THE INTERNATIONAL COMPARISON OF COURT CASELOADS: THE EXPERIENCE OF THE EUROPEAN WORKING GROUP

HELEEN F. P. IETSWAART

Drawing on the experience of the European working group for the comparative study of litigation patterns, the author assesses the possibilities and limits of longitudinal international comparisons. The major challenge is ensuring that what is compared is comparable. Overall national litigation data are not comparable as such; official statistics raise more questions than they answer. The problems lie in the (socio)legal categories used in various countries, consistency of registration over time, and differences in legal procedures. The author suggests that a more fruitful line of inquiry begins with sociolegal categories of problems (e.g., housing, debt) and searches for litigation patterns. Thus disaggregating litigation data has the additional advantage of allowing the use of problem-specific baselines, which makes for greater comparability of data.

I. INTRODUCTION

The European working group for the study of the evolution of litigation was created in 1984.[1] Its objective was to study the litigation trends in the five participating Western European countries (Belgium, the Netherlands, France, West Germany and Denmark), and to conduct a comparative analysis. This research constituted in part a response to Galanter's 1983 (1983a) article addressing misconceptions that have led to the "litigation explosion" hypothesis.[2] Galanter rightly attacked, among other things, the implicit comparison of present North American litigation rates with a fictitious past in which litigation rates were much lower, and with "other places" (including Europe) where people litigate less. We were

I am indebted to Werner Ackermann for his ongoing encouragement and helpful comments. Frank Munger has played an important role in the revision of earlier drafts and has done remarkable editing.

[1] Its coordinated activities have lasted until 1987. A first joint publication appeared in 1989 (Blankenburg, 1989).

[2] In the "hyperlexis" view, which considers the whole of society as overlegalized, litigation is caused by "litigiousness"—the propensity to sue—coupled with too many legal rules and too many lawyers, both encouraging "litigiousness." Galanter concentrates his argument on litigation, and so did the working group.

LAW & SOCIETY REVIEW, Volume 24, Number 2 (1990)

particularly interested in Galanter's discussion of the implicit comparison of litigation in North America and Europe. Notwithstanding the valuable intentions of his arguments challenging "hyperlexis" discourse in general, we believed that the data necessary to make accurate comparisons between litigation rates in European countries, let alone between North America and Europe, did not exist. Essentially, our goal was to improve the data on which Galanter (1983a: 52) bases that part of his argument that concerns "other places."[3]

The need for better comparative research on contemporary litigation trends led the European group to propose research on the patterns of litigation in Europe. The major questions guiding the research were the following:

1. How has the rate of litigation in each European country changed over time?
2. Do these rates follow the same or different patterns?
3. Which types of cases have been responsible for changes in the volume of litigation in each country?
4. What elements in the legal system of each country or its socioeconomic environment explain the rates and trends and the similarity or differences between countries?

Guided by Galanter's focus on recent change in litigation patterns, the group selected the period between 1970 and the early 1980s (depending on data availability). No master plan was adopted; the teams conducted their research along lines established during early exchanges among members of the group and adapted the research to their own scientific and administrative environments.

This article contains my own evaluation of our efforts at cross-national comparative analysis. In my view, many of the important lessons that we learned were not direct answers to the original questions that we posed; rather they were lessons about how to do, or not to do, comparative research. What follows consists of three parts. First, I compare the overall litigation trends by country. Second, I elaborate on the limits of such global comparisons. Third, I argue that a different approach, analyzing the data by area of disputing, is more promising. This discussion is preceded by a

[3] The data have various weaknesses. First, if the presumed U.S. litigation explosion is to be located in the 1970s, it is neither logical nor useful to juxtapose 1970 data for Spain and 1980 data for the United States. Second, the litigation rates for the different countries are calculated from such different data that it is hardly justified to put them together in one table, thus suggesting they are comparable. A careful reading of the two and a half pages of explanatory footnotes to the table clearly shows the complexity of the matter. This complexity concerns the contents and comparability of judicial categories, as used in the statistical reports of the different countries. The Galanter presentation of these data reduces this complexity to simplicity. The working group wanted to restore European real-life diversity to its rightful place (cf. also Nelson 1988b: 691).

brief description of the nature of available data and the judicial organization in the five countries.

II. SOURCES OF DATA AND JUDICIAL ORGANIZATION

A. Sources of Data

We initially thought that a careful scrutiny of official statistics would be sufficient for our comparative research. All five countries publish official statistics concerning the administration of justice. However, the content of the published statistics varies from one country to another. The variations arise because the official statistics serve, at best, purposes internal to the judicial system. For example, courts may try to use statistics to obtain more personnel and other resources. Or the central administration may use them to compare the productivity of different courts. Thus, the volume and type of statistics gathered and reported in each country vary considerably as a result of different perceptions of their usefulness as well as a result of the substantial differences in judicial organization.[4]

In addition to their lack of uniformity, official judicial statistics do not necessarily report the information needed to answer the questions we posed about litigation trends. For the decade of the 1970s, official statistics provided few details about the composition of caseloads.[5] They typically lumped all "civil cases" together, and did not specify, for example, the number of landlord-tenant or debt cases. Thus, while official statistics permitted easy comparison of the total number of civil cases, it was difficult, if not impossible, to determine the kinds of cases that made up the total and, thus, whether the totals were in fact comparable. It was even more difficult to determine the proportion of different types of cases in the total.

While admittedly it is possible to gain a general idea of what sorts of cases might make up this total, since the types of legal proceedings available to litigants are specified in statutes, as Wanner has pointed out (1974: 422), disputing parties only make limited use of the legal proceedings that are available to them. To understand the pattern of court use, it is necessary (though not sufficient) to know the organization of the judicial system in each country and the subject-matter jurisdiction of each type of court.

---

[4] The data appear mostly in yearly publications, with a delay of several years. Thus, in 1984, the data for 1980 were just becoming available.

[5] In France, a modern, much more sophisticated statistical system was started in 1980. During the first two years the system did not work well, and the details of the data have not been elaborated. Since 1982, though problems persist, much more statistical information is available.

B. Judicial Organization

All Western European countries have institutions called "courts," "tribunals," "commissions," "bureaus," etc., which together form their system of administration of justice. Institutions called "courts" in one country do not necessarily perform the same tasks, or function in the same way as the "courts" in another. Various legal and cultural traditions have led to or maintained a different division of labor in the various countries. The systems vary, first, on a scale of public-private: some leave more room for private and semipublic institutions than do others. Second, within the public sphere the systems vary on a scale of centralization. The more decentralized the system, the larger the array of courts, tribunals, commissions, etc., having specialized subject-matter jurisdiction. Another dimension of the public third parties is their degree of professionalization. Some systems allow nonprofessionals very little participation in their courts and tribunals, whereas others allow for a considerable role for lay assessors or lay judges.[6]

All five countries have judicial systems in which there is a core of what traditionally have been considered "ordinary" general jurisdiction courts and a periphery of "special courts." As the special courts have taken over some of the subject-matter jurisdiction of the ordinary courts, the latter are in fact no longer courts of general jurisdiction. The core consists of county courts or small claims courts with jurisdiction up to a certain amount of money (the amount varying from one country to another) and high courts that handle the rest of general jurisdiction cases. The latter typically include most family cases such as divorce, postdivorce and adoption. The high courts in Denmark are an exception in two respects: (1) no-fault (uncontested) divorces are handled, not by the high court but by the town registrar in a truly administrative manner; (2) the high court hears appeals from county court decisions. In the other countries all appeals go to the appeals court.

Denmark has, for that matter, the most decentralized and privatized system, leaving to the "ordinary courts" by and large only (a part of) debt collection and torts. It has numerous specialized institutions—for labor grievances, for consumer affairs, for landlord-tenant problems, and for conflicts between economic actors, among others. These parajudicial institutions are run by nonprofessionals. The French system is also rather decentralized, having besides "ordinary courts" labor courts and commercial courts that are semipublic in the sense that they consist of nonprofessional judges who are the elected representatives of unions and

[6] The sources used for this comparative presentation of judicial systems in Europe are essentially all the earlier papers by the members of the working group: Blegvad and Wulff (1984, 1989); Ietswaart (1989, 1986a, 1986b); Langerwerf and van Loon (1984, 1985); Verwoerd and Blankenburg (1985a, 1985b); but also Verwoerd (1988), van Loon and Langerwerf (1987). For France, see also Bonafé-Schmitt (1986); Pinseau (1985).

professional organizations like employers' and trade associations. Commercial courts have many characteristics of private arbitration institutions, but their decisions may be appealed to the appeals court.

The Belgian system is very similar to the French; it has county courts, high courts, labor courts, and commercial courts; all four of these have a subject-matter competence very similar to their French counterparts.[7] The Netherlands has centralized the ordinary courts with the result that there are no longer separate labor courts (labor grievances are handled by the county courts) or commercial courts (disputes between firms go either to the county court or to the high court, depending on the amount involved).

C. *Ordinary and Special Procedures*

Not only can we distinguish a core of "ordinary courts" and a periphery of "special courts," but there are also "ordinary" and "special" procedures. In general, the "ordinary" procedures are the traditional, adversary procedures, while the "special procedures" are relatively less adversarial, the result of recent innovations. Thus, in Denmark, at the sheriff's court, creditors may employ a summary procedure in conflicts concerning consumer credit contracts. In France, West Germany, and the Netherlands a nonadversarial "order-to-pay" procedure provides a simplified means of debt collection.[8]

III. COMPARING LITIGATION CROSS-NATIONALLY

A. *Defining Civil Litigation*

In comparative research we must ensure that what we compare is comparable.[9] The differences among the court systems of the five countries create obvious problems in this respect. The ordinary trial courts in Denmark deal almost exclusively with debt collection and torts. As a consequence, their caseloads and any change in volume over time are not comparable to the changes in the caseloads of ordinary trial courts in France, where well over one-fourth of the caseloads of county and high courts consists of family cases. Similarly, caseloads of county courts in the Netherlands are not comparable to those of their French counterparts because the former include labor grievances and a number of commercial cases, whereas the latter do not.

---

[7] The French judicial system was successfully imposed on Belgium and the Netherlands during the Napoleonic period.

[8] The availability of a simplified and cheap debt-collection procedure is bound to have a negative impact on the number of ordinary procedure cases: to the extent legally possible, creditors will use the simplified procedure. We shall come back to this when discussing the problem of counting "cases."

[9] If a long period of time is studied, the organizational changes in the institution, as well as in the tasks it performs, also pose a problem of comparability over time.

Thus, in order to compare the changes in overall litigation trends in "trial courts" we must take into account all trial institutions and construct aggregates of their caseloads in such a manner that the same categories of cases are represented in all countries. We must decide where to draw the line. If we search carefully, we discover numerous alternative institutions that deal with part of the cases "ordinary courts" could deal with, according to their subject-matter competence. Therefore, we require a criterion to decide what should be included and where to stop counting.

The highly decentralized Danish judicial system in particular forced the working group to consider the role of parajudicial institutions and purely private alternatives to the use of courts. We resolved this problem by focusing on types of disputes rather than on types of dispute resolution. We selected types of disputes by following what I would call a mixed approach. On the one hand, we chose to examine the major socioeconomic areas of litigation that the judicial and parajudicial system of the five countries deal with. On the other hand, we took into account types of cases that previous research on disputing has examined.[10] Thus, we covered the following areas: the family, landlord-tenant relations, work relations, consumer problems, debt collection, and torts.[11] Within each country, we collected data on major litigation in all these areas, whether in ordinary courts, special courts or, in the case of Denmark, in some parajudicial institutions. Using this definition of civil litigation, the European working group attempted to construct comparable data sets on civil litigation trends using official statistics.

B. Comparing Trends and Rates: A First Step

A first, rather crude comparison may be made on the basis of the data thus selected (see Table 1).[12] For each country there are two columns: the first indicates the percentage increase in the liti-

[10] It would seem that the DPRP study (Miller and Sarat 1980–81) synthesizes a consensus on the logic of treating different areas of disputing separately. The underlying criteria for such a separation, elaborated in an extensive literature over the years, include the relations between the parties (degree of asymmetry, relative intimacy, the desire or the necessity to continue the relationship), the socioeconomic characteristics of the parties (individual, firm), monetary issues, among others. See Abel (1973); Felstiner (1974, 1975); Boyum (1983); Nader (1965, 1969a); Felstiner *et al.* (1980–81); Gulliver (1969b); Fallers (1969); Sarat (1976); Galanter (1974a); Macaulay (1963); Mather and Yngvesson (1980–81)); Miller and Sarat (1980–81); Bohannan (1967b); Danzig and Lowy (1975).

[11] Initially, we included two other categories of cases: those concerning rights arising from the social protection system, and those between citizens and government authorities. These areas were not covered, however, because unlike the four other countries, Denmark lacks administrative courts, and including these areas required too much additional research.

[12] We have taken 1970 as the year of reference. It should be noted that this particular year did not necessarily have the same meaning in all countries. If, e.g., 1970 has been preceded by a growth period and thus shows relatively

gation rate between 1970 and 1980-82;[13] the second column shows the litigation rate in 1982 (or 1980). To control for the differences in size of the populations in the five countries the date are presented as rates per thousand population (Lempert (1978).[14]

C. *A Preliminary Analysis of Trends*

A preliminary comparison of the data gathered in the different countries leads to the following observations.

1. In all countries the litigation rate has increased in the period studied. The size of the increase varies. Rather comparable increases occurred in Northrhine Westphalia (a state of the German Federal Republic) and Belgium if we leave aside for the moment the lack of data for Belgian labor courts. The increase in France has been much greater. The two analyses of the Netherlands data show quite a large discrepancy, and several items for Denmark are lacking. In Belgium the overall increase has been considerable but not as large as in France, while Northrhine Westphalia shows a rather moderate increase.

2. Northrhine Westphalia (West Germany) and above all

---

high litigation rates, not much more growth may be expected in the 1970s. If, to the contrary, the 1950s and 1960s have been a rather quiet period and a certain growth started in the 1970s, the trend may be one of relatively strong growth. Ideally, overall growth before the period considered in detail should be taken into account. See Yohai *et al.* (1985).

[13] Attempting to construct comparable rates for the five countries revealed two further problems created by reliance on official statistics. First, the data in Table 1 are not complete: for Belgium no statistics on labor courts exist, and for Denmark we lack data for the various institutions that handle labor grievances, as well as for the commercial and maritime courts. Indeed, Denmark shows the most important gaps in the data set, in part because of its high degree of decentralization: official statistics on the various parajudicial institutions are perhaps available but not easy to get hold of. Second, for the Netherlands two analyses of the official data exist, and they have important differences. Soetenhorst–de Savornin Lohman (1983) studied the demand for judicial services at the request of the Ministry of Justice. Her data allow us to calculate for the period 1970–79 an overall increase of the litigation rate by about 24 percent and a rate of 16.5 per thousand in 1979 (or 24 if we count orders to pay as well). Verwoerd and Blankenburg (1985b), on the basis of the same primary data, derive different figures: an overall increase of the rate of about 70 percent between 1970 and 1982, corresponding to a rate of 13.5 cases per thousand in 1982 (or 20.1 if we include orders to pay). Both are included in Table 1. The differences clearly result from the types of cases included in the calculations, but neither of the authors provide sufficient detail to explain these.

[14] The use of population as a baseline is neither always necessary nor appropriate. Contemporary or historical research on a certain court or set of courts may limit itself to data internal to the court(s). In longitudinal studies of court activity it is possible to concentrate on the development of caseloads from an internal point of view. But any study of courts in their social context must take account of at least population growth (Lempert, 1978). It is because Friedman and Percival (1976a) proposed to analyze the role of the courts in their community that Lempert criticized their lack of use of proper baselines. As there are also drawbacks to the presentation of all litigation data as rates per thousand population, this method must always be justified by the nature of the argument and of the data.

Table 1. Civil Litigation Rates in Five Countries by Type of Court, 1970–1982 (Cases per 1,000 Population)

Type of Court	France		Netherlands: Northrhine-Westphalia¶		Netherlands: Soetenhorst-de Savornin Lohman		Netherlands: Verwoerd & Blankenburg¶		Belgium		Denmark	
	% Increase in Rate 1970–82	Rate 1982	% Increase in Rate 1970–82	Rate 1982	% Increase in Rate 1970–80	Rate 1980	% Increase in Rate 1970–82	Rate 1982	% Increase in Rate 1970–80	Rate 1980	% Increase in Rate 1970–82	Rate 1982
County court[a]												
1. Ordinary cases	66	6.4	I 21	I 30.3	18	6.3	I 70	I 13.5	24	19.5	30	48.0
2. Orders to pay	123	12.0	II 26	II 81.2	0	7.5	II 5	II 6.6	– – Sources do not report data – –			
High court	100	6.8			28	10.2			92	14.4	−10	0.5
Labor court	108	2.7	60	4.7	– – No comparable court. Cases handled by high or county courts – –				– – Sources do not report data – –			
Commercial court												
1. Ordinary cases	41	4.8	– – – – No comparable court in these countries – – – –						5	9.7	[b]	[b]
Sheriff's court	– – – – – – – – – No comparable court in these countries – – – – – – – – –										[b]	111[c]
All courts[d]												
Excluding orders to pay	72	20.8	25	35	24	16.5	30	13.5	– – – – Data insufficient – – – –			
Including orders to pay	86	32.8	[b]	121.5	[b]	24	[b]	20.1	– – – – Data insufficient – – – –			

SOURCE: Based on official national statistics as reported in the following studies: France: Ministre de la Justice (1970–84); Northrhine-Westphalia: Verwoerd and Blankenburg (1985a, 1985b); Netherlands (1): Soetenhorst-de Savornin Lohman (1983); Netherlands (2): Verwoerd and Blankenburg (1985a, 1985b); Belgium: Langerwerf and Van Loon (1985); Denmark: Blegvad and Wulff (1985).

¶ I: Combined county court and high court ordinary cases. II: Combined county court and high court orders to pay.

[a]Includes district court (see Appendix). See text for the distinction between ordinary cases and orders to pay.

[b]Studies on which this table is based do not report sufficient data.

[c]Data for Copenhagen area, 1981 only.

[d]Sheriff's court included for Denmark only.

Denmark would seem to be examples of a relatively low growth rate in the period 1970–82, because there had been a high rate of litigation before 1970. It should be recalled that the caseloads of ordinary courts in Denmark do not include divorces, while in the other countries they do. This contrasts with the situation in France: a low litigation rate in 1970 (17.7, including orders to pay) and a high growth rate (86 percent) over the following fifteen years. Belgium is an intermediate case. While its litigation rate was already rather high in 1970 (33.7, without labor grievances), the increase has nevertheless been considerable, at least in the high courts and the commercial courts.

3. The rates of litigation vary considerably from one country to another. In the early 1980s, the Netherlands had the lowest rate (although the two analyses differ) and Denmark had the highest, even when we exclude several categories of cases. It would seem that the special, summary procedures for debt collection available in France, West Germany, the Netherlands, and Denmark increase the litigation rate considerably, but their overall effect is also variable from country to country: in Denmark including summary procedures in the sheriff's court adds significantly to the rate, in Northrhine Westphalia less so, and in France adding such cases causes only a small increase in the rate.

IV. A CRITIQUE OF LITIGATION TREND COMPARISONS

While it is tempting to answer our initial questions on the basis of these data, the analysis is not satisfactory, for two major reasons. First, rates calculated on the basis of population assume that the population as such—the general public—generates litigation. This assumption entails another: population growth leads to more litigation. Second, the judicial statistics for each country employ categories that are often unique and may not even be consistent with those employed in previous statistical reports for the same country over the twelve to fifteen years under consideration.

A. Baselines

The first problem concerns the use of baselines. A baseline permits description of the quantity of litigation relative to some base (e.g., population) that reflects sources of variation in the amount of litigation that we wish to hold constant (i.e., we want to be able to disregard its effects). Thus, use of a rate relative to an appropriate baseline allows comparisons over time and from one country to another. Population is a simple and much-used baseline. But population as such does not produce litigation. Litigation arises from many aspects of socioeconomic life, and many types of litigation are not generated by the population at large but by specific groups of social actors. Commercial litigation is generated by firms, divorce litigation by married couples, postdivorce litigation

by divorced people, landlord-tenant litigation by landlords and tenants, labor grievances by that part of the labor force employed by private enterprise (in Europe, civil servants mostly have to sue their employer in administrative tribunals). In the dispute-handling tradition, and in particular in the pyramidal representation of disputing (Felstiner *et al.*, 1980–81; Mather and Yngvesson 1980–81; Galanter 1983a), these subgroups of the population at large have been called populations-at-risk (Miller and Sarat 1980–81). From one country to another, these populations-at-risk may be quantitatively different, and they grow at rates that differ from the growth rates of the general population. They may, in addition, show different dispute behavior in different countries or at different times.

Therefore, presenting litigation data cross-nationally as rates based on population creates only an imperfect comparability. To the extent that the baseline does not accurately reflect changes in populations-at-risk, the comparison will naturally lead to incorrect conclusions. Proceeding, then, to explain differences in litigation rates by pointing to differences in more relevant baselines is a roundabout way of reasoning that only attempts to correct the underlying mistake in measurement that might have been avoided from the outset. For example, Belgium has a higher landlord-tenant litigation rate (per 1,000 population) than France. If, however, we were to find that the number of rented housing units is higher in Belgium, and that it is in about the same proportion to litigation in the two countries, it would be more correct to say that the level of landlord-tenant litigation is approximately the same in the two countries. By contrast, for two important categories of lawsuits population as a whole may be considered an adequate baseline: debt collection and torts, as anybody may be a debtor or the victim of personal injury or damage to property, although even here we may wish to use still more specific baselines—for example, the number of automobiles for still greater precision with respect to some types of torts. Population may also be considered an adequate baseline for consumer problems, as everybody is a consumer; but consumer litigation tends to be a small proportion of total civil litigation.

B. The Limits of Official Statistics

To refine the analysis and to apply sociologically meaningful baselines, we should distinguish and analyze the different types of litigation separately.[15] But here an important practical problem

[15] Researchers in different areas of (potential) litigation take into account the real social baseline concerned. Studies on divorce rates have since long compared the latter to the marriage rate (see, e.g., Commaille *et al.*, 1983). Studies on problems of the payment of child support take for a base the number of divorced mothers having a right to child support (Festy and Valetas, 1986). The number of road accidents is measured against the effective

arises. The reports of official statistics do not (at least for the 1970s) specify a great number of types of cases. As we have seen, we may know from the laws specifying subject-matter jurisdiction that cases for a certain court include, for example, landlord-tenant cases, traffic and other torts, and debt collection, but we cannot tell in what proportions. In fact, we do not quite know how these statistics were produced, exactly what categories were included, and whether the way they were produced was the same for the various years concerned.

A couple of examples from France may illustrate the problem. Until enactment of the 1975 law on divorce,[16] all divorce cases followed the same procedure: they had to start with a request to begin the procedure; this request would be followed by the traditional "attempt at conciliation," which in fact constituted a first hearing in which provisional arrangements about money and children were decided upon. After this first hearing the "real" procedure could start: a summons could be served. As a consequence of this procedural particularity divorce cases were not counted before the summons was served by one of the spouses. Under the provisions of the new law the no-fault procedure is exempted from the summons. This procedure begins with a request and, after a certain delay, the request is repeated. For the other procedures the old two-phase system has been maintained. The no-fault procedure soon became popular, and after a number of years, counting requests and counting summonses by no means produced the same figures. During a three-year period (1981–83) both kinds of data were available and the discrepancy between them is considerable: about 100,000 summons against about 150,000 requests in 1981. Since 1984, only requests have been counted. For the period up to 1981 it is impossible to know, for the country as a whole, how many divorce procedures were initiated and went to a first hearing, and how many were abandoned after the first hearing. We know how many divorces were granted, but that is a different matter. As a consequence, in comparing "divorce cases" between countries we do not really know what we are comparing.

Another problem lies in the variable reporting practices of different courts within the same system of courts. In France, for example, similar activities may or may not be included in the statistics on civil caseloads of different county courts. Further, in the official statistics, related but different activities may be added up, despite important qualitative differences between them. For example, in the area of guardianship, some courts report only the total number of requests for guardianships; others add to these all the administrative acts related to guardianships in existence dur-

use of cars, i.e., the number of kilometers per car per year. It is only natural that we, in studying the courts, try to do the same thing.

[16] See Law no. 75-617, of 11 July 1975 (published in *Journal Officiel* of 12 July 1975).

ing the year: guardianship is an ongoing responsibility of the court. In particular, guardianships of elderly people require repeated activity by the court.[17]

In order to have a better idea of the composition of caseloads and of what happened in different areas of litigation, we need to conduct fieldwork examining such archives as the courts have. The data thus obtained would be complementary to the available official statistics (cf. Lempert, 1989).

V. COMPARING LITIGATION BY SOCIOECONOMIC AREA OF CONFLICT: THE SECOND STEP

The comparative analysis of litigation data by socioeconomic area of disputing has three advantages: (1) we may present and analyze quantitative data on areas of daily life that have a recognizable socioeconomic reality in all countries concerned; (2) these data may be relatively precise and reliable, especially in so far as fieldwork is possible, and (3) they may be related to sociologically relevant baselines, such as changes in the number of particular types of transactions-at-risk to litigation.

Table 2 presents trends in litigation rates since 1970 (column 1) and litigation rates in the years 1979, 1982 or 1984, by socioeconomic area of disputing, insofar as that is possible using available data.[18] Unfortunately, the gaps in the data set are, for the time being, considerable. The table should be seen as a model for the sort of information we would like to have. Except for certain items, the data do not reflect litigation at the national level. They are, rather, based on case studies by members of the working group or on published case studies. In France, fieldwork was done in four county courts. In Belgium, the Greater Antwerp area was studied in detail. In the Netherlands, fieldwork was done in the Amsterdam region. In Denmark, some detailed data for the Copenhagen area are available.

A. Landlord-Tenant Relations

The area of landlord-tenant relations is the best known and provides the most comparable data on the various countries because the detailed data generally concern (large) urban areas. The

[17] The same is true of garnishments. In these cases the court acts as the administrator of debt collection: every month it receives money from a number of debtors' employers and passes it on to the creditors. What is counted is the number of garnishments administered. But here the problem of counting is less acute, as these "cases" are not included in the category "total civil cases."

[18] In all Western European countries numerous specialized organizations contribute to dispute handling in the various areas of socioeconomic relations, ranging from local consumer associations to the courts. As the present study concerns litigation, we have in fact remained close to the courts. In the Netherlands, where the Rent Commission is an important and quite visible institution, its caseload has been taken into account. For Denmark, some of the numerous specialized parajudicial institutions have also been included.

Table 2. Civil Litigation Rates in Five Countries by Type of Case, 1970–1984 (Cases per 1,000 Population)

Type of Court	France		Northrhine-Westphalia		Netherlands		Belgium		Denmark	
	% Increase in Rate 1970–84	Rate 1984	% Increase in Rate 1970–82	Rate 1982	% Increase in Rate 1970–82	Rate 1982	% Increase in Rate 1970–84	Rate 1984	% Increase in Rate 1970–82	Rate 1982
					(6) ND	23.8			(2) *189	*7.7
Landlord-tenant	398	3.2	12	1.5	(7) 54	6.0	100	3.8		
					(8) ND	29.8			(5) †86	†19.8
	(1) 182	2.7	ND	ND	(1) ND	ND				
Debt collection	(3) 164	10.9	26	91.2	(3) 5	7.1	56	30.5		
	(4) 167	13.6	ND	ND	(4) ND	ND				
Other contracts	233	0.3	ND	ND	ND	ND	ND	ND	(2) ‡30	‡48.0
									(5) ND	§111.3
Torts	–55	0.3	ND	*2.4*	ND	*0.1*	7	5.0		
Family	ND	ND	ND	ND	ND	ND	60	8.9	ND	ND
Consumer	615	0.3	ND	ND	ND	ND	ND	ND	ND	(9) ¶10.7
Labor	*108	*2.7	95	5.6	*130*	*0.5*	141	2.0	ND	ND
Commercial	*45	*4.8	ND	ND	ND	ND	54	9.7	ND	ND
Special notes	*Based on official national statistics								*1981 only †1982 only ‡National data: all contracts §1981 ¶1979	

SOURCE: Based on reports of field studies undertaken by members of the European working group in specific geographic areas within each country: France (four county courts): Ietswaart (1986a, 1986b); Northrhine-Westphalia: Verwoerd and Blankenburg (1985a, 1985b); Netherlands (Amsterdam): Verwoerd and Blankenburg (1985a, 1985b); Belgium (Greater Antwerp area): Langerwerf and Van Loon (1985); Denmark (Copenhagen): Blegvad and Wulff (1985).

NOTES: Numbers in italic type are estimated. "ND": Studies on which this table is based do not report data.

CASE CATEGORIES:

(1) Ordinary cases (excluding unpaid rent); see text for explanation
(2) Ordinary court cases; see text for explanation
(3) Orders to pay
(4) All debt collection (excluding unpaid rent)
(5) Sheriff's court
(6) Rent commission cases
(7) County court cases
(8) Total for rent commission and county court
(9) Consumer cases before consumer tribunal and consumer board

French data cover two suburbs of Paris, one medium-sized town, and an area that was strongly urbanized in the middle and late 1970s. The data for Belgium come from the Greater Antwerp area, for the Netherlands from Amsterdam, and for Denmark from the Copenhagen area. Landlord-tenant relations are generally more strained in urban areas, and the relative incidence of court cases in such areas tends to be above the national average in towns. Where details exist since 1970, the increase has been considerable but quite variable among countries. The increase was greatest by far in France, and somewhat less in Denmark, Belgium, and the Netherlands; for the whole of Northrhine Westphalia the increase was much more modest, only 12 percent.

The rates of landlord-tenant litigation in 1982–84 are also quite variable. The French and the Belgian data indicate approximately the same rate, but in the Amsterdam area and in Copenhagen the rate is much higher.

B. Debt Collection

For debt-collection cases the picture is different. In France (four county courts) and in the Greater Antwerp area the increase in debt cases has been about half that in landlord-tenant cases, whereas the rate in 1984 is much higher than that for landlord-tenant cases (13.6 in France, and 30.5 in Antwerp).[19]

For the Amsterdam area the longitudinal data are incomplete. We only know that the number of orders to pay has been remarkably stable (+5 percent). The trend in ordinary debt cases is not known. The same applies to the rate in 1982: there were 7.1 orders to pay (per 1,000 population), but the rate of ordinary debt litigation is unknown.

For Northrhine Westphalia and Denmark the data are also incomplete. In Northrhine Westphalia orders to pay have increased by 26 percent and the rate in 1982 was 91.2. To this already high rate must be added the unknown number of debt cases that follow the ordinary procedure. Debt litigation is thus much more prominent in the courts of Northrhine Westphalia than are landlord-tenant cases. In Denmark the summary procedure at the sheriff's court alone produces a rate of 111. In this country, official statistics do not separate debt from tort cases in ordinary courts, so that it is impossible to establish on overall debt litigation rate.

C. Torts

In all five countries torts cases are relatively few and have not contributed to the overall growth of court cases. In Antwerp, tort litigation increased by 7 percent; in France, it even diminished by

[19] Furthermore, the French data are incomplete; they report only on the county courts and not the others (high courts, commercial courts). The total rate is much higher.

55 percent. For neither Northrhine Westphalia nor the Netherlands is the growth in rates known. The rates in 1982–84 vary from 5 (Belgium) to 0.1 (Netherlands).

D. Labor Grievances

The number of labor grievances has increased considerably in four of the five countries: France, Northrhine Westphalia, the Netherlands, and Belgium. However, the rate of labor litigation is not very high, ranging from 5.6 in Northrhine Westphalia to 0.5 in the Netherlands.[20]

E. Family

Family cases have not yet been analyzed in sufficient detail to be cross-nationally comparable. The category illustrates clearly some specific problems of the comparative analysis of litigation. Differences in civil procedure and in the statistical reporting of cases—partly a consequence of procedural differences—are a great obstacle to comparisons among countries. In official statistics, it is unclear what cases are included in the category "family cases." The number of divorces granted is always known, but it is typically much lower than the number of divorce cases handled by the courts. In France, the division of labor between high courts and county courts in the area of family relations is so complicated that the work of the two types of courts must be analyzed together. More field research is needed to make reasonable comparisons among countries concerning the data on family cases.

VI. EVALUATION: STRENGTHS AND WEAKNESSES

The relatively simple data that I have compared show both the strengths and the weaknesses of the approach the working group has adopted. The chief strength of this comparative analysis of litigation is that it has suggested that the diverse character of the litigation systems themselves may contribute strongly to the patterns of litigation in different countries. The differentiation of dispute resolution within and between judicial systems has encouraged the group members to investigate aspects of caseloads and dispute areas that would otherwise not have attracted their attention. For example, the data suggested the importance of "special procedures" and "alternatives" to ordinary courts as explanations for litigation trends.

On the other hand, the most striking weakness of the research is due in part to the diversity and differentiation of European judicial systems, namely, the relative lack of comparability of the data obtained. Further, no research program was adopted by the group

[20] Again, these rates are only first approximations, since more appropriate baselines for labor grievances exist, e.g., the economically active population.

that might have rendered the data from the five countries more uniform. Thus, these data are rather diverse, and comparisons necessarily remain approximate. In particular, the problem of knowing and controlling for what is contained in the official statistical categories, whether defined by type of institution or by type of dispute, has not been solved.

VII. REEXAMINATION OF LITIGATION TRENDS

In the introduction I described four questions that guided the research of the working group; they concerned overall trends in litigation, differences between countries, trends in different types of cases, and the causes of litigation trends. As shown previously (see Table 1 and sec. III.C above), litigation rates increased in all five countries between 1970 and 1982–84; at the same time, the 1982–84 litigation rates for each country reveal wide variation. In my critique of comparative research methods I argued that in order to go beyond these simple generalizations we must examine specific types of litigation, defined by socioeconomic criteria (see sec. IV above), and for each type we must link litigation both to changes in the system of legal and paralegal institutions (e.g., changes that attempt to provide easier access to dispute resolution by creating alternatives to courts) and to changes in the extralegal environment (e.g., changing debtor/creditor relations or changing practices of insurance companies). With respect to the specific areas of litigation we may then develop theories of change.[21] Although, as I explained, the working group's data suffer from severe problems for comparative analysis, my examination of trends by socioeconomically defined case types yielded several new and suggestive insights.

The data for the five countries suggest that rising civil litigation rates are the result of rapid increases in specific types of cases, while other types of cases have not increased at the same rate, or have not increased at all. For example, the number of labor grievances has, on the whole, grown particularly fast. More research on this point will be illuminating. My own research on French county courts showed the influence of other case-specific trends. In 1970 traffic torts constituted about 40 percent of the cases in these courts, but by 1980 they had practically disappeared. By contrast, landlord-tenant cases increased so rapidly as to replace the traffic tort cases (Ietswaart, 1986a).

[21] The relationship between change within courts and extralegal developments has been studied extensively, and overall, comprehensive theories have been proposed. But it has now been sufficiently demonstrated that there is no simple correlation between overall economic and legal development (Friedman and Percival, 1976a; McIntosh, 1980–81; Krislov, 1983; Daniels, 1984; Toharia, 1987; Munger, 1988). At the same time, neither courts nor (potential) litigants function in a socioeconomic vacuum. Nonetheless, the kinds of litigation that the courts are called upon to handle are so varied that global theories are inadequate.

Changes in the litigation rates of specific types of cases raise additional questions for research. For example, if there is an increase in certain types of cases, we would like to know about the plaintiffs who are filing the cases: Are they individuals or institutions? Are they landlords or tenants? The next question that logically arises is whether the types of plaintiffs (or defendants) have changed over time. At the cross-national level we have not yet pursued this question, but it obviously constitutes an important subject for future research.[22] Such a question ultimately concerns the changing role of courts in society and their direct and indirect contribution to dispute settlement, to normative evolution, and to legal ordering more generally (Lempert, 1978; Galanter, 1983b; see also Mnookin and Kornhauser, 1979).

Further, we will need to analyze carefully the different categories of cases in order to distinguish between the various factors that might contribute to the increase or decrease in each type of case. An increase in the litigation rate might mean that the number of underlying transactions-at-risk increased more rapidly than the baseline we used to control for differences in the size of countries (namely, population). Thus, if the number of consumer credit transactions has grown faster than the population, this may cause the litigation rate of consumer debt matters to increase. As Krislov (1983) points out, two other factors also might explain changes in litigation rates: changes in willingness to litigate ("litigiousness") and changes in the effective opportunity to litigate, including changes in the costs of litigation.

From my own research I offer two examples of the complexity of the relationship between the number of transactions-at-risk and the volume of cases in court. In France, car accidents have increased considerably since 1970, but the number of auto tort cases has greatly diminished because insurance companies, finding that lawsuits are too expensive, have created alternative means of handling claims. By contrast, the number of rental housing units has remained stable in France since 1970, but landlord-tenant litigation has greatly increased. The economic crisis of the 1970s was in part responsible for a growing number of instances of nonpayment of rent. In the same period, greater efficiency was expected from public housing administrators. Those landlords who want to recover some money from the state must use the courts if they cannot obtain an eviction.[23]

---

[22] While nonlongitudinal studies have dealt frequently with the socioeconomic status of plaintiffs (Wanner, 1974; on small claims court studies, see Yngvesson and Henessey, 1975: 235 ff.), only a few longitudinal studies have looked at this issue over time (McIntosh, 1985; Munger, 1988).

[23] In France, the state is financially liable if the police refuse to help evict tenants forcibly. In that case, the landlord has a right to an indemnity for unpaid rent. For this liability to come into play, several steps are necessary: (1) The landlord requests the eviction in court; (2) the judge grants the eviction; (3) the landlord notifies the tenants of the judgment, and asks them

Another insight that resulted from the comparative analysis of litigation trends of specific types of cases has to do with the structure of judicial and parajudicial institutions of each country.[24] As explained above, there is great variation among the five countries in the number of formally organized, specialized bodies for handling disputes (see sec. II.B). Two hypotheses may be formulated. First, a high degree of decentralization of the administration of justice is associated with a high litigation rate. In other words, if social actors have access to numerous, specialized dispute handlers, they will use them. In particular, the Danish system suggests this hypothesis, but it is supported by the effects of the special systems that handle particular matters in other countries (e.g., the Rent Commissions in the Netherlands, Denmark and, more recently, France). Second, the existence of a simplified, nonadversarial debt-collection procedure tends to increase the litigation rate, even if ordinary courts handle these procedures. Thus, we may propose the following more general hypothesis: the more special courts and special procedures creating simplified or cheaper access, the higher the litigation rate.

Thus, I suggest that the structure of formal dispute resolution forums that provide alternatives to courts plays an important role in the production of lawsuits. An illustration of the influence of another type of pre-judicial institution, legal counseling, is provided by the emphasis on preventive law in the Netherlands. The free or low-fee legal counseling, which is widely available, may act as a buffer between potential litigants and the courts, reducing the litigation rate by comparison with a judicial system such as Denmark's in which the many specialized parajudicial agencies invite third-party dispute resolution without first consulting a lawyer.

The use of alternatives to courts is determined in part by what potential parties want and what can be gained from courts and from available alternative forms of dispute resolution. Potential litigants presumably compare what the different means of dispute resolution offer, and their choice of forum will be influenced by their particular objectives and the circumstances of the case. Consumer credit litigation in France is a case in point that demon-

(again) to leave; (4) upon their refusal, s/he requests the help of the police. The ultimate decision in these matters rests with the prefect (head of the Department) and the prefects vary in their willingness to forcibly throw tenants out. If the prefect refuses, the state becomes liable.

[24] Changes in judicial organization in the period since 1970 have not been systematically studied in each country. Anecdotal evidence suggests, however, that ideally such changes should be taken into account as they may affect litigation rates. In France, a number of new labor courts were established in 1980–81, with all labor grievances falling within their exclusive jurisdiction. Up to 1980, county courts were competent to hear these matters where no labor court existed. Also, new labor judges were elected in that same period in the whole country. Altogether a rather chaotic situation resulted, and for a few years the labor courts did not function well, with a negative effect on the official rate of labor grievances in 1984.

strates the interrelation between the needs or expectations of social actors and the decision to use the ordinary courts. In this area, the ordinary courts play a largely symbolic role. A creditor's request for an order to pay by an ordinary court amounts to saying "we mean business." Creditors know that by the time a lawsuit is brought, it is usually too late to recover anything at all. Nevertheless, they take some debtors to court just to make an example of them. Thus, the court is used for its symbolic effect.[25] Even this use may decline as private debt collection becomes still more sophisticated and effective. The effectiveness of litigation and alternatives will depend on such variables as the relative power, resources, and sophistication of the parties as well as the content of the law.

VIII. CONCLUSIONS

Cross-national comparative study of litigation rates is possible, but it is a difficult enterprise. The major challenge is ensuring that what is compared is comparable. Notwithstanding serious problems of comparability, the cross-national data of the European working group has yielded interesting findings. On the one hand, we may note that the demand for the services of courts and court-like institutions has, on the whole, been increasing in recent years. On the other hand, the research has shown that civil litigation is comprised of socially very different cases and is most usefully studied by disaggregating cases by area of socioeconomic relations.[26] This approach has two advantages. First, a particular type of case may be looked for in both courts and parajudicial institutions; thus, the criterion for including the activity of dispute resolution by third parties is their relation to disputes arising from the socioeconomic area concerned. Second, specific, relevant baselines may be used to calculate rates, providing a more meaningful reference for comparison across time and space.

The areas we have distinguished on the basis of socioeconomic criteria (housing, debt, family relations, torts) are recognizable in all Western European countries. They may be complemented by still others, notably social insurance cases and administrative cases

[25] A valuable study of debt collection in the areas of landlord-tenant relations and consumer credit is Mornet (1980). It describes the functioning of private debt-collection agencies and explains their efficiency. The sociolegal function of courts in the area of debt collection is quite different from that in cases of eviction (cf. note 24). It is a pity that the debt-collection study has not been repeated more recently; fieldwork was done in 1976–77.

[26] The same conclusion has been reached in a totally different area. Maurice *et al.* (1979) started out studying comparatively the wage scales at different levels of skill in French and West German firms. They soon found out that the systems of job qualification and categories of skill were very different in the two countries, thus making comparisons of wages impossible. They ended up studying the education systems, since they form the basis of the acquisition of skills and the appreciation of these in the labor market.

(those in which public authorities are defendants, or both plaintiff and defendant). Identifying litigation by socioeconomic categories, as proposed here, normally requires fieldwork because specific statistics on such areas, as conceived in sociolegal terms, often do not exist. Fieldwork is in any case commendable, because conclusions based on existing official statistics are always problematic.

Changes in litigation rates over time may not be explained by single variables such as "litigiousness," or effective access to the courts, or the role of lawyers alone. For each socioeconomic category of litigation, hypotheses must be developed concerning the interplay of a set of relevant variables that includes those just mentioned but includes as well such variables as the costs and benefits of alternatives and the relationship between the parties, legal rules, and judicial habits. The interplay of these variables structures the choices and the strategies of the parties. The litigation strategies of the parties ought to be the centerpiece of the hypotheses to be constructed about their behavior within and around the court system. Thus we may refine our understanding of litigation and of the role of courts in various socioeconomic relations. Such an approach to the study of litigation facilitates cross-national comparison because the hypotheses about the interplay of these variables can be developed in all Western countries.

APPENDIX
MAJOR JUDICIAL, SEMIJUDICIAL, AND NONJUDICIAL INSTITUTIONS AT THE TRIAL LEVEL IN FIVE EUROPEAN COUNTRIES

1. FRANCE

Type of Court, Tribunal Commission, Etc.	Subject Matter Competence	Public, Private, Semipublic	Professional, Lay, Mixed
County court	Landlord-tenant (no value limit) Debt collection up to FFr 30.000 Torts up to FFr 30000 Some family cases Consumer complaints up to FFr 30.000 Orders to pay Numerous administrative acts	Public	Professional
High court	Most family cases, notably divorce & post divorce Debt collection Torts Consumer complaints Bankruptcy of noncommercial institutions	Public	Professional
Labor court	Labor grievances (incl. dismissal)	Semipublic	Lay
Commercial court	All disputes between firms & independent entrepreneurs in trade & services Bankruptcies of firms	Semipublic	Lay
Social security complaint commission	Complaints about medical benefits & pension rights	Semipublic	Mixed
Administrative tribunals	Citizen complaints against local & central govt. Disputes between govt. institutions	Public	Professional
Insurance companies	Traffic torts involving insurance claims Other torts involving insurance claims	Private	
Commercial arbitration	Commercial disputes	Private	
Labor Inspection	Certain cases of dismissal	Public (admin.)	
Housing Commission	Certain landlord-tenant disputes	Semipublic	Mixed
Postbox 5000	Consumer complaints	Semipublic	Mixed
Consumer associations	Consumer complaints	Private	

SOURCE: Ietswaart (1984, 1986a, 1986b); Pinseau (1985); Bonafé-Schmitt (1986)

2. DENMARK

N.B.: There are no administrative courts; administrative complaints are handled by the sector concerned (hierarchical complaint procedure)

Type of Court, Tribunal Commission, Etc.	Subject Matter Competence	Public, Private, Semipublic	Professional, Lay, Mixed
District court	Debt collection	Public	Professional
	Very small number of landlord-tenant cases (Lease Act)		Mixed (lay assessors)
	Consumer cases Other contract cases (property) N.B.: Can be used up to DKr 100.000		
High court	Original jurisdiction if value exceeds DKr 100.000	Public	Professional
	Appeal from district court decisions Commercial cases		
(Family court)	Family cases (contested divorces & other)	Public	Professional
Town register	Divorce by mutual consent	Public (admin.)	
Maritime and Commercial Court	Commercial cases if both parties agree	Public	Mixed

2. Denmark — *Continued*

Type of Court, Tribunal Commission, Etc.	Subject Matter Competence	Public, Private, Semipublic	Professional, Lay, Mixed
Sheriff's court—*cont.*	Eviction Debt collection (summary procedure) Execution of debt sentences by district court	Public	Professional
Rent Control Board	Rent level, rent increase Repairs, maintenance	Semipublic	Mixed: admin. + representatives of landlord & tenant organizations
Dismissal Tribunal	Dismissal grievances	Public	
Labor Court	Labor grievances	Public	
Social Security Board	Workers' compensation Unemployment payments Compensation for work accidents & occupational diseases		
Consumer Tribunal	Consumer complaints	Semipublic	
Consumer Complaint Board	Consumer complaints	Public	
Complaints Boards by branch of industry or service	Consumer complaints	Private	
Consumer associations	Consumer complaints	Private	
Commercial arbitration	Commercial disputes	Private	

SOURCE: Blegvad and Wulff (1984, 1989).

3. BELGIUM

Type of Court, Tribunal Commission, Etc.	Subject Matter Competence	Public, Private, Semipublic	Professional, Lay, Mixed
County court	Landlord-tenant (no value limit) Debt collection up to BFr 50.000 Torts up to BFr 50.000 Some family cases Consumer complaints up to BFr 50.000 Administrative acts	Public	Professional
High court	Most family cases, notably divorce & postdivorce Debt collection Torts Consumer complaints Bankruptcy of noncommercial institutions	Public	Professional
Labor court	Labor grievance (incl. dismissal) Debt collection in social insurance matters	Public	Mixed
Commercial court	All disputes between firms & independent entrepreneurs in trade and services Bankruptcies of firms	Public	Mixed

SOURCE: Langerwerf and Van Loon (1984, 1985).

4. THE NETHERLANDS

Type of Court, Tribunal Commission, Etc.	Subject Matter Competence	Public, Private, Semipublic	Professional, Lay, Mixed
County court	Landlord-tenant (no value limit) Debt collection up to DFl 3.000 Torts up to DFl 3.000 Labor grievances (no value limit) Some family cases Consumer complaints up to DFl 3.000 Orders to pay Administrative acts Commercial disputes up to DFl 3.000	Public	Professional

4. THE NETHERLANDS — *Continued*

Type of Court, Tribunal Commission, Etc.	Subject Matter Competence	Public, Private, Semipublic	Professional, Lay, Mixed
High court	Most family cases, notably divorce & postdivorce Debt collection Torts Consumer complaints Commercial disputes Bankruptcy	Public	Professional
Administrative tribunals	Citizen complaints against local & central govt.	Public	Professional
Labor Bureau	Certain dismissal grievances	Public (admin.)	Professional
Rent Commission	Rent level, rent increase	Public (admin.)	Professional
Housing Bureau	Maintenance of rented housing (control)	Public (admin.)	Professional

SOURCE: Verwoerd and Blankenburg (1985a, 1985b).

5. NORTHRHINE-WESTPHALIA (FRG)

Type of Court, Tribunal Commission, Etc.	Subject Matter Competence	Public, Private, Semipublic	Professional, Lay, Mixed
County court	Debt collection up to ??? Torts up to ??? Some family cases until 1977 Consumer complaints up to ??? Orders to pay Bankruptcy Administrative acts (land register, trade register, etc.)	Public	Professional
Family court (since 1977)	All family cases	Public	Professional
High court	Family cases until 1977 Family cases on appeal since 1977 Debt collection Torts Consumer complaints	Public	Professional
Labor court	Labor grievances (incl. dismissal)	Public	Mixed
Social law court	Social security & medical benefit claims	Public	Mixed
Tax court	Claims concerning tax matters	Public (admin.)	Mixed
Administrative court	Citizen complaints against govt. agencies		

SOURCES: Verwoerd and Blankenburg (1985a, 1985b); Plett (private communication, 1987).