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When Good Little Debts Went Bad: Civil Litigation on the Virginia Frontier, 1745–1755

The lived experience of debt litigation remains one of colonial Virginia's great mysteries. Two generations ago, historians identified debt's vital role in the trans-Atlantic economy, and later scholars, most notably Breen, scrutinized the culture of debt. Subsequent investigators, however, never explained how debt worked at the local level. Consequently, a poorly grounded assumption persists that most courts ineffectually enforced credit contracts. Ample evidence to the contrary survives in Virginia county court records, but after earlier scholars completed major quantitative studies of Chesapeake labor and political institutions, numerous questions about local and regional credit networks remained unaddressed.[1]

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1 Aubrey C. Land, "Economic Base and Social Structure: The Northern Chesapeake in the Eighteenth Century," *Journal of Economic History*, XXV (1965), 639–654; *idem*, "Economic Behavior in a Planting Society: The Eighteenth-Century Chesapeake," *Journal of Southern History*, XXXIII (1967), 469–485; Jacob M. Price, "The Last Phase of the Virginia-London Consignment Trade: James Buchanan and Co., 1758–1768," *William and Mary Quarterly*, XLIII (1986), 64–98; Richard B. Sheridan, "British Credit Crisis of 1772 and the American Colonies," *Journal of*

One important but overlooked topic is the litigation of small debts. This study analyzes a decade's worth of data from almost 1,400 legal cases in mid-eighteenth Augusta County, Virginia, a sprawling frontier county lying west of the Blue Ridge but well connected to merchants and creditors far beyond its borders. Using a multinomial logit model to identify factors favoring one party or the other in small debt suits, we demonstrate that even in southern backcountry settlements, creditors could depend on courts to protect their financial interests. As Khan found in Maine, we find that orderly legal institutions existed at an earlier time than previous historians have reported for Virginia. From Augusta County's mid-eighteenth-century inception, its court vigorously enforced credit contracts.[2]

HISTORICAL CONTEXT According to a 1748 description, Augusta County's first courthouse inspired little confidence in a rule of law. The ramshackle log building was located in an unnamed hamlet that eventually became the modern town of Staunton, Virginia. The structure was 38 feet long and 18 feet wide, with "some of the Cracks between the Loggs quite open four or five Inches wide and four or five foot Long." The building was dark as

Economic History, XX (1960), 161–186; James H. Soltow, "Scottish Traders in Virginia, 1750–1775," *Economic History Review*, XII (1959), 83–98; Timothy H. Breen, *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of Revolution* (Princeton, 1985); A. Gregg Roeber, *Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture, 1680–1810* (Chapel Hill, 1981), 40; Terri L. Snyder, "Legal History of the Colonial South: Assessment and Suggestions," *William and Mary Quarterly*, L (1993), 18, 20, 26; James A. Henretta and James D. Rice, "Law as Litigation: An Agenda for Research," *ibid.*, 179–180. For unsympathetic or ineffectual courts, see George Lewis Chumbley, *Colonial Justice in Virginia: The Development of a Judicial System, Typical Laws and Cases of the Period* (Richmond, 1938), 144–145; Robert Polk Thomson, "The Merchant in Virginia, 1700–1775," Ph.D. diss. (Univ. of Wisconsin, 1955); Sheridan, "British Credit Crisis of 1772," 184–185; Roeber, *Faithful Magistrates and Republican Lawyers*, 130–132; Richard R. Beeman, *The Evolution of the Southern Backcountry: A Case Study of Lunenburg County, Virginia, 1746–1832* (Philadelphia, 1984), 43–44, 83. For a rare depiction of reliable pro-contract judgments in county courts of the Virginia hinterland, see Michael L. Nicholls, "Competition, Credit and Crisis: Merchant-Planter Relations in Southside Virginia," in Rosemary E. Ommer (ed.), *Merchant Credit and Labour Strategies in Historical Perspective* (Fredericton, New Brunswick, 1990), 273–289.

2 Robert D. Mitchell, *Commercialism and Frontier: Perspectives on the Early Shenandoah Valley* (Charlottesville, 1977); McCleskey and James C. Squire, "Pennsylvania Credit in the Virginia Backcountry, 1746–1755," *Pennsylvania History*, LXXXI (2014), 207–225; B. Zorina Khan, "'Justice of the Marketplace': Legal Disputes and Economic Activity on America's Northeastern Frontier, 1700–1860," *Journal of Interdisciplinary History*, XXXIX (2008), 1–35.

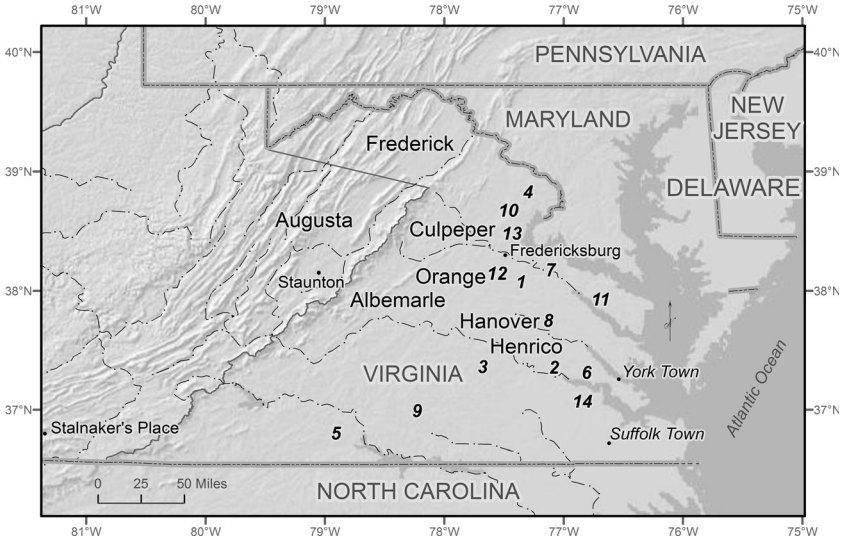
well as drafty, including only "two Small holes cut for Windows but no glass nor Shutters to them." Given the absence of any mention of flooring, persons inside the courthouse probably stood on packed dirt. In any case, the interior was so rough that a panel of grand jurors thought it "not . . . fitting for his Majesties Judicature to Sit." Yet sit there the magistrates had done routinely since the first Augusta County court session in December 1745. Devoid of richer material surroundings that visually reinforced court authority in eastern Virginia's older counties, could such a crude setting sustain the administration of justice on a distant margin of settlement? Arguably not: Violent frontier insurrections in South Carolina and North Carolina during the 1760s were blamed by contemporaries and historians alike on ineffective courts. Nonetheless, Augusta County enjoyed an effective rule of law.[3]

The original Augusta County's borders embraced most of Virginia's territorial claims west of the Blue Ridge, stretching more than 200 miles from the Shenandoah Valley in the vicinity of Massanutten Mountain south by southwest past the New River valley (Figure 1). By the spring of 1755, Virginia officials estimated that more than 9,000 people lived there. Court records for these settlers are in relatively good shape, given the documents' age. The county clerk's minute books are available; they comprise terse notes taken during each day's court proceedings. Many judgment files also survive; they include documents presented by the litigants as well as generated by court officials. After court sessions, the clerk consulted minutes and judgment files to compile official handwritten records of proceedings, known as court order books, which are also still extant. Such extensive and rich sources are rare for the period under study, especially the judgment files.[4]

3 Grand jury presentment of courthouse, 21 May 21, 1748, Augusta County Order Book 2:34 (microfilm), Library of Virginia, Richmond (hereinafter Augusta OB); *ibid.* 1:1; Carl Lounsbury, *The Courthouses of Early Virginia: An Architectural History* (Charlottesville, 2005), 84–165; Rachel N. Klein, *Unification of a Slave State: The Rise of the Planter Class in the South Carolina Backcountry, 1760–1808* (Chapel Hill, 1990), 50–51; James P. Whittenburg, "Planters, Merchants, and Lawyers: Social Change and the Origins of the North Carolina Regulation," *William and Mary Quarterly*, XXXIV (1977), 226–238. Richard Lyman Bushman's observation that North Carolina Regulators resented bad court officers, not courts, is a key distinction. See Bushman, "Farmers in Court: Orange County, North Carolina, 1750–1776," in Christopher L. Tomlins and Bruce H. Mann (eds.), *The Many Legalities of Early America* (Chapel Hill, 2001), 410.

4 A report by Governor Robert Dinwiddie based on data of June 10, 1755, listed 2,273 white and 40 black tithables (taxable persons) in Augusta County. Dinwiddie estimated the total white population in Virginia to be four times the white tithables and the total black population to be

Fig. 1 Non-Resident Litigants in Augusta County, Virginia, 1746–1755



NOTES Counties with ten or more plaintiffs are named; locales with fewer than ten plaintiffs are in italics. Key to counties with fewer than 10 plaintiffs: 1 Caroline County; 2 Charles City County; 3 Chesterfield County; 4 Fairfax County; 5 Halifax County; 6 James City County; 7 King George County; 8 King William County; 9 Lunenburg County; 10 Prince William County; 11 Richmond County; 12 Spotsylvania County; 13 Stafford County; 14 Surry County.
GEOSPATIAL SOURCES State boundaries: Minnesota Population Center, National Historical Geographic Information System, Minneapolis, University of Minnesota, 2004, available online at http://www.nhgis.org. Shaded relief: World Shaded Relief: Copyright © 2009, Environmental Systems Research Institute (ESRI), available at http://goto.arcgisonline.com/maps/World_Shaded_Relief. Rivers: National Atlas of the United States of America, Reston, Va., U.S. Geological Survey, available at http://nationalatlas.gov/atlasftp-na.html. Augusta and York County boundaries: DenBoer, Gordon, and Peggy Tuck Sinko, Virginia Historical Counties Data Set; Laura Rico-Beck, digital comp. (ed. John H. Long), Atlas of Historical County Boundaries, The Newberry Library, Chicago, 2010, available at http://www.newberry.org/ahcbp. Cartography by Dr. James W. Wilson, Mossy Creek Enterprises.

twice the black tithables. Using Dinwiddie's calculation, Augusta County at the end of the study period held 9,092 whites and 80 blacks for a total population of 9,172. See Dinwiddie (ed. R. A. Brock), *The Official Records of Robert Dinwiddie, Lieutenant-Governor of the Colony of Virginia, 1751–1758* (Richmond, 1884), II, 352–353. For Augusta County's creation as an early county west of the Blue Ridge, see Mitchell, *Commercialism and Frontier*, 9–11. Microfilm copies of Augusta County minute books and order books are available on interlibrary loan from the Library of Virginia, Richmond. Judgment files in the office of the clerk of Augusta County Circuit Court, Staunton, Va., are cited hereinafter as Judgments, Augusta CCC. For Orange County and Sussex County judgment files, see http://www.lva.virginia.gov/public/local/results_all.asp?CountyID=VA205 and http://www.lva.virginia.gov/public/local/results_all.asp?CountyID=VA269 (accessed August 19, 2014).

From this extensive record we have drawn data concerning 1,376 petitions to recover small debts. By Virginia law, suits via petition offered plaintiffs a procedurally simple way to recover overdue debts of 25 shillings to 5 pounds (100 shillings). Such debts were the local equivalent of approximately ten to forty days' wages for laboring men. Aggrieved creditors suing via petition could scrawl a terse note to the county clerk asking that defendants be summoned to court, where petitions were tried before magistrates only, never with a jury. Suits to recover overdue credit in excess of 5 pounds could be tried before a jury, but petitions never were.[5]

The petitions analyzed herein comprise all small-claims suits from the court's inception in December 1745 through the May 1755 session. Shortly after the latter date, the violent local onset of the Seven Years' War (also called the French and Indian War) triggered massive flight from Augusta County. We thus analyze only small debts litigated during a decade of peace.[6]

The first petition to recover a small debt in Augusta County was presented on February 11, 1745/6, when Michael Wood sued Cornelius Murley to recover 30 shillings in overdue credit. The case was tried before a panel of five magistrates. Wood's attorney delivered the plaintiff's evidence, and defendant Murley pleaded in person that he owed nothing. The magistrates immediately found for Wood and moved to the next suit. Although Wood employed a lawyer to represent him, the procedures for suits by petition were sufficiently straightforward to permit ordinary men and women to represent themselves successfully as both plaintiffs and defendants. Litigants choosing to employ an attorney in an action by petition paid a fixed fee that was half the fifteen-shilling fee permitted to lawyers suing upon a formal writ.[7]

5 A 1749 account evaluated days of raising logs, hauling logs, and mowing at 2 shillings 6 pence per day; reaping was valued at 2 shillings 3 pence per day. Petitioner's account, *John Philips v. Valentine Sevier*, March 1750 Judgments, Augusta CCC. All monetary units in this article are in Virginia currency unless otherwise noted—12 pence to the shilling and 20 shillings to the pound. "An Act to amend the Laws now in force, for the more speedy and easy recovery of small Debts," August 1734, in William Waller Hening (ed.), *The Statutes at Large; Being a Collection of All the Laws of Virginia . . .* (Richmond, 1820), IV, 426–427. "An Act for establishing county courts, and for regulating and settling the proceedings therein," Oct. 1748, *ibid.* (1819), V, 498–499.

6 Augusta OB 1:1–4, 462. For disruptions of frontier communities after hostilities began, see Matthew C. Ward, *Breaking the Backcountry: The Seven Years' War in Virginia and Pennsylvania, 1754–1765* (Pittsburgh, 2003).

7 Augusta OB 1:9. After Britain converted to the Gregorian calendar in September 1752, the new year began on January 1 rather than March 25. Until that date, years were written with both

Despite the relatively small size of contested debts in petitions, the action represented an important component of legal support for financial contracts. Historiographically, the subject of small debts is barely charted. Historians long have assumed that a web of accounts bound together creditors and debtors in the illiquid colonial American economy, but few scholars have undertaken rigorous statistical analyses of any American debt litigation during the rule of English common law. Nor have historians closely scrutinized the role of petitions to recover small debts in colonial Virginia.[8]

The omission is significant, in part because such petitions, even though they dealt only with small claims, were a plurality (38.8 percent) of credit-default suits in Augusta County's initial decade. From Augusta County's inception in late 1745 through the May 1755 court, plaintiffs initiated 1,376 petitions to recover small debts, 1,144 suits via a writ of debt to recover debts over £5 secured by written instruments, 541 suits via a writ of trespass on the case to recover book debts, and 483 suits via a writ of attachment to forestall debtors from absconding—a total of 3,544 suits concerning unpaid debts. Additionally, the rapid resolution of small claims reflected a brisk, business-like approach that was overlooked in earlier scholarship about the culture of debt. Virginia statute directed county courts to "instantly proceed to hear and determine the cause in a summary way . . . according to the very right of the cause . . . without regard to form, or want of form." Augusta County magistrates complied with alacrity: A majority of petitions (64 percent) were resolved in one court session, and another 22 percent were

the old and new styles of annual reckoning between January 1 and March 24. For a successful plaintiff representing herself, see Augusta OB 3:321; for a successful defendant representing herself, *ibid*., 4:122. "An Act, to prevent Lawyers exacting or receiving exorbitant fees," May 1742, Hening (ed.), *Statutes at Large*, V, 181; "An Act for continuing an act, intituled, An Act for regulating the practice of attornies," November 1753, *ibid*. (1819), VI, 372.

8 For the web of debt, see Land, "Economic Behavior in a Planting Society," 479; Darrett B. Rutman and Anita H. Rutman, *A Place in Time: Middlesex County, Virginia, 1650–1750* (New York, 1984), 205–211; Breen, *Tobacco Culture*. Exceptional quantitative studies for other colonies include Mann, *Neighbors and Strangers: Law and Community in Early Connecticut* (Chapel Hill, 1987); William M. Offutt, Jr., *Of 'Good Laws' and 'Good Men': Law and Society in the Delaware Valley, 1680–1710* (Urbana, 1995); Claire Priest, "Colonial Courts and Secured Credit: Early American Commercial Litigation and Shays' Rebellion," *Yale Law Journal*, CVIII (1998/99), 2413–2450; Khan, "'Justice of the Marketplace,'" 1–35. Roeber's description of credit litigation in colonial Virginia erroneously conflates the distinctive procedures of suits to recover small debts by petition and suits to enforce interest-bearing obligations via a writ of debt (*Faithful Magistrates and Republican Lawyers*, 83–84).

Table 1 Number of Court Sessions Needed to Resolve Petitions

# OF COURT SESSIONS USED	NUMBER	% OF ALL PETITIONS (N = 1,376)	CUMULATIVE % OF ALL PETITIONS
1	884	64.24	64.24
2	296	21.51	85.76
3	100	7.27	93.02
4	59	4.29	97.31
5	18	1.31	98.62
6	9	0.65	99.27
7	3	0.22	99.49
8	2	0.15	99.64
9	1	0.07	99.71
10	3	0.22	99.93
11	1	0.07	100.00
Total	1,376	100.00	

NOTES Mean number of court sessions is 1.63; standard deviation of court sessions is 1.15.

resolved in just two sessions. On average, petitions were concluded between one and two court sessions (Table 1).[9]

Beyond their procedural simplicity and speedy resolution, petitions offer a unique panoramic overview of how frontier creditors and debtors employed different types of credit instruments. Creditors filed petitions to recover all types of small debts, ranging in complexity from open-ended accounts that had accumulated for years to fixed sums secured by formal bonds committing debtors to repayment on a certain date. By contrast, under English common law, plaintiffs suing to recover larger debts selected a type of writ, and hence a particular legal strategy, according to the type of instrument that recorded the debtor's obligation. Repayments of overdue store or artisan accounts too large to recover by petition thus were sought via writs of trespass on the case, while large interest-bearing obligations were recovered by suits on a writ of debt. By circumventing procedurally complex common-law writs, suits on petition strengthened financial contracts in societies undergoing rapid economic growth with uncertain physical security and only a distant central-government authority.[10]

9 Augusta OB 1:1–4:462; Hening (ed.), *Statutes at Large*, V, 499.

10 For trespass on case, see William Blackstone, *Commentaries on the Laws of England* (Oxford, 1758; facsimile ed. Chicago, 1979), III, 122–123; for debt, *ibid.*, 153–155. For cultural implications of the writs employed in debt collection, see David Thomas Konig, "A Summary View of the Law of British America," *William and Mary Quarterly*, L (1993), 43–44.

MODEL Our investigation of eighteenth-century small-claims lawsuits employs data from original court records in Augusta County. We gathered information about suits by petition from three sources—the official versions of each day's court proceedings, known as order books; the more informal minute books that included the county clerk of court's contemporary record of judgments; and judgment files. The judgment files are comprised of memos from plaintiffs to county clerks, various types of promissory notes, copies of accounts, orders to the sheriff to summon defendants and witnesses, and the brief handwritten or printed forms that were official copies of the plaintiff's petition. Court orders and minute books are available in microfilm copies at the Library of Virginia. The contents of the judgment files, many of which are in fragile condition, have not been photographed. Our data include 1,376 petitions to recover debts of 25 shillings to 5 pounds from the court's inception in December 1745 through the May 1755 session.[11]

This analysis searches for patterns in how small-claims suits were resolved in eighteenth-century Augusta County. Toward that end, the dependent variable in our calculations is the outcome of petitions to recover small debts. In the absence of other relevant quantitative studies of small-claims suits, we derived a list of possible explanatory variables in an old-fashioned way—by discussing if, how, and why each variable for which we had data could influence the outcome of a petition. As we indicate more fully below, our explanatory variables include information derived directly from cases as well as information about the parties collected separately from such contemporary records as Augusta County deed books, will books, militia records, and church records.[12]

Since "outcomes of petitions," the dependent variable, can be categorized into three types—judgments for plaintiffs, judgments

11 The authors are deeply indebted to John B. Davis, clerk of Augusta County Circuit Court, for permission to examine the judgment files. For a copy of the data, contact McCleskey or Sen via the email addresses on their Virginia Military Institute web page.

12 Microfilm copies of Augusta County deed and will books are available on interlibrary loan from the Library of Virginia via http://www.lva.virginia.gov/public/local/results_all.asp?CountyID=VA017 (accessed May 11, 2014). For baptismal records from 1740 to 1749, see Howard McKnight Wilson, *The Tinkling Spring: Headwater of Freedom* (Fishersville, Va., 1954), 470–484. Major documentary collections including relevant information about Augusta County inhabitants during this period include the Preston Family Papers, 1727–1896, Virginia Historical Society, and the William Preston Papers (Series QQ) and the Virginia Papers (Series ZZ) in the Lyman Copeland Draper Manuscripts, Wisconsin Historical Society, Madison (hereinafter Draper MSS).

for defendants, and suits resolved without judgment—we set categorical variables accordingly. Plaintiffs won judgments in 56.2 percent of cases and only 4.7 percent of suits ended with judgments for defendants. Cases resolved without judgment (39.2 percent) most commonly were dismissed after the parties negotiated a resolution outside court (Table 2).

Our explanatory variables fall into three categories—debts, litigant identities, and legal procedures. Debts were recorded with a variety of instruments, each possessing unique legal as well as economic attributes. Litigants possessed complex identities, from which we could systematically analyze place of residence, economic wealth, and social rank as manifested by official authority and gentry status. Finally, relevant procedural aspects of small-claims litigation included how many court sessions were required to resolve the case and which senior magistrate presided over the case when it was completed.

DEBTS When plaintiffs initiated suits, the county clerk almost always recorded the debt instrument on the petition. In a majority of cases, the clerk also identified instruments in his court-order book. Hence, instruments for a large majority of petitions (85.9 percent) can be identified. We hypothesized that the form of debt instrument influenced the outcome of cases, and we included the various kinds of debt instrument as an explanatory variable in the analysis. Most of the instruments in the study were penal bills, promissory notes, or accounts. We aggregate a few remaining miscellaneous types of debts as "Other" and assign a separate variable to suits for which an instrument was not found (Table 3).

We categorize debt instruments according to how credible were the commitments to repay. Punishments for not fulfilling a commitment came in two forms—one monetary and the other measured in reputation. Monetary penalties—in this case, interest charged on overdue sums—credibly deterred default by increasing the present value of future punishment. By contrast, contracts that depended solely on reputation effects to deter default possessed a credible deterrent only if the parties had a stake in future interactions. According to game theory's Folk Theorem, creditors and debtors can maximize gains in loan markets when they are patient enough to avoid future punishment by repeatedly fulfilling their obligations. Thus, contracts that lack either punishment

Table 2 Outcomes of Petitions to Recover Small Debts

OUTCOME (N = 1,376)	NUMBER	% OF N
Judgment for plaintiff		
Defendant defaulted (defendant was summoned but failed to appear)	686	49.85
Defendant and plaintiff appeared for trial, judgment for plaintiff	80	5.81
Defendant confessed judgment (appeared, acknowledged debt was just and unpaid)	7	0.51
Subtotal	773	56.18
Resolved without judgment		
Suit dismissed by plaintiff		
Parties agreed	222	16.13
Dismissed on plaintiff motion because sheriff did not summon defendant	175	12.72
Dismissed on plaintiff motion, no reason recorded	28	2.03
Parties agreed, defendant to pay court costs	16	1.16
Defendant not found by process server	10	0.73
Process served on wrong person, plaintiff did not renew suit	8	0.85
Parties agreed, plaintiff to pay court costs	1	0.07
Suit dismissed by court		
Neither party appearing	55	4.00
Abated by death of defendant, plaintiff did not renew suit against executor/administrator	15	1.09
Abated by death of plaintiff, plaintiff's executor/administrator did not renew suit	5	0.36
Resolved by court-sanctioned arbitration	2	0.15
Abated by defendant's marriage, plaintiff did not renew suit against defendant and her husband	1	0.07
Subtotal	538	39.2
Judgment for defendant		
Defendant and plaintiff appeared for trial, judgment for defendant	37	2.69
Non-suit (plaintiff withdrew or made procedural error)	19	1.38
Dismissed because plaintiff's suit was for less than 25 shillings	9	0.65
Subtotal	65	4.72
Total	1,376	100.00

Table 3 Instruments

INSTRUMENT (N = 1,376)	NUMBER	PERCENTAGE OF N
Penal bill (interest-bearing)	103	7.5
Promissory note	624	45.3
Account	413	30.0
Other		
Court judgment	10	
Order	10	
Wages	16	
Assumpsit	3	
Detinue	3	
Subtotal	42	3.1
Unknown	194	14.1
Total	1,376	99.99[a]

[a]Rounding

NOTE The instruments penal bill, promissory note, and account are arranged above in descending order of credibility to repay, as are the instruments listed under "other."

mechanisms to compensate for the lower value of future repayments or any reputation component are least likely to deter default credibly.[13]

Penal bills, the most credible instruments, included not only written commitments to pay a specific sum to named creditors or their heirs or assignees but also interest. Debtors signed or marked penal bills, as did witnesses to debtors' signatures, and occasionally the document's solemnity was increased with a wax seal along with the debtor's signature. No other debt instrument in suits by petition explicitly promised to pay interest on the principle if debts were not repaid by a given date. Sometimes the promise simply stated that interest would be due; more commonly, debtors secured interest-bearing instruments with formulaic pledges to

13 Contracts require cooperation between two parties. If either party expects to deal with the other only once and has an incentive to renege on the contract, the party can renege without fearing a future penalty. However, if both parties expect to deal with each other in the future and are patient (that is, they have a low discount rate for the future), the Folk Theorem stipulates that both parties have an incentive to comply with the contract (that is, the efficient outcome can be an equilibrium). David M. Kreps, *Microeconomics* (New York, 2004), 533–574; Robert Cooter and Thomas Ulen, *Law and Economics* (Reading, 2000; orig. pub. 1988), 185–223.

repay an amount double the original principle. Penal instruments comprised 7 percent of all petitions.[14]

Promissory notes, the next most credible instruments, were also the most common in our sample. In contemporary usage, they were identical to notes of hand or bills. Notes were written commitments to pay a certain sum to named creditors or their heirs or assignees. Such debts could be due on demand, but typically were payable on or before a stipulated date. As with penal bills, debtors and witnesses signed or marked promissory notes, but notes carried no penalty for late payment. The combination of the debtor's mark or signature, the written specification of the debt, and the marks or signatures of witnesses made notes a credible but not punitive commitment to repay. When creditors sued to recover debts, they gave the notes to the county clerk for retention in the case file. Promissory notes comprised 45 percent of the instruments in the 1,376 suits of our sample (Table 3).

Debts due by account—that is, balances of debits and credits that accumulated over time—were the least credible instruments. Typically, accounts recorded goods delivered or services provided. Occasionally, they included transfers of cash, a term that in contemporary usage included a wide variety of credit instruments as well as specie or official monetary instruments, such as Virginia's tobacco notes. In most instances, accounts involved retail purchases by consumers from frontier merchants or services by artisans. Since debtors assumed to pay accounts without signing a document, creditors were required to present their ledgers as evidence and swear an oath to their validity. Some petitions included annotations of account details, but frequently no additional information accompanied them. Accounts represent 30 percent of the petitions in our sample.[15]

14 As elsewhere in colonial America, when Augusta County's court found in favor of creditors seeking to recover debts secured by penal bills, the judgment reduced the doubled penalty of the instrument to repayment of the principal with interest from the date due until the debt was paid. Virginia's legal limit on interest for this category of debt was 5%. "An Act to make void certain Contracts for the paying excessive Usury; for the further discouragement of the unrighteous practice of taking more than the lawful interest; and reducing the rate of interest," August 1734, in Hening (ed.), *Statutes at Large*, IV, 395–397; "An Act to restrain the taking of excessive Usury," October 1748, *ibid.*, VI, 101–104. Contemporaries (including the county clerk) synonymously referred to penal bills as bonds or penal bonds.

15 "An Act, for reducing the Laws made, for amending the Staple of Tobacco; and for preventing frauds in his Majesty's Customs, into one act of Assembly," May 1742, in Hening (ed.), *Statutes at Large*, V, 132–134; "An Act for amending the staple of Tobacco, and preventing frauds

The category of "other" consolidates a small number of miscellaneous overdue obligations into a single variable—in descending order of credibility, judgments from Augusta County or other Virginia county courts, contested orders to pay or be paid by third parties, overdue wages for indentured servants, implicit assumptions of responsibility for a debt (assumpsit), and payment due for the value of unjustly detained property (detinue). A total of 3 percent of the petitions involved such obligations.[16]

LITIGANT IDENTITIES In addition to characteristics of debts, we also examined characteristics of the parties to each suit, focusing on aspects of litigant identity that might have affected a petition's outcome. These independent variables include where litigants resided, how much land they owned, whether or not they enjoyed high social status, and what official responsibilities (if any) they exercised. Since all four variables apply to both parties in a suit, a total of eight explanatory variables comprise the category of litigant identity.[17]

It seems intuitively obvious that litigants' places of residence could have affected the outcome of suits. One-quarter of the plaintiffs lived outside Augusta County in New Jersey, Pennsylvania, Delaware, Maryland, and the Carolinas, as well as in twenty counties of eastern Virginia and in the towns of Fredericksburg, Suffolk, and York (Table 4). By the end of the period under study, in the spring of 1755, Augusta County's most distant settlements were about 200 miles from the courthouse in modern-day Staunton. Despite the challenges of such vast distances, sheriffs, deputy sheriffs, and constables could summon even the most remote defendants; for example, one determined creditor eventually obtained service on Samuel Stalnaker, who resided on the upper Holston River near the modern border between Virginia and Tennessee (see Figure 1).

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in his majesty's customs," October 1748, *ibid.*, VI, 163–165; "An Act prescribing the Method for proving Book-Debts," May 1732, *ibid.*, IV, 327–329; "An Act prescribing the method of proving book debts," October 1748, *ibid.*, VI, 53–55.

16 For examples of each miscellaneous obligation, see Augusta OB 2:343 (Augusta County judgment), 2:552 (Frederick County judgment), 3:321 (wages), 2:612 (order accepted but unpaid), 4:365 (order protested); *William Gay v. Archibald Kearns*, petition, Nov. folder #2, Box Oct.–Nov. 1754, Judgments, Augusta CCC (assumpsit); *John Flood v. William Russell*, petition, Feb. folder B #1, Box Jan–Feb 1749, *ibid.* (detinue).

17 As an anonymous reviewer pointed out, two other important aspects of litigant identity deserve future investigation—experience (to include litigation as both plaintiff and defendant) and commercial activity. We are unable to provide a statistically sound analysis of these issues with the current model but plan to address them in a separate study.

Table 4 Residence of Litigants

PARTY'S RESIDENCE WHEN SUIT BEGAN (N = 1,376)	PLAINTIFF		DEFENDANT	
	NUMBER	% OF N	NUMBER	% OF N
Resident of Augusta County	972	70.6%	1,260	91.6%
Resided outside Augusta County				
Unspecified location	63		16	
Other colonies				
New Jersey	2			
Pennsylvania	20			
Delaware	8			
Maryland	5			
North Carolina	1			
"Carolina"	11			
Subtotal	46		17	
Other Virginia counties and towns				
Albemarle County	27		4	
Caroline County	8			
Charles City County	1			
Chesterfield County	2			
Culpeper County	14		2	
Fairfax County	1			
Frederick County	67		8	
Fredericksburg (town)	13			
Halifax County	1			
Hanover County	33			
Henrico County	18			
James City County	1			
King George County	1			
King William County	2			
Lunenburg County	2			
Orange County	23		5	
Prince William County	1			
Richmond County	2			
Spotsylvania County	2			
Stafford County	4			
Suffolk Town	1			
Surry County	1			
York Town	1			
Subtotal	226		19	
Total outside Augusta County	335	24.3	36	2.6

Table 4 (Continued)

PARTY'S RESIDENCE WHEN SUIT BEGAN (N = 1,376)	PLAINTIFF		DEFENDANT	
	NUMBER	% OF N	NUMBER	% OF N
Formerly Augusta County, moved to:				
"Carolina"			1	
North Carolina				
Anson County			1	
Rowan County	5		4	
unspecified N.C. county			3	
South Carolina			1	
Virginia				
Frederick County			14	
Orange County			2	
Unknown locale	4		24	
Subtotal	9	0.7	50	3.6
Residence unknown	60	4.4	30	2.2

Notably, however, the Stalnaker petition required seven or eight renewals by the plaintiff, suggesting that remote defendants like Stalnaker may have hoped to evade distant creditors. We therefore included residence as an explanatory variable, categorizing both plaintiffs and defendants as residents, non-residents, former residents, or of unknown residence.[18]

The economic capacity of parties to pursue a suit or to repay a debt also seems potentially capable of influencing case outcomes. Unfortunately, no systematic contemporary record assessed litigants' net worth. The question of wealth seems sufficiently important, however, for us to construct a proxy measurement based on the individual landholdings of the county residents, calculated in acres. We consulted colonial land-patent records for the initial creation

18 For the Holston River road order naming Stalnaker, November 1753, see Augusta OB 4:76; for continuances of renewed summons for Stalnaker, *ibid.* 3:195, 230, 296, 349, 402, 479, 4:27, 80, 183. Information about location is drawn from annotations on instruments and local records pertaining to office holding, road orders, land ownership, and religious congregations. Additionally, land deeds and litigation records help to indicate destinations of plaintiffs who moved away from the county. Non-residents frequently can be located via litigation records or published official colonial government records. Augusta OB 1:1—4:463; Augusta County Deed Books, vols. 1–17 (microfilm), Library of Virginia; Wilson, *Tinkling Spring*, 424–429, 438–439, 470–484; Wilmer L. Hall (ed.), *Executive Journals of the Council of Colonial Virginia* (Richmond, 1967), V (hereinafter EJC); H. R. McIlwaine (ed.), *Journals of the House of Burgesses of Virginia, 1742–1747, 1748–1749*, and *1752–1755, 1756–1758* (Richmond, 1909) (hereinafter cited as JHB).

Table 5 Landholding

PARTY	MEAN ACREAGE	STANDARD DEVIATION	MINIMUM ACREAGE # (% OF ALL PETITIONS)	MAXIMUM ACREAGE
Plaintiff	547.74	4,573.61	0 (52.3%)	79,898
Defendant	340.98	3,300.84	0 (54.9%)	75,046

NOTE Includes non-resident landowners but not acreage outside Augusta County.
SOURCES Augusta County Deed Books 1–17 and Will Books 1–4 (microfilm, Library of Virginia); Orange County Deed Books 3–14 and Will Books 1–2, *ibid.*; Virginia Land Office Patents and Grants Database, Library of Virginia, available at http://lva1.hosted.exlibrisgroup.com/F/?func=file&file_name=find-b-clas30&local_base=CLAS30 (accessed February 19, 2014).

of real estate in Augusta County as well as county deed books and will books recording subsequent transactions. Because landowners sometimes occupied or conveyed land long before their deeds were recorded, we calculated a three-year average of landholdings. If a petition were filed in 1752, for example, we averaged the acreage held by the parties at the end of 1751, 1752, and 1753. Plaintiffs held more land than defendants—on average, about 548 acres versus 341 acres—but 52.3 percent of plaintiffs and 54.9 percent of defendants owned no land in Augusta County. Table 5 includes additional details regarding landholding.[19]

Another feature of litigant identity that seems intuitively relevant to the outcome of a suit was whether the parties held official positions. Given that either the county court or the colonial government appointed almost all offices, office holding reflected reputation. Office-holding records for this period appear to be complete for the three broad categories of official service in the counties of colonial Virginia—civil, military, and parish.

Positions of civil authority ranged in status from county magistrates at the top to such local functionaries as the road overseers who supervised the sporadic maintenance of a stretch of county road at the bottom. Virginia's governor and council in Williamsburg appointed magistrates and, on magisterial recommendation, sheriffs and coroners. With the exception of the county clerk and county surveyor, the county court appointed all other civil authorities in the county. The Virginia colonial government also commissioned militia officers in the rank of captain or higher; junior militia officers

19 Acreage is an admittedly crude measurement, given that an improved small farm might be much more valuable than a large quantity of unimproved land, but there is no other basis for estimating relative wealth. For acreage sources, see Table 5.

Table 6 Office Holding

AUGUSTA COUNTY OFFICE HELD BY PARTIES TO SUITS, WITH SOURCE OF AUTHORITY (N = 1,376)	PLAINTIFF		DEFENDANT	
	NUMBER	% OF N	NUMBER	% OF N
None	900	65.41	942	68.46
County official				
Appointed by colonial authority	136	9.98	65	4.72
Appointed by county authority	256	18.6	295	21.44
Militia officer				
Appointed by colonial authority	53	3.85	48	3.49
Appointed by county authority	16	1.16	9	0.65
Parish duties[a]				
processioner	14	1.02	15	1.09
vestryman	2	0.07	2	0.15

[a]Processioners reported to the parish vestry but were appointed by the county court; vestrymen were elected by adult white male landowners.

NOTES Given that concurrent office holding was common, magistrates typically also served as at least a captain in the militia. Vestrymen could be magistrates and usually were militia officers. The categories shown above therefore have some overlap among the three spheres of local authority. For example, James Lockhart began serving as a vestryman on April 1, 1747, was commissioned as a magistrate on May 9, 1749, and swore to his captain's commission in the militia on November 21, 1752. For purposes of the multinomial logit model, Lockhart was coded as holding no office through March 1747, as a vestryman from April 1, 1747, to May 8, 1749, and as a magistrate thereafter. Lockhart's membership in the county's commission of the peace was therefore coded as more important than his commission as a militia captain.

SOURCES Augusta Parish Vestry Book, 1 (photocopy, Special Collections, Alderman Library, University of Virginia); Wilmer L. Hall (ed.), *Executive Journals of the Council of Colonial Virginia* (Richmond, 1967), V, 214; Augusta County Order Book 3:411 (microfilm), Library of Virginia, Richmond.

were appointed by their local superior officers and swore their oaths of office in the county court. Finally, the Church of England, the established religion of colonial Virginia, exercised authority over a range of social-welfare issues at the parish level through a governing vestry composed of county gentlemen. Two types of officers reported to the vestry, churchwardens—vestrymen serving in turn—and processioners appointed by the county court. Only about one-third of either plaintiffs or defendants held office in Augusta County (Table 6).[20]

20 Charles S. Sydnor, *Gentlemen Freeholders: Political Practices in Washington's Virginia* (Chapel Hill, 1952), 80–93. Surveyors were commissioned by the College of William and Mary. Sarah S. Hughes, *Surveyors and Statesmen: Land Measuring in Colonial Virginia* (Richmond, 1979), 75. John K. Nelson, *A Blessed Company: Parishes, Parsons, and Parishioners in Anglican Virginia, 1690–1776* (Chapel Hill, 2001), 13–16.

Table 7 Social Class

SOCIAL CLASS OF PARTIES TO SUIT (N = 1,376)	PLAINTIFF		DEFENDANT	
	NUMBER	% OF N	NUMBER	% OF N
Common	1,142	82.99	1,359	98.76
Gentry				
Resident	113	8.21	17	1.24
Non-resident	121	8.79	0	–
Subtotal	234	17.01	17	1.24
Total	1,376	100.00	1,376	100.00

NOTE The enumeration above includes as gentry all persons identified by contemporaries as gentleman or esquire plus such educated professionals as physicians, ministers, surveyors, and attorneys. Merchants have not been included in the gentry tally unless contemporary records explicitly identified them as gentlemen.

The last significant feature of litigant identity was social rank. Colonial Virginians distinguished carefully between gentry and commoners, and even in frontier counties like Augusta, court records of all sorts routinely identified gentlemen with the label *gent* after their names. As the term was used in eighteenth-century Virginia, *gentry* signified gentlemen who did no manual labor, whether skilled or semiskilled. Because evidence about the work of commoners was recorded unsystematically, we have not attempted to treat various laboring occupations as explanatory variables. The variable of social rank is thus binary, gentry or not gentry. In all, gentry comprised 17 percent of plaintiffs and 1 percent of defendants (Table 7).[21]

LEGAL PROCEDURES By the mid-eighteenth century, Britain's colonies in North America had well-established legal systems based on English common law. Details of procedure varied from colony to colony, but in Virginia, civil litigation broadly followed the principles in effect throughout the common-law realm. Although particular protocols might be distinctive, in general, court costs inhibited frivolous suits and encouraged rapid resolution, and magistrates wielded considerable authority in shaping proceedings within their

21 Albert H. Tillson, Jr., *Gentry and Common Folk: Political Culture on a Virginia Frontier, 1740–1789* (Lexington, Ky., 1991), 18–24.

own courtrooms. Our two explanatory variables for procedure therefore include a fee-related variable as well as the identity of the senior magistrate presiding over each case.[22]

All litigation generated administrative fees payable to the clerk of court and county sheriff; such fees increased if suits were not resolved at their initial court session. Under the so-called English rule, fees for petitions fell entirely on the losing party in cases with judgment and on the plaintiff in cases without judgment. Litigants consequently devised their strategies with an eye toward the number of court sessions required to resolve a suit. Only about 14 percent of petitions required more than two sessions for resolution (Table 1).[23]

A second key aspect of procedures for suits by petition derived from the fact that cases were tried only before county magistrates, not juries. Augusta County's court met regularly between four and nine times a year. By Virginia law, a minimum of four magistrates were required to sit as a panel, at least one of whom had to be a member of the quorum, the senior half of the commission of the peace. This statutory mandate strongly implies that the senior magistrate had considerable influence on a case's outcome, although the extent of that power has never been analyzed quantitatively. We therefore coded each suit to include the case's senior magistrate.[24]

22 Peter Charles Hoffer, *Law and People in Colonial America* (Baltimore, 1992).

23 Douglas C. Baird, Robert H. Gertner, and Randal C. Picker, *Game Theory and the Law* (Cambridge, Mass., 1994), 54–55, 306; "An Act for better regulating and collecting certain Officers Fees; and other purposes therein mentioned," August 1734, in Hening (ed.), *Statutes at Large*, IV, 412–423; "An Act for the better regulating and collecting certain Officers fees; and other purposes therein mentioned," August 1736, *ibid*., IV, 496–507; "An Act, for the better regulating and collecting certain Officers fees; and for other purposes therein mentioned," November 1738, *ibid*., V, 42–54; "An Act, for continuing the Act intitled, an Act, for the better regulating and collecting certain officers fees; and other purposes therein mentioned," September 1744, *ibid*., V, 246–247; "An Act, for the better regulating and collecting certain Officers Fees; and other purposes therein mentioned," February 1745/6, *ibid*., V, 331–344; Priest, "Colonial Courts and Secured Credit," 2417.

24 The maximum number of monthly sessions, nine, occurred in the court's first full year, 1746, and never again during the study period. Augusta OB 1:5, 19, 21, 43, 47, 69, 71, 103, 129. Augusta County shifted to a quarterly court schedule in 1748 and continued thusly through the colonial period. McCleskey, "Quarterly Courts in Backcountry Counties of Colonial Virginia," *Journal of Backcountry Studies*, VII (2012), available at http://libjournal.uncg.edu/index.php/jbc/article/view/570/330. "An act for establishing County Courts, and for regulating and establishing the proceedings therein," October 1710, in Hening (ed.), *Statutes at Large*, III (1823), 505; *ibid*., October 1748, V, 489.

Table 8 Senior Magistrates

SENIOR MAGISTRATE	# OF PETITIONS	% OF ALL PETITIONS	CUMULATIVE % OF ALL PETITIONS
James Patton	602	43.75	43.75
David Stewart	226	16.42	60.17
John Lewis	172	12.5	72.67
Peter Schull	160	11.63	84.3
Andrew Lewis	91	6.61	90.92
Robert Cunningham	49	3.56	94.48
Samuel Gay	22	1.6	96.08
John Lynn	17	1.24	97.31
George Robinson	16	1.16	98.47
"Other" dummy combination			
Richard Borden	10		
John Brown	7		
John Denton	2		
John Wilson	2		
Subtotal	21	1.53	100.00
Total	1,376	100.00	

Magistrates were listed in order of seniority in commissions of the peace signed by the Virginia governor—sixty-seven of them in Augusta County during our study period. Their service was unpaid, and they attended court only as they saw fit. A county magistrate might serve in one session but not the next, or on one day in the session but not another. Magistrates could join or depart the bench in the middle of the day, as long as at least four of them were present. We were able to identify the most senior magistrate present for every suit using the clerk's annotations in the minute book regarding magisterial traffic. We coded the petitions accordingly, including as an explanatory variable the most senior magistrate present when a particular case was resolved. A total of thirteen senior magistrates presided over the conclusion of petitions in our sample. We listed the nine most common magistrates separately and aggregated the remaining four into a single dummy variable. James Patton, the most senior magistrate in the commission of the peace, presided over 44 percent of the petitions (Table 8).[25]

25 For the first commission (October 30, 1745), see *EJC* V, 191, Augusta OB 1:1; for the second commission (June 13, 1746), *EJC* V, 214, Augusta OB 1:68; for the third commission (May 9, 1749), *EJC* V, 289, Augusta OB 2:127; for the fourth commission (June 14, 1749), *EJC* V,

RESULTS The data regarding small-claims litigation in early Augusta County are detailed and generally complete but complicated to analyze. Of our eleven explanatory variables, only two, "landholding" and "number of court sessions," are quantitative. The remaining variables are qualitative and only one of these nine variables, "social rank," is binary. None of the explanatory variables are ordered, nor is the dependent variable. Given the data's characteristics, a multinomial logit model is best suited for identifying factors influencing outcomes of small-debt litigation. We employed "outcome" as our dependent variable and set "judgment for plaintiff" as our base outcome.[26]

We developed three specifications, and our results are robust across all three (Table 9). As the appendix regarding robustness checks explains more fully, we ultimately excluded all cases for which the debt instrument and defendant's place of residence are unknown. The following discussion thus concerns the results for the model $n = 1{,}163$, focusing only on the significance of variables or lack thereof, not on the magnitude of coefficients. Our strategy of first examining significant variables and then insignificant ones may be a slightly unorthodox organization, but it helps us to present a coherent picture of frontier justice with regard to debt instruments, litigant identities, and court procedures.

Characteristics of debt instruments influenced petition outcomes. Penal bills and promissory notes were significant and negative for the outcome "resolved without judgment" and insignificant for "judgment for defendant." Cases involving debts secured by these instruments were more likely to result in a judgment for the plaintiff than be settled out of court, although they did not systematically favor one party over another. At one level, this finding is unsurprising; historians long have understood that penal bills and promissory notes amounted to evidence that was difficult for defendants to

290–291, Augusta OB 2:149; for the fifth commission (October 27, 1749), *EJC* V, 303, Augusta OB 2:287; for the sixth commission (June 11, 1751), Augusta OB 3:176; for the seventh commission (April 30, 1752), *EJC* V, 389, Augusta OB 3:242; for the eighth commission (June 16, 1753), *ibid.* 4:1; for the ninth commission (uncertain date but presented March 21,1755), *ibid.* 4:395, 425, 465, 489, 498. For the initial late arrival and initial departure before adjournment, see Augusta OB 1:3, 7, respectively.

26 Readers unfamiliar with technical problems surrounding what are known as multiresponse models will find an explanation in Charles H. Feinstein and Mark Thomas, *Making History Count: A Primer in Quantitative Methods for Historians* (New York, 2002), 422–423.

Table 9 Results

	SPECIFICATION 1 (N = 1,163) (NO UNKNOWN INSTRUMENTS, NO UNKNOWN DEFENDANT RESIDENCE) LR = 243.40		SPECIFICATION 2 (N = 1,182) (NO UNKNOWN INSTRUMENTS) LR = 268.53		SPECIFICATION 3 (N = 1,376) (FULL MODEL) LR = 496.84	
	RESOLVED W/O JUDGMENT	JUDGMENT FOR DEFENDANT	RESOLVED W/O JUDGMENT	JUDGMENT FOR DEFENDANT	RESOLVED W/O JUDGMENT	JUDGMENT FOR DEFENDANT
Debt instrument						
Penal bill	−1.004**		−1.08**		−1.06**	
	(.43)		(.43)		(.43)	
Promissory note	−.81**		−.80**		−.79**	
	(.36)		(.36)		(.36)	
Account						
Unknown					2.79***	2.42***
					(.43)	(.80)
Other						
Litigant identity: residence						
Plaintiff						
Augusta						
Not Augusta						
Formerly Augusta						
Unknown						
Defendant						
Augusta						
Not Augusta	2.00***		1.99***		1.94***	
	(.42)		(.42)		(.41)	
Formerly Augusta	.94***		.95***		1.00***	
	(.35)		(.35)		(.34)	
Unknown			2.43***		2.45***	
			(.66)		(.66)	

Table 9 (Continued)

	SPECIFICATION 1 (N = 1,163) (NO UNKNOWN INSTRUMENTS, NO UNKNOWN DEFENDANT RESIDENCE) LR = 243.40		SPECIFICATION 2 (N = 1,182) (NO UNKNOWN INSTRUMENTS) LR = 268.53		SPECIFICATION 3 (N = 1,376) (FULL MODEL) LR = 496.84	
	RESOLVED W/O JUDGMENT	JUDGMENT FOR DEFENDANT	RESOLVED W/O JUDGMENT	JUDGMENT FOR DEFENDANT	RESOLVED W/O JUDGMENT	JUDGMENT FOR DEFENDANT
Litigant identity: landholding						
Plaintiff						
Defendant						
Litigant identity: office holding						
Plaintiff						
Civil, senior						
Civil, junior						
Militia, senior						
Militia, junior						
Parish vestry						
Parish processioner						
None						
Defendant						
Civil, senior						
Civil, junior						
Militia, senior						
Militia, junior						
Parish vestry						
Parish processioner						
None						

Litigant identity: social rank				
Plaintiff				
Gentry				
Not gentry				
Defendant				
Gentry				
Not gentry				
Procedures: *n* of sessions		.45***	.44***	.43***
		(.095)	(.09)	(.09)
Procedures: senior magistrate				
James Patton		−1.90**	−1.90**	−1.85**
		(.80)	(.80)	(.76)
David Stewart		−2.48***	−2.48***	−2.21**
		(.95)	(.95)	(.87)
John Lewis		−2.66***	−2.65***	−2.93***
		(.95)	(.94)	(.94)
Peter Schull				
Andrew Lewis				
Robert Cunningham				
Samuel Gay				
John Lynn				
George Robinson				
Other				
Time trend	.00001***		.00001***	.00002**
	(3.46e-06)		(3.44e-06)	(3.20e-06)	(6.85e-06)

**Significant at 5%.

***Significant at 1%.

NOTES Base outcome is judgment for plaintiff. Significant results reported as coefficient over (standard error).

refute. This result indicates that courts were actively enforcing formal instruments of debt.[27]

Economists argue that signed and witnessed documents, such as promissory notes, formally brought reputations of debtors into play even without such explicit deterrents against noncompliance as interest on the default amount. When debtors expected to borrow again, the potential damage to their reputations was a credible deterrent against contractual breaches. In a society like that of colonial Virginia, where ongoing creditor/debtor relationships were pervasive and court proceedings were open to the public, promissory notes should have credibly deterred breaches of contracts so long as the judicial system held defaulters accountable. Our findings—that petitions involving notes were less likely to be decided outside the courts and that they did not systematically favor one party over the other—are in full accord with this assumption. The role of penal bills, with their built-in monetary penalty for default, is similarly consistent with economic theory. Petitions involving penal bills were more likely to receive judgment for plaintiffs than to be resolved without judgment, though they did not favor plaintiffs over defendants. By this measure, a breach was more likely to be decided in court than settled outside.[28]

Furthermore, the Augusta County court consistently provided unbiased judgments, enforcing legitimate contracts fairly. Defendants who fulfilled their contracts could win judgment reliably, as could plaintiffs whose contracts were unsatisfied. Indeed, the court's consistent enforcement of contracts seems likely to have reinforced the confidence expressed by creditors who employed riskier promissory notes rather than interest-bearing penal instruments. In only one out of every seven litigated transactions involving written promises to pay did creditors offset the risk of late repayment by stipulating interest to be charged for overdue sums (Table 3). Our findings thus suggest that contemporaries believed the Augusta County court would reliably enforce weaker contracts.

Of the eight explanatory variables concerning litigant identity, only one, "defendant residence," was statistically significant. For non-resident defendants as well as defendants who formerly resided

27 Mann, *Neighbors and Strangers*, 34–37.

28 Eric Rasmusen, *Games and Information: An Introduction to Game Theory* (New York, 2007), 136; Cooter and Ulen, *Law and Economics*, 185–223.

in Augusta County but moved away, coefficients were significant and positive for the outcome "resolved without judgment," and insignificant for the outcome "judgment for defendant." Hence, suits involving defendants who did not live in Augusta County were more likely to be resolved without judgment than be judged for plaintiffs, but they were not more likely to favor plaintiffs over defendants. This result is reasonable: Defendants who lived outside the county were much more difficult to find and summon to court. When defendants could not be summoned or had left no property to be distrained, plaintiffs were compelled to discontinue their suits without judgment. When non-resident defendants were summoned, however, outcomes showed no bias for or against them.

Both explanatory variables about legal procedures were significant. The explanatory variable "number of court sessions" was significant and positive for the outcome "judgment for defendant" and insignificant for the outcome "resolved without judgment." Apparently the more sessions required to resolve a suit, the more likely were defendants rather than plaintiffs to receive a favorable judgment. This outcome also makes sense, given the so-called English rule by which losers paid all court costs. Because extending a case for multiple sessions added to its expense, when rational defendants sought a continuance, they signaled to magistrates and modern scholars alike that they had a strong case. Conversely, requests for a delay from plaintiffs strongly implied that plaintiffs had a weak case, likely not to be resolved in their favor. When a case was settled outside the court, this variable was irrelevant, as our result indicates.

A second variable regarding procedure, "senior magistrate," was insignificant for "resolved without judgment" but negatively significant for the outcome "judgment for defendant." When one of the three senior magistrates who presided over most of the petitions (72.7 percent)—Patton, David Stewart, and John Lewis—sat on the bench, plaintiffs were more likely to win judgment than were defendants. Patton and Lewis, the most senior of the three, were major land speculators who obtained low-cost grants of land from the colonial government that they then conveyed on credit to immigrating settlers. Both Patton and Lewis appeared on the court docket frequently as plaintiffs; Patton initiated twenty-four suits against debtors during the study period and Lewis sixty-seven. When Indian raiders killed Patton in July 1755, just after the close of the study period, he was owed at least

thirty-two debts of between 25 and 100 shillings—values limiting recovery via suits by petition. Stewart likewise was also an active plaintiff, bringing thirty-eight suits of various types against debtors. Probably this result reflects the fact that as extensive creditors, each of these magistrates had compelling reasons to avoid setting a precedent of lax legal enforcement. Litigants seem not to have been concerned about Patton, Lewis, or Stewart's business interests, however; their presence did not increase the likelihood that a petition would be resolved outside the court.[29]

Our results regarding the significance of debts, litigants, and procedures are revealing, but they amount to only part of a larger picture. The lack of significance of other variables in these categories—the instrument of accounts; the residence of the plaintiff; and the landholding, office holding, and social status of either party—indicate an absence of systemic bias. These results suggest that the extension of English common law into an insecure borderland was much more orderly than previous studies have concluded.

We find that suits involving the least formal instruments were as likely to be resolved out of court as to favor either plaintiff or defendant. The debt instrument "accounts" was insignificant across both outcomes. In other words, the Augusta County court adjudicated cases involving unsecured accounts on their merits, without bias regarding the instrument. This impartial adjudication of informal accounts seems likely to have reassured local residents that credit transactions would be enforced fairly, thereby facilitating other financial contracts on the frontier.

Nor did the court demonstrate prejudice regarding key aspects of litigant identity. The magistrates showed no concern about whether either of the parties to a dispute owned considerable land or no land, held high office or no office, or maintained gentry status or commoner status. Magistrates cared only about the written or implicit financial contracts. When contracts were valid but unfulfilled, the

29 Lewis and Patton were two of the few magistrates in Augusta County's initial decade with prior experience on the bench in Virginia. For details of the early magistrates' backgrounds, see McCleskey, *The Road to Black Ned's Forge: A Story of Race, Sex, and Trade and the Colonial Frontier* (Charlottesville, 2014), 83–85, 175–176. For the suits, see Augusta OB 1:34–4:462; for Patton's death, "A Register of the Persons who have been either Killed, Wounded or taken Prisoners by the Enemy in Augusta County," Draper MSS. 1QQ 83. "A List of Bonds Bills & promisary notes Due to the Estate of Colo[nel] James Patton Dec'd," February 17, 1758, Augusta County Will Book 3:202–207 (microfilm), Library of Virginia.

court enforced them without regard to extraneous characteristics or circumstances.

Such reliable justice had more than local significance. That the final element in litigant identity, "plaintiff residence," is insignificant across all outcomes is especially important with regard to about one-quarter of all plaintiffs, the ones residing outside Augusta County. Creditors from at least five different colonies and twenty-three different eastern Virginia counties or towns found that their attorneys or agents could reliably collect small debts in a distant dilapidated courthouse (Table 4). Secure legal processes made small transactions with Augusta County clients profitable to non-resident creditors, signaling that frontier magistrates could be trusted to adjudicate larger debts, thus ultimately speeding the flow of credit to frontier customers.

Reliable adjudication of even small debt suits had political as well as economic ramifications. Almost 9 percent of petitions were filed on behalf of such non-resident gentlemen creditors as burgesses John Chiswell (Hanover County), Gabriel Jones (Frederick County), John Spotswood (Culpeper County), and William Waller (Spotsylvania County) (Table 7). By demonstrating their reliability in small matters, Augusta magistrates reinforced the politically useful impression that they could be trusted with much greater responsibility.[30]

Our results tell a consistent story about Augusta County's court. In its initial decade, the court enforced contracts actively and fairly. Plaintiffs or defendants might have disliked the outcome of their suit, but they had no reasonable cause to revolt against an unjust legal system. For social historians, our findings challenge evidence that has been interpreted as signaling weak county governance in colonial Virginia's more remote rural counties. For legal historians and economists, we present robust empirical evidence of the early establishment of legal institutions that encouraged efficient contracts. Lawsuits concerning small debts in colonial Virginia's frontier settlements thus represent essential social, legal, and economic landmarks in eighteenth-century British North America.

The hitherto unavailable dataset consulted herein permits an investigation of factors that may have affected judicial decisions

30 Augusta OB 2:83, 208, 551, 611, 3:450, 456, 484; 4:178; *JHB 1742–1747, 1748–1749,* vii–ix.

in Augusta County's small-claims litigation in the mid-eighteenth century. In particular, our examination of debts, litigant identity, and legal procedures for evidence of bias in court proceedings discovers that although some magistrates favored creditors over debtors in cases receiving judgment, justice was blind to official authority, landed wealth, and social status. Furthermore, the courts enforced legitimate contracts fairly. Such consistent enforcement by the court may have reinforced the confidence of both plaintiffs and defendants, making disputes more likely to be brought to court than settled privately. Overall, the evidence corroborates the view that by the mid-eighteenth century, Virginia's remarkably fair judicial system encouraged efficient contracts for small debts.

APPENDIX: ROBUSTNESS CHECKS

We conduct two kinds of robustness checks for our model. One derives from the necessity of running three different specifications. The other involves artificial neural networks. Both checks indicate that the explanatory variables analyzed by our model provide a good explanation of the case outcomes.

Our data are incomplete for "instrument," "defendant residence," and "plaintiff residence." In our full model, $n = 1{,}376$, both "instrument unknown" and "defendant residence unknown" are significant. In the former case, we do not know the instrument for 194 suits (14.1 percent). In the latter case, we cannot locate 30 defendants (2.2 percent), 11 of which participated in suits for which no instrument is known.

To avoid omitted variable bias, we re-ran our regressions, first excluding all petitions for which the instrument is unknown ($n = 1{,}182$) and then excluding all petitions for which both the instrument and the defendant's residence are unknown ($n = 1{,}163$). Our results are robust across all three specifications (Table 9).

For a second robustness check, we run artificial neural networks (ANNs) on all three specifications of our model. ANNs offer a robustness check that is atheoretical in two ways. First, apart from the choice of variables, they do not make a priori assumptions about underlying relationships between variables. Second, unlike all statistical models (including our multinomial logit approach), the validity of ANNs does not depend on underlying data structures—that is, on assumptions about the distribution of the error term and so on.[1]

We include all explanatory variables in the ANN calculations and let the MATLAB program randomly choose a training sample to avoid

1 Ad Feelders, "Data Mining in Economic Science," in Jeroen Meij (ed.), *Dealing with the Data Flood: Mining Data, Text and Multimedia* (The Hague, 2002), 166–175.

author bias or selection biases from theoretical considerations. On average, variables from the multinomial logit approach predict out-of-sample case outcomes about 70 percent of the time. If our explanatory variables were irrelevant to case outcomes, it seems highly unlikely that a randomly chosen training model would correctly predict case outcomes so frequently.

This conclusion is supported by results of the Chi-square tests reported in Table 9. The logistic regression statistic (LR) is large enough to suggest an almost zero probability that all coefficients in our models are equal to zero, across all three specifications. ANNs thus offer independent verification of our multinomial logit model.