150 YEARS OF LITIGATION AND DISPUTE SETTLEMENT: A COURT TALE

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This article examines the behavior of civil litigants in a state general jurisdiction trial court over an extended period of time, 1820 to 1970. It focuses on whether the dispute resolution function of courts has diminished with social and economic development and rising litigation costs. The data consist of case records sampled at fifteen-year intervals. The samples are broken down into five case issues (domestic relations, torts, debts, nondebt contracts, and property) to determine the degree of change in the legal agenda. The rate of litigation (cases filed per 1000 population) is compared across issues, and disposition patterns over time are analyzed. The findings indicate that trial court processes have not totally converted to "rubber stamp" administration of routine petitions. Although the degree of judicial intervention into cases has changed, the court continues to play a significant role in the resolution of private conflicts.

Lawrence Friedman and Robert Percival (1976a; see also Friedman, 1976) suggested that the primary function of American trial courts had changed from the resolution of disputes to the administrative processing of routine cases. Their observations were based on a longitudinal study of two trial courts in California, one urban and one rural, over the period 1890 to 1970. Richard Lempert (1978) reanalyzed the Friedman-Percival data and concluded that the two courts had in fact continued to serve their communities as dispute-settlement institutions. This paper reports data from the Circuit Court of St. Louis, Missouri, for a period of 150 years—1820 to 1970. Its findings, in brief, are that neither socioeconomic development nor increasing costs of litigation have withered the dispute resolution function of the St. Louis court.

The first section of the paper examines the rate of litigation in St. Louis in a changing economy and social order. Although the aggregate rate of private litigation in St. Louis has leveled off in the most recent time period (e.g., in its most technologically advanced period), and certain types of economic disputes have disappeared from the docket, not all such cases have disappeared. The second section of the paper

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examines trends in the disposition of certain types of cases. Again in contrast to Friedman and Percival, I report data which indicate the continued presence of conflict resolution activity. Conclusions about the functions of courts need not rest solely on the results of formal case resolution (Lempert, 1978: 99-100). Notwithstanding the decline of formally decided cases, there is still credible evidence that the St. Louis court has remained a locus for private dispute resolution activity.[1]

I. CHANGES IN LITIGATION RATE AND DOCKET COMPOSITION

The courts have traditionally served as public fora for the peaceful resolution of disputes between private parties. Certainly not every issue or dispute between two parties becomes a legal case. For example, the results of a five-state survey of private households conducted by the Civil Litigation Research Project (CLRP) suggests that a relatively small proportion of "eligible" disputes reported by individuals are translated into legal cases (Miller and Sarat, 1981). The nature of the relationship between the disputants affects the manner in which they approach a problem and the terms in which they define it (Macaulay, 1963; Merry, 1979). Resource inequalities produce differences among parties in disputing capability (Wanner, 1974; Caplovitz, 1974; Rubenstein, 1976). In addition, the community political culture may affect the degree of combativeness with which citizens approach dispute situations and their orientation to legal action. Although several attempts to determine the nature of the linkage between litigation and political culture have produced mixed results (cf. Jacob, 1969; Grossman and Sarat, 1975; Daniels, 1980), the CLRP survey suggests that a traditional political subculture, in which widespread participation in the political system is not encouraged, may orient citizens toward suppression of conflict or the settlement of conflict via private and informal routes, and away from more adversarial techniques such as litigation (Grossman *et al.*, 1981b). Thus, most potential legal cases are resolved fairly quickly in a private and informal manner. Even most disputes which are formalized as court cases are

[1] The first step in the data collection process was to peruse the entire stock of documents in order to pinpoint the precise storage location of each year's files and to determine the total number of cases that were filed in each year between 1820 and 1977. The original documents for most of these years are housed in the court archives, but because of space limitations the files for the more current years (beginning with 1930) have been microfilmed. In addition, a random sample of about 250 cases was drawn for close examination for every fifteenth year, yielding eleven sample years and a total of 2873 cases.

ultimately settled privately out of court. (Ross, 1970; Wanner, 1975; Sarat, 1976). But the threat of trial entailed by the filing of a lawsuit is undoubtedly enough to spur many resistant adversaries to seek negotiated settlements. Hence, courts still have an important influence on private dispute resolution (cf. Gulliver, 1973; Scott, 1975; Lempert, 1978). This process has been characterized recently as "bargaining in the shadow of the law" (Mnookin and Kornhauser, 1979).

Trial courts have also traditionally performed administrative functions such as approving name changes and granting professional licenses. Ordinarily these cases have no defendants; the petitioner is simply seeking the court's stamp of approval on a change of status. Divorce actions have two parties, but these too can be essentially administrative proceedings. Few divorces are contested. Many are placed on the trial court docket only after agreement between the parties has been reached[2] and only because the approval of the trial judge is legally necessary (Friedman and Percival, 1976b; Mnookin and Kornhauser, 1979).

Finally, the law and legal institutions have always been used by upper-strata individuals and organized interests to maintain their positions of influence. These legal elites rarely invoke the formal mechanisms of law against other status equals with whom they enjoy more flexible social and economic relations (Galanter, 1975; Black 1976: Ch.2; Wanner, 1978), but they have utilized the courts to bring the power of government to bear against more vulnerable adversaries (Mosier and Soble, 1973; Caplovitz, 1974; Wanner, 1975; Rubenstein, 1976).

Private law cases typically arise from social and economic relations. As societies develop, existing relationships are altered and new ones formed, creating the potential for change in private litigation activity (Felstiner, 1974). Industrial development and increased complexity in social and economic interactions produce greater need for the development of a consistent system of legal relationships and legally defined rights. As these relationships and rights develop, the law and legal institutions become increasingly relevant to and utilized in the day-to-day and long-range activities of a community. The act of "mobilizing" (Black, 1973) the law becomes a more

[2] Lempert (1978: 103) argues that in some divorce cases that end with an uncontested result, "a judge or others attached to the court may devote considerable effort to bringing about the agreement that is necessary for an uncontested judgment to be entered."

common strategy to resolve conflict and to enforce or defend a legal right.[3]

Several scholars have examined the relationship between socioeconomic development and the rate of private law litigation (i.e., civil cases filed relative to population size) in trial courts, and report that the rate of litigation seems to increase with development until it reaches a threshold level. At that point socioeconomic development may continue, but the litigation rate stabilizes or even declines (Grossman and Sarat, 1975; Sarat and Grossman, 1975; Friedman and Percival, 1976a). This result obtains even though the volume of legal activity in general, such as the formation of corporations, the writing of wills, and the signing of contractual agreements, may continue to increase substantially.

Table 1 presents demographic statistics for St. Louis between 1820 and 1970 indicating that a significant degree of social and economic change has occurred.[4] Both the population and the economic base have grown and diversified substantially since the early 19th century; and, although it has experienced decline in recent years, the city itself remains the central component of a continuously developing metropolitan community. It would thus be surprising if litigation activity had remained unaffected. Figure 1 presents the total number of cases filed and the rate of litigation (cases filed per 1000 population) within the jurisdiction of the St. Louis Circuit Court in the form of decade averages over the years in question. The total number of civil cases introduced into the court system has obviously increased since the 1820's, with the largest increment occurring between the 1890's and the 1920's. The volume of cases filed seems quite strongly dependent upon the size of the population (the simple correlation between the two is .883). When controlling for population size, however, a different pattern emerges. The rate of litigation (the number of civil cases filed per 1000 persons) was very high from 1820-1850. Beginning in the 1850's the average rate of litigation declined

[3] "According to this theory, variation in the process of mobilization is a function of the level of complexity, differentiation, and scale of a social structure. The argument is that as the complexity, differentiation, and scale of a society increases, reliance on the courts and other formal public adjudicators also increases" (Sarat and Grossman, 1975: 1209; also see Friedman 1976).

[4] These data represent demographic changes within the geographic boundaries of the court's jurisdiction. The court's jurisdiction included St. Louis city and county until 1876; thereafter, only the city, itself. This fact accounts for the large differences in some items, such as population density, between the 1870 and 1880 censuses. Slaves are included in the population figures presented in Table 1 but are not included in the analyses of litigation rates which follow.

Table 1. Demographic Statistics For St. Louis, Missouri,[1] 1820 to 1970

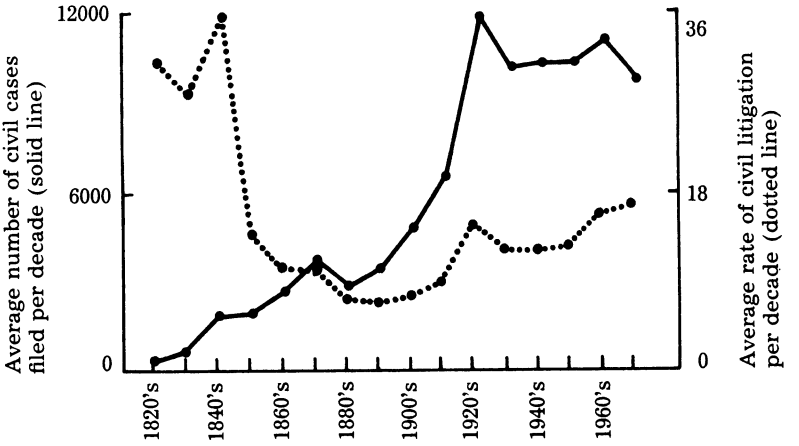
	1820	1830	1840	1850	1860	1870	1880	1890
Population	10049	14125	35979	104978	190524	351189	350818	451770
% Change	—	40.56	154.72	191.78	81.49	84.33	(12.76)[2]	28.78
Density (Pop./Sq.Mi.)	18.47	25.97	66.14	192.97	350.23	645.57	5751.11	7406.06
% Black	19.96	21.35	14.21	7.08	3.26	7.51	6.34	5.95
% Foreign Born[3]	—	—	—	50.46	50.43	35.42	29.93	25.43
% Employed in Mfg.[4]	—	—	—	—	18.90	33.30	37.80	37.10
Attorneys/ 1000 pop.	1.99	2.34	1.81	1.28	1.44	1.47	2.11	1.44

	1900	1910	1920	1930	1940	1950	1960	1970
Population	575238	687029	772897	821960	816048	856796	750026	622236
% Change	27.33	19.43	12.50	6.35	−.072	4.99	−12.46	−17.04
Density (Pop./Sq.Mi.)	9430.13	11262.70	12670.40	13474.70	13377.80	14045.80	12295.50	10200.18
% Black	6.17	6.40	9.04	11.38	13.33	17.95	38.58	40.85
% Foreign Born	19.36	18.30	13.41	9.78	7.28	4.88	3.53	3.70
% Employed in Mfg.	37.70	37.40	40.70	36.90	33.00	32.80	29.50	25.00
Attorneys/ 1000 pop.	1.82	1.68	1.63	1.83	1.52	2.21	2.83	3.96

1. The geographic jurisdiction of the circuit court encompassed the entire County of St. Louis until 1876, after which time the City alone composed the circuit. Hence, the data presented in this table for the years 1820 to 1870 are for the entire county and 1880 to 1970 are for St. Louis City.
2. This is the percent change in the city's population.
3. The U.S. Census Bureau did not report the number of foreign born individuals until 1850.
4. Due to changing definitions for manufacturing industries and the absence of sound statistics concerning the size of the labor force, only data for years 1860 forward are presented.

Sources: U.S. Census Bureau; "Attorneys' Roll," Archives Department, Circuit Court for the City of St. Louis; *Livingston's Law Register* 1884, 1856.

Figure 1. Average Number of Civil Cases Filed and Average Rate of Litigation (Cases Filed per 1000 Population) in the St. Louis Circuit Court for Each Decade Between 1820 and 1977



Source: U.S. Census Bureau
St. Louis Circuit Court, Archives Department, Microfilms and Current Files Department

gradually, bottoming out in the 1890's. Although there is an upward trend since about 1900, the litigation rate has remained fairly stable during the last six decades.

Thus we observe a nonlinear relationship between the rate at which the private law cases have been filed in the St. Louis Circuit Court and socioeconomic development of the community. The pattern of litigation behavior exhibited since the end of the 19th century is as expected—increase followed by stability. But the demand for judicial services in the 1800's was much higher than might have been predicted. Indeed, in several years during this period, the rate of litigation was well above 40 cases filed per 1000 population.[5] Litigation rates have typically been calculated as a ratio of cases filed to population (or adult population) (Friedman and Percival, 1976a; Grossman and Sarat, 1975; Lempert, 1978; Daniels 1980; Grossman *et al.*, 1981b). This is a poor measure, but the best available. The true rate of litigation would be calculated on the basis of the number of actual disputes occurring within the court's jurisdiction, but such information does not exist (but see Miller

[5] A litigation rate of 40 cases filed per 1000 population is very high compared to subsequent years. Since 1850 the litigation rate has exceeded 20 cases per 1000 people only once, in 1971. These data are available in tabular form from the author upon request.

and Sarat, 1981). Lempert (1978: 95-96) suggests that although population statistics have obvious analytic weaknesses, they may "serve in a loose sense as a proxy for the number of disputes arising at particular points in time, since, other things being equal, one would expect the number of disputes in society to vary with the number of potential disputants" (cf. Cavanagh and Sarat, 1980: 386-387).

Aggregate litigation totals are not very informative except as a gross measure of demands placed upon a court system. Additional insight into the dynamics of litigation behavior may be gained by considering changes in the *types* of cases that have composed a court's docket over time.[6] Table 2 illustrates the changes in the composition of the court's docket. Economic-oriented litigation, contract and property cases (corporation and labor cases have nearly always been rare) combined to dominate the issue agenda of the court throughout the 19th and early 20th centuries, whereas family law and tort cases have dominated the docket since the 1920's. Indeed, the

Table 2. Proportional Composition of the Civil Docket of the St. Louis Circuit Court at Fifteen-Year Intervals, 1820-1970 (number of cases in parentheses)

	Contracts	Property	Corporation and Labor	Family Law and Estates	Torts	Misc.	Total Sample
1820	.883(227)	.074(19)	.000(0)	.000(0)	.027(7)	.016(4)	1.000(257)
1835	.715(173)	.128(31)	.000(0)	.033(8)	.070(17)	.054(13)	1.000(242)
1850	.563(171)	.097(25)	.012(3)	.156(41)	.035(9)	.035(9)	0.998(258)
1865	.637(165)	.081(21)	.035(9)	.135(35)	.054(14)	.058(15)	1.000(259)
1880	.375(97)	.189(49)	.012(3)	.224(58)	.069(18)	.131(34)	1.000(259)
1895	.416(129)	.129(40)	.077(24)	.239(74)	.077(24)	.065(19)	0.999(310)
1910	.238(62)	.050(13)	.277(72)	.273(71)	.104(27)	.058(15)	1.000(260)
1925	.141(38)	.048(13)	.011(3)	.300(81)	.478(129)	.022(6)	1.000(270)
1940	.140(34)	.029(7)	.021(5)	.459(111)	.322(78)	.029(7)	1.000(242)
1955	.072(18)	.008(2)	.008(2)	.548(137)	.356(89)	.008(2)	1.000(250)
1970	.199(32)	.015(4)	.015(4)	.459(122)	.353(94)	.038(10)	1.000(266)

Source: St. Louis Circuit Court, Archives Department, Microfilm and Current Files Department.

[6] The original jurisdiction of the Missouri circuit courts has always extended to all property issues, including land title questions and unlawful detainer, all contract issues, and torts with a minimum $50 valuation. The state legislature granted divorce jurisdiction in 1845 (*Missouri Revised Statutes*, 1845: 426-429). Also, from statehood in 1820 the circuit courts have held appellate jurisdiction over the probate and justice of the peace courts (subsequently renamed magistrate courts). A court of common pleas was established in St. Louis in 1841, given concurrent jurisdiction with the circuit court in 1843, but merged with the circuit bench on January 1, 1866 (*Missouri Laws*, 1843: 56; *Missouri Revised Statutes*, 1865: 887). Thus the samples drawn for analysis in this study for 1850 and 1865 include cases from both dockets.

proportion of the docket accounted for by economic-oriented cases appears to be approaching zero.

This is precisely the pattern of change reported by Friedman and Percival (1976a: 280-286), and by Kagan *et al.* (1977) in a study of 16 state supreme courts. Friedman and Percival (1976a: 289-290, 299-300) argued that the functions performed by the trial courts had changed over time from dispute resolution to routine administration. Today, in their view, the courts are used primarily by nondisputing parties who are overwhelming the system with essentially administrative cases such as will probates, divorces, and petitions for name changes. This growing demand for administrative services, Friedman and Percival maintain, has contributed to increased litigation costs. Parties experiencing *real* conflict have sought relief in less expensive and more efficient alternative fora.

It is reasonable to believe that disputing parties who have a choice may not immediately opt for the litigation strategy. But the findings presented thus far only indicate a decline in the relative frequency of some cases as compared with others. They do not indicate that the former are being displaced by the latter.

Contract Cases: Debt Collection

Contract cases alone accounted for a large majority of the court's business in the first half of the 19th century but exhibited a precipitous decline beginning around 1850. Until recently, debts were the major component of this category. If we extract debt collection cases from the contract category, as shown in Figure 2, we see the reason for the overall decline.[7] Between 1820 and 1850, debt collection cases alone represented more than half of all petitions filed. The rate of debt collection cases during these years, moreover, was extremely high when compared not only to other contract cases but to all other types of civil actions as well. It is thus rather clear that during this period the court functioned as an agent of the financial community in enforcing the claims of creditors. Economic depressions in 1820, 1837, and 1857 exacted heavy tolls, causing manufacturing and merchant failures, forcing banks to close their doors, and leaving thousands of individuals unable to repay outstanding notes (Scharf, 1883: 1370-1378). Add to that

[7] Data presented in Figure 2 are available in tabular form upon request from the author.

a poor system of credit for both individuals and business enterprises, inexperienced state legislators, and an ill-defined body of law,[8] and the predominance of debt litigation in this early period of history is understandable.

The number of debt collection cases filed per 1000 population[9] continued its decline until 1925, but has remained stable since then. It is rather surprising that the rate of debt collection litigation has not increased with the tremendous expansion of personal credit in the mid-20th century, but has actually shown a slight further drop. Certainly the number of opportunities for debt litigation has not declined. It may be that the inferior trial courts, whose jurisdictional ceiling on the dollar value of contract cases has been raised by the Missouri legislature on several occasions (from $90 in 1820 to $3500 in 1970), have absorbed some of the burden of handling the less significant debt collection actions.[10] Indeed, inferior courts such as small claims courts are used heavily by creditors in many states (National Institute for Consumer Justice, 1972; Yngvesson and Hennessey, 1975). Lacking information about the number of unpaid debts and accounts over time, and the collection caseload of the inferior courts with concurrent jurisdiction in the lower dollar ranges, it is unclear whether debt litigation has actually decreased.

The primary point, however, is that the per capita demand for judicial services has not dropped in the last 100 years as much as the docket proportions seem to suggest. The debt collection component of the court docket declined by 90 percent, from 43.2 percent in 1865 to only 4.5 percent in 1970.

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[8] The term "ill-defined" is used here because in the years immediately following American occupation of the Louisiana Territory an attempt was made to merge French and Spanish laws then in use with the British common law in the St. Louis area (English, 1947: Ch. 1).

[9] The rate of debt collection cases, as well as the rates of other types of cases, were projected using docket proportions and the overall rate of litigation. This assumes that sample proportions accurately reflect the true docket compositions (Lempert, 1978: 111).

[10] The St. Louis Circuit and inferior state trial courts have always held concurrent jurisdiction in cases exceeding $50 valuation and with the following dollar value limitations on the lower court: all cases $90 (*Laws of the Territory of Missouri*, 1814: Ch. 104); contracts and unlawful detainer $90, torts $50 (*Missouri Laws*, 1825: 473); contracts and unlawful detainer $200, torts $100 (*Missouri Laws*, 1868: 59); all cases $250 (*Missouri Revised Statutes*, 1879: 475); all cases $300 (*Missouri Revised Statutes*, 1889: 4453); all cases $500 (*Missouri Revised Statutes*, 1909: 417-418); unlawful detainer, mechanics liens, other personal property $600, contracts and torts $500 (*Missouri Revised Statutes*, 1919: 1067); all cases $750 (*Missouri Revised Statutes*, 1939: 673-674); all cases $1500 (*Missouri Laws*, 1945: 807); all cases $2500 (*Missouri Revised Statutes*, 1959: 4151-4152); all cases $3500 (*Missouri Laws*, 1969: 560). The inferior courts have never been granted jurisdiction in cases concerning land title questions, slander, or libel.

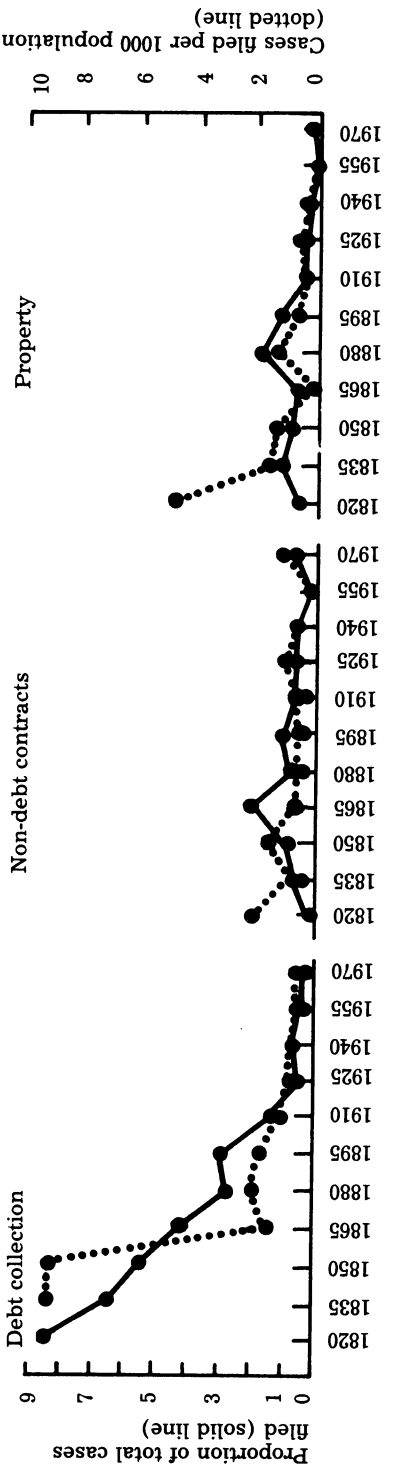
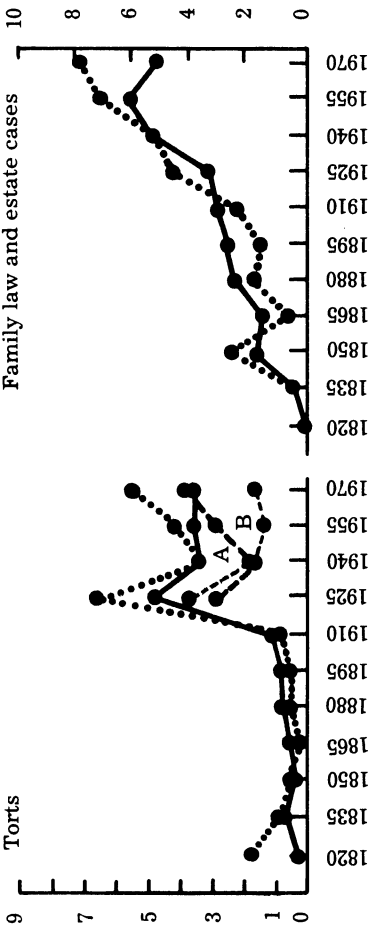


Figure 2. Case Filings in Five Civil Law Areas in the St. Louis Circuit Court, 1820-1970. Proportion of Total Cases Filed (Solid Line) and Rate of Litigation (Dotted Line).



A = rate of motor vehicle accident cases
B = rate of all other tort cases

Source: St. Louis Circuit Court, Archives Department, Microfilm and Current Files Department.

The *rate* of debt litigation declined by more than one half, from 1.7 cases per 1000 population in 1865 to 0.77 in 1970, but the truly significant change in demand occurred prior to the Civil War.

Contract Cases Other Than Debt Collection

Nondebt contract cases gradually increased as a proportion of the court docket prior to the Civil War, as shown in Figure 2 and peaked in 1865 at 20.5 percent. With minor fluctuations, these cases—primarily commercial contracts and other contracts between corporate entities—have maintained a fairly constant share of the court's business since 1880, and the rate (cases per 1000 population) has varied even less. For example, compare the rate of 0.95 nondebt contract cases in 1835 (or 1.82 cases in 1850) to the rate of 1.28 in 1970. These findings are different from those found by Friedman and Percival (1976a) but coincide with those reported in the state supreme court study (Kagan *et al.*, 1977: 139-140)—that is, that the proportion of nondebt contract cases has remained nearly constant over the last century.

This is not to say that the volume of contract transactions has remained constant. Indeed, although no data are available, the number of contracts written has certainly increased substantially in the 20th century. Even assuming this to be true, we cannot know how many contract disputes actually occur or what proportion of them is litigated. The number of transactions or the resulting number of disputes would provide a better basis than population for gauging use of the court over time. Unfortunately, these data are absent. Nonetheless, as with debt collection, other kinds of contracts are not disappearing from the courts, and they are being litigated at approximately the same per capita rate today as they were more than one hundred years ago.

Property Cases

Property cases, once a prominent component of the docket of the St. Louis court, are now nearly nonexistent. Throughout the 19th century, property issues consistently accounted for a significant portion of the court's business, ranging between 7 and 19 percent of the total cases filed. In the 20th century, however, property issues have decreased dramatically. Figure 2 indicates that not only has the property share of the docket approached zero, but so too has the rate at which these issues are actually litigated. In addition to land title and other real property questions, these data include personal property

issues, ownership disputes concerning rental property, slaves (prior to 1860), merchandise, and other goods. Termination of the institution of slavery may account for part of the post-Civil War decline in litigation. The inferior courts in Missouri have never held jurisdiction in cases involving land titles; such cases must be filed in circuit court. Personal property disputes in the smaller dollar value ranges, however, may now be filed disproportionately in the inferior courts (see footnote 10).

The rights of property ownership, as well as the fact or question of ownership itself, have traditionally been subjects for private disputes. Problems with imprecise measurement techniques in the early 1800's inevitably led to disputes over land boundaries, and land titles themselves were often questionable due to recordkeeping inaccuracies. In Missouri these problems were exacerbated by the imposed authority of the British common law over the looser tradition of French and Spanish civil law of property rights, by widespread land speculation, by profiteering activities and by the large-scale immigration of new settlers. Property litigation in St. Louis was so heavy, in fact, that a specialized Land Court was established in 1853 and operated for twelve years, hearing exclusively real property issues (*Missouri Revised Statutes*, 1853: 1592; *Missouri Revised Statutes*, 1865: 887). The invention of title insurance and standardization of procedures for recording and transferring titles greatly reduced the uncertainties of ownership rights in this century. But the number and value of property transactions have certainly increased with population growth, industrial expansion, intense real estate development, and the concomitant increased scarcity of land.

We cannot assume that the the near disappearance of property litigation resulted from a decrease in the number of property transactions. It is more likely that the most frequently recurring policy issues have been resolved, leaving little to be gained by litigation in most cases. This conclusion, also reached by Friedman and Percival (1976a: 296), seems to be supported by the findings reported by Kagan *et al*. (1977: 140-141), in their state supreme court study. The most frequently litigated questions of property law, disputes over ownership and occupancy rights, are precisely the issues which have diminished as a proportion of the business of state supreme courts over the past 100 years. Other property issues, such as landlord-tenant disputes and private land use questions, have always represented but a small portion of the

caseloads in the highest state tribunals and show no appreciable change over time.

Torts

Tort litigation became a major concern in the St. Louis circuit court at the turn of the 20th century. Since 1925, torts have accounted for more than 30 percent of the total cases filed; prior to 1900 they constituted less than 10 percent in any sample year. As Figure 2 illustrates, the greatest increase occurred between 1910 and 1925, during which time the rate of litigation in this field of law rose by a magnitude of seven.

The invention of the automobile accounts for part of the increase; motor vehicle accident cases amounted to a mere 0.4 percent of all cases filed in 1910, compared to 21.2 percent in 1925. This fifteen-year interval also marks the period when railroads and industrial employers saw most of the common law defenses, which had protected them against tort actions for the better part of a half century, abolished by legislation (*Missouri Laws*, 1897: 96; *Missouri Laws*, 1919: 456). Industrial employees and railroad passengers gained access to the courts, and much new litigation resulted. Indeed, suits of these types increased from 7.3 percent of all cases filed in 1910 to 17.8 percent in 1925.

St. Louis was a major railroad and industrial center by the end of the Civil War. By 1880, more than 37 percent of the city's labor force was employed in manufacturing industries, and employment in the heavy industries continued to increase until about 1920. National railroad statistics indicate that there were nearly as many deaths and injuries resulting from railroad accidents in 1910 as in 1925 (U.S. Bureau of the Census, 1975: 739-740). Moreover, the industrial work place was certainly no less safe for employees in 1925 than it had been in 1910 or earlier. Nonetheless, both work accident and railroad accident cases were rare prior to 1910.

By 1925 the trickle had become a flood. Assuming that the sample totals are truly representative, approximately 1122 cases were filed by injured employees in 1925 (9.3 percent of the 12,121 cases filed that year), rising from only 276 in 1910 (4.6 percent of 5977 total cases filed). Similarly, about 1030 suits were filed against the railroads by injured passengers in 1925 (8.5 percent of 12,121 cases) as opposed to only 161 in 1910 (2.7 percent of 5977 cases). These figures indicate significant shifts in activity.

Thus, the demise of doctrines protecting the employer, such as the "fellow servant rule," and the development of the doctrine of "liability without fault" provided more meaningful access to the courts for tort plaintiffs. In addition, the development of liability insurance (Friedman, 1973: 476-480) and the practice among lawyers of accepting tort cases on a contingent fee basis probably encouraged litigation in this area. The dramatic increases in tort activity around the turn of the century demonstrate the impact of improving the availability of the legal system to a large group of potential plaintiffs.

On November 2, 1926, the Missouri Workmen's Compensation Act was approved overwhelmingly by popular vote—an action which removed most employee injury cases from the jurisdiction of the courts.[11] By 1940, the passenger train had lost preeminence to the automobile as a means of transportation, and suits filed against the railroads by injured passengers had dropped sharply. Hence, the rise and fall of railroad cases as significant components of the court's docket occurred within the space of thirty years, 1910 to 1940.

Figure 2 reveals that the rate of motor vehicle tort actions has increased continuously since about 1940. But other types of damage suits leveled off at approximately 1.5 to 2.0 cases filed per 1000 population. This is interesting for two reasons. First, it follows the same pattern exhibited throughout the 19th century (prior to the automobile) of a fairly constant rate of tort litigation. Second, although motor vehicle accidents currently dominate the field, there are recurrent tort issues, such as libel, slander, and products liability, which historically have been deemed significant enough by the parties involved to enter the judicial arena.

Family Law Cases

Family law and estate cases have grown steadily in frequency; they were virtually nonexistent in 1820 but composed nearly half the total caseload of the circuit court by 1940. Typical actions in this field of law include child custody cases, marriage annulments and, most prominently, divorces. Divorce in the first half of the century was, in most states, including Missouri, obtainable only by legislation (Friedman, 1973: 181-184). The procedure was costly with the result that

[11] The vote totals were 561,898 in favor of the new law, and 251,822 against (*Missouri Laws*, 1927: 490). The Workman's Compensation Act allowed for appeals to the Circuit Court only after a decision had been reached by the Workman's Compensation Commission (*Missouri Laws*, 1927: 513).

access to legal termination of marriage was available only to wealthy individuals. The Missouri state legislature gave the circuit courts jurisdiction over divorce in 1845 (*Missouri Revised Statutes*, 1845: 426-429). Divorce was defined as an adversary action in which grounds were to be proved and the defendant (usually the husband) found to be at fault. The 1845 Missouri statute required the presentation of evidence, including depositions from people with personal knowledge of the defendant's wrongdoing. To discourage collusion between the parties it stated that, if found guilty of the charges in the petition, the defendant must forfeit all rights to remarry for a term of five years. Resort to the legal system gradually increased as judicial divorce became more acceptable and accessible. Friedman and Percival (1976b: 63) report that this has been a nationwide trend since 1867, "interrupted only by brief upward leaps after the world wars and a temporary drop during the Depression."

II. CASE DISPOSITION

Changes in the functions of trial courts can be explored further by examining variations in case dispositions over time. Table 3 indicates the changes which have occurred since 1820 with respect to the various methods of case disposition. The uncontested judgment, primarily signifying default,[12] shows no clear pattern over time except that it has always been prominent. Voluntary dismissal has also been a common method for disposing of cases; it increased in frquency until 1910, and then steadily declined. More often than not, a case dismissed voluntarily indicates that the issue has been settled out of court. The proportion of contested judgments[13] has gradually declined throughout the entire period, with defendants consistently winning a much smaller share of cases than plaintiffs. Indeed, contested judgments won by defendants have not amounted to more than 10 percent of all cases filed since 1820; typically the percentage has been much lower. In addition, the proportion of contested judgments has typically been lower since 1900 than in the years prior to the turn of the century. The proportion of total contested cases was relatively high through 1880, ranging between about 25 to 45 percent, compared to a range of about 15 to 20 percent in

[12] Most uncontested judgments represent defaults. Others are consent judgments.

[13] Contested judgments include cases resolved at full trial or contested hearings.

Table 3. Methods of Case Disposition in the St. Louis Circuit Court, 1820-1970 (total civil cases)

	Voluntary Dismissal	Case Dropped	Contested Judgment to Pltff.	Contested Judgment to Deft.	Uncontested Judgment	Other[1]	Total Cases	Incomplete Files	Adjusted Total[2]
1820	.231(15)	.015(1)	.323(21)	.185(12)	.246(16)	—	257	192	65
1835	.294(52)	.113(20)	.215(38)	.062(11)	.299(53)	.017(3)	242	65	177
1850	.244(58)	.126(30)	.223(53)	.055(13)	.353(84)	—	258	20	238
1865	.347(90)	.066(17)	.174(45)	.046(12)	.363(94)	.004(1)	259	—	259
1880	.296(76)	.147(38)	.216(56)	.081(21)	.247(64)	.008(2)	259	2	257
1895	.323(100)	.097(30)	.145(45)	.071(22)	.358(111)	.006(2)	310	—	310
1910	.435(113)	.042(11)	.146(38)	.050(13)	.308(80)	.019(5)	260	—	260
1925	.415(112)	.159(43)	.104(28)	.041(11)	.267(72)	.011(3)	270	—	270
1940	.351(85)	.116(28)	.128(27)	.037(9)	.380(92)	.004(1)	242	—	242
1955	.356(89)	.104(26)	.124(31)	.040(10)	.356(89)	.020(5)	250	—	250
1970	.335(88)	.173(46)	.156(41)	.042(11)	.271(72)	.019(5)	266	3	263

1. These are cases which are either removed to U.S. Court or removed to a different state circuit court on a change of venue.
2. The adjusted total was obtained by subtracting the number of cases with missing disposition data (incomplete files) from the total cases sampled. The proportions in this table are based upon the adjusted totals.

later years.[14] Finally, the proportion of cases dropped[15] has fluctuated but exhibits a general movement upward over time.

These findings are similar to those Friedman and Percival (1976a: 284-287) reported in their California study. They argued that court proceedings were becoming routinized and less conflictual, and further that the role of trial courts in the resolution of disputes was becoming less meaningful. A trial entails an uncertain outcome for both sides, and the parties have a stake in attempting to reach a private settlement. Waiting for a judicial resolution of the controversy is time consuming and costly. Furthermore, the delays involved with formal court proceedings certainly do not enhance long-term relationships, particularly between interacting parties in the economic sphere; neither does the designation of a clear winner and loser.

Resort to the legal system is only "one method in a stream of public and private alternatives" (Howard, 1969: 340) for dispute resolution, and the parties generally choose that method which appears most appropriate and cost efficient. One may characterize the list of possible dispute resolution alternatives in a number of ways. For instance, Sarat and Grossman (1975) devise four categories, depending upon the formality of process and the communicability of the result (also see Galanter, 1974). It is impossible to determine the number of disputes which actually occur in a society, but there may be predominant modes of resolving particular kinds of conflicts. Indeed, more than one method may be tried, and typical paths may be traversed before conflicts are ultimately resolved. There may also be unique sets of alternatives available to disputing parties, depending upon the type of problem involved.[16]

Dispute resolution strategies may vary depending upon the types of litigants and the type of controversy. Descriptive studies of who uses the trial courts reveal that different types of litigation involve different combinations of adversaries.[17] In

[14] Nearly 75 percent of the cases sampled for 1820 were lacking disposition information. Of those with complete files, about half were contested, but this figure may be inflated if record keeping was biased in favor of contested cases.

[15] Cases dismissed by the court because of no response or failure to secure costs on the part of the plaintiff are counted as dropped.

[16] Research efforts are currently in progress that seek answers to these and related questions. See Ladinsky and Susmilch (1980) and Kritzer *et al.* (1980).

[17] Wanner (1974: 423-431) reports that civil litigants can be categorized by the types of complaints they file, and that most plaintiffs are marked by a single, or "primary," type of action. For example, banks usually resort to court action in order to recover debts, while department stores and manufacturing

addition, the relationships between litigants in the various kinds of private law cases tend to differ qualitatively (Galanter, 1974). The nature of the connections between landlords and tenants (Mosier and Soble, 1973), creditors and debtors (Caplovitz, 1974), personal injury victims and insurance companies (Ross, 1970), commercial enterprises (Mentschicoff, 1961; Macaulay, 1963), neighbors (Merry, 1979), and spouses (Friedman and Percival, 1976b) is certainly dissimilar and helps to shape the demeanor of the parties toward each other and to define the limits within which the dispute will be contested. For example, the relationship may be ongoing and one which both sides wish to continue; this is typical between parties to commercial contract litigation; or the relationship can occur by chance and continue only for the duration of the dispute; that is usually true of the adversaries in automobile tort actions. Inequalities in the distribution of resources also affect the manner in which parties may approach disputes. Organizations are much more likely than individuals to possess the resources necessary to carry out an effective litigation strategy (Wanner, 1974; 1975).

Costs also influence the range of dispute resolution possibilities. In addition to the necessity of having a justiciable case and proper standing to sue, potential plaintiffs must be able to overcome cost barriers incurred by time delays, legal complexities, and legal expenses. Obstacles to access are not the same in all kinds of cases. The contingent-fee system benefits the tort plaintiff, but no similar payment scheme exists to mitigate expenses for the party who wishes to file a contract or property suit. Docket backlogs can produce unacceptable time delays, and parties able to wait can use time as a weapon against their adversaries, delaying cases with continuance requests, pretrial motions, repeated discovery, and other procedural maneuvers. A proportion of potential litigants are always priced out of the market; for them, litigation is simply not feasible. Others may be able to pay the costs but opt instead for a quicker and less expensive settlement procedure, or for arbitration; litigation becomes only a last-resort strategy.

The following paragraphs examine the dispositional histories of particular categories of cases. Because numbers become small for any particular type of case in a given sample

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firms primarily litigate contract suits and debts. Jacob (1969) finds middle-class individuals most likely to become involved in bankruptcy and wage garnishment actions; Dolbeare (1967) cities businesses as frequent participants in land use and zoning litigation. See also Sarat (1976); Galanter (1974).

year, the data have been aggregated into four time periods, 1820-1850, 1865-1895, 1910-1925, and 1940-1970.

Contracts

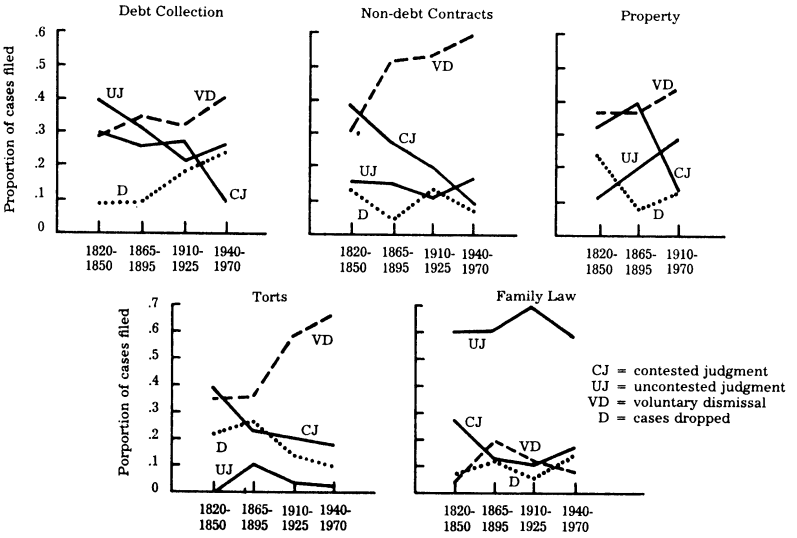
Recall that the rate at which contract issues came to the trial court, while showing some variation over time, was not appreciably different in 1970 than it was in 1865. Figure 3 indicates that the primary mode of resolving these cases, voluntary dismissal, has changed only slightly over the last 100 years. Indeed, in all types of contract cases—debt collection and otherwise—there seems to be an inverse relationship between contested result and voluntary dismissal as methods of disposition. In addition, the proportion of cases in the debt collection category resulting in uncontested judgments actually decreased until recently, and has remained nearly constant among other types of contract issues. Of those cases which are voluntarily dismissed, moreover, plaintiffs have been at least as likely (usually more so) as defendants to pay court costs.[18] If voluntary dismissal typically indicates that a private settlement has been reached, contract defendants have not agreed to lose informally and off the record, and, in fact, many cases are terminated on a rather conciliatory note. Although there has been some slippage in the debt collection category, where the proportion of cases dropped has gradually increased, these data do not indicate a dramatic functional change from adversariness to routine administration. Indeed, the patterns of activity observed here indicate the presence of strategic conflict resolution behavior in which the court plays an important role. Instead of becoming irrelevant to dispute settlement, the court seems to have altered its role to de-emphasize direct intervention and adjudication at trial, which might serve to escalate disputes unnecessarily, and toward encouraging adversaries to settle (Lempert, 1978: 99-100).

Prior to the establishment of lending institutions, most debts were contracted between individuals and took the form

[18] The proportion of cases falling in these categories is as follows:

	Debts		Non-Debt Contracts	
	Voluntary dismissal		Voluntary dismissal	
	at plff's cost	at deft's cost	at plff's cost	at deft's cost
1820-50	.219(65)	.054(16)	.256(10)	.051(2)
1865-95	.299(83)	.043(12)	.451(51)	.062(7)
1910-25	.214(12)	.107(6)	.422(19)	.111(5)
1940-70	.214(9)	.190(8)	.286(12)	.310(13)

Figure 3. Method of Case Disposition in Five Civil Law Areas, 1820-1970



Source: St. Louis Circuit Court, Archives Department, Microfilm and Current Files Department

of promissory notes.[19] Therefore, until about 1900, most debt collection cases were initiated by individuals against other individuals. However, business organizations (e.g., banks, finance companies, merchants) have become more common litigants in debt collection cases both as plaintiffs and as defendants.[20] Because business organizations, more regularly than individuals, tend to borrow large amounts of money, it is probable that only the most significant cases in this area are being litigated in the general jurisdiction trial courts, while those of lesser import are more likely to be diverted to the lower courts. Moreover, organizations may prefer to deescalate disputes with other organizations in order to preserve stability and enhance future interaction. The legal forum provides them an opportunity to articulate their demands, ventilate their differences, and find a suitable solution when other courses of action fail to produce acceptable results.

Nondebt contract cases typically involve controversies between business organizations. In other words, individuals have never represented more than a small minority of such litigants. These cases probably evolve from mutually accepted, pre-existing agreements. For example, studies have shown that

[19] For a discussion of the importance of promissory notes, see Friedman (1973: 236-238).

[20] Tables showing types of parties involved in the various case categories are available from the author upon request.

the relationship between parties to commercial contracts tends to create an atmosphere that promotes dispute resolution on an informal basis, in order to prevent the disturbance of business as usual, rather than to resort to the formal and public adjudicative alternative (Mentschikoff, 1961; Macaulay, 1963). Hence, arbitration is consistently a more popular method of conflict resolution among parties to commercial contracts than is litigation, and formal adjudication at trial is viewed as counterproductive (cf. Bonn, 1972; Sarat, 1976).

Because there tends to be a bias in favor of informal resolution strategies, those cases which are brought into court are likely to represent the more serious conflict situations. The initiation of formal legal action may be the step that is necessary to encourage an obstinate adversary to begin meaningful negotiations. If this is true, then the dispositional history of contract cases exhibited in Figure 3 indicates the presence of precisely the kinds of strategic behavior designed to resolve conflicts that one would expect to find. Thus the court appears not to have lost its dispute resolution function, but to have adapted its role to promote the settlement of issues between parties without further aggravating their conflict.

Property Cases

Because there are too few property cases in the samples drawn from the later years for meaningful comparison, the disposition data for these cases are presented in a more aggregated form in Figure 3. The disposition of property cases has become bimodal. Since the turn of the century they have been either voluntarily dismissed, in which case the plaintiff was most likely to pay the court costs,[21] or have resulted in an uncontested judgment. This "trend" would be consistent with the hypothesis that the most frequently recurring property issues have been resolved, routinizing the related transactions and leaving a small residual category of property issues to be developed (Friedman and Percival, 1976a: 296). The number of cases here is too small, however, to conclude that the argument has been supported.

[21] Plaintiffs have always been more likely to pay court costs in voluntarily dismissed property cases. Of the 17 cases voluntarily dismissed between 1820 and 1850, plaintiffs paid court costs in 16; plaintiffs paid in 35 of 39 in the 1865-95 period, and in 11 of 17 since the turn of the century.

Torts

Tort cases typically arise between strangers who have little desire to develop a long-term relationship after the dispute at issue between them has been resolved. Moreover, tort plaintiffs are primarily individuals who are episodic or "one time" litigants and follow a strategy designed to maximize recovery in their particular cases (Ross, 1970; Galanter, 1974). Defendants, on the other hand, tend to be repetitive litigants, such as insurance companies, who are interested in minimizing aggregate losses.

Tort law cases present a different set of disposition patterns in Figure 3 from those exhibited by contract cases. The proportion of cases resolved by contested judgment has decreased marginally since 1865, while the proportion resulting in voluntary dismissal has increased dramatically. Both uncontested judgments and dropped cases have continuously decreased since 1865. Additionally, in an overwhelming majority of cases dismissed voluntarily since 1910, the defendant has paid the court costs,[22] probably indicating a growing propensity of insurance companies to agree to lose with certainty off the record rather than to risk the uncertainties associated with trial. A negotiated settlement may also be preferred by plaintiff lawyers who are working on a contingent-fee basis and for whom a settlement assures at least some payment for their services.

Torts represent the only category in which cases resolved by court intervention have always been more likely to be contested, and in which the difference between contested and uncontested judgments has always been substantial. The role of the court in the resolution of tort disputes has clearly shifted since the early 1800's, but there has been no complete transformation to routine administration. A larger proportion of cases are resolved privately by the parties themselves, and many tort petitions, such as the less significant automobile accident cases, probably present the same or similar issues. The court appears to encourage parties to negotiate and provides them with a forum for doing so. Each can discover the

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[22] The proportional breakdown of voluntarily dismissed tort cases is as follows:

	Costs Paid By	
	Plaintiff	Defendant
1820-50	.304(7)	.043(1)
1865-95	.268(15)	.089(5)
1910-25	.115(18)	.468(73)
1940-70	.111(29)	.552(144)

position of the other side, and each can agree to make concessions. However, the parties are adversaries. What one wins, the other loses, and their relationship has a very limited future. In addition, some cases can present more complex issues and warrant careful, individual attention, and when the adversaries are unable to resolve matters to their mutual satisfaction, the court is prepared to interpret the facts, unravel the issues, and derive a judgment for them.

Family Law Cases

Nearly all of the cases in the family law area are divorces, and Figure 3 indicates that the dispositional pattern has not changed since the earliest period. Few cases are contested, and many of these were probably collusive suits in which the defendant accommodates the plaintiff in "proving" his guilt (Friedman and Percival, 1976b: 66-68).

For various social and economic reasons (Friedman, 1973: 436-440) the divorce rate has climbed almost continuously over the last century. In fact, the volume of petitions has increased to such an extent that, since 1914, two courtrooms (divisions) of the circuit court have been reserved to handle family law cases exclusively. Unlike other disputants, individuals experiencing domestic problems have few alternatives to formal court proceedings. A few cases are dropped or voluntarily dismissed, but a large majority result in uncontested judgments (default). The extent of litigant activity or court intervention that preceded the final uncontested result is not known (Lempert, 1978: 103-104).

III. SUMMARY AND CONCLUSIONS

To summarize briefly, the rate of civil litigation in the St. Louis Circuit Court exhibits a nonlinear relationship with socioeconomic development. That the observed relationship is not precisely like the one predicted by the literature may stem partially from the fact that we have examined litigation in only one court. No parallel institution has existed within the geographic area of the circuit court, but overlap in jurisdictions with the specialized Land Court which operated in the 1850's, the magistrate courts (formerly called justice of the peace courts), and the federal district court, has allowed some litigants a choice as to where they might initiate legal action. The relationship between litigation and change in socioeconomic context would be better represented by a measure of the composite activities of all these courts.

Moreover, the use of population statistics as a basis for calculating the rate of litigation is an obvious source of measurement error. No official records of the actual number of transactions taking place over time, which would form the true basis from which conflict and ultimately litigation arise, exist.

The current docket of the St. Louis trial court looks very different from the one existing in the 1800's. The typical docket of the early 19th century was composed primarily of economic-oriented petitions, such as contract and property cases. The agenda gradually shifted, however, so that by the 1920's a large majority of cases filed were either torts or divorce petitions. This trend is certainly not restricted to St. Louis, but seems to be indicative of a nationwide change in the judicial agenda (Friedman and Percival, 1976a). Some legal questions, such as those associated with the ownership of real property, have probably become settled, and in these instances, litigation would be redundant. In other words, certain issues are no longer "litigable" and have all but vanished from the court docket. Others, such as small debts and corporation and labor disputes, were by the turn of the century probably being siphoned into alternative official fora (e.g., small claims courts and administrative agencies). Still others, particularly those likely to arise between repetitively interacting parties (such as disputes over the terms of commercial contracts), have apparently come to be viewed as business problems resolved most efficiently outside the official legal system altogether.

Nonetheless, we cannot conclude that economic-related issues have been displaced or that they are disappearing from the court. Certain economic issues are recurrent and are consistently litigated. Contract cases have been filed at approximately the same rate since about 1865. That they have declined precipitously as a proportion of the court docket is largely a function of increases in the rate of other kinds of cases.

We have also observed changes in the methods of case disposition. The proportion of cases resulting in contested judgments declined; voluntary dismissal and uncontested judgments increased. But examining the dispositional patterns of the total caseload produces a somewhat distorted picture. Each distinguishable area of the civil law may represent a unique behavioral system. Not only are the issues different, but so too are the types of litigants involved, their resource capabilities, the relationships between them, and the array of dispute resolution strategy alternatives.

All conflicts are not alike. The context of disputes varies. In some cases, adjudication at trial may be counterproductive. For example, the parties to a contract dispute may wish to minimize the confrontational aspects of their disagreement, so that an otherwise mutually beneficial economic relationship can be resumed. Their interests are convergent, and the role of the court seems to have changed to accommodate those interests. The court seems to encourage private settlements in which the parties find bases for agreement, rather than adjudication which could further aggravate the parties' differences. Similarly, the court seems to encourage private negotiations in tort cases, providing a forum where the adversaries can articulate their claims. But the issues may be complex. The interests of the parties are divergent, and their relationship ends with resolution of the dispute. While the orientation of the court may have shifted, the adjudicative function has remained significant. A court need not impose a formal judgment upon the parties in order to contribute to the resolution of conflict.

For references cited in this article, see p. 883.