

PART III
NEW THEORY FOR LONGITUDINAL TRIAL
COURT RESEARCH

INTRODUCTION

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If much of the early longitudinal trial court research characterized litigation too narrowly as a form of social control that could be understood by identifying the connections between “disorder” and patterns of litigation (see Sanders’s essay in this issue), more recent research has employed an array of theories emerging in the law and society field to explore particular aspects of the complex set of processes and interactions among individuals and institutions that underlie the concept “litigation.” Many promising new lines of theoretical development are illustrated in this section’s essays, including longitudinal application of dispute processing theories and theories derived from anthropological studies of law, continuing relations theory, theory of complex organizations, theories of the state, and theories of economics and law.

Lawrence Friedman’s recent review in the *Annual Review of Sociology* characterized litigation research as comprised of two strands, “dispute-centered” and “court-centered” research (1989b). These classifications are suggestive of a problem at the core of the newer understandings of trial courts and litigation—the impulse to distinguish between actors and institutions. Theoretical approaches that attempt to understand actor orientations and the derivation of meaning provide powerful underpinnings for research on dispute resolution and for longitudinal studies of courts, as Lynn Mather argues in the first essay in this section. Other important work, also represented in this section, has begun to create a bridge to relevant theoretical traditions in research on organizations and the state, theory that has been too often ignored in sociological studies. Yet, however distinct these “actor” and “institution” perspectives may seem, it is apparent from these essays on longitudinal research that the two perspectives are complimentary and, in the final analysis, inseparable.

When we observe citizens or officials as they perceive conflict and act with regard to conflict or dispute resolution, it is apparent that these actors’ choices are constrained by expectations based on the apparent intentions of others they must interact with, result-

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ing in continuing patterns of interaction that we term "structure." It is also apparent as we observe such patterns of perception, disputing, court organization, or state policy toward litigation over time that this structure remains rooted in actor orientations that may change. Institutional perspectives often take such settled expectations (i.e., structure) for granted. Yet much organizational research is inevitably about the process and problems of creating expectations in individual actors that will support appropriate structure and about disruptions in organizational structures due to changes in the expectations of the actors within them. Readers will find a blending of theoretical elements from "actor" and "institutional" perspectives in many of the essays in this section and explicit discussion of the relationship between alternative perspectives in the essays by Mather (on the potential contributions of dispute processing theory to longitudinal research) and by Yngvesson (on the conceptualization of power).

In her essay, Lynn Mather describes in detail the uses that might be made of existing, richly contextual research on dispute resolution. We have sometimes underestimated how much this literature has to offer studies of litigation (though its importance has been demonstrated by Nelson (1988b) in his review of Galanter, 1983). Dispute processing research, which has typically considered conflict and dispute resolution at a single point in time, provides a natural starting point for thinking about changes in disputing (and litigating) over time. Conversely, as Mather argues, introducing the element of time into dispute processing research will require new and careful thought about conditions and consequences of continuing relations and about changing actor orientations to dispute resolution.

Marc Galanter, in the second essay, builds on a discussion by Emerson of the "holistic effects" of caseloads (1983). He introduces an important new concept in longitudinal research, the case congregation, that captures how actors' orientations combine over time to form new contexts and structures for litigation. A case congregation is a collection of cases existing (and changing) through time. Such a grouping is created by the subjective orientations of lawyers, judges, potential litigants, and other insiders in the disputing and litigating process who define legal relevance and thus link together cases of particular types. The dynamics of case congregation provide a fertile ground for considering the interaction of exogenous and endogenous processes affecting trial courts.

Britt-Mari Blegvad's essay explores business litigation and the formation and maintenance of continuing commercial relations. Focusing on the type of continuing relations that provided the basis for Macaulay's classic statement (1963) of the continuing relations hypothesis, Blegvad extends Macaulay's treatment by bringing to bear the theories of Luhmann, Williamson, and MacNeil and by considering data from a pilot study of Danish firms.

As Mather notes, dispute processing research has often overlooked the institutional settings of conflict and dispute resolution. Time makes problematic the emergence and maintenance of the institutional frameworks for dispute resolution and litigation that this literature assumes. Drawing on this observation, essays by John Padgett and Carroll Seron examine the changing roles of the courts and of official actors in relation to litigation, while Barbara Yngvesson's essay attempts to link the institutional and actor-oriented perspectives. Padgett offers a major substantive and methodological contribution to research on plea bargaining. His creative and powerful methodology for modeling different types of plea bargaining illustrates an important technique for stretching the power of docket data. His exploitation of a detailed source of data for the 1930s also shows the accuracy of Richard Lempert's point in this issue that study of a detailed cross-section at one point in time will substantially enhance understanding of less detailed longitudinal docket data.

Seron argues that the court as an organization and part of the state must be theorized as such, and she criticizes docket studies for having made naive assumptions about the organization of courts and thus having underestimating the complexity of a court's interaction with litigants. She draws on a study of federal district courts conducted with Wolf Heydbrand (Heydebrand and Seron, 1990) to illustrate how a well-developed theory of complex organizations may be used to establish a better framework for understanding the courts' responses to the historically mounting tension between the fiscal conservatism of Congress and public expectations created by the political role of the courts in legitimating state policy.

Barbara Yngvesson's essay grew out of an exchange with Carroll Seron at the Conference on Longitudinal Studies of Trial Courts in which Seron suggested that the power of the state is reflected in the control that courts or police exercise over dispute resolution. In her essay, drawing on a richly detailed study of neighborhood disputing in which the discourse among participants is followed from the neighborhood to court and back to the community, Yngvesson demonstrates that the power of court officials is not simply derived from state authority, but depends on the relationships, over time, between officials and those who come to them with complaints. Citizens share with officials power over meanings and process when citizens make choices about how to respond to perceived injury and in their capacity to involve the court in this response. Thus, while the relations citizens establish with court staff or police may be unequal ones, the power is "two-way" (Giddens, 1979: 92). More generally, this research suggests that central tendencies revealed by statistics may be built on a complex base of interactions that are conducted on contested ground and are subject to change and reconstruction. Applying Yngvesson's

insight to Padgett's or Seron's institutional research suggests that profound changes in the role of a court may be in part a product of such complex and less clearly ordered interactions that shape the creation or acceptance of change in the process of litigation mutually constructed by the participants.

A third group of essays explores litigation in an appropriate framework of state theory. Longitudinal studies of courts compel us to examine the state as an active participant in creating and resolving conflict. Viewed historically, the actions of courts, legislatures, and other state institutions appear often to be far from automatic responses to external demands. Wolf Heydebrand uses longitudinal data on U.S. cases in the federal courts to demonstrate that litigation is an important indicator of the state's political and institutional role in regulating the private economy under each presidential administration since 1940. John Stookey uses data on state trial court litigation in Arizona during the Great Depression and World War II to examine the implications of conflict theory of the state for the role played by law in responding to political crises. Eric Monkkonen locates changes in nineteenth-century felony trial courts in what he calls the local state, a concept of local government that combines its role as part of the government of a particular State and its fiscal dependence on local political economy. Ironically, as Monkkonen notes, the discovery that the limited power of local police and courts arises from a fiscally conservative political economy that may have been widely shared among local states raises questions about what is truly local political culture and whether local culture may have grown from roots in a shared American political and legal culture. In all three studies, changes in the state's own role are an important factor in explaining litigation over time that would be lost if the courts were not considered as part of the larger framework of the state.

The section concludes with a strong statement from Cooter and Rubinfeld about the value of theory and the requirements for precision that it places on investigators' conceptualization and data analysis in longitudinal research on trial courts. Sanders noted the strengths that economic theory might bring to longitudinal litigation research through its focus on actor choices and its strong theoretical structure that could enable more reliable empirical tests. Cooter and Rubinfeld describe these strengths in greater detail and provide examples of potential applications of this theoretical structure to the study of trial courts.