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'TO HAVE AND HAVE NOT': ARE RICH LITIGIOUS PLAINTIFFS FAVORED IN COURT?

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Working Paper 20945
http://www.nber.org/papers/w20945

NATIONAL BUREAU OF ECONOMIC RESEARCH
1050 Massachusetts Avenue
Cambridge, MA 02138
February 2015

I received valuable comments from Stanley Engerman, Catherine Fisk, William Gallagher, Henry Gemery, Naomi Lamoreaux, Craig McEwen, Alan S. Taylor, Christopher Tomlins, and participants in seminars at Bowdoin College, the National Bureau of Economic Research, American Society for Legal History, and the Economic History Association. Employees at the Maine Archives were very helpful. I am grateful to Bowdoin College for offering research support for the project, and to Ginny Hopcroft, Carr Ross and Guy Saldanha for their assistance. Liability for errors is limited to the author. The views expressed herein are those of the author and do not necessarily reflect the views of the National Bureau of Economic Research.

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NBER Working Paper No. 20945
February 2015
JEL No. K10,K41,N11,O43

ABSTRACT

A long-standing debate centers on the role of the “Haves” and the “Have Nots” in litigation. It is often suggested that wealthier plaintiffs are more likely to be repeat players, who tend to prevail in disputes before the courts. Do wealthy repeat players indeed capture courts and succeed in shaping legal rules regardless of the intent of policy makers? This paper employs a unique historical data set that allows a direct test of these hypotheses, including information on the wealth of participants in civil district courts, their occupations, and the total number of lawsuits filed by each litigant over a long period. The results show that repeat players indeed tended to be wealthier, in occupations that likely benefited from creating a reputation for uncooperative litigation strategies. However, outcomes in court were independent of wealth, and related more to the type of case. Far from being under the sway of the “Haves,” early courts functioned as an effective enforcement mechanism for extensive markets in debt, that likely promoted economic growth during this period.

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I. INTRODUCTION

> "Do not rich men oppress you, and draw you before the judgment seats?"
> -- *Epistle of St. James, 2:6*

Legal institutions are a primary source of socioeconomic capital, and have the potential to enable market interactions and economic growth if they are objective, predictable and unbiased. At the most general level, this project responds to Douglass C. North's call for more research on the economics of institutions comprising "the rules of the game of a society or, more formally, the humanly-devised constraints that structure human interaction."[1] Similarly, Stanley Engerman and Kenneth Sokoloff point out that, although it is widely acknowledged that institutions are a key factor in explaining divergent economic growth paths, there is less understanding about the way in which institutions are formed, how they evolve, and why some persist despite their inefficiency.[2]

Our understanding of the evolution of institutions has been enriched by a large stock of historical-legal research on courts and cases. Law and society scholars have been somewhat divided, however, on the relationship between courts, markets and society. Some have proposed that a "moral economy" existed at least until the end of the eighteenth century, and that courts were based on community norms which were hostile to rational economic transactions; whereas others point to a pervasive commercial market orientation that existed from the earliest years of settlement, and to court dockets that primarily functioned as an enforcement mechanism for deep and extensive debt markets that spanned many states.[3] Another way in which legal institutions can depart from their

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[1] Douglass C. North, p. 3, Institutions, institutional change and economic performance. Cambridge: Cambridge Univ. Press.

[2] Stanley Engerman and Kenneth Sokoloff, "Institutional and Non-Institutional Explanations of Economic Differences," NBER WP 9989, 2003; "Colonialism, Inequality and Long-Run Paths of Development," WP 11057, 2005; and "Factor Endowments, Inequality, and Paths of Development among New World Economies," Economia, vol. 3 (1) 2002.

[3] See, among others, Bruce H. Mann, Neighbors and Strangers: Law and Community in Early Connecticut (Chapel Hill, NC, 1987), 9-10. David Thomas Konig, Law and Society in Puritan Massachusetts: Essex County, 1629-1692 (Chapel Hill, North Carolina, 1979); William E. Nelson, Disputes and Conflict Resolution in Plymouth County, Massachusetts,

role as the facilitator of market enterprise is through corruption or biases in favour of special interests. Recent research highlights the strong negative impact of "the grabbing hand" for economic progress, whereby talented individuals funnel resources and abilities to wealth-redistribution, rather than wealth-creation, a problem that is especially prevalent in developing countries where ancillary institutions are less able to substitute for captured legal processes.[4]

Marc Galanter, in what has been called "the most visible, widely cited, and influential article ever published in the law and society field," promoted the thesis that the "Haves" tend to prevail in litigation.[5] The Haves comprise repeat players in court who acquire both economic and political advantages that allow them to defeat their opponents ("the Have Nots") and to attain their private long-run objectives, potentially at the cost of social welfare. Such repeat players have access to extensive specialized resources, accumulate knowledge about what works best, and are able to benefit from economies of scale and low start up costs. They can also count on privileges beyond the legal system that enhance their standing in court, such as long-term relationships and influential social networks. The judiciary itself might be captured and act to further the interests of the Haves, despite countervailing pressure from those who represent the relatively disadvantaged petitioners. More generally, the Haves can influence the rules of the game or the path of institutional change, regardless of the initial intent of policymakers. A corollary of this perspective is that the focus of

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1725-1825 (Chapel Hill, North Carolina, 1981). Bruce Mann's study of early Connecticut, pointed to a professionalization of the legal system that framed conflicts in a more predictable and uniform fashion than prior resolutions based on community norms. Mann also found that courts soon became the fora for settling commercial disputes rather than personal grievances, and argued that more impersonal capital markets had developed in rural Connecticut by the 1750s. However, in Republic of Debtors: Bankruptcy in the Age of American Independence, (Harvard University Press, 2002, pp. 2-3) he claimed the existence of a "moral economy of debt" that waned over the course of the 18th century but still "established the idea against which debtors and creditors measured themselves and each other and to which they gave legal expression…. Within that framework inability to pay was a moral failure, not a business risk."

[4] A. Shleifer, R. Vishny, and K. Murphy, "Why is rent-seeking so costly to growth?" American Economic Review 83.2:409-414 (1993).

[5] Grossman, Kritzer and Macaulay (p. 803), referring to Galanter, Marc (1974) "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 Law and Society Rev. 95-160 .

institutional economists on the rules of the game is misplaced, since the characteristics of the litigants are more significant.

Galanter further made specific claims about the patterns of litigation. He contended that the "great bulk of litigation" comprises plaintiffs who are repeat players bringing cases against one-shot defendants.[6] The Haves are more likely to be repeat players in litigious strategies because of asymmetries in the distribution of the net expected benefits by income status.[7] Repeat players may "play for precedent" by choosing to take to trial cases in which they can obtain a favourable decision rule that will have implications for future disputes. Accordingly, this model generates testable predictions that wealthy individuals will be disproportionately represented among plaintiffs, and that the Haves will tend to prevail against their opponents.[8] Galanter did not consider the possibility that disproportionate representation might also occur if the wealthy tended to engage in larger numbers of risk-taking transactions that raised the possibility of legal conflicts. If this were true, we would expect that repeat plaintiffs would tend to be successful merchants or others whose occupation indicated that they were involved in multiple transactions to a greater extent than other litigants. Another alternative is that, in a rent-seeking society, legal disputes might reduce social welfare by creating incentives for transfers from productive to unproductive activities. If so, the wealthy would face a higher probability of being sued, leading to their being disproportionately represented among defendants.

Economists interpret the legal system in markedly different ways from other social scientists, and emphasize the rules of the game rather than the characteristics of the players; indeed, market

[6] Galanter (1974), p. 108.
[7] For repeat players, whether as plaintiffs or defendants, "the stakes will almost surely differ between the parties, because the alternative costs of their future activities are unlikely to be equal" (Priest and Klein, 1984, p. 28). The Haves are more likely to have higher present discounted values at stake than one-shot defendants, and thus can rationally spend more on any one case.
[8] See also Bruce Kobayashi, "Case Selection, External Effects, and the Trial/Settlement Decision," in Dispute Resolution: Bridging the Settlement Gap, David A. Anderson, ed., 1996.

efficiency implies that trades are atomistic and independent of the identities of the traders. Dispute resolution is further characterized as a process of rational deliberations regarding expected benefits and costs, where the optimal (cost-minimizing) outcome is a settlement where risks are allocated to the party who can bear it at least cost. Economic models, such as the Priest and Klein analysis of the selection of disputes for trial (discussed later), imply that observed court cases should be related to unsystematic and unpredictable factors.[9] Economic theorists also differ somewhat in their interpretation of the frequency of cases per person ("repeat play"). In game theory, the Folk Theorem explains how repeat play can facilitate cooperation, independently of social hierarchies. Fudenberg and Levine (1992) analyzed the class of all repeated games that involved a long-run player and a one-shot opponent and showed how the repeat player, if sufficiently patient, can obtain a superior payoff in any Nash equilibrium. In scenarios with imperfect information, a player who obtains a reputation for tough bargains can deter potential adversaries from engaging in future conflict and facilitate socially optimal settlements.

Is the American legal system inherently biased in favour of, and shaped by, the strategic manoeuvres of wealthy litigious plaintiffs? Despite more than twenty five years of research that have produced "a varied and abundant progeny," we only have mixed insight into the relationship between the socio-economic standing of litigants and outcomes in legal institutions.[10] Part of the reason for these shortcomings lies in the difficulty in gauging the resources of litigants. Thus, researchers in this area simply assume that certain categories of litigants have more assets, so the "Haves" and "repeat players" are usually proxied by governments and organizations -- firms,

[9] Priest, George and B Klein, "The Selection of Disputes for Litigation," JLS, vol 13, 1984:1. See also George Priest,"Measuring Legal Change," Journal of Law and Economic Organization, Fall 1987, vol. 3(2):193-225.

[10] For a summary of the large body of literature on this issue, see Herbert M. Kritzer and Susan Silbey (Editors), In Litigation Do the "Haves" Still Come Out Ahead?. Stanford, CA: Stanford University Press, 2003. In particular, see Brian J. Glenn, "The Varied and Abundant Progeny," pp. 371-419.

corporations, unions, schools -- whereas individual litigants and specific types of businesses such as sole proprietorships are assumed to "have not."[11] Another difficulty lies in accumulating evidence of "repeat play" since researchers today typically do not have the full record of court trials at the level of individual litigants and here, again, speculations are made that particular types of litigants – such as insurance companies – are likely to be repeat players.[12] The conclusion from such empirical studies is that the Haves (organizations) win more in court, but clearly these findings are limited by the questions that are raised by the proxies used to measure access to resources and repeat play, and by the biases of the reported lawsuits and administrative records used. Based on the state of knowledge so far, it is still unclear even whether repeat play matters in litigation; and it is impossible to say if or why the "Haves" do better than the "Have Nots."

This paper directly examines two key factors that research on the Haves vs. Have Nots so far has tended to imperfectly measure: a complete assessment of the frequency of litigation per person; and estimates of the wealth of both parties to the conflict. Information on repeat litigation and on the wealth of participants in civil district courts is used to test whether the "Haves" tend to prevail over the "Have Nots" in the legal system. The empirical analysis employs a panel data set of civil litigation in Maine over the course of market expansion from the Colonial period through to the Civil War.[13] The data set includes some 30,000 lawsuits filed in the counties of Washington, York,

[11] For instance, Ringquist and Emmert (1999) categorized litigants as Haves or Have Nots depending on whether or not they were Fortune 500 companies; whereas Meeker (1984) modeled the state as a repeat player, and the criminal defendant as a one-shot player. Tauber (1998) uses the NAACP as his proxy for a repeat player; Levine and Mellema (2001) study drug dealers and prostitutes.

[12] Appellate cases, which some have used to measure repeat play, are an imperfect proxy because they clearly relate to quite different issues from multiple litigation. Some researchers have used records from noncourt prosecutions such as IRS audits.

[13] Maine functioned as an early frontier for the residents of the Northeast and, in keeping with other frontiers, outcomes exhibited greater variance and risk than in more developed areas. In 1820, 82 percent of the labour force was in agriculture and 11 percent in manufactures; but by 1860 the agricultural sector accounted for only 40 percent of employment. Maine's comparative advantage remained in resource extraction, such as timber and fishing, and in 1860 its fishing industry was the most important in the country after Massachusetts. Natural resources also served as a basis

Cumberland and Kennebec between 1700 and 1860. The lawsuits are categorized by type of case (property, contract, debt, personal) and type of litigant. These cases also include detailed estimates of the amount of money at issue, the amount awarded, the costs of the case, and the outcomes. The primary results in this paper are based on a sub-sample in which the unit of observation is the individual plaintiff and defendant, identified by place of residence, age, gender and the total number of lawsuits per person. The sample of litigants were linked to manuscript population censuses to obtain individual-level information on their occupation, wealth, and household size. The residence of the plaintiffs and defendants were categorized in terms of town and county-level data on population, industries, valuation of estates, and urbanization.

The first section of the paper describes the development of antebellum Maine courts and general patterns in litigation over time. The second section addresses the characteristics of the sample from Washington county, and determines the identity of repeat players relative to one-shot players. These data allow us to better assess claims that repeat players for the most part prevail against one-shot defendants and that they rarely engage in litigation against each other. The third section estimates the determinants of legal outcomes and the influence of wealth and other

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for a growing secondary sector: the Maine economy rapidly became more diversified as it expanded from the traditional pursuits of farming, shipbuilding, fishing and lumber to include manufacturing employment. By 1850, Maine rivaled its New England neighbours, including Massachusetts, in an impressive number of industries. The lumber trade peaked in 1840, when Maine provided almost 15 percent of total timber output in the United States, second only to New York. Maine was able to exploit its large timber endowments and fishing heritage to create the most successful shipbuilding industry in the United States; indeed, by 1840 it accounted for over a quarter of the national output of shipping tonnage. The state possessed many of the endowments that potentially contributed to manufacturing productivity, including inland sources of water for power and transportation, sea ports, and proximity to markets. As early as 1807, the Maine Cotton and Woolen Manufacturing Company was incorporated in Brunswick, and Boston capitalists funded other mills including the largest factory in the United States at that time, an enterprise in Saco that was capitalized at one million dollars. In 1860, Maine cotton manufactures ranked fifth in the United States in terms of output, and employed some 6,700 workers. Other sources of manufacturing revenues included wool textiles, boots and shoes, and tanning of leather. Foreign trade expanded when the products of the state's sawmills were exported to the Caribbean and other overseas markets, and imports such as raw sugar were processed in Cumberland county seaport towns. Maine's counties were incorporated in the following years: Androscoggin (1854); Aroostook (1839); Cumberland (1760); Franklin (1838); Hancock (1790); Kennebec (1799); Knox (1860); Lincoln (1760); Oxford (1805); Penobscot (1816); Piscataquis (1838); Sagadahoc (1854); Somerset (1809); Waldo (1827); Washington (1790); York (1652).

characteristics on the disposition of cases in York, Cumberland and Kennebec counties. The final section offers a brief conclusion.

II. ANTEBELLUM MAINE COURTS

"An age so prone to litigation"
--*Province and Court Records of Maine (1692-1711)*

Maine separated from Massachusetts to become the twenty-third state of the Union in 1820, and the size and complexity of its economy increased markedly thereafter until the Civil War. Maine courts were established from the time of early settlement, and incorporated Massachusetts rules and legislation.[14] Decisions were quite expeditious and summary, with rare instances of appeal to the inferior county court of common pleas.[15] In 1700, actions that involved sums above 40 shillings could be brought before the Court of Common Pleas.[16] After 1820, Justices of the Peace were appointed with jurisdiction in minor civil matters not exceeding $20, and criminal causes involving

[14] This account follows William Willis, A History of the Law, the Courts, and the Lawyers of Maine (Portland, Maine, 1863). In 1640 the first session of the court in June heard 18 civil cases and nine complaints; in the September session there were 28 civil actions (nine jury trials), and 13 indictments .The first lawyer, Thomas Gorges, arrived in 1640 and was joined by Thomas Morton of Mass. shortly thereafter; however, no others came for another century. "In cases of great importance, as well as on ordinary occasions, regularly educated lawyers from New Hampshire and Massachusetts attended the courts in Maine" (p. 87, Willis). United States President John Adams was one of those who travelled the Maine circuit, which he did for twelve years before the Revolution (p. 88).

[15] According to Willis (p. 13), legal questions were dealt with in a summary fashion: "The forms of proceeding were of the simplest character, and the absence of lawyers is found in the entire freedom from all technicalities in the pleadings and verdicts." This pattern persisted even in the nineteenth century. Some judges, such as Chief Justice Parsons disapproved of "discursive displays of rhetoric." (Parsons tended to write up his decision before listening to the attorneys) Willis, p. 126. The structure of payments in the legal system created incentives for cases to be treated with despatch. A 1701 statute fixed the fees that attorneys could charge, so they had an incentive to encourage a greater number of filings in order to increase their income. Until the separation from Massachusetts, court officers also received emoluments from fees that litigants paid. The fees that the Cumberland CCP received totalled $15 in 1776 and remained about $123 per year for the next 20 years. However, they averaged $1975 in the decade before the Civil War, and in 1808, "a year of extraordinary business," amounted to $4080.

[16] "This doubtless discouraged the bringing of many small and trifling causes into a county court the jurisdiction of which was sufficiently wide in any event to insure steady business in an age so prone to litigation," Neal W. Allen Jr. (ed.) Province and Court Records of Maine, IV (Portland, Maine, 1958), xxii. Two terms a year were held in York and Wells, and after 1736 a June term was added for Falmouth or Portland. In 1760 two terms were also held at the courts for the newly established Cumberland and Lincoln counties. The judges and court clerks were initially compensated with the court fees, but when Maine became a separate state, the county court system was changed so that the chief justice and two associates were all salaried.

fines of $5 or less.[17] In 1839, the Courts of Common Pleas were renamed District Courts, but they retained the same jurisdiction and terms and no major changes occurred thereafter until 1852.

The supply of legal resources in the region kept pace with demand. The number of courts expanded whenever new counties were formed. Initially, a shortage of qualified lawyers implied that a majority of the members of the courts were simply prominent men of the region who were formally untrained in the law. Economic prospects were much improved in and after the second half of the eighteenth century, and lawyers were quick to take advantage of these opportunities. The stock of legal personnel was responsive to growing demand and the potential for above-average returns, and lawyers migrated to expanding towns, including a significant influx from Boston and other parts of New England. Between 1790 and 1860, their numbers grew from only 16 to 529, compared to a sixfold increase in the general population. In 1840 the town of Bangor had a population of only 8634, but 48 of these were lawyers, and even outlying Aroostook and Oxford counties were well served with four and 26 respectively. In 1850 Cumberland, Kennebec, Washington and York counties each had approximately one attorney at law practising for every thousand residents.[18]

The function of courts changed rapidly in ways that seem consistent with the notion that institutional specialization and division of labour were related to the market. In the years between 1700 and 1709, courts predominantly enforced social rules about sexual behaviour, religion, drinking practices, and swearing.[19] During the next few decades a marked change occurred in the caseload of the lower courts. In the 1720s more than half of all cases related to economic issues

[17] Maine Laws, p. 352, Ch. LXXVI (1821). The Superior Court consisted of a chief justice and two associates until 1847, when a third associate justice was added In 1852 the inferior courts of common pleas were abolished, and their jurisdiction was absorbed by the Supreme Court, presided over by seven judges.
[18] Cumberland had 87 practising lawyers, Kennebec 64, Washington 32, and York 46 (Maine Register, 1852).
[19] See Khan, "Justice of the Marketplace."

such as contract, debts, and ejectments from land. By 1730, a decisive shift in orientation had occurred, and thereafter the overwhelming majority of cases involved economic market transactions. The total number of lawsuits relating to noneconomic matters (religion, crimes, county administration, and regulation of behaviour) was relatively constant, but such issues fell as a proportion of total cases outstanding as well as in per capita terms. Henceforth courts would forego their role in regulating private behaviour and would instead function as the locus of enforcement for commercial bargains. This pattern should not be surprising, since it accords well with the notion that market expansion is accompanied by a rationalization of social and economic rules and practices.

Alan Taylor documented the sometimes violent struggles between squatters ("Liberty Men") and large scale landowners ("Great Proprietors") that occurred in Maine shortly after the Revolution.[20] However, such conflicts appear to have been rather uncharacteristic of the general relationships between entrepreneurs and settlers in both temporal and geographical terms. Resistance among a few "liberty men" may have been genuinely bitter, but in general these were quite unrepresentative and overall resistance to proprietors was not profound; indeed, any violence was confined to a relatively small inland area for a brief period of time, around the turn of the century. Plaintiffs in remote Washington county (on the northern frontier adjacent to Canada) recorded no more than 10 property disputes out of a sample of 500 cases in the first decade of the nineteenth century. The more developed regions of York and Cumberland counties also experienced few lawsuits about property. In York and Cumberland in 1800 only 5.6 percent of 835 cases dealt with property, and almost the same (5.7 percent) was true of 1850. Many of these did not

[20] Alan Taylor, Liberty Men and Great Proprietors, The Revolutionary Settlement on the Maine Frontier, 1760-1820 (Chapel Hill, North Carolina,1990).

involve true conflicts, and simply dealt with standard procedural issues such as a petition to partition a plot of land.[21]

The overall patterns for Maine suggest that the importance of property cases fell relative to all other types of cases in the 1820s, and debt issues increased dramatically during the industrial expansion of the next three decades. As was true of many other colonies in early New England, cash was in short supply among Maine residents and the majority of transactions were in the form of book credit or agreements that debtors ultimately settled with "sundries" or goods in kind.[22] Notes promising repayment of debts on short and long term circulated as negotiable instruments, endorsed by third parties, and at times involving an extensive chain of residents in different states. For instance, in 1837 Benjamin F. Waite, a resident of Calais, in Washington County, who specialized in endorsing financial transactions, drew on a $900 draft that was payable to Zimri B. Heywood of Kennebec County at the Suffolk Bank in Boston. Heywood had delivered the draft to Heman Norton who transferred it to Nathaniel Norton (both of New York) to repay a loan that the latter had made him several years before to help support his family through hard times.[23]

The frequency of such interactions and the relatively small size of the average claim created an incentive for large-scale collection through the courts to economize on transactions costs. Daniel

[21] Taylor highlights the experience of Kennebec county, and notes that resistance occurred at the turn of the nineteenth century because Kennebec settlers felt that "proprietors threatened the foundation of liberty in an egalitarian distribution of property."

[22] For instance in 42 Me. 229 (1856) Anna Heywood required as rent "ten bushels of corn at 75 cents per bushel, eight bushels of wheat at $ 1 per bushel, twenty-five bushels of potatoes at 1 shilling per bushel, and two tons of hay at $ 5 per ton; the balance in cash, or country produce at cash price." However, prices altered during the course of the contract, so she "insists that she is entitled to the amount of the actual market value at that time, of ten bushels of corn, eight bushels of wheat, twenty-five bushels of potatoes and two tons of hay, in addition to the ten dollars to be paid in cash, or in country produce at cash price, when these articles are shown to have had a value greater than that stated in the lease. On the other hand, the defendant resists this construction of the contract, and contends that, failing to deliver the specific articles, he is bound to account only for the rent at its agreed value in cash." The majority decided in favour of the defendant, but Judge Rice chivalrously dissented because "to permit the defendant, under such circumstances, to be a gainer by a voluntary violation of his agreement, especially when that agreement was made with a woman, would not, in my opinion, be …conducive to good morals."

[23] Nathaniel Norton v. Benjamin F. Waite, Sup. Judicial Court of Maine for Aroostook and Washington Counties, 20 Me. 175 (1841); judgment for the plaintiff.

Vickers claims that debt was also "an instrument of social power and, as such, often became the focus of deep social tension," and that such social tensions were manifested through litigation.[24] An assessment of thousands of legal filings does not support this notion. Instead, from the earliest period the records point to a systematic, routinized proceeding to which plaintiffs and defendants all subscribed and understood. There was little dramatic flourish in the January 1713 session of the York Court of Common Pleas when Elizabeth Alcock and Elizabeth Parker appeared as plaintiffs claiming that Nathaniel Perkins owed them approximately £10. Perkins failed to appear to contest the charge, and the courts granted the women recovery of the debt as well as £1 18s 3d in court costs.[16]

Debt collection was quite straightforward, and the certainty of procedures may be inferred from the substantial amount of secondary or tertiary trades in promissory notes. Other things being equal, a defendant who is motivated by strong opposition to his creditor's claims in more likely to turn up to contest the claim especially since, in his absence, the court will award costs to the plaintiff. However, the vast majority of debt cases were never opposed by defendants, and the high fraction of defaults by defendants in 1800 (90.2 percent) had changed little in 1850 (92.4 percent). The evidence suggests that courts were primarily being used as a third-party enforcement mechanism for well-developed financial markets rather than as a forum for genuine conflict. This was not as true of property cases, where about two thirds of the legal claims were contested by defendants. If social norms were effective, it might be expected that relatively straightforward disputes would never tend to reach the courts because they could be settled at lower cost out of court. It is significant that the percent of cases in which both parties did not appear increased from eight percent in 1800 to 27.1 percent in 1850. Thus, the tendency to reach out of court settlements

[24] Vickers, Daniel, *Farmers & Fishermen: Two Centuries of Work in Essex County, Massachusetts, 1630-1850*, Chapel Hill: The University of North Carolina Press, 1994.

was rising over the period of market expansion, implying a growing tendency toward cooperative solutions.[25]

III. ONE-SHOT PLAYERS AND REPEAT PLAINTIFFS

> "Because I have learned from a Merchant, said the Judge, that you are a perfidious wretch, whom justice will punish as you deserve if a second complaint of the same nature is brought against you…"
>
> --"The Prudent Judge," in *American Moral & Sentimental Magazine* (1797)

According to the Galanter school, the repeat player "Haves" tend to bring charges against "one-shot" "Have not" defendants who are inexperienced in litigation. The former comprise litigious plaintiffs with greater access to resources, who win disproportionately and are able to "play for rules." The issue is worth exploring further for such claims suggest that institutional change in both developed and developing countries is likely to be stifled by hierarchical social structures. The historical experience of New England promises to shed more light on this debate because the opportunity to gain access to unique data.

A key aspect of these data is insight into the nature of repeat litigation. During the first half of the eighteenth century repeat litigation was consistently higher in the area of property disputes than for any other category. Extraordinarily litigious plaintiffs included prominent Maine citizens such as William Pepperell, the foremost Kittery merchant of his day, who amassed wealth in a diverse array of industries including lumber, shipping and real estate. Other plaintiffs were employed as agents of landed proprietors like Pepperell. They brought suits of trespass and ejectment against squatters and tenants that were decided by justices who themselves tended to be business associates or relatives. Such descriptive examples might seem to support the notion of rich

[25] Similar patterns have been documented over time in other frontier regions. See B. Zorina Khan, "Commerce and Cooperation: Litigation and Settlement of Civil Disputes on the Australian Frontier," *Journal of Economic History*, vol. 60 (4) 2000:1088-1119.

litigious plaintiffs benefiting from social networks to exploit the ordinary tenantry. However, their interlocking interests were not entirely harmonious, as witnessed by the significant number of court cases that involved these same individuals as defendants in disputes brought by other multiple plaintiffs. For instance, several of Nathaniel Donnell's 44 lawsuits were filed against Malachi Edwards (a Wells selectman who was plaintiff in 79 cases) whom he accused of trespass, and against Humphrey Scammon (a wealthy mill-owner and lumberman) who was himself involved in 42 cases as plaintiff.[15]

The data for this section are drawn from the court records of Washington county.[26] Table 1 shows the characteristics of the sample. Even in this remote region, approximately 18 percent of all litigants were out-of-state residents (4 percent were from Boston and a significant number from New Brunswick, Canada), and one third had been born outside of Maine. The sample consists of 981 litigants who were traced in the manuscript census for 1850. These individuals were involved in a total of 4,362 cases as either plaintiff or defendant, and each accounted for an average of 6 lawsuits (with a standard deviation of 4.5). As Galanter had claimed, several businesses such as the Calais Bank (20 cases) and the St. Croix Manufacturing Company (30) were repeat players. However, the highest numbers of cases were brought by high-transaction individuals, predominantly lawyers and traders, whose scale of activity naturally led to a higher proclivity for litigation. Many others were repeat players, but predominantly appearing as defendants rather than as plaintiffs. For example, Rendol S Whidden, a wealthy Calais lumberman who had been born in New Hampshire, was a plaintiff in only 14 of his total 60 cases. Benjamin F Waite, a rich trader who negotiated loans with

[26] Washington county is located in the northeast quadrant of Maine, and covers over 2700 square miles along the border with Canada. The population increased by 37 percent between 1840 and 1850 to 38711, and the per capita valuation of real estate in 1850 was $135 (relative to the state average of $172). This area was farmed with corn, wheat, hay, and potatoes; other activities included timber grants, ship building, fisheries, and granite mining. The main towns were Calais and Machias, and the latter was a Federal port of entry, with a permanent customs office.

New York lenders, similarly was the plaintiff in only 3 of 48 cases; whereas George M. Chase, who was one of a dozen lawyers practicing in Calais, was the claimant in 35 of his 43 lawsuits.

Table 2 replicates the headings from Galanter's typology of litigants in terms of four quadrants (plaintiff/defendant and one-shot/repeat player). The table includes information on some seven hundred litigants who appeared in the Washington county District Court, who were traced over time to gauge the total number of instances they had appeared in court over the prior ten years. The proportion of one-shot players is identical for both plaintiffs and defendants. The results in the table do not support and, indeed, refute Galanter's argument that repeat player plaintiffs tend to bring suits against one-shot defendants, and rarely litigate against other repeat players. Less than twenty percent of the individuals before the court were involved in a case where a repeat plaintiff was charging a one-shot defendant. Instead, thirty six percent of the sample comprised instances where a high-frequency (at least three) plaintiff brought a case against another high-frequency defendant.

The repeat-play hypothesis is based in part on the notion that multiple litigants take the initiative in bringing lawsuits as plaintiffs. It does not fully incorporate the possibility that many individuals appear in court as both plaintiff and defendant at different times. The regressions in Table 3 exclude one-shot litigants. The first regression explores the determinants of the propensity to be a repeat plaintiff, in terms of the percent of cases in which the litigant is a plaintiff. Wealth is significantly related to the propensity to be a plaintiff. Farmers and individuals with large households are more likely to be defendants, whereas traders and white collar litigants appear more frequently as a plaintiff. However, higher numbers of cases are not significantly related to the percent of times the person appears as a plaintiff.

The dependent variable in the second regression represents the log of the odds that a litigant had filed more than one case within the previous decade. The results here show that repeat play is negatively related to the propensity to be a plaintiff: that is, multiple lawsuits tend to involve individuals who are appearing in court predominantly as defendants. Farmers are somewhat more likely to be one-shot litigants, whereas white collar individuals (especially lawyers), merchants, manufacturers and petty traders are more likely to be repeat players. The coefficient on the log of wealth confirms that repeat litigation is positively and significantly related to wealth holding. Thus, both regressions to some extent are consistent with the hypothesis that plaintiffs and repeat players are more likely to be Haves rather than Have Nots, but the evidence also links repeat play to the scale of participation in market transactions.

IV. WEALTH AND LEGAL OUTCOMES

> "Annual income twenty pounds, annual expenditure nineteen nineteen six, result happiness. Annual income twenty pounds, annual expenditure twenty pounds ought and six, result misery."
>
> --Charles Dickens, *David Copperfield (1850)*

As Galanter had argued, repeat players tend to be the Haves, richer merchants and lawyers, but this raises the question of whether the Haves also prevail in court. Litigation is a negative-sum game because of the loss of expenses for the prosecution of each party's claims, some of which is not compensated for even if the loser is held responsible for the winner's costs. A model of rational litigants suggests that, because the costs of settling a case are lower than the costs of trial, the majority of disputes will be resolved before trial.[27] Thus, the sample of cases that appear in court is not a random sample from the underlying population of disputes, and instead will consist of issues

[27] In the event of a default judgment, the English rule held (the loser paid the costs of both parties). Costs of the plaintiff who prevailed in his claim included fees for the writ and entry into the dockets, depositions, travel of the plaintiff and witnesses, costs of the trial, and travel of the judge; whereas the defendant's costs excluded filing costs.

where there is genuine uncertainty.[28]

Assume that the stakes are identical for both plaintiff and defendant. If P_p and P_d are the plaintiff's and defendant's perceived probability of the plaintiff's winning a judgment J, and C_p and C_d are their respective costs of going to trial relative to settlement, then the plaintiff would choose a settlement S as long as

$$S >= P_p J – (1-P_p) (C_p + C_d).$$

That is, the plaintiff would tend to settle if the amount to be gained, S, exceeds the net expected benefit of trial (the expected judgment less the expected excess of trial over settlement costs). Whereas the defendant would settle if

$$S <= P_d (J + C_p + C_d),$$

implying a zone of mutually acceptable settlement can be found when

$$(P_p - P_d) (J + C_p + C_d) <= (C_p + C_d).$$

If both parties have identical expectations regarding the strength of the plaintiff's case then there will always exist a range of settlement. But the greater the difference in expectations ($P_p - P_d$), the higher the judgment or amount at issue (J), and the lower the excess costs of litigation over settlement costs ($C_p + C_d$), the lower the likelihood of settlement and the greater the probability of trial. The implication is that, in a legal system that is predictable, cases would tend to be resolved before trial; thus, the cases that are not settled are likely to be genuinely uncertain either because of systemic factors or factors that are specific to the litigants. Under these circumstances, holding other things constant, we might expect that wealth or other observable characteristics of litigants would have little or no predictive power in explaining outcomes in trials. By contrast, Galanter contended that wealthy plaintiffs win or appeal more often because they are able to invest more in each lawsuit.

[28] See George Priest and Benjamin Klein, "Selection," for the classic model that analyzes the selection of disputes.

Direct tests of such propositions have to this point been impossible, because of the lack of information on the wealth of plaintiffs and defendants before the courts. The empirical tests here will address the hypothesis using records on individual wealth-holding. The data on the disposition of cases comprise a random sample from each of the three legal districts in Maine: the District Courts of Cumberland, York and Kennebec. These counties included major towns such as Portland and Augusta, and experienced a rapid expansion in the level and diversity of economic activities between 1820 and 1860. The court records included the names of litigants, their occupations and addresses, the type of case, the amount claimed and the amount awarded, costs incurred, the outcomes and whether the case was appealed. These records were linked to the manuscript population census of 1850 which provided further information on the litigants including their age, occupation, family size, and real estate wealth.

The argument that the Haves were linked by strong personal connections is not strongly supported by the evidence regarding occupational and geographic proximity. Merchants, dealers and traders of all levels accounted for a disproportionate share of plaintiffs relative to their share in the population, but even when professionals such as doctors, lawyers and "gentlemen" are taken into consideration, the majority of plaintiffs were from less elite occupations. A minimal and unchanging six percent of plaintiffs and defendants were in a position that might suggest close ties; that is, in the same job and location. Instead, more than half were from different jobs *and* lived in different towns and this did not change during the period under review. Many of the cases were brought by several plaintiffs from different backgrounds and towns filing as party to one suit. For instance, in 1849 Frederick Sweetser, a young Boston merchant, joined together with Samuel Gookin, a 59 year old tailor from New Hampshire, to bring a claim for unpaid debts against Stephen True of North Yarmouth. Similarly, the records reveal individual lawsuits brought against multiple defendants

who were from very different backgrounds and economic circumstances. The lack of class-identification is unsurprising in a context where one frequently observes the same person following several different pursuits simultaneously, or describing himself as a fisherman in one year and a "gentleman" in another. Moreover, it might be expected that economic growth would create incentives for risk-sharing among individuals who belonged to different occupational classes.

Other things being equal, a defendant who is motivated by strong opposition to his creditor's claims in more likely to turn up to contest the claim especially since, in his absence, the court will award costs to the plaintiff. However, the vast majority of cases were never opposed by defendants, and this was especially true for debt litigation. The high fraction of defaults by defendants in debt cases in 1800 (90.2 percent) had changed little in 1850 (92.4 percent). The evidence suggests that courts were primarily being used as a third-party enforcement mechanism for financial markets rather than as a forum for genuine conflict. This was not as true of property cases, where about two thirds of the legal claims were contested by defendants. If social norms were effective, it might be expected that relatively straightforward disputes would never tend to reach the courts because they could be settled at lower cost out of court. It is significant that the percent of cases in which both parties did not appear increased from eight percent in 1800 to 27.1 percent in 1850. This finding indicates that the tendency to reach out of court settlements was rising over the period of market expansion. Rather than creating more conflicts, the expansion of commerce and economic growth was enhancing the tendency to cooperative solutions. The results are consistent with the evolution of dispute resolution in other frontier areas.[17]

Those who subscribe to the notion that richer plaintiffs tend to prevail argue that wealthy claimants are able to afford higher expenditures on their lawsuits. Table 6 examines the determinants of legal expenditures for each case. The costs of litigation in district courts throughout the nation were

quite modest by design, and the average lawsuit in Maine cost no more than $12 overall, compared to the average claim of $273 and awards of $127. There is little systematic relationship between legal costs and the wealth of litigants or the occupations of most plaintiffs. Plaintiffs who were farmers, not rich merchants, spent the most on cases, but even then the magnitudes are not significantly greater for any social class. Instead, defendants were more likely to incur higher costs, as did residents in small rural areas (relative to those from towns with more than 10,000 residents). Debt cases were cheaper than other types of disputes, in keeping with the lower amounts at issue, and the high default rate also substantially lowered costs for both parties to the lawsuit.

Table 7 shows the relationship between characteristics of plaintiffs, defendants, and the likelihood of a decision in favour of the plaintiff.[29] If the Galanter thesis were correct, it would be expected that wealthier plaintiffs would be more likely to receive a positive ruling in court. The regressions here indicate that there is no systematic difference between outcomes for rich or poor litigants, and wealth is largely unrelated to the disposition of cases. Less than four percent of overall variation is due to variables that relate to the status of litigants. The results support the economic model of selection, which suggests that cases that go to court will not be associated with predictable features. In short, there is little reason to believe that early New England courts were biased in favour of the Haves.

Rather, in keeping with an economic perspective on litigation, outcomes overall are primarily related to the nature of lawsuits rather than the nature of litigants. It is interesting to note that out-of-state plaintiffs are significantly less likely to prevail in lawsuits. New England residents tend to be caricatured as hostile to "people from away," but this finding is related more to the types of cases they brought rather than to a bias against nonresidents. The explanatory power of the regression increases

[29] The results are basically unchanged if OLS, logistic or probit estimation of the regressions is used.

to 55 percent once the type of case is controlled for, and it is clear that an understanding of debt issues is crucial to understanding the role of nineteenth-century courts. Both the results here and the regressions on costs imply that a substantive role for courts was to help economize on the enforcement of financial contracts.

Appeals from lower court decisions may occur when the defendant and/or the plaintiff receives a decision that diverges from their expectations. The tendency to appeal thus provides another way of gauging whether the parties have different expectations or conflicts. The evidence here accords with the data on defaults, since the likelihood of appeal was significantly higher at the beginning of the period, and fell over time. In York and Cumberland, 16.8 percent of all decisions in 1800 were appealed to the superior courts, whereas only three percent of all cases were being appealed by 1850. Again, although merchants were somewhat less likely to appeal, wealth and occupation were unrelated to the likelihood of appeals. Instead, in keeping with strictly economic models, appeals were predominantly higher in cases with larger dollar amounts at issue. The types of disputes that drew appeals also support the notion that debt transactions were more "rational" in an economic sense, for they were significantly less likely to be appealed relative to property or emotional charges such as breach of promise.

V. CONCLUSION

> "*Resolved*, That we are in favor of 'a *well regulated* credit system … its free and general use is the distinguishing feature between despotism and liberty' "
> *--Niles' Weekly Register (1837)*

American conceptions of the history of debtor-creditor relations have been disproportionately shaped by such unique events as Shay's Rebellion and accounts of Alan Taylor's "Liberty Men" battling

against rich unfeeling absentee landlords.[30] Popular historical narratives tend to center around such supposed hostility between creditors and debtors, and to these we can add the claim of disparate outcomes among the Haves and Have Nots. If these claims were indeed generally true, they raise questions about the nature of American economic growth and about the prospects for developing countries today which are even more likely to have institutions that are biased in favour of the rich and powerful. Adam Smith himself observed that "Commerce and manufactures can seldom flourish long in any state which does not enjoy a regular administration of justice, in which the people do not feel themselves secure in the possession of their property, in which the faith of contracts is not supported by law, and in which the authority of the state is not supposed to be regularly employed in enforcing the payment of debts from all those who are able to pay."[31]

In an enormously influential paper, Marc Galanter made a number of unsubstantiated claims about the objectivity of legal institutions in the United States, which had been captured by wealthier groups. Galanter was pessimistic about the prospects for advances in the law that might improve the welfare of society in general, because the monolithic advantages of the Haves created a tendency for legal change to work primarily in their narrow self interest. The large array of empirical studies that address his hypotheses have been less than ideal, because of the constraints of available data. Some have used appellate court cases to test the validity of the Galanter model, whereas others proxy the Haves by organizations and the Have Nots as individuals, regardless of their socio-economic standing.

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[30] See Bruce H. Mann. *Republic of Debtors: Bankruptcy in the Age of American Independence*. Cambridge: Harvard University Press, 2002; Claire Priest, "Colonial Courts and Secured Credit: Early American Commercial Litigation and Shays' Rebellion," *Yale Law Journal*, Vol. 108, No. 8 (Jun., 1999): 2413-2450.

[31] The Wealth of Nations, (Book V, Chap. III).

By contrast, this paper tested Galanter's assertions more directly, using data drawn from a representative sample of the Maine district courts in Washington, York, Kennebec and Cumberland counties. The analysis centered on the prevalence of repeat plaintiffs relative to one-shot defendants, the wealth of repeat plaintiffs, the extent to which rich plaintiffs invested disproportionate resources in lawsuits, and whether the Haves tended to prevail in court relative to the Have Nots. As Galanter had proposed, plaintiffs and repeat players were more likely to be Haves rather than the Have Nots. However, they also tended to be merchants who might reasonably be expected to be involved in larger number of transactions, so one cannot rule out the possibility that they were in fact responsible for fewer cases *per transaction* than other litigants.

Do the Haves also prevail in court? Here the results are quite robust: wealth seems to be unrelated to the outcome of these lawsuits. The findings here instead support the economic model of rational litigants who use courts as a mechanism to economize on enforcement costs, regardless of social or economic status. The American legal system acknowledged that entrepreneurs benefited society, but that their ventures were associated with risks; individuals of different economic standing could find themselves as a defendant as well as a plaintiff, depending on the circumstances. The courts did not favour wealthy creditor plaintiffs above hapless debtor defendants. Early American courts were remarkably democratic institutions that facilitated the operation of extensive financial markets that spanned the Northeast from the metropolis of New York City through to the remotest areas of the Northern New England frontier. Thus, rather than being captured by a wealthy elite, the legal system proved to be a flexible and open institution that responded effectively to the needs of an expanding and industrializing society.

TABLE 1
Characteristics of Litigants by Total Number of Cases Per Person
(Percent, Washington County, 1850)

	One Shot		*Repeat Player*		
	Plaintiff	Defendant	Plaintiff	Defendant	N
Variable					
RESIDENCE (*row* percent)					
Maine	12.6%	18.8%	28.9%	39.7%	*761*
Out of State	25.3	10.5	54.9	9.3	*162*
HOUSEHOLD (*row* percent)					
Head	13.0	16.5	32.7	37.8	*569*
Not	16.7	20.8	29.2	33.3	*120*
BIRTHPLACE (*row* percent)					
Maine	12.4	18.6	26.4	42.6	*469*
Massachusetts	15.6	14.4	51.1	18.9	*90*
Foreign	22.9	16.9	31.3	28.9	*83*
Other	8.9	8.9	48.2	33.9	*56*
OCCUPATION (*column* percent)					
Farmer	17.0	27.4	14.8	27.6	*213*
Skilled	7.9	7.5	5.5	7.5	*68*
Trade	12.1	9.1	29.0	24.5	*205*
White Collar	9.1	3.8	9.7	5.3	*69*
Labourer	8.5	12.4	10.3	15.4	*118*
None	5.5	5.9	4.5	2.2	*41*
Unknown	40.0	33.9	26.1	17.6	*266*
TOTAL	(165)	(186)	(310)	(319)	***980***
	16.8%	19.0%	31.6%	32.6%	

Notes: These data represent litigants who brought lawsuits before the Washington County District Court in 1850. There were 18 women, 13 of whom were one shot players. The frequency of cases was estimated from records from the previous decade. If the litigant was involved in multiple lawsuits, he or she was categorized as a plaintiff if at least 50 percent of the cases were brought as a claimant.

Table 2
EMPIRICAL ESTIMATION OF "TAXONOMY OF LITIGATION"
Washington County District Court, 1850

	DEFENDANT			
	ONE-SHOT	REPEAT PLAYER		
		2 Cases	*3-10 Cases*	*>10*
PLAINTIFF				
ONE-SHOT PLAYER				
N	**41**	**24**	**72**	**29**
Row %	24.7	14.5	43.4	17.5
Col. %	24.1	20.2	25.4	21.6
(Total=166)				
REPEAT PLAYER Number of Lawsuits Per Plaintiff				
2 Cases				
N	**25**	**15**	**50**	**15**
Row %	23.8	14.3	47.6	14.3
Col. %	14.7	12.6	17.6	11.2
(Total=105)				
3-10 Cases				
N	**49**	**56**	**93**	**55**
Row %	19.4	22.1	36.8	21.7
Col. %	28.8	47.1	32.8	41.0
(Total=253)				
> 10 Cases				
N	**55**	**24**	**69**	**35**
Row %	30.1	13.1	37.7	19.1
Col. %	32.4	20.2	24.3	26.1
(Total=183)				
TOTAL (N=707)	170	119	284	134

Notes and Sources: Each quadrant in the table is a crosstabulation of the frequency characteristics of the plaintiff and defendant in the same case. Thus, the first entry shows the number of plaintiffs whose "litigation career" was limited to one case, and who brought charges against defendants who had also been involved in only one case during the previous decade. The total sample consists of 707 litigants drawn from the records of Washington County District Courts around 1850.

TABLE 3
REPEAT PLAY AND WEALTH AMONG LITIGANTS
(Washington County District Court, 1850)

	(1) OLS Regression of Propensity to be a Plaintiff Dep. Var=Percent of Cases in which Litigant is Claimant	(2) Logistic Regression Dep. Var =Log Odds that a Litigant is a Repeat player
Intercept	35.80***	0.56
	(5.5)	(2.06)
Ln of wealth	1.07***	0.06***
	(2.29)	(4.58)
Occupations		
Farmer	-6.67	-0.46*
	(1.50)	(3.15)
Trade	13.46***	0.52*
	(2.97)	(2.86)
Skilled	-4.40	-0.06
	(0.91)	(0.05)
White-collar	21.12***	-0.21
	(3.62)	(0.36)
Age	0.01	0.01
	(0.15)	(2.14)
Household	-1.21***	-0.04
	(2.38)	(1.36)
Servants	-------	0.55***
		(5.77)
Out of State	44.51***	-0.54*
	(9.44)	(2.87)
Total Number of Cases	-0.01 (0.98)	-------
Percent of cases Filed as Plaintiff	-----	-0.004 (3.24)*
	R-sq=0.29; N=465	-2LogL=785.4 N=466

TABLE 4
CHARACTERISTICS OF LITIGATION: DEFAULTS AND APPEALS
YORK AND CUMBERLAND LOWER COURTS,1800-1850

DEFAULTS (Non-appearance in court)	**1800**		**1850**	
	Number	%	Number	%
Defendant defaults	687	68.9	620	62.2
Plaintiff defaults	23	2.3	11	1.1
Both parties default	80	8.0	270	27.1
Neither party defaults	207	20.8	96	9.6

DEFENDANT DEFAULTS BY TYPE OF CASE	**1800**		**1850**	
	Number	%	Number	%
Debt cases	650	90.2	549	92.4
Property cases	17	38.6	15	33.3

DEFENDANT DEFAULTS BY RESIDENCE	**1800**		**1850**	
	Number	%	Number	%
Both parties from same town	158	70.2	219	77.1
Both parties from different towns	524	78.1	400	71.3

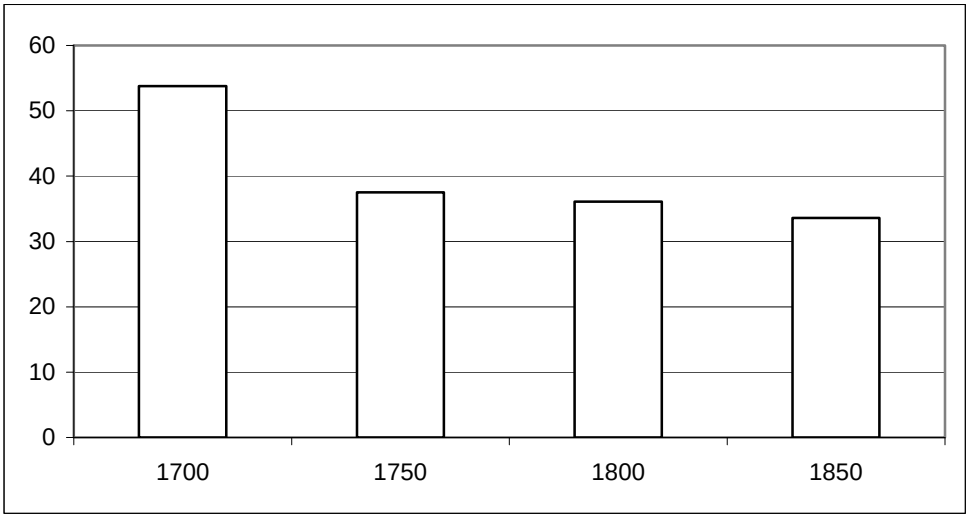
APPEALS FROM LOWER COURT DECISIONS

	1800		**1850**	
Total appeals	167	16.8%	15	3.0%
Type of Case				
Debt	138	19.1%		
Property	15	34.1%		
Breach of promise	10	40.0%		

TABLE 5: OCCUPATIONAL PROXIMITY OF PLAINTIFFS AND DEFENDANTS, YORK AND CUMBERLAND LOWER COURTS,1800-1850

Plaintiff's Occupation	**1800** Defendant has Same Occupation	**1850** Defendant has Same Occupation
	%	%
Artisan	27.7	23.3
Farmer	53.0	36.6
Gentleman	7.8	0.0
Labourer	34.5	27.8
Legal	4.7	0.0
Professional	0.0	0.0
Merchant/Manufacturer	14.9	6.1
Woman	3.3	0.0
TOTAL NUMBER	*829*	*806*

Figure 1: Percent of Litigants from Same Town, 1700-1850



Notes: The figures indicate the percent of all plaintiffs and defendants who lived in the same town at the time the lawsuit was filed. The count excludes cases in which no information on residence was provided. The residence of litigants from states other than Maine was categorized as out of state regardless of the town. Additional information on residence was obtained from the manuscript censuses of 1800 and 1850.

TABLE 6: EXPENDITURES ON LAWSUITS
(Cumberland, Kennebec and York Counties District Court, 1850)

Dependent Variable: Log (Costs)			
Intercept	2.18***	2.47***	2.31***
	(36.76)	(29.57)	(17.48)
Log Wealth			
Plaintiff	--0.002	--0.001	--0.005
	(0.36)	(0.25)	(1.05)
Defendant	-- 0.01	--0.004	--0.002
	(0.94)	(0.66)	(0.49)
Plaintiff Occupation			
Farmer	0.23***	0.18***	0.15***
	(3.96)	(2.96)	(2.76)
Lawyer	-- 0.07	--0.07	--0.01
	(0.98)	(1.00)	(0.20)
Commerce	0.04	0.03	0.02
	(0.74)	(0.61)	(0.47)
Labourer	0.06	0.06	0.06
	(0.98)	(0.96)	(1.01)
Defendant Occupation			
Farmer	0.03	0.02	0.08
	(0.48)	(0.43)	(1.59)
Lawyer	0.35**	0.34**	0.22
	(2.31)	(2.27)	(1.61)
Commerce	0.22***	0.22***	0.16***
	(3.81)	(3.96)	(3.13)
Labourer	--0.001	--0.001	0.03
	(0.03)	(0.01)	(0.54)
Out of State Origin	-- 0.10	0.15**	0.08
	(1.57)	(2.17)	(1.21)
Town Pop>10k	-----	--0.09**	--0.10**
		(1.92)	(2.14)
Debt Issue	----	--0.28***	--0.07
		(4.44)	(1.12)
Log (Amount Claimed)	----	------	0.13***
			(6.93)
Defendant Defaults	----	-----	--0.70***
			(9.87)
	R-Sq =0.07; N=781	R-Sq =0.10; N=782	R-Sq =0.26; N=761

TABLE 7: DETERMINANTS OF THE PROBABILITY OF A PLAINTIFF WINNING
(Cumberland, Kennebec and York Counties District Court, 1850)

Dependent Variable: Probability of Judgment for Plaintiff			
Intercept	0.85***	0.32***	0.62***
	(26.8)	(9.44)	(13.77)
Log Wealth			
Plaintiff	0.001	--0.003	0.001
	(0.32)	(1.40)	(0.35)
Defendant	-- 0.01	--0.003	--0.002
	(1.54)	(1.27)	(1.42)
Plaintiff Occupation			
Farmer	-- 0.14***	--0.02	--0.01
	(3.62)	(0.65)	(0.43)
Lawyer	0.06	0.03	0.003
	(1.17)	(1.06)	(0.12)
Commerce	0.05	--0.002	-0.01
	(1.28)	(0.10)	(0.80)
Labourer	-- 0.05	--0.04	-0.01
	(1.28)	(1.45)	(0.31)
Defendant Occupation			
Farmer	-- 0.14	0.02	-0.00
	(0.77)	(0.78)	(0.02)
Lawyer	-- 0.11	0.00	0.06
	(1.19)	(0.01)	(1.49)
Commerce	0.01	0.02	0.04*
	(0.15)	(0.64)	(2.08)
Labourer	0.01	0.03	0.01
	(0.20)	(1.12)	(0.60)
Out of State Origin	-- 0.09**	--0.01	0.01
	(2.09)	(0.44)	(0.55)
Town Pop>10k	0.02	--0.01	0.01
	(0.49)	(0.31)	(0.38)
Debt Issue	----	0.68***	0.09***
		(32.31)	(3.89)
Log (Amount Claimed)		------	-0.02***
			(3.52)
Defendant Defaults	----	-----	0.41***
			(19.84)
	R-Sq =0.04; N=955	R-Sq =0.55; N=957	R-Sq =0.45; N=808

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