

PART IV
COMPARATIVE RESEARCH: PROGRESS AND PROBLEMS

INTRODUCTION

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Longitudinal research on courts has its roots in comparative research. Researchers initially presumed that docket data would provide a relatively standardized measure of the dispute resolution activity of courts, and that they thus could be used to compare the activities of different courts in response to change in different communities and even in different societies. The weaknesses of the assumption of comparability of litigation data across courts is most apparent in international comparisons, as the two essays in this section demonstrate. Not only are great differences in court systems apparent (affecting the official meanings of “court” and “case”), but there are also significant cultural differences that would seem to pose nearly insurmountable barriers to comparisons between courts in different countries. Of course, these barriers affect not only the validity of cross-national comparison but also the validity of comparisons between courts in neighboring North American states or counties (compare Daniels, 1990) and even the comparison of a single court or court system at one point in time with the same court at another point in time (compare Engel, 1989).

Clark's essay, drawing on data from the Studies in Law and Development (SLADE) comparative litigation project, develops a creative alternative to direct comparison of litigation in different countries. Clark instead compares differences between litigation in developed and undeveloped, outlying and capital city regions within one country to the differences between such regions in other countries, specifically in six Mediterranean and Latin American countries, in the hope of finding cross-national parallels in the differences in litigation patterns between regions of each country. This approach may provide a model for comparative litigation research that avoids some of the most serious weaknesses of cross-national comparison.

Ietswaart describes the work of another major comparative litigation research project, conducted by the Western European Working Group. In her description, she uses the work of the

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group as an example of the difficulties of valid cross-national comparison. She describes difficulties arising out of the differences in European court structures and the way these difficulties are compounded by the manner in which official statistics are kept. She also describes the effects of differences in legal culture and in social organization that prevent valid comparison even where court systems and statistical reports appear to be similar. Her conclusion, much like Clark's, is that one should attempt to understand litigation thoroughly in its own social setting before comparing it to litigation in another social setting.

Clark's conclusions about the design of comparative research and Ietswaart's conclusion that valid comparison requires a detailed knowledge of the social context of litigation have far-reaching implications for comparative research in and across all units of analysis. Valid comparative research, they suggest, compares the similar or related sociological processes that occur in each country, and does not rely on direct comparisons of litigation rates.