

even as the new President himself stands as a symbol of racial equality, the long trajectory of his ascent, and the racializing divides it refracted at every turn, must not be forgotten if they are to be redressed. This is a vital moment for the history of racism in America. Marie Provine's *Unequal Under Law* should be part of this moment.

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*Friends of the Court: Interest Groups and Judicial Decision Making.* By Paul M. Collins, Jr. (Oxford University Press, 2008.)

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In the study of *amicus curiae* or friend of the court briefs filed by interest groups, the examination tends to take the perspective of either the groups or the justices. We investigate the motivations of the group or the justices, yet rarely do our findings for one provide much insight on the other. Collins' book, however, is an exception. Additionally, this thoroughly documented study uses the vehicle of *amicus curiae* to add to the eternal question in the field of judicial politics—does the law matter when the justices make decisions? If so, how much? Not only does Collins provide insight into the independent influence of *amicus* on the decision making of the justices, but also contributes to the larger debate about the relative influence of policy preferences and law in judicial decision making. In the end, *Friends of the Court* provides serious fodder for scholars interested in the legal behavior of interest groups.

To set the stage for the influence of *amicus* briefs, Collins suggests that the justices make their decisions from the bottom up rather than the top down. While acknowledging that policy preferences are active and even dominant in the decision-making processes of the justices (175), he argues that the bottom-up approach allows the justices to consider or be persuaded (83), as Collins calls it, away from their policy preferences as they pursue the “correct” legal answer.

The role that interest groups as *amici* play in this persuasion is the main focus of the book. Because there is no consensus on what “influence” means, Collins's approach is to operationalize influence in three different ways to test the effect of *amici* on the justices. In each of the three analyses, he utilizes an extensive dataset containing *amicus* participation from the mid-1940's through the 2001 term. The power of his argument comes from the combined

findings, which point to a significant role for interest groups and their *amicus* briefs in the judicial decision-making process.

Each analysis is geared toward building the theory of legal persuasion. This theory combines some aspects of role theory with the psychology of decision making. Justices, by training, want to make a good and correct legal decision; the information provided in *amicus* briefs provides fodder for determining the best legal answer; briefs provide alternative arguments and outside perspectives. Thus, in Chapter 4 Collins examines whether groups' *amicus* briefs influence the ideological direction of an individual vote. With few exceptions, Collins finds that the number of briefs mediates the effects of ideology, particularly in cases with asymmetric filings.

But, the volume of information provided by the brief can also overload the justices' circuits (120) and produce additional uncertainty. It is this psychological reality that provides the basis for the second analysis of influence. In Chapter 5, the target or dependent variable is the consistency of voting; the presumption is that if *amicus* briefs are not influential, their presence will not cause instability in ideological voting. Yet, in many cases, a greater number of briefs is associated with greater inconsistency in judicial voting. Again, the findings indicate that *amici* are affecting the justices' choices and doing so in a way that mediates ideological voting.

Unsurprising, Collins does find that case salience negates the influence of *amici*. In a salient case, there is less variability or inconsistency in a justice's vote. This finding is well in line with much of the decision-making literature. We expect that ideology will play a larger role in such cases.

Chapter 6 is the weakest of the three data driven chapters due to the minimal effects uncovered, although the anecdotal evidence supplied helps considerably. Here, influence is determined by the effect of *amicus* briefs on separate opinion writing. Certainly, an explanation for the increases in separate opinion writing is important to understanding the decision-making process, and the role that *amicus* may play in the continued splintering of judicial opinion is worthy of investigation. However, while the *amicus* variables obtain statistical significance the practical effect, as evidenced by the change in probabilities, is quite weak. Perhaps the multinomial probit model underestimates the effect of the briefs because the model assumes that the choice between writing a concurrence, special concurrence, or dissenting opinion is not ordinal. I wonder if this is the case. These choices could be ordered in terms of strategic and

operative costs. Might there be a higher cost to writing a special concurrence, particularly in minimum coalition cases? Similarly, while Collins clearly and accurately notes that the norms regarding dissent and concurrence have long since declined, the strategic and time costs of answering the majority opinion may stay the hand of a justice more than the idea of simply adding some explication to her view of the majority opinion.

Backtracking a bit, Chapter 3 contains some descriptive analyses of the amicus briefs that provide some substantiation for hypotheses made in the main data chapters (4–6). Chapter 2 is the typical literature chapter. Both add something although the substantive impact of the book comes from Chapters 3 and 4, and the excellent conclusion in Chapter 7. In Chapter 7, Collins summarizes his approach and findings succinctly, and, as the justices often do, notes the possible alternative explanations for his findings. He then proceeds to rationally and logically explicate why the alternatives are no match for his theory of “legal persuasion.”

This is a strong and scholarly book that reads like one. There are a few criticisms that can be offered. For example, in his effort to be inclusive of all audiences in his discussions of his data and results, Collins uses figures and language that in the end may be more confusing to less methodologically minded readers (i.e., 101), but these are minor distractions. The main critique lies in the dissonance between the subtitle of the book and the actual study. The work here does not provide an explanation of the power of interest groups or any purchase on whether some groups are more able or more influential before the Court. In his zeal to be inclusive, Collins is overly so. The definition of interest group is so broad as to leave few, if any, briefs out of the mix. Thus, the study tells us a great deal about the influence of amicus briefs and, in some sense more importantly, the decision-making process, but less about the role of *groups* or their influence on the votes of the justices or their opinion writing habits.

In the end, we have a well-documented and thorough examination of amicus participation and the influence of these briefs on the justices and their votes. The data are excellent and the work thorough. For scholars interested in an eclectic approach to the study of the decision making of the justices, it is a book worth reading. So I offer a toast to Professor Collins with a virtual beverage of his choice, “Bottoms up.”

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*Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People.* By James L. Gibson and Gregory A. Caldeira. (Princeton: Princeton University Press, 2009.)

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*Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People* (hereafter *Citizens*) is the latest effort by leading court scholars Gibson and Caldeira to use “positivity theory” to explain public evaluations of judges and courts. Specifically, *Citizens* uses the controversial but successful Alito nomination to “test hypotheses about the causes and consequences of changes in attitudes toward the United States Supreme Court.” As a piece of research, *Citizens* is everything court scholars have come to expect from these two authors: its innovative methodology and provocative findings contribute significantly to the literature on public opinion and the judiciary.

One achievement of *Citizens* is to challenge, convincingly, the conventional wisdom that the American public knows next to nothing about the judicial branch and the Supreme Court in particular. Gibson and Caldeira advance a two-pronged argument the perception of public ignorance. Along with Mondak (2006), they argue that open-ended recall measurement of knowledge is a much less reliable indicator than closed-ended multiple choice questions. Second, they take issue with what is considered necessary to know about the Supreme Court. Thus, finding that (in 2000) only 10.5% of respondents could recall what office Rehnquist held is a far less useful and reliable assessment of public knowledge than the fact that 60.7% correctly identified the Supreme Court (in 2001) as having the last say on the Constitution. Were the public as ignorant as previously suggested the concept of judicial legitimacy would be nearly void of meaning, with disturbing systemic implications. Fortunately, this is not the case.

Given the increasing importance of public opinion for Supreme Court nominations and a dearth of research on the topic, Chapter 4’s focus on public reaction to the Alito nomination is especially welcome. Why, given his staunchly conservative record and the barrage of interest group ads opposing his nomination, did Alito enjoy broad public support? According to positivity theory, people viewed the nomination through the frame of legality, and in their evaluations accorded more weight to Alito’s professional credentials than his ideology.

In a nutshell, positivity theory holds that any exposure to courts reinforces the idea (learned in