On Becoming Charitable: Predicting and Encouraging Charitable Bequests in Wills

Kristine Knaplund
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I. Introduction

What causes people to leave their property to charity in their wills? Many scholars have explored the effects of tax laws on charitable bequests, but now that more than 99% of Americans’ estates are exempt from federal taxes, what non-tax factors predict charitable giving? This Article explores charitable bequests before the federal estate tax and a deduction for charitable bequests were enacted by Congress. By examining two years of probate files in Los Angeles and St. Louis, in which 16.6% of St. Louis testators, but only 8.3% in Los Angeles, made charitable bequests, we can begin to discern why testators in St. Louis were far

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4 Revenue Act of Feb. 24, 1919, ch. 18, § 403, 40 Stat. 1057, allowed for a deduction for bequests, legacies, devises, or gifts to religious, charitable, scientific, literary, or educational purposes, specifically mentioning the encouragement of the arts and prevention of cruelty to children or animals.

5 See Section ---, infra.

6 See Section ---, infra.
more inclined to give to charity. The surprising results may help policy makers encourage those in the United States and in developing countries to give beyond their family and friends.

This Article is unique in that it is the first to examine not just whether a will included a charitable bequest, but whether the charity received it. This crucial information adds key insights to who gives to charity. In fact, if we compare the two cities by looking at charitable bequests which were actually received, St. Louis testators are even farther ahead of their Los Angeles counterparts, with 15% of St. Louis testators giving to charity compared to 6% in Los Angeles.

Articles examining probate records have reported varying results as to the percentage of testators who include a charitable bequest in their wills. Two studies of 19th century wills in New York and New Jersey found that the percentage of testators leaving charitable bequests varied from 3% in 1850 and 1900 New Jersey to 10% in 1875 New Jersey. Several studies of 20th century wills have found that about 8% to 10% of those who die testate make a charitable bequest. One large study of wills in 1963 Michigan produced higher numbers of such bequests,

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7 Lawrence M. Friedman, Patterns of Testation in the 19th Century: A Study of Essex County (New Jersey) Wills, 8 AM. J. OF LEGAL HIST. 34 (1964) (1 of 30 wills in 1850 and 2 of 60 wills in 1900 Essex County, New Jersey had charitable bequests).
8 Friedman, Lawrence M., Patterns of Testation in the 19th Century: A Study of Essex County (New Jersey) Wills, 8 AM. J. OF LEGAL HIST. 34 (1964) (6 of 60 wills, or 10% in 1875 Essex County, New Jersey had charitable bequests). A second study of 191 wills from New York in 1880-1885 found that 16 wills, or 8.4%, contained charitable bequests. Steuart Henderson Britt, The Significance of the Last Will and Testament, 8 J. OF SOC. PSYCHOL. 347 (1937).
9 See, e.g., Friedman, Lawrence M. et al., The Inheritance Process in San Bernardino County, California, 1964: A Research Note, 43 HOUS. L. REV. 1445, 1462 (2007) (8-9% of 342 wills in 1964 San Bernardino County, California included charitable bequests; Marvin B. Sussman, THE FAMILY AND INHERITANCE 144 (1970) (10% of 659 estates in Ohio in 1964 and 1965 included charitable bequests); T.P. Schwartz, Testamentary Behavior: Issues and Evidence About Individuality, Altruism and Social Influences, THE SOCIOLOGICAL Q., Volume 34, Number 2, 337, 344-45 (1996) (33 of 319 wills [over 10%] in 1985 Providence included bequests to “a combination of local and non-local organizations and people besides family members, relatives and friends, plus one will with bequests only to local churches). Schwartz’s study may understate the number of wills with charitable bequests since the author included only those who gave “more than a trifling amount (usually more than one percent or $100.00)” to those other than
at 16%,\textsuperscript{10} while two studies in Washington and Texas found smaller numbers of 4%\textsuperscript{11} and 7%.\textsuperscript{12} IRS data suggest that, of those with estates large enough to file federal tax returns, as many as 18% make charitable bequests.\textsuperscript{13}

What predicts that a testator will make a charitable bequest? Does the size of the estate matter, or how many relatives are left behind? Does education count? What other factors might help our analysis? The impetus for this Article arose from the author’s earlier study, in which Los Angeles probate files were examined to determine whether women, especially married women, bequeathed their property differently from men.\textsuperscript{14} After reading several hundred wills, one conclusion was unanticipated: very few testators in Los Angeles were leaving anything at all to charity. Even very wealthy testators left nothing outside their immediate families. For


\textsuperscript{11} Sylvia Kathleen Bennett, \textit{The Economics of Bequest Patterns}, Rice University 1990, p. 29, Order No. 9110946 (Table of “Structure of Bequests” showing 25 of 618 estates with a bequest to charity).


example, Alfred Armstrong, the owner of 12 parcels of land plus personal property worth a total of almost $9 million in today’s dollars left everything to his wife and four children. Presley Baker, with extensive real estate holdings in Pasadena, Monrovia, Arcadia, downtown Los Angeles, San Diego, San Bernardino and Texas, and a total net worth of over $5 million in today’s dollars gave all to his stepson and his wife. Lorenzo van der Leck, a widower worth almost $1.3 million in today’s dollars split his estate between his married daughter and his son. Another widower, Roger Plant, gave his property, including land in Santa Monica, downtown Los Angeles and San Diego’s Coronado Island, to his nine adult children. Williamson Dunn Vawter, a widower who was one of the founders of the city of Santa Monica, California, and also instrumental in establishing the Presbyterian Church there, left his estate to his children and grandchildren. Wealthy testators with no children also left nothing to charity: for example, Antonio Franco Coronel left virtually his entire estate to his wife, plus “one peso in American money” to each of his six nieces and nephews. The 43 testators in California who executed a form will were warned, “All property may be disposed of by will. Land to charitable

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15 Case 433 Alfred Armstrong. His assets appraised at $130,000 for the real property and $206,000 in personal property would be worth $8,842,763.18 in 2014 dollars.
16 Case 329 Presley Baker. His estate was appraised at $194,920. His will gave $25,000 to his stepson and the rest to his wife. $194,920 would be worth $5,129,736.84 in 2014 dollars.
17 Case 438 Lorenzo van der Leck. His real property of $40,000 and $9,000 in personal property would be worth $1,289,473.68 in 2014 dollars.
18 Case 522 Roger Plant. His estate included $91,350 in real property, and $4,531 in personal property, worth $2,452,306.58 in 2014 dollars.
20 Case 673 Williamson Dunn Vawter. His estate included real property valued at $11,000 and personal property, mostly stocks, of $49,000.
21 Case 572 Antonio Franco Coronel. The will was written in Spanish. His estate, appraised at $90,876, was the subject of three lawsuits by his nephews, which were dismissed.
22 A total of 44 form wills were in the Los Angeles files, but one testator, Case 230 Mary Perham, executed her form will in Vermont in 1878. Her 1891 codicil in Pasadena, California was not executed on a form. None of the wealthiest Los Angeles testators used a form will.
institutions requires a special deed.” The latter phrase may have discouraged a few from charitable bequests; only one of the 43 gave anything to charity.

St. Louis was chosen to compare with Los Angeles, in part because of the similar demographics of the two cities, and in part because their probate files are available online. The files for this study were obtained as follows. First, all the probate files in Los Angeles County for 1893 and 1894, the earliest years stored in the archives, were examined. No sampling was done in Los Angeles because only 788 files were available, and those included 276 guardianships and adoptions. A total of 514 decedents’ estates were examined: 302 intestate estates, and 210 testate. Wills and intestate files from St. Louis, Missouri, were also examined; the city was chosen in part because the city, at that time, was much bigger and more established than Los Angeles, and in part because the probate records were available online.

The St. Louis archives included 877 decedents in 1893 and 737 in 1894, and so these records were sampled in the following manner. First, to ensure that files were included for all months of the year, all files with the final digit “5” were sampled. A second sampling occurred by choosing a file ending in “1,” then the next file ending in “2” and so on through “0.” A total of 317 files in 1893 and 1894 were sampled for this study. While the St. Louis files did not include

23 Case 212 James Stewart. File includes the “Directions” for completing the form.
24 Case 342 Antoine Charvoz. His estate of $545 included no real property. He gave his ½ interest in a barbershop (valued at $200) to his business partner, and all the rest, after debts of $201, to the French Society of Los Angeles.
26 Missouri’s 1875 Constitution authorized the separation of the city of St. Louis from the county of St. Louis, and treated the city as a county for purposes of representation in the legislature, collection of state revenue, and so on. Constitution, 1875, Art. IX §§ 20-25. Accordingly the city separated from the county in 1876, and the probate files for St. Louis examined for this study are for the city, not the county. Missouri State Archives, Missouri Judicial Records, available at www.sos.mo.gov/archives/mojudicial/.
27 To examine the probate records in St. Louis or other jurisdictions in St. Louis, go to www.sos.mo.gov/archives/mojudicial/.
28 Probate files are assigned a number in the order in which the initial paperwork, typically a request for letters of administration or to appoint an executor, is received by the probate office. However, the online files are arranged in alphabetical, not numerical, order.
guardianships and adoptions, they did include one file to establish a conservatorship and six files to dissolve partnership agreements on the death of a partner; those seven files were excluded. Thus, 134 intestate estates and 172 wills from St. Louis were included in the study.

II. Historical Background

Both cities had experienced tremendous growth in the preceding decade, with the growth in Los Angeles far exceeding that in St. Louis. Los Angeles County had a population of 33,381 in 1880; ten years later, the county had tripled in size to 101,454, even though by that time Orange County, with a population of 13,589, had split from Los Angeles. The city of Los Angeles grew from 11,000 in 1880 to more than 50,000 in 1890, of whom perhaps only one-quarter had been living there for more than four years. The growth of the railroad system helps to explain the population rise: In 1876, the Southern Pacific Railroad connected Los Angeles to the rest of the country. When the Atchison, Topeka and Santa Fe Railroad arrived nine years later, a price war developed, with the price of a ticket from Chicago falling from $85 to as low as $1. In 1886, 120,000 passengers arrived in Los Angeles via the Southern Pacific, and “the Santa Fe had three or four trains a day arriving” there, bringing in still more.

The city of St. Louis was far bigger than Los Angeles; the population in 1890 for St. Louis City was tallied at 451,770, but it too was growing rapidly, with a 29% increase from

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31 Joseph S. O’Flaherty, Those Powerful Years: The South Coast and Los Angeles 1887-1917 16 (Exposition Press 1978).
32 Id.
33 Joseph S. O’Flaherty, Those Powerful Years: The South Coast and Los Angeles 1887-1917 16 (Exposition Press 1978).
350,518 in 1880. As in Los Angeles, part of this growth was due to the expansion of the railroads. The 1874 completion of the Eads Bridge, a 520-foot two-story structure that was the biggest bridge in the world at that time, allowed the railroads on the two sides of the Mississippi river to unify. Before the bridge, freight had to be off-loaded from the trains onto ferries to be shipped into or out of St. Louis, a time-consuming and expensive delay. Another reason for St. Louis’ growth was its large German population and their desire for a beer that tasted like home. German immigrants in St. Louis produced lager, in which the beer was stored in wooden casks to age, and by the mid-1800s, more than 50 breweries were in operation in St. Louis. In 1876, German immigrant Adolphus Busch created an American-style lager beer, Budweiser, which became the first beer to be pasteurized so that it could be shipped long distances from St. Louis, especially once Busch developed refrigerated railcars in the late 1870s. In addition to beer, St. Louis was a major source of production for shoes, including the Hamilton-Brown Shoe Company, which first opened in 1872 to sell shoes made on the East Coast and later opened its own factory in St. Louis in 1888.

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34 Dep’t of the Interior, Census Off., Report on the Population of the United States at the Eleventh Census: 1890 221 (1895) tbl. 5 “Population of states and territories by minor civil divisions 1880 and 1890”
38 Two decedents in the study were in the shoe business. Case 20880 Abraham Rosenberg owned a shoe store at 612 Franklin St in St. Louis; his inventory included hundreds of pairs of shoes. The inventory of Case 20425 Carl Hurleman noted 30 pairs of assorted shoes.
Both cities included substantial numbers of immigrants, with 25% of the population foreign born.\textsuperscript{40} The Los Angeles files included 24 decedents who left family in Scotland,
England, France, Ireland, Germany, Switzerland, Italy, Mexico, Spain and Syria.\textsuperscript{41} In the St. Louis files, 20 decedents had ties especially to Germany\textsuperscript{42} and Ireland,\textsuperscript{43} but also Austria,\textsuperscript{44} Canada,\textsuperscript{45} England,\textsuperscript{46} Turkey,\textsuperscript{47} and Wales.\textsuperscript{48} St. Louis had far more inhabitants with a foreign born father or mother than Los Angeles; in the 1890 Census for cities with populations of at least 25,000, St. Louis ranked fifth in the country (behind only New York, Chicago, Philadelphia, and Brooklyn, N.Y) in “white persons” with at least one foreign born parent, while Los Angeles

\textsuperscript{40} Dep’t of the Interior, Census Off., Report on the Population of the United States at the Eleventh Census: 1890 451 (1895) tbl. 19 “Population by sex, general nativity, and color, of places having 2500 inhabitants or more: 1890.”
\textsuperscript{41} Testate decedents: Case 212 James William Earle Stewart (Scotland); Case 206 George William Spawforth (England); Case 143 Joseph Naud (France); Case 342 Antoinne Charvoz (France); Case 321 Terrence Kenney (Ireland); Case 343 Jacob Stengel (Germany); Case 361 Charles Wagner (Germany); Case 401 Albert Herminghaus (Germany); Case 366 C.U. Mueller (Switzerland); Case 495 Edward Willike (Germany); Case 544 Robert Fleming (England); Case 591 John Bergdahl (Sweden); Case 605 Horatio Perry (Germany); Case 639 Juan Del Amo (A resident of Mexico, he was a native of Spain); Case 744 Joseph A. Arbeely (Yusef Aoud Arbelly) (Syria). Intestate: Case 120 Andrew Danielson (Sweden); Case 157 Josefa de Celis (Mexico and Spain); Case 320 Andrew Rein (Germany); Case 351 Pietro Luciaridi (Italy); plus four decedents from Ireland: Case 95 Bridget Wilson, Case 306 Alicia Walsh, Case 307 Olivia Bovaird, Case 404 Edward Herne.
\textsuperscript{42} Case 19465 Maria Braght (sister in Germany); Case 19510 Francis Saler (inventory showed share of stock in Herold des Glaubens [German Printing and Publishing Association] and cash in the German Savings Institution); Case 19564 Theobald Rees (brothers and sisters in Germany); Case 20115 John Leuze (will written in German & executed in Stuttgart, Germany); Case 20235 Mary Laske (born in Hanover, Germany); Case 20051 Carl Clemens (decedent was German national; case opened in St. Louis to allow Carl to inherit from his brother, Otto Clemens, who died here); Case 20769 Hermann Bredestegge (will written in German; bequests to Germans); Case 20778 Sophie Flohr (will written in German & executed in the Kingdom of Prussia); Case 20967 Adolphus Boeckele (wife and brothers in Germany; testator buried there); Case 20909 Theresa Lohrum (daughter signed receipt in German); Case 20160 Carl Baumann (receipt from one charitable beneficiary, Diaconissen Home, in German).
\textsuperscript{43} Case 19645 Daniel Malone (mother and brother in County Cork, Ireland); Case 19685 Mary Jane Ranken (Irish citizen who executed will in Ireland); Case 20415 John Murphy (1 daughter in Ireland); Case 20990 Mary Lyons (niece in Ireland).
\textsuperscript{44} Case 19997 Abraham Geist (bequests to niece and brother-in-law in Krakau, Austria).
\textsuperscript{45} Case 20248 Michael Walsh (2 sons in Ontario, Canada).
\textsuperscript{46} Case 19907 Thomas Silence (brother in London, England expressly left nothing in will).
\textsuperscript{47} Case 19700 George Hachadoorian (intestate heir in Sivas, Turkey signed by mark).
\textsuperscript{48} Case 20255 Thomas Stephens (1 brother, and children of deceased sister, in Wales).
ranked #52. In that census, 152,810 inhabitants of St. Louis had both parents born in Germany. Another 11,322 in St. Louis had at least one parent born in Germany, plus another 775 with one parent born in Germany. The second most common country of origin in both cities was Ireland. For St. Louis, 54,972 inhabitants had both parents born in Ireland, and another 6,980 had one parent born in Ireland. Los Angeles had far fewer inhabitants with Irish born parents: 2,632 with both parents born in Ireland, and 775 with one parent born in Ireland.

50 Tbl. 52, “White Persons Having Both Parents Born in Specified Countries, or of Mixed Foreign Parentage, For Cities Having 25,000 Inhabitants Or More: 1890.”
52 Tbl. 52, “White Persons Having Both Parents Born in Specified Countries, or of Mixed Foreign Parentage, For Cities Having 25,000 Inhabitants Or More: 1890.”
53 This number is the sum from Table 59 (mother born in Germany & native father of native born inhabitants= 212), Table 60 (same parentage as Table 59 for foreign born inhabitants = 3), Table 61 (father born in Germany & mother born in some other foreign country = 335) and Table 62 (mother born in Germany and father born in some other foreign country = 225).
54 Tbl. 52, “White Persons Having Both Parents Born in Specified Countries, or of Mixed Foreign Parentage, For Cities Having 25,000 Inhabitants Or More: 1890.”
55 This number is the sum from Table 59 (mother born in Ireland & native father of native born inhabitants= 3,061), Table 60 (same parentage as Table 59 for foreign born inhabitants = 57), Table 61 (father born in Ireland & mother born in some other foreign country = 1,669) and Table 62 (mother born in Ireland and father born in some other foreign country = 2,193).
56 Tbl. 52, “White Persons Having Both Parents Born in Specified Countries, or of Mixed Foreign Parentage, For Cities Having 25,000 Inhabitants Or More: 1890.”
57 This number is the sum from Table 59 (mother born in Ireland & native father of native born inhabitants= 214), Table 60 (same parentage as Table 59 for foreign born inhabitants = 5), Table 61 (father born in Ireland & mother born in some other foreign country = 225) and Table 62 (mother born in Ireland and father born in some other foreign country = 311).
Both places were largely white: 94% in both Los Angeles and St. Louis. While no racial identifiers could be found in the Los Angeles files, three references to race were in the St. Louis files. In one, the testatrix identified herself as a “mulatto woman” and left all her property to two children, ages eleven and eight, who she identifies as “colored persons” and the grandchildren of Berryman Ramsey, “a colored man.” Ramsey was one of the witnesses to the will; the testatrix and both witnesses signed by mark. In another will, also signed by mark, the testatrix identified herself as “a colored woman” and gave her property to her children. In a third file, a bill for nursing services indicated that $1 was paid to a “colored assistant;” the nurses, but not the assistant, were identified by name.

Both cities reflected the economic downturn in 1893, with substantial numbers of estates either declared insolvent or with no known property. In Los Angeles, seven estates with attested wills and 31 intestate estates lacked assets, for a total of 7% of the estates. Not surprisingly, many of the insolvent estates declared that the decedents had no known heirs: six of the intestate insolvent estates in Los Angeles, plus another six solvent intestate estates, resulted in escheat. In addition, in another six estates in Los Angeles, locating family members was an issue. In two

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59 Dep’t of the Interior, Census Off., Report on the Population of the United States at the Eleventh Census: 1890 466 (1895) tbl. 19 “Population by sex, general nativity, and color, of places having 2,500 inhabitants or more: 1890”
60 Case 19854 Patricia Hurst.
61 Case 20018 Nancy Johnson.
62 Case 20236 Isabella Devine.
63 Case 72 Lorenz; Case 73 Brophy; Case 143 Naud; Case 345 Mell; Case 357 Gustin; Case 361 Wagner; Case 589 Champagne.
64 Case 594 Gibson (single male, with assets of $50 before debts and expenses); Case 235 McMahon (single male, $81); Case 421 Munro (single male, $25); Case 648 Ney (single male, $201); Case 337 Price (single female, $95); Case 160 Sheehan (single male, $300).
65 Case 748 Darr (married man; real property inventoried at $350 but sold for $150; $6 escheated to state in 1910); Case 755 Huffman (single female, $708); Case 631 Kerr (single male, $321); Case 496 Kronberg (single male, $582); Case 91 Montagono (single male committed to insane asylum, $26); Case 434 Sentt (single male, $610).
attested wills, the testator declared he had lost track of his family.\footnote{Case 146 Mattie Prairo (will left all to husband; her sister’s whereabouts unknown); Case 223 Gerry Wells (will stated “I had two brothers and one sister but have not heard from them for many years and do not know whether any of them is living now.”) In another example, Case 10’s Charlotte Maxwell executed her will in 1892 leaving all to her four children, apparently unaware that her daughter Maria died almost two years before will executed.} In a third file, the surviving widow declared that the decedent had children from his first marriage but their names and whereabouts were unknown to her.\footnote{Case 348 B. Homer Fairchild.} In a fourth Los Angeles will, the testator, a widower, asked that his two children, ages ten and eight, be placed with the Los Angeles Orphans Home.\footnote{Case 494 Weinheimer.} In two Los Angeles intestate cases, finding family members proved difficult: in one case, the administrator located two half-siblings of the decedent, who were entitled to the estate in place of the original claimants, the decedent’s brother and nephew;\footnote{Case 435 Hodge.} in a second intestate case, the minor decedent’s missing mother was belatedly found re-married and living in Boston.\footnote{Case 743 Porter.}

In St. Louis, 35 of the files – 6 with attested wills and 29 in intestacy – were insolvent, or 11\%. Three St. Louis cases revealed difficulties in locating family: in one, family members differed over the number of nieces and nephews entitled to inherit in intestacy;\footnote{Case 20473 Beall.} in the second, the intestate distribution resulted in a partial escheat because one of the decedent’s daughters never appeared to collect her share;\footnote{Case 20945 Hunter. The decedent owned three lots of real property so the estate did have assets.} and in the third case, the decedent’s daughter stated that her brother had not been heard from since 1868 and thus “she is unable to state whether said
August is alive or dead.” In another four St. Louis cases, the executor or administrator filed papers to qualify to preside over the estate and then disappeared.

In other ways files from the two cities were markedly different. Los Angeles in the late 1880s and early 1890s was a popular destination for those wanting to invest in land. In 1886, the Southern Pacific Railroad brought in 120,000 passengers, and the Atchison, Topeka and Santa Fe line ran three or four trains a day to the city. The passengers were swarmed by real estate agents looking for purchasers for their property developments. “While they gulped free lunches, brass bands blared and daredevils risked the balmy skies with balloon ascensions. A mania seized them. Why not buy building lots on credit, and then resell a few days later for a profit?”

Not surprisingly, 74% of all the files, testate and intestate, in Los Angeles included real property, while only 63% in St. Louis included real estate. While one might expect a much higher level of testacy in those with real property, that is not true in Los Angeles: 77% of the testate decedents owned real property at death, compared with 72% of intestate decedents. In St. Louis, by contrast, testate decedents were far more likely to own real property: 78% of the testate decedents and only 43% of intestate decedents owned real property. Los Angeles

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73 Case 19755 Fredricke Tanzberger.
74 Case 19455 John Ellis (will named his wife as executrix; a “Citation to Make Settlement” was returned with the notation “The within named Sarah Ellis cannot be found in the City of St. Louis”); Case 19858 Joseph Lewis (widow declined to administer estate and son appointed instead; court issued several citations to make settlement and to file inventory but as of March 1895, the son “cannot be found.”); Case 19651 Ellen Powers (will named husband as executor, who qualified and later was ordered to file accounts and make settlement, but cannot be found); Case 20256 Mary Shiffley (husband qualified as administrator, collected the $500 in insurance and then abandoned his three children ages 13, 8 and 5).
75 Joseph S. O’Flaherty, Those Powerful Years: The South Coast and Los Angeles 1887-1917 16 (Exposition Press 1978).
76 David Lavender, Los Angeles Two Hundred 49-50 (Continental Heritage Press 1980).
77 373/504 = 74%. 161 testate decedents and 212 intestate decedents had real property listed in an inventory filed with the court. In 8 cases (2 testate and 6 intestate), no inventory was filed so those 8 cases are excluded from the total.
78 191/305 = 63%. 133 testate decedents and 58 intestate decedents had real property. For one testate decedent, no inventory was filed so that case was excluded from the total.
decedents also differed from those in St. Louis in the quantity of real property: the Los Angeles probate files included a number of decedents who owned scores of lots.\textsuperscript{79} In St. Louis, only one owned dozens of lots.\textsuperscript{80}

Another contrast was in the administration of the probate estates: the length of time required to probate the estate in Los Angeles and the number of estates that were reopened decades later. Seventeen estates in Los Angeles took ten years or longer to close. Three of the seventeen might be explained by the fact that the decedents were non-residents.\textsuperscript{81} In another seven cases, either a principal person in the case died, or the estate was subject to substantial litigation.\textsuperscript{82} The remaining seven cases reveal no indication why administration took many years.\textsuperscript{83} In addition to these seventeen, in another four cases the estate was closed promptly and

\textsuperscript{79} See, e.g., Case 472 Sereno Chaffee (inventory for guardianship included dozens of lots valued at over $50,000; see Case 376); Case 4 Patrick Conroy (95 parcels), Case 56 Thomas Brown (over 100 parcels); Case 216 Charles Langford (50 parcels); Case 500 Annie McAnany (109 parcels).

\textsuperscript{80} The exception is Case 20185 George Tower, whose real property inventory covered 17 pages and included 95 unimproved lots and 5 improved lots in Missouri; 83 improved acres in New Hampshire, plus unimproved property in New Hampshire, Illinois and Arkansas. Two others in St Louis owned multiple lots: Case 19622 David Armstrong (15 lots) and Case 20278 Thomas Rielly (6 lots).

\textsuperscript{81} Case 306 Wash (intestate; resident of Ireland); Case 307 Bovaird (intestate; resident of Ireland & sister of Walsh); Case 774 Bolton (intestate; Massachusetts resident; decree of distribution dated 1895 was filed in 1909).

\textsuperscript{82} Case 130 Steele (attested will; his wife, named executrix, died in 1899; closed in 1912); Case 108 Cochran (intestate; attorney for administratrix-wife was Case 390 Henry O’Melveny, who died in 1893; closed in 1921); Case 293 Flanagan (attested; will contested because signed by only one witness; estate distributed in intestacy; closed in 1907); Case 298 Eichenberger (attested; lots of litigation; closed in 1904); Case 305 Baker (intestate; lots of litigation; closed 1906); Case 574 Rheinart (holograph; wife predeceased him in 1893, Case 227; closed 1911); Case 610 Sherman (intestate; lots of litigation; closed 1921).

\textsuperscript{83} Case 111 Richards (intestate; closed in 1917); Case 310 Gifford (holograph; closed 1906); Case 384 Sloan (intestate; inventory filed 1903); Case 481 Barron (attested; closed 1903); Case 562 Caulfield (intestate; closed 1907); Case 629 Mead (attested; inventory filed in 1911); Case 689 Sanchez (intestacy; closed in 1940).
then re-opened years, even decades later.\textsuperscript{84} In St. Louis, in contrast, only five cases, all involving residents, took more than ten years to close.\textsuperscript{85}

Laws on the execution of wills also differed between Missouri and California. The age of testamentary capacity for males in Missouri was twenty-one with respect to real property and eighteen with respect to personal property,\textsuperscript{86} for females it was twenty-one for both real and personal property.\textsuperscript{87} These requirements were the law for 148 years, from 1807 to the enactment of the 1955 Code. As the author of one practice book noted, “To admit a will to probate the proponent must establish that the testator was of the required age. While there is no decision on the point in Missouri there is little doubt but that the testator must have attained the required age at the time of the will's execution. It is not sufficient that the testator remain passive and not alter his previously executed will after attaining the required age.”\textsuperscript{88}

California required male and female testators to be eighteen and of sound mind.\textsuperscript{89} While at one time a married woman needed her husband’s consent to execute a will,\textsuperscript{90} after 1864 his consent was no longer required. Still, she could only devise her separate property; the

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\textsuperscript{84} Case 80 Swartwout (intestate; resident of Louisiana; re-opened in 1926); Case 81 Morgan (intestate; re-opened in 1944); Case 101 Ogier (attested; re-opened in 1932 to quiet title); Case 295 de Lamarca (intestate; re-opened in 1907).
\textsuperscript{85} Case 19622 Armstrong (attested; lots of litigation over omitted wife, wrongdoing by executor leading to removal; closed in 1909); Case 20185 Tower (attested; largest file in study with lots of litigation; closed in 1919); Case 20865 Pullis (attested; assets valued at $81,625 were later sold for $10; re-opened in 1905); Case 20544 Casey (intestacy; closed in 1907); Case 20235 Laske (intestacy; re-opened in 1903).
\textsuperscript{86} V.A.M.S. § 468.130 (1949)
\textsuperscript{87} V.A.M.S. § 468.140 (1949)
\textsuperscript{88} John A. Borron, Jr., Missouri Practice Series: Probate Law And Practice, Chapter 3. Testamentary Capacity § 92.\textsuperscript{89} Act of Apr. 10, 1850, ch. 72, 1850 Cal. Stat. 177, § 1 provided “Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will, shall descend as the estate of an intestate, being chargeable in both cases with the payment of all the testator’s debts.” The 1874 Civil Code included the same requirements. \textsc{Cal. Civ. Code} § 1270 (1874).
\textsuperscript{90} Act of Apr. 10, 1850, ch. 72, 1850 Cal. Stat. 177, § 2.
community property belonged solely to her husband after her death. A married woman’s interest in the community property, Chief Justice Field of the California Supreme Court held, “is a mere expectancy, like the interest which an heir may possess in the property of his ancestor.” Justice Cope explained a year later:

The wife has no voice in the management of these affairs, nor has she any vested or tangible interest in the community property. The title to such property rests in the husband, and for all practical purposes he is regarded by the law as the sole owner. It is true, the wife is a member of the community, and entitled to an equal share of the acquests and gains; but so long as the community exists her interest is a mere expectancy, and possesses none of the attributes of an estate, either at law or in equity.

The result was that married women in both Missouri and California had substantially equivalent property rights. They could manage and devise their separate property, but could not will away property gained through their husband’s earnings. The California legislature restricted the husband’s right to give away community property by requiring the wife’s written consent as of 1891, but that statute had little effect on our testators, as the California Supreme Court ruled in 1897 that the statute applied only to property acquired after 1891. Married women at that time were unlikely to have their own earnings after marriage. While the probate files often revealed the occupation of male decedents, few women decedents appeared to be employed at the time of their deaths. Male decedents included a number of attorneys, in addition to a few

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91 CAL. CIV. CODE § 1401 (1874). Married women finally gained the right to will away their half of the community property in 1923. Act of Apr. 16, 1923, ch. 18, 1923 Cal. Stat. 29, 30 § 1 (codified as CAL. CIV. CODE § 1401 (1923)).


93 Packard v. Arellanes, 17 Cal. 525, 538 (1861).


96 Los Angeles: See, e.g., Case 110 Alexander McCoy (personal property valued at $14,718 included law books); Case 654 Samuel McKinlay (law library valued at $300); Case 740 W.H. Mitchell (died intestate with an inventory including law books and interests in patents); Case 390 H.K.S. O’Melveny (probate attorney and former judge who died intestate; his son founded prominent LA law firm O’Melveny & Myers); 741 C.C. Stephens (widow’s petition to be named administratrix stated that decedent was actively practicing law until a few days before his death); Case
with jobs we rarely see today such as a tinsmith, a blacksmith, and a Basque shepherd. Five women, only one married at the time of death, indicated a source of their income: a married pawnshop owner, a widow who owned two houses with 32 rooms for rent, and a widow who served as Assistant Postmistress in St. Louis; and a widowed winemaker and a rooming house owner in Los Angeles.

In both California and Missouri at that time, married women could inherit property, but St. Louis testators were often careful to keep the inheritance from their sons-in-law. For example, Philip Curtis directed his executor to sell all the real property in the estate, give $1 to Curtis’ son, and then divide the remaining property into shares with one part to his beloved daughter Eliza “as her sole and separate property, free from all use and control of her husband;” a similar bequest was made to another married daughter, Edmonia; for a third daughter, a widow, the property shall be “free from all use and control of any future husband that she may have.” In a similar manner, Bernhard Hoelscher bequeathed his property to his widow for her life “free from the control of interference of anyone else whomsoever,” and then to his married daughters “free from the control or interference” of their husbands. Samuel Warren left half his property to his wife and half to his married daughter, with the proviso that all property

693 John Robarts (law library with 1,776 volumes valued at $2,300); Case 372 William Wade (inventory included law library and copyrights on law books written by decedent); Case 344 Thomas Wilson (petition to probate will states that decedent was an attorney); Case 694 Langston Winston (law library and office furniture worth $200);.
97 Case 355 Kennedy (intestate);
98 Case 404 Herne (intestate).
99 Case 333 Sorzabal (intestate).
100 Case 20155 Mary Miller.
101 Case 20633 Maria Schmidt.
102 Case 20965 Alice Hall (her only asset was “1 month’s salary as Assistant Post Mistress” valued at $76.09).
103 Case 489 E. A. Leeper (inventory included 9,000 gallons of wine @ $50/gallon, one crusher, one wine press, and ten wine kegs); Case 359 Trantum (widow; owned eleven Bunker Hill lots with rooming houses).
104 Case 19572 Philip Curtis. Daughter Eliza was also given a share in trust for another married daughter, Martha Mills, “for the reason that my said daughter, Martha Mills, is of weak mind.” Son Philip Curtis was given his share outright.
105 Case 20995 Bernhard Hoelscher.
bequeathed to his daughter “shall be held by her as her separate estate, without any control thereof by her husband. I make this provision not from any lack of confidence in her husband, whom I hold in the highest regard, but solely as a matter of prudence for her future best interests.” The language may have been needed for the real property in Hoelscher’s and Warren’s estates, but was unnecessary for the personal property: Missouri in 1875 had enacted its version of the Married Women’s Property Acts, declaring that any personal property inherited by a married woman was her separate property and under her sole control.

In Los Angeles, while one testator used language even more restrictive than that in the St. Louis wills, several simply gave all their property outright even to married daughters or granddaughters. From the time California entered the Union, all property acquired by inheritance was regarded as separate, not community property. This concept was spelled out in the California Constitution of 1849:

106 Case 20755 Samuel D. Warren.
108 Case 5 John W. Polley devised half his real property in California to his daughter, and the other half equally to his two sons. His daughter, but not the sons, was given “no power to mortgage, encumber, or in any way convey the property, or to transfer an interest therein, or to assign her right to receive the rents and income therefrom without the written consent of the executors” and the two sons. A court might also use language similar to the St. Louis terms. See, e.g., Case 738 Lena Brenner, who died intestate survived by her son and a married daughter. The court decreed that ½ the property went to son Jacob and ½ to daughter “Rosa Haas, wife of Julius L. Haas, for her sole and separate use and benefit.”
109 See, e.g., Case 10 Charlotte Maxwell: On a form will, she gave all her property in California “to my four children Mareta R. Ramsey, Maria M. Bonman, Samuel A. Maxwell and George B. Maxwell.” Daughter Maria died almost two years before the will was executed. Case 408 Elias Bixby: In a typed will, he gave all his real property in Los Angeles to his son Lewis Bixby, and all his property in the state of Missouri “to my beloved daughter Madora Bixby Willis, of Sherman, Texas, and to her heirs forever…” He further directed that his body be properly embalmed and transported to Missouri to be buried with his wives (plural!) and children. Case 15 Maria G. Herrera: Survived by two adult daughters and three adult grandchildren (two grandsons and a granddaughter), her form will left all to the five descendants “share and share alike equally.” Case 487 Henry Nelson: In an attested will executed the day he died, he left all his property equally to his five children, including three minor children living with his ex-wife in Philadelphia. Case 230 Mary Perham: All the rest to her two granddaughters and a grandson in equal shares.
All property, both real and personal of the wife, owned or claimed by her before marriage, and that acquired afterwards by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property, as to that held in common with her husband.\(^{110}\)

The Legislature acted in 1850 to declare that the husband had sole management and control of the wife’s separate property, although her consent was needed before her could transfer or encumber it.\(^{111}\) In 1872, a new statute gave the wife full managerial power over her separate property,\(^{112}\) and in 1889 declared that property conveyed to a married woman by written instrument was presumed to be her separate property.\(^{113}\) This presumption furthered the intention of the parties: “Since a married woman could only control separate property … [a] grantor’s decision to place title in a married woman much have represented a desire that she exercise control.”\(^{114}\) With that 1889 presumption, there was no need for a testator to expressly declare that the bequest to a California married woman was free of her husband’s control, and thus it is not surprising that the language is largely absent from California wills.

Testators in both states routinely named their widows as executrix, even in cases in which the widow signed by mark and thus may have lacked the ability to read and write.\(^{115}\) Several

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\(^{112}\) 1 Codes and Statutes of California Sec. 5162, at 595 (T. Hittel ed. 1876). Earlier, the California Supreme Court had held that the rents and profits of separate property were also separate, and did not belong to the community. George v. Ransom, 15 Cal. 322, 323-24 (1860).


\(^{115}\) St. Louis: See, e.g., Case 20240 Gerhard Poser (both testator and wife-executrix signed by mark); Case 19564 Theobald Rees (will gave $1 each to testator’s brother and sister in Germany; rest to wife); Case 22996 Michael Shea (widow-executrix died in 1897, leaving three sons and two daughters; daughter Mary then appointed successor administrator); Case 19735 Lambert Walter (will named widow to serve as executrix without bond); Case 20664 Joseph Whetstone (will did not provide for waiver of bond). In Los Angeles, 71% of the married men who designated an executor in their wills named their wives; two-thirds of the married women named their husbands.
testators named their daughter or niece, rather than a male relative, to be executor,\textsuperscript{116} although in some cases the daughter was disqualified because she was married.\textsuperscript{117}

The St. Louis files differed from the Los Angeles files in other respects. Decedents in St. Louis were far more likely to be testate than their Los Angeles counterparts. In addition, women in St. Louis were far more likely to have an administered estate than those in Los Angeles.

Of the 512 Los Angeles files, 59\% (302/512) were intestate, and only 41\% (210/512) involved holographic or attested wills. In St. Louis, the percentages were almost the reverse, even though no wills were holographs: 56\% (172/306) of the files involved attested wills, and 44\% (134/306) were intestate. The gender ratios in the two cities were quite different as well. In Los Angeles, 28\% of the decedents (intestate and testate) were female, while in St. Louis, 35\% were female. Women were a greater percentage of testators in St. Louis than in Los Angeles: 37\% of those executing wills in St. Louis were female, while only 29\% of Los Angeles testators were female.


\textsuperscript{116} St. Louis: \textit{See, e.g.}, Case 20352 C. Auguste Calame (in a will signed by mark, testator named his niece, not his brother in St. Louis, as executrix to serve without bond); Case 20025 Arndt Klein (typed form will provided for testator’s 5 daughters and 4 sons, and named 1 daughter to serve as executrix without bond). Los Angeles: \textit{See, e.g.}, Case 636 Martha Ashmead (testator survived by husband, three adult daughters and two adult sons. Oldest daughter named executrix. Three daughters to receive shares outright; son George to have sole use of certain real property for six years “at the end of which if he is living a sober, upright life in every way he is to have the deed of the property…” Similarly, son Arthur is “not to receive his share until he is out of debt, has real property to the value of two hundred dollars… and becomes steady and does not spend his evenings out…”). Case 326 Richard Chippendale (will give all to daughter Maria and named her executrix; other children not mentioned in will; Maria relinquished her right to act as executrix, and her brother served instead); Case 88 Mary C. Saunders (will named the testator’s daughter-in-law, not the testator’s husband or son, as executrix).

\textsuperscript{117} \textit{See, e.g.}, Case 22596 Nicholas Ast (testator’s only child disqualified because married; her husband named administrator in her place); Case 20875 Charles Masschelein (testator named one of two married daughters to be executrix); Case 20693 Mary O’Connor (testator named married daughter as executrix, and provided that property should be divided among her 3 sons; after her daughter was disqualified, her son served as administrator). In at least 3 intestate estates, a daughter served as administrator: Case 19962 Mary Powers (letters revoked after daughter married); Case 20792 Albert Trevor (decedent’s son and three daughters waived right to serve in favor of decedent’s fourth daughter); Case 20505 Helena Zimmerman (same).
A high percentage of testators in St. Louis signed by mark, much higher than in Los Angeles at that time. Thirty-five of 168 wills (21%) were signed by mark in St. Louis, compared with 11 of 215 (5%) in Los Angeles. Another nineteen files in St. Louis contained signatures by mark by heirs or devisees, the executor named in the will, and others. While some of those signing by mark may have been incapacitated by stroke or other infirmity, it is likely that the majority of those signing by mark could not read or write, given the educational climate in Missouri and the rest of the country in the 19th century. A public education system in Missouri was first created after the Civil War, when the 1865 state convention directed the General Assembly to provide free public schooling for children between age 5 and 21, and mandated a minimum attendance of sixteen months at some time prior to age 18. St. Louis set up several public schools in 1865 but still turned away about 2,000 eligible white children that year. Five years later, the 1870 Census reported that, state-wide, 59% of eligible white

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118 A total of 172 St. Louis wills were included in this study. In 4 cases, documents in the file established that the decedent died testate but no copy of the will was included in the file, so it was unknown if the testator signed by mark.
119 In five of the 220 LA will files, the will itself was not included in the file.
120 Heirs or devisees signing by mark: Case 20473 Samuel Beall; Case 20805 John Callahan, Case 20645 Patrick Fox, Case 20395 John Kroeger, Case 20315 Louis Kirchoff, Case 20964 Margareth Linkenfelter, Case 20880 Abraham Rosenberg, Case 20385 James Tarlton, Case 19695 Christoph Wall, Case 19700 George Rachadoorian. Executors signing by mark: Case 19564 Theobald Rees, Case 22996 Michael Shea, Case 19735 Lambert Walter, Case 20664 Joseph Whetstone. Others signing by mark: Case 19612 Martin Mears (witness to will), Case 20089 Henry Ebmeyer (appraiser filing inventory), Case 20335 Timothy Scott (creditor), Case 20639 Charles Starkes (worker), Cases 20297 Adeline Charpiot (4 witnesses in trial), Case 20248 Michael Walsh (affiant).
121 For example, David Armstrong, Case 19925 in St. Louis, signed his will by mark the day before he died, but another document in the file includes his signature. Francis Saler, Case 19510 in St. Louis, also signed his will by mark. He was the publisher of a German daily and weekly newspaper so it is unlikely that he was illiterate. James Cox, Old and New St. Louis: A Concise History of the Metropolis of the West, available at http://books.google.com/books?id=ZtEYAQAAMAAJ&pg=PA430&lpg=PA430&dq=Francis%2BSaler%2BSt%2BLouis%2BCox&source=bl&ots=ZoHA1SsGyz&sig=TxlLjOu6D88vnxQzF%eazD%eazFz%eazF%eazF&hl=en&sa=X&ei=HHS8U6zAwoA TGuoKABg&ved=0CDUQ6AEwBQ#v=onepage&q=Francis%20Saler%20St%20Louis%20Cox&f=false.
122 William E. Parrish, A History of Missouri Volume III 1860-1875 170 (U. of Mo. Press 1973). School terms in the 19th century were quite short, and generally followed the agricultural cycle. For example, the school term in Cape Girardeau County Missouri was four months long in the 1870s, beginning after the harvest in late October and ending in early March before the spring planting season. Lawrence O. Christensen and Gary R. Kremer, A History of Missouri Volume IV 1875-1919 54 (U. of Mo. Press 1997).
children were attending school. Blacks in Missouri were even less likely to receive an education: An 1847 amendment to the Missouri constitution declared it unlawful to teach any “Negro” to read and write. Some defied the law, with Catholic nuns in St. Louis conducting classes periodically in that city. In 1856, the first Black-run school was established in St. Louis; 150 children paid the monthly tuition of $1 to attend, but the school operated for only one year. In 1864, a group of both Blacks and whites in St. Louis operated four subscription schools with about 400 students, increasing to 600 a year later. In 1865, the General Assembly repealed the restrictions on educating Blacks, and in 1866 mandated that each town or city board of education establish and maintain at least one separate school for Negro children where the number of eligible students exceeded 20. St. Louis responded by opening 3 such schools with a combined 437 students; a fourth school, funded by Blacks, opened in 1869 and was burned down a month later. The 1870 census reported that more than 9,000 Black students were attending school state-wide, a huge increase over a few years earlier, but still constituting only 21% of those eligible. By 1875, Missouri had established primary schools in most parts of the state for Black students, so the state was moving forward much faster than other former

131 William E. Parrish, *A History of Missouri Volume III 1860-1875* 164 (U. of Mo. Press 1973). The loss was estimated at $10,000. *Id.*
132 William E. Parrish, *A History of Missouri Volume III 1860-1875* 163 (U. of Mo. Press 1973). Blacks constituted 6.9% of Missouri’s population in 1870, with over 99% born in the state. *Id.* at 151. Missouri began to restrict immigration of Blacks into the state starting in 1825. *Id.* at 145.
slaveholding states.\textsuperscript{133} That year, St. Louis opened the first high school for Black students, becoming the only such school west of the Mississippi River.\textsuperscript{134}

St. Louis testators who were born in another state and later moved to Missouri were also part of a patchwork educational system. Before 1830, most American schools were privately operated and had short terms similar to those in Missouri, of about three months.\textsuperscript{135} Many states, like Missouri, first established public schools after the Civil War.\textsuperscript{136} The 1870 Census reported an overall U.S. illiteracy rate of 20\%, with Whites (native and foreign born) at 11.5\% and Blacks and other minorities at 79.9\%. In 1880, the overall rate had dropped slightly to 17\%, with native Whites at 8.7\%, foreign born Whites at 12\%, and Blacks and others at 70\%. In 1890, the overall rate was 13.3\%, with native Whites at 6.2\%, foreign-born Whites at 13.1\%, and Blacks and others at 56.8\%.\textsuperscript{137}

Several of the St. Louis wills were either written in German\textsuperscript{138} or provided bequests for those in Germany and other German-speaking areas of Europe,\textsuperscript{139} a reflection of the large German population in St. Louis. At the beginning of the Civil War, St. Louis had a German

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\textsuperscript{134} Lawrence O. Christensen and Gary R. Kremer, \textit{A History of Missouri Volume IV 1875-1919} 59 (U. of Mo. Press 1997). In contrast, white women could even attend college or law school: a white woman was first admitted to the University of Missouri in 1868, and two white women were admitted to St. Louis Law School in 1869. Lawrence O. Christensen and Gary R. Kremer, \textit{A History of Missouri Volume IV 1875-1919} 60 (U. of Mo. Press 1997).
\textsuperscript{137} Illiteracy Rates in the United States 1870-1930, available at \url{http://nces.ed.gov/naal/lit_history.asp#educational}.
\textsuperscript{138} Case 20115 John Leuze (will written in German & executed in Stuttgart, Germany); Case 20769 Hermann Bredestegge (will written in German; bequests to Germans); Case 20778 Sophie Flohr (will written in German & executed in the Kingdom of Prussia).
\textsuperscript{139} Case 19465 Maria Braght (sister in Germany); Case 19510 Francis Saler (inventory showed share of stock in Herold des Glaubens [German Printing and Publishing Association] and cash in the German Savings Institution); Case 19564 Theobald Rees (brothers and sisters in Germany); Case 20235 Mary Laske (born in Hanover, Germany); Case 20051 Carl Clemens (decedent was German national); Case 20967 Adolphus Boeckeler (wife and brothers in Germany; testator buried there); Case 20909 Theresa Lohrum (daughter of decedent signed receipt in German).
population of about 60,000, resulting in many schools teaching in German as well as English.\textsuperscript{140}

In 1865, the legislature funded the State Board of Immigration to encourage settlement in Missouri, sending agents to Europe and distributing some materials in German.\textsuperscript{141} By 1870, over 100,000 foreign-born resided in St. Louis County, about half of whom were German.\textsuperscript{142} In contrast, while a substantial number of Los Angeles decedents had ties to Germany,\textsuperscript{143} no wills were executed in that language. Two Los Angeles wills were executed in Spanish.\textsuperscript{144}

In both Los Angeles and St. Louis, most testators executed their last wills within a year of their deaths. One hundred ninety-five Los Angeles wills and 168 St. Louis files included both the date of the will and the date of death. The majority of these wills were executed within a year of death: 62\% in Los Angeles, and 54\% in St. Louis.\textsuperscript{145} Roughly 10\% of the wills were executed within three days of death.\textsuperscript{146} Given the medical practices at the time, it is likely that many testators writing wills within a few days of their deaths knew that they were dying.\textsuperscript{147}

III. Who Gave to Charity in St. Louis and Los Angeles?

\begin{itemize}
  \item \textsuperscript{140} William E. Parrish, \textit{A History of Missouri Volume III 1860-1875} 178 (U. of Mo. Press 1973).
  \item \textsuperscript{141} William E. Parrish, \textit{A History of Missouri Volume III 1860-1875} 200 (U. of Mo. Press 1973).
  \item \textsuperscript{142} William E. Parrish, \textit{A History of Missouri Volume III 1860-1875} 201 (U. of Mo. Press 1973). The population of the city of St. Louis in 1870 was 310,825, making it the 4\textsuperscript{th} largest city in the U.S., with a 93.4\% increase from 1860. \textit{Id.}
  \item \textsuperscript{143} Testate: Case 343 Jacob Stengel (will gave all to five siblings in Germany); Case 361 Charles Wagner (will gave ½ to sister in Germany); Case 401 Albert Herminghaus (all to siblings and nieces and nephews in Germany and St. Louis; German Consul in San Francisco named executor; many documents in German and translated); Case 366 C.U. Mueller (brother in Zurich, Switzerland); Case 495 Edward Willike (decedent born in Germany; property left to siblings in Germany). Intestate: Case 320 Andrew Rein (relatives in Germany); Case 606 Otto Singer (wife and one son lived in Dresden; decedent was a pupil of Franz Liszt in Weimar, and moved to the U.S. in 1867; http://ittzes.bohemragtime.english/6th.htm).
  \item \textsuperscript{144} Case 572 Antonio Coronel (will left nearly all to wife, and “one peso in American money” to nieces and nephews); Case 756 Vicenta Machado de Lugo.
  \item \textsuperscript{145} Los Angeles: 195 files indicated a date of execution and a date of death; 121 of the 195 were executed within a year of death. For St. Louis, 90 of 168 wills with both dates were executed within a year of death.
  \item \textsuperscript{146} Ten percent in LA (20/195) and 9\% in St. Louis (15/168). Executed on the day of death: 4\% of the LA wills (7/195) and 5\% of the St. Louis wills (8/168). Executed within 1 month of death: 31\% in LA (60/195) and 26\% in St. Louis (44/168). Executed within 3 months of death: 42\% in LA (81/195) and 38\% in St. Louis (64/168).
  \item \textsuperscript{147} See, e.g., Case 95 Bridget Wilson (seriously burned in a fire, she executed her will three days before her death); Case 366 C.U. Mueller (executed his holographic will the day before he committed suicide).
\end{itemize}
When examining the charitable bequests in the wills in both St. Louis and Los Angeles, several clear patterns emerge. First, the St. Louis bequests were overwhelmingly to religious institutions, while in Los Angeles they were to a mix of charities. Women were slightly more likely to give to charities to men. Finally, earlier studies finding that those with no close family were more likely to give to charity are not duplicated here; our testators are a mix of married and single, with children or grandchildren and without.

Most of the charitable bequests in 1893 were to religious organizations, and were permissible relatively recently in each state's history. In Los Angeles, of the 16 testators giving to charity, eight bequests were to religious entities, and another three were a mix of religious & other purposes. Five were entirely secular. Four of the 16 were non-residents, whose

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148 Case 298 John Eichenberger ($100 to Bishop Thoburn of the AME Church in trust for missions in India); Case 592 Thomas Ellis (all to the First Presbyterian Church of East Syracuse, NY; otherwise to his nephew if the church would not accept; church sold property to nephew for $1); Case 485 Ida Lehmer ($500 to husband in trust for the Mission Board of the German Baptist Brethren Church of Southern California, to be paid when the church or meeting is built and not before); Case 387 Helen Lowth (all to her two children, but if they die without issue, to the Bishop of the Diocese of Milwaukee, to be used at his discretion for the best interest of the Episcopal Church in that Diocese); Case 713 John McKee (will directs his real property in Colorado to be sold and the proceeds given to the Trustees of the Reformed Presbyterian Church of North America for the benefit of the poor widows of deceased ministers of the Reformed Presbyterian Church); Case 101 Anna Ogier ($500 to Los Angeles Catholic Orphans Asylum in Boyle Heights; $500 to Los Angeles Protestant Benevolent Society; $ 500 to the Trinity Methodist Church south of Los Angeles); Case 492 Hugh Webster ($100 to Buffalo Baptist Union of Buffalo, NY “to aid in its purpose and work”); and Case 95 Bridget Wilson ($1,000 to Rev. Aloysius Ellery in trust to the Catholic Church to be used in masses every month for the repose of her soul; $500 to the Roman Catholic Orphan Asylum in Boyle Heights, Los Angeles; $10,000 to Father Scanlon, Catholic priest of Pasadena, and $500 to the Roman Catholic priest in Dunkirk County, Ireland for the worthy poor).

149 Case 518 John Downey (from his estate worth $1.5 million, $1,000 to Bishop Mora, Archbishop of the Diocese of Monterey & LA, $1,000 to Sisters of Charity, and $1,000 to the Los Angeles Women’s Club); Case 68 John Greenleaf Whittier ($1,000 to Haverhill City Hospital, $500 to American Peace Society, $500 to Amesbury Charitable Society, $200 to the Friends in Amesbury for the care of their burial grounds, ½ of residue to the Amesbury and Salisbury Home for Aged Women, the Anna Jacques Hospital in the City of Newburyport, and the Normal and Agricultural Institute for “colored and Indian” pupils at Hampton, VA); and Case 546 Amos Throop ($20,000 to California Universalist Convention to be used for the use and benefit to the promotion for the training of ministers for the propagation of the Universalist cause on the Pacific Coast; all the rest to Throop Polytechnic Institute [now Cal Tech]“upon the express condition however that it shall always be an unsectarian institution.”

150 Case 528 Caroline Campbell (residue to the Prohibition Trust Fund Association for prohibition work among the Negroes of Alabama and women who seek to strive and educate themselves); Case 538 Virgil Chaplin (if his nieces and nephews failed to survive, residue to Pierceton, Indiana for a library “provided that my executors have the right to assist in the selection of the books… and no books of unchaste, immoral or evil tendency to be selected.”); Case
estates were subject to ancillary administration in California because of property in the state.\textsuperscript{151}

If we examine simply the Los Angeles-resident testators, then six are religious, two are a mix, and five are secular. The religions aided by Los Angeles testators included Baptist, Presbyterian, and Catholic.

\textsuperscript{342} Antoine Charvoz (residue to the French Society of Los Angeles); Case 377 Willet Doty (executor is directed to use the residue to help poor and deserving persons); Case 423 Henrietta Losee (residue in trust for Hanover College in Hanover, Indiana, to endow a chair in astronomy in memory of her father); and Case 503 Annie Pratt ($20,000 to sister Louise “to be distributed by her within two years after my death to such charitable institutions in San Francisco, and in such amounts to each, as she may think would most coincide with my wishes, were I living”).

\textsuperscript{151} Case 538 Virgil Chaplin; Case 592 Thomas Ellis; Case 713 John McKee; and Case 68 John Greenleaf Whittier.
In St. Louis, of the 27 testators giving to charity, 24 were to religious entities,\textsuperscript{152} another one was a mix,\textsuperscript{153} and three were secular.\textsuperscript{154} As in Los Angeles, four of these testators were non-

\textsuperscript{152} Case 20265 Mary Allen (if daughter died without issue, to Roman Catholic Orphan Asylum); Case 20160 John Baumann ($50 to Evangelical St. Paul’s School, $50 to the Evangelical Ministers’ Seminary, $30 to the Protestant Orphan Asylum, $35 to the Samarythen [Good Samaritan] Hospital, $35 to the Deaconissen Home, all in St. Louis); Case 20325 Susan Barbour ($3,000 to her husband as executor to give to three Catholic charities or three poor Catholic churches to be distributed among them as he deems best); Case 20769 Hermann Bredestegge ($50 for masses, $150 to the Rector of SS. Peter & Paul’s Congregation of St. Louis for the poor children of the congregation, $100 to the German St. Vincent’s Orphan Association, $100 to the St. Aloysius Congregation of St. Louis, and $100 to the Little Sisters of the Poor of St. Louis); Case 19605 John Callaghan (80 acres to the Society of the congregation of the Mission of St. Louis for educational purposes, $50 to the Roman Catholic Orphan Asylum in St. Louis, and $25 to the English branch of the St. Vincent DePaul Society at St. Vincent’s Church in St. Louis); Case 20236 Isabella Devine (all in trust for the South Presbyterian Church of St. Louis, to purchase or build a house for the use of the congregation as a house of worship); Case 19997 Abraham Geist ($300 for the Home for Aged and Infirm Israelites of St. Louis, $200 to the Jewish Orphan Asylum of Cleveland OH, $100 to the United Hebrew Relief Association of St. Louis, and $100 whenever a Jewish hospital is erected in St. Louis); Case 19782 Catherine Hart ($25 for masses and $100 to the Little Sisters of the Poor for the benefit of aged men and women); Case 19985 Emerette Ingraham ($100 to the Rector of Trinity Church in Toledo OH for missionary purposes); Case 19674 Sophia Kuehne ($200 for St. Paul’s Church, $100 to the German Orphans Home, $100 to the Good Samaritan Hospital, and $100 to the Lutheran Theological Seminary of St. Louis); Case 20927 Karl Linz (all to the Alexian Brothers of St. Louis for fifty masses and the remainder applied to the benefit of the poor); Case 19645 Daniel Malone ($300 to Rev. Kielty, pastor of Holy Angels Church, for masses; $200 to Rev. Kielty; $100 to Rev. Foley, assistant pastor of Holy Angels Church; $100 to the Roman Catholic Male and Female Orphans Asylums, $100 to the Sisters of the Good Shepherd, and $100 to the Little Sisters of the Poor, all of St. Louis); Case 20819 Patrick Muldoon ($500 to the pastor of St. Bridget’s Church and $100 to the assistant pastor; $1,000 to the Little Sisters of the Poor, and $2,000 to the pastor of St. Francis Xavier Church to be used toward building a church); Case 19625 Joseph O’Neill ($3,000 to the Roman Catholic Orphan Board, $3,000 to the Little Sisters of the Poor, $3,000 to the St. Vincent DePaul Board; $500 to the Knights of Father Matthew in St. Louis; $500 to the Convent and Asylum of the House of Good Shepherd; $1,000 to St. Louis University in trust toward the building of the new St. Francis Xavier Church in St. Louis, and $500 to the Pastor of St. Paul’s Roman Catholic Church); Case 19510 Francis Saler ($100 to the German St. Vincent’s Orphan Association; $100 to pastor of St. Mary’s Church for masses); Case 19745 Edward Scheele ($200 to the German St. Vincent Orphan Association of St. Louis); Case 20633 Maria Schmidt ($100 for masses, $100 for the use and support of St. Joseph’s Roman Catholic Church in St. Louis, $100 for the German St. Vincent Orphan Association; $50 for the St. Vincent DePaul Society; $50 to St. Boniface Society); and Case 19691 Anna Thole ($50 for masses; $50 for St. Francis de Sales Church; $25 to the St. Vincent German Orphan Asylum of St. Louis). Six were solely for masses: Case 20205 Francisiska Brueggemann ($50); Case 20955 Maria Homelsen ($25); Case 20440 Maria Knueppel ($100); Case 20395 John Kroeger ($100); Case 20155 Mary Miller ($100); and Case 20633 Mary O’Connor ($100).

\textsuperscript{153} Case 20115 John Leuze (100 marks for the local poor of Eringen, and 500 marks to the Basler Mission in Switzerland; will written in German and executed in Germany). The Basler Mission, also known as the Basel Mission, was founded by Protestants in 1815. http://missionaries.griffith.edu.au/missionary-training/basel-mission-society-1815.

\textsuperscript{154} Case 20778 Sophie Flohr (1000 marks to the Children’s Hospital in Osnabruck, Prussia for the free bed fund, 500 marks to the Kleinkinder Bewalwanskalt at Osnabruck, 1000 marks to the City Hospital of Osnabruck for the free bed fund, and 1000 marks to the Women’s Home in Osnabruck; will written in German and executed in Osnabruck, Kingdom of Prussia); Case 20193 Sidney Francis ($500 to charity “to be used as my sisters decide.”); Case 20806 Sidney Homer (charitable bequests totaling $16,000, including $1,000 each to the Home for Aged Men in Boston, the Home for Aged Women, the Home for Destitute Children, and the Institution for Foundling Children; $2,000 to Harvard College for the use of the public library of the college, income to be expended in the purchase of works on political economy; $1,0000 to the Society of Natural History in Boston).
residents. The 23 religious bequests by St. Louis residents were overwhelmingly Catholic with 18 of the 23 including bequests for masses, the German St. Vincent’s Orphans Home, the Little Sisters of the Poor, and other Catholic groups. Given the large number of Catholics, and particularly German Catholics, in St. Louis at this time, it is not surprising that so many made charitable bequests. German principalities began instituting a “church tax” starting with Lippe, in the northeastern part of today’s North Rhine-Westphalia, in 1827. A church tax is still paid today in modern Germany by members of Catholic, Evangelical and Latter Day Saints churches, members of Jewish synagogues, and those in the Salvation Army and the German Humanist Association, which together comprise over three-quarters of Germany’s population. Those in our study with ties to Ireland might have also had some experience with tithing, although the system was abolished in Ireland in 1871.

155Case 20325 Susan Barbour; Case 20778 Sophie Flohr; Case 20806 Sidney Homer; and Case 20115 John Leuze. The four (or five) who did not give to Catholics are Baumann, Devine, Geist, Kuehne and possibly Ingraham. Case 20160 John Baumann gave to a Protestant organization (Protestant Orphan Asylum) and to Catholic organizations (Evangelical St. Paul’s School, Evangelical Ministers’ Seminary, and the Good Samaritan Hospital). Case 20236 Isabella Devine gave all her property to the Presbyterian Church. Case 19997 Abraham Geist gave significant bequests to Jewish institutions, and also requested in his will that his son marry a Jewish girl (“It is my earnest desire and request that whenever my said son Zelky Geist shall marry he shall select for his wife a maiden born of Jewish parents and of the Hebrew faith and race.”). Case 19674 Sophia Kuehne, like John Baumann, gave to a mix of Protestant (the Lutheran Theological Seminary of St. Louis) and Catholic (St. Paul’s Church and the Good Samaritan Hospital). Case 19985 Emerette Ingraham’s bequest to the Trinity Church in Toledo Ohio could be a gift to the Trinity Lutheran Church established in 1874, http://www.trinitylutheran.org/about/history/ or to the Trinity Episcopal Church built in 1863, http://en.wikipedia.org/wiki/Trinity_Episcopal_Church_(Toledo,_Ohio). 157Stephanie Hoffer, Caesar As God’s Banker: Using Germany’s Church Tax As An Example of Non-Geographically Bounded Taxing Jurisdiction, 9 WASH. U. GLOB. STUD. L. REV. 595, 599 (2010). Churches had earlier been funded through a tax on the producers of agricultural products and trade wares, but another source was needed when German became increasing industrial and urban. Id. at 605-06.

158Stephanie Hoffer, Caesar As God’s Banker: Using Germany’s Church Tax As An Example of Non-Geographically Bounded Taxing Jurisdiction, 9 WASH. U. GLOB. STUD. L. REV. 595, 603-04 (2010). Catholics and Evangelicals, roughly 70% of the German population, have their church taxes withheld directly from their paychecks. Id.

While eleven of the American colonies imposed church taxes, after 1776 they eliminated this practice with Massachusetts being the last state in 1833. Missouri never had an established church. Thus, German immigrants, and possible some Irish immigrants, having been used to a tax to support their church or synagogue, might have been more inclined than American-born testators to give something to their religious organization in their wills.

Women were somewhat overrepresented among those leaving charitable bequests. 41% of the testators giving charitable bequests in Los Angeles were women, compared with 29% of the testators as a whole. For St. Louis, women comprised 50% of those with charitable bequests, compared to 37% of testators of all wills. Testators who were not married at death were more likely to leave a charitable bequest than their married counterparts: in Los Angeles, 11 of the 17 testators (65%) were not married; in St. Louis, 21 of the 28 (75%) were not married. Whether the testator had surviving children does not seem a factor in either city. In Los Angeles, 9 testators with surviving children, and 8 without, gave to charity; in St. Louis, 13 with children, and 15 without, did so.

In other published studies of charitable bequests, Browder, Dunham and Sussman concluded that testators who left only collateral kindred such as siblings were more likely to

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162 Stephanie Hoffer, Caesar As God’s Banker: Using Germany’s Church Tax As An Example of Non-Geographically Bounded Taxing Jurisdiction, 9 WASH. U. GLOB. STUD. L. REV. 595, 603-04 (2010). The American system worked quite differently from the German system, requiring all taxpayers regardless of religious affiliation to support the state-sponsored church. Stephanie Hoffer, Caesar As God’s Banker: Using Germany’s Church Tax As An Example of Non-Geographically Bounded Taxing Jurisdiction, 9 WASH. U. GLOB. STUD. L. REV. 595, 628 (2010).
leave bequests to charity. Browder noted that while 26% of the testators in his 1963 Michigan study left only collateral kindred, 19 of the 30 who made charitable bequests had only collateral kindred, and thus, “it can be inferred that the absence of any nuclear family is a factor in the incidence of charitable gifts.”163 Similarly, Dunham’s study of 97 wills filed in 1953 in Cook County, Illinois, found that “ten of the fifteen charitable gifts appeared in estates in which brothers and sisters were the closest relatives of the deceased.”164 Sussman, examining 422 wills in Cuyahoga County, Ohio in 1965, observed that, of the seven wills leaving more than 15% of the estate to charity, the testator had no surviving spouse, children or grandchildren.165

This may be a correct assessment of 20th Century behavior, but the pattern does not appear to hold true for our 1893-94 testators. Of the 18 charitable testators in Los Angeles, 7 left collaterals only; in St. Louis, 13 of the 28 left collaterals only, meaning a majority of those giving charitable bequests in either city were survived by a spouse, children, or both. For example, Maria Schmidt, a St. Louis widow survived by eight children, gave $400 to various Catholic entities and the rest to her children in equal shares. Her personal property was inventoried at $3,772, and she also owned two three-story brick houses with 32 rooms to rent, so she had fairly substantial means for the time.166 Amos Throop, who died married in Los Angeles with a surviving daughter and three grandchildren, gave his wife a life estate and all the rest of his property, save a $20,000 bequest to the California Universalist Convention, to Throop

164 Allison Dunham, The Method, Process and Frequency of Transmission at Death, 30 U. CHI. L. REV. 241, 254 (1968-69). Overall, Dunham found that 15% of the estates (15 out of 97) included charitable bequests. Id.
166 Case 20633 Maria Schmidt. Her handwritten will was signed by mark.
Polytechnic Institute; his codicil revoked an earlier $1,000 annuity to his daughter.\textsuperscript{167} One Los Angeles testator provided insight into why she was leaving so little to her husband: Bridget Wilson, married with no children and owning over $285,000 in property, left a sizeable bequest of $10,000 to the Roman Catholic priest of Pasadena and smaller bequests for masses and the Roman Catholic Orphan Asylum; she gave $50 a month to her husband John for the rest of his life, but “if my husband, John Wilson, shall marry the said Eliza Sanchez, then the monthly payments of $50 per month … shall cease.”\textsuperscript{168}

If we examine only those who left significant bequests to charity, which Sussman defines as over 15% of the estate, we still see a mix of those with families and those with only collaterals. Ten testators left sizeable gifts to charity in their wills; of those, six died without a spouse or issue surviving them,\textsuperscript{169} but the other four includes three testators who were married with children,\textsuperscript{170} and 1 widower survived by a child and three grandchildren.\textsuperscript{171} The high

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\textsuperscript{167} Case 546 Amos Throop. Throop established the school in 1891 with its purpose “To furnish students of both sexes and all religious opinions a liberal and practical education, which, while thoroughly Christian, is to be absolutely non-sectarian in its character.” http://archives.caltech.edu/about/fastfacts.html.\textsuperscript{168} Case 95 Bridget Wilson. The will was handwritten on a form, and signed by mark. Husband John Wilson contested the will on grounds of undue influence and unsound mind; his jury verdict in the trial court was reversed on appeal, and the will was probated.\textsuperscript{169} Case 342 Antoine Charvoz (residue to the French Society of Los Angeles; survived by brother in France); Case 20236 Isabella Devine (all in trust for the South Presbyterian Church of St. Louis; will states she had two brothers but believes they are dead); Case 592 Thomas Ellis (all to the First Presbyterian Church of East Syracuse, NY; survived by nephew); Case 20927 Karl Linz (all to the Alexian Brothers of St. Louis; no relatives noted); Case 423 Henrietta Losee (residue in trust for Hanover College in Hanover, Indiana; survived by two brothers): Case 68 John Greenleaf Whittier ($1,200 to four named charities, ½ of residue to three named charities; survived by nieces and nephews). Charvoz, Ellis, Losee and Whittier were in the Los Angeles files (Ellis and Whittier as non-residents); Devine and Linz were in St. Louis.\textsuperscript{170} Case 19605 John Callaghan (80 acres to the Society of the congregation of the Mission of St. Louis for educational purposes; survived by his wife and adopted daughter); Case 528 Caroline Campbell (residue to the Prohibition Trust Fund Association; survived by her husband, one adult son, and two minor children of a deceased son); Case 713 John McKee (will directs his real property in Colorado to be sold and the proceeds given to the Trustees of the Reformed Presbyterian Church of North America; survived by wife and six children ages 35 to 50). Callaghan was in the St. Louis files; Campbell, Doty and McKee were in the Los Angeles files (although McKee is a non-resident).\textsuperscript{171} Case 377 Willet Doty (executor is directed to use the residue to help poor and deserving persons) (Los Angeles).\textsuperscript{30}
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incidence of contingent remainders reported in Friedman\textsuperscript{172} also is not repeated in this study: only three of the forty five charitable bequests were framed as alternatives to a relative surviving the testator.\textsuperscript{173}

IV. Predicting Who Gives To Charity in Their Wills

Comparing St. Louis charitable bequests to those in Los Angeles, at a time when the two cities were in their formative stages and no federal tax law impacted these gifts, gives us valuable insight into the prerequisites for successful charitable giving. Five steps are crucial to ensure that charities receive the bequests in a will.

Step One: To create a charitable bequest, execute a will. A bequest to charity is possible only if one executes a will. In all 50 states, the laws of intestacy distribute the probate property to the decedent’s family: the spouse, descendants such as children and grandchildren, then parents, and last more remote kindred.\textsuperscript{174} One might expect more testate decedents in California because California allowed holographic wills, while Missouri did not. Indeed, 23\% of the Los Angeles wills (49 out of 210) were holographs. An even greater number of Los Angeles wills were printed forms filled in by hand: 44 of the 164 attested wills in Los Angeles were form wills (27\%). Despite the ease of executing a will in Los Angeles, decedents in Los Angeles were more likely to be intestate than those in St. Louis. Overall, 59\% of the Los Angeles decedents

\textsuperscript{173} Case 20265 Mary Allen (if daughter died without issue, to Roman Catholic Orphan Asylum); Case 387 Helen Lowth (all to her two children, but if they die without issue, to the Bishop of the Diocese of Milwaukee); Case 538 Virgil Chaplin (if his nieces and nephews failed to survive, residue to Pierceton, Indiana for a library). Allen was from St. Louis; Chaplin and Lowth from Los Angeles.
\textsuperscript{174} Dukeminier & Sitkoff, Wills, Trusts and Estates 65 (9th ed. Wolters Kluwer).
died intestate,\textsuperscript{175} with a proportionate number of women (58\%) and men (59\%) dying intestate; 41\% died after executing a will.\textsuperscript{176}

In St. Louis, 172 of the 307 probate files contained wills, meaning that 56\% of the decedents were testate. Even if we exclude the 8 nonresident files from the calculation (all testate), the percentage changes little: 165 of the 299 files had wills, or 55\%. Only five of the 168\textsuperscript{177} attested wills (3\%) were executed on forms, far fewer than the 27\% in Los Angeles, and so the ease of using a form does not appear to lead to more charitable gifts. In both cities, most wills were handwritten,\textsuperscript{178} as were most of the documents in the files. Although the first English patent for a typewriter was issued in 1714, and an American patent in 1829, the first popular typewriter, the Remington, was finally produced in the U.S. in 1868, but sales were slow until the early 1880s. In 1878, the first typewriter to include both upper and lower case letters (via the “Shift” key) helped to improve sales, but in 1881, the Remington sold only 1,200 typewriters and 1,400 the following year. In 1887, 14,000 of its typewriters sold nationwide.\textsuperscript{179} After 1883, the typist could see what was printed on the paper as she typed,\textsuperscript{180} but until the 1890s, typing “was practiced only by operators of exceptional skill.”\textsuperscript{181}

\textsuperscript{175} Three hundred two out of 512 total files for wills and intestacy. If only Los Angeles residents are counted, the percentage is virtually the same: 273 intestates out of 449 total files, or 61\%.

\textsuperscript{176} As with the total files, the numbers are similar if we count only LA residents. 77 women died intestate out of a total of 128 = 60\% intestate; 196 men out of 321 died intestate = 61\%.

\textsuperscript{177} In 4 files, the will itself was not in the file and so we could not ascertain if a form was used.

\textsuperscript{178} For examples of typed wills, see, e.g., Case 408 Elias Bixby (Los Angeles); Case 20025 Arndt Klein (St. Louis).


\textsuperscript{180} 22 Encyclopaedia Britannica 644-45 (14\textsuperscript{th} ed., Encyclopaedia Britannica Company, Ltd. 1929).

\textsuperscript{181} 22 Encyclopaedia Britannica 644-45 (14\textsuperscript{th} ed., Encyclopaedia Britannica Company, Ltd. 1929).
Women were found at somewhat higher rates in the St. Louis files than in Los Angeles. Of the 307 total files in St. Louis, 35.5% were women;\textsuperscript{182} in Los Angeles, 28% were women.\textsuperscript{183}

\textit{Advantage: St. Louis.} Even though St. Louis required two witnesses to a will, and few testators used form wills, a higher percentage of those with probate estates died testate than in Los Angeles. Another surprise: Literacy did not appear to affect will execution: 21% of the St. Louis testators signed by mark.

\textbf{Step Two:} \textit{The will must be valid.} The number of will contests in the two cities was strikingly different, although other types of litigation were comparable. Fourteen wills in Los Angeles (6%) were the subject of will contests, with only three such contests (2%) in St. Louis.\textsuperscript{184} 23 Los Angeles wills and 24 St. Louis wills were subject to other forms of litigation, such as creditors’ claims, orders to the executor to file inventories, and so on. A total of 18% of the Los Angeles wills (37 out of 204) and 16% of the St. Louis wills (27 out of 172) had either a will contest or substantial litigation. Even in cases in which the will was upheld, years of litigation had the potential to drain the estate of resources.

In St Louis, three will contests involved wills with charitable bequests, and two of those contests resulted in the charity being denied its bequest.

\textsuperscript{182} Forty-five intestate females + 64 testate females = 109.
\textsuperscript{183} Eighty-four intestate females + 60 testate females = 144 women out of 512 total files.
\textsuperscript{184} The percentage of formal will contests in Los Angeles is higher than most studies, while the St. Louis figure of 2% comparable to most studies. One study of wills filed in New York County between 1921 and 1929 found that 4% were contested. Richard R. Powell & Charles Looker, \textit{Decedents’ Estates: Illumination From Probate and Tax Records}, 30 COLUM. L. REV. 919-931-32 (1930). A more recent study of 7,638 wills filed in Tennessee between 1976 and 1984 concluded that sixty-six, or less than 1%, were contested. Jeffrey A. Schoenblum, \textit{Will Contests – An Empirical Study}, 22 REAL. PROP. PROP. & TR. J. 607, 613 (1987). Two percent of the wills filed in California in 1964 were contested. Friedman, Lawrence M. et al., \textit{The Inheritance Process in San Bernardino County, California, 1964: A Research Note}, 43 HOUS. L. REV. 1445, 1466-67 (2007).
Francis Saler, a widower, executed an attested will, which he signed by mark, on January 23, 1893, 11 days before his death on February 2, giving $1 to each of his seven grandchildren, $100 to the German St. Vincent's Orphan Association of St. Louis, $100 to the Pastor of St. Mary's Church, St. Louis, for the purpose of having masses said for the repose of his immortal soul, and all the rest of his property to his son Joseph." The accounts show a charge of $500 for attorneys' fees in the suit instituted by the grandchildren to contest the will, a suit they lost: each grandchild received $1, and the bequests were paid to the two charities.

Two other will contests were successful, with both preventing the bequests to charity. Sidney Francis, an unmarried man, dictated his will to his sister on November 24, 1893; he signed it but neither his sister nor his nurse, both of whom were present, signed the will as witnesses. He died 11 days later on December 4. The will included substantial bequests to his mother, two sisters, a niece and a nephew, plus $5,000 to charity "to be used as my sisters decide." His estate was very large, with personal property (including two life insurance policies of $50,000 each) valued at $424,635, and real property that included two lots he owned outright, plus 1/4 or 1/3 interests in 7 other lots. The estate was distributed in intestacy, and finally closed in April 1903.

In the final St. Louis will contest, James Monahan executed an attested will on November 8, 1892, leaving his property in equal shares to his brother James and his two sisters Emma and Alice, both unmarried. A third sister, Mrs. Mary Dawley, contested the will, alleging that while

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185 Case 19510 Francis Saler.
186 Case 20193 Sidney Francis.
187 Case 20193 Sidney Francis. Brother of Missouri Governor David Francis, Sidney was a very successful trader in grain and produce in St. Louis. The Exchange closed early on the day of his funeral so traders could attend. Annual Statement of the Trade and Commerce of St. Louis, p. 22, available at http://books.google.com/books?id=p6QoAAAAYAAJ&pg=RA3-PA22.
James was over 18 in 1892, he was not over 21, and thus she should receive 1/4 of the real property. Her contest was successful.\textsuperscript{188}

In Los Angeles, fourteen wills were formally contested (including one that successfully argued that the decedent’s husband had murdered her),\textsuperscript{189} while another 23 wills had substantial litigation: suits over the appointment of an executor; omitted children; omitted spouses, and so on. Form wills, holographs and those signed by mark seemed particularly vulnerable: of the fourteen will contests, two involved wills signed by mark, and four were holographs. In other files with substantial litigation, five included form wills, four were holographs, and two were signed by mark. Charitable bequests were involved in three of the will contests, and five of the remaining wills with charitable bequests had substantial litigation, so that a total of eight of the fifteen wills with charitable bequests were involved in litigation of one form or another.

For the three Los Angeles wills with formal contests, the contestants lost in two cases, and prevailed in one. For Bridget Wilson, who gave her husband $50 per month provided he did not marry Eliza Sanchez, the will contest was initially successful but overturned on appeal.\textsuperscript{190} Thomas Ellis’ will leaving all to his church was contested by his sister on the grounds that he was “sick of body and mind” when he wrote it, but the will was upheld.\textsuperscript{191} In the only successful will contest in Los Angeles, Annie Pratt’s holograph and codicil were both set aside, thus invalidating her bequest of $20,000 to her sister Louise to be distributed to “such charitable

\textsuperscript{188} Case 19627 James Monahan
\textsuperscript{189} Case 2 Gregoria de Bentley: Her attested will left all to her husband. The coroner ruled that the decedent was poisoned and the husband was charged with murder; he then renounced his claim to her estate. Eight hundred eighty-three dollars was distributed equally to her three children after payment of her debts.
\textsuperscript{190} Case 95 Bridget Wilson. Both Bridget Wilson’s husband and two beneficiaries of an earlier will contested the validity of her codicil, which was executed while the testatrix was suffering from severe burns from which she ultimately died.
\textsuperscript{191} Case 592 Thomas Ellis. Ellis, a New York resident, had real property in New York valued at $5,000 and in California valued at $750. The devisee, the First Presbyterian Church of East Syracuse, New York, sold the California property to the testator’s nephew for $1.
institutions in San Francisco … as she may think would most coincide with my wishes, were I living.” Her estate was distributed in intestacy in 1897.192

Ultimately this factor in the two cities ends as a draw. Despite the high number of will contests in Los Angeles, few involved wills with charitable bequests, and only one was successful; two successful will contests in St. Louis193 resulted in the charity not being paid. Otherwise, the litigation had no effect on the charities.

Step Three: The law of the state should encourage, or at least allow, charitable bequests.

In the late nineteenth century, restrictions on charities came in two forms: limits on a charity's ability to take or hold property, and limits on a testator's ability to give to charity in a will. By the time of our study, California’ laws were far more restrictive to charitable bequests than Missouri’s.

California required a charity to be expressly authorized by its charter to accept bequests.194 A similar statute had been enacted in New York in 1829 after a New York case held

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192 Case 503 Annie Pratt. Her holograph in 1881 and a codicil in 1885 made various bequests to her sisters, nieces and nephews, and others, plus $20,000 to her sister Louise to be distributed to “such charitable institutions in San Francisco, and in such amounts to each, as she may think would most coincide with my wishes, were I living.” Shortly before Pratt’s death in 1894, her daughter, Lucy Goodspeed, sued to have Pratt declared incompetent and a guardian appointed. Goodspeed and two grandchildren later contested the will; a jury found that that the 1881 will was not signed by the decedent, and she was not of sound mind when she signed the 1885 codicil. Goodspeed was then appointed administratrix; after more litigation by the grandchildren challenging her accounts, the property was distributed in intestacy in 1897.

193 Case 20193 Sidney Francis and Case 19627 James Monahan.

194 CAL. CIV. CODE § 1275 (1874).
that a devise to an orphan asylum was void because the charter only empowered it to purchase real property.\textsuperscript{195}

California legislators were also worried about charities exercising undue influence at a testator's bedside. A statute enacted in 1874 required that the will making a gift to charity must be executed more than thirty days before death and that no more than 1/3 of the estate be given to charity.\textsuperscript{196} An 1881 California Supreme Court case sorted through whether a charitable trust was subject to the Rule Against Perpetuities in California and held that it was not; the Court also determined that the statutory maximum of 1/3 to charity should be calculated on the distributable estate rather than on the gross estate.\textsuperscript{197} The Supreme Court specifically addressed whether "religion," in the broad sense in which the word is employed, is charitable,\textsuperscript{198} and concluded that it is. Thus, a will that left William Hinckley's California Theater Property in trust to certain named individuals, to use the income to create "The William and Alice Hinckley Fund" to be devoted perpetually to Human Beneficence and Charity, to foster Religion, Learning and Charity, and provide a sum of $300 per year as the "Hinckley Scholarship" was held valid as to 1/3 of Hinckley's property after payment of his debts and administrative fees.\textsuperscript{199} Even a bequest to a specific denomination, rather than for "religion" generally, was held valid in California. A will giving the residue of the testator's estate equally to three Presbyterian churches was a charitable bequest, and valid as to 1/3 of the distributable estate but void as to the rest.\textsuperscript{200}

\begin{flushleft}\footnotesize\textsuperscript{195} Act of Apr. 17, 1829, ch. 159, Sections 1, 3, 1829 N.Y. Laws 258, following the decision in \textit{McCartee v. Orphan Asylum Soc'y}, 9 Cow. 437 (1827). For a discussion of these doctrines, see Kristine S. Knaplund, \textit{Charity for the 'Death Tax': The Impact of Legislation on Charitable Bequests}, 45 GONZAGA L. REV. 713, 726 (2009/10).\textsuperscript{196} CAL. CIT. CODE § 1313 (1874).\textsuperscript{197} Estate of Hinckley, 58 Cal. 457 (1881).\textsuperscript{198} Estate of Hinckley, 58 Cal. 457, 511 (1881).\textsuperscript{199} Estate of Hinckley, 58 Cal. 457, 516 (1881).\textsuperscript{200} Estate of Hewitt, 94 Cal. 376 (1892).\end{flushleft}
Of the 28 charitable bequests in St. Louis wills, many were executed close to the time of
death, as was true generally for wills in 1893 and 1894. 26% of the St. Louis wills in this study
were executed within a month of death, including ten wills with charitable bequests. Had
California Civil Code Section 1313 been in effect in Missouri to void a charitable bequest in a
will executed less than 30 days before death, the charitable bequests in those 10 wills, all to
religious groups, would have been void on those grounds; the charitable bequest in an 11th
will, executed a year and a half before the testator’s death, would have been partly void because
it gave more than 1/3 of the estate to a charity.

The Missouri Supreme Court was initially quite favorable to charitable bequests. Its first
case to determine the jurisdiction of courts to administer trusts arose in 1860, in Chambers v.
City of St. Louis. Bryan Mullanphy, a judge of the St. Louis Circuit Court and former Mayor
of St. Louis, died in 1851, leaving a valid will that gave 1/3 of his property to the City of St.
Louis, “in trust, to be and constitute a fund to furnish relief to all poor emigrants and travelers
coming to St. Louis on their way, bona fide, to settle in the West.” After noting that the state
had no mortmain statutes at that time, the court upheld the bequest, stating “the doctrine is
well established that a corporation can be a trustee.” The court rejected the appellants’

201 Case 20265 Mary Allen; Case 20205 Franciska Brueggeman; Case 20193 Sidney Francis; Case 19782 Catherine
Hart; Case 20955 Maria Homelsen; Case 20155 Mary Miller; Case 20927 Karl Linz; Case 19645 Daniel Malone;
Case 20819 Patrick Muldoon; Case 19510 Francis Saler. The bequests in the wills of Allen and Francis were not
paid for other reasons: Allen’s bequest was a contingent remainder which did not vest; Francis’ will was
successfully contested.
202 Case 20236 Isabella Devine, whose will gave all her property in trust for the South Presbyterian Church of St.
Louis.
203 29 Mo. 543 (1860).
204 St. Louis Public Library, biographies of St. Louis Mayors, available at http://exhibits.slpl.lob.mo.us/mayors/
205 Chambers v. City of St. Louis, 29 Mo. 543, 572 (1860).
206 Chambers v. City of St. Louis, 29 Mo. 543, 575 (1860).
207 Chambers v. City of St. Louis, 29 Mo. 543, 578 (1860).
concerns that the charity’s purpose might “fill the city with paupers and vagabonds,” characterizing this objection as a “possible abuse” from which “an injury might result.”

Likewise, the objection that the beneficiaries were not specifically identified was no concern: “From the very nature of the subject, charitable gifts must be objects vague and uncertain.”

Thus from the start Missouri avoided the confusion arising in other states regarding the effect of the repeal of the English Statute of Charitable Uses. The U.S. Supreme Court had determined that a charitable trust could not exist without the statute, a rule followed in Virginia, West Virginia and Maryland, all states that had repealed the English Statute.

Three other states followed New York’s lead in interpreting statutes enumerating valid trusts but omitting any mention of charitable trusts, to exclude the latter in those states.

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208 Chambers v. City of St. Louis, 29 Mo. 543, 588 (1860).
209 Chambers v. City of St. Louis, 29 Mo. 543, 589 (1860).
210 Chambers v. City of St. Louis, 29 Mo. 543, 590 (1860). Despite the favorable treatment of the bequest in this initial case, the trust was subject to litigation for decades. In 1898, the Supreme Court declared that the property the city held in trust from Mullanphy’s will was taxable, the same as if an individual or corporation was trustee. St. Louis v. Wenneker, 145 Mo. 230, 238 (1898), but because the assessment did not properly name the corporation, the tax bills were void. Id. at 240. In 1902, the Missouri Attorney General asked the court to apply cy pres because so little of the trust was being used for its initial purpose, and allow the trust to sell the property and build a hospital for indigent travelers. St. Louis v. Crow, 171 Mo. 272 (1902). Applying traditional strict rules of cy pres, the court denied relief, despite its finding that more than ¾ of the income was being spent on administrative expenses, and the trust property had deteriorated and fallen into decay. Id. at 281. A second cy pres request was denied in 1920. St. Louis v. McAllister, 281 Mo. 26 (1920), although the court later granted attorneys’ fees to Mullanphys’ heirs for bringing the 1920 suit. St. Louis v. McAllister, 302 Mo. 152 (1924). Cy pres was finally granted in the fifth suit, in 1934, although the court was careful to note that the purpose of the trust had not totally failed. Thatcher v. Lewis, 335 Mo. 1130 (1934).
212 Philadelphia Baptist Association v. Hart, 4 Wheat. 1, 4 L.Ed. 499 (1819). The Supreme Court later ruled that Hart was in error and that such charitable trusts could exist without the statute, in Vidal v. Girard’s Executors, 2 How. 127, 11 L.Ed. 205 (1844).
The Missouri Supreme Court continued to favor charitable bequests for testators who
died before the 1865 Constitutional amendment forbidding most charitable gifts and bequests to
religions. For example, in 1872, the Court was asked to interpret a provision in Ann Biddle’s
will that devised a substantial piece of land to the Bishop of St. Louis, Peter Kenrick, in trust for
the benefit of an order of nuns, the Ladies of the Visitation of St. Mary. In sweeping terms, the court affirmed the devise and
applied *cy pres*, noting “Where lands are vested in a corporation, as these are, and it is
contemplated by the donor that the charity should last forever, the heirs never can have the lands
back again. If it should become impossible to execute the charity as expressed, another similar
charity will be substituted by the court…” Similarly, in 1875, after John Ruotzong deeded
real property to the “Lutheran Church,” and both the Evangelical Lutheran Trinity Church and
the German Evangelical Central Congregation both claimed the land, the court declared in
*Schmidt v. Hess* that its job was to carry out the specific intent of the donor, even in cases in
which the recipient had not been incorporated at the time of the gift and thus was incapable of
accepting it. Satisfied that Ruotzong intended to convey to the Evangelical Lutheran Trinity
Church, which incorporated in 1859, sometime after the deed, the court found for that church,
and permanently enjoined the German Evangelical Central Church, whose pastor “did not
pretend to be a Lutheran,” from further interference with the former’s rights.

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215 *Kenrick v. Clemens*, 50 Mo. 167, 170 (1872).
216 *Kenrick v. Clemens*, 50 Mo. 167, 172 (1872).
217 *Schmidt v. Hess*, 60 Mo. 591, 594 (1875).
218 *Schmidt v. Hess*, 60 Mo. 591, 594-96 (1875).
For testators dying after the new restrictions in the 1865 Constitution, the Missouri Supreme Court took a narrow view of gifts and bequests to churches. Article I, Section 13 stated:

Every gift, sale or devise of land, exceeding one acre in extent, to any minister, public teacher or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of or in any trust for any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order or denomination; and every gift or sale of goods or chattels, to go in succession, or to take place after the death of the seller or donor, to, or for such support, use or benefit; and also, every devise of goods or chattels to, or for the support, use or benefit of any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination, shall be void.

The 1865 restriction was viewed by many as anti-Catholic and anti-German. It was repealed in 1875. In the ten years the provision was in force, testators tried to circumvent it to no avail. The Missouri Supreme Court invalidated an absolute bequest “to Peter Richard Kenrick,” finding that “the testatrix made her bequest to the plaintiff for the purpose of evading the policy of the law as shown in the constitutional restrictions.” Similarly, a bequest

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219 In Barkley v. Donnelly, the Missouri Supreme Court held that, where a will devised more than 1 acre to a prohibited entity, the devise was valid up to 1 acre so long as the church did not already hold property in excess of that amount, and was void as to the rest. Barkley v. Donnelly, 112 Mo. 561, 570 (1892).

220 Mo. Constitution, 1865, Art. 1, § 13. This amendment along with several others that taxed and restricted churches “were interpreted as anti-Catholic and attempts to limit religious freedom by the German community.” Community and Conflict: Post War Politics, available at http://www.ozarkscivilwar.org/archives/458. Missouri thus joined many American jurisdictions which feared “the dead hand, particularly the dead hand of the church…” James J. Fishman, The Development of Nonprofit Corporation Law and an Agenda For Reform, 34 EMORY L.J. 617, 628 (Summer 1985). For a discussion of laws similar to Missouri’s, see Kristine S. Knaplund, Charity for the Death Tax? The Impact of Legislation on Charitable Bequests, 45 GONZAGA L. REV. 713 (Spring 2010). Section 13 of the 1865 Constitution was eliminated by the 1875 Constitution. 1 Missouri Constitutional Convention of 1875 1, 69 (1920) (Loeb & Shoemaker, eds.).


222 Const. Mo. 1875 art. 2, § 15.

223 Kenrick was the archbishop of the Roman Catholic Church in St. Louis. Kenrick v. Cole, 61 Mo. 572, 575 (1876).

224 Kenrick v. Cole, 61 Mo. 572, 577 (1876).
of $5,000 for the erection of a church edifice plus $1,000 for the support of a minister were invalidated as “obnoxious to the provisions of the constitution before mentioned.”

In a third case, Leopold Schmucker’s will made a bequest of $200 to John H. Reel, “to be applied to a specific purpose which I have explained to him;” another $500 “for another specific charitable purpose which he well understands,” and all the rest “to apply in charity, according to his best discretion.” Schmucker’s written instructions to Reel stated that the bequests were to be given to the Benedictines of Atchison, Kansas and the German Roman Catholic churches of St. Louis for masses for the testator and his wife. The Supreme Court held that the three gifts were trusts and therefore wholly incapable of enforcement because of vagueness and uncertainty, a typical common law result later deemed the doctrine of semisecret trust. But the Court did not stop there: The evidence showed that “[t]he will here was obviously made to evade the … constitution,” and thus could not be enforced. The Court observed that "mass can be said only by a priest, and a priest is one who ministers at the altar, and the pecuniary acknowledgement for saying the mass is applied to the support and benefit of the priest saying it.

225 First Baptist Church v. Robberson, 71 Mo. 326 (1879). In contrast, Amelie Brockmeyer’s will leaving all the rest of her property “to the Rev. Jeremiah J. Hasty to be treated and disposed of as he may think best without any dictation or control,” presented no such difficulties. After Brockmeyer died on November 30, 1894, her estate was administered and the residue, $52.56, was paid to the Reverend. Case 20930 Amelie Brockmeyer.

226 Schmucker’s Estate v. Reel, 61 Mo. 592, 595 (1876).

227 Schmucker’s Estate v. Reel, 61 Mo. at 601 (1876). Other jurisdictions were not so generous in allowing the bequest. For example, courts in New York permitted an unincorporated association to take if the devise or bequest was made contingent on the group incorporating before the gift took effect. Howard J. Stamer & Saul B. Schneider, Devise or Bequest to Unincorporated Association – Provision for Saving of Testamentary Intent Where Association Unable to Take at Time of Testator’s Death – Rule Against Perpetuities, 19 BROOK. L. REV. 113, 114 (1952-53).

228 Schmucker’s Estate v. Reel, 61 Mo. at 600 (1876).

229 A semisecret trust is created when the will expressly declares that the beneficiary receives the property in trust, but does not spell out the trust’s terms. Traditional common law courts were reluctant to admit extrinsic evidence to prove the terms of the trust, and thus the trust failed. See, e.g., Olliffe v. Wells, 130 Mass. 221 (1881). A secret trust, in contrast, was created when the will gave the property to the beneficiary outright, but the beneficiary had secretly agreed to hold such property in trust. Courts found that the admission of extrinsic evidence was essential to prevent the unjust enrichment of the devisee, and so allowed all the terms of the trust to be admitted and thus enforce the trust. Dukeminier and Sitkoff, Wills, Trusts, and Estates 433 (9th ed. Wolters Kluwer).

230 Schmucker’s Estate v. Reel, 61 Mo. at 601 (1876).
Therefore, if the bequests are carried out and applied to masses, they will be paid over to the priest or priests, saying the masses, for the support and benefit of such priest or priests. As a priest is one who ministers at the altar, he comes within the definition of the constitutional provision. 

Interestingly, had the bequest for masses been made in a California will, a California court would have held that it was not for the benefit of the church, thus having the effect of vading the restriction in the Missouri Constitution. Patrick Lennon's will gave $3,500 to Bishop Conaty "to have the same amount of masses celebrated as soon as possible for my soul." If this were a charitable bequest, then Section 1313 would require the will to be executed more than 30 days before the testator's death, and limit the bequest to 1/3 of the estate. The California Supreme Court reasoned, "A charitable trust is a gift for the benefit of persons, either by bringing their hearts and minds under the influence of education or religion, by relieving their bodies of disease, suffering or constraint, by assisting to establish them for life, by erecting or maintaining public buildings, or in other ways lessening the burdens or making better the condition of the general public, or some class of the general public, indefinite as to names and numbers." A bequest for masses, the court found "is entirely lacking in the elements of continuance and perpetuity which characterize a charitable use. It is a bequest, not for the benefit of the bishop, but for the benefit alone of the testator..." Rather than seeing the payment of money to the bishop as supporting religion, as the Missouri court had in *Hinckley*, the California Supreme Court sided with the English view that masses are a "superstitious use,"

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231 *Schmucker's Estate v. Reel*, 61 Mo. 592, 602 (1876).
232 *Estate of Lennon*, 152 Cal. 327, 329 (1907).
233 *Estate of Lennon*, 152 Cal. 327, 329-30 (1907).
234 *Estate of Lennon*, 152 Cal. 327, 330 (1907).
and found that that the bequest was valid as it did not come within the purview of the Civil Code.

Continuing this restrictive view on religious bequests was the Missouri Supreme Court’s decision in Catholic Church v. Tobbein on facts very similar to those in Schmidt v. Hess. In Tobbein, the will left half the testator’s property “to the Catholic Church at the city of Lexington, in the State of Missouri;” in Schmidt, the deed conveyed property to “the Lutheran Church.” When Tobbein died, the church had not yet incorporated, as was the case in Schmidt. But instead of declaring that the later-incorporated church held the property, as in Schmidt, the Tobbein court found that, because the will took effect before the church was incorporated, “the provision in Tobbein’s will was for the Catholic Church at Lexington, and not to the plaintiff corporation,” and therefore the corporation had no standing to bring suit. The Church in Lexington then sued as an unincorporated association to probate the will, but the trial court found that the unincorporated society had no legal capacity to sue. An amended petition to probate the will filed by individual members of the church was challenged on the grounds that their petition was not filed within the statute of limitation of five years, but the Missouri Supreme Court again stepped in and found that the individuals' petition related back to the timely filed petition of the unincorporated association, and thus could proceed. In 1894 -- fifteen years after Tobbein's death -- the Supreme Court of Missouri ruled for a third time on the disposition of the estate. By

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235 Citing 1 Edward, ch. 14; In re Blundell's Trust, 30 Beav. 360.
236 82 Mo. 418 (1884).
237 60 Mo. 591 (1875).
238 Catholic Church v. Tobbein, 82 Mo. at 423 (1884).
239 Catholic Church v. Tobbein, 82 Mo. at 424 (1884). A later case found that the individual church members had standing to sue regarding the devise to the church. Lilly v. Tobbein, 103 Mo. 477 (1890). In 1894, the Supreme Court determined that the church’s share was ¼ of the property, not ½. Lilly v. Menke, 126 Mo. 190, 210-11 (1894).
240 Lilly et al. v. Tobbein et al., 103 Mo. 477, 485 (1890).
241 Lilly et al. v. Tobbein et al., 103 Mo. 477, 490 (1890).
this time Mrs. Tobbein had died, leaving a will giving the bulk of her estate to her niece, Maria Menke. The circuit court ruled that, once Mrs. Tobbein made her election to take one-half of the estate absolutely, the remaining one-half should be distributed all to the Catholic Church, apparently on the theory that Mrs. Tobbein had disposed of her half to one of her heirs, her niece.\textsuperscript{242} Declaring that the circuit court "clearly committed error," the Supreme Court ordered a partition of the remaining one-half not claimed by Mrs. Tobbein between the Catholic church and the heirs and legal representatives of Catherine Tobbein.\textsuperscript{243} The estate was finally closed in 1902, when the Missouri Court of Appeals rejected an appeal asking for costs.\textsuperscript{244}

In cases where the bequest was to a secular organization not yet incorporated, the Missouri Supreme Court was more willing to effectuate it: for example, an 1872 deed of land to the Missouri Historical Society, which incorporated three years later in 1875, was upheld.\textsuperscript{245} The Court was likewise affirming in cases in which the will gave an executor or trustee broad discretion to decide which charities should receive the testator’s bounty: a bequest of the residue of $5,000 to $6,000, to be divided by the executor “among such charitable institutions of the city of St. Louis, Missouri, as he shall deem worthy,”\textsuperscript{246} or the rest amounting to $3,000 to $5,000 “to such charitable purposes as my said trustee may deem best,”\textsuperscript{247} were upheld despite challenges

\textsuperscript{242} \textit{Lilly v. Menke}, 126 Mo. 190, 211 (1894).
\textsuperscript{243} \textit{Lilly v. Menke}, 126 Mo. 190, 210-211 (1894).
\textsuperscript{244} \textit{Lilly v. Menke}, 92 Mo. App. 354, 359 (1902).
\textsuperscript{245} \textit{Missouri Historical Society v. Academy of Science}, 94 Mo. 459 (1887).
\textsuperscript{246} \textit{Howe v. Wilson}, 91 Mo. 45, 48-49 (1886).
\textsuperscript{247} \textit{Powell v. Hatch}, 100 Mo. 592, 592 (1890). Later decisions continued this trend when the object was not religious. \textit{See, e.g., In re Rahn’s Estate}, 316 Mo. 492 (1927) (1920 will giving $10,000 to “the German Red Cross Society, of the Empire of Germany” upheld despite claims that the bequest violated public policy because it benefitted the enemy and did not accurately describe the donee, “the Central Committee of the German Society of the Red Cross”; \textit{St. Louis Union Trust Co. v. Little}, 320 Mo. 1058 (1928) (bequest of $5,000 to Mattie McMillan “to be spent on the welfare of poor, homeless children” upheld); \textit{Irwin v. Swinney}, 44 F. 2d 172 (W.D. Mo. 1930)(bequest “for the furtherance and development of such charitable, benevolent, hospital, infirmary, public, educational, scientific, literary, library or research purposes, in Kansas City, Missouri, as said trustees shall in their
that these provisions were void for uncertainty. The Missouri Supreme Court continued to be dubious about these provisions if the object was religious, however: a 1907 case interpreting a will giving the residue to “the Methodist E. Church, South, and missionary cause,” was held void for being indefinite and uncertain.\textsuperscript{248} The Court noted, “[h]ad she said “to the Methodist E. Church, South, for missionary cause, there would be less trouble,”\textsuperscript{249} but as the language stood, there were two distinct beneficiaries, and so the provision was void. In the same vein, a bequest to the testator’s nephew “to be used for missionary purposes in whatever field he thinks best to use, so it is done in the name of my dear Savior and for the salvation of souls,” was void.\textsuperscript{250} The will gave no indication of the particular form of Christian religion that she intended to promote, and thus "no court could determine whether or not he [her nephew] was abusing his trust."\textsuperscript{251} It was not until 1948 that the Supreme Court distinguished \textit{Jones v. Patterson}, and stated the rule of the Restatement of Trusts that "A charitable trust is valid, although by the terms of the trust the trustee is authorized to apply the trust property to any charitable purpose which he may select, if the trustee is able and willing to make the selection."\textsuperscript{252}

\textsuperscript{248} Board of Trustees \textit{of Methodist Episcopal Church, South v. May}, 201 Mo. 360, 371 (1907).
\textsuperscript{249} Board of Trustees \textit{of Methodist Episcopal Church, South v. May}, 201 Mo. at 369 (1907) (emphasis in original).
\textsuperscript{250} \textit{Jones v. Patterson}, 271 Mo. 1, 5-9 (1917).
\textsuperscript{251} \textit{Jones v. Patterson}, 271 Mo. 1, 10 (1917).
\textsuperscript{252} \textit{Alman v. McCutchen}, 210 S.W. 2d 63, 66 (1948) (citing with approval 2 Restatement of Trusts 1189 Section 396).
In this regard, the Missouri Supreme Court was not alone. As late as 1940, a commentator observed “there is no uniformity of decision in the various states of the United States as to the amount of certainty necessary in the framing of a charitable trust.” 253

*Advantage: St. Louis.* California’s statute requiring the will to be executed more than thirty days before death would have voided out many of the charitable bequests in St. Louis. While the Missouri Supreme Court was less favorable to religious bequests than its counterpart in California, few wills in St. Louis reached that court, and so the charitable bequests were paid.

**Step Four:** *Tax laws should encourage, or at least not discourage, charitable bequests.*

In California, an inheritance tax was first enacted in 1893 and effective May 21, 1893. 254 A tax of 5% was levied on all property passing by will or by the laws of the state of California for all residents, as well as on property of nonresidents located in the state; to avoid evasion, it included transfers of property in contemplation of death or which took effect after the death of the decedent. The tax exempted property which was transferred to various relatives, and also tax-exempt societies, corporations, and institutions. Estates of less than $500 were not subject to the tax. 255 The California Supreme Court ruled in 1897 that the law was constitutional, despite claims that taxing bequests to nephews and nieces but not to siblings was arbitrary. 256 The tax was not a robust fundraiser: In the first year, California collected $1,365. 257

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254 1893 Cal. Stat. 193
255 1893 Cal. Stat. 193
256 *Estate of Wilmerding*, 117 Cal. 281 (1897).
257 *Inheritance Tax: Million and Half Paid,* L.A. TIMES, May 26, 1911, at 13, ProQuest Historical Newspapers: Los Angeles Times (1881-1989). The amounts increased: for the term ending May 1, 1909, the state received $937,072; for May 1, 1910, $833,311, and for May 1, 1911, $1,508,985.
The federal government attempted to tax inheritances as income in the Income Tax Act of 1894, which was enacted to place a 2% tax on all income (including gifts and inheritance) that exceed $4,000.\(^\text{258}\) The act was scheduled to take effect on January 1, 1895, but on April 8, 1895, the United States Supreme Court declared the law unconstitutional in *Pollack v. Farmer’s Loan & Trust Co.*\(^\text{259}\)

It is unlikely that either the California law or the federal law affected a testator’s behavior in deciding whether to give to charity. For the California wills for which we have both the date of execution and the date of death, 121 wills were executed before the effective date of the statute, including nine wills making charitable bequests.\(^\text{260}\) These 121 last wills have 62 testators who died before May 21, 1893, in some cases well before that date, and so they would have no opportunity to change their wills to reflect the new restrictions.\(^\text{261}\) Another eight testators were out-of-state residents who, even though they died after the statute took effect, may have focused more on their home states’ laws than on California’s.\(^\text{262}\) That results in 51 testators who died after the effective date of the statute but did not update their wills in response to the new tax
benefit for charitable bequests; of these, six testators had already included charitable bequests in their wills.263

Seventy-four (38%) wills were executed after the effective date of the California statute of May 21, 1893, and so it’s possible these testators altered their plans in some way. The result is a fairly small sample of California testators who could have changed their wills after the statute but did not. For these 66 wills executed after California enacted its statute, 5 (6%) include bequests to charity, and all five were California residents.

Reverend John Eichenberger gave $100 from his estate of $7,190 to Bishop Thoburn of the AME Church, the “sum in trust for a mission in India, the same being in fulfillment of a vow I made to the Lord if I got my back pay as an officer in the Army and which I have received.”264

Amos Throop, a longtime benefactor of both the Unitarian Universalist Church in Pasadena and Throop Institute, left $20,000 of his $94,800 estate to the Universalist Association of California, a denomination which later merged with the Unitarians, for the establishment of a divinity school on the condition that the association raise an equal amount of funds for the project. In 1897 the Universalists relinquished any claim against the estate. All the rest of Throop's estate was given to Throop Institute (later renamed the California Institute of

263 Case 528 Caroline Campbell (DOW 0/0/1891; DOD 2/18/1894); Case 377 Willet Doty (DOW 3/22/93; DOD 11/6/93); Case 518 John Downey (DOW 0/0/1877; DOD 3/1/1894); Case 387 Helen Lowth (DOW 8/11/90 in Wisconsin; DOD 11/13/1893 in California); Case 503 Annie Pratt (DOW 3/3/1885; DOD 2/18/1894); Case 492 Hugh Webster (DOW 11/16/1891; DOD 1/25/1894).
264 Case 298 John Eichenberger. His will was executed on August 10, 1893, 10 days before his death on August 22, 1893. The testator was survived by his wife and adult son.
Technology, and commonly known as Cal Tech), provided it always remain non-sectarian; $67,244.94 was delivered to the trustees of the University.265

Antoine Charvoz, an émigré from France, bequeathed his half of his business to his partner Fallonday, and all the rest of his estate (worth $545) to the Société Bienfaisance Francais (literally “French Charity Society”) of Los Angeles. In August of 1894, after Fallonday received the half share of the shop and funeral & medical expenses were paid, the Society received $145.32.266

Henrietta Losee gave the residue of her property in trust for Hanover College, Indiana, to endow a chair of astronomy for her father, Samuel Harrison Thomson. After considerable litigation, including an action to quiet title, the college gained title to some land in Oregon.267 In the case of one bequest, the charity never received any property. Ida Lehmer left $500 of her separate property of $2,650 in trust to the Mission Board of the German Baptist Brethren Church of Southern California; the probate court ruled that the bequest to the church was void because the will was executed within 30 days of death.268

265 Case 546 Amos Throop. He executed his will on November 11, 1893, 297 days before his death on March 22, 1894 at age 82. Earlier he had given $200,000 and the land for Throop University, which opened in 1891. Amos G. Throop and CalTech, available at http://harvardsquarelibrary.org/Caltech/throop1.html. He was survived by his wife, his daughter Martha, and three grandchildren. The Amos Gager Throop Collection, available at http://authors.library.caltech.edu/25014/1/ThroopCollection.pdf at pp. 13-14.

266 Case 342 Antoine Charvoz. His will was executed on October 10, 1893, six days before his death on October 16.

267 Case 423 Henrietta Losee. Her will was executed on September 4, 1893, two months before her death on November 6, 1893. She left certain bequests to her nieces and nephews, and all the rest to Hanover College, but the estate in California lacked assets to pay the bequests. In 1906, the law firm of Spencer, Day and Hampson contacted the President of Hanover College offering to clear title to the college’s bequest in Oregon in exchange for a ½ interest in the land.

268 Case 485 Ida Lehmer. The will was executed on January 28, 1894, 5 days before her death at age 24 on February 2, 1894. The will left "my silver watch to my infant son who is 20 days old who has not yet been named." This mortmain provision was enacted in 1874 to invalidate charitable bequests unless the will was executed thirty days before death, and limited any valid bequests to 1/3 of the estate if the testator left legal heirs. Code Amendments
**Advantage: Los Angeles.** Missouri had no inheritance tax during the time of this study, 1893-1894. A tax on inheritance was first enacted in 1895. While the California tax does not appear to have affected testators’ behavior, the law made a policy judgment that bequests to tax exempt organizations were not subject to the levy.

V. Conclusion

What factors predict charitable bequests in wills? By examining hundreds of wills executed before the federal estate tax was enacted, we can see patterns for the vast majority of people who die with estates far too small to be impacted by the estate tax. Certain conditions appear irrelevant: the fact that wills were easier to execute in California than in Missouri did not lead to more testate decedents in California; nor did the high rates of illiteracy in Missouri discourage people from executing wills. The most salient fact from these wills is that most people executed them within a year of their deaths. Thus, a statute like California’s voiding any charitable bequest made in a will executed within thirty days of death can have a huge impact on whether a charity can receive a gift.

To encourage more charitable giving in wills, five steps must be taken. First, we need people to execute wills rather than die intestate. Second, the wills must be valid, and not subject to years of litigation that drain the estate of assets. Third, the jurisdiction’s statutes and case law

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269 Mo. Stat. 1895, p. 278, s.1 (Approved April 1, 1895). Both this law and a later amendment were found to be in violation of Article 10, Section 3 of the Missouri Constitution in *State ex rel. Gart v. Switzler*, 143 Mo. 287, 45 S.W. 245 (1898). Missouri tried again in 1899; that law was ruled constitutional in *State ex rel. Fath et al. v. Henderson*, 160 Mo. 190, 60 S.W. 1093 (1901).
should encourage, or at a minimum allow, charitable bequests. Fourth, tax laws should likewise encourage charitable bequests.

The fact that so many more decedents in St. Louis had wills, and so many more gave to charities, point to a potential fifth step: The jurisdiction must be sufficiently stable that we have long-term residents with deep roots to the community, the judicial system is established enough so that wills are not endlessly contested and litigated, as in Los Angeles, and perhaps the most basic necessity for charitable gifts: *In order to have charitable bequests, we need charities to give it to.* Thus, a second salient fact from the study emerges: Most of the population of Los Angeles in 1893-94 was highly transitory; fewer than 25% had lived there for more than a few years. St. Louis, a far larger city at the time, had a much more stable population, with the potential to form long-term ties with their church, synagogue, and other philanthropic institutions. Policy makers who seek to encourage charitable giving should keep these factors in mind.