

PART II
PUSHING TRIAL COURT DOCKET DATA TO
THE LIMITS—AND BEYOND

INTRODUCTION

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Docket data have provided an important long-term perspective on change—change in the activity of courts, and change as well in the relationship between legal institutions and society. Docket researchers are often well aware of the problems of inferring the effects of social change on courts from litigation documents alone. The three research articles in this section reflect that awareness while presenting striking evidence of the general relationship between change and litigation patterns.

The strength of all three of these examples of docket research is the long perspective they provide on change—over one hundred years in Van Loon and Langerwerf's and Daniels's research and a staggering four hundred years in the series assembled by Wollschläger. The length of each series makes it easier to see the impact on litigation of both the changing role of the state and the effects of shifts in the scale or organization of economic and social activities in society. These perspectives are valuable notwithstanding the fact that no explanation of the relationship between litigation and social change can be precise in the absence of more fine-grained data about courts and litigants, or potential litigants, and their relationships to one another.

The articles illustrate contrasting approaches to the problems of inferring relationships between social and economic change and the activity of courts. Wollschläger interprets the fluctuations in his immense time series for Breman cautiously since the nature of social life in Breman has changed dramatically since the sixteenth century. Nevertheless, he argues convincingly that shifts in litigation have generally corresponded to changes in society. At the same time Wollschläger carefully qualifies his general conclusions by raising questions about court process and about the precise nature of the changes in Breman's economy and social structure that should lead to a clearer conceptualization of the relationship between litigation and change.

Van Loon and Langerwerf present a classic correlational analysis of litigation in Belgium from 1830 to 1980, which strengthens

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their critique of functional explanations of litigation. The requirements of this method of analysis in terms of theory and data are severe (Cooter and Rubinfeld, 1990), yet Van Loon and Langerwerf accomplish their main purpose—to reject an oversimplified explanation of change.

Daniels provides a model for careful docket data analysis. Exploiting his multijurisdiction, multilevel data on litigation, he limits his analysis to controlled contrasts between particular courts. His design thus allows him to draw conclusions about the different, and distinguishable, effects of court environment and court organization.

In a methodological sense these articles lie at the frontier of docket data analysis. Further analysis will be needed to meet serious challenges. Three such challenges, described by investigators who have studied trial courts, are reflected in the comments of Lempert, Engel, and Reiss. Lempert argues that use of docket data involves a substantial risk of false causal inference unless supplemented by other kinds of “local knowledge.” Engel vividly illustrates how a researcher who relies on docket data can misconceptualize the meaning of both “case” and “the court” in the society at large. Reiss comments on the lack of a systematic approach to model building and measurement.

In an important sense these articles lie not just at the frontier of existing research techniques but also at a second frontier—a frontier of ideas and theory. The authors’ interpretations of long-term trends in litigation in these articles lead directly to important questions. For example, Wollschläger, Van Loon and Langerwerf, and Daniels all note the particular importance of discontinuities or breaks in their time series; wars, civil disorder, and severe depressions. While they often imply that these moments of disorder lead to breakdown of the civil litigation system, alternative explanations of the importance of such moments in the behavior of legal institutions open other avenues of research. At the time of such discontinuities the state itself is often being reorganized, altering the power and political alignment of conflicting groups and changing the basis upon which major social conflicts might arise and be resolved. Similarly, all three authors note the attenuation of the link between economic trends and litigation trends in the “modern” economy. Here both Van Loon and Langerwerf and Wollschläger suggest that the legal profession may have played a part in this change, a hypothesis that suggests important issues for further research.

As the foregoing examples indicate, to push the study of litigation, courts, and social change beyond surface impressions, future research must focus in greater detail on the connections between litigation and changes in power, interests, and meanings of people and organizations that create conflict and influence its manifestations and outcomes, and between litigation and changes in such

state organizations as courts and legislatures. Pursuit of these connections will generate challenging theoretical and methodological issues in the study of social change. Issues that docket studies suggest for future research about trial courts and social change and ways to meet the challenges of theory and method described by their critics are the central concern of the remaining parts of this special issue.