A STATE COURT'S CLIENTELE: EXPLORING THE STRATEGY OF TRIAL LITIGATION

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This paper explores the activities of civil litigants in a state trial court between 1820 and 1970. Litigation is considered as essentially a political activity in which the parties utilize the judicial system to promote their respective interests. The analysis indicates that all parties initiate and defend cases consistently in narrow fields across time, representing interests to which the litigants are easily connected. Moreover, if litigation has a large political component, then the inequities and balances of power existing between parties in the wider community probably affect judicial outcomes. To pursue this notion, I classify the court's clientele as either individuals or organizations. Evidence suggests that utilization of the legal process in general, and case outcomes in particular, are determined in part by the pairing of litigants opposing each other. Individuals have more often initiated than defended actions, and the dollar value of their claims has steadily increased, especially against organized opponents. By contrast, organizations have defended much more often than they have filed claims, and their claims are consistently smaller than those pursued by individuals. In general, judicial demands and outcomes vary systematically but consistently over time, according to the legally active group involved, the adversary pairing, and the issues between them.

This paper examines the litigating population in a state trial court in one community (St. Louis, Missouri) over an extended period, 1820 to 1970. It differs from my earlier work with the St. Louis data in that the analysis here is litigant-centered. It focuses upon those parties who use the court rather than on the court's changing role in the community over time.

My previous findings, like those of others (McIntosh, 1983; Daniels, 1982; Kagan *et al.*, 1977; Friedman and Percival, 1976), suggest that changes in the pattern of trial court litigation reflect social and economic changes over time. In St. Louis during the century and a half between the 1820s and the 1970s

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the litigation rate appears to have had a non-linear relationship with socioeconomic development, increasing during periods of intense transformation and leveling off in the interims. Types of claims varied substantially over this period, reflecting the evolution of community socioeconomic conditions (McIntosh, 1980-81). And the long-term pattern of case disposition differed considerably across legal fields, suggesting that the court contributed to dispute settlement in various ways.

My earlier work, like much of the recent research examining the relationship between social development and the courts, focuses upon change in the judicial agenda (e.g., Daniels, 1982; McIntosh, 1980-81; Lempert, 1978; Kagan *et al.*, 1977; Friedman, 1976; Friedman and Percival, 1976; Grossman and Sarat, 1975; Sarat and Grossman, 1975). The aim here is to track the movements of a court's clientele. The starting point for the analysis is the notion that litigation is an essentially political activity. It involves the calculated use of the legal process to gain some advantage over an opponent. From this perspective one important question is whether particular classes of litigants are associated with the initiation or defense of certain types of questions. A second focus is on the relationship between case issues and outcomes and the characteristics of the adversaries. It is expected that power inequities in the larger community will affect judicial outcomes. At the risk of oversimplification, the litigating population is divided into individuals and organizations, with four resulting adversarial combinations. This reflects Galanter's (1974) argument that "repeat players" hold strategic advantages over "one shotters" in civil litigation and the fact that organizations are more likely than individuals to be repeat players. Thus, litigation involving organizations on one side and individuals on the other is of particular interest. The findings are, of course, limited by the fact that I am focusing on one court with a particular jurisdiction that has changed over time.[1]

[1] One study comparing the state and federal trial court clientele across five jurisdictions (Grossman *et al.*, 1982) finds variation not only in the composition of the litigating population but also in the objectives of the petitioners in courts serving a common constituency. Moreover, surveys of municipal and limited jurisdiction court litigants (see, e.g., Wanner, 1974) report patterns of use that are different from those uncovered here.

I. THE DATA BASE AND COURT JURISDICTION

Data Base

The data consist of information on civil cases sampled from the general jurisdiction trial court in St. Louis, Missouri. Approximately 250 cases were drawn randomly from the court files for every fifteenth year, beginning in 1820 and extending through 1970. The goal was to obtain not a constant sampling proportion but a relatively constant sample size at each period, sufficiently large to be considered representative. By this procedure, 11 samples with a total of 2,874 cases were generated.[2]

Domestic relations cases, which dominate the court's docket in the later years of the time series, are excluded from the current analysis with the result that yearly sample sizes, during the later time periods especially, are often substantially below 250.[3] These cases are excluded because the focus on party configuration would require them to be analyzed separately in any event. They all involve individuals suing individuals over matters that in principle could not involve any other party configurations. Moreover, the special characteristics of domestic relations law are well known. To have included these cases, which are numerically dominant in the most recent years of the series, would have obscured trends we wish to be able to spot.

Jurisdiction

The Missouri circuit courts have always held exclusive jurisdiction over land title petitions and libel and slander claims valued at $50 or more, and they have shared jurisdiction with inferior state trial courts on all other claims where $50 or more

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[2] In addition, in the early part of the sequence samples were drawn for the years 1826, 1830, 1840, 1845, and 1855, leading to a total of 16 samples and 4160 cases. In the interest of clarity, the five "odd" samples from the early end of the sequence are not included in tables. Their inclusion does not alter any conclusions. More "complete" data tables are available upon request. For the purposes of this study, a "case" is any matter formally filed and recorded with the court. Some cases only seek an administrative change of status and may not actually name a defendant. Also, the vast majority of civil cases are untouched by judicial hands, because they are resolved via the civil equivalent of the criminal plea negotiation process (Friedman and Percival, 1976; McIntosh, 1980-81). The intervening year samples result from the original design of the study, which was to sample cases at five-year intervals. Lack of resources necessitated a change in design. The 1826 sample was drawn because the 1825 files had seriously deteriorated and further handling was discouraged by the court archivist.

[3] A total of 673 domestic relations claims were excluded, reducing the total sample size by 23.4% to 2,201 cases.

was in dispute. What has changed is the jurisdictional limit in the lower courts. It rose from $90 in 1820 (or $196 in 1967 constant dollars) to $3500 in 1969 ($3188 constant).[4] During the study period a growing percentage of small claims, though not formally excluded from the circuit docket, no doubt went to the lower courts as their jurisdictional range expanded. Thus, stakes in the typical circuit court case probably increased substantially across the years sampled. In addition, the circuit courts have had appellate jurisdiction over probate and justice of the peace courts (subsequently named magistrate courts) throughout the period of the study.[5]

II. THE CLIENTELE POPULATION

Plaintiffs

As a community evolves, political, social, economic, and technological innovations inevitably change the pool of disputes. Although some of those incidents filter into the system, the court calendar is, for several reasons, an inaccurate barometer of change in the pool's composition. To bring suit, aggrieved individuals need a justiciable case and standing to sue as well as such resources as money, information, and time. A proportion of potential claimants is always, therefore, priced out of the market. Others find that more attractive alternatives (e.g., withdrawal, avoidance, discussion, negotiation, mediation, or arbitration) are available (see, e.g., Macaulay, 1963; Mentschikoff, 1961; Ross, 1970; Galanter, 1974). The problems people face, the law, access to resources, and available alternatives all vary over time (Felstiner, 1974). For these reasons, trial courts, although theoretically open forums,

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[4] A list of the jurisdictional changes in the inferior state trial courts' dollar limitations in actual and [constant 1967] currency follows: all cases $90 [196] (1814 *Laws of the Territory of Missouri*, ch. 104); contracts and unlawful detainer $90 [265], torts $50 [147] (1825 Mo. Laws, 473); contracts and unlawful detainer $200 [488], torts $100 [244] (1868 Mo. Laws, 59); all cases $250 [862] (1879 MO. REV. STAT., 475); all cases $300 [1017] (1889 MO. REV. STAT., 4453); all cases $500 [1786] (1909 MO. REV. STAT., 417-18); unlawful detainer, mechanics' liens, other personal property $600 [1158]; contracts and torts $500 [965] (1919 MO. REV. STAT., 1067); all cases $750 [1803] (1939 MO. REV. STAT., 673-74); all cases $1500 [2783] (1945 Mo. Laws, 807); all cases $2500 [2864] (1959 MO. REV. STAT., 4151-52); all cases $3500 [3188] (969 Mo. Laws, 560). The inferior courts have never been granted jurisdiction in any cases concerning land title questions, slander, or libel.

[5] A court of common pleas was established in St. Louis in 1841, given concurrent jurisdiction with the circuit in 1843, but merged with the circuit court on January 1, 1866 (1843 Mo. Laws, 56; 1865 MO. REV. STAT., 887). Thus, the sample years 1845, 1850, and 1855 include cases from both dockets.

service a select plaintiff clientele (Freidman and Percival, 1976), which varies over time.

If litigation does not reveal a true cross-section of a community's disputes, it does reflect a sample of what people regard as significant grievances. More importantly, however, and more accurately, it reveals how people and organizations use law as they attempt to jockey for advantage over one another. The very fact that access to law is not a free good means that patterns of litigation are likely to reflect significant local economic and social competition and the distribution of power in local socio-political arenas. Thus, the sample records should indicate important changes in the economic and social structure of the St. Louis community as it experienced urban growth and decline, moving from a small fur trading village through the Industrial Revolution and into post-industrialization. Table 1A presents the basic data comparing the proportion of cases initiated among eight classes of plaintiffs over time.[6]

Outside the domestic relations area, litigation has fallen predominantly into four fields—debts, non-debt contracts, property, and torts—with a small residual group of government and miscellaneous litigation. As we see from Table 1A, individual plaintiffs initiated a majority of all actions in nine of the eleven sample years (cf. Wanner, 1974; 1975; Grossman *et al.*, 1982). Their average docket share is about 60 percent, and after 1910 it is about 80 percent; this excludes the ever-increasing proportion of cases brought by divorce plaintiffs.

Individual plaintiffs dominate—numerically at least—the fields of debt collection, property, and tort liability. The figure for tort cases is especially striking. Individual plaintiffs bring almost all tort cases and have throughout the entire period. This obviously reflects tort doctrine, which primarily protects personal and dignitary interests. Individual dominance in the property area is, until the 1970 sample, as consistent as it is in tort litigation and almost as great. Debt cases and non-debt contracts show more of a balance. Individuals account for only about half the plaintiffs in debt cases and bring only a minority of non-debt contract actions. The primary pursuit of individual plaintiffs has shifted, though, from a nineteenth-century

[6] I could not include all classes of plaintiffs and present the data in a reasonably concise fashion. To be included in Table 1, a class of plaintiffs must have appeared in a minimum of 3% of all cases sampled in one of the four fields analyzed, or have at least a 2% appearance rate and appear in no less than 6 of the 11 samples.

Table 1A. Plaintiffs, Overall Appearance Rates
(for percentage distribution in each sample, read down the columns)

All Cases Initiated by	1820	1835	1850	1865	1880	1895	1910	1925	1940	1955	1970	Total % (N)
Individuals	61.1	53.3	53.6	52.0	55.9	47.0	37.4	81.2	80.7	85.3	70.3	59.2 (1302)
Wholesale & Retail Merchants	31.1	42.6	39.5	38.2	25.8	33.7	15.9	8.4	9.6	11.2	13.1	26.9 (592)
Transportation & Manufacturing Cos.	1.6	0.4	1.7	3.1	1.9	2.0	3.6	1.6	3.0	0.9	5.5	2.2 (48)
Financial Institutions	3.9	-	3.0	3.1	1.9	9.6	4.1	2.1	2.2	1.7	2.8	3.3 (73)
Landlords & Real Estate Companies	1.6	-	1.3	-	6.6	4.0	2.6	2.1	0.7	-	2.1	2.0 (44)
Insurance Companies	-	-	-	1.3	0.9	0.8	-	1.0	0.7	-	2.1	0.6 (13)
Government Agencies	0.8	3.7	0.9	1.8	7.0	2.0	35.4	0.5	0.7	-	2.8	5.1 (112)
Misc. Service Orgs.	-	-	-	0.4	-	0.8	1.0	3.1	2.2	0.9	1.4	0.8 (17)
Total (N)	257	242	233	225	213	249	195	191	135	116	145	2201

Table 1B. Defendants, Overall Appearance Rates*

All Cases Initiated against	1820	1835	1850	1865	1880	1895	1910	1925	1940	1955	1970	Total % (N)
Individuals	72.4	67.6	58.0	42.3	41.5	32.2	16.8	32.0	23.1	35.4	32.4	43.7 (918)
Wholesale & Retail Merchants	26.1	24.9	31.0	45.9	43.5	49.3	58.4	31.4	43.0	34.5	37.5	37.3 (783)
Transportation & Manufacturing Cos.	-	7.1	7.1	6.8	6.0	3.9	12.7	26.5	15.6	23.2	9.4	10.0 (211)
Financial Institutions	1.2	-	0.4	0.9	5.5	1.0	1.7	-	3.3	-	1.5	1.3 (28)
Landlords & Real Estate Companies	-	-	0.4	-	-	2.4	4.6	4.0	5.8	2.7	4.4	1.8 (37)
Insurance Companies	-	0.4	1.3	2.7	1.0	6.3	2.9	4.0	6.6	1.8	10.3	2.9 (61)
Government Agencies	0.4	-	1.8	0.9	2.5	2.4	1.7	5.7	5.8	1.8	5.9	2.2 (47)
Misc. Service Orgs.	-	-	-	0.4	-	2.4	1.2	2.3	1.7	1.8	0.7	0.8 (17)
Total (N)	257	241	226	220	200	205	173	181	128	112	139	2102

* These data do not include domestic relations cases or cases in which there is no defendant, such as a name change petition.

Source: St. Louis Circuit Court Archives

emphasis on debt collection, with a secondary focus on property law, to a decided accent on personal injuries in the twentieth century.

For individual plaintiffs, then, the court's function and relevance has changed. Prior to the development of lending institutions, and especially during the first half of the nineteenth century, most debts were contracted between individuals and took the form of promissory notes (Friedman, 1973: 235-38). Heavy use of the court by individual claimants to enforce debts is therefore unsurprising and probably reflects the national experience during that period (see, e.g., Laurent, 1959; Silverman, 1981; Kagan, 1984). Moreover, land boundaries and titles that were often open to question during the frontier era (Troen and Holt, 1977; English, 1947) became more fixed and less ambiguously defined with improvements in record keeping and measurement technology, thus reducing much of the tension surrounding property rights (Friedman, 1973). The turn of the twentieth century saw individual plaintiffs initiating personal injury petitions with increasing frequency, reflecting the social, economic, and technological changes that had already taken place or were then occurring. Indeed, the census indicates that by then St. Louis had become one of the nation's largest cities and a major industrial and commercial center. Banks and other institutions dominated the financial market as primary creditors; passenger rail service was peaking; the automobile was being introduced to the market as a consumer item; the manufacturing industries employed nearly 40 percent of the city's rapidly expanding workforce.

Organization plaintiffs also litigate narrowly, bringing cases logically related to the activities in which they are normally involved. For example, the claims of wholesale and retail merchants almost always grow out of contractual agreements, particularly debts and commercial contracts. At least one group of authors (Sarat *et al.*, 1978: 3) has noted that "profit-oriented business organizations look to the courts to rationalize economic activity and to ensure the stability and predictability of economic transactions." Such parties appeared as plaintiffs in 38.5 percent of all the debt collections in the 11 samples and initiated more than half, 53.2 percent, of all the non-debt contract cases (primarily commercial contracts) examined.

To assess the same data differently, Table 2 presents the primary legal activity of the various plaintiffs. More than 75 percent of the wholesale and retail merchant cases sampled between 1820 and 1850 are debt collection petitions, and

Table 2. Issue Focus of Litigation Initiated by Selected Plaintiffs
(for percentage distribution, read down the columns)

	1820 %	1835 %	1850 %	1865 %	1880 %	1895 %	1910 %	1925 %	1940 %	1955 %	1970 %	Total % (N)
Individuals												
Debts	84.7	59.7	63.2	49.6	37.8	29.9	27.4	5.2	11.0	6.1	2.0	33.4 (435)
Property	9.0	20.2	14.4	17.1	22.7	20.5	11.0	5.2	4.6	2.0	1.0	9.9 (129)
Torts	3.8	13.2	5.6	10.3	13.4	18.8	35.6	81.3	70.6	86.9	84.3	36.9 (481)
All Cases (N)	(157)	(129)	(125)	(117)	(119)	(117)	(73)	(155)	(109)	(99)	(102)	(1302)
Merchants												
Debts	91.3	76.7	60.9	48.8	45.5	52.4	35.5	25.0	30.8	30.8	15.8	58.3 (345)
Non-Debts	6.3	11.7	19.6	43.0	21.8	19.0	35.5	50.0	23.1	30.8	42.1	22.6 (134)
All Cases (N)	(80)	(103)	(92)	(86)	(55)	(84)	(31)	(16)	(13)	(13)	(19)	(592)
Transportation and Manufacturing Companies												
Debts	75.0	-	-	28.6	-	-	-	-	-	-	12.5	12.5 (6)
Non-Debts	25.0	100.0	75.0	57.1	75.0	80.0	42.9	-	100.0	-	62.5	58.3 (28)
All Cases (N)	(4)	(1)	(4)	(7)	(4)	(5)	(7)	(3)	(4)	(1)	(8)	(48)
Financial Institutions												
Debts	90.0	-	100.0	100.0	50.0	37.5	62.5	100.0	66.7	100.0	100.0	70.0 (51)
All Cases (N)	(10)	(-)	(7)	(7)	(4)	(24)	(8)	(4)	(3)	(2)	(4)	(73)
Landlords and Real Estate Companies												
Property	100.0	-	66.7	-	92.9	60.0	-	50.0	100.0	-	33.3	65.9 (29)
All Cases (N)	(4)	(-)	(3)	(-)	(14)	(10)	(5)	(4)	(1)	(-)	(3)	(44)

another 13 percent represent non-debt contract disputes. Of the twentieth-century merchant cases analyzed, more than two-fifths involve commercial contracts, while an additional one-third are debt collections.

Transportation and manufacturing companies follow the pattern set by merchants, initiating contract claims almost exclusively, which again reflects the nature of their business. Similarly, when banks and other financial institutions used this court, it was to collect delinquent debts, and the legal activities of real estate companies have clearly converged upon the field of property law. Insurance companies and miscellaneous service organizations (which include non-market groups, such as newspapers, educational institutions, religious organizations, etc.) have appeared too infrequently as plaintiffs to indicate a clear litigation focus. Government agencies also appear only infrequently as plaintiffs, with one obvious exception in 1910, when government-plaintiff cases, mainly against corporations that failed to file financial reports, accounted for 35.4 percent of the cases in the sample.[7]

Defendants

Part B of Table 1 gives the proportional rate of appearance by eight categories of respondents across the series. Individuals dominate in the defendant population only during the earliest years of the series. However, individuals are the primary targets of debt collection and property cases in most of the sample years. In raw numbers, however, these cases diminish substantially in the latter part of the time series.[8] This reflects in part the diversion of cases to the inferior court as its jurisdictional amount increased,[9] and it also probably reflects a general diminution of debt cases in the courts, which Kagan (1984) identifies and explains.

Wholesale and retail merchants have also been frequent defendants throughout the time period. They are the second

[7] The 1910 anomaly occurred in the midst of the anti-trust era, when "big business" experienced attacks on all fronts. Of the 69 government-plaintiff cases sampled in 1910, 62 were filed against corporations for failure to file financial reports with the appropriate government authority. This was the only sample year in which such cases were found.

[8] The raw numbers from the last four samples for debt (D) and property (P) cases are as follows: 1925: 8D, 8P of 56; 1940: 6D, 3P of 28; 1955: 8D, 1P of 39; 1970: 6D, OP of 44. The sample totals are small because they exclude domestic relations cases, which by 1925 were appearing in large numbers; i.e., 79 (1925), 107 (1940), 134 (1955), 122 (1970) domestic relations cases appeared in the original survey.

[9] See footnote 4 *supra* and corresponding text.

most likely defendants in debt and property suits, and they are the most frequently encountered defendants in non-debt contract actions. Moreover, in the samples drawn since the Civil War, merchants defended a large proportion of the tort liability cases. In the nineteenth century these claims typically arose out of employee injuries, while in the twentieth century most tort claims against merchants have been brought by injured customers or by people involved in delivery vehicle accidents.

The contrast between the prevalence of merchants as plaintiffs and as defendants is also interesting. Between 1820 and 1895 merchants were involved as plaintiffs in 35 percent of the cases brought. After 1895 they figure as plaintiffs in only about 12 percent of the cases. On the other hand, they are involved as defendants in an average of 23 percent of the cases brought between 1820 and 1850. After the Civil War they are defendants in about 44 percent of the total cases.

The third most common class of respondents are transportation and manufacturing companies, which became increasingly involved as defendants as the Industrial Revolution proceeded. In the late nineteenth and early twentieth centuries, they were the single most common tort defendants as workers sued for their injuries. These suits largely ended with the enactment of Missouri's Workers' Compensation scheme, but manufacturing and transportation companies continued to be sued by third parties in tort after this period, and in some years they figure importantly as defendants in property and non-debt contract cases.

Examining the question from a different perspective, Table 3 reports the case involvement of the various classes of defendants. Other classes of litigants appear relatively seldom as defendants in this trial court; however, each seems to have established a legal niche connected to its market activities. For example, financial institutions are most likely to appear as defendants in debt collection cases. Insurance companies figure prominently in the field of non-debt contracts, usually responding to fire and life insurance policy claims.[10] Government agencies appear consistently, though relatively infrequently, in each of the twentieth-century samples as

[10] The data understate the defense role of insurance companies. The case files do not indicate that an insurer participates unless it is a named principal. Thus, although the activities of insurance companies in automobile accident cases are well known, they are not explicitly included in such cases in this study. In many of the tort cases brought against individuals, insurance companies were probably the real party in interest.

Table 3. Issue Focus of Litigation Initiated against Selected Defendants
(for percentage distribution, read down the columns)

	1820 %	1835 %	1850 %	1865 %	1880 %	1895 %	1910 %	1925 %	1940 %	1955 %	1970 %	Total % (N)
Individuals												
Debts	86.0	69.3	71.8	61.3	48.2	57.6	69.0	14.3	21.4	20.5	13.6	59.0 (550)
Property	8.1	12.9	10.7	14.0	27.7	19.7	3.4	14.3	10.7	2.6	-	12.2 (112)
Torts	3.8	8.6	6.1	5.4	7.2	6.1	3.4	62.5	50.0	74.4	86.4	17.5 (161)
All Cases (N)	(186)	(163)	(131)	(93)	(83)	(66)	(29)	(56)	(28)	(39)	(44)	(918)
Merchants												
Debts	83.6	56.7	55.7	48.5	21.8	45.5	15.8	12.7	11.5	7.9	9.8	35.8 (280)
Non-Debts	9.0	11.7	18.6	35.6	21.8	20.8	9.9	10.9	11.5	10.5	23.5	17.9 (140)
Torts	-	5.0	1.4	4.0	4.6	6.9	3.0	65.5	71.2	78.9	52.9	19.4 (152)
All Cases (N)	(67)	(60)	(70)	(101)	(87)	(101)	(101)	(55)	(52)	(38)	(51)	(783)
Transportation and Manufacturing Companies												
Debts	-	58.8	62.5	23.5	25.0	7.7	-	2.1	10.0	3.8	-	15.2 (32)
Non-Debts	-	29.4	31.3	52.9	50.0	7.7	20.7	4.2	5.0	3.8	7.7	16.1 (34)
Torts	-	-	-	23.5	25.0	84.6	72.4	91.7	80.0	92.3	92.3	65.4 (138)
All Cases (N)	(-)	(17)	(16)	(17)	(12)	(13)	(29)	(48)	(20)	(26)	(13)	(211)
Insurance Companies												
Non-debts	-	100.0	100.0	66.7	50.0	84.6	100.0	85.7	100.0	50.0	35.7	75.4 (46)
All Cases (N)	(-)	(1)	(3)	(6)	(2)	(13)	(5)	(7)	(8)	(2)	(14)	(61)

defendants in motor vehicle accident cases (torts). Finally, most of the cases initiated against landlords and real estate companies are tort liability claims filed by injured tenants.

III. PLAINTIFF-DEFENDANT COMBINATIONS

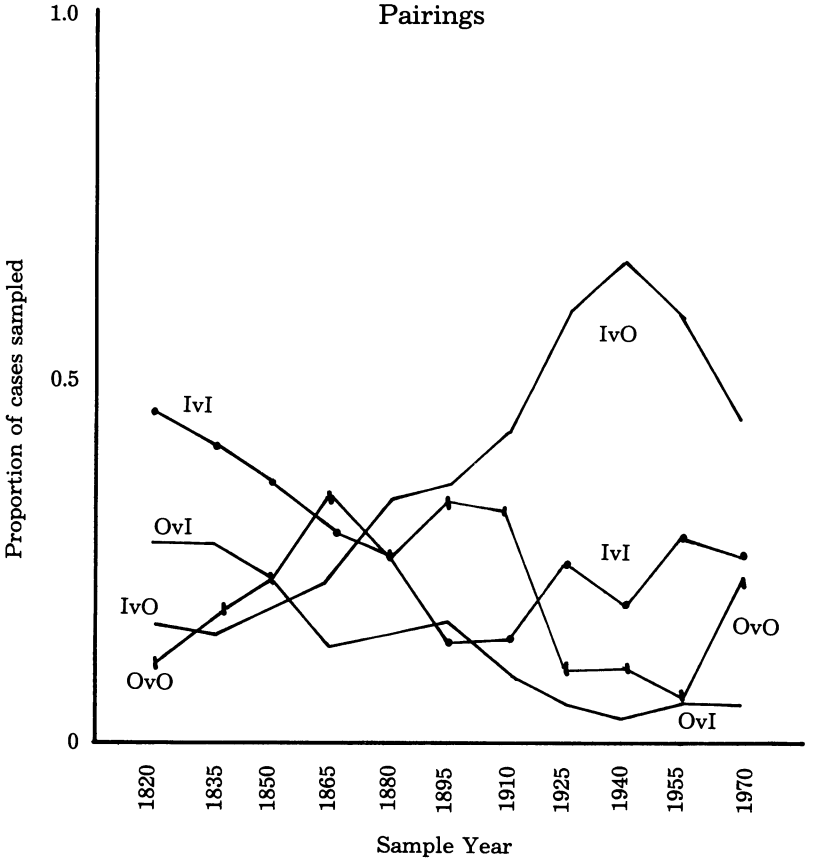
Dividing litigants into organizations and individuals yields four possible adversary pairs: Organization v. Individual, Organization v. Organization, Individual v. Organization, Individual v. Individual. One would expect organizations to have better access to litigation resources than individuals and to be generally more powerful than individuals, but it is difficult to translate this general expectation into predictions about the relative success that these parties should experience. Litigants in the St. Louis trial court were typically seeking the immediate resolutions of disputes and not the kinds of legal change that led Galanter (1974) to predict that the "Haves" (most often organizations) would generally come out ahead in litigation. Moreover, particularly in the nineteenth-century samples, some individual litigants might have been more formidable adversaries than many organizations. Finally, court cases are not a random sample of all disputes. When individuals sue organizations, they may have special reasons to believe they will prevail.

Figure 1 graphs the relative frequency of each litigant pairing across the sample years.[11] It shows a steady decline throughout the nineteenth century in the proportion of cases pitting individuals against each other and a steady increase until about 1940 in the proportion of cases brought by individuals against organizations.

Organizations also faced defendant individuals frequently during the 1800s, but since the turn of the century, they have initiated relatively few cases against individuals in the circuit court (cf. Wanner, 1974; 1975; Grossman *et al.*, 1982). The cases most likely to involve this adversary combination—debt

[11] In this and other data presentations, where the parties are categorized as either individuals or organizations, government-party cases are excluded. Government-party cases should be distinguished from others because they often involve policy enforcement, but there are too few of them for meaningful analysis as a separate category. To classify parties as either individuals or organizations facilitates analysis but masks diversity within the two groups. It fails to distinguish between resource-rich corporations and struggling partnerships, on the one hand, and wealthy and indigent individuals, on the other. The case files do not allow us to capture resource differences. The exclusion of domestic relations cases means that these figures should not be taken as a portrait of changes in the use of the court by individual litigants over time.

Figure 1. Proportion of Cases Falling into Four Litigant Pairings



IvI = Individual plaintiff versus individual defendant
IvO = Individual plaintiff versus organization defendant
OvI = Organization plaintiff versus individual defendant
OvO = Organization plaintiff versus organization defendant

Source: St. Louis Circuit Court Archives

collections and landlord-tenant disputes—are undoubtedly being filtered into the lower courts because they are likely to involve relatively small dollar claims,[12] or they are no longer being litigated at all (Kagan, 1984). Cases in which two organizations oppose each other have been relatively infrequent except in the samples drawn between 1850 and 1910. This was also the period of the most intense industrial development and market competition in St. Louis (Scharf, 1883; Troen and Holt, 1977; McIntosh, 1983). The relatively low rates in other periods are not surprising, for under routine conditions one would expect businesses and corporations, in a spirit of cooperation, to

[12] See Figure 2 *infra* and accompanying text.

utilize alternate problem-solving techniques and avoid litigation if possible (see Macaulay, 1963; Mentschikoff, 1961).

The array of cases involving each combination of litigants is presented in Table 4. The four litigant configurations are associated with different types of disputes at different points in time. Cases between individuals were once predominantly debt collection petitions and occasionally property disputes, but in the four most recent sample years the overwhelming proportion involves tort claims. Yet in most of the recent tort cases the individuals sued were probably only nominal defendants and the real parties in interest were insurance companies. However, since these suits generally grew out of auto accidents, they do reflect clashes of individuals, so in this sense the nominal parties reflect the nature of the original dispute. Legal activity directed against organizations shows a gradual shift from debt collection in the nineteenth century to tort claims in the twentieth century.

The litigation patterns of organizational plaintiffs have not changed nearly as much. Complaints against other organizations occur overwhelmingly in the field of contracts, with a gradual shift from debt to non-debt disputes. Property disputes were relatively important in the last half of the nineteenth century, and beginning about 1925 there has been an apparent upsurge in the proportion of organizational cases involving tort litigation. However, this proportional rise probably reflects a diminution in the absolute number of cases with organizations on both sides rather than a real increase in interorganizational tort actions. When organizations sue individuals, the predominant purpose has always been to collect debts. Such actions have, however, decreased markedly relative to other actions on the docket.

IV. CASE DISPOSITIONS

Table 5 shows the association between the adversary configuration and outcomes in the four areas we have been investigating. Dispositions fall into five categories.[13] Voluntarily dismissed cases are those in which the parties negotiate a private solution and withdraw their dispute from the public arena. Other cases are "dropped," which means the plaintiff either fails to follow through with a claim after filing it or fails to pay (or demonstrate the ability to pay) court costs.

[13] A relatively large number of case files in the early samples (especially through the 1835 sample) provided no information on disposition. These cases are excluded from the analysis in Table 5.

Table 4. The Legal Issue Involved between Four Litigant Pairings* (for percentage distribution in each sample, read across the rows)

IvI: Individual Plaintiff versus Individual Defendant

Sample Year	Debts	Non-Debt Contracts	Property	Torts	Total (N)
1820	84.5	-	8.6	5.2	116
1835	62.1	2.1	18.9	14.7	95
1850	68.4	3.8	8.9	8.9	79
1865	50.0	4.7	18.8	7.8	64
1880	54.2	-	25.0	10.4	48
1895	48.3	6.9	20.7	13.8	29
1910	70.6	5.9	5.9	5.9	17
1925	8.9	2.2	11.1	77.8	45
1940	17.4	-	14.3	60.9	23
1955	9.4	-	3.1	84.4	32
1970	2.9	-	-	97.1	34

OvI: Organization Plaintiff versus Individual Defendant

Sample Year	Debts	Non-Debt Contracts	Property	Torts	Total (N)
1820	88.6	1.4	7.1	1.4	70
1835	85.7	1.6	4.8	-	63
1850	80.0	6.0	10.0	2.0	50
1865	86.2	3.4	3.4	-	29
1880	50.0	3.6	39.3	3.6	28
1895	65.7	2.9	20.0	-	35
1910	66.7	-	-	-	12
1925	36.4	36.4	27.3	-	11
1940	40.0	-	20.0	-	5
1955	71.4	-	-	28.6	7
1970	62.5	-	-	37.5	8

Table 4 (continued)

IvO: Individual Plaintiff versus Organization Defendant

Sample Year	Debts	Non-Debt Contracts	Property	Torts	Total (N)
1820	85.4	2.4	9.8	-	41
1835	52.9	2.9	23.5	8.8	34
1850	61.0	9.8	19.5	-	41
1865	52.0	14.0	14.0	14.0	50
1880	29.0	11.3	24.2	14.5	62
1895	28.8	19.2	16.4	24.7	73
1910	16.3	12.2	6.1	49.0	49
1925	3.9	7.8	2.9	83.5	103
1940	10.1	10.1	2.5	75.9	79
1955	4.6	3.1	-	89.2	65
1970	1.7	6.9	1.7	86.2	58

OvO: Organization Plaintiff versus Organization Defendant

Sample Year	Debts	Non-Debt Contracts	Property	Torts	Total (N)
1820	82.1	17.9	-	-	28
1835	62.5	30.0	5.0	-	40
1850	48.0	36.0	20.0	20.0	50
1865	37.8	56.8	-	2.7	74
1880	27.8	31.9	21.3	2.1	47
1895	47.1	27.9	7.4	2.9	68
1910	30.6	41.7	13.9	2.8	36
1925	27.8	44.4	5.6	16.7	18
1940	30.8	61.5	7.7	-	13
1955	14.3	57.1	-	14.3	7
1970	17.2	51.7	10.3	6.9	29

* Cases in which a government agency is a party are excluded from these data.

Source: St. Louis Circuit Court Archives

A third disposition is the contested judgment, which means there was a verdict after an adversary hearing or full trial. The fourth is the uncontested judgment for the plaintiff, which is entered when a defendant, usually by not showing up, does not resist a claim. Finally, a case may be "removed" to a different court, as when a defendant from outside Missouri exercises a right to have the case heard in federal court. Table 5 reports only the cumulative totals for the 11 samples.[14] Each of the four legal fields analyzed shows a unique set of case dispositions but also a noticeable degree of congruity between litigant pairings and over time.

Debts

The disposition of debt actions is relatively independent of the litigant configurations. Collapsing the data over time shows that between 23 and 31 percent of the cases are voluntarily dismissed, with individuals less likely to agree to voluntary dismissals than organizations. About 22 percent result in contested judgments for plaintiffs, and about 36 percent in uncontested judgments. Looking at the data over time[15] does not change the basic picture although some trends are visible. Contested judgments, which occurred in about 25.6 percent of all cases before 1925, diminish for all pairings, averaging only 8.5 percent from 1925 on. Individual plaintiffs are in recent years relatively more likely to drop their cases than organizations (from 1925 on, 32 percent of individual debt cases were dropped, compared to 25 percent of those instituted by organizations) although in the earlier years the percentage of dropped cases was much lower, 10.2 percent for individuals and only 7.1 percent for organizations. And from 1925 on, voluntary dismissals are substantially more likely in cases involving unbalanced litigant pairings (OvI and IvO) than in cases involving only individuals or only organizations. The voluntary dismissal rates for the dissimilar and similar pairings are 59 percent and 18.5 percent, respectively. Before 1925 they were 29.6 percent and 28.3 percent, respectively. The diminution in contested judgments, as well as the increased tendency of individuals to drop cases in recent years, may reflect the fact that the average disposition time from initial filing to the last entry of record has risen from about five months in the first portion of the time series to about two and one-half years in the

[14] More complete data tables are available upon request.

[15] To conserve space these data are not presented here. Tables are available from the author.

Table 5. Case Outcomes in Four Issue Areas According to Litigant Combination, 1820 to 1970 (all samples combined) (for percentages, read across table)

		Contested (won by)					
	Voluntary Dismissal	Dropped	Plaintiff	Defendant	Uncontested	Removed	Total (N)
Debts							
IvI	23.3	11.9	21.7	5.8	37.2	-	497
IvO	25.9	11.0	22.0	3.9	37.2	-	255
OvI	31.8	7.3	22.2	2.3	36.1	0.3	396
OvO	30.3	5.0	22.7	5.5	35.8	0.8	238
Non-Debt Contracts							
IvI	29.4	23.5	23.5	17.6	5.9	-	17
IvO	42.4	13.6	22.7	6.1	12.1	3.0	66
OvI	72.7	9.1	9.1	-	9.1	-	11
OvO	44.8	8.6	20.5	5.2	19.7	1.4	210
Property Cases							
IvI	29.8	9.6	31.6	15.8	12.3	0.9	114
IvO	43.9	15.2	21.2	9.1	7.6	3.0	66
OvI	40.0	14.0	28.0	8.0	10.0	-	50
OvO	41.2	14.7	14.7	14.7	11.8	2.9	34
Torts							
IvI	43.1	24.6	21.0	5.4	5.4	0.6	167
IvO	58.2	16.0	12.9	5.2	3.1	4.6	325
OvI	60.0	10.0	20.0	-	10.0	-	10
OvO	53.3	13.3	13.3	6.7	13.3	-	15

Source: St. Louis Circuit Court Archives

last three sample periods.[16]

Non-Debt Contract Cases

Individuals are rarely defendants in non-debt contract cases, and there are too few such cases in our sample to spot any meaningful patterns. When organizations are defendants, the pattern of outcomes does not seem to turn on whether individuals or organizations brought the suit. In each case the voluntary dismissal is the modal category, amounting to more than 40 percent of all dispositions. The rate of contested judgments is about the same as it was in debt cases, but uncontested judgments are only about half as common. Over time the only substantial differences in the data are that uncontested judgments are consistently more likely to occur in debt cases than in non-debt contract litigation in the years sampled.

Property Cases

Most of the property cases that appeared in Table 5 come from samples drawn from the 1800s. In the few cases from the twentieth century, almost none are contested. Property transactions apparently became rather routinized early on, and market mechanisms, like title insurance, seem to have developed to stabilize expectations regarding property. The aggregate statistics, therefore, reflect primarily nineteenth-century case dispositions. Unlike the preceding two categories, they reveal some important differences between litigant combinations. When individuals sued individuals, the modal disposition was a contested judgment (47.4 percent of all IvI cases were contested), while the next most frequent result was a voluntary dismissal. Not only is the rate of contested judgments higher here than in any other case and litigant type configuration,[17] but defendants are relatively successful in cases

[16] In comparison, case life in the other fields has either remained fairly constant (property and torts) or declined (non-debt contracts).

[17] Comparing the rate of contested judgments in property disputes when they were most apparent in the samples (1850 to 1895) with the rate of trial in the other case classes produces the following results:

	Property	Debts	Non-Debt Contracts	Torts
IvI	15/35 = 42.9	38/124 = 30.6	1/ 8 = 12.5	3/21 = 14.3
IvO	13/40 = 32.5	17/ 87 = 19.5	13/30 = 43.3	10/34 = 29.4
OvI	12/24 = 50.0	29/102 = 28.4	0/ 5 = 0	0/ 2 = 0
OvO	5/16 = 31.3	24/ 95 = 25.3	23/91 = 25.3	1/ 6 = 16.7

going to judgment compared to the other categories. This, however, is true of property cases generally. Defense victories at trial are proportionately more common in property cases relative both to all outcomes and to plaintiff victories than they are in almost all the equivalent categories in other types of cases. Indeed, in the small number of cases in which organizations sued organizations, the plaintiffs prevailed at the trial only 50 percent of the time. Relatively few individual defendants allowed no-contest judgments to be entered against them when property rights were at stake, and even fewer individual plaintiffs dropped their claims.

These data suggest that individuals used the legal process aggressively when matched against other individuals with conflicting claims to private property. The three remaining litigant pairings show higher rates of voluntary dismissal and dropped claims and lower rates of contested judgments. The adversary process was utilized least often when the defendant was an organization; organizations apparently preferred to seek compromise solutions.

Torts

Tort liability cases are almost exclusively filed by individuals. The few cases brought by organizations usually involve damage to a delivery vehicle. Most defendants, on the other hand, are organizations. Here the data on individual defendants are misleading, for in many of these cases the real party in interest must have been an insurance company. The data suggest that since these cases began to emerge on the docket in large numbers (late 1800s), the method of disposition has not changed. The primary method of disposition is by voluntary dismissal, which is especially likely when the defendant is an organization. The percentage of cases going to trial is somewhat lower than in other issue areas analyzed, and the rate at which individual plaintiffs drop claims is markedly higher, though it has been decreasing. When individuals sue organizations, the proportion of cases won by plaintiffs at trial (12.9 percent) is lower than it is in all other subcategories with more than 30 cases. This is also true for the proportion of uncontested judgments. These findings, coupled with the high rate of voluntary dismissals, are consistent with other research which suggests that the bulk of personal injury cases result in an out-of-court settlement (see, e.g., Ross, 1970; Calabresi, 1970).

Removals to a different court were, as we see from Table 5, never common. They are most likely when an individual sues an organizational defendant. This may reflect the size of the claim in these cases,[18] the fact that people seldom sue individuals from other states, and advantages that organizations may see in raising the costs of litigation to individuals.

V. CASE VALUE

Figure 2 displays the dollar value of cases in each sample according to litigant pairing. Case value is the dollar amount designated in the plaintiff's claim, standardized by using the Consumer Price Index with 1967 as the base year. The four litigant combinations show different patterns in the value of claims. For example, claims initiated by individuals have escalated dramatically in price. From the inception of the time series through the 1910 sample, most individual plaintiffs demanded no more than $1000 in constant 1967 dollars[19] from individual defendants, whereas in each succeeding sample a large majority sought more than $5000, with a large number of claims rising to over $10,000. This discrepancy reflects not only the diversion of cases to the inferior trial court because of a real rise in the lower court's jurisdictional amount, but also the change in legal issues reported earlier for this litigant pairing. Throughout the 1800s legal conflict between individuals stemmed primarily from economic associations, particularly creditor-debtor relations. Apparently, most of their notes were for relatively small sums. The dominant legal issue between individuals in the most recent samples concerns liability for damages resulting from automobile accidents. The invention of the automobile increased the capacity of individuals to do each other harm.[20]

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[18] Removal to federal court on diversity of citizenship grounds requires that a jurisdictional amount, currently $10,000, exclusive of interest and cost, must be satisfied (U.S.C., Title 28, § 1332).

[19] $1000 in constant 1967 currency amounted to $420 in actual 1820 dollars, $270 in actual 1860 dollars, $290 in actual 1910 dollars, but $1163 in 1970 currency.

[20] The relationship between the *ad damnum* and the amount actually being sought probably differs from one field to the next. In debt collection cases, the amount is known and not at issue. Non-debt contract cases may have a wider range, but the amount at stake will generally fall in the vicinity of the contract price. Lost profits, subsequent damages, etc., may serve to complicate matters, but the *ad damnum* should closely relate to the genuine expectations of the plaintiff. The amount stated in a tort claim, however, bears a different relationship to the claimant's expectations for recovery. The *ad damnum* may indicate more about the seriousness of the claim than about the expected size of the settlement check. Thus, increases in the amount

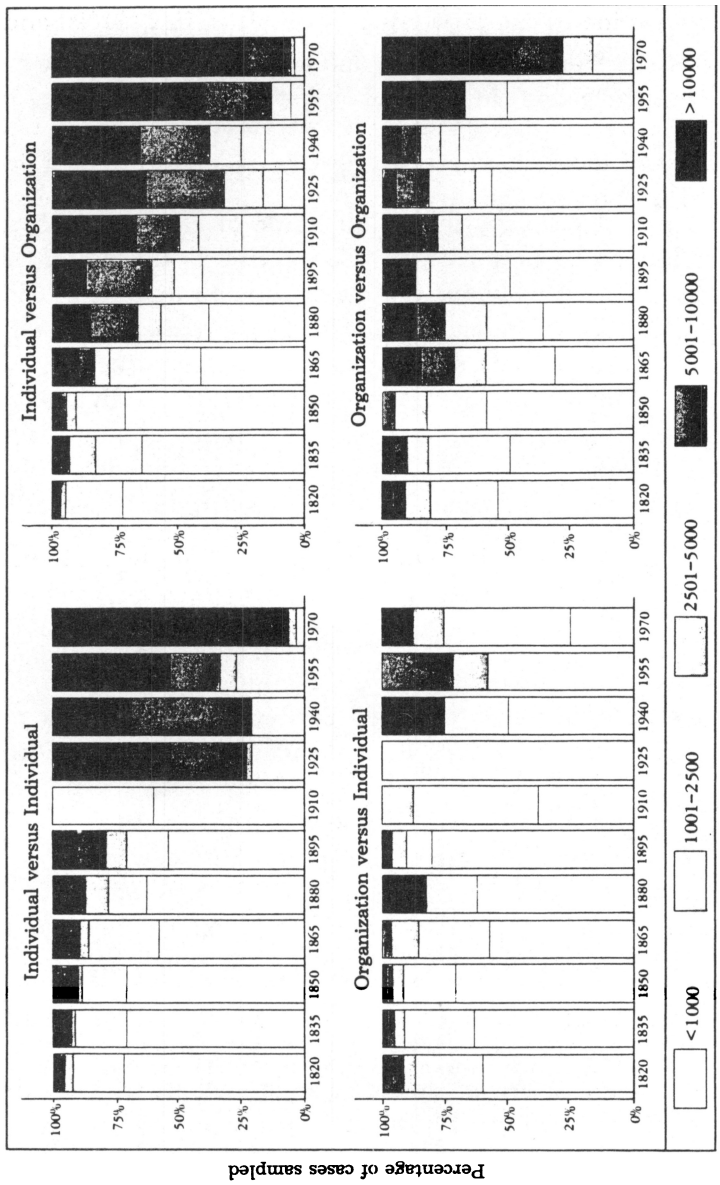

Figure 2. Value of Cases Filed in Constant Dollars (1967) Involving Four Litigant Pairings

Source: St. Louis Circuit Court Archives

The cases filed by individuals against organizational defendants also grow in value across the series, but the escalation starts much earlier. Beginning with 1865, there is a steady decline in the proportion of small claims ($1000 and less) and a gradual gain in the proportion of large ones (over $10,000). The rather high stakes involved in cases initiated against organizations reflect the effects organizations have on the lives of individuals and the potential for substantial damage resulting from individual-organization interactions. In particular, before the automobile made tort actions common between individuals, workplace mishaps were responsible for the most serious compensable damages that most people might suffer. In addition, the relative wealth of many organizations might have served as an incentive for lodging higher priced claims.

Organizations, probably because they are seldom victimized in tort, have generally filed smaller claims. The dollar value of cases brought by organizations against individual defendants is similar across the series, with a slight increase in petitions over $5000 in the last three samples. This may be attributable to the diversion of moderately priced cases to the inferior court as its jurisdictional amount rose. The overall pattern reflects the fact that organizations most commonly used this court to collect debts that were, for the most part, rather small from individuals. Cases initiated by organizations against other organizations also carry a relatively low dollar value. Only the last two samples show a sizeable proportion of cases rising above the $5000 mark. This is somewhat surprising, since many organizations are routinely involved in extremely high stake ventures in their respective markets. These cases, however, are apparently not brought to court (Macaulay, 1963), and when they are brought, they may go to federal rather than state courts. It appears that organizational litigants in the St. Louis court play for small to moderate stakes when they do litigate. It may be that the most frequent organizational defendants are small businesses that are really the alter egos of their individual owners. Organizations, in short, use the court to collect debts from both individuals and other organizations and to manage their commercial relations. In both instances, the value of their litigation in constant currency has not escalated significantly over the time series.

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claimed, as reported here, do not necessarily indicate proportionate rises in amounts recovered or expected to be recovered.

VI. CONCLUSIONS

This paper has compared civil litigators and the demands they have placed upon the trial court in their community from a longitudinal perspective. Historically, individuals have utilized this court to present a claim more often than to defend one. These results are quite plausible for a pool of largely "one shot" litigators engaged in a myriad of loosely connected economic, social, and political transactions. They initiate the legal process episodically and opportunistically if and only if they hope to realize a tangible gain from doing so and without regard to any long-range legal planning. This tendency is less apparent in the nineteenth century but seems increasingly common in the twentieth.

By contrast, organizations have more often defended than initiated claims. One might not expect this from Galanter's (1974) arguments regarding "repeat player" litigators, which are most commonly organizations. But this result should not be surprising. Because of their resources organizations are tempting targets, especially in tort actions. Large organizations are rarely victimized by individuals in ways that make legal action sensible, and small organizations are usually victimized only through bad debts. Moreover, when organizations might bring legal actions, their resource and other advantages mean that they may be able to gain satisfaction without going to court.

The litigation that is brought by individual and organizational plaintiffs grows directly out of their market status and primary non-judicial activities. For example, banks and other financial institutions have persistently litigated debts, and real estate companies have initiated property claims. Cases brought by organizations have, however, diminished both proportionately and absolutely in the recent sample periods. This may reflect in part the expanded jurisdiction of the inferior trial courts, and it also probably indicates the rationalization of commercial life in the debt (Kagan, 1984) and property areas.

Similarly, patterns are visible when we look at which parties defend which claims. Individuals defend a large percentage of debt collections and most property claims, a pattern that reflects their involvement in credit and property transactions. Merchants and manufacturing and transportation companies are conspicuous as defendants across the field of contracts—debts and, more prominently, commercial contracts;

organizations of all varieties, including government agencies, are defendants in tort cases.

The patterns of activity for each clientele group are remarkably stable over an extended period of time, and the changes that do occur seem to reflect basic socioeconomic change. Not only does the primary legal focus of the various parties remain predictable, but judicial outcomes also follow well established patterns. Debt collections meet with a high rate of default regardless of time period or litigant pairing. In property cases, by contrast, individual defendants rarely default and contested judgments are likely. Non-debt contract cases and torts, types of cases that are typically brought against organizations, are often voluntarily dismissed, indicating a settlement, and they seldom result in default judgments.

These variations probably point to a difference in the perspectives of different litigants. Debt collections are difficult to defend for liability is usually clear, and parties with few assets may see no reason to show up in court. This may explain the high rate of default judgments in debt cases. Property cases, on the other hand, are also defended largely by individual "one shotters," but these litigants have assets that they might lose if they are not aggressive. Moreover, the asset in dispute is often indivisible, such as the ownership of a horse, a homestead, or in many pre-Civil War cases, a slave, and this leaves little room for negotiation.

The cases defended by organizations and involving non-debt contracts or tort liability are generally more amenable to partial recoveries and therefore to negotiated outcomes. Thus, while organizational defendants seldom default, they can often maximize their well-being by systematically compromising their disputes. Compromises, as evidenced by voluntary dismissals, are particularly likely where organizational defendants are repeat players, as in tort litigation.

Thus, the findings here indicate that the St. Louis trial court's clientele has shifted over the 150 years examined, but often the shifts tend to be marginal. In addition, demands on the court and outcomes vary systematically but consistently over time, reflecting the adversary pairing and the issue involved.

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