"Political Culture
and the Public Sphere:
Rethinking the Making of
Citizenship"

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Attention to the meaning and making of citizenship rights has been largely absent from the intellectual agenda for too long. Thirty years have passed since Reinhardt Bendix's Nation-Building and Citizenship, and over forty since T.H. Marshall first published his masterful series of lectures, Citizenship and Social Class.1 Happily we can now celebrate the forthcoming republication in a new edition of T.H. Marshall's classic (with a lengthy introduction by Tom Bottomore). This could hardly be more timely. Rarely have the politics of citizenship, rights, and social change more dramatically been yoked together than in recent years where societies constructed on a framework of state control, such as in Eastern Europe, the Soviet Union, and China, have collapsed or been fundamentally challenged by the mobilizing force of an extraordinary source of power--popular claims to citizenship rights. What is most notable about these rights-claims is their political specificity: citizenship rights may appear 'natural,' but they are rights-claims justified by membership in a historically constructed political community. As such, they have unfurled in the context of national public spheres and state power. The world-historical impact of these events is obvious. The implications for politics and sociology should also be both large and urgent: Just what is this power we call citizenship and how and why is such an identity constructed as a dynamic force in history?

The exigency of this question makes it especially unfortunate that recent sociological discussion of citizenship has been so scant. Among Western intellectuals the reasons for this silence are not hard to identify. The persistence (currently the increase) of social inequalities in the face of celebrated liberal freedoms seems only to highlight the shallowness of that which we most commonly associate with citizenship--formal civil rights and a limited concern for individual liberty. The language of citizenship is further made suspect by its association with liberalism's apparent focus on individual rather than social rights. It is thus not surprising that scholarship has concentrated on the politics of class, and the historical formation of working-class movements for social and economic change have dominated discussion and inquiry.

But there is a sociological message in the political charge recently ignited around the world: People are empowered by an identity-politics; social change is made by people whose sense of who they are is violated fundamentally; and it increasingly appears that the identity of self as a 'rights-bearing' person is perhaps the most inviolable, and the most empowering. And there are other elements of this message. Despite the similarities across European movements, for example,

the recent mobilizations have nonetheless unfolded in the context of local political cultures, that which the activists call 'civil society.' These are people who have articulated their rights-claims to be held by virtue of political membership in a sphere that is neither of the individual nor of the state.

The implications of this seem striking: We need to reproblematize the politics of citizenship; citizenship is a 'contested truth'--its meaning politically and historically constructed. We need to explore why the context of participation is in the pluralities of local civil society rather than in either the individual or the state. Above all we need to look at the ways that political issues of participatory and civil rights have been integral to--rather than exclusive of--those of economic justice. It is crucial to understand how both class and politics mutually influence the formation of rights.

T.H. Marshall wrote in a very different time than ours. Britain in 1950 was in its glory days of expanding institutions of social citizenship--from health care to education. Those days seem a long way from our current political economies. Yet Marshall's discussions of the relationship between social class inequalities and the formal status equality of citizenship is even more germane today. It is for this reason that a reconsideration of his work seems fitting. This essay will explore Marshall's work on the same ground as he did--the formation, course, and consequences of citizenship in English history. There are three parts to my essay. In the first, I will lay out those aspects of Marshall's argument with which I am most concerned and I will formulate in relatively theoretical terms five specific "points of contention." In the second section, I will offer a rather general "counter-narrative" of English citizenship-formation to that of Marshall's. Out of that counter-narrative will emerge my amended conception of citizenship. And finally in the third section, I will present a more closely grounded example of the making and meaning of citizenship in one type of local political culture--English towns and municipalities.

What this paper is definitely not is a paper about the rise of capitalism, or the transition from feudalism to capitalism, or even the actual historical impact of capitalism on legal rights. It is not even directly concerned with the qualitative impact of citizenship institutions on social inequalities. Nor is it a paper taking a position on the 'urbanist' theory of the development of capitalism; and most especially it is not a celebration of a 'golden-age.' What it does address are the institutional roots of a political culture--roots which have perhaps been too long

obscured by debate over the normative implications and the contested uses of English history.

I

T.H. Marshall and Citizenship: Point Counter-Point

T.H. Marshall's classic <u>Citizenship and Social Class</u> is an explanation for the successive growth of citizenship rights in the context of the development, course and consequences of the capitalist mode of production. Marshall's path breaking achievement was to expand and redefine citizenship away from a narrow legal concept of formal individual liberty or even democratic participation. Instead he presented a conception embracing not only these rights but also the right to be provided with antidotes to social inequalities through economic welfare and a modicum of social justice. His three-dimensional definition includes civil, political and social rights.2 Civil rights are those we associate with formal individual liberties--habeas corpus, the right of association, the right to sell one's labour on a free market, and the right to justice--the courts of law without which no right would be politically meaningful. Political liberties are participatory rights--the right to vote, to elect representatives, and so on. Social rights are what he calls the "consumer" rights of the modern welfare state. This bundle of rights attaches to persons through what Marshall calls the "status" of citizenship.

It is the relationship between the rights endowed by citizenship status premised on equality one the one side, and the fundamental inequality of the social class structure on the other that most interests Marshall. The two sides represent, in his words, "warring principles"--those of status equality and right against contract inequality and markets. Developing a theory to account for the cause and consequences of these warring tensions in modern society forms the heart of his work:

In Marshall's explanation the engine of modern citizenship is in the social forces and conflicts of capitalism. The needs of capitalist society for free individuals available for labour markets and bourgeois needs for mobile property get the motor going and lead to the achievement of civil rights. Once set in motion, the subsequent contradictions between capitalist social forces and the exclusions and inequalities of the class system keep the drive going. Eventually all three citizenship rights are sequentially instituted through socio-economic change and class formation. This initial premise leads his historical periodization to coincide with epochs of class formation.

In the first stage of the long eighteenth-century the triumph of the gentry in the Glorious Revolution ushered in civil citizenship; political citizenship was a product of the nineteenth-century ascendancy of the middle class; while social

citizenship came in the twentieth century with the power of the working class and the institutionalization of the welfare state. For Marshall each phase of citizenship is not organically contained in the preceding one. He allows for separate developmental stories for each component. He also dismisses a teleology of rights which derive ultimately from individual property rights. But although they are not logically derived in this way, he nonetheless insists that the emergence proceeded in necessary stages, each right a product of the developmental logic of capitalism and its processes of class formation.

The meaning of the growth of citizenship is fundamentally Marshall's story of the enlargement of individual rights to autonomy and equality. To be sure, each individual legally is given an equal opportunity to citizenship rights as a consequence of her social status as citizen; but it is the individual who inhabits this status and thus is endowed with the rights the status accords.

Marshall's definition of citizenship as embracing three spheres has yet to be surpassed. The strength of his classifications is their insight into the political nature of social life and the recognition that social as well as political rights can only stem from a political community. Moreover, his emphasis on the institutionalization of rights as a necessary component of their realization is a major contribution. But his greatest contribution perhaps is in his originality and clarity in posing what has now become a common problematic among political sociologists--the inherent tension between capitalism and democracy or, in his formulation--between market inequality and the principle of equality. Marshall's intellectual inheritance (Tawney, et.al) and his own moral impulses make immediate the unexpected consequences of the unification within a single society of the contrary tendencies toward the inequalities consequent to legal freedoms in law and markets on the one hand, and those toward the equalizing goals of social welfare and democratic education on the other.3(?)(?)(?)

Five Points of Contention:

There are, nonetheless, serious problems with Marshall's account of the growth of citizenship, its relationship to capitalist development, and the meaning he ascribes to citizenship. To be sure, his primary interest was less with the rise of citizenship that with building a theory that could make sense of its paradoxical consequences for twentieth-century social and economic relations. But Marshall's theory of contemporary society is not structurally static; its powerful analysis of the tensions between citizenship and society, as well among the different dimensions of rights is entirely dependent on the historicity of their emergence.

Indeed all explanations are part theory and part historicity--or dynamic historical narratives.4 To fully consider his theory, there is no choice but to seriously address its historical foundations.

I start by embracing Marshall's three-dimensional definition of citizenship. But I will take issue with five of his explanatory themes--the structural dynamic, the historical agency, the timing, the spatial distribution, and the meaning of citizenship. In preview: 1) Where Marshall sees the structural motor of capitalist social forces at work in the development of citizenship, I see a shifting configuration of political and community institutions and a concomitant political culture of rights; 2) Where Marshall sees the agents of citizenship to be social classes, I see members of contesting institutions as the protagonists in the drama of rights; 3) Where Marshall sees citizenship rights sequentially follow the transition from traditional feudal to modern capitalist society, I see the institutional roots of citizenship long before capitalism and a subsequent contingency in the enlargement and contraction of rights unattached to any macro-processes of feudalism's demise, capitalism's rise, or societal modernization in general; 4) Where Marshall sees a national uniform extension of rights, I see both a localized and uneven spatial distribution as well as an uneven capacity for and consequences of exercising those rights--indeed permanently variable and contested degrees of autonomy and equality; 5) And where Marshall sees citizenship as the gradual enlargement of individual rights to wider spheres of society through the equality of status, I see citizenship rights as a hybrid that at once embodies institutional membership and social attachments, as well as the capacity for the individual exercising of those rights.

Structural dynamic: Marshall's analysis of political developments is firmly anchored in the social structures of feudalism and capitalism. The motor of his sequential process of citizenship-formation is in the needs and inevitable social contradictions of the capitalist mode of production. Citizenship rights as we know them were non-existent before capitalism. Any initial impulses towards or even early expressions of rights were thoroughly impeded by the unequal status structure of feudal society. Only the equality of status necessary to and promoted by capitalism enabled their initial "take-off." The expansion of citizenship was in turn driven by capitalism's ensuing conflicting principles--legal equality and social inequality. Marshall's theory takes a curious twist; rather than status to contract, he move from status to contract and status.

The fundamental point that distinguishes myself from Marshall's is that in my argument the processes of citizenship-formation are not anchored in social structures--whether feudal or capitalist--and exist in analytic (although of course not historical) autonomy from the categories of status and class. Rather than in the transition to capitalism, I see the roots of citizenship not in the 'birth of class society' but in the legal revolution of medieval England and the formation of a national public sphere and a concomitant political culture of rights. The institutional patterns of England's public sphere--by which I mean the conjoining of a territorial-wide public law with the public urban and rural communities of the realm--was unique. (I use the term to avoid the confusion associated with either the term the "state"--which is too reified and too difficult to distinguish from "the government" or "the crown," or the "nation-state"--which is too anachronistic and carries too many connotations.) Alone among processes of Western state-formation, only the English crown created a national public sphere by appropriating from below and extending throughout the land the political and legal conventions of the medieval cities (the city 'writ-large') and (to a lesser extent) those of the public villages. As a result, remedies of procedural justice (civil citizenship) ensuring personal liberty coexisted with both national regulatory and redistributive statutes (social citizenship) and legal institutions which commanded community participation (political citizenship) in the administration of law.5

By appropriating and extending throughout the land the political culture of the city, English state-building institutionalized a working definition of liberty and rights linked to public law, local participation and, above all, the rights of public membership. Beginning in the seventeenth century, these ideas had to compete with a newly developed idea of liberty based solely on the individual rights and property produced from autonomous labour. These Lockean ideas of natural rights have dominated the social history of working class politics. But not only did the former public conception of rights and freedom prove remarkably robust in its competition with Locke's ideas; arguably, it was more significant in shaping modern popular conceptions of and claims to citizenship.

While the struggles over rights were deeply embroiled with the inequalities--indeed the violence--of capitalism, these struggles and their institutional concomitants were consistently mediated through constitutional and juridical channels. Indeed as an institutional force in the historical landscape, the culture of rights played a constitutive role in shaping the patterns and timing and

character of both feudal and capitalist relations as they changed and developed over the course of the centuries. The history of struggles over citizenship becomes less intelligible in the absence of a full picture of these institutional foundations.

Agency: The agents in Marshall's account of citizenship are social classes whose structural positions and interests in effect thrust them into the historical arena. The dynamism behind these struggles, however, was less the class actors than the contradictory principles between the inequalities of class under capitalism and the formal equality of status under citizenship.

In contrast the agents of my story are members of particular communities or institutions in different sectors of the public sphere. At different times and places, and for different reasons, these membership groups formed alliances or antagonisms with other groups. Some of the contending and coalescing groups included peasant families in pastoral regions of England, monarchical state-builders, baronial challengers to the crown, merchant middle-men engaged in the rural putting-out industry, small-fry constables engaged in enforcing the law in local villages, and the artisans and journeymen of guilds. Depending on circumstances and resources, rights were successfully institutionalized, realized, blocked, or neglected in the course these alliances and contestations.

In these contestations, legal institutions and a culture of rights were both the resources and the outcomes of these alliances and antagonisms. It would be difficult if not impossible to know which came first in any causal sequence. Examples of some of the institutions and cultural resources involved included the legal right to remedy against the "overmighty," guaranteed trial by jury of one's neighborhood, the administration of justice and governance through local juridical bodies, the discourse of the universality of law, the doctrine of the "king's two bodies," and the existence of statutory regulations mandating that minimum and maximum wages were to be locally administered.

The explicit reasons motivating particular alignments at particular times included economic reasons, as well as religious, familial, political, moral, military, and so on. Usually there was a combination of reasons. But regardless of the particularities of any given coalition or conflict, the issues were fought out over competing conceptions of membership rights. Because labour relations, for example, were embedded in legal policies (social citizenship), struggles over labour conditions became struggles over the appropriation of law and the realization of rights.

Perhaps most importantly, the outcomes of these struggles were less attached to their agency in class or status groups but in the character of the site of contestation. Only occasionally were the agents' intentions or interests translated into results; more commonly, the struggles over rights and their institutional expression led in directions wholly unanticipated. This was especially true in the surprising case of popular appropriation and transformation of the discourse and promises of universal justice.

Temporality: Marshall's sequential timing of citizenship--from civil, to political, to social--is a direct outgrowth of his initial anchoring of the process in the capitalist social structure and its class agents. This initial premise leads his historical periodization to coincide with epochs of class formation--since each right is a product of the developmental conflicts of capitalism and its stages of class formation. It follows from this that Marshall's is an amended theory of modernization: citizenship can only be truly identified with the decline of traditional feudal society (status) and the rise of a modern capitalist one (contract). Although his amendment of modernity (contract plus status) is a major contribution, like all versions of modernization, a fundamental discontinuity must be located in the transition between the two. This is why Marshall acknowledges the presence of "traditional" sorts of rights under feudalism but argues for a qualitative break before modern rights begin to emerge in the eighteenth century. It also forces him to limit the presence of political rights to the nineteenth century, and social rights to the twentieth.

By contrast I see a contingent and uneven process to the institutionalization of citizenship rights which does not correspond to a periodization of the transition from feudalism to capitalism. Indeed virtually all the multiple and overlapping groups of English communities claimed, exercised, benefited and suffered from both the expansion and the contraction of all three types of citizenship rights long before the triumph of their "proper" structural cause. In certain settings all three dimensions of citizenship existed and were exercised in institutional and practical terms before anything resembling the capitalist mode of production arrived in the English countryside. At times one or more of these rights became faint through repeal or desuetude, while at other times they were central players in the historical drama. The most significant point of difference is that I begin the story with the medieval legal revolutions and insist that rather than a qualitative break from this period, modern citizenship rights can only be fully understood as continuations--albeit with major transformations--from these medieval foundations.

Scope and scale, the problem of place: Marshall views modern citizenship rights as society-wide in scope since they are concomitants of holistic societal transformations. The scale of citizenship, the classes who carried them out, the breadth of the economic changes, and ultimately the institutionalization of the rights themselves were universal rather than particular. In this he follows his disciplinary training in sociology with its nonsensical neglect to spatial distinctions and cultural differences within single societies.

In contrast I see the paradox of England's national political culture of rights to be in the fact that it produced highly localized and multiple practices of rights and their enforcement. Even formally institutionalized rights were totally local in effect and were always transformed in the particular settings where they were implemented. This was a direct result of the peculiar nature of England's public sphere--the political entity which conferred these rights. Its hybrid conjoining into the structure of rule national, county, and local spheres of power created a central ratchet point of vulnerability--local governance. As a result, the meaning of rights varied radically depending on the setting and the administrative relationships where it was actually exercised. Not surprisingly the struggles for and over rights were also highly local and unevenly distributed over the social and geographical landscape.

Meaning: For Marshall, the essence of a right is precisely in its attachment to an autonomous individual. Because the status of citizenship is by definition a social category, the rights it confers can only be carried by individuals abstracted from their actual relational settings.[6] The conflicts Marshall identifies between individual freedoms and the distributive measures necessary for greater social equality do not affect this ontological premise of the rights-bearing individual.

By contrast, the citizenship rights I see exercised in historical practice comprise a hybrid of more commonly perceived incompatibilities between individual and communitarian conceptions of rights, or negative and positive liberty. (Indeed so dichotomous is this false distinction that most communitarians do not even accept the concept of rights as ontologically consistent with their view of the self.[7]) My conception of a right entails recognizing that only the relationality of rights, (an outcome of what I will call 'autonomy in membership' and 'liberty in embeddedness') provides the means to exercise autonomy and independence.[8] Citizenship rights are indeed rights which support and allow a high degree of independence; at the same time they are predicated on the

attachments and the constraints of membership within a particular group--from family, to village, to trade union, to party, to national public sphere. As will be evident in my discussion below, even the achievement of the civil right to liberty presupposes the achievement of an a priori right to membership and the necessary maintenance of attachments. Indeed the history of rights sadly reveals their diminishment with the attenuation of particular communities; while the attenuation of memberships also reveals the concomitant loss of individual empowerment and independence.

Rather than a category of social status the meaning of citizenship rights can be viewed as a bundle of enforceable claims which are variably appropriated by members of communities within a territorially defined nation-state. A right, like all forms of moral and legal power, does not come attached to anyone social group or institution; rather it is a free-floating cultural and institutional resource whose appropriation and consequence only has meaning in practical context. In this sense, legal discourse is one of the most powerful of rights; but who benefits from it will depend upon the distribution of power among those groups seeking to justify their claims according to that discourse. A right is thus a social practice; it is not a "thing."

III
<u>A Counter-Narrative of Citizenship</u>

These five points of contention are all elaborated in my alternative view of citizenship-formation. My story, in brief, is told through the making of the political culture of the public sphere in which citizenship-rights were developed and contested in medieval and early modern England. It the history of coalitions and contentions, alliances and antagonisms, that play out in a shifting configuration of institutional relationships and political cultures. The premise of my story is that development of citizenship becomes less intelligible when analytically or historically severed from these medieval institutional and cultural foundations. Rather than one of social forces making, controlling, and patterning political rights, it is a story of the institutional and cultural foundations of those rights and their overwhelming importance in shaping patterns of social relations as well as social and political conflicts. I do not suggest that social forces are not important; on the contrary, it is the interaction between these forces and the shifting institutional patterns of the public sphere that makes the history and the realization of citizenship and its rights so unpredictable.

My counter-narrative begins with a set of questions and observations. For Marshall, the three dimensions of citizenship were historically sequential; they may not have been logically derivative but their successive phasing was historically necessary and followed a developmental modernizing continuum. But if his schema makes sense, how are we to account in the early nineteenth century for the loss of long-standing social citizenship rights such as apprenticeship regulations?9 And why the decrease in political citizenship in the after a period of democratic expansion in the seventeenth?10 Why did England have 500 years of poor laws which were first radically reformed in 1832? And why were <u>minimum</u> wage regulations first passed in 1604--three centuries before Marshall's social citizenship--only to be repealed in 1814?11

The same sorts of questions of periodization are applicable in reflecting upon the agency of citizenship-formation. In the context of Marshall's account of periodization one of the most perplexing questions arises in light of the continuity of political practices before and after the transition from "traditional society" and "feudalism," to "modernity" and "capitalism. Noticing the disproportionate presence of collective actions in the rural-industrial regions of seventeenth and eighteenth-century England, scholars have been quick to argue that the key to

understanding the content and meaning of these struggles is the onset of early capitalist labour relations.12 But a glance backwards to the same communities in the same settings reveals substantively similar conceptions of and claims to rights- -attached to different specific problems of course. The long-term evidence is striking: From as early as the fourteenth century peasant and later rural-industrial communities from the pastoral regions of England claimed rights and expectations towards the law in language and in actions remarkably similar to those of their nineteenth-century progeny discussed above.13 These early labouring families also linked the independence and cohesion of their communities to the participatory rights and distributive ideals of English citizenship. Moreover, they appeared to carry these citizenship expectations with them directly into the modern nineteenth-century world of industrialization.

These practices, moreover, were highly local and regionally-specific. No less striking than the temporal continuity is the evidence of persistent spatial and geographical distinctions in rights-claims and attitudes toward the law.14 Also dating from the fourteenth century, communities specifically from pastoral, later rural-industrial, and eventually industrial villages demonstrated explicitly positive claims and expectations of citizenship-rights. There is less evidence for any such positive expectations or practices towards the law in those communities comprised primarily of large commercial agricultural labour.15

The contrast is notable: Rural-industrial communities appear almost "guild-like" in their political cultures,16 while their labouring agrarian, but same-class, neighbors revealed a radically different, and negative, attitude towards the law. Far from "rights", these latter communities clearly perceived the institutions of law and justice to be oppressive.

Any theory of the historical development of rights-claims would have to be able to account for these surprising problems of time and place. These are the sorts of questions that organize my counter-narrative.

The Making of the Public Sphere

To understand the meaning of citizenship we must begin by exploring the context of its making. The meaning of English citizenship is revealed in the historicity of the public sphere that first conferred and demanded it. The first national entity in England to confer citizenship rights was what I am calling the medieval public sphere. The history of the formation of a national public sphere must begin in eleventh and twelfth-century England before the presence of a unified territorial-wide state. Decentralization was the hallmark of this period of

so-called feudalism, and it is generally characterized as comprised of a single political culture of "parcellized sovereignties" of mighty fiefdoms with the crown simply one among many feudal landlords.

By contrast, I will map the landscape roughly into four different political and legal cultures. The first is the most familiar: The rich arable regions of England dominated by significant manors and their lords, and administered through manor courts (hall moots). These private spheres of power (which varied tremendously in size and resources) most closely fit the stereotype of the feudal social order--a hierarchical chain of relationships connecting lords, vassals, and a large population of servile unfree peasant labourers (villeins). In this system of vertical ties, each link plays a part in the story of citizenship-formation. The strongest manorial lords formed the core of the legendary baronial competition to the crown (leading to the Magna Carta) which served as a catalyst as well as a response to ongoing monarchical state-building ambitions. Curiously, it was the relationship of the vassals to their lords which were most significant for our story. Although subordinated in a chain of command to their lord, they nonetheless had laid claim to significant rights which gave them--unlike the villeins--a great deal of autonomy. Institutionalized through the manor courts, these rights-in-relationality come to play an exemplary role in the development of citizenship. Finally, as they transform over time into agrarian landless labourers, these unfree peasant communities will serve as an unhappy example of the contested meaning of citizenship. The political culture of rights is, in their case, appropriated not by them but against them, an outcome which both testifies and contributes to the crucial role of local political cultures and relationships.

The second sphere is the least familiar: Vast areas of relatively non-arable land--called the champion (champagne) regions--populated primarily by small free-holding peasant communities who farmed and lived in small scattered villages. Unlike our image of feudal society these champion or pastoral regions had few great manors and more often than not there were was no resident dominating manor. Governance took place through local public courts--some ancient county and "hundred" courts--which were formally under the jurisdiction of royal sheriffs. The hallmark of these communities was the co-existence of their relative legal and social freedom and the constant threat of manorial encroachment to which they were subjected. Their primary system of defense was the strict system of horizontal rights and obligations which was expressed in their inheritance practices and family relationships, as well as through their courts and councils and

juries. These cultural practices will serve them well in their relative capacity to appropriate universal rights into local benefits.

The third sphere was the towns and municipalities of the urban boroughs. These constituted a kind of hybrid. On the one hand boroughs were usually located in land controlled by manorial lords. In this setting urban tenants had the same obligations to the lord as did the servile peasant labour. They were answerable to the lords in the manor court and forced to labour regularly on their lands. At same time their mercantile activities required a considerable degree of co-ordination among themselves, and to this end numerous self-governing institutions outside the manor courts had developed over time. The first of these was the merchant guild. Its members looked with envy at the rights of vassals, noting that the autonomy endowed by these rights were directly contingent on their relationship with their lords.

Finally, the fourth sphere was that of the monarchy. The post-Conquest English monarchy was, in comparative terms with the rest of Europe, extremely centralized and bureaucratized. Its capacity for administration now legendary through the Domesday records. Nonetheless the crown was hemmed in ultimately by its relentless and urgent need for the wages of war on the one hand, and the power of manorial lords and urban merchants to resist providing the financial support for monarchical military ambitions. Crown and baronial antagonism reflected royal frustration over not being able to gain access to the resources necessary for foreign wars--especially against the French--as well as the difficulty in controlling the violence of the warring countryside, the political demands of rebelling barons. The crown was especially annoyed that even merchants were beyond its reach; indeed there was good reason to believe that the political loyalties, not to mention the wealth, of great merchants would follow the lead of the barons' revolts.

The crown, the towns, and the pastoral communities had nothing in common except an overwhelming mutual antagonism to the manorial spheres of private power. Urban antagonism reflected the demands of urban dwellers for the same degree of autonomy as manorial vassals. In this desire for municipal juridical independence, merchants and artisans were united. Merchants, moreover, were indeed inspired by baronial revolts; if their wealth was in so much demand they saw no reason why they should not expect in return a share in wider political power. Finally, pastoral peasant antagonism reflected the constant attempts on the part of manorial lords to "manorialize" their free-holding farms,

rob them of their free legal status, and ultimately to be subjected to the condition of rightlessness characteristic of those peasants answerable only to the "will of the lord" in the manor court.

How did the English state overcome these separate spheres and create a single entity? Most crudely put, over many years and many conflicts a political "alliance" develops between "the people" and the "law."17 This alliance takes the institutional shape of a triadic configuration of linkages among the crown, urban dwellers, and pastoral peasant communities. This configuration must be visualized as a geometric matrix of networks and linkages in continual relational tension and movement among and between the different connecting nodes.

Deploying Norman administrative structures, centralizing principles of Roman Law, ancient juridical customs of the realm, Canon Law and a host of other free-floating resources, the monarchy carried out a legal revolution in the twelfth through fourteenth centuries. What was revolutionary was both the fact of "precocious" territorial-wide unification and the method of accomplishing it: It was crafted by the crown forging structural links with the pastoral and urban communities. At the same time, through a widely expanded elaboration of royal legal rules and regulations, it formally encircled all the communities of the realm by creating powerful territorial-wide public institutions which functioned over and above private feudal power. The result was an early territorial-wide nation-state which incorporated the localities into a single entity but without dismantling the smaller ones. Rather than setting up an alternative state apparatus parallel to its competitors the state was created by the crown's incorporation of all these pre-existing legal and governing bodies into a single entity. It can be pictured as a transformation from numerous entities, to the encirclement but not the fundamental disruption of them, by a surrounding set of public institutions. These formed the heart of the public sphere--an institutional matrix of complex connections.

I have of course presented hypostatized and abstract picture of a dramatic historical process driven by momentous conflicts and power relations. This is not the place, however, to spell out in a large canvas that drama of struggle and state-building and the making of the public sphere. Suffice it to say here that this is the institutional foundation of the English nation-state. It is this configurational institution to which members of previously separate communities first come to belong as national members. And it is this public sphere which first confers national citizenship rights on its members.

Early English Citizenship and a Political Culture of Rights

The nature of English citizenship was a direct outcome of the method and consequences of the mode of formation of the institutional body in which a territorial-wide political culture of rights first develops. As I described above, that entity of which the population became members was constructed in part through the conjoining and appropriation from below of local political institutions and practices. These were in turn codified above through centralized institutions and then in turn reapplied to the communities through local administrators who were nonetheless ultimately accountable to the national state.

The first national body to confer citizenship was thus constructed on the conjoining and interdependence of local communities, institutions, practices, and doctrines with a central organizing body. This was a public realm built on mandatory community inclusion, and participatory law and governance--and it is this that is above all significant in the formation of a political culture of rights and the practical meaning that citizenship actually takes. The consequence of this historical process was the creation of a hybrid political culture which was both new and old, national and local, and which embodied all the principles and power relations of the different local cultural spheres.

What was new was membership in a national body to which people were both answerable and as well as endowed with rights. These rights were only meaningful in the context of their linkage to membership in the national sphere and access to its legal system over and above that of private power. What was old, however, was just as important. The linkages were not between the crown and individuals, but between public national institutions and local community ones--local juries, the constabulary, local assizes, and so on. The benefits of national membership were utterly contingent upon membership in these local institutions, making individuals and families also answerable and responsive to local and practices and sanctions, to the old duties and rights attached to local membership.

As a mutually constituted realm, neither the national nor the local had power without the other. Alone, local communities could not protect themselves from manorial power and eventually market exploitation; while the crown in turn wholly depended on this newly expanded power base. Borrowing a term from a scholar of urban life, this hybrid-like configuration was comprised of "worlds within worlds", or what I will call "membership within membership."18 "Self-governance at the king's command" was the paradoxical contemporary expression

of this political culture constructed on relational tensions and mutual interdependencies among groups and institutions. The resulting political culture was also a hybrid embodying all of these principles. And the three dimensions of citizenship that emerged were direct outgrowths of this hybrid political culture created of worlds within worlds.

<u>Civil Citizenship</u> The first (although not necessarily chronologically) was the right and the obligation to public justice--the origins of civil citizenship. The spread, accessibility, and above all the discourse of public law virtually saturated English political culture. Its very essence was its promise to <u>remedy</u> the wrongs of the high and mighty power of feudal lords--a remedy of <u>right</u> that could counter through law the unequal position of rightlessness of the weak when confronted with the local power of private justice. Its hallmark was <u>universality</u>. As a discourse and an expectation, it was a resource for mobilization and a constant ideal and goal of those struggles. The fact of the frequency of struggles for its realization underlines just how uneven was its application in practice. Remarkably, and most notably, the ideal and the resource lived on despite evidence to the contrary.

Based not on enacted laws or policies but on the principle of law as a set of public rules to resolve conflict and ensure equal protection to all, principles of civil right established the basis of liberty to be 'freedom from...', that is, freedom from the overbearing power of private feudal power by the protection of the public law. Linked in the seventeenth century to the theory of natural rights and property rights in labour and the individual, procedural civil justice gave rise to the animating myths of the 'free-born Englishman' and England's much touted 'rule of law' as it made universality before the law and the right to rebel against a tyrannical monarch (allegedly called into existence solely to protect the individual's rights) central to its organizing principles. Yet in their origins, these principles of right and property were not connected to the formulation of property as individual ownership in the juridical language of civil law and Locke, but to property as political membership--the contrast being between rights invested in things and rights invested in political relationships.19 The king's writ, for example, did not determine in advance how property disputes should be resolved, but rather ordered the dispute to be moved into the public courts thus giving people the right to public justice, not the determination of the nature of that justice. Once in the royal courts, however, it was the Assize of Clarendon which determined the procedure. Enacted enacted by the crown in the twelfth century, the Assize

worked in such a way that membership rather than property 'ownership' determined political and legal rights. By declaring that freeholders were not longer subject to absolute political power by private lords in disputes over their land, even if a person did not 'own' the land, if the community supported his rights to it, he was now given the right to public justice in the kings courts. Because they came from a freeholding heritage, for rural-industrial families in particular, issues of economic survival were matters of public membership.

One of the more interesting twists on civil citizenship is in the legal practices of equity. When in the fourteenth century the Chancery first began to take up the business of justice it offered itself as an alternative means of receiving justice from the lengthy and expensive procedures of the common law courts. In the Chancery no pleading was necessary by lawyers, no jury had to be convened-- although expert witnesses were to be brought; and the initiation of the proceeding was a result of a petition from below. The key to this new swifter form of justice by which the 'less mighty' could be protected against the 'overmighty' was that by reaching directly to the king's courts, equity bypassed powerful county influence. As a procedure, equity was so popular that the conciliar courts were inundated with petitions for its use and it became the basis of procedure and judgment in the Privy Council, the Star Chamber, and the Court of Requests.[20]

The substance of equity, however, was broader than mere procedural simplicity. In essence it was a concept of justice in which particular circumstances, considerations of hardship and mercy, and the putatively high-minded conscience of the king--rather than abstract principle--were factored into the passing of judgments. St. Germain was the most notable sixteenth century theorist of equity:

> Equity is righteousness that considers all the particular circumstances of the deed, which is also tempered with the sweetness of mercy...And the wise man says: be not overmuch righteous, for the extreme righteousness is extreme wrong...And therefore to follow the words of the law were in some case both against justice and the commonwealth: wherefore in some cases it is good and even necessary to leave words of the law and to follow that reason and justice require. And to that intent equity is ordained.[21]

Equity appealed to the poor because it was an operational principle that focused on the relationship between needs and justice. It was meant to be a law that was appropriate and adaptable to changing circumstances. As such it directly competed with common law procedures which were so strictly tied to the letter of

the law that the spirit of necessity was lost. As St. Germain stated about the purpose of the Court of Chancery:

> ...And the Court of the Chancery is called of the common people the court of conscience, because the chancellor is not strained by rigour or form of words of law to judge but _ex aequo_ and _bono_ according to conscience.22

Rather than the law in its pristine logic, equity ruled as just the principles of 'natural justice, common sense, and common fairness'--principles that were applied by the state's conciliar courts to the task of redressing injustices inflicted on the poor by the unequal power of the 'overmighty.' The discretionary conscience of the king was to be the basis of such redress; and as long as such conscience was frequently mobilized, the centralized power of the crown could increase. By meeting the needs of those who felt lack of justice at the hands of the rigidities of common law procedures, and by providing redress where other forums of law had failed to adapt to changing circumstances23, the courts of equity forged direct links between the people and the institutions of the state while simultaneously carrying on the process of monarchical centralization through the law.

If the king's conscience came to be a boon to the poor, the king's body--that is, his actual corporeal person--was of less importance. In English legal practice there was an English version of the Roman doctrine of the 'king's two bodies.'24 The doctrine specified that every person in the realm including the king was subject to the law--even if the king was himself the maker of laws. The king in his person, for all the pomp attached to his physical being, was unquestionably subservient to the law even as the kingship--his office--was above it. The crown appropriated the principle of the invincibility of office to support the entrenchment of centralized administrative techniques and the power of the conciliar courts. By doing so, English monarchs created the conditions for the expectations of moral obligation and justice from the crown without necessarily attaching an enduring allegiance to the particular person of the king himself.

A remarkable mythology of the rule of law was the consequence of the Anglicanization of the doctrine of the king's duality. From oppressive legal proceedings to the most heinous impositions of tyranny by the state, not the failing of the law itself was blamed but rather corrupt individuals, ministers, particular events, and even kings who were abusing the rule of law. Only the English were so obsessed by the conviction of universality of law, that they claimed it was within the bounds of law to commit revolution and detach a king's head. Milton is

attributed with fits of 'legal antinomianism' in his cries for the utter legality of regicide.25 The king's two Bodies was essential doctrine for both parliamentarians and the conservative agents of the restoration.26

> Nothing more slackens the reins of government, and the stability of peace, which is upheld by the reverent awe and respect which the people and subjects give to the Magistrate, than when by injustice and unworthiness, they bring their persons and authority under contempt and dislike; but that they seem not as Gods but Idols, which have eares but heare not, eyes but see not, mouths but <u>speak not true judgement. Against such Magistrates, people are prone to think it, not only just, but meritorious to rebel.</u>

John Ganden, "A Sermon Preached Before the Judges at Chemeford"27

The doctrine was also at the heart of the law's promise of universality. That the king in his person, for all the pomp attached to his physical being, was unquestionably subservient to the law created the conditions for popular expectations of moral obligation and justice from the royal law without attaching an enduring allegiance to the particular person of any one monarch. Universality was at the very core of English common law; king and pauper alike were equally subject to the law. There was no ambiguity about this; the term magistrate was applied equally to local political authorities, the power, duties, and accountability of Westminster were analogous to those of local authorities, and expectations of both were one and the same.28 If no authority was above the law, it followed naturally that if any acted as if they were, they were subject to legal removal by the injured parties. What was the definition of a governor and legislator? Even a Newcastle Whig answered in 1774 by declaring them as but 'trustees to the public' such that any such magistrates who abuse the laws by making 'laws more favourable to themselves than to him [the public]', or if they 'execute the laws more favourable to one than to another, or stretch them to an oppressive purpose to serve their own ends--they <u>should be displaced, from the prince to the parish officer; and other chosen in their stead.'</u>29 The dissociation of the rule of law from the <u>rulers</u> of law gave eminent rationality to an expectation of justice.

Political Citizenship The second aspect of the political culture of rights, and the oldest of all, was compulsory participation in local governance, administration, and law--the origins of political citizenship. As I described above the public sphere integrated into participatory roles local courts and communities and the crown drew new lines of loyalty throughout the territory. It would be easy to dismiss any democratic outcomes in this structure of participation. But for two reasons this would be a mistake. First, English governance was chanelled through its legal system. The local courts served as political arenas and institutions. Secondly, it was precisely in legal institutions that community participation was not limited to county elites but spread deeply into the communities.30 The vastly smaller number of English salaried officials in contrast to the Continental system was made up by the heavy use of laymen.31 Joseph Strayer points out that by the thirteenth century England's royal government was involving almost the entire free population of the country in the work of the law courts...'32 These popular institutions included juries, bodies of 'expert witnesses' drawn from the communities requisite to almost all legal and administrative procedures, petitions, proclamations from the central government, village courts, the method of appointment of the constable, and to a limited extent, the electoral rights held in the sixteenth and seventeenth centuries by a surprisingly large number of small artisans and free-holders.33

Political citizenship was thus built upon an unpredictable contingency: The power of the centralized machinery--despite its coercive mechanisms, its prerogative courts, its county agents, its threatening letters, and its allures of patronage--had always to compete with that which had the potential to be an equally powerful influence on the action of local administrators--the neighbors. This counter-pressure, moreover, was grounded in and expressed through more than customary practices or social pressures. Popular participation in local and national governance was institutionally incorporated into the heart of the English bureaucratic apparatus.34

A number of paradoxical outcomes developed from this. As a system of state-centered participatory rule--or self-governance at the king's command--the structure of rule could be neither fully state controlled nor fully decentralized. The result was a system of reciprocal enhancement of power between the center and the local branches of the state as the strength of each depended upon and in turn fostered the strength of the other. This in turn produced a politicized and

negotiable chain of command in the English structure of rule; it was forced to operate through a contingent balance of coercion, negotiation, and multiple points of bargaining among each of the bodies in its chain of command. The state could not rule unconditionally but rather was forced to bargain with, exhort, and be vulnerable to local politics and popular communities. 'Ruling', observes seventeenth century historian Cynthia Herrup, 'was a repeated exercise in compromise, co-operation, co-optation and resistance.'35 As a consequence of participatory rights and duties, there was no a priori monopoly of power and the actual implementation of rights hinged on negotiation and political bargaining.

Social Citizenship: The third aspect of citizenship was the regulation of economic life--the origins of Marshall's social citizenship. For my purposes, the most important was the body of industrial and welfare policies devoted not to eliminating but to regulating markets--from labour to grain. With the 1349 and 1351 Ordinance and Statute of Labourers, a body of national laws regulating labour relations was first introduced to cover the entire realm. These were continually reintroduced and adjusted through the famous 1563 Elizabethan Statute of Artificers regulating wages and apprenticeship practices, through the neglected 1604 statute instituting minimum wage regulations in the rural-industrial regions, until their final repeal in 1813 and 1814.36 Even more well known, of course, are the Poor Laws--versions of which date to the late thirteenth century--which included "unemployment benefits" and the recognition of structural unemployment. Many other welfare policies could be included, from the assizes of bread to regulation of working hours.

But why should these laws--usually described as modes of social control and class power--fall under my category of citizenship rights? To understand that, it must be noted that the most significant feature of English welfare and industrial policies was that they were implemented through the normal channels and processes of government and law. The public courts doubled as labour tribunals; local justices and constables served as the administrative personnel; and juries, petitions, legal arbitrations, national courts were all part of the administrative labour process.37 The consequences were tremendous: Labour relations operated within the structure of public law, and struggles over labour relations were converted into contestations between employers, workers, and political authorities over whether these laws would be tyrannies or rights.

In the context of political citizenship this in turn had momentous consequences: labour relations were negotiated through a legal system that was

built upon multiple points of participatory access. By forging a direct link into the villages through JPs, constables, juries, and village courts, and by delegating to local authorities the task of administering labour regulations, the crown had in one swoop made vulnerable to local power all the essential aspects of labour relations-- labour supply, labour costs, and the cost of provisioning. Politics, not markets, would determine labour relations. Neither municipal guild regulations, nor magnate or gentry landlords, nor merchant capitalist employers would have a legal claim to an <u>unmediated</u> administrative or economic relationship to labour as the public sphere subjected all forms of the private labour contract (whether the private party was commercial landlords or merchant capital), agricultural and industrial labour alike, to public legal jurisdiction. That all forms of the labour contract were now subject to public participatory legal mediation arguably had more impact on the abolition of feudal villeinage (serfdom) and the continued assertion of the right to freedom from private manorial and/or merchant capitalist power than did the 'transition from feudalism to capitalism' or other forms of class power and demographic change.

What were the consequences of the politicizing of the labour contract within a public structure of rule whose chief features were its malleability, indeterminacy, and participatory accessibility? Because the English state was built on a participatory basis, exactly how labour relations were resolved in practice depended upon the nature of the different communities in which the law was actually exercised. <u>A single public body of rights generated in practical terms intensely local legal and political cultures.</u> The structure of rule in general and the character of labour relations in particular took different shape depending upon who had the power to participate. In the champion/agrarian regions, the power to participate was eventually monopolized by large landholding gentry who used the civic liberty of the public law to free themselves from private magnates and assert themselves through the new found power of public judicial institutions. Labouring communities in these regions with little or no autonomous power were unable to take advantage of public participatory rights, and despite the legal freedom granted by public law, were subordinated through the legal process anew. In pastoral/rural-industrial regions, by contrast, the absence of powerful social and political elites, the longer history of legal freedom, and the presence of strong popular communities meant that civic liberties and public participatory law promoted more favourable outcomes to the labouring communities. As active participants in the processes of governance, labouring communities were able to

prevent private sources of power--both gentry and merchant capitalists--from exploiting to complete advantage the public institutions of law while they were simultaneously able to demand and appropriate the law to strengthen their own independence.

The local contextualizing of legal processes thus generated different patterns of justice and rights in different types of English communities.38 There were historically persistent patterns of difference in the structure of early labour markets, in the degree of popular participation in political and legal institutions, in the character of corporate village institutions, and in conceptions of justice and rights. Neither class nor status divisions cannot account for these differences since those in similar class situations maintained different degrees of power across communities. Instead, these cultural patterns were part of the interaction between England's participatory legal institutions on the one hand, and the presence of contrasting community patterns on the other. Popular empowerment varied in the degree to which communities were able to appropriate the law into a 'judicial citizenship.'

The significance of the political contingency, plasticity, and multiple points of participatory access in the structure of the public sphere was that it made the institutions of citizenship not the a priori domain of any one class or group but rather a 'multiple-use' structure--potentially available to be appropriated by those who had the capacity to appropriate public institutions. No one person, authority, institution, or class was simply free to impose and realize their interests but was rather forced to negotiate and bargain within this participatory public sphere. The fluency of the law and the administrative chain of command, the centrality of popular institutions and local governmental offices converged to made it possible under different conditions for different parties to grab hold of legal mechanisms and turn them to their own advantage. A culture of localism and participatory practices made the meaning of citizenship highly contested and variable depending on distribution of power to exercise rights.

I will now take a deeper look at one of those political cultures within the public sphere: the medieval municipalities and their guild cultures.

IV
The Political Culture of the Towns and Guilds: the Relationality of Rights

Images of medieval cities and guilds are more constructed and exploited in theories than analyzed in their historical practices. My effort here will be to ignore the "ideology of normative past" that infuses the historiography and social theory of urban life and to instead focus on what has been neglected--a focus on the forms of urban life and analysis of the intersection of cultural and institutional life.39 One reason for doing this is that medieval urban life provides an exemplary pattern of a political culture of citizenship rights both in formation and in action. It illustrates how struggles among communities and between spheres of power transformed into varieties of institutional relationships--relationships marked by ongoing tensions. These dynamic patterns become embodied and expressed within a political culture and are themselves sources of historical change.

A second reason for looking closer at the medieval towns concerns their special impact on the development of England's public sphere. Principles of substantive justice and mercantilist policies for regulating economic life were common to all European state-building strategies. But the manner in which England established territorial-wide political control over economic life was unique--both in its relationship to the urban policies and in its impact on the national political culture. By the fourteenth century English cities and towns can be characterized by what I am calling "autonomy in membership" or "liberty in embeddedness." This meant that their legal self-governance and characteristically medieval economic autarky was wholly contingent on institutional ties of political reciprocity with the crown and the public sphere at large. In its struggles for expanded national wealth (again, for the wages of war), the English crown was able to take advantage of this less than absolute autonomy of their medieval cities. On the Continent early absolutist regimes were unable to counter the complete autonomy of the urban burghers and guilds and thus had to "invent" anew their regulative institutions. Only in England was the crown able to appropriate from below and extend throughout the land the political and legal conventions of the medieval cities. From the mid-fourteenth century through the seventeenth-century Stuart regime English monarchs and state builders engaged in a steady process of "breaking open" the insulated town policies and instituting throughout the country at large the same vast system of regulative and redistributive laws

which had previously been limited to urban, guild and even canon law. Continental monarchs by contrast, were left with only national regulative control over commodity markets and foreign trade.

These statutes and conventions were a key feature in shaping the development of the English political culture of citizenship --especially in the crucial realm of social rights. In contrast to continental Europe where the culture of the guilds was restricted to urban settings, England's public sphere blended the political and legal cultures of town and country labour.40 Since urban culture and law was thus so central to the public sphere as a whole we must look closer at it to understand the foundations of the national political culture.

Liberty in Embeddedness: the City and the crown .

In popular lore, medieval cities are most renowned for having been a refuge for personal liberty in an age of arbitrary feudal power and insecurity.41 'A year and a day' was the customary amount of 'city-air' an escaped villein needed to gain freedom. But this was not the kind of freedom Pirenne and others identified as the origins of capitalist individualism.42 Indeed Pirenne and Weber and even Marx to a degree all believed the motor of modern capitalist growth--whether conceived in Pirenne's terms as free market individualism, or Weber's as the site of rational domination and legitimacy--was in the mercantile activities of the medieval cities. Pirenne in particular has been hugely influential in locating in the towns the origins of cultural individualism. But capitalist breakthroughs did not originate primarily from the cities; nor was the secret to its success unregulated mercantile activity. Our interest in the freedoms of the city must take us to a rival and relatively unrecognized concept of liberty--both economic and personal.43

The "liberty" of the towns had both a corporate and a personal meaning. But it was from the corporate that individual liberty derived.44 The hallmark of the English--and London is of course the most outstanding case--was its liberty in membership and its autonomy in embededness. In marked contrast to the Italian communes (e.g. the Lombards) which gained total independence from any wider sphere, the very triumph of the English urban commune and its strength of self-governance was contingent on its embeddedness within the political framework of the realm.45 This wider national power was in turn sustained by what was also unusual in comparative terms--the inclusion, rather than the locking out, of urban groups in the wider political sphere. How did this autonomy in embeddedness develop?

The story of the political culture of urban rights begins with the initial subordination of towns to fiefdoms or royal desmenses I described above. The struggle for municipal independence takes shape in the twelfth century. Through a curious (but surprisingly common) discursive twist urban dwellers found a cultural and institutional resource in the language of rights in play between feudal lords and their vassals.46 This was a language which invested rights in the inviolability of relationships, responsibilities, and above all membership. This discourse, however, could not be inexorably attached to the social foundations of vassallage; with political effort merchants and artisans appropriated and

transformed the specificity of these rights to a potentially similar relationship between themselves and the crown.

The language of rights in reciprocity was a considerable cultural resource for a political struggle. In late twelfth and early thirteenth centuries the English crown was in desperate need for merchant wealth, and had numerous occasions to feel the threatening implications of merchants in alliance with baronial political rebellions. With such potentially mutual benefits the alliance of town and crown is not surprising. English towns began the process of wresting juridical and political power from feudal magnates through winning grants of self-governance from the crown. These charters of liberties as they were called endowed local autonomy under ultimate Royal law. In return they paid royal taxes and bought royal farms. The first great victory was the establishment in 1191 of the London commune--"subject to the king's pleasure."47 Londoners founded their commune on a sworn association of <u>citizens</u> with its own juridical personality which existed within a reciprocal relationality with the crown.

This triumph of quasi-autonomy was nonetheless precarious; continual struggles to maintain juridical and legal independence, now with the crown, characterized the whole thirteenth century. But by the fourteenth century, autonomy in membership developed to the point where not only were merchants included in Parliament, an extremely unusual development in comparative terms, but artisan powers and juridical autonomy were locally and nationally enlarged and buttressed. The strength of the reciprocity is revealed in the <u>granting</u> of liberties by the English crown. French territorial lords nor urban burghers did not need monarchical grants; they simply took their power. Instead of consolidating tensions within a single public sphere, the French monarchy was forced for centuries to co-exist in direct competition with these separate spheres of power.

Corporate membership in the national public sphere was thus the prerequisite for urban liberties. Communal independence was achieved not through city-state status, but by reshifting institutional alignments from those of subordination within private spheres of manorial power, to those of partial autonomy within the sphere of public power. The rights that were gained were the rights of citizens--to rule and be ruled. The cultural and institutional foundations of Marshall's civil, political and social citizenship rights took shape within this pattern of autonomy in membership.

Guild, Citizenship and the Public Sphere

Our story must move from the "macro" relationship of town and crown, to the "micro" level of individual and guild. The process of individual freedom, however, followed a similar course to that of communal. Just as communal liberty developed through institutional and membership realignments, so the freedoms and the rights of the urban individual were also contingent upon membership-- both locally and within the multiple ties and relationships of the larger public sphere.

The inequalities of the medieval towns were as vast as anything we know today. In the twelfth and thirteenth centuries artisanal labour was proliferating. In the early days of municipal independence artisans of lesser wealth, primarily crafts people, found themselves defenseless against the new town authorities (often comprised of urban dynasties) who were not interested in giving the commoners the same powers as themselves. The mode by which artisanal rights were gained within the town parallels the struggle of the commune as a whole within the fiefdom: Total autonomy was traded for partial autonomy through the formation of crafts guilds based on strict rules and regulations of membership.48 Before exploring the culture of guild membership it is important first to understand its struggle for existence.

Economic regulation is the first thing we associate with the power of guilds.49 But alone economic regulations were weak. The challenge and the necessity if guilds were indeed to provide a base for artisanal freedom was for them to become legally constituted bodies, not just informal solidaristic groups. Just as only through membership would an individual gain her own power of autonomy and freedom from greater power, only through constitutional inclusion would artisans as a group gain the power of autonomy and self-governance. This didn't come easily.

The essential step by which individuals found their own local freedom in membership in strictly regulated guilds occurs by a direct "alliance" between guild and crown. In a process of struggle lasting almost half a century, guilds battle local elites of merchants and authorities to win not only official recognition by, but notable power within, both local and national governance. The triumph occurs in 1319 by Royal Charter under King Edward II. Article 7 was crucial: all "inhabitants to be admitted [into the freedom] shall be of some mistery..."; anyone seeking to obtain the freedom who did not belong to a guild "shall then only be

admitted with full assent of the commonality-assembled."50 In translation that meant that to become a citizen one had to enter into or "possess" the "freedom" of the town or city. Yet entry to the freedom and thus to citizenship <u>could only be achieved through membership in a guild</u> (a "mistery").

This remarkable feat was institutionalized in the 1319 charter which became popularly known as the Magna Carta of the London commonality. It represented, according to G.A. Williams, the "highest peak of achievement that a popular movement ever attained in medieval London."51 That achievement forged a mighty bond between guild membership and citizenship--a bond accomplished through what Rappaport calls "a collaboration of crown, city and companies."52 Although not created by the crown, guilds were nonetheless required to be registered with the state, which in turn endowed charters of local self-governance. The charters confirmed the ancient privileges of citizenship and during the two centuries after Edward II granted his famous charter, over one hundred London guilds were incorporated as livery companies, each with similar provisions and ordinances.

Despite the considerable restrictions and obligations of guild membership by the sixteenth-century the overwhelming majority Londoners elected to assume them to gain rights of the freedom. From 1531 through the 1550's the average number of artisans admitted each year into 12 companies (2/5's of all men admitted in 1551-3) rose by 69%. This was more than three times the increase in the city's population; by the mid-sixteenth century, approximately three quarters of London's men were free. Remarkably nine-tenths of all London citizens had entered the freedom through obtaining apprenticeship and guild membership.53. One half of all men were citizens in Norwich and York, while in Coventry 4 out of 5 male householders were free by the early sixteenth century.54 Part of the explanation for this may have been that 'forreners' were not expelled from the towns but co-opted into the regulations of membership. London apprenticeship fees, moreover, were significantly reduced in the Acts of 1531 and 1536. Nonetheless that charters combined the right to self-rule and the guarantee that citizenship alone endowed the right to practice one's craft was certainly the overwhelming reason.

State-building and local membership were mutual partners in the enlargement of citizenship rights. That guild law was strong to the extent it was structurally allied with the muscle of public law can be underlined with an example of failed autonomy. As guilds became more hierarchicalized in the

fifteenth and sixteenth centuries, the journeymen engaged in numerous attempts
to establish journeymen's and yeoman's guild that were autonomous from their
masters. This act of counter-sovereignty was a threat to the crown and to
parliament of an entirely different order. Through the establishment of what was
to be a long chain of "anti-combination" laws, journeymen's guilds were legally
forbidden. Outside of membership in the public sphere, the freedom they sought
had no chance of survival.

The Property of Membership: The Culture of the Guild

But what exactly did it mean to be in a guild? The answer to that question
lies in the institution of apprenticeship.55 The strictest guild regulation was that
more was required for a skilled artisan to ply the trade than mere knowledge of a
craft. To practice the "arte and mistery" of a craft required membership. Only
members of a guild could legally practice their craft in a town, but only an
apprenticeship earned guild membership. Seven years was the standard
apprenticeship-time required to acquire the adequate skills and hence the right of
entry to a guild. At the end of the service, the crafts-person (now a journeyman)
was taken through a public ceremony in which he or she swore by oath to follow
the guild's rules and obligations.56 With that oath the artisan was entitled to the
mutual benefits of membership which included guaranteed citizenship, livelihood,
employment, mutual aid, religious life, social organizations--indeed an entire cradle
to grave culture.

But the meaning of an apprenticeship was not primarily one of a temporary
period of training. Paradoxically, it was not "over" at the end of seven years.
Like an academic credential the apprenticeship now became the artisan's
permanent property--permanent as long as practiced within the regulative confines
of the guild. This last point is the essential one. Even though the property of
apprenticeship reflected the journeyman's specific skill and investment of time,
this was not mobile property that attached to the individual crafts person.57 Far
more significantly the achievement of a successful apprenticeship was the
achievement of a guaranteed place in a deep culture of attachments--along with all
the rights and obligations consequent to those attachments.

The property of skill acquired during an apprenticeship was in fact a social
membership. The medieval word for skill is 'mistery' (as in the 'art and mistery
of weaving') indicating that knowledge of a craft was viewed as a specialized
secret.58 Used in this way, skill could be seen as an individual attribute--a form
of 'human capital'--that no one could take away from the owner. But mistery had

another meaning and use that prevailed over the first--it was also the medieval word for the craft guild itself, the social body, the fellowship, the corporate and instituted group.59 Unlike the word skill which is singular and individual, mistery was simultaneously individual and corporate. To possess the mistery was to simultaneously "possess" knowledge and membership.

But for both aspects of the concept, skill was a social mistery, not a technical one. It was thus a form of cultural capital rather than human capital as we now understand it. An unskilled worker was not unskilled because he or she was untrained. Indeed, through a wide array of illegal practices many unskilled workers in fact were technically trained. The definition of unskilled was to be without an apprenticeship. And without an apprenticeship one was excluded from a mistery, beyond the bounds and the bonds of relationality, and thus excluded from the rights of membership. The attachments of membership, not training or ability alone, conferred legality and the property of skill.60

Citizenship Rights in Action

The rubric of citizenship entailed civil, political, and social rights. The chief expression of civil liberty was in the guaranteed access to public law, the right to defend by law, the capacity to sue and to plead in court under an impartial judge, and the security against arbitrary violence that civil law promised. Citizens could only be prosecuted in the courts of the city for city offenses and no citizen could sue another or had to plead in civil courts outside the walls of the city.61 The promise of the universality of law--of course more recognized in the breach--served as a form of empowerment against numerous sources of the over mighty ('we cannot be equal with those more powerful').

At times by choice, at others by compulsion, political rights were the most active dimension of citizenship. The right and necessity to local self-rule mediated the relationship between crown and individual artisan. Only citizenship permitted political participation. Since membership in a guild was the prerequisite for admission into the freedom, guilds effectively determined who exercised full political rights. (These included the right to participate in public ceremonial processions and "mistery plays" which affirmed the political identity of membership.62)

Local governance was institutionalized through the courts. As a public lawmaking body, guild leaders served public legal functions such as council member, alderman, jury members, and constables.63 Guilds, moreover, had their own courts. Both town and guild courts were institutions of governance and

administration, as well as of formal juridical procedure. In addition, they served as forums for public discussion and resolution of the disputes of public life and labour (economic conflicts, unfair labour, etc.) Participation in the administration of law, and often with more power than municipal governments, made guilds what Rappaport calls the "courts of daily life."64 Local governance was permanently shaped by the political culture of the guild.

The third set of rights to which all citizens were entitled came under the category of the right to social justice. Social justice, by law and by guild, was defined as the right to livelihood, to a fair wage, to available employment, to poverty benefits, mutual aid, burial rites, tramping privileges, and many more.65 Possession of the freedom was again the prerequisite for these rights to justice, and by controlling entry to citizenship, the guild's corporate power of membership became the means to social justice. That rights were defined as monopoly and restriction seemed not a contradiction. As I've tried to show, this was a political culture which embedded freedom in regulation and membership; the regulation of livelihood was the job of the freedom.66 In the fourteenth century the 'ancient' right of citizenship was reconfirmed: Only citizens could sell in towns, and only freemen could legally practice their crafts. Justice, regulation, and the freedom coexisted in this unfamiliar political culture.

The culture of the guild was thus constructed on attachment and membership. The body of rights and obligations stemmed from the strength and upkeep of those relationships. But guilds neither promised nor offered the a traditional world of gemeinschaft. The purpose of the property of membership was precisely to provide the foundations for artisanal independence and personal liberties.67 The prominent emphasis among artisans on independence and autonomy suggests the importance of distinguishing the moral from the institutional conception of rights. The right to the freedom of practicing one's skill, as well as that of citizenship, achieved the goal of individual empowerment. But this empowerment only had viability when rooted in the institutional foundations of attachments and membership. Only the possession of membership allowed for individual empowerment and the meaningful exercise of rights.

The property of skill and relationality thus turned out to be the key to the city. A multiple matrix of linkages had been established: To become a citizen one had to enter into or possess the freedom. Yet entry to the freedom, and thus to citizenship, could only be achieved through the channel of guild membership and apprenticeship. Making the guild the source of public and private empowerment

was no mean accomplishment; according to Unwin it gave the crafts a major hold on the constitution and provided the basis for virtually all the political achievements that were to follow.68

Creating a public sphere as in part the city writ-large did not automatically confer these citizenship rights on all people, or to the same effect. But among "the people" those included and excluded (including gender exclusion) were less based on class divisions or land ownership than on the political contingencies of membership--indeed on the possibilities of membership--in the different sorts of social communities in which English law actually operated.

Conclusion

Marshall's moral impulse and his focus on the exigency of what he called the "abatement" of inequality with social justice is needed now more than ever. But by conflating class and citizenship he makes it more difficult to make sense of the varying effects of the interaction between the two. Nonetheless, T.H. Marshall has set the terrain for all discussions of these issues for many decades to come. We can truly celebrate the reissue of his book.

Let me end by reflecting on a few points for discussion. This essay has numerous obvious egregious omissions--dealing specifically with the issues of gender and citizenship is perhaps the most obvious in the context of English history. Nor am I able to give full due to the revised conception of property I have suggested above. Rather than try to abate these errors in a conclusion I will highlight a few theoretical points.

The first addresses the difficulty of decoupling the study of citizenship from its saturation in the intellectual legacy of classical modernization theory (and its concomitant class formation theory) by returning to medieval institutional foundations. A two-fisted criticism usually awaits attempts to do so. The first is the accusation of nostalgia; the second is the accusation of teleology. Both, I believe, suggest the power of that very same classical modernization theory to overdetermine what should be straightforward historical criticism. Both suggest that for social scientists, medieval history is little known but much appropriated for normative purposes of every persuasion.

The concern that medieval scholarship is nostalgic rather than analytic clearly reflects two related problems. The first is the extraordinary degree to which the need to believe in the progressive nature of capitalism remains embedded in scholarship. The widespread worry of being accused of being a Romantic or, worse yet, a guild socialist, reveals the deep similarities between

liberal and Marxist social science. The second problem is the perserverence of a holistic conception of society. It is very hard to give up the idea that medieval life was not a feudal <u>society</u>--a social science concept that depends on the notion of a singular societal core essence with co-variation among the social parts. But medieval guilds, for example, just as all of medieval life, had aspects both seemingly "traditional," and seemingly "modern." (Were its practices of solidaristic inclusion and exclusion through the property and possession of apprenticeship, for example, more or less modern or more or less traditional than, say, graduate training and the PhD?) To suggest that medieval life did not conform to images of "traditional society" or "feudal society" is not to suggest it was a gemeinschaft. It is, rather, a wholesale rejection that the notions of either a "traditional" or a "modern" society bear any resemblance to historically grounded concepts that can actually explain anything at all; this rejection is in turn an attempt to present an analysis of institutional relationships rather than societal types.

The worry about teleology reflects one overwhelming issue: the perserverence of our belief in a Rubicon in history that took place at some time known as the "transition from feudalism to capitalism" or alternatively, as the industrial revolution. But to find institutional roots of modern life is not to suggest that things either <u>had</u> to turn out the way they did (which is the meaning of teleology) or that there were <u>no</u> changes or not even tremendous changes. It is rather to argue that one looks for causal roots in order to identify the conditions for emergence and development. If that search takes me to the thirteenth century--so be it. Again, I believe that to be institutional analysis, not teleology. The philosopher of science, Ian Hacking, has recently named this historical approach the analysis of "words in their sites."

Such long-term comparative research into the interaction between political culture and citizenship surely suggests the hubris and recklessness of the historical sociologist. To be sure; but it nonetheless also makes possible a decisive break with axiomatic connexions between societal transformation and political institutions. Citizenship cannot be viewed as a product of progressive 'stages' of socio-economic development or of the 'transition from feudalism to capitalism.' Indeed the analysis calls into question two of historical sociology's master concepts--modernization and the primacy of socio-economic structures--highlighting instead the centrality of legal power, degrees of popular empowerment, and a contested culture of rights.

Finally, I have also tried to offer two friendly amendments to recent developments in social science. The first concerns the role of the state. The long-time neglect to the state in social analysis has finally been compensated for. Less attention, however, has been paid to the ways in which the development of legal power--both in principle and in structure--was a source of popular empowerment, a potential resource against both private power and the coercive aspects of the state itself--indeed a central aspect of identity-formation.69 Power under the English law was plural, porous, and contingently embedded in communities, rather than unitary, absolute, and wielded only from above. The plasticity of legal and economic power suggests why different patterns of rights-claims could develop in different communities. Shifting analysis away from the 'role of the state' to the character of the 'public sphere,' brings attention to the impact of competing private and public spheres of power over and above traditional class divisions. A malleable and contested legal power was at the center of England's political culture.

My second amendment is to a common thread underlying recent historiographical and sociological moves to abandon the determinancy of economic relations and instead to concentrate principally on culture, discourse, and ideology. These revisions have been valuable. Paradoxically, however, they have often had the unintended consequence of reinforcing (by neglect) the 'economism' of social history. Stressing culture or even politics as separate spheres leaves intact the fiction that markets are self-regulating, autonomous systems; it locates 'labour' and property and material life on one side, and cultural and political concerns on the other. But economic life is too important to leave to the economists.

The challenge to the 'economistic fallacy' must be two-fold: It must not only reject the idea that the state (or culture, or ideas) are driven by the logic of the economy. More fundamentally, it must challenge the idea that there exists a 'logic' of the economy that is not itself politically and culturally constructed.70 I would go so far as to suggest that even the conceptual unity of something called 'capitalism' might also be questioned.71 Without both revisions, the special status of the economy is often reinforced by the use of such terms as 'extra-economic', 'non-economic', or the 'relative autonomy of the state'--all of which underline the economy as the base-line of social processes.72

Endnotes
1. Reinhardt Bendix, Nation-Building and Citizenship (Berkeley and Los Angeles: University of California Press, 1977 [1967]; T. H. Marshall, Citizenship and Social Class and other essays, (Cambridge: Cambridge University Press, 1950.)
2. Marshall also has an orphan category of 'industrial rights' which he defines as an aggregate of civil liberties.
3. Marx of course was the first to pose this problem. Recently it has been addressed by Alan Wolfe in his Limits of Legitimacy (New York: Free Press, 1979), and by James O'Connor in Fiscal Crisis of the State. My prejudice is that to date Polanyi's elaboration of the problem in The Great Transformation (Boston: Beacon Press, 1957 [1944]) has yet to be given the theoretical recognition it deserves.
4. Margaret R. Somers, "Social Theory after the Historic Turn: Knowledge Cultures, Narrativity and Historical Epistemology," forthcoming in Terrence J. McDonald ed., The Historic Turn in the Human Sciences.
5. This is taken from Margaret Somers, The People and the Law: Narrative Identity and the Place of the Public Sphere in the Formation on English Working Class Politics--1300-1850, a Comparative Analysis, Ph.D. Dissertation, Harvard University, May 1986.
6. On the epistemological significance of relationships over categories see Harrison C. White, et.al., "Social Structure from Multiple Networks I & II," American Journal of Sociology 81 (4) (January 1976):730-81, and AJS 81(6) (May 1976):1265-144. For an application in historical sociology see Peter Bearman, Relations into Rhetorics, forthcoming.
7. For critiques of the view that rights-claims and community membership identities are fundamentally opposed, see especially M. Walzer, Spheres of Justice (New York: Basic Books, 1982); W. H. Sewell, Jr., "Le citoyen/la citoyenne: Activity, Passivity, and the Revolutionary Concept of Citizenship," in The French Revolution and the Creation of Modern Political Culture,Vol. 2 of Colin Lucas, ed., The Political Culture of the French Revolution, (   ); Martha Minow, "Interpreting Rights: An Essay for Robert Cover," in The Yale Law Review, 96 (1987):1860-1915; S. Hall and D. Held, "Left and Rights," Marxism Today (June 1989):16-22.
8. See Martha Minow, "Interpreting Rights: An Essay for Robert Cover," for a similar definition of rights to the one I am using here.
9. Iowerth Prothero, Artisans and Politics in Early Nineteenth-Century London: John Gast and His Times (Baton Rouge: Louisiana University Press, 1979); P. Mantoux, The Industrial Revolution in the Eighteenth Century, Revised ed., (London: Harper and Row, 1955 [1928]); E.P. Thompson, "The Moral Economy of the English Crowd," Past and Present, 50 (1971):77-136; J. Rule, The Labouring Classes in Early Industrial England 1750-1850, (London: Longman, 1986); J. Rule, The Experience of Labour in eighteenth-Century Industry (London: Croon Helm, 1981); K. Polanyi, The Great Transformation.
10. Derek Hirst, The Representation of the People? Voters and Voting under the Early Stuarts (Cambridge: Cambridge University Press, 1975); J. Plumb, "The Growth of the Electorate in England from 1600-1715," Past and Present 45 (1969); J. G. A. Pocock, "Varieties of Whiggism," in his Virtue, Commerce, and History (Cambridge: Cambridge University Press, 1986).
11. W. E. Minchinton, Wage Regulation in Pre-Industrial England (New York: Barnes and Noble, 1972). There are similar problems of periodization in the

more elaborate comparative schema of Gaston Rimlinger in his <u>Welfare Policy and Industralization in Europe, America and Russia</u> (New York: , 1971). See also Asa Briggs, "The Welfare State in Historical Perspective," in C. I. Shotland, ed., <u>The Welfare State</u> (New York: Harper and Row, 1967).

12. Franklin Mendels, "Proto-Industrialization: The First Phase of the Industralization Process," <u>Journal of Economic History</u> Vol, 32, No. 1 (1970); Charles Tilly, "Flows of Capital and Forms of Industry in Europe, 1500-1900," <u>Theory and Society</u> 12 (2) (1983): 123-42; Peter Kreidte, Hans Medick and J. Schlumbohm, <u>Industrialization before Industrialization</u> (Cambridge: Cambridge University Press, 1982); Rudolf Braun, "Early Industralization and Demographic Change in the Canton of Zurich," in <u>Historical Studies of Changing Fertility,</u> ed., Charles Tilly (Princeton: Princeton University Press, 1978), pp. 289-334; Rudolf Braun, "The Impact of Cottage Industry on an Agricultural Population," in David Landes, ed., <u>The Rise of Capitalism</u> (New York, 1966).

13. My collected evidence is currently being compiled in a database under a range of categories and themes (e.g. appeals to local justice, demands for wage regulations) by date, region and social composition. For a preliminary overview, see M. R. Somers, <u>The People and the Law</u>. For the eighteenth-century, see J. Rule, <u>The Experience of Labour</u>; ibid., <u>The Labouring Classes in Eighteenth-Century England</u>; C. B. Dobson, <u>Masters and Men</u> (London: Croon Helm, 1980); K. D. M. Snell, <u>Annals of the Labouring Poor: Social Change in Agrarian England 1660-1900</u> (Cambridge: Cambridge University Press, 1985); Roy Porter, <u>English Society in the Eighteenth Century</u> (Harmondsworth: Penguin, 1982). For the seventeenth-century see K. Wrightson, <u>English Society, 1580-1680</u> (London: Hutchinson, 1982); Snell, <u>Annals of the Labouring Poor</u>; and David Underdown, <u>Revel, Riot and Rebellion: Popular Politics and Culture in England 1603-1660</u> (New York: Oxford University Press, 1985). For the sixteenth-century, see Buchanan Sharp, <u>In Contempt of All Authority: Rural Artisans and Riot in the West of England,1586-1660</u> (Berkeley and Los Angeles: University of California Press, 1982). For the fifteenth- and fourteenth-centuries see R. H. Tawney, "The Assessment of Wages in England by the Justices of the Peace," in W. E. Minchinton, <u>Wage Regulation in Pre-Industrial England</u>, pp. 37-92; R. Webber, <u>The Peasants' Revolt,</u> (Lavenham and Suffolk: Terrence Dalton Limited, 1980); R. Dobson, <u>The Peasants Revolt</u> ( ); R. H. Hilton, <u>Bond Men Made Free</u> (London: Methuen & Co., 1973); T.H. Aston, ed., <u>Landlords, Peasants and Politics in Medieval England</u> (Cambridge: Cambridge University Press, 1987; R.H. Hilton, ed., <u>Peasants, Knights, and Heretics</u> (Cambridge: Cambridge University Press, 1976.

14. For a sampling of regional differences see Andrew Charlesworth, <u>An Atlas of Rural Regional Protest</u> (London: 1983); Derek Gregory, <u>Regional Transformation and Industrial Revolution</u> (Minneapolis: University of Minnesota Press, 1982); Buchanan Sharp, <u>In Contempt of All Authority</u>; Larry Poos, "The Social Context of the Statute of Labourers' Enforcement," <u>Law and History Review,</u> Vol. 1, No. 1 (Spring 1983):27-52; John Bohstedt, <u>Riots and Community Politics</u> (Cambridge, Mass.: Harvard University Press, 1983).

15. See Somers, <u>The People and the Law</u> chapter 6 for full discussion of these differences.

16. On artisanal politics from the fourteenth to the nineteenth-centuries, see especially R. A. Leeson, <u>Travelling Brothers</u> (London: Granada, 1980); also Dobson, <u>Masters and Men</u>; J. Rule, <u>The Experience of Labour in Early</u>

Industrial England; I.J. Prothero, <u>Artisans and Politics</u>. For comparisons with French artisans, see especially Michael Sonenscher, "Mythical work: Workshop Production and the Compagnonnages of Eighteenth-Century France," in Joyce ed., <u>The Historical Meanings of Work</u> (Cambridge: Cambridge University Press, 1987); Michael Sonenscher, "The Sans-culottes of the Year II: Rethinking the Language of Labour in Revolutionary France," <u>Social History</u>, 9 (3) (1984); Michael Sonenscher, "Journeymen: The Courts and the French Trades, 1781-1791," <u>Past and Present</u>, 114 (1987); William H. Sewell, Jr., <u>Work and Revolution in France: The Language of Labor from the Old Regime to 1848,</u> (Cambridge: Cambridge University Press, 1980), passim; Joan W. Scott, "Work Identities for Men and Women: The Politics of Work and Family in the Parisian Garment Trades in 1848," in <u>Gender and the Politics of History,</u> (New York: Columbia University Press, 1988), pp. 93-112; Jacques Ranciere, "The Myth of the Artisan," in Steven Kaplan and Cynthia eds., <u>French _____</u> (Ithaca, N.Y.: Cornell University Press,   ). For comparisons of French rural-industrial and artisanal workers in the eighteenth and nineteenth centuries, see especially William H. Sewell, Jr. "Artisans, Factory Workers and the Formation of the French Working Class, 1789-1848," in Ira Katznelson and Aristide Zolberg, <u>Working-Class Formation: A Comparative Study of France, Germany and the United States</u>, (Princeton, N.J.: Princeton University Press, 1986), pp. 45-70.

17. For various historical approaches to the concept of "the people," see C. Hill, "Parliament and People in Seventeenth Century England,"<u>Past and Present</u>, 142 (1981): 100-24; D. T. Rogers, <u>Contested Truths: Keywords in American Politics Since Independence </u>(New York: Basic Books, 1987); Raymond Williams, <u>Keywords: A Vocabulary of Culture and Society,</u> (Oxford: Oxford University Press, 1976); I.J. Prothero, <u>Artisans and Politics</u>, p. 59.

18. Steve Rappaport, <u>Worlds Within Worlds: Structures of Life in Sixteenth-Century London</u> (Cambridge: Cambridge University Press, 1989).

19. Pocock, J.G.A., "Authority and Property: The Question of Liberal Origins" and "The Mobility of Property and the Rise of Eighteenth-Century Sociology" in his <u>Virtue, Commerce, and History</u> (Cambridge: Cambridge University Press, 1985); James Tully, <u>A Discourse on Property: John Locke and his Adversaries </u>(Cambridge: Cambridge University Press, 1980); Richard Tuck, <u>Natural Rights Theories: Their Origin and Development</u> (Oxford: Oxford University Press, 1979). An extremely interesting recent discussion is Ian Shapiro, "Resources, Capacities and Ownership: The Workmanship Ideal and Distributive Justice" (Unpublished Mss.), 1989.

20. J.H. Baker, <u>An Introduction to English Legal History</u> 2nd ed., (London: Butterworths, 1983); G.R. Elton, <u>The Tudor Constitution: Documents and Commentary</u>, 2nd ed., (Cambridge: Cambridge University Press, 1982 [1960]); Frederick Maitland, <u>The Constitutional History of England,</u> (Cambridge: Cambridge University Press, 1979 [1908]); W. Fischer and P. Lundgreen, "The Recruitment and Training of Administrative and Technical Personnel," in Charles Tilly, ed., <u>The Formation of National States in Western Europe,</u> (Princeton: Princeton University Press, 1975). All were under the control of the King's Privy Council and served as alternative educational arenas to the common law courts for statesmen and civil servants.

21. Cited in Donald Hansen, <u>From Kingdom to Commonwealth: The Development of Civic Consciousness in English Political Thought,</u> (Cambridge, Mass.: Harvard University Press, 1970), p.157.

22. Hansen, From Kingdom to Commonwealth, p. 157.
23. Elton, The Tudor Constitution, p.152.
24. E. Kantorowitz, The King's Two Bodies: A Study in Medieval Political Theology, (Princeton, N.J.: Princeton University Press, 1957); Hansen, From Kingdom to Commonwealth.
25. Alan Harding, A Social History of English Law, (Gloucester, Mass.: Peter Smith, 1966); Howard Nenner, By Colour of Law: Legal Culture and Constitutional Politics in England, 1660-1689, (Chicago: University of Chicago Press, 1980).
26. Nenner, By Colour of Law.
27. Cited in John Walter, "The Essex Grain Rioters," in John Brewer and John Styles, An Ungovernable People? (New Brunswick: Rutgers University Press, 1980), p. 47.
28. John Brewer and John Styles, "Introduction," in Brewer and Styles, eds., An Ungovernable People?, p.133.
29. Brewer and Styles, Op Cit., p.133.
30. In France, by contrast, the community was excluded. cf. Bruce Lenman and Geoffrey Parker, "The State, the Community, and the Criminal Law in Early Modern Europe," in V.A. C. Gatrell, et al., eds., Crime and the Law, (London: Europa, 1980).
31. Whereas the French state sold and controlled over 12,000 judiciary jobs throughout the land churning out a massive army of central bureaucrats who tried (but failed) to swallow up local community practices, in England in sixteenth-century there were only 15 Royal judges, see Lenman and Parker, "The State, the Community, and the Criminal Law in Early Modern Europe."
32. Joseph R. Strayer, On the Medieval Origins of the Modern State, (Princeton, N.J.: Princeton University Press, 1970), p. 41; see also Pollock and Maitland, A History Of English Law, (Cambridge: Cambridge University Press, 1968), p. 79-110, 136-173; William S. Holdsworth, A History of English Law, 2nd ed., Vol. I, (London: Methuen & Co., 1914); T. Plucknett, A Concise History of the Common Law, 5th ed., (London: 1956).
33. See FN # 9 above.
34. This approach dovetails with the recent scholarship of Thomas Andrew Green, Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800, (Chicago: University of Chicago Press, 1985); Cynthia Herrup, The Common Peace (Cambridge: Cambridge University Press, 1987); John Beattie, Crime and the Courts in England: 1660-1800 (Princeton: Princeton University Press, 1986); J. Brewer and J. Styles, eds., An Ungovernable People?; Cynthia Herrup, "Law and Mortality in Seventeenth-Century England," Past and Present 106 (1985), pp. 102-23.
35. C. Herrup, "The Counties and the Country: Some Thoughts on Seventeenth-Century Historiography," Social History 8 (2) 1983: 169-181, p. 169.
36. See FN #10 above.
37. R.H. Tawney, "The Assessment of Wages in England by the Justices of the Peace"; C.B. Dobson Masters and Men (London: Croon Helm, 1980); Margaret Davies, The Enforcement of English Apprenticeship, 1563-1642: A Study in English Mercantilism, (Cambridge, Mass.: Harvard University Press, 1956); Bertha Putnam, "Justices of Labour in the 14th Century," in English Historical Review, Vol, 21, 1906; B. Putnam, The Enforcement of the Statute of Labourers During the First Decade After the Black Death, 1349-1359, (New York: Columbia University Press, 1908.
38. The import of the "law in context" was originally developed in the early twentieth-century American school of legal realism, see Laura Kalman,

Legal Realism at Yale (New Haven: Yale University Press, 1987). More recently, the contextual focus has been taken up by anthropologists, see Clifford Geertz, "Local Knowledge: Fact and Law in Comparative Perspective," in his Local Knowledge (New York: Basic Books, 1983); and S. F. Moore, Law as Process (London: Routledge and Kegan Paul, 1978).

39. The phrase comes from Perez Zagorin.
40. From a vast comparative perspective Weber argues this in Max Weber, The City, trans. and ed. D. Martindale and G. Newsmith (New York, 1958).
41. Alan Harding, "Political Liberty in the Middle Ages," Speculum, 55, No. 3 (1980), pp. 442, 427; T. Smith, English Gilds; M. Block, Feudal Society, Vol. 1 (Chicago: University of Chicago Press, 1961); A. Black, Guilds and Civil Society, pp. 39, 42.
42. Nor was the city the only place, as I argue in The People and the Law passim.
43. The liberal versus communitarian polarization can be seen as more of a philosophical prejudice than a historical one.
44. On the process of transition from corporate to individual liberty, see A. Harding, "Political Liberty in the Middle Ages," pp. 442-42.
45. On Italian cities, see Lauro Martines,

See also the work of Larry Miller (Unpublished Mss.) who has written on the historical conditions in which Macchiavelli formulated his political theories.
46. I am grateful to Larry Miller for his suggestions on this aspect of feudal "inspiration" for the expansion of rights to the urban sphere.
47. G. A. Williams, Medieval London: From Commune to Capital,(London: The Athlone Press, 1963), p.2.
48. The merchant Guild preceded the crafts guild, but the latter (composed of masters and journeymen) became far more important.
49. On guilds see Sylvia Thrupp, "The Guilds," in M. M. Postan, E. E. Rich, and Edward Miller, eds., The Cambridge Economic History of Europe, Vol. III, Economic Organization and Policies in the Middle Ages (Cambridge: Cambridge University Press, 1963), pp. 230-281; Lujo Brentano, "On the History and Development of Guilds and the Origin of Trade-Unions," in Toulmin Smith, ed., English Gilds, (London: Oxford University Press, 1963); Philip Abrams and E. A. Wrigley, eds., Towns in Societies: Essays in Economic History and Historical Sociology (Cambridge: Cambridge University Press, 1977); E. A. Wrigley, People, Cities and Wealth; Susan Reynolds, An Introduction to the History of English Towns (Oxford: Oxford University Press, 1977); P. Corfield, "Urban Development in England and Wales in the Sixteenth and Seventeenth Centuries" in D. C. Coleman and H. H. Johns, eds., Trade, Government, and Economy in Pre-Industrial England (London); Anthony Black, Guilds and Civil Society in European Political Thought from the Twelfth Century to the Present (London: Methuen & Co. 1984); Steve Rappaport, Worlds Within Worlds: Structures of Life in Sixteenth-Century London (Cambridge: Cambridge University Press, 1989); Steve Rappaport, "The Extent and Foundations of Companies' Powers in Sixteenth-Century London," Paper presented at Social Science History Association Meetings, Chicago, 1988; Laurie Nussdorfer, "Urban Politics and the Guilds in Early Modern Europe: Guilds and Government in Baroque Rome," Paper presented at the Social Science History Association, Chicago, 1988; Gail Bossenga, "Regulating the Local Economy: Guilds and the Town Council in Eighteenth-Century Lille," Paper presented at the Social Science History Association, Chicago, 1988; Pamela Nightengale,

"Capitalists, Crafts and Constitutional Change in Late Fourteenth-Century London," <u>Past and Present</u>, 124 (August 1989): 3-35.

50. Cited in S. Rappaport, <u>Worlds Within Worlds</u>, p.31.

51. G. A. Williams, <u>From Commune to Capital</u>, pp. 282-4.

52. S. Rappaport, <u>Worlds Within Worlds</u>, p. 49.

53. My sources on guild membership and citizenship include Susan Reynolds, <u>An Introduction to the History of English Medieval Towns</u>, chaps. 5, 6, 8; Steve Rappaport, <u>Worlds Within Worlds</u>, p. 53; Sylvia Thrupp, "The Guilds"; A. Black, <u>Guilds and Civil Society</u>; H. Berman, <u>Law and Revolution</u> pp. 359-404.

54. R. B. Dobson, "Admissions to the Freedom of the City of York in the Later Middle Ages," <u>Economic History Review</u>, 26 (1973), p. 15; D. M. Palliser, <u>The Age of Elizabeth: England Under the Later Tudors 1547-1603</u> (London, 1983), pp. 220-22.

55. On apprenticeship, see especially E. Lipson, <u>An Introduction to the Economic History of England</u>, Vol. I, <u>The Middle Ages</u>, Chap. VIII, (London: A. & C. Black, Ltd. 1920.

56. For the surprisingly impressive number of women in guilds, see Lucy Smith, "Introduction" in Toulmin Smith, ed., <u>English Gilds</u>; Levi Fox,...; Leeson, <u>Travelling Brothers</u>, p.27-8. On oaths and obligations, see I. Prothero, <u>Artisans and Politics</u>, p. 37; S. Thrupp, "The Gilds," pp. 184, 232-33; A. B. Hibbert, "The Economic Policies of Towns" in Postan, et. al., <u>The Cambridge Economic History of Europe, Vol. III</u>, pp. 157-229; p. 210; R. A. Leeson, <u>Travelling Brothers</u>, passim.

57. Tramping, one of the most important forms of labour migration, was contained within social membership networks, see R. Leeson, <u>Travelling Brothers</u>.

58. <u>Oxford English Dicionary</u>, Vol. X (Oxford: Oxford University Press, 1933), pp. 815-16. In ancient Greece, the craftsmen were, like priests and doctors, believed to possess some secret power, see M. Godelier, "Work and its Representations: A Research Proposal," <u>History Workshop Journal</u>, 10 (1980).

59. <u>Oxford English Dictionary</u>, pp. 815-16; Lujo Brentano, "On the History and Development of Gilds," in T. Smith, <u>English Gilds</u>, p. cxxxii. For various references to "mystery," "mistery," "misterium," "misterium artis," or "mestera, misteria, from ministerium," as the collective body of the craft guild (rather than the skill itself) see A. B. Hibbert, "The Economic Policies of Towns," p. 210; Harold J. Berman, <u>Law and Revolution: The Formation of the Western Legal Tradition</u> (Cambridge, Mass.: Harvard University Press, 1983), p. 391; S. Reynolds, <u>An Introduction to English Medieval Towns</u>, p. 165; A. Black, <u>Guilds and Civil Society</u>, p. 14; R. A. Leeson, <u>Travelling Brothers</u>, p. 26.

60. On illegal shops as unapprenticed ones, see E. Lipson, <u>An Introduction to the Economic History of England</u>, Vol.II, (London: A. & C. Black, 1931), p. 41.

61. On the legal rights of individuals, see Helen Jewell, <u>English Local Administration in the Middle Ages</u> (New York, 1972), p. 53; Max Weber, <u>The City</u>, pp. 91-97; H. Berman, <u>Law and Revolution</u>, pp. 360, 381-82, 386, 396, 401; Carl Stevenson, <u>Borough and Town: A Study of Urban Origins in England</u> (Cambridge, Mass.,: Harvard University Press, xxxx), p. 143; A. Black, <u>Guilds and Civil Society</u>, pp. 34, 38, 40; Steve Rappaport, <u>Worlds Within Worlds</u>, p. 35.

62. C. Adams-Phythian, "Ceremony and the Citizen: The Communal Year at Coventry 1450-1550," in P. Clark, ed., <u>The Early Modern Town</u> (London, 1976), pp. 106-07.

63. H. Berman, <u>Law and Revolution</u>, pp. 391-97.
64. Steve Rappaport, <u>Worlds Within Worlds</u>, p. 29.
65. On social justice as mutual aid, economic regulations and monopoly, see A. Unwin, <u>Industrial Organization in the Sixteenth and Seventeenth-Centuries</u>, (Oxford: Oxford University Press, 1904); A. Black, <u>Guilds and Civil Society</u>, chap. 2; H. Berman, <u>Law and Revolution</u>, pp. 391-92; A. Hibbert, "The Economic Policies of Towns," in <u>Cambridge Economic History of Europe</u>, pp. 159-65, 202, 206-12.
66. Steve Rappaport, <u>Worlds Within Worlds</u>, p. 45.
67. For the strongest evidence on this point, see A. Black, <u>Guilds and Civil Society</u>; see also the numerous guild documents collected in T. Smith, <u>English Gilds</u>.
68. G. Unwin, <u>The Gilds and Companies of London</u>, 4th edn. (London, 1963 [1908]), pp. 70-71.
69. Social historians have been far more attentive to this. See E.P. Thompson, <u>Whigs and Hunters: The origin of the Black Act</u>, (New York: Pantheon, 1975); John Brewer and John Styles, eds., <u>An Ungovernable People?</u>. For discussion on these and other approaches to the law, see Lawrence Stone, "The Law," in his <u>The Past and the Present</u> (Boston: Routledge & Kegan Paul, 1981), pp. 189-99.
70. See A. Hirschman, <u>Rival Views of Market Society and Other Recent Essays</u> (New York: Viking, 1986); A. Hirschman, "Against Parsimony," <u>American Economic Papers and Proceedings</u> (1984), pp. 89-96; K. Polanyi, <u>The Great Transformation</u>; M. Granovetter, "Economic Action and Social Structure: The Problem of Embeddedness," <u>American Journal of Sociology</u>, 91 (1985), pp. 481-510; Fred Block, <u>Post-Industrial Possibilities: A Critique of Economic Discourse</u>, (Berkeley and Los Angeles: University of California Press, 1989); Richard Swedberg, "Economic Sociology," <u>Current Sociology</u>, 35 (1987), pp. 1-221; Margaret R. Somers, "Karl Polanyi's Intellectual Legacy," in Kari Polanyi-Levitt, ed., <u>The Life and Work of Karl Polanyi</u>, Montreal/New York: Black Rose Books, 1991; F. Block and M.R. Somers, "Beyond the Economic Fallacy: The Holistic Social Science of Karl Polanyi," in T. Skocpol, ed., <u>Vision and Method in Historical Sociology</u> (Cambridge: Cambridge University Press, 1984); D. Bell, "Models and Reality in Economic Discourse" in D. Bell and I. Kristol, eds., <u>The Crisis in Economic Theory</u> (New York: Basic Books, 1981); M. Sahlins, <u>Culture and Practical Reason</u> (Chicago: University of Chicago Press, 1976); Donald N. McCloskey, <u>The Rhetoric of Economics</u>, (Madison, WI: University of Wisconsin Press, 1985); W.H. Sewell, Jr., <u>Work and Revolution in France</u>, pp. 10-15.
71. For a similar view (the only other such one I am aware of) see also C. Sabel, "Protoindustry and the Problem of Capitalism as a Concept: Response to Jean H. Quartaert," <u>International Labor and Working-Class History</u>, 33 (1988): 30-37. See also M. R. Somers, "Workers of the World, Compare!" <u>Contemporary Sociology</u>, 18 (3) (May 1989).
72. Robert Brenner and Perry Anderson both use this term. See R. Brenner, "Capitalism, Aristocracy and the English Revolution," Davis Center Paper, Fall 1989; P. Anderson, <u>Lineages of the Absolutist State</u> (London: New Left Books, 1974).