictors since they are measured at the same point in time, but owing to that factor, confidence in the causal inference is clouded.

To reiterate, the hypothesis we test is that those with preexisting loyalty to the Supreme Court will judge the confirmation process differently. More specifically, we expect those with high levels of loyalty to weigh judiciousness much more heavily than they weight partisanship and ideology, and more highly than those with low loyalty toward the Court. Table 5 reports the relevant data. In testing the conditional hypothesis, we cast our lot with improving internal validity: increasing the confidence in the causal inference (even though this works against the confirmation of the hypothesis). Therefore, institutional loyalty is measured in 2005, and all other variables associated with the confirmation are measured in 2006. The temporal sequencing of the data adds increased confidence to any causal inferences which we might make about the effect of preexisting attitudes on expectations, perceptions, and judgments of the confirmation process.

The coefficients in this table provide strong support for the hypothesized conditional effect of preexisting loyalty toward the Supreme Court. Those who score high on the loyalty index tend to weigh satisfaction of their role expectations (judiciousness) much more heavily in forming a confirmation preference than those who score low on institutional loyalty ($b = 3.46$ versus $b = 1.97$). The difference of regression coefficients is highly statistically and substantively significant. Institutional loyalty makes little difference in how much weight is accorded ideological distance and partisanship (the coefficients between citizens with high and low loyalty do not differ). Thus, the consequence of institutional support is that loyalty points the citizen toward judging the process on the basis of judiciousness, and the satisfaction of one's expectations of judges has a very large effect on confirmation preferences, even if loyalty does not totally eliminate considerations of ideology and partisanship.

trusted to make decisions that are right for the country as a whole. The U.S. Supreme Court gets too mixed up in politics.

²¹The propositions (replies on which were collected via a five-point Likert response set) are as follows: The right of the Supreme Court to decide certain types of controversial issues should be reduced. If the U.S. Supreme Court started making a lot of decisions that most people disagreed with, it might be better to do away with the Supreme Court altogether. The Supreme Court can usually be

²²The correlation between institutional loyalty at t_1 and t_2 is .34.

TABLE 5 The Conditional Effect of Institutional Loyalty on Alito Confirmation Preferences

Predictor	Low Loyalty				High Loyalty			
	r	b	s. e.	β	r	b	s. e.	β
Ideological Distance	-.40	-.01	.00	-.23***	-.37	-.02	.01	-.22**
Partisanship	-.23	-.09	.04	-.15*	-.41	-.07	.04	-.11
Satisfaction of Role Expectations	.50	1.97	.35	.39***	.68	3.46	.43	.59***
Intercept		2.70	.33			1.48	.43	
Standard Deviation—Dependent Variable		1.19				1.27		
Standard Error of Estimate		.99				.88		
R ²				.32***				.53***
N		169				113		

Note: Standardized Regression Coefficients (β): ****p* < .001, ***p* < .01, **p* < .05. When a single interactive equation is estimated for all respondents, the results are as follows:

$$Y = 3.57 + (.74 * \text{Role Expectations}) - (.01 * \text{Ideological Distance}) - (.07 * \text{Partisanship}) - (.67 * \text{Institutional Loyalty}) + (.88 * \text{Expectations-Loyalty Interaction})$$

Table 5 provides a useful means of illustrating these important differences. However, a more efficient method of testing the interactive hypothesis is available. We estimated a single equation that included as predictors (1) ideological distance, (2) partisanship, (3) satisfaction of role expectations, (4) institutional loyalty, and (5) the interaction of loyalty and role expectations.²³ We tested the hypothesis using two separate indicators of loyalty: the mean response to the four items and a count of the number of supportive replies to the four propositions. The results of this formal test of interaction strongly support our hypothesis, and it matters little which of the indicators of loyalty is used.²⁴ Since the count variable employs the most intuitively accessible metric (the number of items on which support is expressed, varying from zero to four), we use that variable to illustrate the results of the hypothesis test.

The regression coefficient for the interaction term is .88 (see note in Table 5 for the full equation). Thus, the slopes of the satisfaction of role expectations variable, according to level of institutional loyalty (number of items endorsed), are as follows:

Items Endorsed	Slope
0	.74
1	1.62
2	2.51
3	3.39
4	4.27

These figures clearly document that the impact of the satisfaction of role expectations on confirmation preferences increases rather dramatically over the range of degrees of institutional loyalty.²⁵ The most loyal citizens place an exceptional degree of emphasis on the judiciousness of the nominee when considering whether to support the nomination to the high bench.²⁶

Discussion and Concluding Comments

The analysis presented in this article has produced some reasonably strong support for the theory of positivity

²³When we tested for interactive effects between loyalty and ideological distance and loyalty and partisanship, we found absolutely no evidence of such relationships. Given the similarity of the coefficients for low and high loyalty respondents, as reported in Table 5, this is an entirely predictable finding.

²⁴When the interactive term is entered into the equation, R² increases by 5%, which is statistically significant at *p* < .000. Thus, the hypothesis of linearity is rejected; an interactive relationship does indeed exist. On the analysis of interactions, see Cohen et al. (2003).

²⁵The satisfaction variable varies from 0 to 1, with a mean of .68 (standard deviation = .23).

²⁶The direct interrelationship between loyalty and satisfaction is small, *r* = .10. This means that those who are more loyal to the Supreme Court tend only modestly to hold role expectations that were satisfied by Judge Alito. The effect of the loyalty variable is rather to enhance the role of satisfaction in shaping confirmation opinions, not necessarily to shape directly perceptions of the nominee.

bias in public reactions to Supreme Court decisions and events. Most specifically, we have shown that those who express loyalty toward the U.S. Supreme Court form their judgments about nominees to the Court on the basis of specific criteria: the satisfaction by the nominee of expectations of judiciousness. Among the loyal, failure to satisfy role expectations is strongly associated with opposition to confirming Judge Alito, just as satisfying such expectations is strongly connected to approval of his confirmation. These citizens do not eschew entirely issues of ideology, policy, and partisanship—and in that sense they differ little from those who express low loyalty toward the Court—but the dominant factor in their decision making focuses on whether the nominee has the characteristics of a good judge. We argue that this is evidence of a preexisting attitude (loyalty) establishing a frame of reference for evaluating judicial nominees. This frame provides the criteria for judging the candidates. We place a usually high degree of confidence in these findings since they make use of panel data in which loyalty to the Supreme Court is measured well before the variables associated with perceptions and judgments of the confirmation process, a particularly tough test of the hypothesis.

These findings give succor to those who have long labored toward understanding the causes and consequences of institutional legitimacy. Our evidence indicates that legitimacy matters. Whether citizens accord legitimacy to institutions like the Supreme Court has highly significant consequences for a variety of aspects of judicial politics.

Moreover, this analysis also provides considerable support for the theory of framing. We have demonstrated that preexisting attitudes shape evaluations of contemporary events. These attitudes activate criteria against which perceptions of facts are evaluated. Without the frame, matters of judiciousness are less relevant to citizens in their assessments of Supreme Court nominees. This seems to us to be a classic example of the power of frames, although we certainly recognize that more work on the process involved here is in order. Nonetheless, the empirical results are encouraging.

Our findings have important consequences for the confirmation process itself. We begin with a basic empirical fact: The Supreme Court has a very large supply of institutional legitimacy. Due to that legitimacy, a large proportion of the American people are predisposed to judge confirmation controversies in terms of criteria of judiciousness, apart from normal partisan or ideological politics. The *presumption* is that judiciousness is the most relevant criterion. Of course, candidates can be defeated on issues of judiciousness, of which perhaps Harriet Miers's nomination is a classic example. It turned out that it was not too difficult to challenge Miers's judi-

cial credentials. Indeed, in her case, many did not reach consideration of the dimension of ideology and partisanship, so suspect were her judicial qualifications. Once the presumption that judiciousness was disestablished as the principal relevant criterion, issues of ideology and partisanship could be effectively raised. Of course, the withdrawal of Miers's nomination by President Bush perhaps had more to do with politics within the Republican Party than with ordinary citizens, but we nonetheless perceive some of the same processes at work here. If a president is shrewd enough to nominate someone who is minimally qualified to be a Supreme Court justice, then the debate can often be centered on issues of judiciousness, as it was for Alito and Roberts.

The job of the opposition to a nominee is to try to substitute an alternative frame through which the debate can be conducted. That frame of course focuses on ideology, issues, and partisanship. We have seen, however, just how difficult it is for substitute frames to be effective. We attribute this to the wellspring of legitimacy enjoyed by the Supreme Court, and the consequence of this legitimacy, which is the belief that judges are different from ordinary politicians, that therefore nominees ought to be evaluated on the basis of legal, not political, criteria. As long as the Supreme Court maintains its reservoir of goodwill—and if presidents are cagey enough to nominate candidates for whom an easy *prima facie* case for judiciousness can be made—it seems unlikely that political forces can be effectively mobilized to deny presidents their choices.

We reiterate our view that institutional legitimacy is an enormously important source of political capital. The conventional hypothesis is that legitimacy is significant because it contributes to acquiescence to decisions of which people do not approve (e.g., Gibson, Caldeira, and Spence 2005). We have devoted considerable effort toward investigating that hypothesis throughout the world. To the extent that we are correct in our analysis of the theory of positivity bias, we suggest here that legitimacy has an even more significant role in the political process: Citizens who extend legitimacy to the Supreme Court are characterized by a set of attitudes that frame a variety of expectations and choices. These frames provide a standing decision that is difficult to rebut in contemporary American politics. This consequence of institutional legitimacy is perhaps the most significant.

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