In 1998, when I was a graduate student at the University of Wisconsin, I was fortunate to attend a two-day conference organized around Marc Galanter’s seminal piece, “Why the ‘Haves’ Come Out Ahead.” Held to celebrate the twenty-fifth anniversary of this often-cited publication, the retrospective offered the insights of some of the greatest scholars in the area of Law and Society, reflecting on one of the discipline’s most important works. This conference inspired the edited volume, \textit{In Litigation: Do the “Haves” Still Come Out Ahead?} The book draws on papers presented at this conference as well as articles published in a special issue of Law & Society Review focusing on Galanter’s “Haves” paper. In addition, several new papers, written specifically for this volume, are also included.

Part One of this volume begins with Galanter’s original article, following an introductory chapter. Galanter’s now-famous piece argues that the legal system disproportionately advantages those parties who use the courts on a repeated basis and who have sufficient resources to benefit from this repeated usage. For these “repeat players,” litigation is anticipated
and handled strategically; each court case simply is one in an ongoing stream of similar lawsuits. Repeat players benefit from advance intelligence, economies of scale, and greater familiarity with the law, enabling them to “play the odds” and push to litigation only those cases where winning is not only likely but will produce substantial outcomes and affect the rules of the game. These repeat players are often the “haves” litigants, such as large corporations. In contrast to the repeat players are the “one-shotters” who have only occasional, unanticipated contact with the legal system.

Part Two tests Galanter’s hypotheses through six eclectic and engaging empirical studies. The first of these, chapter three, by Donald Songer, Reginald S. Sheehan, and Susan Brodie Haire, demonstrates that the “haves” were more likely to win U.S. Court of Appeals cases, from 1925 to 1988. In particular, they found that the U.S. government, in some ways the ultimate repeat player, enjoyed a great deal of appellate success. Beth Harris, in the next chapter, examines public interest lawyers’ struggles on behalf of homeless families or families nearing homelessness, showing how these attorneys transformed judicial decisions into “symbolic resources” to achieve actual benefits for their clients. These lawyers, although representing perhaps the ultimate “have nots,” were able to act as repeat players to advance their clients’ positions. In the following chapter, chapter five, Karyl A. Kinsey and Loretta J. Stalans explain that tax auditors’ decisions are often shaped by the cultural capital of the taxpayers, benefiting higher prestige taxpayers. However, Kinsey and Stalans also found that practitioner involvement lessens this high-prestige bias and levels the playing field for “haves” versus “have nots.” In chapter six, Catherine Albiston, studies employment litigation regarding the Family and Medical Leave Act to show that, when repeat players settle cases that they anticipate losing, the one-shotters may win in each particular instance. However, the larger-scale result is that these settled
cases do not become precedents and fail to impact any benefit to future, similarly situated one-shotters, thus limiting any impact these cases could have had for social change. Yoav Doton’s chapter seven explores litigation outcomes from the Israeli High Court of Justice, finding that the “haves” experience only limited advantage over “have nots” and that the “haves” do not come out ahead when the “have nots” are represented by legal counsel. These findings held true in settled cases as well as those that went through final judicial dispositions. In the final chapter of Part Two, Kathryn Hendley, Peter Murrell, and Randi Ryterman examine what they term the “Russian Repeat Player” (RRP), finding RRPs to be less aggressive and less innovative than Galanter’s repeat player yet more likely to sue other RRPs.

Part Three offers three compelling empirical studies building on Galanter’s hypotheses, as well as a fourth chapter which summarizes the impact of Galanter’s classic article across the disciplines. The first chapter in Part Three, by Patricia Ewick and Susan Silbey, inquires about the significance of the general public realizing that the “‘haves’ come out ahead” for the legitimacy, authority, and durability of law. Ewick and Silbey found that people have multiple, even contradictory, perceptions of the law (specifically “before the law,” “with the law,” and “up against the law”). However, “multiple and contradictory meanings of legality protect [the law] from – rather than expose it to – radical critique” and, therefore, are not a problem with the law, but actually “operate ideologically to define and sustain legality as a durable, powerful, social institution” (p. 284). In the next chapter, chapter ten, Lauren B. Edelman and Mark C. Suchman assert that large, bureaucratic organizations have “internalized” key aspects of the legal system, specifically through (1) the “legalization” of individual firms and organizational fields, (2) increased reliance on alternative (private) dispute resolution for conflicts both within and between organizations, (3) increased prominence of in-house counsel, and (4) greater use of
private policing. These trends have moved important functions from the public legal order into the realm of organizational bureaucracy, increasing the power of the “haves” as organizations are no longer simply repeat players but separate private legal systems. In chapter eleven, Herbert Kritzer argues that, contrary to party capability theory, the most powerful litigation parties are not businesses but the government because it has rule-making authority and because, “despite norms of judicial independence, courts and judges are not independent of government” (p. 343). Thus, in addition to the common repeat player advantages, the government also benefits from being the one that both makes the rules and enforces those rules by which we all play. Brian Glenn closes the volume by reviewing the research that has been generated by Galanter’s article, first discussing and classifying the works and then providing a bibliographic table of these “progeny.”

It is impossible, in a short review article, to do justice to the many fine articles included in this volume. Together, these eleven chapters offer rich and intriguing discussions of power and advantage before the law, united by the ground-breaking 1974 article by Galanter. This volume is an important compilation of works addressing legal participation and litigation behavior. It offers a significant contribution to law and society scholarship as well as many other areas in a wide variety of disciplines.