

CIVIL LITIGATION AND MODERNIZATION: THE WORK OF THE MUNICIPAL COURTS OF BREMEN, GERMANY, IN FIVE CENTURIES, 1549–1984

CHRISTIAN WOLLSCHLÄGER

The article presents preliminary findings of a caseload study which covers preindustrial and industrial periods of judicial activity in Bremen, Germany. It discusses the historical comparability of the data and opposes evolutionary approaches in longitudinal research. Waves and exponential trends are examined as stable elements in the time series. Five historical periods of different growth patterns are distinguished. Higher litigation rates of previous times lead to the conclusion that modern society handles far more potential legal conflict with relatively less litigation than did society in earlier periods.

I. INTRODUCTION

In many ways, modern society favors a growth in the number of lawsuits. For example, because economic growth requires more contractual transactions to distribute goods and services among consumers, the number of potential disputes that may be taken to the courts is permanently increased. Other types of disputes such as divorce cases, also arise more often and lead to more litigation. Personal estrangement, which is often felt to be characteristic of modern human relations, makes the private settlement of disputes even more difficult. In former times, the close communities of small towns and villages favored the nonjudicial solution of conflicts through subtle modes of social control. Since such intimacy has often been replaced by anonymity, there has been less opportunity to use alternate forms of dispute resolution to avoid lawsuits. Because all these factors tend to produce more work for the courts, it seems clear that increased civil litigation is characteristic of societal modernization, especially industrialization and urbanization, which essentially shaped modern society during the nineteenth century.

The ideal test of this theory would be a time series of court

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caseloads that reaches back to the preindustrial period. If the age of industrialization is actually marked by a permanent change in the patterns causing litigation, a break in the secular trend should be visible at the historical dividing line between agrarian and industrial societies. The data on civil litigation in Bremen, Germany, are presented here for the first time (see Fig. 2 below) in an attempt to provide such historical evidence. This time series, which starts in the year 1549, allows us to view the workload of the civil courts of first instance during the crucial transition from preindustrial to industrial development. Moreover, because it covers about 250 years spanning the sixteenth to the eighteenth centuries (the “early modern period”), significant structural changes in the preindustrial development of judicial activity in one of the largest German cities can be shown.

This article provides a preliminary report on the research that focuses on the theoretical questions about development and industrialization that are raised by the sheer length of the Bremen series (cf. McIntosh, 1980–81; Ranieri, 1985; Wollschläger, 1989).

The civil courts of Bremen have functioned for more than five centuries under widely varying conditions. Before analyzing the data, however, it is legitimate to ask whether it makes sense to go that far back into history to the age of the Spanish conquest of Latin America and to the Reformation in Europe. Therefore, I first consider the comparability of the data drawn from so many years. I examine the dimension of change in litigation rates, the characteristics of premodern and modern fluctuations, and the meaning of trends and breaks in trends. The principal aim was to test the validity of two concepts that are central to the longitudinal study of civil litigation: the idea of development and the impact of industrialization. A critique of evolutionary models of litigation is given on the basis of 435 years of real “development.” Finally, the secular rise and fall of civil litigation will be interpreted for five distinct periods. Since the study is limited to one city, results from other research on courts in the preindustrial era are summarized in Table 2 (see below). Although the Bremen series reveals the highest litigation rate reported in the literature to date, the comparisons with other locations show surprising parallels with findings from quite distant places, thus suggesting that the Bremen example is representative of a broader European development. General conclusions as to the role of civil litigation in the process of societal modernization therefore seem to be possible.

II. SOURCES AND DATA COLLECTION

The study is based on two types of sources that require different methods of data collection and thus yield data with different degrees of reliability. For the preindustrial period, docket research must be used to estimate the annual number of cases from

court records. After 1820 caseload figures are directly and continuously available from judicial statistics. A principal value of these sources is that the two data bases can be linked.

For the preindustrial period (1549–1811) there are two sources in the state archives of Bremen. One is the *Catalogus*, the calendar or journal of the court, which lists the names of the parties for each sitting of the judges. The other is the *Protocollum*, which was similar to a plea roll in old English practice. It contained the pleadings and the motions of the parties, often together with the decision of the court. These records yield the annual number of hearings, not of cases. The count of the hearings can be directly linked to the judicial statistics, because they also report the number of entries in the *Catalogus*. Thus judicial activity in the prestatistical and the statistical eras of court administration can be exactly compared on the basis of a common unit of measurement—the number of hearings—which is available for the sixteenth to the nineteenth centuries.

Nevertheless, the case must be the relevant unit of comparison with modern data. The number of lawsuits pending before the court can be counted from a few indexes to the *Protocollum*. For most of the early modern period, however, this crucial variable must be estimated. Individual cases were reconstructed by identifying the names of the parties from the court calendar over two consecutive years. This was performed for two periods, 1655–56 and 1699–1700. Not surprisingly, they yielded a rising ratio of hearings per case, which suggests that during this period litigation became more complex, a trend that continued through the nineteenth century. Technically, the lack of a constant relation between hearings and cases must be taken into account as a first source of error for the early modern period (cf. Brooks, 1978: 42 n. 3; Dickinson, 1976: 152 n. 22). Reliability is further restricted by the loss of sources. Complete annual series of records have survived from the sixteenth century and the first half of the seventeenth. Most of the eighteenth-century materials were thrown away at some point by archivists who were not interested in social history, resulting in large gaps in the time series and necessitating extrapolation from the few extant sources.¹

¹ The available materials amount to more than four hundred bound folio volumes with approximately two hundred thousand handwritten pages, most of which are barely legible. Because archival care of the documents has been less than perfect, their content had to be determined by individual inspection. The changing system of recording in the courts had to be reconstructed to avoid double counting, for in certain periods each hearing was reported in five documents. Because of the mass of materials, sampling techniques were required to establish the general trends. After frenetic annual fluctuations in the caseload were discovered, a full count of consecutive years was made for some periods (1569–94 and 1640–73). To further reduce this considerable source of error (cf. Daniels, 1984: 766), the quantity of paper used for the court records was measured to obtain an approximation of the caseload. The results, reported in Figure 1, shows the risk involved in the unavoidable sampling by

As a result, the preindustrial data are subject to error. A detailed account of the methods of data collection must be left to a later publication directed primarily to the interests of archivists and local historians.

Starting in 1820, the number of lawsuits filed in the civil courts is directly available from annual reports to the government of Bremen, which mark the beginning of modern judicial statistics in the city. After 1865, the returns were published with other official statistics. The most recent figures come from computer-based court statistics (see Appendix). Although many interruptions and technical changes occurred for this period, this part of the Bremen series is remarkable because it offers complete and reliable evidence of judicial activity since the beginning of industrialization.

III. HISTORICAL COMPARABILITY OF THE DATA

To a person living today, annual increases or decreases in court caseloads do not suggest that there has been an institutional change. For example, court administrators believe that, in spite of the many changes that have occurred in one year, they administer the same court in the same society. However, in historical perspective, such annual changes may be part of a process in which the courts themselves are changing. After a hundred incremental annual changes in the caseload, are we still observing the same institution or something else that accidentally bears the name of a civil court? Are historical data on litigation really comparable over time? To conclude that the data are comparable requires a demonstration that basic determinants of the caseload have remained constant or can be controlled within a tolerable margin of error. The importance of the Bremen series lies in the fact that the essential preconditions of such a comparison over centuries have been fulfilled.

A. *Territorial Limits of Jurisdiction*

As an administrative unit, the city of Bremen shows a remarkable continuity over the entire span of time from 1549 to 1984. During the late Middle Ages, it had gained *de facto* independence from its feudal lord, the archbishop. Sovereignty was formally guaranteed in the beginning of the nineteenth century and has been preserved to the present, when Bremen is a federal state of West Germany (Schwarzwalder, 1975). As an independent city-state, it had its own courts, which have kept their own records from the sixteenth century. This exceptional legal status is the main reason that judicial activity can be observed in Bremen over a long period.

The territorial limits of the jurisdiction of Bremen's courts

single years, since it is never clear whether the probe hit a minimum or a maximum of the fluctuations.

changed significantly only once, in 1811, when surrounding rural areas were added.² Prior to the eighteenth century, the municipal court district was the inner city (*Altstadt*) together with the suburbs that had developed since the seventeenth century. During the nineteenth and twentieth centuries, the court district included the entire urban agglomeration. In the period of industrialization, nearly all big cities expanded into suburbs outside of their traditional legal boundaries and in time incorporated neighboring communities. Although this occurred several times in Bremen, the court district was not affected, because the surrounding rural areas had already been included. Thus for Bremen the statistical data cover all judicial conflicts that arose in one urban center (with negligible rural portions). In particular, the litigious potential of the middle- and lower-class inhabitants is not left out, as it is elsewhere. Knowledge of the territorial history of Bremen, which is again a result of its uncommon political situation, thus allows us to observe the growth of lawsuits in a single social system over five centuries.

B. Population

Population data are indispensable for the comparison of caseloads. Since 1812, such data have been directly available for Bremen from census reports and for the eighteenth century have been reliably computed from birth and death registers. No more than estimates are possible, however, for the earlier period. The number of houses, fireplaces, taxpayers, and other indicators yield an estimate of 15,000 inhabitants in the year 1563 (see Schwarz, 1983). Thus in comparative terms Bremen was large, ranking about fifteenth in size among German cities (Henning, 1985: 172).³

C. The Court System

Changes in court structure are the main obstacle to every historical comparison of preindustrial litigation data. Medieval and early modern court organization was characterized by the fragmentation of jurisdiction among various feudal lords and courts of

² The rural areas had their own courts. In 1811, these areas were included in the district of the lower court, whereby its population rose by one-third (see Fig. 2). This may have increased judicial business by about 10 percent but no more, because we can safely assume that the litigation rate was essentially lower in rural areas than in urban centers. The earliest available statistics that allow a comparison between the city proper and rural districts with their own courts show that an additional 32 percent of the whole population produced only 12 percent more law suits (calculated from the sources for 1865 for *Amt Vegesack* and *Amt Bremerhaven*, two districts that adjoin Bremen).

³ Outbreaks of the plague seriously reduced the population; the worst took about four thousand lives. Such losses make the calculation of early modern litigation rates even more uncertain. Since they tend to underestimate the rate, however, they do not affect one principal finding of the study, namely, that before 1710 there were at least as many lawsuits per capita as today.

limited powers. Citizens of the same town could be subject to competing jurisdictions, depending on the status of the parties, the nature of the lawsuit, or the choice of the plaintiff. Bremen presents the rare case of a single, two-level court system processing nearly all the lawsuits among its citizens that has been in operation since 1541.⁴

D. *The Law of Civil Procedure*

Reforms in civil procedure mainly affected the business of the upper court. Matters of voluntary jurisdiction, such as land title transfers, guardianship, and wills, once under the jurisdiction of the archbishop, were transferred to the upper court at an unknown date. In the eighteenth century voluntary matters were separated from contested matters. In the mid-seventeenth century (around 1655) voluntary cases may have amounted to 20 percent of the court's total business. After 1820 bankruptcy, distraint, and foreclosure, which accounted for about 20 percent of the court's business, were no longer included with the ordinary cases.

The most dramatic change came in 1876, when the dunning procedure (*Mahnverfahren*) was introduced as an inexpensive way to collect debts. The creditor simply applied to the court for a payment order, which, unless the debtor protested, was granted without hearing. The new law immediately reduced the number of ordinary lawsuits by 50 percent. Today, ordinary civil proceedings amount to no more than 20 percent of the total. Both such proceedings and debt collection cases must be included in the time series to assure historical comparability. Figure 2 (below) shows the continuity between the old uniform civil proceedings prior to 1876 and the sum of ordinary civil lawsuits and, after the law reform of 1876, the dunning procedure. The community produced a constantly rising demand for judicial conflict resolution that was unaffected by the reform, which, however, introduced an alternative to the regular lawsuit. Since the legislature had simply diverted judi-

⁴ The upper court (*Obergericht*) consisted of twelve members of the Bremen city council, in which the city's political and financial aristocracy was represented. This court decided all cases involving claims over about \$15,000 and also heard appeals against decisions of the lower court (*Niedergericht*). The latter was composed of one presiding member of the city council and two assessors, none of whom were required to be professional jurists. Small cases were heard by the two assessors sitting as single judges (*Gastgericht*). During the first 150 years of the time series, the archbishop still formally exercised his judicial powers through his governor (*Stadtvogt*), but there are strong reasons to believe that the services of this weak official were neglected by the citizens, who preferred the municipal courts for their speed and efficiency (see Hiemsch, 1964: 18–24). Court reforms in the nineteenth century separated the judiciary from administrative offices and required judges to have formal legal training. But the two basic levels of the court system remained unchanged. A commercial court (*Handelsgericht*), added in 1845, attracted new lawsuits from the merchants. By the end of the century, a labor court (*Gewerbegericht*) was established; this took a negligible part of the caseload away from the regular courts (3.6 percent in 1900).

cial business into a new type of proceeding, both must be considered because they are functionally equivalent.⁵

E. Uncontrolled Factors

Certain factors cannot be compared over time. The prestige of the judges, representation by legal counsel, the position of parties, the nature of cases, and the costs of litigation, for example, have changed over the centuries. The effect of these and other relevant circumstances on caseload cannot be controlled here; some are not controllable in any historical research. Thus this study is subject to all the criticisms that have been raised against the mere counting of cases (Krislov, 1983: 161–63). The practical rejoinder must be that determining frequency of litigation in various historical periods is a necessary first step in analyzing these rich but unwieldy data. Another researcher may answer more differentiated questions, with these first attempts to uncover the facts serving as guidance.

IV. FORMAL ELEMENTS OF THE TIME SERIES

Specific elements of the Bremen series should first be explained to prepare for the analysis of the entire time span and to understand the data presented in Table 1.

A. Range of the Data and Compound Growth Rates

An international comparison of contemporary litigation rates (Galanter, 1983a: 52–54) has shown that the incidence of lawsuits varies greatly by country. The rates vary so widely that it seems impossible to regard any one figure as “normal.” When dealing with the historical perspective, the researcher must look at an even greater range of data. Between the minimum of 530 cases in 1550 and the maximum of 212,600 in 1931, the caseload of the civil courts of Bremen has risen by a factor of 401. While population increased by a factor of 23.6 during this period, the litigation rate (cases/population) rose by a factor of 17. This long-term change far exceeds any shifts in modern litigation rates, which are negligible in comparison. Historical studies must thus explain far greater changes in the order of magnitude of litigation rates.⁶

Among the various computational methods that have been used to study long-term trends in economic theory (Van Duijn, 1983: 37–41), the exponential, or compound, rate seems to best fit

⁵ For a full discussion and further evidence, see Wollschläger (1989).

⁶ The extraordinary range of the data is the main reason that considerable sources of error seem to be tolerable for the prestatistical period. Due to the different bases of estimations and the aforementioned changes in the legal categories of the cases, the margin of error may be as high as 30 percent for a single year. This seems to be acceptable, however, because research may still document the large-scale changes in the caseload that establish the long-term trend.

Table 1: Civil Litigation in Bremen, 1550–1984

Year	Population (1,000s)	Civil Cases (N)	Litigation Rate ^b	Growth Rates (% per Year) ^a				Period ^c	Remarks
				Population	Cases	Litigation Rate ^b	Cases		
1550	15	530	35	0.3	2.5	2.2	A	Rapid growth	
1605	18	2,100	117	0.4	-0.1	-0.5	B	Stagnation	
1670	24	2,000	83	0.0	0.9	1.5			
1700	24	3,100	130	—	0.2	-0.3	C	Decline	
1725	29	3,500	120	0.2	-2.8	-3.0			
1780	33	750	23	0.2	3.5	3.2	D	Rapid growth, urbanization, World War I	
1810	35	2,100	60	1.0	—	—			
1820 ^d	52	1,931	37	1.9	3.2	1.3			
1875	143	10,869	76	2.1	3.9	1.8			
1913	315	47,268	150	0.0	-8.6	-0.7	E	Great Depression Leveling of litigation rate	
1920	316	25,250	90	1.0	21.4	18.8			
1931	354	212,600	600	2.4	0.3	0.6			
1960	698	89,158	127	-0.2					
1984	665	96,523	145						

SOURCE: State Archives of Bremen, Judicial Statistics.

^a Mean rate of annual exponential growth between dates in the table; e.g., the rate of population growth from 1550 to 1605 = 0.3.

^b Cases divided by population.

^c See text section for descriptions of each period.

^d Court jurisdiction changed in this year.

the needs of longitudinal litigation research, because it does not require a complete set of annual data and can be easily calculated for distant years. If the mean growth rate between 1550 and 1931 is calculated as an exponential rate, the awesome factor 401 is reduced to a modest annual increase of 1.6 percent over 381 years. This transformation permits the caseload to be analyzed in terms of familiar, contemporary macro variables such as population and gross national product (see Table 1). The main advantage of this conversion is that it makes the results of various historical caseload studies comparable. In Table 2 (see below) this parameter was used to standardize the findings of several studies on litigation in the early modern period. Considering that independent authors studied totally different regions and courts, the narrow range of the growth rates is surprising.⁷ In general, longitudinal studies of civil litigation should use the compound mean annual growth rate as a standard measure of long-term changes.

B. Modern and Premodern Wave Patterns

When the Bremen series is based on continuous annual data (1569–94, 1640–73, 1820–1984), irregular fluctuations occur. This cyclical movement of judicial business is a general property of civil litigation and has been observed in previous caseload studies (McIntosh, 1983: 993–98; Wollschläger, 1981, 1989: 96–99) and time series studies of criminality, prices, interest rates, production, and other economic indicators. As an economic phenomenon, cyclicity was discovered in the nineteenth century, and most observations concern this and more recent times. The early modern data of the Bremen series show that even the preindustrial age knew of the constant ebb and flow of caseloads (see also Ranieri, 1985: vol. 2, pp. 296–99). Although the business cycle offers a possible explanation for these fluctuations, the issue cannot be examined here because the necessary data are not available for the whole time span.

Attention should be directed, however, to a remarkable difference in the magnitude of annual changes in the litigation rates in the early modern period (before 1700) and the modern period (after 1820). In our age, the annual change rarely exceeds 5 percent, whereas in the sixteenth and seventeenth centuries the caseload varied up to 100 percent from one year to the next. This can be seen more clearly for a period of eighty years (1565–1645) in Figure 1, in which the consumption of paper for the court records has been used as a substitute for the caseload.⁸ Periods of plague and

⁷ In these figures, except in absolute caseload data, the decimal digit is important, because it can mean the difference between “normal” or rapid growth, stagnation, or decline.

⁸ Since the physical qualities of paper and the habits of the secretaries seem to be invariant over short periods, this method should reveal short-term fluctuations.

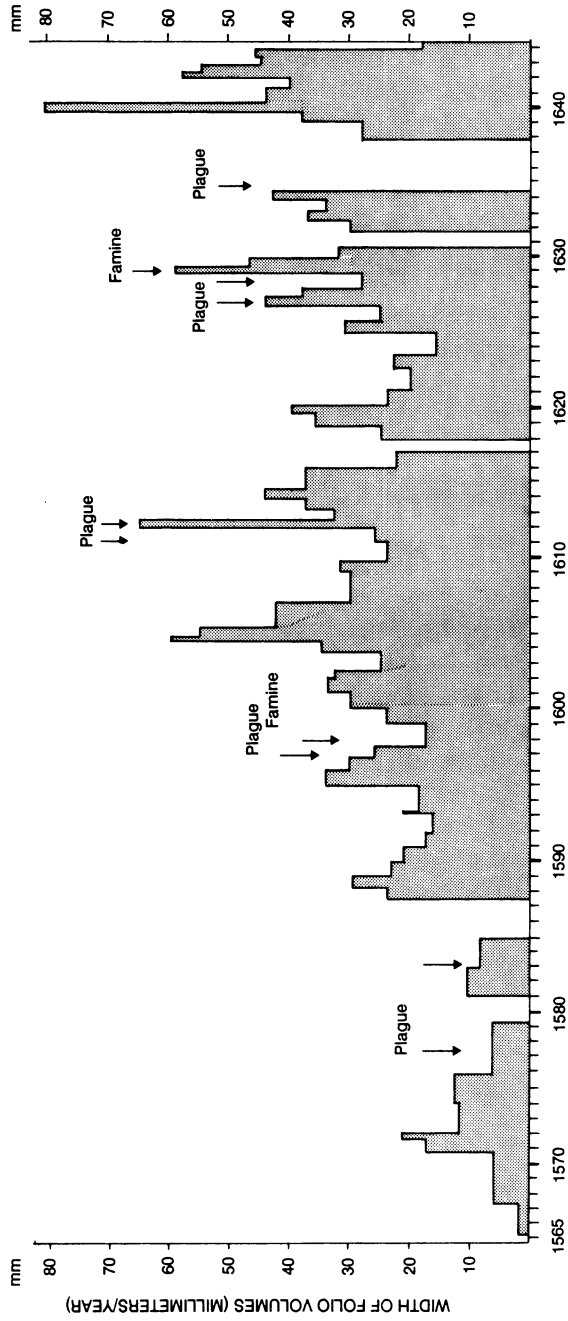


Figure 1: Quantity of records of the Upper Court of Bremen, Germany, 1565–1644

famine, as reported by local history, have been marked, but no clear pattern emerges. During most of these years, fewer lawsuits seem to have been filed, apparently because economic life was paralyzed by epidemics. The complete absence of sources for one year (1635) may mean that the court ceased to operate. In other years (1612, 1627, 1629), plague and famine coincide with peaks of judicial business. Probably the crises prevented many people from paying their debts, causing creditors to sue.

Whatever the reasons for the peaks and troughs in the series, variation in the amount of litigation was greater for 1565–1645 than it has been more recently. Premodern and modern waves should therefore be distinguished in the longitudinal analysis of litigation. The data for Bremen are too fragmentary to indicate when the transition to the modern wave type occurred. They do confirm a phenomenon that has been observed in Danish and Swedish series (Wollschläger, 1989), where the premodern type still prevailed until the late nineteenth century. One reason for the extreme fluctuation in preindustrial lawsuits seems to be the high proportion of debt collection cases. Where debt cases were registered separately, Swedish statistics show that the amplitude of the waves was higher for debt collection than for other matters. In general, this pattern reflects the basic instability of early modern economic and legal relations. People must have been more sensitive to changes in their lives, and apparently when bad times arrived would decide hastily to go to court.

C. *Exponential Growth Trend*

The data reveal an exponential growth trend in the number of cases in the nineteenth century, which in Figure 2 appears as a straight line superseded by irregular fluctuations.⁹ This exponential growth pattern has been observed and its causes examined in previous studies (see *ibid.*, pt. 6.2). Population and national product are the two macro variables that increase according to the exponential function. The parallel movement of civil litigation strongly suggests that it, too, is determined by these two major forces. In particular, the volume of economic transactions must have exerted the dominant influence on the continuous rise in the number of lawsuits. Other factors, such as the relative frequency of breach of contract or the propensity to litigate in private conflicts, must have remained stable, or at least their influence was not strong enough to change the direction of the trend.¹⁰

⁹ This results from the semilogarithmic scale that, on the y -axis, transforms all values into powers of ten. On a linear scale, the exponential trend would have the shape of a ski jump; see the curve for U.S. divorce rates in Friedman and Percival (1976b: 64, Fig. 1).

¹⁰ This is the principal difference between Bremen and those rural regions in Europe where litigation declined during the age of industrialization (e.g., Scandinavia, France, Italy, and parts of Germany). In these areas eco-

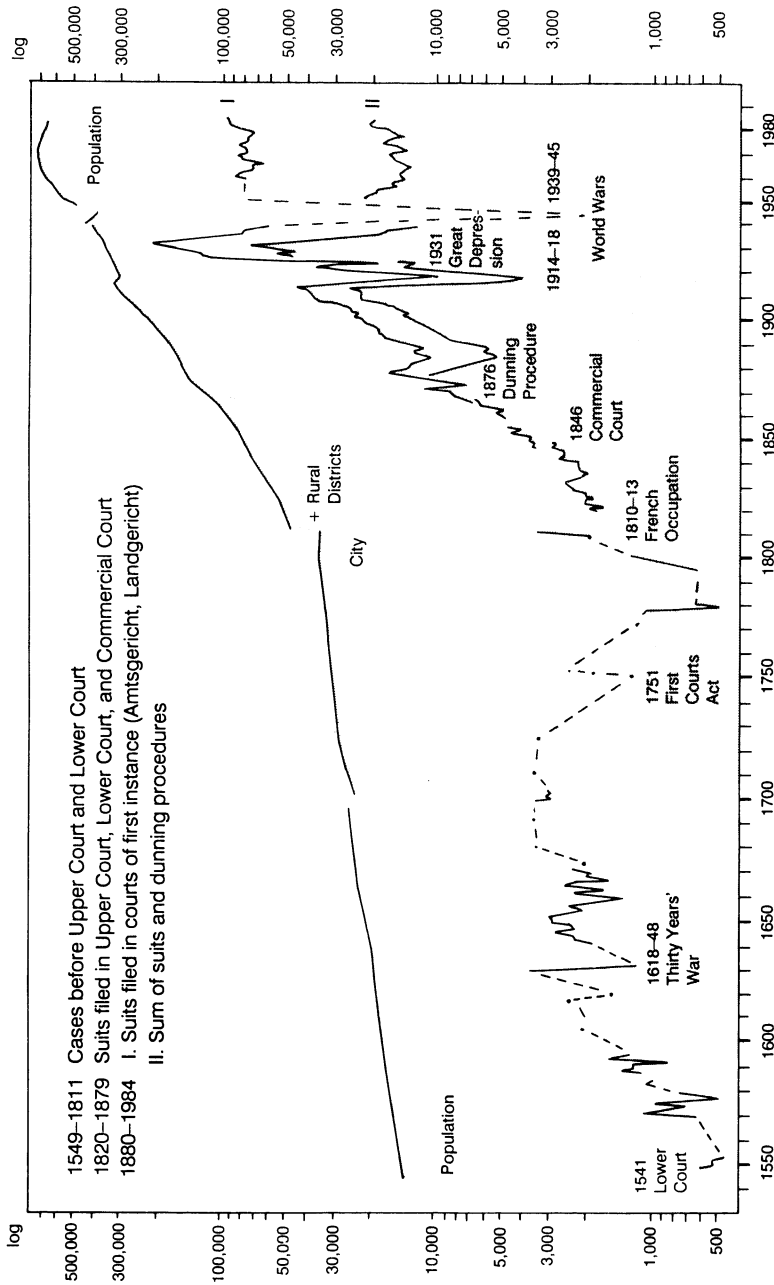


Figure 2: Civil litigation in the city of Bremen, 1549-1984

V. THE NATURE OF DEVELOPMENT

The extraordinary length of the Bremen time series challenges the conceptual tools of longitudinal study of litigation. During the nineteenth century, judicial business was continuously increasing in Bremen; the caseload rose more than twentyfold. A classical social scientist would certainly view this development as a permanent state of expansion and would have little choice but to use an exponential growth function to describe the trend and cyclical oscillations to explain the short-term movement. Even someone less interested in mathematical models would see the development as a continuous process in which one stage moves smoothly on to the next. By the end of the nineteenth century, this certainly appeared to be an adequate description of Northern European social reality. The cities grew larger, the economy expanded, conditions of life improved. Everything was progressing, and it seemed natural that this applied to the work of the courts as well.

A. *Critique of Evolutionary Theory*

This evolutionary view of social development still underlies many longitudinal studies of litigation, as a critical review of U.S. research has shown (Daniels, 1984). However, European judicial statistics cast strong doubts on evolutionary theory (Wollschläger, 1989: 100–103). For certain periods since the nineteenth century, exponential growth was indeed a dominant pattern in some countries, including The Netherlands, Belgium, Denmark, and Germany. For most countries, however, there are breaks in the trend, which indicates strong structural changes in the causation of lawsuits.

The Bremen series provides evidence that at the very least evolutionary interpretation of litigation trends over longer time spans must be modified to take into account other forces that interrupted long-term litigation patterns. Figure 2 shows four breaks in the secular trend for growth rates in the course of five centuries (see also Table 1). The first break occurred in the early seventeenth century, when a period of rapid increase came to an end (period A). Although the data do not permit us to identify an exact date for the change, the middle decades of the seventeenth century may be tentatively identified as a period of high stagnation (period B). Decades of decline can be identified in the eighteenth century until around 1780 (period C). The break that occurred then marks the beginning of the secular growth of litigation through the age of industrialization (period D). The climax of this period is reached during the Great Depression, when the maximum litigation rate of 600 cases per 1,000 inhabitants was reported

conomic growth also had an effect, but its dominant influence must have been to improve the payment of debts, thereby reducing defaults and other breaches of contracts. Judicial business decreased because there was less need to sue.

for 1931. The final segment of the time series shows that either the Great Depression or World War II must be regarded as another break in the trend. Since 1960 (period E), the caseload has roughly followed the size of the population, and it is clear that the phase of rapid growth is over.

These five periods are not unique to Bremen, however. As a more detailed examination will show, the basic pattern is confirmed by the findings of other research on litigation in the early modern age. The Bremen data since the nineteenth century can be taken as representative of the dominant national development in Germany. Parallel patterns can be found in Belgium, England, and Denmark although not in all of the European countries that have been examined to date (Wollschläger, 1989).

The conclusion to be drawn from these observations is that the data do not support the evolutionary theory of litigation trends. Trends do exist, of course, but nothing guarantees that they can be projected at will into the past or the future. This finding severely restricts the generalization of research results. In particular, it is wrong to consider modern times as being more litigious than the allegedly peaceful "good old days." In Germany litigation has indeed increased since industrialization, and there were almost no lawsuits in certain eighteenth-century rural jurisdictions (Wollschläger, 1982). In Bremen, however, the litigation rate in 1630, 1660, and 1700 was higher than the rate is now. Because economic production in those years was lower than in the industrial period, we can safely conclude that increased legal activity—that is, the number of contracts and debts—was not the reason for the higher litigation rates. Consequently, either the frequency of breach of contracts or the propensity to litigate or both must have been higher. Nineteenth-century societal development, but not that of earlier centuries, was characterized by more civil litigation; there has been no continuous "societal development" toward more litigation.

B. The Meaning of Trends and Breaks in the Trend

Although the explanatory power of trends is thus limited, trends remain an important element in time series of civil litigation and merit closer analysis. Like any other social activity, civil litigation has many causes, including the size of the population and of the economy, the availability of substitutes to the ordinary lawsuit, and the costs of litigation. Some of these factors, such as population growth, generate and enlarge judicial business; others, such as increased legal costs, tend to decrease it. Economic growth has contradictory effects; it enlarges the volume of contracts and other legal activity that can lead to lawsuits while reducing the frequency of default (because rising income favors the payment of debts).

In light of these observations, an upward trend in litigation rates must be interpreted to mean that there was an imbalance between the causes of litigation and the forces inhibiting litigation, with the causes of litigation having the greater effect. This situation may be described as a *disequilibrium of expansion*. For a considerable time, the social structure contributed to the rise in the number of lawsuits. For example, in the nineteenth century people were attracted to Bremen by its prospering economy. This new labor force increased production, which in turn attracted more people. As a result, the potential for more lawsuits rose. Although this effect may have been partly compensated for by factors discouraging litigation, such as greater court delays or costs, the net results remained positive: The caseload of Bremen's courts grew for 150 years.

Correspondingly, a break in the trend means that social growth conditions changed. Relevant factors must have been altered to create a new *disequilibrium of contraction*. This must have been caused by strong forces, because factors that had been stable for decades were affected. In Bremen, as well as elsewhere in Germany and other European countries, the economic and political catastrophes of the interwar period and World War II may explain the break in the trend after 1931. Such turning points in the litigation time series deserve deeper analysis than do periods in which the trend is continuous. Unfortunately, such analysis is much more difficult precisely because society is in an extraordinary state during structural changes.

VI. THE IMPACT OF ECONOMIC GROWTH ON LITIGATION IN FIVE PERIODS

The interpretation of a very long time series is necessarily restricted to broad perspectives. Because population size is the only quantitative information that is available for the entire time span, Bremen's general political, economic, and cultural environment must serve as the background for the present analysis. To broaden this basis for the preindustrial period, the findings can be compared with those of other studies (see Table 2), which assure us that Bremen is no extraordinary case. Of course, it must be realized that this study involves an urban jurisdiction, although 80 percent of the preindustrial German population was rural. With this limitation in mind, we shall consider the economic and legal history of Germany as a whole to explain the findings (see Kellenbenz, 1977; Henning, 1985).

Period A. Rapid Growth During the Renaissance (1550–1605)

The first period of rapid growth in Bremen's litigation rates probably began before the time series starts. The rise in civil litigation can be safely attributed to economic growth that began in

Table 2: Civil Litigation Growth Rates in Europe Before 1800

Jurisdiction	Period ^a	Years	Growth Rates (% per Year)		Source
			Cases	Litigation Rate ^b	
England: King's Bench, Court of Common Pleas	A	1490-1580	2.1	— ^c	Brooks (1978)
Spain, Castile: Valldolid Court of Appeals	A	1580-1640	1.3	—	Kagan (1981)
Germany: Imperial Court of Appeals	C	1500-1580	1.2	—	Ranieri (1982, 1985)
France, Paris: Court of Appeals	C	1580-1660	-2.0	—	Kaiser (1980)
France, Falaise: Lower court	C	1494/99-1590/94	2.4	—	Dickinson (1976)
Prussia, Konigsberg: Trial court	D	1590/94-1685	-2.0	—	Wollschläger (1981)
Germany, District of Berlin: Lower courts	D	1670-1788	-1.9	—	
			-4.3	—	
			0.8	—	
			2.2	—	
				2.8	

^a See text section V for descriptions of periods.

^b Cases divided by population.

^c A meaningful rate could not be calculated because of missing information.

^d Preindustrial near-stagnation. For parallels see Wollschläger (1981: 19-20).

the late fifteenth century; the end can be dated before the outbreak of the Thirty Years' War in 1618. Between 1550 and 1605, the rate of increase was nearly as high as in the age of industrialization (2.5 percent per year before 1605, compared with 3.2 percent after 1820). Parallel increases in litigation have been found for the English court of King's Bench (Brooks, 1978) and for the court of appeals of Valladolid in Spanish Castile (Kagan, 1981). In Germany the caseload of the *Reichskammergericht* (the imperial chambers court), which was the central court of appeals, rose during the sixteenth century at almost exactly the same rate as in Bremen (2.5 percent, calculated from Ranieri, 1985: vol. 2, p. 300). While these findings apply to courts of appeals or of limited jurisdiction, the Bremen series shows that the increase also took place in the general courts of first instance.

The development between 1550 and 1605 has clear parallels in Bremen's economy, as trade expanded and times were prosperous. The city's many opulent Renaissance buildings attest to both private and public wealth. It was at this time that the city hall received its present proud façade, which reflected the affluence of the merchants who ruled the city. It was also the age of the price revolution, with prices of grain and other basic commodities rising for a century, as a result of an expansion of credit (Henning, 1985: 182), which may help to explain the parallel increase in the number of lawsuits. The lower court's records contain many simple confessions of debt. Twenty to thirty cases were normally heard in one session, revealing that this was petty business of the simplest legal nature. Through several centuries, debt collection must have been the dominant occupation of the lower court, where most lawsuits were processed. Hence credit relations must have played the major role in the increase of litigation during the sixteenth century.

In German legal history the sixteenth century is known as the age of the Reception of the Roman Law, which gradually replaced the indigenous medieval legal institutions (Wieacker, 1967). Between the fourteenth and sixteenth centuries, young aristocrats and commoners who pursued careers in public office studied Roman law in the universities of northern Italy, causing a profound change in German legal culture—and in Bremen, where legal education had been held in low esteem in the Middle Ages. (It was said that in Bremen in 1450 a fisherman had higher status than a doctor of law, who elsewhere would have been considered a nobleman.) This attitude would change radically, however, as the city invested considerable sums to gain the imperial privilege that allowed it in 1541 to establish its own lower court. Two learned secretaries were paid to write the protocols, and more and more educated lawyers became members of the ruling elite of the city council. This transformation must have been caused by the rising need for judicial conflict resolution. It was assumed that the

learned jurists could cope more effectively with the increasing caseload than could the merchants. The rapid growth of civil litigation thus forms a decisive causal link between the expansion of the economy and the profound change in German legal culture.

Period B. High-Level Stagnation (1618–1721)

During the century between the Thirty Years' War (1618–48) and the Nordic War (1700–1721) Bremen's mean level of judicial activity did not show great changes, and in fact these years may be characterized as a period of stagnation. Although there were the enormous short-term fluctuations mentioned above, stagnation was the overall trend. The actual annual caseload varied between zero in a year of plague (1635) and 3,500 in 1699 and 1711. Whereas large parts of Germany were devastated and depopulated during the Thirty Years' War, Bremen remained neutral and managed to maintain its relative prosperity. The civil cases probably stemmed from the city's steady flow of trade and credit relations. Other causes may have been a higher rate of defaults or a greater propensity to sue or both. This conclusion is based on litigation rates that in peak years could be twice as high as today (more than 200 cases per 1,000 inhabitants in 1630, 1699, and 1711) and that averaged 100 cases per 1,000 inhabitants during three decades for which continuous annual figures were collected (1640–73).

Period C. Preindustrial Decline (1700–1800)

Because data sources were lost, there is only fragmentary evidence of a decline of civil litigation in Bremen during the eighteenth century. The estimates seem to be reliable, nevertheless, because they yield a consistent pattern and are confirmed by findings for civil courts of other regions. In Paris between 1670 and 1788, for example, civil appeals declined to one-tenth of their former volume (Kaiser, 1980: 312, 331), and there was a similar decline in the business of a rural French trial court (Dickinson, 1976). Appeals declined in Spanish Castile and in the German imperial court of appeals more than one century earlier than they did in Bremen (Kagan, 1981; Ranieri, 1985). These observations from various places thus suggest a common downward trend in judicial activity in Europe before the age of industrialization.

Many wars had exhausted the population and the economy during this period. The position of Bremen was additionally weakened by the emergence of rival territories that actively promoted business through state subsidies. As a seaport, Bremen was surpassed by Amsterdam and Hamburg. The city's population growth rate was also lower in the eighteenth century than in the seventeenth (0.2 percent per year between 1725 and 1800 versus 0.3 percent between 1612 and 1688). This indicates that the city had become less attractive to the rural immigrants who had been the

main reason for its expansion since the Middle Ages. The Seven Years' War (1756–63) further added to the depression.

Period D. Urbanization and Industrialization (1775–1931)

The second period of rapid growth in litigation rates occurred between the last third of the eighteenth century and the Great Depression of 1929–31 (if the decline of litigation during World War I is passed over as a singular event). The economic upsurge of the nineteenth century offers the most obvious explanation for this dramatic development in which the caseload of civil courts rose more than twentyfold between 1820 and 1913. The structural change is best indicated by the population growth, which soared from 0.2 percent per year in the eighteenth century to 2.0 percent per year in the nineteenth, as Bremen's expanding economy attracted more and more people. This situation, which caused the workload of civil courts to increase permanently, has been described above as a disequilibrium of expansion. The specific effects of urbanization and industrialization on litigation need no detailed comments here. The Bremen series thus presents one of the clearest parallels between the growth of the economy and the growth of litigation.

The term *industrialization* as used in this context requires qualification. The Bremen series shows that in the last third of the eighteenth century, the caseload trend had already turned upward. Structural change occurred decades before the first steamship sailed from Bremen in 1817 and before industry became a significant part of the economy. There are parallel findings for Prussia, where litigation rose well in advance of the introduction of new technologies to that relatively backward region (Wollschläger, 1981: 19). Expanding market relations in an agrarian economy were given as an explanation. Changes in the volume of commerce must have enlarged the business of the courts as long as "industry," in the sense of mechanized production, did not exist. If, however, industrialization is understood as a revolution of the technical means of production, it can be safely excluded as the cause of the rising litigation rates. This difficulty can be avoided if the term is used in a broader sense, to describe all structural changes that, as economic history suggests, transform an agrarian society into an industrial society (Cipolla, 1976; Minchinton, 1976; Clough and Rapp, 1975). Changes in the population growth rate and the increasing demand for consumer goods are the essential indicators of this transformation, for they are preconditions for the technical innovations that followed. This view is helpful in understanding the development of civil litigation. Lawsuits are not directly related to economic production. For the major part, contracts and debts are the legal transactions by which production is financed and distributed to the consumers. Hence, the tertiary section of

the economy must be regarded as relevant for the function of courts. The development of commerce and trade is the primary reason for changes in litigation rates both over time and between regions. The advent of industry is less important because it is only a remote cause of litigation and, as the Bremen series shows, not necessarily connected with structural changes in judicial business.

Period E. The Leveling Off of the Litigation Rate Since the Great Depression

The last section of the time series starts either during the Great Depression or after World War II. Although it contains some gaps until 1958, the principal feature is clearly visible: The steep rise of the caseload since the nineteenth century has given way to a modest increase in the absolute number of civil proceedings. In relation to population growth, this means that the litigation rate remained on roughly the same level during the 1960s and 1970s. (The recent rise since 1980 may be neglected in the long-term perspective.) This pattern mirrors a pattern seen in the whole of West Germany, where a short period of increased litigation rates after the end of the war was followed by more than two decades of relative stagnation. Similar breaks in the trend can be observed in France, Italy, and Scandinavia (see Wollschläger, 1989).¹¹ Sometime during the Great Depression or World War II the development of litigation was decisively altered.

For Bremen as well as for the rest of West Germany, this meant that the steep rise of postwar economic production (the gross national product increased fivefold between 1950 and 1980) found no parallel in the business of civil courts. Since it would be unrealistic to assume that the number of contractual transactions was not enlarged by the economic boom, the reasons must be sought elsewhere. One explanation might be that the role of the courts in debt collection was altered. Banks increased the volume of consumer credit; in the nineteenth century retail businesses had to finance the purchases of their customers themselves. The bankers' handling of defaults may have reduced the need to use courts for that purpose. Another cause may be seen in the increase of the German legal profession, which increased fourfold between 1950 and 1988 (Senninger, 1989: 300). Lawyers seem to have become more effective in settling legal disputes out of court. In particular, simpler cases that once were brought before the court now seem to be solved without litigation.

The real causes of the current trend in litigation rates cannot be established in this analysis of the long-term development.

¹¹ These parallels suggest that economic factors were dominant internationally. While in Nazi Germany collectivist ideology and the persecution of Jewish lawyers may have added to the decline of private lawsuits after the Great Depression, political factors cannot explain the general pattern.

Whatever they may be, it is clear that the productive force of the economic expansion after World War II must have been offset by other forces that tended to reduce civil litigation. Thus in spite of the many complaints about unwarranted litigiousness in West Germany and elsewhere, there is no proof that modern society is really more inclined to resort to courts. In fact, the evidence of the Bremen time series instead suggests that modern society handles far more potential legal conflict with relatively less litigation than did earlier societies.

APPENDIX
SOURCES OF DATA ON BREMEN COURT
CASELOADS AND POPULATION

A. *Caseload Data*

- 1549–1811 Protokolle des Obergerichts; Protokolle des Nieder- und Gastgerichts; Kataloge des Gastgerichts. Staatsarchiv Bremen.
- 1820–1879 Übersicht des Resultate der Geschäftsführung des Obergerichts; Übersicht der Geschäftsführung des Unter-Civilgerichts in Berichten an den Senat seit 1822; Übersicht des Geschäftsthätigkeit des Handelsgerichts vom Jahre 1846 bis 1871. Staatsarchiv Bremen.
- 1865–1931 (Bremen) Bureau für Bremische Statistik. *Jahrbuch für die Amtliche Statistik des Bremischen Staats* (title varies). Bremen, 1873–1933.
- 1932–39 (Germany) Statistisches Reichsamt. *Statistisches Jahrbuch für das Deutsche Reich. Berlin, 1933–40* (estimates from data for the district of the Oberlandesgericht Hamburg).
- 1943/44 Records of the Deutsches Reich, Reichsjustizministerium (estimates). Bundesarchiv (R 22/28), Koblenz, West Germany.
- 1950–57 Mayer, "Der Geschäftsanfall bei den Gerichten seit 1950," 8 *Anwaltsblatt* 1958, 208, at 210.
- 1958–70 (Germany Fed. Rep.) Statistisches Bundesamt. *Bevölkerung und Kultur. Fachserie 9, Rechtspflege, Zivilgerichte*. Stuttgart: Kohlhammer, 1959–71.
- 1971–84 JUSTIS—Justizstatistik-Informationssystem. Gesellschaft für Mathematik und Datenverarbeitung (electronic data base) (St. Augustin). JURIS-GmbH, Saarbrücken, Fed. Rep. Germany.

B. *Population Data*

- 1563–1700 K. Schwarz, "Zur Einwohnerzahl Bremens im 17.Jh." Manuscript 1983, Staatsarchiv Bremen.
- 1700–1825 (Bremen) Statistisches Landesamt Bremen. *Die Bevölkerungsentwicklung Bremens seit 1700*. Statistisches Mitteilungen, Heft 44, 1979.
- 1812–1980 Freie Hansestadt Bremen. Statistisches Landesamt Bremen. *Statistisches Handbuch 1975–80*. Bremen, 1982, pp. 7–14.