

TRIALS AND TRIBULATIONS: CRISES, LITIGATION, AND LEGAL CHANGE

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Using a data base of 28,000 trial cases decided in four Arizona trial courts between 1912 and 1951, this article examines the relationships between crises, litigation, and policy change. After comparing and contrasting consensus and conflict perspectives on trial court litigation, an interrupted time series design is used to test three propositions derived from the conflict perspective. These propositions concern the impact of crises, namely, world wars and depressions, on different types of litigation; the victory patterns of different types of disputants; the ability of losing litigants to obtain policy relief; and the impact of policy change on varying disputants and litigants. The results suggest the utility of further attempts to explore litigation from an economic and political conflict perspective.

The first half of the twentieth century was a time of unprecedented social and economic crisis. Within this brief period, two world wars and the Great Depression scarred the American social landscape, fundamentally and forever changing American politics and law. The Great Depression was the impetus for a set of legal accords known as the New Deal. The wars paved the way for increased government control and regulation of the private economy.

These crises provide an ideal perspective from which to compare two competing theories of trial court litigation in the American legal/political system. One of these theories emphasizes the role of litigation in the formation of social consensus, while the other focuses upon litigation as a means of economic and political competition and domination.

I. CONSENSUS VERSUS CONFLICT THEORIES OF LITIGATION

A. *The Role of Litigation in Society*

At the most simplistic level, trial court litigation is a means of dispute resolution. Thus, litigation rates presumably measure two characteristics of society—the frequency of particular types of dis-

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putes and the willingness and ability of individuals to convert those disputes into litigation. However, there are a variety of theoretical traditions from which these relationships between society and litigation may be examined.

A "consensus"-oriented theoretical tradition emphasizes that litigation functions to achieve social integration when traditional forms of nonstate control weaken.¹ Nonstate control includes customs, folkways, and regularized patterns of informal dispute resolution. A weakening of nonstate control is marked by more disputes and less reliance on informal and customary forms of dispute resolution (Kidder, 1983: 83).²

An alternative theoretical tradition, which can be encompassed under the rubric of "conflict theory" argues that litigation does not merely provide an alternative to private social control, it also traces major changes in a society's political and economic balance of power (Turk, 1976). From this perspective, changes in who uses the courts and who wins in that use serve as both a measure of power in society and a stimulus for political mobilization that may change the balance of power.

The differences between consensus theory and conflict theory stem from their different assumptions about the role of law. To the consensus theorist, law emerges in a passive evolutionary way to fill the vacuum created by the demise or weakening of informal private or customary means of social integration (Kidder, 1983: 83). The role of law is to maintain stability and harmony. Conversely, from a conflict perspective, law is a tool of group conflict and domination. It is not an invisible hand that ensures stability but is a device used by societal groups, most often economic or political elites, to advance their version of social control (Turk, 1976).

Conceptualizing court use as an aspect of political conflict prompts questions concerning the patterns of court use and who benefits or is disadvantaged by those patterns. A convenient way to address these questions is by characterizing the parties to dis-

¹ What I have labeled the "consensus" theory has many theoretical roots. Most important is probably Durkheim (1964a).

² Consensus theory has led to two different schools of thought about the timing of decreased nonstate control and increased litigation. According to one school, economic development, population growth, and urbanization break down traditional customary relationships and lead to an ever increasing litigation rate as society develops. The second school hypothesizes that nonstate control is particularly weakened during an initial period of economic growth, called a "takeoff" period. Such expansion, it is argued, breaks down or mitigates against the emergence of regularized transaction patterns and customs, leading to an increased reliance on law to regulate social interaction. However, as time passes, regularized transaction patterns emerge, decreasing the need for legal recourse (Munger, 1988).

The first version of consensus theory sees a positive linear relationship between litigation and economic development. The second version sees a curvilinear relationship. However, they both agree that litigation functions to cope with increased social disharmony.

putes in terms of their status as individuals, on the one hand, or as organizations or businesses, on the other (cf. Galanter, 1974a). Four types of disputes result from these characterizations. Type I cases occur between individuals and involve disputes such as divorces or disputes between neighbors concerning property boundaries. Type II cases involve a grieving business or organization (B/O) against an individual (I), as in debt collection or landlord/tenant disputes. Type III cases find an I initiating a complaint against a B/O. Many labor/management cases are of this type. Finally, Type IV cases pit B/O's against each other and may be as simple as a creditor/debtor dispute or as complicated as restraint of trade or merger disputes.

Conflict theory particularly focuses on disputes between individuals and businesses/organizations (Types II and III). Such "interstatus" disputes are important from the conflict perspective because they most clearly show how litigation is not merely a neutral form of dispute resolution, but a reflection of dominance patterns in society.

Conflict theory hypothesizes that businesses/organizations have a considerable advantage in suits with individuals. This hypothesis is based upon two underlying assumptions about the U.S. legal system. First, the use of the legal system requires resources, which are unevenly distributed in U.S. society. As a rule, B/O's have greater resources for litigation than typical individuals (Galanter, 1974b). Second, the law that the courts apply is a result of the political process, which is also disproportionately influenced by those with resources and political skills.

In summary, the differences between consensus and conflict theories of litigation are best seen by identifying the issues to which each directs our attention. Consensus theory is particularly concerned with the long-term pattern of litigation as an indicator of social harmony. On the other hand, conflict theory directs our attention to who uses the courts and with what success. Consensus theory tells us that litigation measures the state's role in social integration. Conflict theory tells us that litigation measures the state role in protecting or limiting economic and political domination.

B. Litigation and Policy Change

Both consensus and conflict theories see litigation as an integral part of the policy process. While tracing litigation patterns is significant in and of itself, it is also significant for what it tells us about policy change. Whereas "the law" is not usually changed by trial court decisions, the pattern of trial court use and the success of such use may reflect and/or motivate policy change. From a consensus perspective, the litigation rate is an indicator of social instability. If the litigation rate increases, we might expect policy

changes from the legislature or appellate courts to reestablish social integration. When such policy changes are made, the litigation rate is an indicator of the remedial action's success.

Conflict theory agrees that litigation both precipitates and measures policy change, but it views the linkages quite differently. The pressure for policy change is not merely motivated by a desire to restore social integration; it also reflects pressure from various groups to maintain or change policy in a way that is most beneficial to their interests. Therefore, an increase in litigation caused by social turmoil will not lead to a call for policy changes from all quarters. The litigants who are winning cases may not want a policy-induced return to "normality." In other words, while consensus theory posits social integration as the goal of policy, conflict theory believes that in some instances social disharmony and increased litigation may be advantageous to some sectors of society (Turk, 1976). Whether social disharmony and increased litigation lead to policy change depends upon the relative political power of those who wish to return to the status quo and those who do not.

From either a consensus or a conflict perspective, therefore, litigation (1) reveals the role of the state in dispute resolution; (2) is an impetus for policy change, and (3) shows the impact of policy change. However, as we have just seen, the characteristics of these linkages are different for each theory.

C. Linkages Between Crisis, Litigation, and Policy Change

Crises, such as war and depression, provide a unique opportunity to compare and contrast consensus and conflict theories of litigation. Both theories give center stage to destabilizing events. Consensus theory sees crises as times of increased litigation and pressure for policy to restore social harmony. Conflict theory sees them as periods of heightened group and class conflict, an ideal setting for understanding the court's role as an indicator of the political and economic balance of power.

Both theories agree generally on the relationships among crises, litigation, and policy change, as depicted in Figure 1. The model reveals four relationships. First, crises affect the rate and types of disputes in society. Second, the rate and types of disputes affect the litigation rate. Third, as the litigation rate and types change, there will be pressure for policy change. Fourth, policy changes will induce changes in the litigation rate.

From the consensus perspective, crisis turmoil increases all types of disputes, raising the overall litigation rate. The increased litigation is an indicator of social instability, which precipitates policy designed to restore social integration. The litigation rate also measures the effectiveness of such policy, with decreased litigation being an indicator of success. The conflict perspective accepts generally the significance of these four relationships but insists that

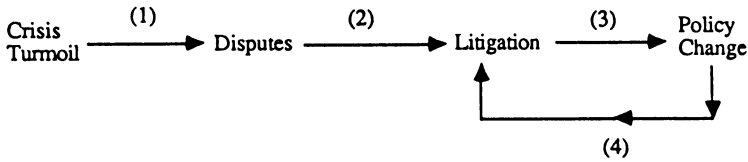


Figure 1. Simple model of crisis-related policy change

we can only understand them by realizing that each is mediated by economic and political conflict. To help clarify this aspect of the conflict theory, I will consider each of the relationships individually.

1. The Linkage Between Crises and Disputes Both consensus and conflict theories predict a rise in disputes as a result of crises. However, consensus theories tend to emphasize the overall destabilizing effect of crises and thus their exacerbation of all disputes. Conflict theory, on the other hand, focuses on the particular effect of crises on interstatus disputants (Types II and III, i.e., B/O versus I and I versus B/O).

Consensus theories predict the rise of I versus I disputes, such as domestic relations conflicts, as well as the increase in interstatus disputes to demonstrate the overall destabilizing effect of crises. While not disagreeing with this point, conflict theory emphasizes the particularly large increase in crises-related interstatus disputes. A crisis will be a time of unusually high levels of such conflict. Rising levels of debt collection, foreclosures, shortages, and labor problems will inevitably increase interstatus disputes during crises. Conflict theorists believe that by focusing only on the aggregate level of disputes, consensus theorists miss the patterns of economic and political domination in crisis-related disputes.

2. The Linkage Between Disputes and Litigation Following from its generally undifferentiated view of disputes, consensus theory is primarily concerned with measuring and explaining the aggregate increase in litigation that results from crisis-related increases in disputes. Conversely, the conflict theorist asks which individuals or groups are able and willing to convert their crisis-related disputes into litigation.

The answers predicted by each theory might well be the same if they had asked the same questions. However, the significant point is that they do not ask the same question. Unlike the consensus theorist, the conflict theorist would have us ask about the relative economic ability of various classes of disputants to use the courts. Similarly, conflict theory asks about the political origins of those advantages. In attempting to answer these questions, the conflict theorist looks to economic and political power as the bases

of litigation success. While these patterns of domination are true at all times, the conflict theorist would predict that a crisis may even further enhance the ability of those with economic and political power to use the legal system successfully. Those with such power are disproportionately able to ride out a crisis and even further widen their advantage over individuals without such a reservoir of resources.

3. The Linkage Between Litigation and Policy Change From a conflict perspective, the linkage between litigation and pressure for policy change is also shaped by economic and political group conflict. The goal of policy pressure is to achieve success, not social integration. Again this suggests that we focus our attention on interstatus disputes.

Consensus theorists see policy response as an almost automatic homeostatic device to remedy crises-caused social disruption and consequent increased litigation. Conflict theory directs us away from the automatic, toward the political. Who is advantaged by the current rise in litigation? Who is disadvantaged? What is the relative economic and political power of the disputants? Which litigants are likely to succeed in seeking policy relief from any hardship caused by increased litigation? Conflict theory suggests that those with economic and political power are likely to dominate the linkage between litigation and policy relief.

4. The Linkage Between Policy Change and Litigation From a consensus perspective the impact of a particular policy change is evaluated by asking whether it has restored social harmony. Has it decreased the litigation rate? Conversely, from a conflict perspective policy impact is measured by assessing who was advantaged and who was disadvantaged by the change.

C. Some Tentative Propositions

Sole reliance on a consensus perspective limits the range of questions asked and hypotheses tested in research on litigation trends. Conflict theory may add to our understanding of litigation trends by raising different kinds of issues and by suggesting different hypotheses. However, it is not useful at this early stage in the development of a conflict theory of litigation to propose a critical test of the relative explanatory powers of consensus and conflict theories. Rather, the approach I take is to present several general propositions suggested by the foregoing discussion of conflict theory. If these propositions appear tenable in light of the data analysis that follows, further consideration of conflict theory to explain litigation would seem warranted.

Proposition 1:

While all forms of litigation will increase during crises (as predicted by the social disruption assumptions of the consensus theories), crises will particularly increase inter-status litigation.

Proposition 2:

Business and organization litigants may be expected to have more economic and political power than individual litigants and therefore will always be disproportionately successful in cases against individual litigants, but that advantage will become even greater during crises.

Proposition 3:

The extent to which crisis litigation causes or reflects policy changes will depend upon the political and economic power of the proponents of those changes.

II. DATA COLLECTION AND CODING

In order to evaluate these propositions, I use docket data and other archival sources from the state of Arizona between 1912 (statehood) and 1951. While other forms of crises could be used, I focus upon major depressions and wars. In addition to the Great Depression of the 1930s, Arizona, like many midwestern and western states, experienced a severe post-World War I depression in 1921 and 1922. Thus, the study period encompasses alternating periods of good times (1912–20), depression (1921–22), good times (1923–29), depression (1929–37), good times (1938–51). The time frame also encompasses the two world wars and three periods of peace.

The data base consists of superior court cases filed during the period 1912–51.³ A sampling of counties and of cases in those counties yielded a representative sample of 28,000.⁴ While the data certainly do not provide a perfect measure of the relative economic and political power of disputants, I coded the data in terms of the individual or business/organization character of the disputants, the assumption being that businesses/organizations will be both economically and politically superior to individuals. Therefore, for each year the rate of cases per 10,000 population was calculated for I versus I, I versus B/O, B/O versus I and B/O versus B/O.

³ The Superior Court of Arizona is the state's general jurisdiction trial court. Its jurisdiction extends to all cases in law and equity not specifically vested by the constitution in other courts, the latter consisting of those few cases reserved by the constitution for the supreme court and those civil cases under \$500 reserved for the justice courts. Cases involving from \$500 to \$1,000 were under concurrent jurisdiction of both the justice and superior courts. The superior court also deals with all domestic relations cases but not probate matters. While the superior court does have criminal jurisdiction, such cases were not included in this analysis.

⁴ For a discussion of the sampling method used, see Stookey (1986: 291–93).

Wars and depressions are characterized by significantly different economic and political manifestations. For example, while depression is a period of economic slowing and unemployment, war is a period of rapid mobilization, shortages, and overemployment.⁵ Therefore, it seems appropriate to evaluate each of the propositions with regard to these two types of crises separately.

Within the confines of these admittedly limited operational measures, proposition 1 suggests that crises will lead to disproportionate increases in interstatus litigation, particularly that initiated by B/O's against individuals. Proposition 2 in turn suggests that there will be a heightened degree of B/O victory during crisis periods. Finally, proposition 3 says that any linkage between these crisis-related litigation patterns and policy change will be weighted in favor of the interests of B/O's.

In order to evaluate proposition 1, I use an interrupted time series design, with the various litigation rates as dependent variables and war and depressions coded as interventions.⁶ Proposition 2 is evaluated by calculating the relative success of various types of litigants within each of the four litigant pairs (I versus I, I versus B/O, B/O versus I, and B/O versus B/O). Finally, proposition 3 is evaluated through an historical narrative of litigation-related policy changes during the crisis periods.⁷

⁵ In the analysis I also included a postwar variable on the assumption that there might be a "release" of pent-up disputes that were not litigated during the war.

⁶ For a description of the technique used see Lewis-Beck (1986). Simply, my approach was to conceptualize the beginning of each crisis as an intervention in the litigation time series. I determined the exact character of the intervention to reflect the likely impact of that intervention. In some instances, the intervention was simply a pulse function. For example, because the first depression was so short and because the expectation was that there would be a large, rapid, but brief increase, the depression years were coded 1, while other years were coded 0. For other interventions I included both an intercept change factor and a slope change factor.

The actual codes for each variable are given in Appendix 1. Some minor variation in the timing of the intervention results from my uncertainty about the difference in lag times associated with each litigation type. Therefore, for each intervention I would hypothesize a year and then check the statistical results for that year and for other years immediately before and after that year. The year selected is the one which best explains the data. While this approach biases the results in "my" favor, it seems an appropriate research strategy, given our primitive understanding of lags between social change and litigation.

⁷ Data from the policy analysis came from *Arizona Session Laws* and from the state's leading newspaper. With two student coders I analyzed all volumes of the *Arizona Session Laws*. We sought to identify all pieces of legislation that concerned matters which either might influence litigation or reflected litigation. Obviously a subjective element was involved in this selection, but resources precluded an analysis of all statutes, and a purposive approach seems more appropriate for this study than some type of random sample.

We carried out content coding of the *Phoenix Gazette* primarily for periods of crisis using random and purposive checks. Random checks were conducted for one day per month during depression and war years. Purposive checks were made for the entire week before and after an important piece of relevant legislation was passed, such as the foreclosure moratorium of 1933.

III. DATA ANALYSIS

A. *Depressions*

Proposition 1: Crises and Litigation Figures 2–5 plot the rates of the four pairings of litigant types.⁸ Table 1 presents the time series analysis of the effects of the various crisis interventions of the four rates.⁹

All four forms of litigation increased significantly during the 1921–22 depression. The actual impact of the depression was confounded somewhat, however, by its proximity to World War I. For example, the increase in I versus I cases resulted largely from increased divorce cases accompanying the end of the war. The remaining increase relates to the economic character of I versus I cases during the early years of Arizona history. In the teens and twenties most loans to individuals in Arizona were provided by other individuals rather than by banks (businesses or organizations). Therefore, with the onset of this early depression there were a considerable number of debt-collection cases involving I versus I. This was less so by the time of the Great Depression, when much of the loan activity had been taken over by banks and other commercial organizations, resulting in an increase in B/O versus I cases rather than I versus I.

This interpretation is supported by the data from the Great Depression. In that instance, I versus I litigation, including divorces, rather steeply decreases for the first few years of the depression, while the three other litigation types increase even more steeply. As the Great Depression continues, the slopes of the I versus B/O, B/O versus I, and B/O versus B/O litigation lines make a negative shift, reflecting the slowing of the economy and decreased debt-collection and labor-management litigation. On the other hand, the continuing social strain of the depression is manifested by a statistically significant increase in the slope of the line reflecting I versus I litigation.

The effect of depression is most pronounced with regard to B/O versus I cases. Between 1919 and 1921 the rate of such cases rose from 26.82 per 10,000 to over 67 per 10,000. Similarly, between 1929 and 1932 this same rate rose from 39.65 to 52.71. In terms of the mere number of people affected, these cases clearly experience the greatest increase.

Consensus theory has a role in explaining these patterns. All types of litigation do increase during depressions. In fact I versus I

⁸ Because the economic cycle is so important to the analysis of crises and their impact on litigation, in each of the time series I have plotted an economic cycle. For a description of how it was calculated see Stookey (1986: 293).

⁹ In time series analysis autocorrelation may significantly inflate measures of statistical significance. In handling this problem, I follow the approach taken by Munger (1988: 83 n.32). Whenever the Durbin-Watson statistic indicated that autocorrelation was present, I have used the Cochrane Orcutt correction procedure. The data reflect such corrections, where appropriate.

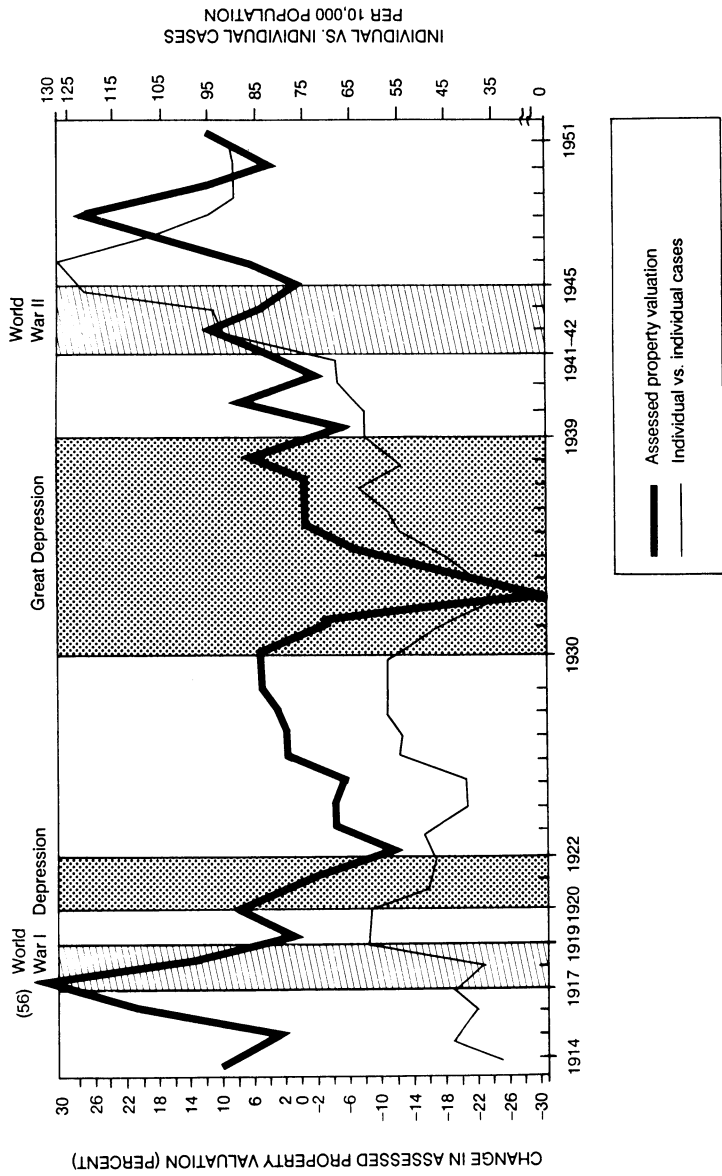


Figure 2. Rate of individual versus individual cases per 10,000 population plotted against economic cycles, depressions, and wars.

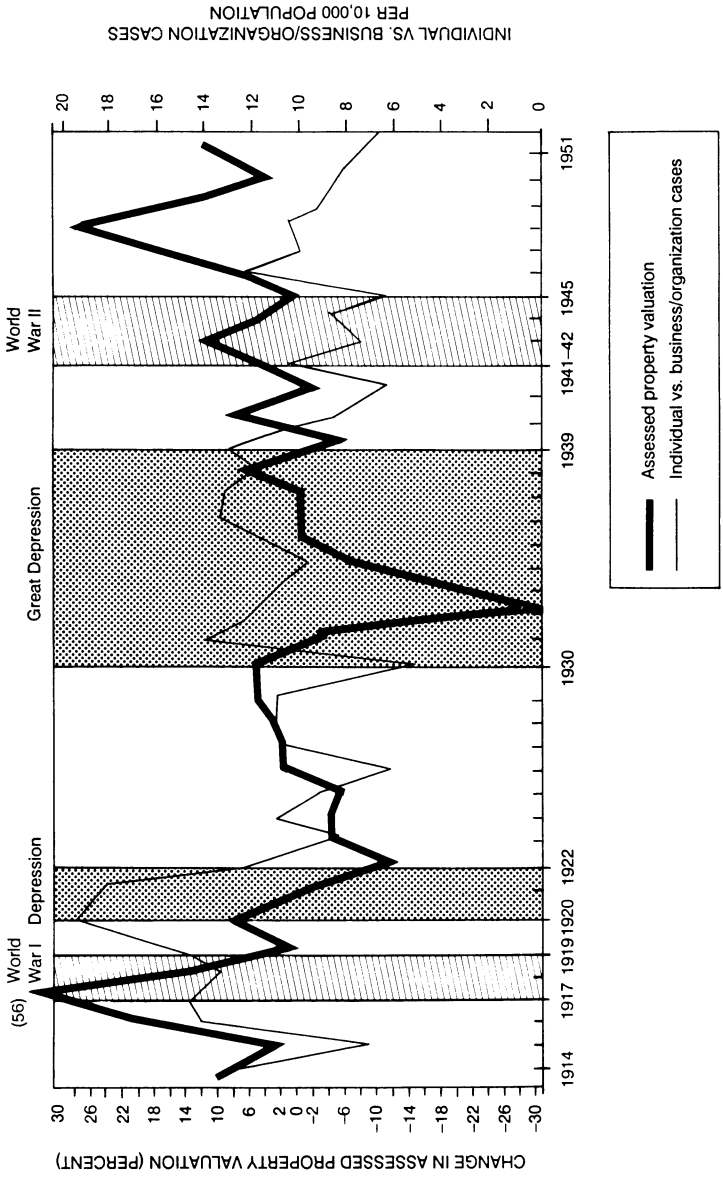


Figure 3. Rate of individual versus business/organization cases per 10,000 population plotted against economic cycles, depressions, and wars.

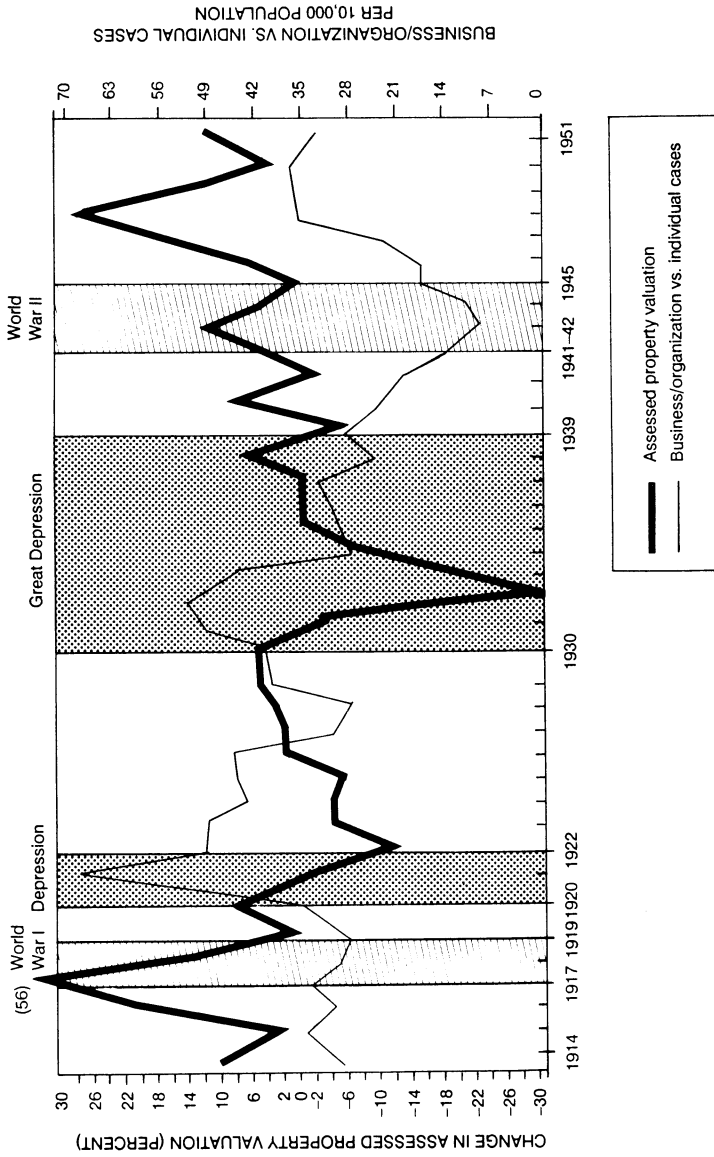


Figure 4. Rate of business/organization versus individual cases per 10,000 population plotted against economic cycles, depressions, and wars.

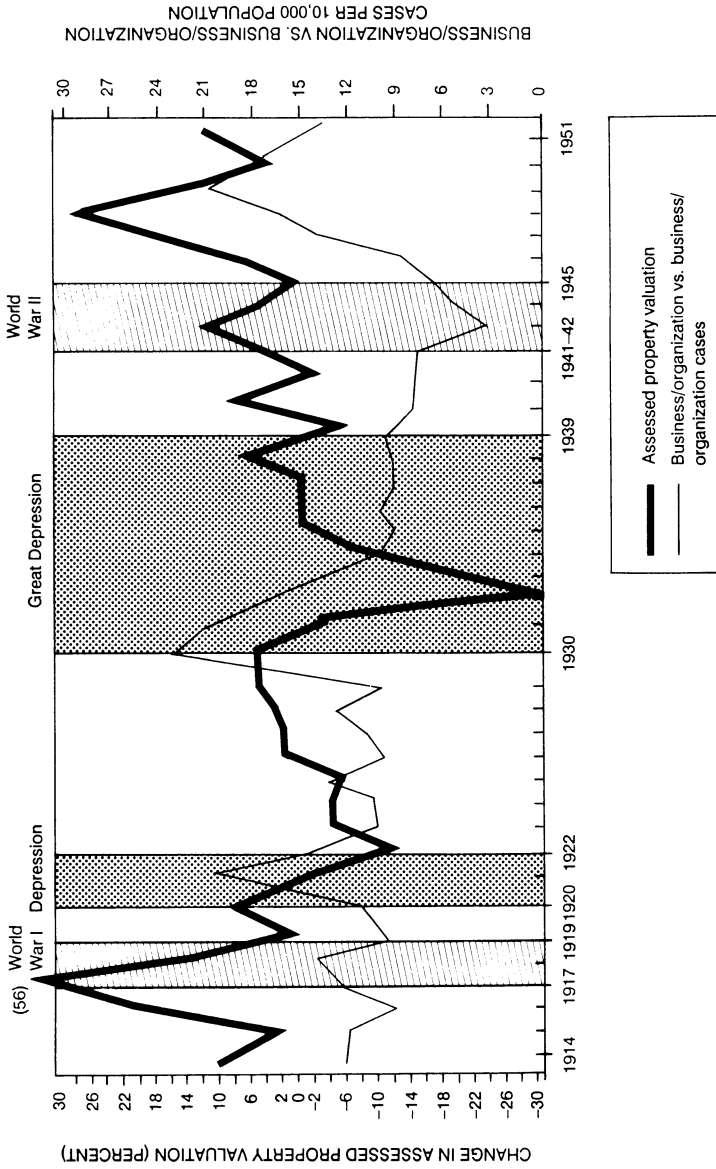


Figure 5. Rate of business/organization versus business/organization cases per 10,000 population plotted against economic cycles, depressions, and wars.

Table 1: Time Series Analysis of the Relationship Between Crises and Litigation Change

	Type of Case			
	I Versus I	I Versus B/O	B/O Versus I	B/O Versus B/O
Depression 1				
<i>b</i>	18.96	8.26	37.48	10.54
<i>t</i>	4.44	4.78	4.94	5.55
<i>s</i>	****	****	****	****
Great Depression				
Intercept				
<i>b</i>	-10.88	2.56	14.46	10.52
<i>t</i>	-2.38	2.01	2.71	5.99
<i>s</i>	***	**	***	****
Slope				
<i>b</i>	1.98	-.13	-2.80	-1.39
<i>t</i>	3.03	-.45	-3.44	-5.78
<i>s</i>	***		***	****
World War II				
Intercept				
<i>b</i>	2.34	-4.05	-1.87	2.28
<i>t</i>	.31	-1.57	-.86	.67
<i>s</i>		*		
Slope				
<i>b</i>	11.54	-.12	.15	.33
<i>t</i>	4.40	-.19	.03	.28
<i>s</i>	****			
Post-World War II				
Intercept				
<i>b</i>	-25.46	5.51	.389	2.70
<i>t</i>	-3.39	2.03	.44	.90
<i>s</i>	****	**		
Slope				
<i>b</i>	-17.49	-.60	6.39	2.71
<i>t</i>	5.60	-.77	1.78	2.20
<i>s</i>	****		*	**
Trend				
<i>b</i>	0.87			
<i>t</i>	4.17	NO SIGNIFICANT TREND PRESENT		
<i>s</i>	****			

NOTE: Types of Cases: I Versus I = individual versus individual; I Versus B/O = individual versus business/organization; B/O Versus I = business/organization versus individual; B/O Versus B/O = business/organization versus business/organization

* Significant at .10 level.

** Significant at .05 level.

*** Significant at .01 level.

**** Significant at .001 level.

litigation shows the most lasting impact of depressions. However, these findings also strongly support the underlying assumption of conflict theory. It would be a mistake simply to measure the aggregate impact of a depression on litigation. The relationship between a depression and litigation is a complex one that requires us to take into consideration the character of the disputes, and more importantly, the character of the parties.

An interesting aspect of that complexity is the rapid rise in interstatus litigation at the beginning of a depression and the equally rapid decline as the depression persists. This pattern suggests that both consensus and conflict theories of litigation must take into account that there comes a point in a depression when the social disruption is no longer converted into litigation. Conflict theory can be logically extended to include the proposition that an extended depression may lead to such great economic domination that litigation ceases to be a useful or necessary device for protecting the interests of the economically and politically powerful.

Proposition 2: Who Wins and Who Loses We have already seen that individuals in cases initiated by B/O's experience the largest absolute increase in litigation during depressions. According to proposition 2 we should also expect B/O's to increase even further their normally high success rate in these cases.

Unfortunately, winners and losers are not as easily determined as one might first think. When either the defendant or plaintiff wins at the trial court level, the conclusion is simple. However, a large percentage of cases are terminated by dismissal with or without a settlement. The meaning of such dismissals is much more difficult to discern. Limiting discussion to the proportion of cases clearly won either by the defendant or plaintiff, I have determined the plaintiff and defendant pure victory rate (number of cases won by plaintiff or defendant divided by the total number of cases) for five-year intervals for each of the four major types of litigation (see Table 2).¹⁰

While the plaintiff has the advantage in all case types, the highest rate of success is achieved by the B/O plaintiff in actions against individuals. Similarly, the defendant in such cases has by far the lowest victory rate of any defendant type. The data in Table 2 show that while the rate of individual losses to B/O plaintiffs is always high, their loss rate increased even further during the Great Depression. Between 1932 and 1937, the B/O plaintiff won a full 63.1 percent of the cases it initiated against individual defendants. This is 17 percent higher than the victory rate for any other

¹⁰ Divorce cases were excluded from this analysis because the plaintiff is the victor in almost every such case. This fact, when combined with the large numbers of divorces, would totally mask the victory pattern for other I versus I cases.

plaintiff type and 14 percent higher than the victory rate of B/O plaintiffs over individual defendants for any other time period.

These data support the proposition that a depression is not merely a generalized destabilizing event. It works particular hardship upon individual disputants while strengthening the hand of business and organizational disputants. Charting and explaining these effects seem a necessary precondition of any successful theory of litigation and society.

Proposition 3: Policy Change and Losing Litigants. The preceding results suggest great motivation for political mobilization on the part of individuals during depressions. Not only are individuals taken to court much more often by B/O litigants during depressions, but the B/O victory rate increases substantially over and above an already impressive success record. However, conflict theory, as I have articulated it, predicts that such individuals would be unlikely to have the economic and political clout to push successfully for policy relief from B/O domination. Thus, we should expect little, if any successful pressure for such policy change.

My review of newspapers and *Session Laws* is consistent with that expectation. There was an almost total lack of political pressure and agitation for political change during the depressions. I found only one concerted and successful effort for policy change in response to the depression. Farmer organizing and mobilization in response to trial court eviction attempts received front-page headline attention in the *Phoenix Gazette* in February 1933: "Police Guard Statehouse at Mortgage Bill Hearing."

The mortgage bill provided that while foreclosure cases could be filed, they could not be terminated during a two-year moratorium. For the duration of the moratorium, the courts were to "manage" the properties for which foreclosure suits had been filed, balancing the rights and interests of the occupants as well as those of the financial institutions. The legislation rapidly passed both the House and Senate and was immediately signed into law by the governor. With the exception of several tax moratoriums, this was the only measure addressed to or passed for debt relief during the depression. There is no evidence of pressure for tenant relief or for relief from other types of debt.

Consensus theory explains the successful debt moratorium fight as a quintessential example of the homeostatic tendencies of the legal system. The farmers' success demonstrates the self-correcting nature of the system by showing the ability of disadvantaged groups to organize and to exert countervailing power against businesses and organizations.¹¹

¹¹ That farmers were organized is indicated by the large number who attended the legislative session and by the groups represented at the hearings. The day of the vote on the legislation, the Senate gallery was filled to capacity with farmers and both the director of the American Farm Bureau Federation

Table 2. Plaintiff and Defendant Victory Rates by Type of Case and Year (Divorce Cases Omitted)

Tears	Type of Case											
	I Versus I			I Versus B/O			B/O Versus I			B/O Versus B/O		
	% Plaintiff Won	% Defendant Won	%	% Plaintiff Won	% Defendant Won	%	% Plaintiff Won	% Defendant Won	%	% Plaintiff Won	% Defendant Won	%
1912-16	41.5	13.1	31.1	31.1	14.9	47.4	47.4	4.4	45.7	6.0		
1917-21	31.0	7.8	25.7	25.7	14.3	39.8	39.8	3.9	31.3	6.6		
1922-26	40.7	9.6	26.3	26.3	14.2	49.0	49.0	3.4	37.5	6.9		
1927-31	35.4	14.0	32.7	32.7	6.4	46.4	46.4	1.8	42.2	7.3		
1932-36	31.6	12.2	29.1	29.1	8.2	63.1	63.1	2.2	42.2	5.8		
1937-41	29.1	7.5	26.8	26.8	12.3	47.4	47.4	2.6	39.4	7.9		
1942-46	46.1	3.7	29.0	29.0	8.5	29.2	29.2	4.3	33.2	5.5		
1947-51	27.3	7.0	24.5	24.5	12.6	39.5	39.5	1.5	31.7	5.0		

NOTE: “% Plaintiff Won” and “% Defendant Won” do not sum to 100 percent because many cases were without resolution.

Conflict theory takes a different view. Creditor/debtor disputes during a depression highlight the class character of crises. While the banks certainly would have preferred getting their money to acquiring “worthless” farms, the legal system is designed to allow the creditor to make the most of a bad situation. Why, then, were the farmers successful? There is a divergence of opinion among those who might support a conflict perspective. An instrumental Marxist, for example, who would likely predict that any policy change would be supportive of B/O’s and the capitalist class, might be hard pressed to account for the success of the moratorium (Carnoy, 1984: 217–20). A structural version of Marxist theory predicts some concessions to the working class and individual disputants as a way of rationalizing and protecting the system (Skocpol, 1981; Carnoy, 1984: 217–20). The moratorium would thus be seen as a means of system maintenance.

A third version, best articulated by Fred Block (1977) and Theda Skocpol (1980), critiques the instrumental and structural approaches as failing to recognize that the state and state managers are not merely pawns of the economically and politically powerful but rather are independent self-interested actors. From this “state manager” view, we can only predict likely policy changes by considering the goals and motivations of state managers as well as the goals of disputants.

While accepting the general theoretical premise that state managers are normally more likely to respond to organization and business interests than individual interests, Block and Skocpol argue that crises are exceptions to this general rule. State managers are motivated by a desire to maintain their position. During good times this is most successfully accomplished by meeting the needs of elites and businesses, so as to ensure business confidence, private investment, and economic prosperity. However, crises simultaneously weaken the power of the usual power brokers, while increasing the extent to which government managers need the support, or at least acquiescence, of the general citizenry. Since state managers have

a fundamental role in maintaining order and political peace, which crises jeopardize, state officials are apt to grant concessions, even though they may be at the expense of dominant groups. Such actions reflect the government’s primary interest in extracting economic resources, recruiting military personnel, and diffusing potential violence during a difficult period of national management. (Rasler, 1986: 924)

Unlike consensus theorists who see policy as a near-automatic means of maintaining social integration, or crude Marxist theorists

and the president of the American Farm Bureau were present (*Phoenix Gazette*, 22 February 1933, pp. 1–2). On necessary preconditions for successful political organization and pressure, see Tilly (1978).

who see policy as always a way of advantaging the elite, state manager theorists hypothesize that state manager self-interest leads to policy in favor of elites during good times but in favor of individual citizens during crisis times. This means that losing individual litigants who are able to organize have a better chance of achieving policy success during crises than during periods of normality.

Farmer policy success seems to provide some support for both consensus theory and the state manager version of conflict theory. As the consensus theorist tells us, the ability to organize is the key to successful political pressure and that ability is possessed by groups other than just the economic and political elite. However, the state manager version of conflict theory provides additional insight into the process by suggesting why policymakers would be particularly likely to respond to organized debtor interests during crises.

B. War

Proposition 1: Crises and Litigation A preliminary analysis of the data revealed no relationship between World War I and any of the litigation rates. As a result, it has been dropped from the equations. Apparently the short duration of the war and its relative isolation from the Arizona economy restricted the war's direct impact on litigation. World War II, with its greater duration and its impact on Arizona, significantly affected I versus I and I versus B/O litigation.

During World War II, as with the depressions, the large positive shift in the I versus I slope results primarily from divorce cases. If such cases are removed, I versus I litigation has a slight downward trend probably reflecting both decreases in disputes and willingness to convert disputes into litigation during wartime. Similarly, I versus B/O cases significantly decrease with the onset of World War II.

B/O-initiated litigation does not reveal significant change in either intercept or slope with the onset of World War II. If anything, there is a continuation of the decline in such litigation that had begun in the Great Depression. While the rapid economic mobilization and shortages associated with war ought to have increased disputes, all types of litigation (except divorce) show a decrease or continued downward trend. These patterns suggest that whether the theoretical framework is consensus or conflict, all crises cannot be treated as undifferentiated events.

Consensus theory sees war, as opposed to depression, as a force that facilitates rather than destroys informal means of dispute resolution. War draws people together and increases social harmony. Therefore, there is less demand for litigation. The downward trend in litigation is also strengthened by the absence of a large portion of the male population and the general unavailabil-

ity of credit or other business/individual interactions that could lead to disputes.

Conflict theory must certainly accept the validity of these explanations. It adds two other operative factors, however. First, World War II came on the heels of the Great Depression. The legal system had already been used by the economic and political elite to the extent possible to protect its interests. All existing disputes had been exhausted. Second, as the war mobilization led to increased potential for such disputes, state manager theory expects the state to step in to limit and control the emergence of these new disputes. The role of state managers in controlling war-related interstatus conflict will be discussed below.

That B/O-initiated litigation was reduced by either government regulation or some type of war spirit is supported by post-World War II litigation patterns. While I versus I litigation returned dramatically to a lower level as war-related divorce decreased, both B/O-initiated litigation types significantly increased. This seems to suggest the possibility that such disputes were pent up because they had not been converted into litigation. As soon as the war was over, business-related disputes and interstatus disputes that had been building up during the war were released and converted into litigation.

Proposition 2: Who Wins and Who Loses? That the litigation consequences of war are different than those of depressions is further supported by the victory patterns in Table 2. While B/O plaintiffs in B/O versus I litigation had their greatest success during the Great Depression (63.1 percent), they had their lowest success rate during the war years of 1942–46 (29.2 percent). This may have resulted from a “war harmony” but more likely indicates that most of the debt-collection and foreclosure cases, which are almost sure wins for banks and other lenders and which had accounted for the great victory margin for B/O’s during the depression, had dried up as a result of the long depression and war.

Proposition 3: Policy Change and Litigation World War II presents an interesting relationship between litigation and crisis that again pits consensus theory against conflict theory. The relationship, however, seems to be different from the one we observed during the depression. World War II saw the passage of policy to facilitate litigation rather than limit it. The landlord/tenant issue is a good example of this.

As Figure 3 shows, the rate of I versus B/O cases doubled between 1945 and 1946 and then dropped back down to a more typical rate. Much of that increase is accounted for by suits initiated by tenants against landlords. The World War II rise to unprecedented levels of landlord/tenant cases is reflected in Figure 6. These cases increased so rapidly because of the housing shortage

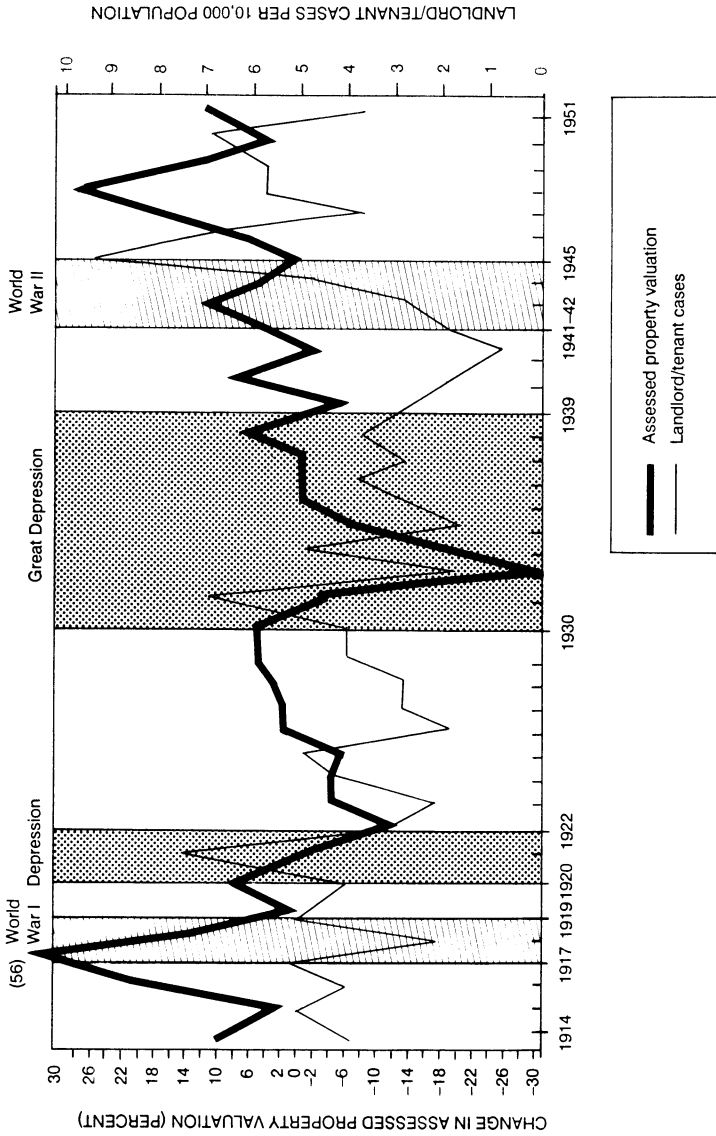


Figure 6. Rate of landlord/tenant cases per 10,000 population plotted against economic cycles, depressions, and wars.

and policy changes that controlled rent level and allowed tenants to sue landlords for violations.

In January, 1942, the federal government passed the Price Control Act. In this act Congress granted legal authority to take violators of these controls to court. Most of the litigation that resulted from this legislation was taken to federal, not state, courts. However, at the encouragement of OPA officials, certain states passed legislation that stated, in effect, that any OPA regulation violation would also be considered a violation of state law. Arizona was one of only a handful of states to pass such legislation.

While the war-related legislation had an obvious effect on the business of the Arizona trial courts, what was the source of this policy change? As John Kenneth Galbraith, Director of OPA's Price Division, wrote in 1942, "We hoped that the public would become aroused over this bill. The public, by and large, [however] is unaware of the issues" (U.S. Office of Price Administration, Office of Temporary Controls, 1947).

If individual citizens were not pushing for this legislation, who was? The state manager version of conflict posits that the key to understanding this policy is to understand the motives of the policymakers themselves. Those motives are twofold. First, state managers desire to maintain social harmony to facilitate the war effort and protect their positions. Second, the ideology of state managers that had developed in the preceding years supported interventionist responses to crisis.

We get a picture of a set of state managers who came into office with a reform-oriented administration, who then served their formative years in attempts to develop state policy to ameliorate the depression (Skocpol, 1980). When war approached, it was natural that such leaders would think in similar terms and respond in a way consistent with their ideology (outlook), namely, by providing for state intervention in behalf of "have not" interests (tenants and consumers).

Consensus theory, then, again responds that rent control is another perfect example of the homeostatic tendency of the law. State manager theory agrees that the state attempted to ameliorate the crisis, but asserts that it offers a more explicitly theoretical explanation of how and why such accommodation comes about. That explanation centers on interstatus conflict, how that conflict changes during crisis, and the role of state managers in mediating the conflict.

IV. IMPLICATIONS

The results presented here are obviously preliminary and tentative. However, they are suggestive of the possible significance of a conflict perspective on crises, litigation, and policy change. This does not mean that the work of consensus theorists is wrong or

should be abandoned. As we have seen, consensus theory provides important insights into the role of litigation. However, what I have tried to show is that the further questions suggested by conflict theory lead us to a more complete and theoretically significant examination of litigation.

The keys to these theoretical developments are an understanding of the significance of the economic and political characteristics of the disputants and litigants and appreciation of the independent importance of state managers. Keeping these factors in mind leads to a rich set of questions about the effects of crises on different types of litigation; the victory pattern of different types of litigants; the ability of losing litigants to obtain policy relief; and the impact of policy change on varying disputants and litigants. While this initial and preliminary exploration has required some simplifying assumptions and has thus yielded only partial explanations, I hope that it points toward the utility of further research from a conflict perspective.

Appendix 1. Coding of Crisis Interventions

	I vs. I	I vs. B/O	B/O vs. I	B/O vs. B/O
Depression I				
Pulse only	1919-20=1 Others = 0	1920-21=1 Others = 0	1921=1 Others = 0	1921-22=1 Others = 0
Great Depression				
Intercept	1912-32=0 1933-51=1	1912-30=0 1931-51=1	1912-30=1 1931-51=1	1912-29=0 1930-51=1
Slope	1912-32=0 1933-51=1,2,3, . . .,n	1912-30=0 1933-51=1,2,3, . . .,n	1912-30=0 1933-51=1,2,3, . . .,n	1912-29=0 1933-51=1,2,3, . . .,n
World War II				
Intercept	1912-42=0 1943-51=1	1912-39=0 1940-51=1	1912-40=0 1941-51=1	1912-40=0 1941-51=1
Slope	1912-42=0 1943-51=1,2,3, . . .,n	1912-39=0 1940-51=1,2,3, . . .,n	1912-40=0 1941-51=1,2,3, . . .,n	1912-40=0 1941-51=1,2,3, . . .,n
Post-World War II				
Intercept	1912-45=0 1946-51=1	1912-45=0 1946-51=1	1912-44=0 1945-51=1	1912-44=0 1945-51=1
Slope	1912-45=0 1946-51=1,2,3, . . .,n	1912-45=0 1946-51=1,2,3, . . .,n	1912-44=0 1945-51=1,2,3, . . .,n	1912-44=0 1945-51=1,2,3, . . .,n