Whether the U.S. Supreme Court does—or should—reflect popular opinion has troubled democratic theorists, practicing politicians, and Court observers for two centuries. In his essay, Federalist 78, Alexander Hamilton described the Supreme Court as "an excellent barrier" against shifts in mass public opinion and against "the encroachments and oppressions of the representative body." In Hamilton's view, the Court would not reflect majority public opinion, but rather would serve "as an essential safeguard against the effects of occasional ill humors in the society."

Over half a century later, in *Dred Scott v. Sanford* (1857: 709), Chief Justice Taney also argued that changes in public opinion should not affect Supreme Court decisions:

> No . . . change in public opinion or feeling . . . should induce the court to give to the words of the Constitution a more liberal construction . . . than they were intended to bear when the instrument was framed and adopted. . . . [The constitution] must be construed now as it was understood at the time of its adoption. . . . Any other rule would make (the Court) the mere reflex of the popular opinion or passion of the day.

A century after *Dred Scott*, Robert Dahl (1957) recast this long-standing normative argument into an empirical one. Because scientific polling data were available for very few Supreme Court decisions, Dahl approached the question of Court majoritarianism somewhat indirectly. In reexamining 86 instances in which the Supreme Court had struck down a federal law, Dahl argued that few examples could be found in which the Court had done so to protect the rights of an unpopular minority. Indeed, Dahl continued, "except for short-lived transitional periods," the Supreme Court typically approved (or "legitimated") the political values of dominant national majorities. Political pressure, death, retirements, and the appointment of new justices ensured that the Supreme Court would long defy neither majority public opinion ("a national majority") nor the wishes of Congress and the president ("a legislative majority"). In short, Dahl suggested, the Supreme Court typically behaved as a majoritarian-oriented institution.

A steadily growing literature followed Dahl's essay, reexamining both his evidence and his conclusions. Jonathan Casper (1976) criticized Dahl's research, arguing that Dahl paid too little attention to the Court's ability to delay new policies for long time periods, introduce new political issues, interpret federal statutes, and strike down state and local policies. Further, since the publication of Dahl's essay in 1957, the Warren and Burger courts had grown markedly more protective of unpopular minorities.

Several studies have compared specific Supreme Court rulings with actual opinion polls. These results suggest that post-New Deal Supreme Court decisions often, albeit not inevitably, reflect poll majorities (Casper, 1972; Barnum, 1985; Sheldon, 1967), or, at a minimum, follow in the direction of discernible poll trends (Casper, 1972: 47, 89, 169; Barnum, 1985: 662-663; Sheldon, 1967).[1]

Both the level and the context of a case were predicted to be strongly related to whether the Court's ruling would reflect public opinion.

The Supreme Court was predicted to defer more often to federal-level than to state- or local-level laws and policies (Ulmer, 1978; Abraham, 1980: 296-297; Casper, 1976; Snyder, 1956; Caldeira and McCrone, 1982). The Court was also predicted to be more restrained toward laws that were themselves consistent with nationwide public opinion (McCloskey, 1972: 348-352; Casper, 1976; Barnum, 1985). As well, federal-level laws were predicted to be more consistent with nationwide polls than are state/local laws and policies (but see Page and Shapiro, 1983: 183). As a result, the Court was predicted to be significantly more majoritarian in federal-level disputes—and to be especially majoritarian when judging a federal-level law or policy that was itself consistent with public opinion.

CASE CHARACTERISTICS

The 110 rulings were also coded on three variables—whether they involved fundamental freedoms issues, economic issues, or crisis times conditions. Fundamental freedoms cases were those involving Bill of Rights or Fourteenth Amendment claims—most often, civil rights, civil liberties, privacy, or criminal rights cases. Since the 1930s the Court has had a well-developed rationale for countermajoritarian decision making in this area (e.g., *U.S. v. Carolene Products,* 1938: 152). Accordingly, the Court's fundamental freedoms rulings were predicted to be less majoritarian than other rulings. As Table 1 reports, however, the 82 rulings involving a fundamental freedoms claim were actually slightly, if not significantly, more consistent with nationwide polls than other rulings.

Second, economic cases—involving labor and employment, commerce, business regulation, taxation, or other economic rights—were contrasted with cases not raising such claims. The Court's economic rulings were predicted to be more majoritarian than other rulings—chiefly because the modern Court tends to defer to elected officeholders in economic disputes and because elected officeholders themselves are assumed to make policies consistent with public opinion.[5] As predicted, the modern Court's economic decisions were at least marginally more majoritarian than its noneconomic rulings.

Third, the Court was predicted to be more majoritarian during "crisis times"—when public attention was heavily focused on an issue (Becker, 1970: 229; *Dennis v. United States,* 1951: 580; see also Miller and Stokes, 1963; Monroe, 1979; Page and Shapiro, 1983). "Crisis times" rulings were those involving a "most important problem," according to the frequently repeated Gallup Poll item (Gallup Poll, 1985: 14). As Table 1 indicates, the Court is significantly more majoritarian in crisis times rulings.

POLL MARGIN

Some research suggests that American public policymaking is at least slightly more majoritarian when public opinion is very one-sided—that is, when the margin between the more and less popular position is quite large (Monroe, 1979: Table 3, recomputed; Erikson, 1976: 25-36; Hewitt, 1974; Page and Shapiro, 1983: 181-182). Accordingly, the Court's decision making was predicted to be more majoritarian when larger, one-sided poll margins exist.

COURT ERA

The final variable classifies the 110 Court rulings according to the presiding Chief Justices. Although the Warren Court is often assumed to have been less majoritarian than the Burger, Vinson, Stone, or ("post-switch") Hughes Courts

TABLE 1
Percent of Majoritarian Decisions, by Predictor

Predictor	% Majoritarian[a]	Number of cases
BY LEVEL AND CONTEXT:[b]		
Consistent federal law	80%	(41)
Inconsistent federal law	37%	(19)
Consistent state law	47%	(30)
Inconsistent state law	66%	(29)***
BY TYPE OF CASE:		
Fundamental freedoms case	66%	(82)
Non-fundamental freedoms case	50%	(28)
Economics case	69%	(29)
Non-economics case	59%	(81)
Crisis times case	80%	(25)*
Non-crisis times case	56%	(85)
BY SIZE OF POLL MARGIN:		
"Landslide" (over 30%)	62%	(68)
6-29% poll margin	62%	(42)
BY CHIEF JUSTICE PERIOD:		
Hughes Court	78%	(14)
Stone Court	50%	(12)
Vinson Court	57%	(14)
Warren Court	54%	(15)
Burger Court	63%	(55)

a. To compute the percentage of countermajoritarian decisions, subtract the percentage majoritarian from 100%.

b. The designation "consistent federal law" indicates federal laws or policies that are themselves consistent with nationwide public opinion. "Inconsistent federal law" indicates federal laws or policies that are inconsistent with the nationwide public opinion. The significance test for the level/context variables is computed on all four categories, jointly.

*Significant at .05; **significant at .01; [illegible]