Journal of Interdisciplinary History, XXXIX:1 (Summer, 2008), 1–35.

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"Justice of the Marketplace": Legal Disputes and Economic Activity on America's Northeastern Frontier, 1700–1860

> *"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)*

During the eighteenth century, the economic standing of the colonies on the British American mainland lagged behind that of many countries in Latin America and the West Indies. By the middle of the nineteenth century, however, it became evident that the United States was in the process of overtaking even the early industrializing nations in Europe. Economic and social historians have offered competing explanations for the transformations that enabled the United States to achieve such rapid economic success. More generally, they show disagreement about the potential for human nature and its expression in culture and commerce to change over time. Institutional economists, for instance, argue that individuals in all eras tend to respond to incentives, as well as to the rules and standards that comprise such key institutions as markets, property rights, and the legal system.[1]

By way of contrast, an extensive historical literature explores

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The author thanks Kenneth Sokoloff for his many useful suggestions and his close reading of earlier drafts. She also thanks Craig McEwen, Dora Costa, Stanley Engerman, Price Fishback, Henry Gemery, Matthew Kahn, Naomi Lamoreaux, Winifred Rothenberg, Alan S. Taylor, anonymous referees, and members of the National Bureau of Economic Research and the Economic History Association for their valuable comments.

1 Stanley Engerman and Kenneth Sokoloff, "Institutional and Noninstitutional Explanations of Economic Differences," NBER Working Paper 9989 (Cambridge, Mass., 2003); idem, "Factor Endowments, Inequality and Paths of Development Among New World Economies," *Economia,* III (2002), 41–109. For the views of a prominent institutional economist, see Douglass C. North, *Structure and Change in Economic History* (New York, 1981).

the so-called "transition to capitalism" in early American society. One variation in the transition thesis draws a distinction between community-based interactions and impersonal market exchange. In this view, the operation of a "moral economy" predated the advent of "capitalism," wherein transactions were governed by social and religious norms and traditions and featured violent reactions to the encroachments of markets on prevailing values and cultural practices. Discussion of the transition encompasses diverse topics: the rationality and objectives of farmers and their *mentalité* (worldviews); claims that real property rights were uncertain and ultimately decided by force; and allegations of class-based conflict between rural farmers and more economically oriented entrepreneurs, merchants, or landed proprietors. Kulikoff noted one point of consensus in all of the debates—that rational, impersonal market exchange emerged only after the American Revolution (some scholars infer a causal connection, allowing them to conclude that subsequent changes were the result of independence).[2]

To address how citizens engaged in commerce and cooperation in different eras, historians have mustered a rich array of information from diverse sources, ranging from account books and diaries to probates; data about wages, prices, and incomes; and even material artifacts. Rothenberg made creative use of evidence drawn from farmers' account books and the convergence of prices, as well as a limited number of probates in her investigation of the development of capital markets. She maintains that rural areas were integrated into regional markets only after the 1780s. Lamoreaux suggests that since the existence and timing of the transition are no longer controversial, scholars should start paying more attention to the process of transformation itself. Historical inquiries

2 Allan Kulikoff, "The Transition to Capitalism in Rural America," *William and Mary Quarterly,* XLVI (1989), 120–144. Naomi R. Lamoreaux, "Rethinking the Transition to Capitalism in the Early American Northeast," *Journal of American History,* XC (2003), concludes, "Most historians now agree that there was such a transition in the American countryside during the late eighteenth and early nineteenth centuries and that it was associated with the social and political upheaval of the American Revolution" (438). According to Thomas Clay Arnold, "Rethinking Moral Economy," *American Political Science Review,* XCV (2001), anthropologists and political scientists share this speculation about a pre-market system; they "debate as intensely as ever the idea of a moral economy . . . [which] refers to the various, essentially noneconomic norms and obligations (e.g. reciprocity) that mediate the central social, political, and/or economic relations"(85). The English experience is examined in Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (New York, 1998).

into these issues have an analog in studies of the legal system, although the two schools rarely integrate their findings explicitly. For example, Horwitz and Pound propose that the disjuncture between the archaic colonial legal system and the rationalization of U.S. law did not occur until the early nineteenth century.[3]

Although studies on this point have added significantly to our understanding of early transactions, a number of central questions about the nature and evolution of early markets and legal institutions remain unresolved. Much of the evidence is fragmented; samples are often too small for statistical significance or too limited across time; and the findings about some locales are inconsistent with those from others. As a case in point, the contention that a transition occurred around the time of the founding of the Republic fails to take into account conflicting findings that even in seventeenth-century Manhattan, market incentives dominated the interactions of residents and that such profit-oriented exchanges may have enhanced community norms. It is telling that many of the standard studies fail to analyze data from the earlier half of the eighteenth century.[4]

This article incorporates a systematic study of the relationship between legal institutions, markets, and economic activity. The results are based on an extensive panel data set that extends from the period before major settlement through the middle of the nineteenth century. Civil- litigation records comprise an especially

3 See Winifred Barr Rothenberg, *From Market-Places to a Market Economy: The Transformation of Rural Massachusetts, 1750–1850* (Chicago, 1992). On legal institutions, see Roscoe Pound, *The Formative Era of American Law* (Boston, 1938); Morton J. Horwitz, *The Transformation of American Law, 1780–1860* (Cambridge, Mass., 1977). William E. Nelson, *The Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760–1830* (Cambridge, Mass., 1975), declared, "The War of Independence ushered in the beginning of a new legal and social order" (5). Thomas Stuart Allen, "Commerce, Credit and Community: The Transformation of Economic Relationships in Rhode Island, 1771–1850," unpub. Ph.D. diss. (Brown University, 1994), repeats the point (the abstract states that "the shape and direction taken by these changes was a product of the Revolution"). Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760–1820* (Chapel Hill, 1990), maintains that "internal conflicts engendered by the Revolution" determined "America's liberal political economy" (230).

4 Rothenberg, *From Market-Places; idem,* "The Emergence of a Capital Market in Rural Massachusetts, 1730–1838," *Journal of Economic History,* XLV (1985), 781–808. The apparent consensus is belied by such contrary works as Dennis Joseph Maika, "Commerce and Community: Manhattan Merchants in the Seventeenth Century," unpub. Ph.D. diss. (New York University, 1995), which argues that as early as the seventeenth-century, commercial interactions and community were closely related and mutually reinforcing.

valuable class of data to investigate social and economic issues, if only because of their pervasive coverage. Lawsuits have well-known, inherent drawbacks that limit their use as quantitative evidence of social attitudes or conflicts. For one thing, the vast majority of disputes tend to be settled well before final judgment in court dockets. Moreover, a significant number of suits may never even reach court for a number of reasons, including the degree of legal certainty, reputation of the parties, and the potential for future litigation. Nonetheless, interpreters who remain sensitive to the potential biases and litigation patterns of civil lawsuits may find the extensive qualitative information that they contain to be of considerable value for the premodern period, especially when other systematic sources are unavailable.[5]

The analysis herein is based on a sample of civil litigation records in Maine from its early years as a frontier society to the Civil War. The panel data set pools time-series and cross-sectional information from about 30,000 lawsuits filed in the counties of Cumberland, Washington, York, and Kennebec between 1700 and 1860. The units of observation are the individual plaintiffs and defendants, identified by their place of residence, gender, and the nature and number of disputes per person. The lawsuits have been categorized by type of case—predominantly property, debt, personal, and criminal. The litigation records for 1800 and 1850 were also linked to manuscript censuses to obtain individual-level information about age, occupation, and wealth. The data include such town- and county-level variables as degree of urbanization and tax valuations.

Any such extensive quantitative analysis of the economic history of law in the eighteenth and nineteenth centuries obviously comes at the cost of the detail that historical monographs provide. However, this approach yields a number of insights that might otherwise be unexplored or unsubstantiated. First, the more per-

5 A fine example of the copious historical-legal research about early America is Bruce H. Mann's study of early Connecticut—*Neighbors and Strangers: Law and Community in Early Connecticut* (Chapel Hill, 1987)—which 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 began settling commercial disputes rather than personal grievances, arguing that more impersonal capital markets had developed in rural Connecticut by the 1750s (9–10). See also David Thomas Konig, *Law and Society in Puritan Massachusetts: Essex County, 1629–1692* (Chapel Hill, 1979); Nelson, *Disputes and Conflict Resolution in Plymouth County, Massachusetts, 1725–1825* (Chapel Hill, 1981).

sonal side of litigation allows us to trace the putative decline of the "moral economy" in the decreasing frequency of lawsuits to enforce social norms. Such social norms or customs are arguably manifested in charges regarding lapses in church attendance, riotous or violent behavior, and allegations of improper sexual conduct. The cultural aspects of early American law can further be perceived in charges brought against women concerning domestic relations and their flouting of social and religious conventions. Second, the pooled time-series and cross-sectional information about the identities of the parties to litigation comprise a robust means of investigating at the individual level the process of transformation in law and the economy.[6]

The study of civil litigation in frontier regions promises to advance the discussion about the evolution of early American institutions in social and economic development by providing consistent evidence over time. The results do not support the hypothesis of discrete turning points, including the common allegation that rational law (in Weber's sense), commercialization, and formal capital markets emerged only after the American Revolution. Even at the beginning of the eighteenth century, when the colonies had only a fledgling economy, commercial exchanges were orderly, and capital markets linked debtors and creditors well beyond local boundaries, with little evidence of social tension. Despite changes in policies and outcomes, continuities are more evident than a discrete transition from community to market (or any of the related variants of these concepts). Instead, increases in the scale and scope of markets were associated with a specialization and division of labor across institutions, leading to the substantive commercial orientation among colonial courts that was manifest even at the beginning of the eighteenth century.[7]

6 A panel data set incorporates both a spatial and temporal dimension and includes data on N cases at a particular point in time, recorded over T time periods, for a total of $N \times T$ observations. That is, it consists of cross-sectional time-series data, in which multiple units of analysis are observed at two or more time periods. The cross-sectional information shows variation across subjects within a time frame, whereas the time-series, or within-subject, information reveals changes within categories over time. Panel data can control for omitted variables that vary across cases but do not vary over time even if unobserved, by tracing changes in the dependent variable over time. Likewise, panel data can control for omitted variables that change over time but are constant among cases.

7 See Max Weber (ed. Max Rheinstein), *Max Weber on Law in Economy and Society* (Cambridge, Mass.,1954).

SOCIOECONOMIC DEVELOPMENT AND THE LEGAL SYSTEM Although legal scholars and social scientists are in broad agreement that market transactions and the legal system have a close relationship, they usually view it from different perspectives. Economists propose that effective legal institutions are likely to increase social wealth: Legal systems codify the rules that govern exchange, provide mechanisms that reduce the costs of transacting, shift risk to those who can avoid it at least cost, and lower the degree of uncertainty. Thus, by enforcing debt contracts, the legal system can safeguard creditors, minimize transactions costs, reduce the size of risk premiums, and encourage more liquid and extensive financial markets. Some in the law and economics movement argue that the common law is steeped in market forces that frequently evolve toward legal rules that promote social efficiency. For instance, inefficient rules tend to be appealed and litigated more frequently, leading to an equilibrium that converges toward socially productive holdings at law. Others in the movement highlight the role of social norms, distributional inequities, and other noneconomic factors that influence outcomes, in ways that may lead to difficult tradeoffs that are not necessarily resolved in the direction of socioeconomic efficiency. A number of studies examine more problematical aspects of litigation, such as the possibility of rent seeking when plaintiffs file lawsuits solely to redistribute assets from productive members of society toward themselves. Such models predict that the wealthy are more likely to be sued and legal decisions more likely to create incentives for inefficient transfers.[8]

The direction of causality between law and markets is also difficult to determine. Laws alter the incentives that govern market exchange, as was evident in the case of patenting and technological development in the United States. Legal institutions (and social institutions in general) operate most effectively if not altered

8 In Ronald Coase's view, "the legal system will have a profound effect on the working of the economic system and may in certain respects be said to control it ("The Institutional Structure of Production," *American Economic Review,* LXXXII [1992], 713). See also North's Adam Smith address, "Economic Theory in a Dynamic Economic World," *Business Economics,* XXX (1995), 7.

A prominent version of the argument concerning redistribution of assets is in Mancur Olson, *The Rise and Decline of Nations* (New Haven, 1982). Thrainn Eggertsson, *Economic Behavior and Institutions* (New York, 1990), also supports an interest-group theory of property rights, contending that most governments "do not supply structures of property rights that are appropriate for placing the economy close to the technical production frontier" (320).

too frequently. Conversely, they are able to avoid sclerosis by responding productively to critical changes in circumstances. But some scholars have argued that because the U.S. legal system has lagged behind the needs of the developing economy, it has required the substitution of more informal institutions to fulfill the necessary functions. Thus, as Hurst points out, when the legal system failed to recognize the rights of the Wisconsin's Pike River Claimant's Union in the early nineteenth century, its members created their own set of rules to process land claims and arbitrate disputes. Others have argued that such "private orderings" through trust, reputation, and other extralegal mechanisms may be superior to formal law and that the development of the formal law may even be detrimental to the needs of a complex society.[9]

A more elemental question that emerges from these studies is the relationship between law, economic growth, and democracy (interpreted as the pursuit of the majority's interests). A sanguine view is that all three factors are mutually reinforcing. Yet, if the legal system functions predominantly to further the objectives of a select few, then law may hinder widespread participation in market expansion and perpetuate or increase inequality. Many scholars allege that economic growth was responsible for the social tensions in the United States. Horwitz's study of "the transformation of American law" suggests that judicial interpretations of the common law that promoted economic growth also disenfranchised farmers and other representative groups. An examination of the relationship between legal systems, litigation, and society in northern New England provides a less damning perspective on the course of institutional change in early American history.[10]

9 James Willard Hurst, *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin 1836–1915* (Madison, 1984), xii. A large body of recent work makes this claim about "private orderings." Robert Cooter, "Structural Adjudication and the New Law Merchant: A Model of Decentralized Law," *International Review of Law and Economics,* XIV (1995), argues that a formal property system would be disruptive in regions where transactors depend on close relationships (215). Jonathan R. Macey, "Public and Private Ordering and the Production of Legitimate and Illegitimate Legal Rules," *Cornell Law Review,* LXXXII (1997), finds private rules superior to state rules (1123). For a different view, see Avner Greif, "Informal Contract Enforcement: Lessons from Medieval Trade," in Peter Newman (ed.), *The New Palgrave Dictionary of Economics and the Law* (London, 1998), II, 287–295. We may add to this topic the (overly) extensive discussion of whether lawyers increase or decrease economic growth.

10 The cross-country analysis of Christopher Clague et al., "Property and Contract Rights in Autocracies and Democracies," *Journal of Economic Growth,* I (1996), 243–276, discovered a

Economic Development in Maine Since a comprehensive economic history of Maine and northern New England, especially in the colonial era, remains to be written, the account herein is unavoidably incomplete. The first attempt to establish a permanent colony in the geographical area now known as the state of Maine occurred in 1607. Though it failed, a settlement at Piscataqua in 1623 achieved greater success, and other townships—such as Pemaquid, Sheepscot, Berwick, York, and Saco—soon followed and flourished. The Massachusetts Bay Colony bought the province of Maine in 1677, and Maine comprised part of Massachusetts until 1820. The extensive network of rivers and easy coastal access facilitated transportation, although the lengthy winters initially curtailed shipping and economic activity. Commerce centered on resource extraction; fish and timber in particular were both readily available at low cost. Despite these sporadic attempts at colonization, the vast size of the district, violent skirmishes with native Indians, and a harsh climate ensured that Maine would remain relatively undeveloped until the end of Queen Anne's War in 1713.[11]

Soon after the advent of peace, Massachusetts actively encouraged immigration by allocating large tracts of land to settlers. A number of these land grants fulfilled promises of remuneration to war veterans and to long-term migrants with designs on economic development, but many others accrued to influential absentee proprietors from Boston. Some scholars focus on the latter group to make the argument that the land policy encouraged unproductive speculation or "land jobbing," but the abundance of land and of factor endowments limited the profitability of such strategies. Regardless of the relative merits of early land policies, these inducements combined with "push factors" to cause rapid population growth. At the end of the seventeenth century, the population amounted to only 2,000, but between 1726 and 1765, it grew from 4,000 to more than 20,000. By the time of the first

positive relationship between contemporary democracies and formal protection of property and contracts. Horwitz, *Transformation of American Law,* 63–108.

11 John J. McCusker and Russell R. Menard, *The Economy of British America* (Chapel Hill, 1985), point out that "we know surprisingly little about New England's economy" (91). According to Charles E. Clark, *The Eastern Frontier: The Settlement of New England, 1610–1763* (New York, 1970), the term "eastern frontier" gives an accurate impression of the region's "initial remoteness from the more settled parts of America and of its nature as a northeastward extension of New England society" (x).

federal census in 1790, the number of residents in the five Maine counties (Cumberland, Hancock, Lincoln, Washington, and York) had approached 100,000, and by 1860, it was approximately 628,000. During the antebellum period, population density in Maine cities increased, although the extent of urbanization was well below that of southern New England. In 1800, the District of Maine accounted for 26 percent of the population in Massachusetts and 16 percent of the state's total valuation of real and personal estates. Tax valuations in York and Cumberland compared well with those in a number of the longer-established Massachusetts counties, such as Berkshire and Bristol, indicating a rapid but unevenly distributed process of commercialization.[12]

Economic pursuits were less specialized at the regional level in Maine than in Massachusetts. When Maine separated to become the twenty-third state of the Union in 1820, the size and complexity of its economy increased markedly until the Civil War. Maine functioned as an early frontier for the residents of the Northeast and, in keeping with other frontiers, economic outcomes exhibited greater variance and risk than in more developed areas. Lewis and Urquhart's observation that rational migrants would choose to settle a frontier only if assured of more than one source of income is consistent with the finding that, from the beginning of settlement, Maine residents combined two or more activities. In 1820, 82 percent of the labor force was involved in agriculture and 11 percent in manufactures, but by 1860, the agricultural sector had decreased to 40 percent of the state's em-

12 Scholars concerned about the unequal distribution of early land allotments might underestimate the implications of the Coase Theorem: If property rights were well-defined, and costs of exchange were low, then effective patterns of land holding would emerge, regardless of the initial allocations. In the absence of any property-right allotment, the likelihood of violent transfers would be greater than in a situation in which one proprietor initially owned all of the land. Examination of the land-deed records reveals only routine transfers of title from the initial proprietors to smaller tract holders. Between 1713 and 1733, ten new townships were established along the coast of Maine; seven were founded in the interior between 1733 and 1750 (Clark, *Eastern Frontier,* 173). See Evarts B. Greene and Virginia D. Harrington, *American Population Before the Federal Census of 1790* (New York, 1912), 4, 21. Population growth slowed during the French and Indian wars that affected the security of the region from 1744 to 1748 and 1755 to 1760. See *Acts and Resolves of the Commonwealth of Massachusetts, 1800* (Boston, 1897), 101–124. The total tax was $133,435. The following taxes were proportional to estate valuations in each county: York, $6,678; Lincoln, $4,795; Washington, $394; Cumberland, $5,776; Hancock, $1,948; Kennebec, $1,964. The tax payable by Maine residents was assessed at $21,555, or 16 % of total tax levied, whereas the population of Maine was 26.4 % that of the entire state.

ployment. Maine's comparative advantage remained in resource extraction, such as timber and fishing; in 1860, its fishing industry ranked only behind that of Massachusetts. Natural resources served as the basis for a growing secondary sector: The Maine economy rapidly became more diversified as it expanded from the traditional pursuits of farming, shipbuilding, fishing, and lumbering to include manufacturing.[13]

For much of the nineteenth century, Maine rivaled its New England neighbors, including Massachusetts, in an impressive number of industries. It became the most successful shipbuilding region in the United States; by 1840, it accounted for more than one-quarter of the country's shipping tonnage. It ranked third in the total number of business incorporations in New England. As early as 1807, the Maine Cotton and Woolen Manufacturing Company was incorporated in the town of 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 $1,000,000. In 1860, Maine cotton manufactures ranked fifth in the United States in terms of output, and employed 6,700 workers. Other sources of manufacturing revenues included wool textiles, boots and shoes, and tanning of leather. The lumber trade peaked in 1840, when Maine supplied almost 15 percent of the timber in the United States, second only to New York. The state possessed many of the endowments that potentially contributed to manufacturing and commercial productivity, including inland sources of water for power and transportation, sea ports, and proximity to markets. 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.[14]

13 Frank D. Lewis and M. C. Urquhart, "Growth and the Standard of Living in a Pioneer Economy: Upper Canada, 1826 to 1851," *William and Mary Quarterly,* LVI (1999), 151–181. See United States Census Office, *Sixth Census or Enumeration of the Inhabitants of the United States in 1840* (Washington, D.C., 1841); Richard G. Wood, *A History of Lumbering in Maine, 1820–1860* (Orono, Me., 1935). According to Moses Greenleaf, *A Survey of the State of Maine* (Portland, Me., 1829), 276, Maine had 946 sawmills in 1820. The first sawmill in the United States may have been the one that operated in York, 1637.

14 United States Census Office, *Compendium of the Sixth Census of the United States, 1840* (Washington, D.C, 1841), 116. J. Leander Bishop, *A History of American Manufactures, 1608 to 1860,* (Philadelphia, 1868), II, 378. For incorporations, see William C. Kessler, "Incorporation in New England: A Statistical Study, 1800–1875," *Journal of Economic History,* VIII (1948), 43–62.

The period under study thus extends from the earliest settlement through a phase of rapid industrialization, during which both economy and society experienced a significant expansion in scale, scope, and complexity. The fact that Maine's institutions were based largely on those of Massachusetts facilitates comparison to the rest of the New England region and highlights potential causes of difference. The assessment of patterns of activity and their evolution in this initially underdeveloped frontier has the potential to elucidate existing studies of commercial and capital markets in well-developed regions like New York and Connecticut. These data offer insights into the operation of institutions in early communities, permitting an assessment of the extent to which the nature of legal disputes and litigants altered during market expansion. The analysis of Maine's court records during the colonial and antebellum eras presents a valuable opportunity for exploring the co-evolution of markets and legal institutions.

Maine's Legal System Courts comprised an important socioeconomic institution in Maine society from the earliest years of settlement. The first formal court was established in 1637 in Saco, a major town in York County. The judicial practitioners in Maine were not averse to legal innovation. In 1640, they heard what was probably New England's first case of equity jurisdiction. However, the structure of the legal system, which remained largely unchanged through 1852, was based on precedents in Massachusetts. Local magistrates decided petty criminal infractions, like disturbances of the peace, and minor civil questions involving small sums of money, but the County Courts handled the vast majority of disputes. The justices of the peace, who supervised the Courts of General Sessions of the Peace and were nominated by popular vote, dealt with the majority of criminal cases, except for the most serious crimes involving penalties that compromised life and limb or required banishment. They also administered county business, including tavern licenses, matters relating to highways and bridges, and tax valuations. The Court of Common Pleas (CCP) for each county, comprising four judges who had to be "substantial persons," presided over civil questions involving larger sums of money. The Superior Court (after 1780 called the Supreme Judicial Court) exercised original jurisdiction over real- and personal-property issues, pleas to which the Crown was a party, cases involving the conservation of the peace, and litigation regarding

divorce and capital punishment. In addition, it functioned as a court of appeal for civil and criminal matters initiated in the county courts.[15]

The supply of legal resources kept pace with demand. The number of courts expanded whenever new counties were formed. For most of the seventeenth century, the shortage of qualified lawyers meant that a majority of the court officials were simply prominent men of the region, formally untrained in the law. This situation ensured that staffing needs could be met as circumstances required. Economic prospects were much improved in and after the second half of the eighteenth century, and "lawyers were not backward in following these sure indications of business." The stock of legal personnel was responsive to growing demand, and professional lawyers, many of them from Boston and other parts of New England, migrated to expanding towns. Between 1790 and 1860, their numbers grew from 16 to 529, compared to just a sixfold increase in the general population. In 1840, Bangor had a population of only 8,634, but 48 of them were lawyers. Even outlying Aroostook and Oxford counties were well served with four and twenty-six, respectively.[16]

15 This account follows William Willis, *A History of the Law, the Courts, and the Lawyers of Maine* (Portland, Me., 1863). In 1640, the first session of the court in June heard eighteen civil cases and nine complaints; the September session heard twenty-eight civil actions (nine jury trials), and thirteen indictments (17). Their jurisdiction did not extend to any questions of title to real property. Decisions were expeditious and summary; appeals to the inferior county court of common pleas were rare. In 1700, actions that involved sums above 40 *s.* could be brought before the CCP. 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 (44). The judges and court clerks were initially compensated with the court fees, but when Maine became a separate state, the chief justice and two associates received salaries. In 1839, the courts of common pleas were renamed district courts without changing their jurisdiction and terms. After 1820, justices of the peace acquired jurisdiction in minor civil matters not exceeding $20 and in criminal causes involving fines of $5 or less (Maine Laws, Ch. LXXVI [1821], 352). 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 absorbed by the Supreme Court, presided over by seven judges.

16 The years in which Maine's counties were incorporated were 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; and York, 1652. Thus, between the date of first settlement and 1760, the colony comprised York county; in 1800, the counties also included Cumberland, Hancock, Kennebec, and Lincoln. See *Atlas of Historical County Boundaries: Connecticut, Maine, Massachusetts, Rhode Island* (New York, 1994).

A jury of six or more persons generally determined the penalties for the frequent "ac-

Courts initially held broad jurisdiction over social activities; their records yield insight into their pervasive role in policing social mores, government, religion, and economic transactions. They were also dynamic and flexible institutions that influenced the nature of markets, responding to the needs of a developing society. Figure 1 illustrates the changes in total litigation and litigation rates during the first half of the eighteenth century. The data are consistent with the notion that disputes varied positively with the market. New England experienced economic expansion during the 1730s, and per capita litigation rates increased markedly during this decade, reaching a peak of 50 cases per 1,000 of the population in 1740. When economic growth not only slowed but likely became negative during the following decade, litigation fell. The recovery of the 1750s resulted in an upswing in cases, but since population increased even further, the per capita rate of litigation remained relatively constant. Consequently, the nature of the courts and disputes altered significantly as the district and state of Maine experienced the transition from a frontier region to a more complex economic and social system.[17]

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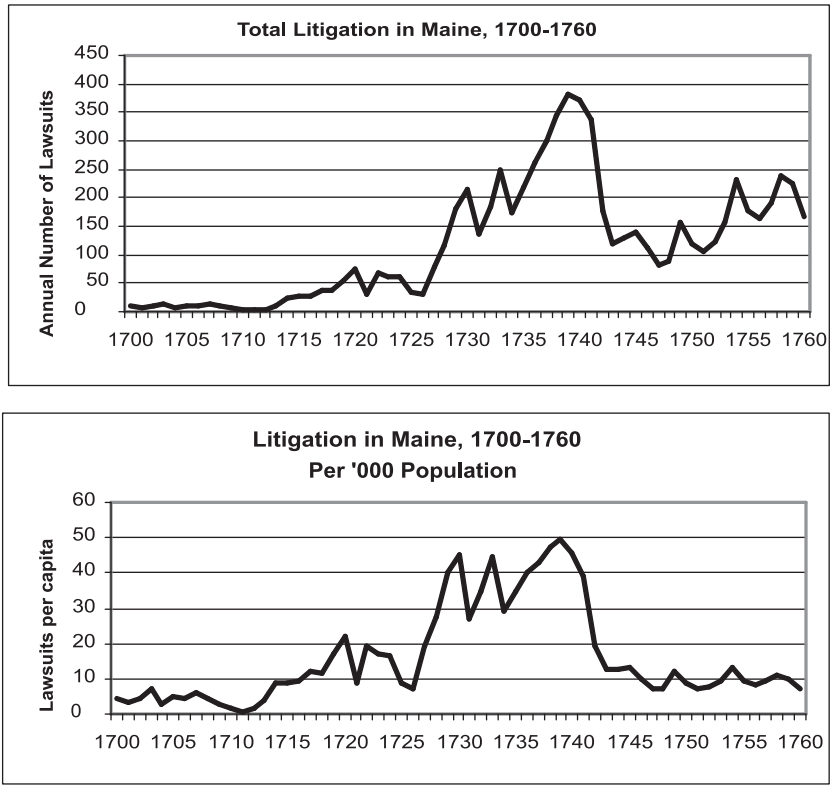
tions of trespass, slander, incontinency, drunkenness, and rash speeches." Thomas Gorges, the first lawyer, arrived in 1640, joined by Thomas Morton of Massachusetts shortly thereafter; no others were to arrive for another century. According to Willis, *History of the Law,* "The forms of proceeding were of the simplest character, and the absence of lawyers is found in the entire freedom from all technicalities in the pleadings and verdicts" (13). This pattern persisted even in the nineteenth century. Arguments tended to be brief. Some judges, such as Chief Justice Parsons, disapproved of "discursive displays of rhetoric"; Parsons often wrote his decisions before listening to the attorneys (126, 299). "In cases of great importance, as well as on ordinary occasions, regularly educated lawyers from New Hampshire and Massachusetts attended the courts in Maine" (87). Future President John Adams attended the Maine circuit for twelve years before the Revolution (88). The structure of payments in the legal system created incentives for cases to be treated with dispatch. Because a statute of 1701 fixed the fees that attorneys could charge, they had an incentive to encourage a greater number of filings in order to increase their income. Until Maine's separation from Massachusetts, court officers also received emoluments from fees that litigants paid. The fees that the Cumberland CCP received totaled $15 in 1776 and remained about $123 per year for the next twenty years. However, they averaged $1975 in the decade before the Civil War, and in 1808, "a year of extraordinary business," they amounted to $4,080.

17 According to Willis, *History of the Law,* "In the rapid progress which took place in the public and private affairs of the Commonwealth, the courts were gradually adapted to the altered circumstances and wants of the people" (49). Terry L. Anderson, "Economic Growth in New England: Statistical Renaissance," *Journal of Economic History,* XXXIX (1979), computes an index of total factor productivity that indicates "a continual rise through the 1730s, a decline in the 1740s, a rise in the 1750s, and then a decline to the end of the period" (255). An alternative viewpoint—Claire Priest, "Currency Policies and Legal Development in Colonial New England," *Yale Law Journal,* CX. (2001), 1303–1405—argues that the most important (if

Fig. 1 Total and Per Capita Litigation in Maine, 1700–1760



SOURCES Maine court records. The lawsuits comprise total cases filed in all of the lower courts, and exclude superior courts. The population figures are interpolations between years for which numbers were provided (see Evarts B. Greene and Virginia D. Harrington, *American Population Before the Federal Census of 1790* [New York, 1932]).

The function of the courts changed rapidly in a manner that seems consistent with the Smithian notion that institutional specialization and division of labor were related to the market. Table 1 indicates that, in the years between 1700 and 1709, courts predominantly enforced social rules regarding sexual behavior, religion, drinking practices, and swearing. Despite the potentially harsh penalties on the books, the judges took individual economic

not the only) explanatory variable in colonial litigation patterns comprised currency policies. Although monetary policies necessarily play a role in debt issues, the evidence from northern New England does not support Priest's substantive claims. Mann provides a rebuttal to part of Priest's study in "Law, Economy and Society in Early New England," *Yale Law Journal,* CXI (2002),1869–1880.

conditions and mitigating circumstances into account. In 1703, Mary and Samuel Shoree were charged with fornication, a crime punishable by "7: Stripes apiece on the Naked back" or payment of a fine. The couple pleaded with the court that recent illness had resulted in their "Extreame Poverty." They were able to reduce the fine by 40 shillings and to avoid being whipped. In another session of the court, Mary Woodman's fine for missing church on Sunday was suspended because her husband gave "reason Satisfactory to the Court."[18]

During the next few decades, a marked change occurred in the caseload of the lower courts. As early as the 1720s, more than half of all cases related to such economic issues as contracts, debts, and ejectments from land. By 1730, a decisive shift in the caseload had occurred; the overwhelming majority of filings consistently involved economically oriented market transactions. The total number of lawsuits relating to noneconomic matters (religion, crimes, county administration, and regulation of behavior), though relatively constant, fell as a proportion of total cases outstanding as well as in per capita terms. This pattern should not be surprising; it accords well with the notion that market expansion is accompanied by a rationalization of social and economic practices. The direction of causation is impossible to establish, but market expansion was clearly associated with increased specialization and division of labor across institutions. Henceforth, courts would forego their role in regulating private behavior and become the locus for the enforcement of commercial bargains.

MARKETS FOR DEBT AND PROPERTY The nature of premodern markets and the process through which past societies modernized is not a mere historical curiosity. The lessons of history obviously cannot entirely transcend time or place, but questions about the origins of economic development are of critical interest today in many countries where the majority of the population is impoverished. First of all, consider the claim that increased commercialization is associated with a decline in social capital or in such intangible factors as community trust and cooperation. Given that World Bank economists identify social capital as the "missing link" in explaining economic growth, an investigatation into the claim that

18 Adam Smith (ed. Edward Cannan), *An Inquiry into the Nature and Causes of the Wealth of Nations* (Chicago, 1976; orig. pub. London, 1776), Book 1, Chapter 3 (21–25).

Table 1 All of the Issues Litigated in Maine Lower Courts by Decade, 1700–1759

	YEARS						
	1700s	1710s	1720s	1730s	1740s	1750s	ALL
Economic Issues							
Debt	53	118	461	1,833	1,347	1,300	5,112
(% of cases in decade)	(10.2)	(23.3)	(37.8)	(62.9)	(68.3)	(63.2)	(55.6)
Property	65	93	211	451	283	339	1,442
(% of Cases in Decade)	(12.5)	(18.4)	(17.3)	(15.5)	(14.4)	(16.5)	(15.7)
Other Economic	37	27	32	37	24	28	185
(% of Cases in Decade)	(7.1)	(5.3)	(2.6)	(1.3)	(1.2)	(1.4)	(2.0)
Total Economic	155	238	704	2,321	1,654	1,667	6,739
(% of Cases in Decade)	(29.8)	(47.0)	(57.7)	(79.7)	(83.9)	(81.0)	(73.3)

Table 1 (Cont.)

	YEARS						
	1700s	1710s	1720s	1730s	1740s	1750s	ALL
Noneconomic Issues							
Church	78	38	59	114	42	86	417
(% of Cases in Decade)	(15.0)	(7.5)	(4.8)	(3.9)	(2.1)	(4.2)	(4.5)
Crime	78	66	126	146	63	61	540
(% of Cases in Decade)	(15.0)	(13.0)	(10.3)	(5.0)	(3.2)	(3.0)	(5.9)
County and public	22	21	42	56	44	19	204
(% of Cases in Decade)	(4.2)	(4.2)	(3.4)	(1.9)	(2.2)	(0.9)	(2.2)
Personal	138	132	188	141	111	181	891
(% of Cases in Decade)	(26.5)	(26.1)	(15.4)	(4.8)	(5.6)	(8.8)	(9.7)
Other noneconomic	49	11	102	134	58	43	397
(% of Cases in Decade)	(9.4)	(2.2)	(8.4)	(4.6)	(2.9)	(2.1)	(4.3)
Total Noneconomic	365	268	517	591	318	390	2,449
(% of Cases in Decade)	(70.2)	(53.0)	(42.3)	(20.3)	(16.1)	(19.0)	(26.7)
Total	520	506	1,221	2,912	1,972	2,057	9,188
Row Percentage	(5.7)	(5.5)	(13.3)	(31.7)	(21.5)	(22.4)	(100.0)

NOTES "Debt" includes actions on the case, nonpayment of accounts, and promissory notes. "Property" cases include title, land, trespass, and ejectments. "Other economic" comprises contract, conversion, replevin, probate, and licences. "Church" includes nonattendance and hiring of ministers. Crimes include rape, arson, theft, murder, and petty violations (such as fighting). "County and public" business includes taxes, highway maintenance, appointment of attorneys, and naturalization. "Personal" includes nonviolent sexual offenses (such as bastardy, fornication, and adultery) as well as nonsexual offences (such as slander and defamation). SOURCES Maine court records. The data include all cases brought before the Maine courts of common pleas and the courts of general sessions between 1700 and 1760.

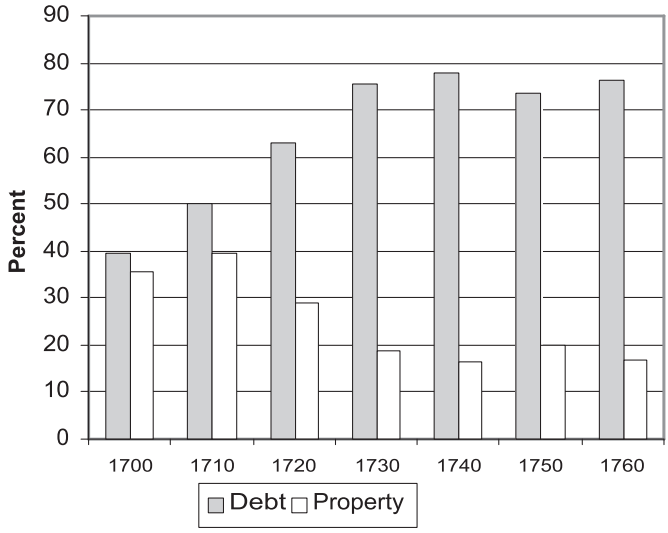
market interaction leads to its decline or demise has considerable relevance.

Second, conventional economic analysis assumes that, independently of time, rational actors respond predictably to incentives and compare costs and benefits in order to maximize net expected benefits subject to external constraints. Many historians regard such models as sterile, lacking the "more textured" temporal contexts that are central to understanding variation in human behavior. If moral economy is indeed prevalent prior to industrialization, effective economic development might need to be integrated with broader cultural or psychological factors. On the other hand, if social behavior displays predictable continuities regardless of time period, a shift of scholarly focus toward such variables as the nature and substitutability of institutional rules and standards in different environments, and their influence on incentives, might be more productive. This seemingly more limited perspective can potentially provide valuable insights about the way in which personal networks can economize on information costs even in sophisticated, modern financial markets.[19]

As the previous section illustrated, the court dockets on the northeastern frontier were dominated from the beginning by commercial disputes. Debt and property cases accounted for 75 percent of all civil law suits in 1700, and this proportion increased to 90 percent in the following decade (Figure 2). A proper understanding of the relationship between civil disputes and economic activity therefore requires a closer analysis of the patterns of litigation in this area. Frontiers are often fraught with conflicts about landed property, either because property rights are uncertain or because settlers view these rights as unequally or arbitrarily distributed. Questions of land tenure, sales, trespass, and other disputes about property indeed formed a substantial part of the court dockets, comprising one-third of all civil cases between 1700 and 1720. Some of the earlier disputes occurred because of the confusion created when residents vacated their land or when records were

19 The World Bank—"Social Capital: The Missing Link?" in *Expanding the Measure of Wealth: Indicators of Environmentally Sustainable Development* (Washington, D.C., 1997)—locates social capital in horizontal associations, civil/political society, social integrations, and legal/governance factors. For an extensive treatment of social capital, see the two-part special issue, entitled "Patterns of Social Capital," *Journal of Interdisciplinary History,* XXIX (1999), 339–782.

Fig. 2 Debt and Property Cases in Maine, 1700–1760



NOTES The figure shows debt and property claims as a percentage of the total cases in that decade. "Debt" includes lawsuits about accounts, promissory notes, actions on the case, and bonds. "Property" includes petitions to partition, ejectments, trespass, conversion, and replevin.
SOURCES Maine court records. The lawsuits comprise total cases filed in all lower courts, and exclude superior courts.

destroyed during the frequent wars with the French and the native Indians. For instance, *Simpson et al. v. Card* (1702) concerned the plaintiff's right to a plot of thirty acres that had belonged to Edward Cox, a relative of the defendant and the occupant of the property until hostile Indians drove him away. Other disputes were the result of deaths and unsettled estates, as when a jury found Elizabeth Littlefield guilty of trespass and had her ejected from the estate of a deceased relative. Littlefield appealed to the Superior Court, which reversed the verdict in her favor at its next sitting in May 1714.[20]

Taylor carefully documented the sometimes violent struggles between squatters ("Liberty Men") and large-scale landowners

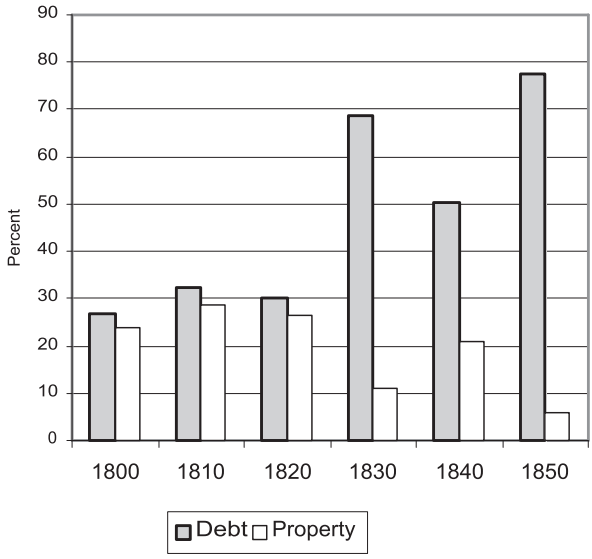
20 Neal W. Allen, Jr. (ed.), *Province and Court Records of Maine* (Portland, Me., 1958), V, li, reports that a number of these cases were due to confusion brought about by property evacuations during periods of war.

("Great Proprietors") in Maine shortly after the Revolution. However, such conflicts appear to have been uncharacteristic of the relationships between entrepreneurs and settlers, being confined to a relatively small inland area for a brief period of time around the turn of the nineteenth century. In any event, violent encounters between the two sides were rare. The litigation records indicate that the more developed regions of York and Cumberland counties experienced few lawsuits about property. In 1800, only 5.6 percent of their 835 cases dealt with property, and in 1850, only 5.7 percent. But even plaintiffs in remote Washington county (on the northern frontier adjacent to Canada) recorded no more than ten property cases out of a sample of 500 lawsuits during the first decade of the nineteenth century, many of them dealing with routine procedural issues, such as a petition to divide a plot of land, rather than genuine conflicts. Notwithstanding the notion that violence may be extralegal and not reflected in the courts, the litigiousness of colonial society does not indicate that ordinary residents were reluctant to take their concerns to courts. Moreover, neither logic nor data confirm that legal costs prohibited plaintiffs from gaining access to the courts. Since court access in this region was inexpensive and democratic, the absence of such disputes—especially those that responded to legal ejectment orders by the formal landowners—from documented court proceedings would be curious.[21]

21 The issue of access is not related to average costs, as some have argued, but to the lower tails of the distribution of cost. Matters involving small sums came before the court in many instances, implying that the economic costs (which include opportunity costs) were lower than these benefits. Because fixed costs were low and the variable costs (such as payments for witnesses) largely within the control of litigants, higher costs were attributable to choices rather than barriers to access. Expenditures on litigation were unrelated to wealth or other characteristics of the litigants; they were instead a function of the particular dispute.

The data indicate that legal costs were significantly lower for debt issues and default judgments, varying positively with the amount at issue. Even the filers of multiple lawsuits occasionally came from extremely humble circumstances, as indicated by occupation and wealth. Multivariate analysis shows that outcomes in these cases were unrelated to wealth. Lawsuits regarding debt contracts were brought by plaintiffs whose decisions were based on expected costs that were close to zero, given (1) the consistently high probability of a plaintiff win and (2) the fact that the burden of litigation costs was usually borne by the loser/debtor. A typical example is the 1804 judgment against Joseph Sandbourn, who was required to pay "the sum of six dollars seventy two cents debt or damage, and four dollars forty two cents for charges of suit . . . being eleven Dollars and fourteen Cents, in the whole" [www.MaineMemory.net, item # 13070]. Contingency fees, another innovation that facilitated court hearings, were condemned in England as "barratry," but judges in America acknowledged their role in affording democratic access to the legal system.

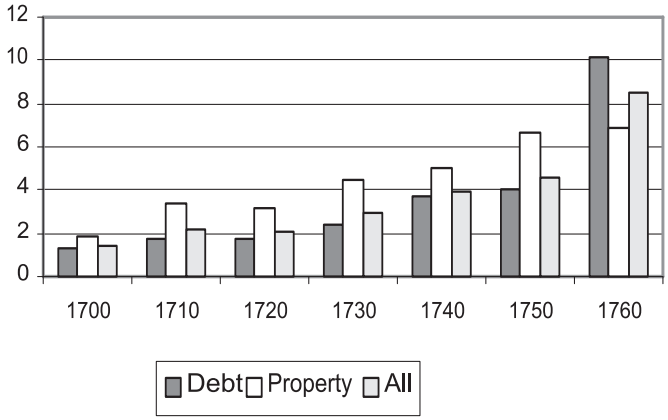
Fig. 3 Litigation in Kennebec County Supreme Judicial Court, 1800–1850



NOTES "Debt" includes lawsuits about accounts, promissory notes, actions on the case, and bonds. "Property" includes petitions to partition, ejectments, trespass, conversion, and replevin.
SOURCES Maine court records. The figure shows debt and property claims as a percentage of the total cases in each decade in the Kennebec Supreme Judicial Court.

Given that Taylor highlights the experience of Kennebec county, a closer examination of its records is in order. Figure 3 presents the distribution of debt and property cases as a fraction of all 10,614 lawsuits brought before the Kennebec Superior Court between 1800 and 1850. These cases may not be representative of the entire population of those involved in disputes, but they are useful for examining the upper tails of the distribution of claim valuations, particularly in light of the notion that Kennebec settlers viewed "[landed] proprietors [as threatening] the foundation of liberty in an egalitarian distribution of property." In one sense, property questions involving multiple lawsuits brought by a single wealthy plaintiff could be construed as "undemocratic." As Figure 4 shows, the average number of property-dispute cases per person during the first half of the eighteenth century was consistently higher than that of any other category. Exceptionally liti-

Fig. 4 Average Number of Cases Filed by Plaintiffs in Maine Courts, 1700–1760



NOTES The lawsuits comprise all of the cases filed in lower courts, and exclude superior court cases.
SOURCES Maine court records.

gious plaintiffs during the eighteenth century included such prominent Maine citizens as William Pepperell, the foremost Kittery merchant of his day, whose wealth derived from a plethora of industries, including lumber, shipping, and real estate. Other plaintiffs—Reuel Williams, for one—acted as agents for 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. Nevertheless, such interlocking interests were not completely 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 forty-four lawsuits were filed against Malachi Edwards (a Wells selectman who was plaintiff in seventy-nine cases), whom he accused of trespass, and against Humphrey Scammon (a wealthy mill owner and lumberman), who was himself involved in forty-two cases as plaintiff. But the majority of cases involved less distinguished participants. The patterns further suggest that the importance of property issues 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.[22]

For some scholars, armed resistance by impoverished laboring squatters against absentee (and, by implication, idle) landowners, however sporadic or atypical, is worthy of more attention than debt collection ever could be. Vickers would disagree; he chose to emphasize the notion that debt was also "an instrument of social power and, as such, often became the focus of deep social tension." It is always possible to find a few extreme examples of "social tension," but larger bodies of evidence would appear to be more representative of the nature and frequency of conflict. Vickers claimed that social tensions were manifested through litigation, but the thousands of legal filings do not support this view. Instead, these data reveal systematic, routinized proceedings to which plaintiffs and defendants all subscribed. The 1713 session of the York Court of Common Pleas in which Elizabeth Alcock and Elizabeth Parker contended that Nathaniel Perkins owed them approximately £10 held little dramatic flourish. Perkins failed to appear to contest the charge, and the courts granted the women recovery of the debt, as well as £1 18*s.* 3*d.* in court costs.[23]

The notion that debt was associated with "tension" or other forms of conflict between plaintiffs and defendants is testable through an examination of default judgments and appeals (Table 2). As in many other colonies in early New England, cash in Maine was in short supply among farmers. The majority of transactions took the form of book credit that debtors ultimately settled with "sundries" or goods in kind. Notes promising repayment of debts on short and long term circulated as negotiable instruments. The frequency of such interactions and the relatively small size of each individual claim created an incentive for large-scale, third-party collection through the courts to economize on transactions costs. Debt collection through the court system was straightforward; the certainty of procedures is inferable from the substantial amount of secondary or tertiary trades in promissory notes.

Other things being equal, defendants who are strongly opposed to their creditors' claims are more likely to appear in court

22 Taylor, *Liberty,* 113.

23 Daniel Vickers, "Competency and Competition: Economic Culture in Early America," *William and Mary Quarterly,* XLVII (1990), 3–29.

Table 2a Characteristics of Litigation—Defaults, 1800 and 1850

	1800		1850	
DEFAULTS (NON-APPEARANCE IN COURT)	NUMBER	%	NUMBER	%
Defendant	687	68.9	620	62.2
Plaintiff	23	2.3	11	1.1
Both parties	80	8.0	270	27.1
Neither party	207	20.8	96	9.6

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

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

Table 2b Characteristics of Litigation—Appeals from Lower-Court Decisions, 1800 and 1850

	1800: YORK AND CUMBERLAND COUNTIES	
Total appeals	167	16.8%
Type of Case		
Debt	138	19.1%
Property	15	34.1%
Breach of promise	10	40.0%

	1850: YORK AND CUMBERLAND COUNTIES	
Total appeals	15	3.0%

SOURCES Maine court records.

to contest them, especially given the court's inclination to award costs to plaintiffs if they do not appear. However, the vast majority of debt cases were never contested by defendants. The large fraction of defaults in 1800 (90.2 percent) had changed little by 1850 (92.4 percent), and the propensity to default did not vary significantly in terms of geographical distance between litigants. The evidence suggests that plaintiffs were using the courts primarily as a third-party enforcement mechanism for financial markets rather than as a forum for genuine conflict. About two-thirds of the legal claims in property cases, however, were contested by defendants. If social norms were effective, relatively straightforward disputes would seldom reach the courts; they would have been resolved at lower cost out of court. Significantly, the percentage of cases in which both parties did not appear increased from 8 percent in 1800 to 27.1 percent in 1850, suggesting that settlements out of court were rising throughout the period of market expansion. Rather than creating more tension or conflicts, economic growth was enhancing the attempt to reach cooperative solutions. These findings from northern New England are similar to those from other frontier areas.[24]

Appeals from lower-court decisions occur when the defendants and/or plaintiffs receive a verdict that diverges from their expectations, other things being equal. The tendency to appeal thus provides another way of gauging whether the parties have differing expectations or conflicts. The evidence accords with the data about defaults, since the likelihood of appeal fell substantially throughout the period under study. In York and Cumberland, 16.8 percent of all decisions in 1800 were appealed to the superior courts, whereas by 1850, only 3 percent of all cases were appealed. The types of issue that drew appeals also support the notion that debt transactions were more "rational" in an economic sense;

24 See Khan, "Commerce and Cooperation: Litigation and Settlement of Civil Disputes on the Australian Frontier, 1860–1900," *Journal of Economic History,* LX (2000), 1088–1119, for an extensive analysis of litigation in the colony of New South Wales. Although disputes per capita fell over time and the proportion of cases settled before trial increased, patterns varied across locations and types of dispute. Economic conflicts regarding debt and contracts were more likely to be settled than personal disputes, which were significantly more likely to be submitted to juries. The fraction of settled cases was significantly lower in frontier areas and in districts without access to transportation and markets. The results suggest that increased market exchange facilitated the development of informal rules and encouraged transactors to find cooperative solutions through private bargaining.

property or emotional charges—for instance, breach of promise—were far more likely to be appealed, holding the net amount at issue constant. These patterns suggest that the earliest years of the colonial period saw little differentiation across legal and religious or moral institutions. Shortly after the turn of the eighteenth century, however, the monitoring and enforcement of social norms devolved to specialized institutions, whereas the legal system, and those who participated in it, exhibited a predominantly commercial market orientation.

COMMUNITY AND MARKETS Social historians of early American society often maintain that development proceeded in two contrasting phases. Their periodization is inexact ("premodern and modern"), and their characterization varied ("precapitalist and capitalist," "neighbors and strangers," and "moral economy and markets"). Their general arguments center on the differences between community and the market and on the timing of a transition from personal interactions, ordered by noneconomic values, toward impersonal transactions involving rational exchange. Clark pointed to a "rural economic morality," based on "reciprocal exchange," that made lawsuits between residents of such neighborly communities rare. Only when long-distance exchange developed did relationships between strangers predominate and lead to legal disputes. Mann also viewed interactions in eighteenth-century Connecticut as predominantly between neighbors in small communities who rarely confronted each other in formal court proceedings. Economic and social development transformed this culture of cooperation into one of anonymous market transactions between strangers who resolved their differences in formal courts. Unlike others in this debate, Mann saw market expansion not so much as destroying communities as changing them: Communities no longer corresponded to towns; law and community began to diverge. Others characterize early colonial society as economically self-sufficient and isolated, with little incentive for legal conflicts between different townships.[25]

25 Some of the contributions to this debate include Michael Merrill, "Cash Is Good to Eat: Self-Sufficiency and Exchange in the Rural Economy of the United States," *Radical History Review,* III (1977), 42–71; Rona Weiss, "The Market and Massachusetts Farmers: A Comment," *Journal of Economic History,* XLIII (1983), 475–480; James Henretta, "Families and Farms: Mentalité in Pre-Industrial America," *William and Mary Quarterly,* XXXV (1978),

These detailed social histories make valuable contributions to our understanding of how the courts were linked to the economy. Nevertheless, evidence from other sources does not always corroborate their conclusions. Heyrman found that the concept of community may have become even more germane, rather than less, when markets expanded in the colonial towns of Marblehead and Gloucester in Massachusetts. She reaches the Weberian conclusion that residents of these fishing villages were able to combine Puritan ethics and commercial capitalism. Moreover, my analysis of some 300,000 cases litigated before the district courts in the nineteenth-century frontier society of New South Wales rejected the hypothesis that markets eroded the social norms of cooperation that supposedly were a feature of small communities. Indeed, the evidence suggested that market expansion created stronger incentives for cooperative behavior (as gauged by settled cases).[26]

Even those who accept that a transition from community to market exchange occurred do not necessarily have a definitive an-

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3–32; Kulikoff, "Transition to Capitalism," 120–144; Christopher Clark, *The Roots of Rural Capitalism, Western Massachusetts, 1780–1860* (Ithaca, 1990). Nelson, "The Eighteenth-Century Background of John Marshall's Constitutional Jurisprudence," *Michigan Law Review,* LXXVI (1978), concludes that "the availability of land, which made territorial quarrels unnecessary, and the lack of a developed transportation and communication network, which made sustained contact difficult, also help account for the infrequency of disputes between communities. Geographically proximate communities were thus able to remain distinct, to pursue their own conception of right, and to avoid intercommunity disputes that legal institutions dependent on local community support would have been incapable of resolving" (893).

26 It is difficult to generalize from these studies. Typically, legal scholars have either avoided quantitative analyses, or they have relied on small samples that permit only statistically insignificant results. For instance, a number of Clark's generalizations in *Roots of Rural Capitalism* are based on information from 21 probate contracts and 174 lawsuits filed in one county court from 1804 to 1809. Mann's analysis in *Neighbours and Strangers,* though unusual in consulting as many as 5,317 civil cases between 1690 and 1760, bases most of its conclusions on extremely small cell sizes: His finding—that "almost 90 percent of all book debt actions filed in Hartford County Court in 1700 were between residents of the same county" and that "in 60 percent of the cases, both debtor and creditor lived in the same town" (17)—derives from a total sample of thirty-two cases. Elsewhere, some percentage distributions are based on totals as small as six (Table 2), nine (Table 3), and fifteen (Table 4). Rothenberg, *From Market-Places to a Market Economy.* Thomas C. Hubka, in a rare study of nineteenth-century Maine—"Farm Family Mutuality: The Mid-Nineteenth Century Maine Farm Neighborhood," in Peter Benes (ed.), *The Farm* (Boston, 1988)—finds that cooperative behavior was entirely consistent with market exchange in farming communities (13–23). Christine Leigh Heyrman, *Commerce and Culture: The Martime Communities of Colonial Massachusetts, 1690–1750* (New York, 1984), uses a wide array of evidence, including probates, tax lists, court cases, genealogical registers, and other historical sources. Weber (ed. Talcott Parsons), *The Protestant Ethic and the Spirit of Capitalism* (London, 1976).

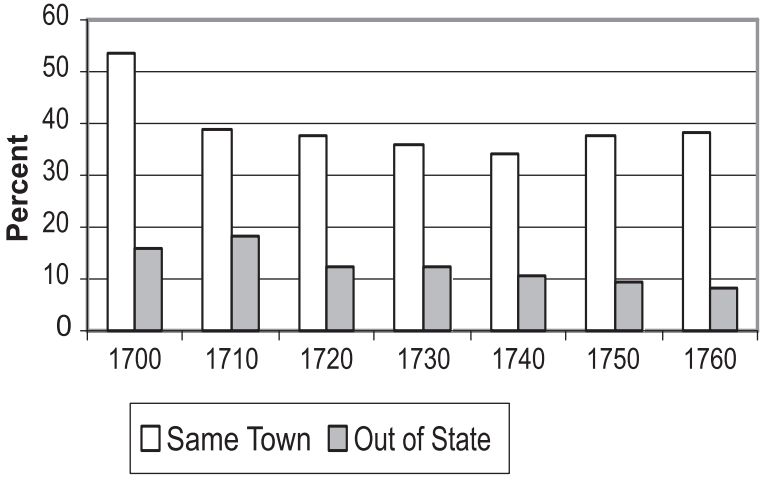
swer to the question of when it occurred. Nelson refers to "the gradual breakdown of ethical unity in Massachusetts over a thirty year period beginning in the 1780s." Clark felt that the period between 1810 and 1830 was particularly important because of an increase in long-distance trade and the relative power of merchants. Rothenberg's work suggested that these estimates are incorrect but, because her study of market integration was truncated due to the lack of available evidence before the second half of the eighteenth century, she could not refute the proposition that the "moral economy" model may have applied to an earlier time. Yet, in the case of colonial New York, research on probate inventories, court records, and other documents did not support the notion of a palpable transition toward a more commercial orientation.[27]

Civil-litigation records can be useful in assessing a number of these long-standing debates about gradual changes in America's market orientation. Discourse about the nature of transitional communities would benefit from testable hypotheses subjected to falsification with a sufficiently extensive dataset. The finding that the caseload before lower courts shifted toward economic issues is inconclusive, since it might simply reflect changes in jurisdiction or administrative procedures. Accordingly, the implicit historical model will be submitted to three further tests that relate to geographical distance, urbanization, and social distance: (1) Did the geographical scope of transactions (as revealed in lawsuits) correspond to the geographical limits of litigants' home towns, and did economic development expand the boundaries of their commercial activities? (2) How did levels of urbanization affect patterns of activity? (3) Do the patterns yield insights into the impact of markets on socioeconomic stratification?

Figure 5 shows the percentage of plaintiffs and defendants who were residents of the same town and therefore participants in what Clark calls "local exchange." If we define community relations by this term, the patterns of court filings suggest that this era had ended by the beginning of the eighteenth century. For the rest of the period through 1760, the majority of cases involved transactions between residents of different towns. Figure 6 suggests that this pattern did not change in the nineteenth century; the percent-

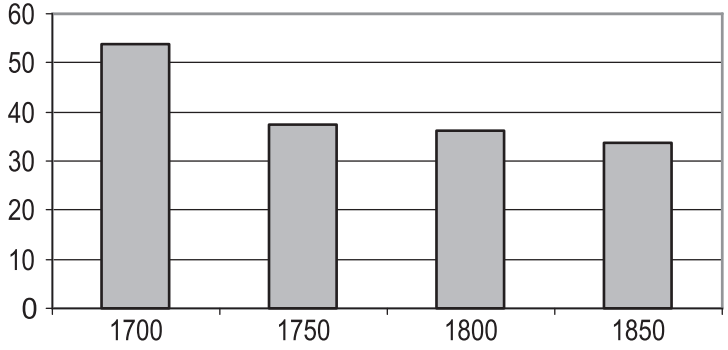
27 Nelson, *Americanization of the Common Law,* 117; Deborah A. Rosen, *Courts and Commerce: Gender, Law and the Market Economy in Colonial New York* (Columbus, 1997).

Fig. 5 Geographical Distance between Plaintiffs and Defendants, 1700–1760



NOTES The figures indicate the percentage of plaintiffs and defendants who lived in the same town when the lawsuit was filed. The count excludes cases for which no information about residence was available. The residence of litigants from Massachusetts was entered as out of state.
SOURCES Main court records.

Fig. 6 Percentage of Litigants from the Same Town, 1700–1850



NOTES The figures indicate the percentage of plaintiffs and defendants who lived in the same town when the lawsuit was filed. The count excludes cases in which no information about residence was available. The residence of litigants from Massachusetts was entered as out of state regardless of time period. Additional information about residence derived from the manuscript censuses of 1800 and 1850.
SOURCES Maine court records.

age of plaintiffs and defendants who were living in the same town remained the same throughout the antebellum period. Roughly two-thirds of all cases filed in York and Cumberland between 1750 and 1850 involved plaintiffs and defendants from different towns. Similarly, economic development did not imply a polarization between urban areas and smaller towns. Maine was never fully urbanized, but in 1850, Bath, Bangor, and Portland were certainly more developed than the small farming and fishing villages that were characteristic of the New England region. Only 15.4 percent of cases were filed by plaintiffs and defendants who both lived in a town with more than 5,000 residents. Both urban and rural litigants were involved in 27.5 percent of all cases (for instance, as a rural plaintiff bringing a claim against an urban resident), again suggesting that transactions were widespread and not localized in urban settings.

The time series for out-of-state residence in Figure 4 further underlines the danger of unquestioning dependence on contrasts between "intratown" and "intertown" relationships to confirm transition. In frontier societies, trade with distant areas may actually be higher during the earlier years when the domestic economy is relatively undeveloped. Many of the initial enterprises in colonial Maine were funded by absentee capitalists from Canada, Boston, New Hampshire, Rhode Island, and New York. As local entrepreneurship and income grew, the relative importance of "long distance exchange" declined, not increased. In such frontier regions as Washington County, where economic development was still minimal early in the nineteenth century and links with neighboring Canada were strong, out-of-state transactions were prevalent, accounting for 28.2 percent of the 6,519 case filings during the antebellum period.

The distribution of shareholders in Maine corporations by state of residence also reflects, and confirms, these patterns from the litigation data. Out-of-state residents did not figure prominently in the funding of transportation infrastructure, in which spillover benefits to local communities suggest greater incentives for local funding, nor in insurance markets, which depended on localized information to price risk. However, the rapid expansion of manufacturing corporations that began in the 1830s and 1840s was primarily driven by out-of-state investors. The more than one-half (54.1 percent) of shareholders in manufacturing enter-

prises who resided outside of Maine provided almost 80 percent of the corporate capitalization of the 1840s. Following the litigation patterns, this proportion decreased over time.[28]

An assessment of the occupational groups to which plaintiffs and defendants belonged lends a different perspective on the relationship between courts, communities, and markets. Some historians have proposed that personal ties are an important factor in communities and that market exchange or economic growth weakens them. If so, a significant proportion of early transactors were likely to have been linked, if not by location, by occupation, and such links were likely to have weakened over time. Another long-standing scholarly issue is the effect of economic growth on inequality and the polarization of social groups. Clark contends that market expansion in the antebellum period meant that "the relative power of local merchants and shopkeepers . . . was enhanced." Moreover, some studies raised the possibility that legal institutions were biased, reflecting the interests of elites. The occupational groupings can help to address these matters, especially since occupation had a strong correlation with wealth. For example, a finding that economic development was associated with an increase in the fraction of (on average, richer) merchant or professional plaintiffs who filed successful claims against (generally poorer) workers and fishermen would support the idea of social polarization.[29]

As stated earlier, York and Cumberland Counties experienced a marked expansion in the level and diversity of economic activities between 1820 and 1860. Table 3 examines the occupational distributions of plaintiffs and defendants before and during this period. The data do not indicate that economic growth conferred more power on merchants. Merchants likely accounted for a disproportionate share of plaintiffs, relative to their share in the population, but even when such professionals as physicians and "gentlemen" are taken into consideration, the majority of plaintiffs were from less privileged occupations. Nor does the available evidence confirm the argument that debtors and creditors had strong personal ties that eroded over time. Table 4 shows that a minimal, and unchanging, 6 percent of plaintiffs and defendants

28 Stephen B. Carlson, "A Quantitative Analysis of Capital Market Development in Antebellum Maine," A.B. honors thesis (Bowdoin College, 2007).

29 Clark, *Roots of Rural Capitalism,* 16.

Table 3 Occupational Distribution of Plaintiffs and Defendants, York and Cumberland Lower Courts, 1800 and 1850

	1800		1850	
	NUMBER	PERCENTAGE	NUMBER	PERCENTAGE
Plaintiff's occupation				
Artisan	83	9.7	102	11.3
Farmer	224	26.1	169	18.7
Gentleman	68	7.9	17	1.9
Laborer	30	3.5	40	4.4
Legal	92	10.7	98	10.9
Professional	14	1.6	56	6.2
Merchant/manufacturer	326	37.0	344	38.1
Woman	31	3.6	41	4.5
Other	—	—	36	4.0
Total	860	100	903	100
Defendant's occupation				
Artisan	114	13.4	136	15.9
Farmer	429	50.6	253	29.5
Gentleman	59	7.0	29	3.4
Laborer	58	6.8	141	16.4
Legal	23	2.7	19	2.2
Professional	18	2.1	51	5.9
Merchant/manufacturer	138	16.3	197	23.0
Woman	9	1.1	6	0.7
Other	—	—	10	1.1
Total	848	100	858	100

SOURCES Maine court records. These data were linked to manuscript censuses.

were positioned in a way that might suggest close ties—sharing the same job and location. Throughout the entire period under analysis, more than half of the plaintiffs and defendants, however, were from different jobs *and* lived in different towns. This is not to say that merchants from other towns were prevailing against hapless farmers or that traders were doing business only with other traders. The scenario that emerges is far more optimistic—a democratic process in which a diverse mix of individuals engaged in market activity without sacrificing their sense of community or cooperative relationships.

Many of the cases were brought by several plaintiffs from different backgrounds and towns filing as party to a single suit. In

Table 4a Occupational Proximity of Plaintiffs and Defendants, York and Cumberland Lower Courts, 1800 and 1850

PLAINTIFF'S OCCUPATION	1800 DEFENDANT WITH SAME OCCUPATION (%)	1850 DEFENDANT WITH SAME OCCUPATION (%)
Artisan	27.7	23.3
Farmer	53.0	36.6
Gentleman	7.8	0.0
Laborer	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

Table 4b Occupational and Geographical Proximity of Plaintiffs and Defendants, York and Cumberland Lower Courts, 1800 and 1850

	1800 RESIDENCE		1850 RESIDENCE	
	SAME	DIFFERENT	SAME	DIFFERENT
Same occupation	6.2% (51)	18.6% (154)	6.4% (51)	27.4% (220)
Different occupation	19.4% (160)	55.9% (462)	14.1% (113)	52.2% (419)
Total number	827		803	

SOURCES Maine court records. These data were linked to manuscript censuses.

1849, Frederick Sweetser, a young Boston merchant, joined with Samuel Gookin, a fifty-nine-year-old tailor from New Hampshire, to bring a claim for unpaid debts against Stephen True of North Yarmouth, Maine. In other cases, multiple creditors (unrelated by name, occupation, or location) brought individual suits simultaneously against the same defendant, implying that they had coordinated to avoid racing to be the first claimant. The records also reveal instances of a single plaintiff suing multiple defendants from different backgrounds and economic circumstances. The lack of class identification is hardly surprising, given a context in

which the same person followed several different status pursuits simultaneously or described himself in the legal records as a fisherman one year and a "gentleman" the next. Moreover, rapid economic development might well have created incentives for risk sharing among individuals who belonged to different occupational classes.

Insights into the evolution of institutions over the long term contribute to our understanding of the sources of socioeconomic growth. From 1700 through 1860, the district of Maine progressed from being a dangerous war-torn frontier of Massachusetts to a state in its own right. Maine refined its expertise in shipbuilding, lumbering, and fishing to become a diversified producer of such manufactured goods as textiles, boots, and shoes. Its position on the frontier offers a valuable opportunity to isolate factors that might be conflated in more urbanized and industrialized regions, especially since its institutions were initially identical to those of Massachusetts and much of New England.

Courts in Maine were reasonably democratic institutions to which everyone had ready access, regardless of income or location. Fees and administrative costs were low, and cases were processed and decided quickly by judges who traveled between the courts in their district to hold sessions several times during the year. Because these courts were a central part of the region's economic system, examination of their records can offer insights into the nature of markets and marketplaces during an era that left few other systematic data sources. Although lawsuits are not a random draw from the population of all transactions, the fact that the degree of bias is unfavorable to the idea that commercial activities do not erode community values strengthens the findings of this investigation. Moreover, confidence in the results is bolstered because the patterns revealed herein are consistent with other data, such as corporate shareholding and changes in capital markets over time.

Scholars who propose dichotomies between impersonal institutions based on market exchange and communities woven together with extensive social norms that order individual interactions underestimate the extent to which norms of cooperation are inherent in the rational behavior of individuals and by the increase in benefits that the coordination of activities can inculcate as markets expand. The large number of debt cases that were filed in the

first half of the eighteenth century points to the early development of a financial market that varied with overall economic activity. The scale and scope of this early market in a relatively remote frontier conspire to cast suspicion on the claim that other regions in America were insulated from "capitalist exchange" until the end of the eighteenth century. Because Puritan immigrants to the New World were already inured to the discipline of the market, the lack of support that the litigation data offer to the notion of a transition from a premarket era to impersonal confrontational exchanges in the marketplace does not comes as a surprise. Legal institutions had abandoned their pervasive supervision of social interactions by the beginning of the 1700s.

Effective market exchange is based on well-defined property rights and long-term contractual relationships that encourage large-scale investments. Accordingly, when economic expansion began, courts began to specialize in commercial activities. Far from eroding community bonds, the development of the market economy enhanced cooperation, individual responsibility, and rational choice in both the social and commercial spheres. The economic progress of the nineteenth century was built on these institutional foundations; as Smith pointed out, "commerce and manufactures can seldom flourish long in any state which does not enjoy a regular administration of justice, . . . 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."[30]

30 Smith, *Inquiry,* 910.