

THE PUBLIC ORDERING OF PRIVATE RELATIONS

PART ONE: INITIATING CIVIL CASES IN URBAN TRIAL COURTS

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INTRODUCTION

People and organizations make demands on the civil courts to settle their disputes, enforce the performance of obligations, and direct the redistribution of resources. Although the potential number of users of civil court proceedings would seem to be as numerous as individuals and organizations in a society, only some individuals and some groups use the civil courts. Furthermore, from the entire catalogue of remedies provided by law, users differentially present matters for litigation. Not all types of legal actions are demanded. Nor are the most frequent plaintiffs the most frequent defendants; some litigants predominate as plaintiffs, while others appear most often as defendants. Because of this nonrandom appearance of litigants and subjects of litigation, civil courts of first instance are daily exposed to claims of some, but not all of the people. The object of this paper is to locate and describe the principal users of the civil court system and the matters these users want adjudicated.

METHODOLOGY

The data for this paper are derived from a larger study, research for which was conducted during 1971 and 1972. A total of 7800 civil cases were examined and summarized from the case folders and dockets for courts of first instance with general jurisdiction in Baltimore, Cleveland and Milwaukee. Cases were selected randomly, sampling without replacement, from those court records from 1965 and 1970 which were open to public inspection. Records of paternity suits or the adoption of minors, for instance, were not matters of public record.

Cases were coded according to: (1) type of legal action initiated; (2) 29 possible outcomes;¹ (3) names and addresses

of all litigants; (4) names of law firms and attorneys present; (5) date of filing; (6) date of last recorded docket entry; (7) number of proceedings docketed; and (8) the amounts of money in dispute; and (9) awarded as damages. Of the 31 subjects litigated, only ten were litigated in more than one percent of the cases. In fact, these ten subjects account for 93.8% of the entire sample of cases studied. Table 1 displays these ten most frequent types of cases.

TABLE 1: A FREQUENCY DISTRIBUTION OF THE TEN MOST COMMON TYPES OF CASES²

Type of Case	Number of Cases	Percentage of All Cases	Frequency Ranking
Debt Actions ^a	1935	25.03	1
Money Damage Contracts ^b	1503	19.44	2
Liens ^c	1202	15.55	3
Divorce-Related Actions ^d	869	11.24	4
Personal Injury and Property Damage Torts ^e	762	9.86	5
Foreclosures ^f	319	4.12	6
Evictions ^g	210	2.71	7
Administrative Agency Appeals ^h	194	2.51	8
Habeas Corpus Petitions ⁱ	139	1.79	9
Injunctions ^j	121	1.56	10
N	7254	93.81*	

a Debt Actions include all cognovit notes, consent judgments, *scire facias*, replevin, garnishment and *fi-fa* (aids to execution).

b Money Damage Contracts include all suits to collect money damages for breach of an agreement.

c Liens include all hospital, tax, and mechanic's liens.

d Divorce-Related Actions include all annulments, divorce *a mensa et thoro* (separation), divorce *a vinculo*, alimony, visitation privileges, custody *capias* to compel support, reciprocal support proceedings and petitions for permission to remarry.

e Personal Injury and Property Damage Torts exclude all other torts.

f Foreclosures include all tax, mortgage, land contract and chattels foreclosures.

g Evictions include all evictions, ejectments, actions for unlawful detainer and for tenant holding over.

h Administrative Agency Appeals include all appeals from local workmen's compensation commissions, from zoning boards, from condemnation boards, from tax court and from liquor license boards.

i Habeas Corpus Petitions include all petitions for bail, post-conviction review, for sanity hearing and child custody.

j Injunctions include all injunctions and writs of mandamus.

*N for all cases is 7732.

The pattern of subjects of litigation is reproduced in each of the three cities studied. When the distribution of court case frequency rankings is compared among cities, the Kendall coefficient of concordance is .733 (significant at the .02 level). In other words, the same subjects are litigated and the same rankings are to be found in each of the cities. While it is widely assumed that motor vehicle accident litigation is the most numerous type of civil litigation (U.S. Department of Transportation, 1970), the collection of debts is the most common

subject in these urban trial courts. In fact, actions on debts, money damage contract suits, liens and divorce-related actions each outnumber auto torts. Auto accident cases may take the greatest time to process, but most commentators are mistaken about the size and makeup of the case load processed by civil trial courts.

Of interest are those types of cases which are not litigated or are only infrequently litigated. Rarely are any of the "emerging" tort remedies pursued. For example, there were no cases claiming third party emotional or mental distress, loss of consortium, liability to third party bystanders or inadequate drug warnings even though these remedies are rapidly developing areas of tort law — part of what Robert Keeton (1969: 4) has called the "private law revolution."³ Nor were there any cases claiming fraud or deceit, libel or slander, false imprisonment, malicious prosecution, taxpayer suits challenging the constitutionality of legislation or abridgement of civil rights. Moreover, breach of warranty (product liability) and medical malpractice were each encountered in less than 1% of the cases in the sample. This is an interesting finding in the light of reports that consumers are in revolt and physicians are being driven out of practice because of fear of malpractice suits.⁴

SELF-SELECTION OF PLAINTIFFS

Who Litigates?

Not everyone exercises his right to a day in court. Some individuals and some organizations predominate as court users. Table 2 displays this differential usage of courts.

The most frequent users of the civil trial courts are local organizations. Local and national organizations together account for about 50% of all plaintiffs (35.35% + 13.81% = 49.16%). Individuals make up the second largest group of plaintiffs, even though one might expect that unaffiliated individuals experience more disputes than organizations and, thus, more occasions for seeking adjudication. Similarly, because there are more women than men in the population, one might expect more female than male plaintiffs. Nevertheless, more men than women litigate in court. This differential pattern of usage is evident in each of the cities studied. When distributions of litigants are ranked by frequency for each city, a Kendall coefficient of concordance of .92 (significant at the .05 level) is obtained.

When organizations are subdivided, we again find differential usage of the court. Table 3 catalogues the use all organi-

TABLE 2: A FREQUENCY DISTRIBUTION OF THE COURT CASES INITIATED BY CATEGORY OF PLAINTIFF*

Type of Plaintiff	Number of Cases Initiated	Number of Cases Expressed as a Percentage of All Cases
Individual Men	1556	21.45
Individual Women	1121	15.45
Married Couples	239	3.29
Unrelated Individuals ^a	113	1.55
Sum of All Individuals	(3029)	(41.74)
Local Organizations ^b	2565	35.35
National Organizations ^c	1002	13.81
Sum of All Organizations	(3567)	(49.16)
Governments	651	8.97
Unencodeable Responses	7	.09
N	7254	99.96

* Plaintiffs tabulated here include only the primary party in interest for each case, not all of the parties of record.

a Unrelated Individuals are all parties in interest in a case having different surnames.

b Local Organizations include all businesses, voluntary associations, and appearances of individuals in their occupational roles.

c National Organizations are organizations for which branches outside of the three cities could be located.

zations make of the court. When distributions of organizational plaintiffs were ranked by frequency of court appearance for each city, a Kendall coefficient of concordance of .86 (significant at the .01 level) was obtained.

The distribution of litigants in Table 3 can be broken down into five strata of plaintiffs. The first stratum consists of banks and commercial lenders representing more than one quarter of all organizational plaintiffs (27.53%). The second stratum consists of hospitals and home construction/maintenance businesses, which together account for 19% of the appearances of organizational plaintiffs.⁵ A third stratum contains eight organizations (furniture stores; manufacturers; attorneys; physicians, dentists and registered nurses; clothiers; auto sales; food stores; and entertainment businesses) who make a total of 25.12% of the organizational plaintiff appearances. The fourth stratum includes insurance companies, service industries, realty and department stores; these businesses total 22.73% of all organizational plaintiff appearances. The remaining ten groups make up the last stratum, accounting for only 2.61% of the total number of appearances of organizational plaintiffs.

This distribution reflects a sharply differentiated usage of the courts by different kinds of organizations. Ten types of organizations each failed to file at least 38 cases. These ten include all of the organizations that might be labeled as "public interest" or "public-regarding" groups: civic groups, charities,

TABLE 3: A FREQUENCY DISTRIBUTION OF THE NUMBER OF COURT CASES INITIATED BY LOCAL AND NATIONAL ORGANIZATIONS^a

Type of Plaintiff Organization	Number of Court Cases	Number of Cases Expressed as a Percentage of All Cases	Frequency Ranking
Banks/Commercial Lenders	1047	27.53	1
Hospitals	425	11.17	2
Home Construction and Maintenance	313	8.23	3
Service Industry ^b	236	6.21	4.5
Department Stores	236	6.21	4.5
Insurance	214	5.63	6
Realtors	178	4.68	7
Furniture Stores	144	3.79	8
Manufacturers	136	3.58	9
Attorneys	133	3.50	10
MD's, DDS's, and RN's	131	3.44	11
Clothiers	119	3.13	12
Auto Sales	115	3.02	13
Food Stores	102	2.68	14
Entertainment	80	2.10	15
Apartments	23	.60	16.5
Utilities	23	.60	16.5
Gasoline Stations	11	.29	18.5
Private Schools	11	.29	18.5
Mass Transit	8	.21	20
Religious Groups	5	.13	21.5
Mass Media	5	.13	21.5
Civic Improvement Groups	4	.11	23
Charities	0	xxxx	24
Unencodeable Cases	97	2.55	
N	3803*	99.99	

^a Cases include all organizational plaintiffs appearing either as a party in interest or as a party of record.

^b Service Industry includes businesses such as television repair shops, small appliance dealers and watch repair shops.

* N for all cases is 7249 because five cases are missing (3446 cases had no organizational plaintiffs).

mass media, schools and religious groups (Wilson and Banfield, 1964: 876). Although past research (Vose, 1967; Dolbeare, 1968) suggests that courts are the preferred forum of many public interest groups, threatened minorities and those unable to influence the legislative and executive branches of government, the inescapable conclusion is that such groups rarely use these civil courts.⁶ Less than 3% of the cases, then, are filed by "public regarding" groups. On the other hand, about 50% of the disputes processed by the civil courts involve the transactions of only three groups—banks and commercial lenders, hospitals and home construction/maintenance businesses. More than one quarter of the total number of disputes involve transactions only of banks and commercial lenders.

What Do Individual Plaintiffs Litigate?

Table 4 displays the frequency with which the ten most common subjects are litigated according to each category of plaintiff. Seven percent represents a natural break in the distribution of the data.

TABLE 4: A FREQUENCY DISTRIBUTION OF DIFFERENT PLAINTIFFS* FOR THE TEN MOST COMMON TYPES** OF CASES

Type of Litigant***	Debt Ac-tions	Money Damage Con-tracts	Liens	Divorce Related	Personal Injury Property Damage Torts	Fore-closures	Evic-tions	Admin. Agency Appeals	Habeas Corpus	In-junc-tions	N
Individual Men	251	395	33	195	306	18	70	112	128	48	1556
Individual Women	96	147	4	660	127	11	29	25	9	13	1121
Married Couples	31	74	1	5	88	7	16	7	1	9	239
Unrelated Individuals	9	18	1	2	65	4	1	4	21	8	113
Local Organizations	985	605	609	2	61	193	58	31	0	21	2565
National Organizations	503	220	91	2	108	59	7	1	0	11	1002
Governments	57	44	463	2	6	26	29	14	0	10	651
Unencodeable Cases	3	0	0	1	1	1	0	0	0	1	7
N	1935	1503	1202	869	762	319	210	194	139	121	7254

* Cases include plaintiffs who appear as the primary party in interest.

** The ten most common cases are found in Table 1.

***The categories of litigants were defined in Table 2.

Six major observations can be made about the pattern of subjects litigated:

First, *individual men bring a greater range of cases than do individual women*. Contract cases represent 25% of men's lawsuits ($395/1556=.2538$); another three kinds of actions each account for at least 10% of the choices of men (torts, $306/1556=.196$; debt collection, $251/1556=.161$; and divorces, $195/1556=.125$). Another two categories each amount to more than 7% of the total choices made (habeas corpus petitions, $128/1556=.082$; and administrative agency appeals, $112/1556=.071$). For women, on the other hand, initiation of court actions is concentrated in a single category of lawsuit; divorce accounts for about 60% of the actions women file ($660/1121=.588$). Only three other categories represent more than 7% of the actions women file (contract actions, $147/1121=.131$; torts, $121/1121=.113$; and debt collections, $96/1121=.0856$). Clearly, men and women litigate different types of disputes, while men initiate more and a greater variety of actions than do women.

Second, *married couples bring mainly three categories of actions* (torts, $88/239=.3682$; contracts, $74/239=.309$; and debt collections, $31/239=.129$). No other types of disputes attract as many as 7% of married couples as plaintiffs.

Third, *unrelated individuals appear jointly primarily in tort actions*; more than one half of the actions begun by unrelated individuals were torts ($65/113=.575$). Perhaps this reflects the frequency with which automobile accidents involve strangers.⁷ Three other types of cases constitute more than 7% of the total cases begun by unrelated individuals: contracts ($18/113=.159$), debt collections ($9/113=.079$) and injunctions ($8/113=.071$). While married couples appeared somewhat more frequently than unrelated individuals, both appeared primarily in tort actions and secondarily in contract and debt actions. A summary of the patterns of the four categories of individual plaintiffs show torts, contracts, debt actions and divorces to be the most frequently used forms of action — however, patterns of use differ among each category of plaintiff.

Fourth, *individuals bring different kinds of disputes to the courts than do organizations and government*. Individual men, for instance, initiate 40% of all torts ($306/762=.401$), 58% of all administrative agency appeals ($112/194=.577$), 92% of all habeas corpus petitions ($128/139=.92$), 40% of all injunctions ($48/121=.3966$) and 33% of all evictions ($70/210=.333$). Individual women begin 76% of all divorce actions ($660/869=.759$).

Local organizations, on the other hand, commence 51% of all debt actions (985/1935=.509), 51% of all liens (609/1202=.506), 61% of all foreclosures (193/319=.605), and 55% of all contracts (825/1503=.548). Local and national organizations together file over 55% of all contract disputes (825/1503=.548), 77% of all debt actions (1488/1935=.7689); and 58% of all liens (700/1202=.582). Only in the category of contract disputes do individuals and organizations show similar patterns of litigation.

Fifth, *organizations seem to concentrate (as do women) on one category of cases*: here, the collection of debts. Thirty-eight percent of all local organization-initiated cases are begun to collect debts (985/2565=.384), while 51% of all national organization cases involve debt (503/1002=.509).

Sixth, *governmental units mainly file liens (463/651=.7112) and, secondarily, initiate actions to collect debts (57/651=.0875)*. No other category of cases accounts for as much as 7% of the cases government begins. Governmental litigation does not dominate any category, although the government does file 38% of all liens (463/1202=.385).⁸

What Do Organizational Plaintiffs Litigate?

Different kinds of organizations display different patterns of litigation. Table 5 contains a distribution of the frequencies of cases initiated by each type of organization.

Among the five strata of organizational plaintiffs there are different frequency distributions of subjects litigated. Banks and credit lenders, the first stratum, primarily litigate debts (579/1047=.553) and, less frequently, contracts (158/1047=.1509), foreclosures (184/1047=.1757) and liens (98/1047=.0963). No other type of case accounts for more than 2% of the litigation filed by banks and credit lenders.

The second stratum of organizations, which includes hospitals and home construction/maintenance businesses, primarily file liens (50.79% for home builders and 68.94% for hospitals). These two secondarily begin actions in contract and debt (for home builders, 22.6% and 18.8% respectively; for hospitals, 13.4% and 17.6% respectively). No other types of cases are frequently litigated by organizations in this stratum.

The third stratum of plaintiffs, which includes service industries, department stores, insurance companies and realtors, show somewhat less consistency, although all four litigate many debt actions. In fact, for three of the four kinds of organizations, debt actions are the most frequent subject of litigation. None of the four litigate more than three subjects frequently.

TABLE 5: A FREQUENCY DISTRIBUTION OF THE NUMBER OF CASES FILED BY EACH TYPE OF ORGANIZATION FOR THE TEN MOST COMMON TYPES OF CASES*

Type of Litigants**	Debt Ac-tions	Money Damage Con-tracts	Liens	Divorced Related	Personal Injury Property Damage Toris	Fore-clo-sures	Evic-tions	Admin. Agency Appeals	Habeas Corpus	In-unc-ions	N
Banks/Commercial Lenders	579	158	98	1	13	184	11	0	0	3	1047
Hospitals	75	57	293	0	0	0	0	0	0	0	425
Home Construction and Maintenance	59	71	159	1	2	14	3	1	0	3	313
Service Industry	95	72	44	1	9	0	7	2	0	6	236
Department Stores	127	93	9	0	1	5	1	0	0	0	236
Insurance	48	42	6	0	101	14	1	0	0	2	214
Realtors	84	17	10	0	3	29	27	3	0	5	178
Furniture Stores	101	39	3	0	1	0	0	0	0	0	144
Manufacturers	46	42	34	0	7	1	2	2	0	2	136
Attorneys	46	42	8	1	5	7	14	4	0	6	133
MD's, DDS's, and RN's	52	73	2	0	3	0	1	0	0	0	131
Clothiers	50	61	3	0	2	0	2	0	0	1	119
Auto Sales	53	54	0	0	5	0	0	2	0	0	115
Food Stores	58	31	1	0	3	1	3	2	0	3	102
Entertainment	38	26	3	0	2	0	0	9	0	2	80
Apartments	6	13	3	0	2	0	6	1	0	2	23
Utilities	10	12	0	0	1	0	0	0	0	0	23
Gasoline Stations	2	5	2	0	1	0	0	1	0	0	11
Private Schools	6	4	0	0	1	0	0	0	0	0	11
Mass Transit	3	2	1	0	2	0	0	0	0	0	8
Religious Groups	0	1	0	0	0	0	0	1	0	0	5
Mass Media	1	3	0	0	0	0	0	1	0	0	5
Civic Improv. Groups	0	2	0	0	0	0	1	1	0	0	4
Charities	0	0	0	0	0	0	0	0	0	0	0
Unencodeable Cases	32	14	28	1	8	3	2	6	0	3	97
N	1571	924	708	5	180	258	81	37	0	39	3803

* The ten most common categories are found in Table 1.

**The types of organizational litigants are defined in Table 3.

The remaining six types of cases fail to amount to as much as 10% of all cases this stratum brings.

The fourth stratum of eight organizations (furniture stores; manufacturers; attorneys; MD's, DDS's, and RN's; clothiers; auto sales; food sales; and entertainment) usually initiate debt actions and contract suits. For five of the eight, debt actions are most frequent. Five of these eight organizations also usually fail to litigate any subject other than debt actions or contracts in more than 7% of their appearances. The three exceptions are administrative agency appeals for entertainment businesses, evictions for attorneys, and liens for manufacturers.

The fifth stratum, which contains the remaining ten types of organizations (apartments, religious groups, charities, gasoline stations, taxicabs, private schools, civic groups, utilities, mass transit, and mass media) displays a different pattern. For none of the ten was the collection of debts the most frequent subject. Instead, torts are the most frequent subject for five of the ten; of the remainder, two kinds of organizations mainly filed administrative agency appeals, one brought evictions, one contracts, and one failed to appear at all as a plaintiff.

In general, each of these organizations concentrates on a single type of litigation. For six of the ten, the primary subject is filed about twice as frequently as any other type of action. Thus, we note that in four of the five strata, the collection of debts is the major object of litigation; these four blocks account for 97.4% of all cases filed by organizations. In the fifth stratum, torts are the primary, and administrative agency appeals the secondary subjects of litigation.

Finally, there is a linear relationship between the frequency of appearance rank of a stratum and the range of subjects its members litigate. The organizations in the first stratum present four kinds of cases; organizations in the second and third present three kinds of cases; organizations in the fourth present two subjects; and those in the fifth stratum usually present a single subject for litigation.

At first glance, one might assume that the relationship between bringing more cases and litigating a wider range of claims reflects a mere cumulation—that is, that heavier litigators litigate the same matters as lighter litigators and other matters as well. However, this is not the case. Each stratum's pattern of types of cases is different from that of the others. Although the first four strata share a principal subject of litigation, the second most common subject is different for each.

Nor do succeeding strata reflect progressively higher concentrations of debt actions, the principal subject of litigation for the entire sample. The lowest concentrations of debt actions are found in the second and fifth strata. Clearly, then, the linear relationship between the amount of litigation and the range of matters litigated is not an artifact of the way in which these strata were constructed.

SELECTION OF DEFENDANTS: WHO IS BEING SUED?

Table 6 displays the frequency with which each category of defendant is summoned by each category of plaintiff.

TABLE 6: A FREQUENCY DISTRIBUTION OF CASES FOR EACH CATEGORY OF DEFENDANTS FOR EACH CATEGORY OF PLAINTIFFS*

Type of Defendants**	Individual Men	Individual Women	Married Couples	Unrelated Individuals	Local Organizations	National Organizations	Government	Unencodeable Cases	N
Individual Men	464	279	103	40	267	153	218	32	1556
Individual Women	820	36	32	13	90	78	46	6	1121
Married Couples	68	29	29	14	53	31	12	3	239
Unrelated Individuals	25	9	12	15	14	25	13	0	113
Local Organizations	816	275	539	87	498	237	102	11	2565
National Organizations	311	91	251	29	176	111	24	9	1002
Governments	319	91	24	21	171	6	12	7	651
Unencodeable Cases	1	0	1	0	2	3	0	0	7
N	2824	810	991	219	1271	644	427	68	7254

* The categories of litigants were defined in Table 2.

**The categories of litigants were defined in Table 2.

In the upper left-hand quadrant, which represents cases brought by individuals against individuals, there are 1988 cases or 27.69% of the 7179 encodeable cases. In the upper right-hand quadrant, which represents cases brought by individuals against organizations, there are 1000 cases or 13.92% of the 7179 encodeable cases. In the lower left-hand quadrant, there are 2854 cases or 39.74% of the 7179 encodeable cases. In the lower right-hand quadrant, which represents cases brought by organizations against organizations, there are 1337 cases or 18.62% of the 7179 encodeable cases.

Five major observations can be made about the defendants in this sample of civil court litigation. First, we observe that *individuals, particularly men, are most often chosen as defendants* by each category of plaintiffs. For example, individuals usually sue other individuals. Of 3029 defendants sued by individual plaintiffs (1556 + 1121 + 239 + 113 = 3029), two thirds are other individuals (1988/3029=.6553). Similarly,

when organizations appear as plaintiffs, individuals are usually the defendants. Of 3567 cases initiated by organizations ($2565 + 1002 = 3567$), individuals are defendants in two-thirds ($2399/3567 = .6725$). When the government is the plaintiff, individuals are again the most frequently named defendants, making up two-thirds of the defendants in suits initiated by governments ($455/651 = .6989$).

Moreover, among individual defendants, individual men most often appear as defendants. Individual men appear as defendants in three and one-half times as many cases as individual women (2824 cases versus 810 cases). Individual men appear as defendants in about three times as many cases as married couples (2824 cases versus 991 cases), and in about thirteen times as many cases as unrelated individuals (2824 cases to 219 cases).

Thus, no matter which type of plaintiff is involved, individuals represent about two-thirds of the defendants. When plaintiffs in the three cities are ranked by order of priority of selection of defendants, a Kendall coefficient of .84 (significant at the .05 level) is demonstrated, indicating considerable similarity among the three cities. Briefly stated, the civil trial courts usually process suits against individuals.

Second, *all categories of defendants most often appear in three types of suits*: liens, contract actions and summary debt proceedings. Table 7 displays the differential appearance of defendants in each category of cases. Ten percent is the natural break in the distribution of the data.

We note, for example, that individual men and women appear as defendants mainly in contract ($693 + 165/3634 = .2361$), divorce ($644 + 162/3634 = .2217$), and lien ($459 + 147/3634 = .1667$) actions. In no other categories of cases do these defendants make at least ten percent of their appearances as defendants; ten percent is the natural break in the distribution of the data. Married couples appear as defendants mainly in summary debt actions ($415/991 = .4187$) and secondarily in liens ($197/991 = .1987$). Unrelated individuals appear as defendants mainly in liens ($66/219 = .3014$), in property damage/personal injury torts ($51/219 = .2329$), in debt actions ($47/219 = .2146$) and in contract cases ($29/219 = .1324$).

In a like manner, organizations appear as defendants usually in summary debt ($408 + 246/1271 = .3415$) and contract actions ($323 + 82/1915 = .2114$), in liens ($234 + 76/1915 = .1618$) and in torts ($148 + 157/1915 = .1592$). Government appears as a

TABLE 7: A FREQUENCY DISTRIBUTION OF DIFFERENT DEFENDANTS* FOR THE TEN MOST COMMON TYPES** OF COURT CASES

Type of Litigant***	Debt Ac-tions	Money Damage Con-tracts	Liens	Divorce Related	Personal Injury Property Damage Torts	Fore-closures	Evic-tions	Admin. Agency Appeals	Habeas Corpus	In-junc-tions	N
Individual Men	606	693	459	644	281	30	98	3	4	6	2824
Individual Women	165	187	147	162	61	19	61	1	1	6	810
Married Couples	415	157	197	0	46	129	40	5	0	2	991
Unrelated Individuals	47	29	66	1	51	16	3	1	1	4	219
Local Organizations	408	323	234	13	148	54	8	59	0	24	1271
National Organizations	246	82	76	21	157	21	0	35	0	6	644
Governments	23	30	19	4	16	45	0	89	133	68	427
Unencodeable Cases	25	2	4	24	2	5	0	1	0	5	68
N	1935	1503	1202	869	762	319	210	194	139	121	7254

* Cases include defendants who appear as the primary party in interest.

** The ten types of cases are found in Table 1.

***The categories of litigants were defined in Table 2.

defendant mainly in habeas corpus petitions ($133/427 = .3114$), administrative agency appeals ($89/427 = .2084$), injunctions ($68/427 = .1592$) and foreclosures ($45/427 = .1053$). In summary, all defendants (with the exception of the government) usually respond to liens, summary debt and contract actions. These three actions include most demands made against most defendants, since the government is a defendant only 6% of the time ($427/7254 = .0588$).

Third, *we can discern which categories of defendants bear the burden of defense in most of these suits.* To sketch this pattern, let us suppose that a defendant is a "primary defendant" if he appears in at least 20% of the total number of cases in each category of lawsuits. Individual men, for example, are primary defendants in six of the ten categories of cases: liens ($459/1202 = .3818$), torts ($281/762 = .3687$), evictions ($98/210 = .4666$), divorces ($644/869 = .741$), contracts ($693/1503 = .461$) and summary debt actions ($606/1935 = .3131$). Individual women, on the other hand, are primary defendants only in eviction cases ($61/210 = .2904$). Married couples are primary defendants in foreclosures ($129/319 = .4043$) and summary debt actions ($415/1935 = .2144$). Unrelated individuals are primary defendants in no category.

Local organizations appear as primary defendants in injunctions ($24/121 = .3041$), debt actions ($408/1935 = .2108$) and contracts ($323/1503 = .2149$). National organizations appear as primary defendants in torts ($157/762 = .2060$). Government appears as the primary defendant in habeas corpus petitions ($133/139 = .9568$), injunctions ($66/121 = .5619$) and administrative agency appeals ($89/194 = .4587$). Referring back to the three subjects most often litigated—liens, contract and debt actions—we see that the burden of defense in most court cases falls upon individuals, and particularly on individual men. Furthermore, individual men are primary defendants in twice as many kinds of cases as any other class of litigant. For instance, government is a primary defendant in three kinds of cases; local organizations in two; all other kinds of litigants in no more than one kind of case.

Fourth, *the burden of defense is not related to the frequency with which one has been a plaintiff.* This can be seen in three areas: first, individual men much more often constitute a major portion of the defendants in each category of cases, even though individual men as a group are not the largest class of plaintiffs (cf. Table 4). Second, local organizations much less often

represent a major portion of the total defendants in each category of cases than do individual men, even though local organizations are a larger grouping of plaintiffs than individual men (see Table 4). Third, two of the four areas in which organizations are most often defendants are subjects in which they rarely appeared as plaintiffs — torts and injunctions. The other two areas most often defended, contract and debt actions, are frequently initiated by organizational plaintiffs. One might expect that national organizations would be primary defendants in torts. These include disputes between insurance companies and personal injury claimants in auto accidents. In settlement of insurance claims or by express agreement written into insurance policies, the rights of the insured are generally “subrogated” to the insurance company. This device enables the insurance companies to enter tort cases as collateral defendants or to replace individuals as the defending party in interest.⁹

One might also expect organizations to defend many summary debt actions. As will be shown later, these cases reflect the use of wage garnishment as a tool for the collection of delinquent debts. Technically, employers become defendants in garnishments, and are ordered to withhold portions of a debtor-employee’s salary. In fact, individual employees, not employers, are the real defending parties in interest. Similarly, the government is a primary defendant in injunctions and in petitions for habeas corpus, although the government litigated very few of these actions as a plaintiff. Thus, we may conclude that the burden of defense is not usually related to the frequency with which one has been a plaintiff.

Fifth, *specific types of organizations appear as defendants with differential frequency in each category of suits.* Table 8 demonstrates the frequency with which each organization defended each type of lawsuit.

The five organizations most frequently hailed as defendants are the following: (1) service industries; (2) insurance companies (as parties of record); (3) manufacturers; (4) home construction/maintenance businesses; and (5) food stores. These five account for more than one-half of all organizations appearing as defendants ($322 + 273 + 269 + 202 + 125/2036 = .5847$).

Although four of the five are also frequent plaintiffs (see Table 5), there is no correspondence between what is litigated as a plaintiff and what is defended. While it is true that insurance companies, food stores and manufacturers primarily initiate and defend the same types of lawsuits, the same is not

TABLE 8: A FREQUENCY DISTRIBUTION OF THE NUMBER OF CASES DEFENDED BY EACH TYPE OF ORGANIZATION FOR EACH OF THE TEN MOST COMMON TYPES OF CASES*

Type of Litigant**	Debt Ac-tions	Money Damage Con-tracts	Liens	Divorce Related	Personal Injury Property Damage Toris	Fore-clo-sures	Evic-tions	Admin. Agency Appeals	Habeas Corpus	In-junc-tions	N
Banks/Commercial Lenders	31	21	4	11	6	36	0	2	0	4	115
Hospitals	16	1	1	0	2	0	0	3	0	0	23
Home Construction and Maintenance	68	57	29	2	17	16	2	8	0	3	202
Service Industry	88	73	102	3	32	1	0	17	0	6	322
Department Stores	7	9	2	1	4	2	1	1	0	1	28
Insurance	36	23	77	15	115	1	0	4	0	2	273
Realtors	31	16	24	1	10	24	0	1	0	1	108
Furniture Stores	4	9	1	0	2	0	0	0	0	0	16
Manufacturers	184a	36	7	2	10	3	1	22	0	4	269
Attorneys	7	10	3	1	1	4	0	0	0	0	26
MD's, DDS's, and RN's	2	8	3	2	5	1	0	1	0	1	22
Clothers	10	4	3	0	0	0	0	2	0	0	19
Auto Sales	28	31	3	1	13	3	1	5	0	2	86
Food Stores	52	38	8	1	20	1	1	3	0	1	125
Entertainment	33	34	7	0	5	0	0	0	0	2	83
Apartments	9	6	5	2	3	3	0	3	0	0	41
Utilities	13	6	1	0	2	0	0	0	0	0	22
Gasoline Stations	7	5	0	0	8	0	0	1	0	0	21
Private Schools	5	2	4	1	1	0	1	0	0	1	14
Mass Transit	6	7	0	0	17	0	0	0	0	0	30
Religious Groups	1	1	5	1	0	2	0	0	0	2	12
Mass Media	3	1	0	0	2	0	0	4	0	0	10
Civic Improv. Groups	0	1	0	0	0	0	0	1	0	0	2
Charities	0	0	2	0	1	0	0	0	0	0	3
Unencodeable Cases	34	21	14	0	18	3	0	29	0	3	122
N	678	427	321	44	319	100	8	108	0	31	2036b

* The ten case categories are defined in Table 1.

**The types of organizational litigants are defined in Table 3.

a Both parties of interest and parties of record were encoded here.

b Organizations were not defendants in 5218 cases of the total 7254 cases.

true of the other two major defendant organizations. Service industries and home construction/maintenance businesses initiate and respond to different types of suits. Service industries mainly commence debt actions ($95/236 = .4025$), but usually defend against liens ($102/322 = .3167$). Home construction/maintenance businesses usually initiate liens ($159/313 = .5079$) but respond to debt action ($68/202 = .3366$). Significantly two major plaintiffs, hospitals and banks, appeared rarely as defendants.

Sixth, *one must remember that organizations responding to claims for debts are usually only nominal defendants*. They are garnishees in garnishment proceedings. The burdens of defense and of monetary penalties are borne by the employee-debtors of these organizations, not by the employer organization itself. Thus, Table 8 tends to inflate the incidence of organizations' appearances at court as defending parties in interest. Reinspection of Table 8 will reveal that response to debt actions accounts for the largest portion of organizational defendants ($678/2036 = .333$).

CONCLUSION

It is widely noted that the legislature, as a law-making body, necessarily reflects the values of dominant interest groups in society. It is, however, more difficult to accept the notion that the operation of civil courts also tends to protect the interests of dominant groups. We have attempted to demonstrate in this paper that civil court litigation is marked by differential usage of the courts — reflecting the interests of significant social groups.

First, we have shown that only certain types of disputes are resolved by the trial courts. The courts are not exposed to every possible type of conflict which may exist in a society. Of the vast number of legal actions and remedies available, only thirty-one were used in this large sample from three cities. Of these, only ten forms of action were litigated with regularity. Of the ten, suits to secure the collection of delinquent debts rather than personal injury torts, were the type of case most often initiated.

Second, only some types of litigants frequently initiated lawsuits. Local organizations made up the single largest group of plaintiffs. National and local organizations initiated about 50% of all the cases in this sample, while, among all organizations, banks and credit lenders predominated. In fact, of the twenty-five types of organizational plaintiffs catalogued, ten failed to file as many as 38 of the 7800 cases studied in this

sample. All groups which might be described as "public regarding" were among these ten. Banks, credit lenders, hospitals and home construction/maintenance businesses, on the other hand, were the most frequent organizational plaintiffs and together accounted for 50% of all organizational litigation. These groups, and organizations in general, were preoccupied with suits to collect delinquent debts. Individuals initiated litigation less frequently than organizations, initiated a far wider range of lawsuits than organizations and did not show a preponderance of collection of debts.

Third, the burden of defense fell unevenly on litigants. Most defendants were individuals, not organizations or government. Furthermore, when organizations did appear as defendants they were often nominal defendants; that is, they were merely one of several responding parties of record suffering no jeopardy, as did individuals as defendants.

Given these findings, it would seem difficult to maintain an untroubled belief in the neutrality of civil trial courts. Our data cannot speak to the presence of neutrality in decision-making. They do, however, indicate that neutrality, if it exists, is not incompatible with results which are heavily skewed in terms of differential benefits and burdens to different groups in society.

NOTES

¹ The 29 possible outcomes recorded were: no resolution beyond filing, plaintiff's verdict or judgment, defendant's judgment or verdict, appeal from this court, affirmation on appeal of this court's judgment, default pro plaintiff, certification of judgment, settlement, *nulla prosequi*, *ne recipiatur*, *ne re overruled*, vacated judgment, *nulla bona*, order to strike a previous order, remanded to another court, remanded to workmen's compensation board, remanded to liquor board, remanded to zoning commission, remanded to tax court, *fi-fa* [writ of *fieri facias*], *fi-fa* fails, *capias* for contempt, sale of premises ratified, restitution of premises made, report and release of guardian, amendment of *nar*, trial *de novo* ordered, suspension of trial by reason of a litigant's death, and remanded to condemnation commission.

² The sample uncovered thirty-one subjects of litigation. These were: (1) property damage and personal injury torts; (2) assault and battery torts; (3) breach of warranty suits; (4) trespass (e.g., dogbite) torts; (5) wrongful death torts; (6) malpractice; (7) petition to command specific performance of an agreement; (8) money damages for a breach on an agreement; (9) actions to collect debts (e.g., *cognovit* notes, consent judgments, *scire facias*, *replevin*, garnishment and *fi-fa* or aids to execution); (10) eviction, ejection, unlawful detainer and tenant holding over; (11) hospital, tax and mechanic's liens; (12) tax, mortgage, land contract and chattels foreclosures; (13) administrative agency appeals (e.g., local workmen's compensation commission, zoning commission condemnation board, tax court, and liquor board of licenses); (14) suit to affirm a marriage; (15) divorce-related suits (e.g., annulments, divorce *a mensa et thoro* (separation), divorce *a vinculo*, visitation privileges, custody, *capias* to compel support, reciprocal support proceedings, and petition for permission to remarry); (16) injunctions and writs of *mandamus*; (17) dissolution and accounting of partnerships; (18) petition for receivership; (19) petition for habeas corpus (for bail, post-conviction review, *ad testificandum*,

sanity hearing, child custody and *ad respondendum*); (21) petition for property guardianship; (22) petition for guardianship of a minor; (23) petition for voluntary civil commitment because of alcohol addiction; (24) petition for voluntary civil commitment because of drug addiction; (25) municipal industrial code violation; (26) municipal housing and building code violation; (27) petition to order the reformation of wills and deeds; (28) petition to order the reformation of insurance policies; (29) petition to quiet title or to discharge a mortgage; (30) petition to change one's name; (31) petition to approve appropriations for the secret service.

Also uncovered were three categories of preliminary motions which were not attached by a docket reference number to any other court case: six petitions for leave to sue the state department of motor vehicles, eight petitions to change venue and seven appeals from local, limited jurisdiction courts. A certain amount of translation was required to equate forms of action among different jurisdictions. For example, writs of *fi-fa* were equated with aids to execution; divorce *a mensa* was equated with legal separation and eviction was equated with ejectment and unlawful detainer.

Table 1 demonstrates which of these 31 categories were included for analysis as the top ten categories; in each of the remaining 21 categories, there were less than 38 cases. In fact, there were only five cases of assault and battery and nine breach of warranty suits. Category (7) petition to command specific performance refers to fresh cases not old, successful suits a plaintiff is bringing back to court in order to compel compliance with a judgment. Category (10) refers to actions to collect debts and includes enforcement of cognovit notes and consent judgments as well as petitions for writs of *scirie facias*, replevin, garnishment and *fi-fa*. Cognovits are "judgments whereby the defendant gives the plaintiff a cognovit or written confession of the action which the plaintiff enters judgment" (Black, 1957: 978). Consent judgments are "judgment(s) the provisions of which and terms of which are settled and agreed to by the parties to the action" (Black, 1957: 978). *Scirie facias* is a "judicial writ, founded upon some matter of record, such as a judgment or recognizance and requiring the person against whom it is brought to show cause why the party bringing it should not have advantage of such record . . . the most common application of this writ is as a process to revive a judgment" (Black, 1957: 151). Replevin is the "redelivery to the owner of the pledge or thing taken in distress" (Black, 1957: 1463). Garnishment is a "statutory proceeding whereby a person's property, money or credits in possession or under control of or owing another are applied to payment of former's debt" (Black, 1957: 810). And *fi-fa* is a "writ of execution commanding the sheriff to levy and make amount of a judgment from goods and chattels of the judgment debtor" (Black, 1957: 754).

Category (17) includes only independent suits, not injunctions related to other cases. And category (20)—petitions for habeas corpus—are primarily criminal matters, e.g., petition for bail reduction and post conviction review. These make up 133 of the 139 habeas corpus petitions; non-criminal petitions account for the remainder. The civil branches of these courts dispose of criminal habeas corpus petitions which, for complicated historical reasons, are civil, post-conviction remedies. It might be argued that habeas corpus petitions for child custody should be coded as divorce-related cases, but in the four cases found in the sample, the plaintiffs and respondents were not ex-husbands and ex-wives. Rather, the parties were widowers and maternal grandparents. Category (31)—appropriation for the secret service—was a sealed case and remains a mystery.

³ The case folders were checked to see if any of these claims appeared in the personal injury suits observed. None were found.

⁴ A review of the *Reader's Guide to Periodical Literature* shows an increasing number of articles since 1965 which deal with consumer protection, consumer complaints, the problem of delay in the administration of justice and malpractice. Articles with aggressive titles have become more noticeable in the more recent volumes of the *Guide*.

⁵ Hospitals become frequent litigants to secure payment for their services. Insurance companies do not automatically pay hospital bills, and people injured in traffic accidents seem particularly reticent about paying their hospital bills.

- ⁶ Vose (1966) is the foremost proponent of the idea of litigation as interest group activity. Dolbeare (1967), on the other hand, arrives at a conclusion similar to mine—there are few cases which demonstrate litigation as a popular forum of interest group lobbying. Hakman (1966; 1969) disagrees with Vose and concludes that litigation as a form of interest group lobbying does not exist, except in the area of civil liberties.
- ⁷ The distribution of personal injury and property damage torts among plaintiff individuals reaffirms an aspect of the automobile accident negotiation structure uncovered by Ross (1967). Most of these torts involve simple, two-party accidents (*cf.* the preponderance of individual men and individual women as plaintiffs to married couple plaintiffs or unrelated individuals as plaintiffs filing cases).
- ⁸ This pattern of initiation of cases may be reinforced by the character of the courts themselves. There are incentives and constraints on the court as a public bureaucracy with a varied clientele which might lead it to be more responsive to the demands of organizational and governmental plaintiffs than to the demands of individuals. First, organizations and government articulate a much narrower range of demands. While individuals litigate many different types of cases, organizations and government each litigate only a few types. Among these are a large number of debt actions which are handled summarily, without adversary proceedings, on a routine basis. Because courts define "efficiency" in terms of keeping down their backlog, they are more readily responsive to the demands of large volume litigants. See Wanner (1973).
- ⁹ Whenever the case folder revealed that the rights of an insurance company were subrogated to the injured individual, the primary party in interest as plaintiff or defendant was taken to be the insurance company, not the individual. Thus, in those tables categorizing only parties in interest (Tables 2, 4 and 6) only the insurance company is encoded as the plaintiff or defendant. In every table categorizing both parties in interest and parties of record, both the insurance company and individuals were encoded as the appropriate plaintiff or defendant.

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