DECREASING SUPPLY TO THE ASSEMBLY LINE OF DEBT COLLECTION LITIGATION

*Dalié Jiménez**

INTRODUCTION

Professor Daniel Wilf-Townsend's *Assembly-Line Plaintiffs*[1] shines an empirical light on state courts and quantifies a world where "debt cases comprise[] the preponderant majority of civil suits,"[2] defendants rarely contest the lawsuits, and "plaintiffs w[i]n the overwhelming majority of their cases."[3] The work the article undertakes is critically important,[4] but it is also vital to emphasize that the predominance of debt collection lawsuits, large numbers of default lawsuits, and lack of legal representation for defendants have been issues since the beginning of the Republic.[5] Wilf-Townsend analyzes U.S. state court cases between 2004 and 2020, but the quotations above come from an article studying civil cases in antebellum South Carolina.[6] Issues of absent and

---

* Professor of Law, University of California, Irvine School of Law. I am grateful to Daniel Wilf-Townsend for tackling these issues; Jessica Steinberg, Colleen Shanahan, Anna Carpenter, and Alyx Mark for their essay and their great work on these topics; and the editors of the *Harvard Law Review Forum* for inviting me to contribute. I am indebted to Michael Koeris, without whose support this piece could not have been written.

[1] Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704 (2022).

[2] Thomas D. Russell, *The Antebellum Courthouse as Creditors' Domain: Trial-Court Activity in South Carolina and the Concomitance of Lending and Litigation*, 40 AM. J. LEGAL HIST. 331, 332 (1996).

[3] *Id.* at 349.

[4] Jessica K. Steinberg, Colleen F. Shanahan, Anna E. Carpenter & Alyx Mark, *The Democratic (Il)legitimacy of Assembly-Line Litigation*, 135 HARV. L. REV. F. 359, 360 (2022) ("This research is critical and difficult to conduct — and far too little of it is undertaken.").

[5] *See infra* section I.A, pp. 377–82. It is likely the case that these problems are replicated in many court systems around the world especially now, if not beginning earlier, as debt buyers and debt collection companies export their business model globally. *See, e.g.*, Patrick Lunsford, *Encore Capital Acquires UK Debt Buyer Marlin Financial for $480 Million*, INSIDEARM (Feb. 10, 2014, 7:06 AM), http://www.insidearm.com/news/00039018-encore-capital-acquires-uk-debt-buyer-mar [https://perma.cc/8A74-PPEZ]. But that is of course outside the reach of this brief Response.

[6] Russell, *supra* note 2, at 333. To be fair, there have been some improvements since the early 1800s. For example, we no longer (technically) allow imprisonment for failure to pay a debt, 28 U.S.C. § 2007, and a federal rule bans confessions of judgment in consumer contracts, FTC Credit Practices Rule, 16 C.F.R. § 444.1–.5. *See also* Appendix, *State Bans on Debtors' Prisons and Criminal Justice Debt*, 129 HARV. L. REV. F. 153 (2016); Note, *Confessions of Judgment*, 102 U. PA. L. REV. 524, 524–25 (1954); Gerald E. Bloom, Comment, *Abolition of the Confession of Judgment Note in Retail Installment Sales Contracts in Pennsylvania*, 73 DICK. L. REV. 115, 115 (1968). *But see* Joyce Rice & Kevin Moore, *How an Unpaid Bill Can Lead to Prison*, VOX (Mar. 26, 2021, 9:30 AM), https://www.vox.com/the-highlight/22327700/debt-prison-debtors-unpaid-bills [https://perma.cc/FEB8-MDA4]; JENNIFER TURNER, ACLU, A POUND OF FLESH: THE CRIMINALIZATION OF PRIVATE DEBT 4 (2018), https://www.aclu.org/sites/default/files/field_document/022118-debtreport.pdf [https://perma.cc/ZT86-UTGE]; Lea Shepard, *Creditors'*

unrepresented defendants, rubber-stamping courts, and repeat plaintiffs with assembly-line-style, low-value claims have a long history in this country.[7]

While there are longstanding issues, Wilf-Townsend's work shines a new light on a troubling feature of the past few decades. He finds that just ten companies from two complementary industries (financial services and debt collection) were responsible for *at minimum* 18.5% of all 2019 civil filings in the nineteen jurisdictions he surveyed.[8] Their filing dominance continued unabated and *even grew* in 2020, during a global pandemic that shut down many state courts.[9] That ten corporate entities file almost one-in-five state civil cases in the country is a significant — and concerning — finding that should generate much-needed urgency toward a solution.

This Response situates *Assembly-Line Plaintiffs* among a rich history of reports and empirical studies about repeat-player plaintiffs (typically but not exclusively corporate entities)[10] and how the legal system has been routinized and made to serve creditors. The historical context of "business (pretty much) as usual" reinforces the crucial points made by Professors Jessica Steinberg, Colleen Shanahan, Anna Carpenter, and Alyx Mark in their response to Wilf-Townsend's article. We cannot ignore that race and gender play an outsize role in these cases, that state courts have become co-opted by corporate plaintiffs and are inflicting illegitimate violence primarily on women and people of color, and that genuinely transformational reforms are needed.[11] As they argue, we must broaden our focus beyond debt collection and courts and increase social provision for individuals who have turned to credit to fulfill basic needs and now cannot repay. As Professor Abbye Atkinson argues, for far too long, we have treated access to credit as an adequate form of

---

Contempt, 2011 BYU L. REV. 1509, 1518; *Complying with the Credit Practices Rule*, FTC, https://www.ftc.gov/tips-advice/business-center/guidance/complying-credit-practices-rule [https://perma.cc/3JFT-KKLU] (Jan. 2022).

[7] It is not at all clear that a majority of civil litigation in the United States has ever looked like "what is taught in law schools." Wilf-Townsend, *supra* note 1, at 1706. As Professor Stewart Macaulay notes: "The picture of the lawyer as litigator in the adversary system may itself serve largely symbolic functions." Stewart Macaulay, *Lawyers and Consumer Protection Laws*, 14 LAW & SOC'Y REV. 115, 115 (1979).

[8] The 18.5% of 2019 civil filings figure comes from dividing 549,444 by 2,964,485. *See* Wilf-Townsend, *supra* note 1, at 1729 tbl.1, 1732 tbl.2 (reporting, in Table 1, 2,964,485 cases in the jurisdictions among the period and reporting, in Table 2, 549,444 cases filed in the period by the top ten filers). The actual top filer burden across the United States is likely much higher if one "rolls up" plaintiffs to their corporate owners. *See infra* note 91 and accompanying text.

[9] Wilf Townsend, *supra* note 1, at 1734 fig.2.

[10] Professor Thomas Russell's article about South Carolina is framed around the story of a widowed enslaver and how she learned to become a creditor with security by obtaining confessions of judgment and using the courts "as an extension of [her] economic operations." Russell, *supra* note 2, at 333.

[11] Steinberg et al., *supra* note 4, at 361–62.

social provision.[12] The dramatic growth of unsecured consumer credit since at least the 1980s has served as the fuel of assembly-line litigation lawsuits.[13] "Stagnant wages and the increasing cost of living have also left the middle class economically vulnerable" in particular since the 1980s.[14]

But while we must think big, we must also act incrementally. We can make gradual progress toward reducing the share of assembly-line litigation in two broad ways: diminishing the desire of plaintiffs to file that litigation (their demand for the product) or reducing the number of debtor-defendants that they can sue (the supply of the product).[15] Wilf-Townsend proposes three solutions aiming to reduce the plaintiff's demand of the litigation "product": congestion pricing, claim aggregation procedures, and administrative adjudication. In Part II of this Response, I discuss Wilf-Townsend's proposed solutions and analyze their relative advantages and disadvantages.

In the final Part, I propose an alternative solution, one that aims to reduce the supply of cases assembly-line plaintiffs can bring to court. I propose a federal law that would "kill" the ability of debt collectors to pursue a debt (in a lawsuit or outside of it) after a statutory period.[16] Until we can reduce the supply of debtor-defendants at the front end by restructuring society to ensure people's basic needs are met, we can reduce the supply of such debtor-defendants at the back end by preventing people who've already borrowed from continuing to be debtors forever.

I. WHAT'S OLD AND WHAT'S NEW

Wilf-Townsend defines assembly-line litigation as involving (1) "a sophisticated, repeat-player plaintiff" who brings "numerous, relatively small-value, and highly similar to each other" lawsuits, (2) mostly absent (defaulting) and generally unrepresented defendants, and (3) "passive"

---

[12] Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093, 1098–99 (2019) [hereinafter Atkinson, *Rethinking Credit*]; Abbye Atkinson, *Borrowing Equality*, 120 COLUM. L. REV. 1403, 1414–15 (2020); *see also* Pamela Foohey, Dalié Jiménez & Christopher K. Odinet, *The Folly of Credit as Pandemic Relief*, 68 UCLA L. REV. DISCOURSE 126, 128–29 (2020).

[13] *See Total Consumer Credit Owned and Securitized*, FRED, https://fred.stlouisfed.org/series/TOTALSL [https://perma.cc/U964-C6TJ].

[14] Atkinson, *Rethinking Credit*, *supra* note 12, at 1156 (citing PEW RSCH. CTR., THE LOST DECADE OF THE MIDDLE CLASS: FEWER, POORER, GLOOMIER 20–22 (2012), https://www.pewresearch.org/social-trends/2012/08/22/the-lost-decade-of-the-middle-class [https://perma.cc/KQT9-KAZ8]).

[15] *Cf.* Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN. L. REV. 741, 746 (2015) (using similar terminology but analyzing the problem from the point of view of self-represented litigants: "Demand side reform refers to an overhaul of the processes and rules that govern litigation so that they best serve the interests of the overwhelming majority of customers in the lower state courts — the unrepresented.").

[16] *See* Dalié Jiménez, *Ending Perpetual Debts*, 55 HOUS. L. REV. 609, 644 (2018).

courts.[17] As I argue below, the historical literature shows us that the second and third features of assembly-line litigation have been a staple of United States courts since before the country's founding. But the rise of a small number of plaintiffs filing an increasingly outsized share of civil litigation is something that has been documented only sparsely before. Anyone who has spent time researching the civil dockets of a state court, or practicing in one, viscerally understands what Wilf-Townsend describes as the top-filer burden. But very few studies before *Assembly-Line Plaintiffs* reported the top filers in their jurisdictions and none have done so on a national basis.

A. *On the Lack of Attorney Representation, High Defaults, and the Predominance of Debt Cases in State Courts*

Wilf-Townsend argues that "[o]ver the last thirty years, state courts have undergone a generational change: in the early 1990s, almost everyone in court was represented by a lawyer; today, fewer than half of the cases filed have lawyers on both sides."[18] He is not alone in painting a rosy picture of attorney representation in the 1990s. He and others cite to the 2015 National Center for State Courts (NCSC) Civil Justice Report[19] for this proposition,[20] but that report unfortunately misinterpreted a methodological quirk in the 1990s data. The reality is that "litigation on unsecured debt and mortgages dominated the business of the [civil] courts" in the United States as early as the colonial period and seemingly every period in between.[21] And unfortunately, the evidence from the colonial through the antebellum period to today points to a world where most individuals defaulted when sued over a debt, and

---

[17] *See* Wilf-Townsend, *supra* note 1, at 1717.

[18] *Id.* at 1706.

[19] PAULA HANNAFORD-AGOR ET AL., NAT'L CTR. FOR STATE CTS., THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS (2015) [hereinafter NCSC 2015 REPORT], https://www.ncsc.org/__data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf [https://perma.cc/P78F-DX8Y].

[20] Wilf-Townsend, *supra* note 1, at 1716 & nn.49–50; PEW CHARITABLE TRS., HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS 13 (2020), https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf [https://perma.cc/J4M3-X7MM].

[21] CLAIRE PRIEST, CREDIT NATION 43 (2021); *see* WILLIAM E. NELSON, DISPUTE AND CONFLICT RESOLUTION IN PLYMOUTH COUNTY, MASSACHUSETTS, 1725–1825, at 23–24 (1981) (finding that 74% of disputes in one court in Massachusetts were about debt); Turk McCleskey & James C. Squire, *Knowing When to Fold: Litigation on a Writ of Debt in Mid-Eighteenth-Century Virginia*, 76 WM. & MARY Q. 509, 543–44 (2019) (finding that in Augusta County, Virginia, "nearly two-thirds of all civil suits" were to recover debts and that most debt suits were resolved before a trial). This may also be the case in other countries as well. *See* Robert A. Kagan, *The Routinization of Debt Collection: An Essay on Social Change and Conflict in the Courts*, 18 LAW & SOC'Y REV. 323, 324 (1984) (citing study in Toledo, Spain, between 1540 and 1700 as primarily involving actions on debt).

very few had an attorney.[22] The procedures have varied, but the available (albeit admittedly incomplete) evidence points to a history in which creditors have always had the upper hand in collection actions and courts have played a rubber-stamping role on their behalf.[23]

The sole indication to the contrary is a 1996 joint–NCSC and Bureau of Justice Statistics Civil Justice Report that studied state court litigation in the seventy-five largest U.S. counties during 1992 and stated that "[i]n the vast majority of contract cases, plaintiffs and defendants had professional legal representation. About 6% of contract cases had at least one pro se litigant who represented himself or herself."[24] From this figure, the 2015 NCSC Civil Justice Report presumably infers that in 1992 defendants were represented in 94% of contract cases, which is a stark contrast to the 26% defendant representation it finds in the 2015 data.[25] The 2015 Report argues that "the representation status of civil litigants has changed dramatically since the publication of the 1992 *Civil Justice Survey of State Courts*."[26]

But the rosy world of 94% attorney representation for consumers never existed. The error was caused by a misinterpretation of the 1996 Report. On the same page as the 6% pro se quote above, the 1996 Report goes on to say that "[i]n half (51%) of all the contract cases, the defendant failed to file an answer to the complaint. . . . About 45% of the uncontested cases were disposed of by default judgment . . . ."[27] A 51% failure-to-answer rate is not consistent with a world in which 94% of defendants were represented. This contradiction makes sense if when referencing "the vast majority of contract cases," the 1996 Report was referring solely to contested cases;[28] that is, cases where the defendant had filed an answer or otherwise appeared. Indeed, the Codebook corresponding to the 1996 Report defines a "pro se litigant" as including "only those parties who actively 'litigate' (that is, make an appearance, file an answer or motions, and so forth)."[29] In cases where the defendant "does not respond, answer, or appear and the case is dismissed, settled or ends in a default judgment," the Codebook advises that the defendant should

---

[22] Kagan, *supra* note 21, at 324–25 (collecting studies); *see also* Emily S. Taylor Poppe, *Why Consumer Defendants Lump It*, 14 NW. J.L. & SOC. POL'Y 149, 152 (2019) (arguing that structural inequalities and incentive structures lead many debt collection defendants to default).

[23] *See* Russell, *supra* note 2, at 346.

[24] CAROL J. DEFRANCES & STEVEN K. SMITH, U.S. DEP'T OF JUST., CIVIL JUSTICE SURVEY OF STATE COURTS, 1992: CONTRACT CASES IN LARGE COUNTIES 7 (1996) [hereinafter 1996 REPORT], https://bjs.ojp.gov/content/pub/pdf/ccilc.pdf [https://perma.cc/R56L-KM7N].

[25] NCSC 2015 REPORT, *supra* note 19, at 31.

[26] *Id.*

[27] 1996 REPORT, *supra* note 24, at 7.

[28] *Id.*

[29] U.S. DEP'T OF JUST., CIVIL JUSTICE SURVEY OF STATE COURTS, 1992: CODEBOOK 12, https://www.icpsr.umich.edu/web/NACJD/studies/6587/versions/V5 [https://perma.cc/E7US-XFG2].

not be counted as pro se.[30] Given this methodology, the 94% representation figure is untenable.[31]

The available evidence points to a long history of rising debt collection cases, passive courts, default judgments, and unrepresented debtors. Examining the colonial period, Professor Deborah Rosen studied two courts in New York and found an "increase in the volume and rate of litigation . . . which is attributable almost entirely to a rise in debt-related litigation."[32] She also found default rates rising from 12% in the Supreme Court of Judicature of New York and 44% in the Mayor's Court in the 1690s to 66% and 69% respectively by the 1750s.[33] Professor Bruce Mann studied the Hartford County Court from 1700 to 1760 and focused primarily on debt cases because "of the overwhelming predominance of debt cases in civil litigation generally."[34] He found that by the 1730s, "debtors never contested more than 10 percent of the actions on written instruments entered against them. In fact, they rarely contested more than 6 percent."[35] While there is a debate among legal historians regarding the *reasons* for the high default rates observed in colonial times,[36] multiple studies in various jurisdictions find very similar data on default rates.[37]

Turning to the antebellum period, Professor Thomas Russell studied one court in South Carolina and wrote that "common law courts of the United States mostly handled cases involving the collection of debts,

---

[30] *Id.*

[31] Note that this error applies not only to contracts cases but also to torts and real property cases. *See* NCSC 2015 REPORT, *supra* note 19, at 32 tbl.11. For contemporary accounts decrying the numbers of default judgments and need for reform, see Hillard M. Sterling & Philip G. Schrag, *Default Judgments Against Consumers: Has the System Failed?*, 67 DENV. U. L. REV. 357, 387 (1990). *Cf.* NAT'L INST. OF JUST., U.S. DEP'T OF JUST., SMALL CLAIMS COURT REFORM 6 (1983), https://www.ojp.gov/pdffiles1/Digitization/93351NCJRS.pdf [https://perma.cc/HY93-T8Q4].

[32] Deborah A. Rosen, *Courts and Commerce in Colonial New York*, 36 AM. J. LEGAL HIST. 139, 147 (1992).

[33] Deborah A. Rosen, *The Supreme Court of Judicature of Colonial New York: Civil Practice in Transition, 1691–1760*, 5 LAW & HIST. REV. 213, 229 tbl.1 (1987) [hereinafter Rosen, *The Supreme Court of Judicature*]; Rosen, *supra* note 32, at 154 tbl.1.

[34] BRUCE H. MANN, NEIGHBORS AND STRANGERS: LAW AND COMMUNITY IN EARLY CONNECTICUT 8 (G. Edward White ed., 1987).

[35] *Id.* at 39.

[36] *Compare id.* at 39–40 ("[M]ost actions on notes and bonds were not disputes at all. . . . Instead, [debtors] appeared in court and confessed judgment against themselves, or they did not appear at all and allowed judgment to go against them by default."), *with* Claire Priest, Note, *Colonial Courts and Secured Credit: Early American Commercial Litigation and Shays' Rebellion*, 108 YALE L.J. 2413, 2437 (1999) (examining, inter alia, the time that elapsed between the creation of a debt instrument and the filing of a lawsuit and concluding that "debt litigation in the colonial courts represents a genuine effort to collect debt, rather than mere debt recording"), *and* Claire Priest, Correspondence, *The Nature of Litigation in Early New England*, 111 YALE L.J. 1881, 1884 (2002) (arguing that the high level of default judgments in the period Mann studied "represented real defaults deriving from deep economic instability").

[37] MANN, *supra* note 34, at 58–59 (referencing the records of one justice of the peace in New London from 1739 to 1758 and noting that "[v]irtually all" of the debt actions he recorded were uncontested, *id.* at 59).

which is to say that the courts did the work of creditors."[38] Russell found passive judging even then, noting that "[o]nly rarely did judges consider the suits, as the shortest distance from filing through judgment to execution was between the offices of the clerk and sheriff."[39] Similarly, Professor Wayne McIntosh studied the Circuit Court in St. Louis, Missouri, between 1820 and 1850 and found that debt collection cases comprised the majority of civil cases, and a significant number ended in default, leading him to conclude that "during this period the court functioned as an agent of the financial community in enforcing the claims of creditors."[40]

Debt collection abuses, especially those causing further defaults, are also not new. As far back as the mid-1960s, there were reports of "sewer service" problems in state courts.[41] The U.S. Attorney's Office for the Southern District of New York (SDNY) conducted a study with postal inspectors and discovered a widespread practice of filing suits in inconvenient locations[42] and (an early version of) robosigning by process servers.[43] The investigation also revealed that 30% of the judgments entered in New York County Civil Court during a randomly selected period in 1968 were entered based on sewer service — that is, with no notice to the defendant.[44] As the SDNY report noted then: "[T]he overwhelming majority of persons victimized by sewer service are unable to hire attorneys to move to set aside judgments entered against them without notice, [thus] the judgments remain in effect and serve to significantly burden the lives of the judgment debtors."[45]

---

[38] Russell, *supra* note 2, at 346.

[39] *Id.* at 349.

[40] Wayne McIntosh, *150 Years of Litigation and Dispute Settlement: A Court Tale*, 15 LAW & SOC'Y REV. 823, 830 (1980); *see also id.* at 838–39 (reporting on default rates). McIntosh also found a decline and eventual leveling off in debt collection litigation between 1850 to 1925 in St. Louis, Missouri, but being unable to observe litigation cases in small claims and other courts, he concluded that "it is unclear whether debt litigation has actually decreased." *Id.* at 831; *see also* Russell, *supra* note 2, at 341–44 (similar).

[41] *See* Frank M. Tuerkheimer, *Service of Process in New York City: A Proposed End to Unregulated Criminality*, 72 COLUM. L. REV. 847, 848 n.6 (1972) (collecting 1965 studies from the Congress for Racial Equality and Mobilization for Youth detailing "sewer service" problems in New York City); *see also* 114 CONG. REC. 19219 (1968) (remarks of Rep. Joseph Resnick); ANNE FLEMING, CITY OF DEBTORS: A CENTURY OF FRINGE FINANCE 197 (2018).

[42] U.S. ATT'Y, S. DIST. N.Y., U.S. DEP'T OF JUST., BIENNIAL REPORT: JULY 1, 1967 TO DECEMBER 19, 1969, at 50 (1969) (discussing "a repeated practice of bringing suit in a county where a finance company is located even though the sale was made elsewhere and the buyer lives elsewhere, depriving customers of their day in Court").

[43] A search warrant to one process server uncovered pre-electronic robosigning: "6,300 affidavits signed in blank by about 100 different process servers. About 150 of these affidavits had also been notarized in blank." *Id.* at 50.

[44] *Id.* at 49.

[45] *Id.* at 48; *see also* Craig Karpel, *Ghetto Fraud on the Installment Plan* (pt. 2), N.Y. MAG., June 2, 1969, at 41, 41, 43 (identifying sewer service, lawsuits filed in an inconvenient venue, among other issues and quoting Professor David Caplovitz as asking "[w]hoever dreamed . . . that the

Studies from 1960s California Small Claims[46] and Municipal Courts[47] find similar issues. In the summer of 1967, Professor David Caplovitz interviewed over 1300 consumers who had been sued for debts in Philadelphia, New York City, Detroit, and Chicago.[48] His 1974 book, *Consumers in Trouble*, details how consumers were harmed by collection before even courts got involved. But in the context of collection lawsuits, Caplovitz found that default judgments were entered in greater than 90% of the cases in Chicago, Detroit, and New York City.[49] In Philadelphia, 83% of debtors in the sample had signed "confessions of judgment" during the credit transaction, and, since that procedure was legal at the time, all of those debtors essentially "defaulted" in their lawsuits.[50] Caplovitz also found stark disparities in service of process across racial groups, at least in New York City.[51] The book concluded: "Our study has documented the thesis that the courts do not administer justice in consumer disputes but rather act as the collection agents of the creditors . . . ."[52]

Individuals in the United States have likely never enjoyed access to civil legal representation in a significant way,[53] least of all in debt collection proceedings. Data from before the Founding of the Republic through today support a story where debt collection has predominated the business of the courts and a majority of debt collection defendants

---

courts in this city would be perverted into becoming a collection agency for unscrupulous merchants?," *id.* at 43).

[46] Small claims courts were already "primarily used by businesses and other organizations for the collection of debts." Jerome E. Carlin & Jan Howard, *Legal Representation and Class Justice*, 12 UCLA L. REV. 381, 421 (1965); *see also* Carl R. Pagter et al., Comment, *The California Small Claims Court*, 52 CALIF. L. REV. 876, 888 (1964) ("A small claims action brought by a corporation is much more likely to be against an out-of-county defendant than an action brought by any other type of plaintiff; and it is much more likely that an action brought by a corporation will result in default judgment.").

[47] Harry M. Brittenham et al., *The Direct Selling Industry: An Empirical Study*, 16 UCLA L. REV. 890, 925–26 (1969) ("The default judgment is frequently used by creditors to turn the courts into collection agencies. This phenomenon is not limited to the Small Claims Court, as is popularly believed.").

[48] DAVID CAPLOVITZ, CONSUMERS IN TROUBLE 8–9 (1974).

[49] *Id.* at 221 tbl.11.8.

[50] *Id.* at 258.

[51] "[I]n New York 66 percent of the [W]hites, compared with 56 percent of the [B]lacks and only 37 percent of the Puerto Ricans, said they received a summons." *Id.* at 196.

[52] *Id.* at 297.

[53] The exception to this rule is *modern* bankruptcy law, where upwards of 90% of consumers who file bankruptcy are represented by attorneys. Jean Braucher et al., *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEGAL STUD. 393, 401 tbl.1 (2012). A key phrase here, though, is "who file bankruptcy"; we do not know how many more people *would* file bankruptcy if they enjoyed greater access to attorney representation. For a discussion of bankruptcy law as consumer protection, see generally William C. Whitford, *The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer Protection, And Consumer Protection in Consumer Bankruptcy*, 68 AM. BANKR. L.J. 397 (1994).

have faced litigation without an attorney.[54] That individuals who may be short on funds have often gone without attorneys (whom they would have to pay) is not surprising, but the level to which courts have functioned primarily as debt collectors since before the Founding of the Republic should not be forgotten.[55]

B. Repeat Player Concentration and Dominance of State Court Dockets

While there is a rich history documenting the predominance of debt collection litigation in many courts, the lack of representation for defendants, and the high numbers of default judgments, it is not clear at what point a small number of players began to dominate the dockets. Wilf-Townsend documents the massive and rising influence that debt collectors and financial services companies have over state court dockets. By focusing on the top filers, he has identified a phenomenon that has lurked in smaller studies of the past few decades and brought it to the forefront.

The idea that a few players dominate civil lawsuits has cropped up in earlier smaller studies. Professor Mary Spector has studied a random sample of county court cases filed in Dallas in 2007 and has found that two plaintiffs initiated just over 36% of all the cases filed, "and the top five plaintiffs accounted for . . . nearly 64.3% of the total."[56] Professor Judith Fox has studied debt collection cases filed in Indiana during the first quarter of 2009 and has found that "thirteen plaintiffs were responsible for filing almost 79% of collection actions."[57] Indeed, the top five plaintiffs were responsible for 56% of cases.[58] Professor Peter Holland has examined a random sample of 4400 cases filed in Maryland collection courts by eleven debt buyers in 2009 and 2010.[59] A clinical professor representing debtors in Maryland courts, Holland created his sample by

---

[54] As shown by the smattering of legal history studies of different time periods in different jurisdictions, the evidence is unfortunately spotty.

[55] There is some evidence during the colonial period that some of the default judgments (which include confessions of judgment) were sometimes used as a recording device akin to secured credit. Rosen, *The Supreme Court of Judicature*, *supra* note 33, at 233–34.

[56] Mary Spector, *Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 VA. L. & BUS. REV. 257, 280 (2011). Spector has also found that six law firms accounted for almost 70% of the filings, *id.* at 285, that defendants failed to appear in 77% of cases in which they were served, *id.* at 288, and that nearly 40% of all cases resulted in a default judgment, *id.* at 298.

[57] Judith Fox, *Do We Have a Debt Collection Crisis? Some Cautionary Tales of Debt Collection in Indiana*, 24 LOY. CONSUMER L. REV. 355, 372 (2012).

[58] *See id.* (making a calculation based on the data reported by Fox).

[59] Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 LOY. CONSUMER L. REV. 179, 185 (2014).

selecting among "the highest volume filers in the state of Maryland."[60] Like Spector and Fox, however, Holland does not dwell on the volume of litigation generated by the top filers and the potential problems this might cause.

In contrast, Wilf-Townsend's focus is precisely on the top ten filers, and he documents their concentration *nationally* as well as across time. He finds that between 2004 and 2020, debt collectors and financial services companies jumped from 68 to 95% of all top filers.[61] This severe concentration appears to be a uniquely modern feature, one likely borne out of concentration in the financial services and debt purchasing industry itself.

In this Part, I have corrected Wilf-Townsend's characterization of an "emergence of majority–pro se courts" in the last decades,[62] finding instead a long history in which debt collection lawsuits make up a significant portion of court dockets, and defendants rarely contest or respond to suits and are hardly ever represented.[63] This rectification makes Wilf-Townsend's work even more important. He painstakingly documents both the size of the problem and its new concentration on a few actors. With this context, his findings illustrate a problem that has existed for hundreds of years, which has resisted a multitude of reforms,[64] and which has now grown to be caused primarily by fewer than a dozen actors nationwide. It's history repeating itself on steroids.

II. RESPONDING TO REFORM PROPOSALS

Here I briefly respond to Wilf-Townsend's suggested reforms to address plaintiffs' demands for assembly-line litigation. He proposes congestion pricing, turning defenses into claims, and claims processing "in the model of state agencies."[65]

---

[60] *Id.* at 203. Attorneys Claudia Wilner and Nasoan Sheftel-Gomes have used a similar identification strategy. CLAUDIA WILNER & NASOAN SHEFTEL-GOMES, LEGAL AID SOC'Y ET AL., DEBT DECEPTION: HOW DEBT BUYERS ABUSE THE LEGAL SYSTEM TO PREY ON LOWER-INCOME NEW YORKERS 18 (2010). They report that twenty-six debt buyers filed 441,143 cases from January 2006 to July 2008. *Id.* In that same period, 1,835,467 cases were filed in the New York City Civil Courts. *See id.* at 20. Using those numbers, the share of cases filed by the top twenty-six debt buyers is 24% of all civil cases in New York City in that period.

[61] Calculations using Table 4 of Wilf-Townsend, *supra* note 1, at 1736. 68% = (35,325 + 34,857)/ (35,325 + 34,857 + 33,127); 95% = (84,877 + 42,725) / (84,877 + 42,725 + 6,205).

[62] Wilf-Townsend, *supra* note 1, at 1714.

[63] *See* 115 CONG. REC. 7218 (1969) ("Only after the judgment is entered does the person sued often first learn of the suit against him — in many cases, he first learns of the suit when he gets a notice of judgment through the mail or when his employer receives through the mail a notice of garnishment . . . .").

[64] *See, e.g.*, Lisa Stifler, *Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy Solutions*, 11 HARV. L. & POL'Y REV. 91, 131–34 (2017) (describing some of the enacted reforms).

[65] Wilf-Townsend, *supra* note 1, at 1769.

A. Congestion Pricing

Congestion pricing aims to "decrease the total number of filings, increase the quality of those filings, and raise revenue for improved management of those filings."[66] Wilf-Townsend describes multiple ways to implement this idea: various kinds of congestion surcharges or a cap-and-trade-style model that would allow courts to "place upper limits on docket congestion."[67]

There is much to be said about the idea of forcing the top assembly-line plaintiffs to internalize more of the costs of what they do and reducing the current subsidies they enjoy from being able to use the legal system as efficiently as they currently use it.[68] While agreeing that increasing the financial burden on plaintiffs is likely to have a positive forcing effect, I worry about the consequences of making courts even more reliant (through an increase in the share of fees) on fewer than a dozen entities. I have experienced firsthand the outsize influence that repeat creditors (or more properly, their lawyers)[69] can have on judges, and the idea that just a few firms might end up comprising an even larger share of the court budget seems ripe for additional issues.[70]

B. Turning Defenses into Claims

Wilf-Townsend describes "turning defenses into claims" as "encompass[ing] interventions that enable defendants to become plaintiffs, turning their legal defenses into actionable claims that, in turn, can be aggregated as a typical plaintiff-side class action."[71] I interpret this proposal as calling for strengthening of existing consumer protection laws and affirmative causes of action vindicating consumer rights. His arguments in this section make a strong case for strengthening consumer

---

[66] *Id.* at 1761.

[67] *Id.* at 1760.

[68] *Id.* at 1758–59 (discussing the subsidization of plaintiffs' collection efforts).

[69] A fascinating version of Wilf-Townsend's study would be to look for "top law firms" who bring collection cases. At the local level, there may be an even higher concentration of lawyers, as they may represent more than one assembly-line plaintiff. But then again, I have heard reports that some plaintiffs split their litigation among multiple local firms to increase competition among the lawyers (and reduce costs). *See* TURNER, *supra* note 6, at 16 ("It is common practice in small-claims court sessions with a large volume of debt collection cases for one or two 'cover attorneys' to answer for all the large debt collection plaintiffs who have cases scheduled on any given day.").

[70] Just because courts might enjoy increased revenues from debt collection cases does not mean that they would put those revenues to use in deciding those cases. There have been many reforms proposed and enacted to "fix" the debt collection problems, even if we just focus on the last ten years. Very few of them have asked *more* from judges (as opposed to clerks).

[71] Wilf-Townsend, *supra* note 1, at 1763.

laws such as the Fair Debt Collection Practices Act[72] (FDCPA) and ensuring that consumers can use them effectively.[73] For example, banning class action waivers in consumer agreements would allow consumers to band together small claims and provide them leverage they currently lack to stop bad practices.[74] The reform effort should also include updating the remedies available to consumers and tying them to inflation going forward. For example, consumers are still limited to $1,000 in penalties per violation of the FDCPA.[75] In the context of the FDCPA, it could also include extending the one-year statute of limitations period for consumer claims and adding that all (or specific) violations of the Act would render any further collection of the debt itself a violation.[76]

And that's just the FDCPA. There are several other federal (and of course, state) statutes that could also use some updates.[77] But if we take Wilf-Townsend's argument far enough (and we should), what Congress ought to do is give consumers the ability to sue debt collectors (and others) for actions that are unfair, deceptive, or abusive.[78] In other words, grant a private right of action under section 1036 of the Consumer

[72] 15 U.S.C. §§ 1692–1692p.

[73] As an example, as Wilf-Townsend describes, the FDCPA "can be understood as adopting this approach in certain provisions." Wilf-Townsend, *supra* note 1, at 1764. These provisions give consumers the ability to sue for behavior that might otherwise have been only an affirmative defense during a collection lawsuit, *id.* at 1765, which very few consumers would bring, since most are unrepresented in the state court action.

[74] *See, e.g.*, Alan S. Kaplinsky et al., *After the Demise of the CFPB Rule, It Is Back to the Future for Consumer Arbitration*, 74 BUS. LAW. 591, 591 (2019). *See generally* Shauhin A. Talesh & Peter C. Alter, *The Devil Is in the Details: How Arbitration System Design and Training Facilitate and Inhibit Repeat-Player Advantages in Private and State-Run Arbitration Hearings*, 42 LAW & POL'Y 315 (2020).

[75] RACHEL TERP & LAUREN BOWNE, PAST DUE 18 (2011), https://advocacy.consumerreports.org/wp-content/uploads/2015/11/Past_Due_Report_2011.pdf [https://perma.cc/ND9J-QY5Q].

[76] *See* 15 U.S.C. § 1692k(d); *cf.* Note, *Improving Relief from Abusive Debt Collection Practices*, 127 HARV. L. REV. 1447, 1467 (2014).

[77] *See, e.g.*, *Model State Laws*, NAT'L CONSUMER L. CTR., https://www.nclc.org/legislation-regulation/legislation-a-regulation/model-state-laws.html [https://perma.cc/S7RG-K4WK]; Press Release, Nat'l Consumer L. Ctr., Advocates Applaud Bill to Cap Interest Rates at 36% (Nov. 12, 2019), https://www.nclc.org/media-center/advocates-applaud-bill-to-cap-interest-rates-at-36.html [https://perma.cc/7D2K-9MVC]; Ams. for Fin. Reform Educ. Fund et al., Comment Letter on the Request for Information on the Equal Credit Opportunity Act and Regulation B, Docket No. CFPB-2020-0026 (Dec. 1, 2020), https://www.nclc.org/images/pdf/rulemaking/CFPB-ECOA-RFI-Comment-Letter.pdf [https://perma.cc/LK3F-MUUD].

[78] *Cf.* Mark Pettit, Jr., *Representing Consumer Defendants in Debt Collection Actions: The Disclosure Defense Game*, 59 TEX. L. REV. 255, 288–89 (1981) (arguing that it is more expensive to represent consumers when the statutory provisions are vague or broad). *See generally* William C. Whitford, *Structuring Consumer Protection Legislation to Maximize Effectiveness*, 1981 WIS. L. REV. 1018 (arguing that increasing the specificity of legislation and altering remedial schemes can improve compliance with consumer protection laws).

Financial Protection Act[79] and ensure there are sizeable statutory damages and attorney fee shifting.[80] There are already some states with similar laws, although it is unclear whether they have any substantial effect.[81] The potential downsides of such an approach are beyond the scope of this Response.

C. Toward Administrative Adjudication

Wilf-Townsend remarks that, given the way debt collection cases are processed in courts throughout the country, it "may make more sense to think of assembly-line cases as petitions from a company to the state, in which third parties are permitted to play a role but rarely do so."[82] He proposes moving from the current system to a more administrative agency–like model. In this view, the court (or perhaps now a separate state agency) would take on the role of adjudicating these disputes while at the same time protecting consumers.[83] This new or redesigned entity could use "tools such as batch processing, collective adjudication, and claim sampling."[84] This is an intriguing idea, although many of the same benefits could be gained by having the Consumer Financial Protection Bureau (CFPB) or an equivalent state agency perform the oversight functions.[85] As Wilf-Townsend notes, Professor Yonathan Arbel proposed something similar, although that proposal did not take into account illegal practices at the postjudgment remedy stage.[86] As Steinberg and her coauthors note, however, the CFPB already has su-

---

[79] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1036, 124 Stat. 1376, 2010–11 (2010) (codified as amended at 12 U.S.C. § 5536).

[80] As Professor Alexandra P. Everhart Sickler has explained, "private right[s] of action aim[] to deter and remedy harm that *ex ante* regulation does not prevent, whether as a result of gaps in the public enforcement mechanism or to ensure regulation of harmful practices that a public regulator may not be able to anticipate." Alexandra P. Everhart Sickler, *The (Un)Fair Credit Reporting Act*, 28 LOY. CONSUMER L. REV. 238, 285 (2016). *But cf.* Alexandra D. Lahav, *Two Views of the Class Action*, 79 FORDHAM L. REV. 1939, 1951–53 (2011) (raising criticisms of the conception of the class action lawyer as a private attorney general in the context of consumer protection litigation).

[81] *See* CAROLYN CARTER, NAT'L CONSUMER L. CTR., CONSUMER PROTECTION IN THE STATES: A 50-STATE EVALUATION OF UNFAIR AND DECEPTIVE PRACTICES LAWS 33–34 (2018), https://www.nclc.org/images/pdf/udap/udap-report.pdf [https://perma.cc/LC7N-8QYM]; Allen H. Denson & Latif Zaman, *States' Divergent Approaches to Unfair, Deceptive, and Abusive Acts and Practices Reveal Consumer Protection Priorities*, AM. BAR ASS'N: BUS. L. TODAY (Aug. 22, 2019), https://www.americanbar.org/groups/business_law/publications/blt/2019/09/abusive-acts [https://perma.cc/2MQ8-62GQ].

[82] Wilf-Townsend, *supra* note 1, at 1768.

[83] *Id.*

[84] *Id.* at 1769.

[85] In California, for example, there is the newly constituted Department of Financial Protection and Innovation, which has many of the same authorities as the CFPB. *See Our Mission*, DEP'T FIN. PROT. & INNOVATION, https://dfpi.ca.gov/about [https://perma.cc/5FBT-HUYG].

[86] Wilf-Townsend, *supra* note 1, at 1771 (citing Yonathan A. Arbel, *Adminization: Gatekeeping Consumer Contracts*, 71 VAND. L. REV. 121 (2018)).

pervisory authority over many of these firms, and regulatory or enforcement authority over the rest.[87] It also regularly studies the market more broadly and has a specific market-monitoring division.[88]

III. REDUCING LITIGATION BY CUTTING OFF SUPPLY

The issues raised by assembly-line litigation go to the core legitimacy of the legal system. As I've argued above, these issues have persisted for hundreds of years — albeit on a smaller scale. But the magnitude of this problem — the increasing number of cases brought by assembly-line plaintiffs throughout the country — is for good reasons much larger than that reported in *Assembly-Line Plaintiffs*. Wilf-Townsend appropriately errs on the side of undercounting the extent of the assembly-line problem.[89] And although some of us are attempting to democratize more of the small claims court data from around the country, we do not have the data available yet.[90] If we could add in those lawsuits and "roll-up" plaintiffs to their corporate owners, we would see even more dramatic numbers.[91]

What to do about such an enduring, growing problem? Steinberg and her coauthors structure their solutions around the Movement for Black Lives and on the "premise[] that we achieve reform not by investing in broken institutions, but by investing in communities."[92] I could

---

[87] *See* Steinberg et al., *supra* note 4, at 368. Unfortunately, due to statutory constraints, the CFPB's supervision does not extend to firms that focus on medical debt. *See* 12 C.F.R. § 1090.105(a)(iii)(E) (2021) ("Annual receipts do not include receipts that result from the collection of debt that was originally owed to a medical provider.").

[88] *See, e.g.*, BUREAU OF CONSUMER FIN. PROT., THE CONSUMER CREDIT CARD MARKET (2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf [https://perma.cc/2LLH-ZKBQ]; *Research, Markets & Regulations*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/research-markets-regulation [https://perma.cc/72BJ-AY9R].

[89] *See* Wilf-Townsend, *supra* note 1, at 1727–28.

[90] I am a co–principal investigator on the Debt Collection Lab, a project led by Professor Frederick Wherry from Princeton University. *About Us*, DEBT COLLECTION LAB, https://debtcollectionlab.org/about-us [https://perma.cc/NXM6-6QR6]. Our goal is to "make visible the practices and indignities long shielded from the light." *Id.* The website currently makes available the Debt Collection Tracker, an overview of debt collection lawsuits in civil and small claims courts in multiple states and counties across the country. *Debt Collection Tracker*, DEBT COLLECTION LAB, https://debtcollectionlab.org/lawsuit-tracker [https://perma.cc/3VD4-RYUX].

[91] For example, American Express Centurion Bank is a top filer of cases in Table 2 of the Wilf-Townsend article, Wilf-Townsend, *supra* note 1, at 1732 tbl.2, but as Appendix II notes, "American Express Bank" was counted separately (both are subsidiaries of American Express Company), *see id.* app. II at 1788. Similarly, Midland Funding, a subsidiary of Encore Capital Group, is a top filer in Table 2, *id.* at 1732 tbl.2, but other subsidiaries like Midland Credit Management, MRC Receivables, and Asset Acceptance are counted separately, *see id.* app. II at 1786-87. There are a number of others (Citibank/Citigroup, JPMorgan Chase Bank/Chase Bank USA), but some of the companies are private and thus some of the information regarding ownership may be more difficult to find. *See id.* at 1788.

[92] Steinberg et al., *supra* note 4, at 371.

not agree more. Investing in communities and creating a legitimate social safety net would likely have a tremendous impact on assembly-line litigation, and so much more. I would characterize these solutions as cutting off the supply of litigable cases. Below, I briefly set out another kind of supply-limiting potential reform: one that aims to reduce the number of legal obligations that debt collectors can enforce in court.

My focus is on diminishing the size of the problem: decreasing the overall volume of litigation. As Wilf-Townsend illustrates, judicial debt collection is a high-throughput system.[93] We need to slow down and shrink the system, if not stop it altogether. There are at least three reasons why the assembly-line litigation has reached these extraordinary numbers. First, it works. Suing people to collect on their debts is a highly profitable affair because courts are such effective collection tools, and generally speaking, people do their best to pay.[94] Second, the opportunity for profits is inexhaustible because so many Americans depend on credit for basic necessities[95] and are just a small incident away from being unable to repay. Third, these debts can live — and grow — forever. This last point, that if consumers don't completely satisfy their debts, most contracts and state laws allow them to continue growing interest and fees and that they may be pursued effectively forever, was the subject of *Ending Perpetual Debts*, an article I wrote a few years ago.[96] I propose to adopt the solution I offered in that article: a statute that would "kill" unpaid consumer debts after seven years.[97] In brief:

1. "Owners of unsecured consumer debts would have seven years in which to collect those debts, with the clock beginning to run 180-days after the consumer's behavior that gave rise to the cause of action. Payments made during this period do not restart the collection clock";
2. "Judgments based on consumer debts would have a separate, nonrenewable, seven-year clock. In other words, the initial seven-year extinguishment period can be extended if a court renders a judgment in

---

[93] *See* Wilf-Townsend, *supra* note 1, at 1713; *High-Throughput*, OXFORD REFERENCE, https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095936341 [https://perma.cc/7RL3-V3FP].

[94] A CFPB report found that:

> Issuers recovered an average of 34 percent of all judgment balance at 48 months since the judgment was received, the longest performance window captured in the survey[]. The average four-year cumulative recovery rate for accounts with judgments was twice the overall four-year cumulative recovery rate for all charged-off accounts . . . . Cumulative recoveries from judgment accounts increased steadily over time . . . .

BUREAU OF CONSUMER FIN. PROT., *supra* note 88, at 154.

[95] *See* Atkinson, *Rethinking Credit*, *supra* note 12, at 1096–98.

[96] *See generally* Jiménez, *supra* note 16.

[97] I proposed seven years to comport with the Fair Credit Reporting Act's reporting period, but of course, that period itself could be changed. *Id.* at 644, 647.

a lawsuit filed before. The automatic discharge federal law I am proposing would not only automatically extinguish the legal remedy of collecting through the courts, but also any right of repayment";

3. "When the applicable seven-year period expires, the debtor's obligation to the creditor and the creditor's concomitant right to collect cease to exist. Similar to the bankruptcy discharge, a judgment obtained on an extinguished debt is void and can be collaterally attacked in a different proceeding";
4. "Attempting to collect on an extinguished debt would be an unfair practice giving rise to a private right of action against the collector, with statutory financial penalty, attorney's fees, and actual costs (including disgorgement of any payments made by the consumer) obtainable from the collector. Regulators such as the Consumer Financial Protection Bureau and states' attorneys general could also enforce the statute"; and
5. "The two extinguishment periods would preempt contrary state law and could not be waived by the consumer."[98]

Ending Perpetual Debts contains a longer discussion of the proposal and challenges of implementation than I have space for here,[99] but I want to highlight what this could do for assembly-line litigation. We currently have a "zombie debt" (or at least, very old debt) problem.[100] The CFPB's 2021 report on the credit card market found that "[m]ost [debt] issuers reported holding a sizeable amount of debt past the statute of limitation in their inventory."[101] Given how most state statute of limitations laws work, these limitations periods can be restarted by something as simple as a consumer acknowledging that they once owed the debt.[102] A creditor can then legally sue the consumer who defaults on this debt. The proposal above would give creditors seven years to collect from the moment of first default, and nothing could be done to restart the legal ability to collect. The idea would be to make debts past this period as unenforceable as confessions of judgment have become.[103] The affirmative cause of action and CFPB enforcement should deter debt collectors from bringing these types of suits, but if they do bring them, there is only one piece of information that needs to be shown to determine if that lawsuit is valid: the date of the first default under the contract. If the lawsuit is brought seven years after that date, or if it's an attempt to enforce a judgment and the judgment was obtained more than seven years prior, those attempts to collect are invalid.

The key point is to "kill" debts in the simplest and most easily verifiable way possible. The current system allows the statutory limitations

---

[98] *Id.* at 645–46 (footnote omitted).
[99] *See id.* at 644–57.
[100] *Id.* at 611; *see id.* at 613–28.
[101] BUREAU OF CONSUMER FIN. PROT., *supra* note 88, at 145.
[102] Jiménez, *supra* note 16, at 611.
[103] *See, e.g.*, FTC Credit Practices Rule, 16 C.F.R. §§ 444.1–.5 (2021).

period to "restart" every time someone makes a payment after a default.[104] Under this "automatic discharge" system, once the creditor has declared a default under the contract, the seven-year statutory period would begin to run. Creditors would have that time — and only that time — to attempt to collect. Even if a consumer began to repay, if they did not repay in full during those seven years, their debt would nevertheless be extinguished. Creditors would also have the option to obtain a one-time (and one-time-only) extension on their debts by winning a lawsuit and obtaining a judgment.[105] That judgment itself would then be collectible for another seven years, but no longer. Unlike under current law, the judgment would not be renewable. This method would also reduce the potential consumer issues in judgment enforcement.[106]

Ending perpetual debts would not by itself solve the assembly-line litigation problem. But, by reducing the supply of debts that could be litigated, it has the potential to significantly reduce the volume of lawsuits as well as collection activity more generally.

CONCLUSION

Assembly-Line Plaintiffs meticulously documents the widespread practices of a small number of private actors who enjoy outsize access to the state court process because of the number of lawsuits they file. The cost to these plaintiffs of using the court system to collect is low enough that these collectors operate with large profits. It all boils down to a very roundabout and costly way of subsidizing private companies that causes a great deal of suffering to the many individuals — disproportionately poor or minoritized — caught in the system.[107] Wilf-Townsend shows us that this subsidy is primarily benefiting fewer than a dozen different corporations.[108] His important work should spur us to act more quickly to reduce, if not completely stop, the assembly line.

---

[104] Jiménez, *supra* note 16, at 621.
[105] *Id.* at 651.
[106] *See* Wilf-Townsend, *supra* note 1, at 1763.
[107] *See* Jiménez, *supra* note 16, at 637–40.
[108] *See* Wilf-Townsend, *supra* note 1, at 1732.