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Rights, Privileges, and the Place of the Artisan in Colonial New York.

by

Simon Middleton.

A dissertation submitted to the Graduate Faculty in History in partial fulfilment of the requirements for the degree of Doctor of Philosophy, the City University of New York.

1998.

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ABSTRACT.

Rights, Privileges, and the Place of the Artisan in Colonial New York.

by

Simon Middleton

Adviser: Professor David Nasaw.

Until the middle of the eighteenth century tradesmen in colonial New York held a particular political and economic position in a social order formed around commitments to a natural hierarchy, deference and mutual respect for the rights and privileges of freeborn Englishmen. Whether high born or of the meaner sort, free men were entitled to claim the privileges of their place. Rulers and the elite expected obedience and deference from their social inferiors; skilled workers claimed respect for their trade privileges and a reasonable return for the work they did. Free men justified their claims to special consideration in a public language of privilege peculiar to the seventeenth and early eighteenth centuries. This language, or shared way of talking about politics, drew upon contemporary debates regarding the nature of government and legitimate authority. Thus the language of privilege connected the rhetoric of the middling and meaner sort with that of the high

born and learned, and situated them both within a broader scheme of contemporary views of political philosophy.

Over the course of the early eighteenth century the operation of the economy, changes in the practices of municipal government and the introduction of the English common law undermined the language of privilege and the place of the artisan in New York. Collectively these changes produced a shift in the language of politics which diminished the force of claims made in the older terms of hierarchy, inequality and respect for the privileges of each in their place. The decline of the public language of privilege with which men justified preferences and inequality left in its wake a colonial public who claimed and shared equality and unalienable rights under the rule of law. It was into this novel and changing environment that the Lockean views of rights and resistance, unacceptable in general debate in the late seventeenth century, took a firmer and ultimately enormously significant hold. The decline in the language of privilege and the place of the artisan provided for new kinds of discussion about rights and privileges in work. In so doing it played an important part in the process which transformed colonial subjects, claiming the rights of Englishmen and the privileges of their place, into Americans who possessed universal equal rights and liberty based not upon their membership in a specific society but upon their humanity.

Acknowledgements.

I would not have completed this thesis without the help of a great many people. Roger Gould and my teachers at Bradford and Ilkley Community College, and Kingston Polytechnic introduced me to the thrill of academic study. I should like to thank the Frank Knox Memorial Fellowship for a year of study at Harvard University where David Blight was particularly helpful. At Harvard and in the years afterwards my many friends, especially Ben, Frank, Josh, Santiago, and Steve sustained my ambition for an American graduate education. Virginia and Dewey Manzer provided a stylish introduction to American culture, a supportive home away from home, and years of much appreciated encouragement.

My education in New York was assisted by funding from the History Department. I am also grateful to the awarding committees of the Dissertation Year Award, 1995-96, the Colonial Dames Dissertation Award, 1996-97, and the E.P. Thompson Memorial Fellowship, 1997-98. I am grateful to Peter Johnson of the Rockefeller Foundation and Keith Hatton at Checkpoint Security Services for flexible terms of employment and the wages which allowed me to continue studying.

In New York I benefitted from the scholarly community of teachers and students which distinguishes the CUNY Graduate Center and the History Department in particular. Jack Diggins has proved a thoughtful and provocative reader for the thesis. I am grateful to James Oakes for agreeing to join the committee on short notice following his arrival at the Graduate Center. My fellow students in New York, particularly Dewar Macleod and Peter Rajsingh, made graduate school an intellectually rigorous and rich experience. For my understanding of early modern political theory and an intellectual engagement which has been essential to my work, I am indebted to Jose Eisenberg. Carol Berkin has been my strongest supporter both academically and personally from my first week in New York, and I am grateful to her for her suggestions and insights.

Gerald Sider's scholarship and genial counsel forced me to rethink my problems and focus on my subject's struggles. My advisor David Nasaw has been a wise and patient mentor even when faced with an occasionally obstreperous student. Back in England Penelope Denning gave the thesis a close and invaluable reading. For tolerating me and this project, and for her love and support through some difficult times, I owe more to Carolyn than I can tally up here. Finally, I would never have survived the rigors of graduate school far from home without the support of my family and in particular my mother and father. Sadly both my mother and grandmother passed away in the final stages of this study, but their steadfast belief in the value of "staying at the books" is present on every page. I dedicate what follows to their memory.

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CHAPTER 1.

Introduction.

By the late seventeenth century artisans in colonial New York manufactured a variety of goods and participated in a thriving urban commerce. Farmers, fishermen, and fur trappers relied on the services of coopers, ship builders, and rope makers from the earliest days of settlement. In the early eighteenth century an emerging colonial upper class furnished their houses with expensive imported goods but turned to local silversmiths, tailors, wig and cabinet makers if the quality was equivalent or the price attractive. Working men and women purchased locally crafted shoes, hats, and gloves, and hired artisans to build their homes, shops, and boats. Even those on the most meagre incomes purchased rudimentary manufactured goods, breads, meat, and beer. In spite of the demonstrable presence of the artisan in colonial America, however, we know very little about the work these men and women did and the place they occupied in eighteenth-century society.¹

¹For colonial manufacturing and retail see Cary Carson, Ronald Hoffman and P.J. Albert eds., *Of Consuming Interests. The Style of Life in the Eighteenth Century* (Charlottesville: University Press of Virginia, 1993), 167-284; Richard Bushman, *The Refinement of America. Persons, Houses, and Cities* (New York: Vintage, 1993), 3-181. On the limits of our current understanding of early American free workers see, Richard S. Dunn, "Servants and Slaves: The Recruitment and Employment of Labor," in Jack P. Greene and J.R. Pole, eds., *Colonial British America: Essays in the New History of the Early Modern Era* (Baltimore: Johns Hopkins University Press, 1984), 158; John J. McCusker and Russell R. Menard, *The Economy of British America, 1607-1789* (Chapel Hill: University of North Carolina Press, 1985), 327.

Our current view draws heavily on a series of studies published in the first half of this century and in particular on Richard Morris's, *Government and Labor*.² Setting out to investigate government regulation in early American commerce, Morris considered colonial tradesmen as a collective group of skilled workers holding a broadly similar place in colonial society and regulated for better or worse in the interests of English mercantilism. Morris described the colonists' attempts to transplant labor codes and regulations which he traced back to the corporate towns of medieval and Tudor England. Tradesmen organized to regulate local monopolies and markets in combinations reminiscent of the European guilds. Where they succeeded these commercial regulations protected trade and at least partially recreated social hierarchies. As in the Old World craft skills or "mysteries" distinguished one trade from another and provided for the pride artisans felt in their labor and the independence and respect they enjoyed in their communities. Convinced that the "colonial period was the age of the individual entrepreneur," Morris traced the ascendancy of *laissez-faire* over the tradition-bound system of masters and apprentices working in small workshops for local customers.

Since Richard Morris's work, historians have relied on his general characterization of the colonial urban trades and have offered studies which fall within one of two broadly defined but conflicting interpretations: the market historians and the social historians.³

²Richard B. Morris, *Government and Labor in Early America* (New York: Harper and Row, 1965); Samuel McKee, *Labor in Colonial New York, 1664-1776*, in Faculty of Political Science of Columbia University, eds., *Studies in History, Economics and Public Law*, no 410 (New York, 1935); Carl Bridenbaugh, *Cities in the Wilderness the First Century of Urban Life in America, 1625-1742* (New York: Oxford University Press, 1938), 37, 42, 190-192.

³In a new preface to the reissue of *Government and Labor* in 1975 Morris felt able to claim that "research over the past quarter century has not measurably changed the findings or altered the conclusions of this book." Richard Morris, *Government and Labor in Early America* (Illinois: Octagon Books, 1975), preface. My characterization of the two groups of scholars as market historians versus social historians uses the distinction

Market historians draw upon a venerable historiographical tradition and a wealth of archival material to depict early American workers as men of great expectations intent on exploiting the abundant resources and less restrictive social conditions of the colonies. Their interpretation stresses the self-reliance and materialism of colonial artisans, qualities which, they argue, underpinned the development of early American manufacturing, commercial ambition, and active involvement in political affairs. Market historians trace the transformation of colonial artisans into early national entrepreneurs, as tradesmen who took up the opportunities offered by individual liberty and free commerce once they were freed from the deadening weight of English trade restrictions.⁴

Within this view economic historians and modernization theorists have measured, calibrated, and charted the transformation of the colonies from communities with market places to a market society. When they refer to conceptions of work or the politics of early

made by Alan Kulikoff, *The Agrarian Origins of American Capitalism* (Charlottesville: University Press of Virginia, 1992), 13-27. For a review of the whole debate one sympathetic and the other less so see Christopher Clark, ed., "The Transition to Capitalism in America: A Panel Discussion," *The History Teacher*, 27 No. 3, (May, 1994), 263-287, and Gordon S. Wood, "Inventing American Capitalism," *New York Times Review of Books*, 9 June 1994, 44-49.

⁴Eighteenth century commentators described the materialistic and ambitious Americans. See J. Hector St. John de Crevecoeur, *Letters from an American Farmer and Sketches of Eighteenth century America* (London: Penguin Books, 1986), 51-66; Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776), ed. Andrew Skinner, (London: Penguin Books, 1986), 1: 78. In American history see Carl Bridenbaugh, *The Colonial Craftsmen* (New York: Dover Publications Inc., 1990), 65-125; Stephen Innes, ed., *Work and Labor in Colonial America* (Chapel Hill: University of North Carolina Press, 1988), 3-47; Winfred Barr Rothenberg, *From Market Places to a Market Economy. The Transformation of Rural Society, 1750-1850* (Chicago: University of Chicago Press, 1992), 1-24. The market historian's proto liberal artisan has long been a stock character of mainstream histories from Daniel J. Boorstin, *The Americans. The Colonial Experience* (New York: Random House, 1958), parts 4 and 11, to Gordon Wood, *The Radicalism of the American Revolution* (New York: Vintage, 1992), 124-144.

modern production and exchange, it is to Reformation Protestantism and the valorisation of work, thrift, and individualism combined with the seventeenth-century campaigns for constitutional and legal protection of property rights and political participation: a loosely bound combination of processes which underpin the progression to modern conceptions of government, rights, and property. The market historians' view provides a clear and insightful analysis of the significance of possessive individualism at the end of the eighteenth century. However, its account of the development of these conditions ultimately depends on somewhat vague economic processes such as the rise of free labor and a transition to a market economy.⁵

The second interpretation, usually attributed to social historians, is critical of the market historians' view. Social historians focus on the relationship between craft production, popular politics, and the market revolution in the eighteenth century. In this view, colonial urban commerce took place in a preindustrial, moral economy characterised by concerns for independence and the common good. Colonial work was governed by the seasonal rhythms of trade within organic communities based on deference and social hierarchy. According to this view, the social and economic relations between colonial artisans were governed more by concerns for custom and competence as they labored in

⁵The market historian's view combines references to Protestantism and the rise of capitalism with an interpretation of seventeenth century individualism and property usually associated with Max Weber, *The Protestant Ethic and the Rise of Capitalism*, trans. Talcott Parsons (New York: Charles Scribner's and Sons, 1958), 35-79; C.B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (London: Oxford University Press, 1962), 3-43. For critiques see Richard Tuck, *Natural Rights Theories* (London: Cambridge University Press, 1979), 143-156; James Tully, "After The Macpherson Thesis," in his *An Approach to Political Philosophy: Locke in Contexts* (London: Cambridge University Press, 1993), 71-95; Michael Ignatieff and Istvan Hont, eds., "Needs and Justice in the *Wealth of Nations*: an introductory essay," in *Wealth and Virtue. The Civic Tradition in the Scottish Enlightenment* (London: Cambridge University Press, 1983), 1-44.

small intimate workshops. Rather than nascent liberal individualists seeking to rise above their station, skilled men worked primarily to maintain their independence; replication and survival, not acquisition and increase, were the watchwords of colonial workers who shared a common artisanal culture. Confronting the demise of social hierarchy, deference, and a united concern for the common good in the later eighteenth century, artisans came to recognise their interests as separate from, even opposed to, those of the merchant elite. In the face of the destabilising affects of free market capitalism, and through a struggle to preserve their independence and customary ways of working, artisans articulated a radical political view which provided a foundation for subsequent working class critiques of the market revolution and commercial society.⁶

Whether colonial artisans welcomed free market capitalism or organized against it underpins the enduring debate between the two schools regarding the motives of early American skilled workers. The argument over motives develops out of a tendency to consider colonial artisans as either self-interested entrepreneurs or community-concerned, custom-bound craftsmen. The market historians' artisan is a materialistic businessman who struggles to attain wealth and standing in a manner which anticipates America's great leap forward into a free market society in the late eighteenth century. In spite of references to the Whig ideas which inspired the revolutionary generation, the market

⁶The moral economy debate derives from earlier discussions of the transition to capitalism such as Maurice Dobb, *Studies in the Development of Capitalism* (New York: International Publishers, 1947), 33-177, and Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 1957), 56-111. The term is usually associated with the work of Edward P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth century," in *Past and Present*, no. 50 (1971), 76-131, and more recently "The Moral Economy Reviewed," in *Customs in Common: Studies in Traditional Popular Culture* (New York: The Free Press, 1991), 259-352; in American history see Gary Nash, *The Urban Crucible: Social Change, Political Consciousness, and the Origins of the American Revolution* (Cambridge: Harvard University Press, 1979).

historians infer the reception of Lockean views of rights and property as a logical and ineluctable development given the prominence of these ideas in the mid eighteenth century and the predispositions of materialistic colonists who had somehow grown away from their imperial rulers.

This is the consensus view of united progress towards modern market relations which social history set out to critique. Challenging the market historians' view of early American motives and paying greater attention to the customs and beliefs of ordinary folk, social historians see eighteenth-century concerns for hierarchy, social position, and the common good at odds with the individualistic and profit motivated artisan. The social historians' argument rests on the claim that pride in skills and craft traditions, customary ways of working, and support for notions of fair price within a "moral economy" constituted a common artisanal culture. A culture which reflected the organization of work and material life, and which provided the basis for resistance to the development of capitalism and alternate visions of America's future in the later eighteenth century. I will be examining many of the claims regarding this artisanal culture in the pages which follow. For the moment, however, it is worth noting that current social history consigns colonial artisans to an archaic world of idiosyncratic customs and small workshops. In spite of its claims to offer the "bottom up" view of ordinary Americans, social history marginalizes colonial workers as anachronistic critics yearning for a bygone age by treating them as victims of, rather than agents in, the historical process.⁷

Although these two views constitute opposing sides of the contemporary debate, their histories and even their inadequacies are surprisingly similar. Both market and social

⁷Charles S. Olton, *Artisans for Independence: Philadelphia's Mechanics and the American Revolution* (Syracuse: Syracuse University Press, 1975), 7-38; Charles Steffen, *The Mechanics of Baltimore: Workers and Politics in the Age of Revolution, 1763-1789* (Urbana: University of Illinois Press, 1984), 53-81.

historians consider colonial artisans as constituting a collective group, as subjects possessing a common outlook or culture. This artisanal outlook appears as either the natural self-interest of the market historians' artisan or the craft-proud and custom-bound artisan described by the social historian. Either way, I would suggest, the origins and development of this perspective are assumed rather than adequately described much less analysed. Indeed rather than tracing the artisanal subjectivity or how the place and view of different colonial skilled workers was defined and refined over time, both existing views chart the history of a collective pre-formed subject through the colonial period. The difficulty of treating free colonial workers, a large and disparate group, in this way is evident in the multiplicity of imprecise collective nouns scholars have relied on, titling colonial skilled workers as artisans, craftsmen, mechanics, or "people of the middling sort." This aggregation obscures the varied histories of certain trades, and the discrete experiences of individuals within the trades, particularly when combined with discussions of the success or failure of transplanted European labor laws and practices. Given the sometimes heated debate on motives, it is noteworthy that both existing views consider colonial urban commerce as a golden age for skilled American workers: an era of mildly exotic, incorrigibly nostalgic work relations doomed by the relentless advance of anonymous historical forces of which the colonial artisan, either as progenitor or a victim, is only dimly aware.

Most importantly, much like Richard Morris some fifty years ago, both views explain the transformation of colonial artisans to a modern working class in terms of the logic of changes within economic systems. The argument over motives obscures the fact that the market and social history views basically agree upon the causal effects and timing of the changes in colonial society and the emergence of modern forms of social relations of production and exchange: in the mid to late eighteenth century an influx of new

immigrants, expansion of settlement and trade, and broadening of markets offered new opportunities for ambitious entrepreneurs and colonial artisans divided into men differentiated only by their status as either workers or employers.⁸

The core difference between the market and social history schools revolves less around what happened and when, than what different historians believe to be the moral and political implications of what happened. The market historians' proto-capitalist artisan is a champion of modernity and key character in the narrative of America's progress into nineteenth century free market and industrial capitalism. The social historians' craft-proud and custom-bound artisan rejects the values of possessive individualism and, reminding us of the world we have lost, offers alternatives to a future of inequality and class struggle.

The two schools offer broadly similar histories neither of which can ever fully discredit the other given their commitment to the self-imposed impasse posed by the question of whether early American workers were either self-interested participants in a market economy or selfless communitarians. The tendency on the market historians' side has been to associate any interest in the market or profitable activity as "capitalistic" and a demonstration of support for approaching modernity. Market historians point to the profit motivated materialism of colonial tradesmen and offer this as evidence of proto-liberal and capitalist behavior in support of their view of a progression to a modern market society. The market historians' depiction of self-interested commerce as evidence of emergent capitalism has left the social historians with the unenviable task of having to demonstrate

⁸These themes broadly connect studies as diverse as Nash, *Urban Crucible*, 312-384; Gordon S. Wood, *The Radicalism of the American Revolution*, 347; Sharon Salinger, *To Serve Well and Faithfully. Labor and Indentured Servants in Pennsylvania, 1682-1800* (New York: Cambridge, 1987), 33, 136-48; Bruce Laurie, *Artisans into Workers. Labor in Nineteenth Century America* (New York: The Noonday Press, 1989), 15-47; Sean Wilentz, *Chants Democratic. New York City and the Rise of the American Working Class, 1788-1850* (New York: Oxford University Press, 1984), preface.

the opposite. Thus the social historians have argued that early American tradesmen did not care to profit from their labor, claiming that colonial artisans worked simply for their "competence" -- an imprecise combination of material comfort and personal autonomy. In an effort to historicize and deny artisanal commercial motives social history has bestowed upon early modern American workers a culture hostile to the market thereby excluding them from meaningful agency in probably the most significant transformation in early modern history.

The argument over early American artisanal motives is unresolvable in its current form. As long as the disagreement centers on the presence or absence of self-interested artisans and whether or not they produced for the market, the market historians' view will remain stubbornly, though not unreasonably, in place. In spite of social history's claims regarding the preindustrial artisanal culture, the evidence of self-interested profiteering in early American commerce is incontrovertible. Seventeenth and eighteenth-century colonial tradesmen risked their lives and fortunes to travel to America and worked long and hard to improve conditions for themselves and their families. In the process they took advantage of all manner of opportunities and calculated their exchanges in precise, commercially motivated and self-interested ways.

Yet the social historians are on to something with their emphasis on early American workers' concerns for customary practices, the place of skilled men in a hierarchical social order, and their claims for a rightful competence for the work they did. The detailed research into colonial work and daily life has revealed popular views of government and economy which set working men and women apart from their richer and more powerful fellow colonists. Just as the market historians can point to the evidence of materialistic and profit motivated artisans, the social historians have convinced us that ordinary colonial Americans held different views about government and politics and that

artisans had strong and coherent views about the work they did and their place in the social order. The artisans struggled against the elite domination of the early republic expressed a bottom-up view of politics which can be traced back through Bacon's and Leisler's Rebellions to the Levellers, Diggers, and Muggletonians of seventeenth-century England.⁹ To move beyond the current deadlock, however, we need an interpretation which can set artisanal claims regarding competence and custom within the context of daily material lives which revolved around commercial ambition and the search for profit: a view which can depict a commerce wherein men and women joined together in co-operative relationships of production and exchange, in the interests of the common good, as they tried to profit from (and even exploit) one another.¹⁰

The starting point for such an investigation lies not in resolving the enduring debate over the presence or absence of self-interest in the colonial artisan, but in highlighting its banality. The historically significant question which the market historians

⁹Alfred Young, "George Robert Twelves Hewes (1742-1840): A Boston Shoemaker and the Memory of the American Revolution," *William and Mary Quarterly*, 3d ser., 38 (1981): 561-623; Joyce Appleby, James Jacob, and Margaret Jacob eds., *The Origins of Anglo-American Radicalism* (London: George Allen Unwin, 1984), introduction, 163-182; David Underdown, *A Freeborn People. Politics and the Nation in Seventeenth century England* (Oxford: Clarendon Press, 1996), 45-68, 112-133.

¹⁰My thinking on this problem has benefitted from Jacques Ranciere, *The Nights of Labor. The Worker's Dream in Nineteenth Century France*, trans. John Drury (Philadelphia: Temple University Press, 1981), 33-99; William Sewell Jr., *The Language of Labor From the Old Regime to 1848* (London: Cambridge University Press, 1980), 1-14, 62-86; Gareth Stedman Jones, *The Languages of Class. Studies in English Working Class History, 1832-1982* (London: Cambridge University Press, 1983), 90-179; above all, however, my debt to Michael Sonenscher is clear to anyone familiar with his outstanding two books, *The Hatters of Eighteenth century France* (Berkeley, California: University of California Press, 1987), and especially *Work and Wages in Eighteenth century France. Natural Law, Politics and the Eighteenth century French Trades* (London: Cambridge University Press, 1989).

generally fail to address and social historians grasp but never sufficiently grapple with is not the presence or absence of self-interest. It is the form which that self-interest assumed, was expressed, realized, or repressed in precise ways, at certain times in specific historical contexts; how in the expression and justification of their self-interest artisans formed themselves as subjects and acted as agents both in their own history and in the historical transformations which shaped the modern world. To understand the form, expression, realization and repression of self-interest, however, we have to shift the focus away from the economy and material life to the languages of politics and law within which artisans justified their commerce.

This dissertation aims to break with the tendency of viewing the colonial trades as prologue to the headline event -- a liberal, capitalist social and economic order. Returning colonial workers and the work they did to the general context of belief and institutions of the seventeenth and early eighteenth centuries, I am concerned with the place of artisans in eighteenth-century society and the justifications they offered for their self-interested concerns. Instead of measuring the success or failure of transplanted legal traditions, I am concerned with law as an operative force in social life. Instead of the customary economic mores of preindustrial society, I am interested in the pursuit of gain and the operation of credit within local markets. Instead of the collective culture of artisans, I want to consider the distinct histories, experiences, and claims of individuals and groups of colonial workers. Overall, I will examine with greater precision the work and daily life of people who -- as artisans, craftsmen, and the "people of the middling sort" -- remain one of the least known social groups in early modern American history. I will do this in a

study of the colonial trades in New York from the seventeenth to the early eighteenth century.¹¹

My departure point is the claim that bakers, carters, brickmakers and all manner of tradesmen engaged in commerce and struggles in colonial markets which influenced the historical transformation of the eighteenth century and the development of new kinds of relations of production and exchange. Where the existing interpretations and I part company, however, is in my premise that the historical loci for struggles within the market and material life are not to be found *in* the market or material life. When tradesmen in colonial New York contracted for work, sought the support of municipal authority for their enterprises and settled their disputes, they justified their self-interested interpretations and actions in ways we can trace quite precisely in contemporary languages of politics and law. Although self-interest motivated commerce, it was never sufficient as a justification for the advantages that tradesmen gained over one another when they represented their case to the wider community. What I am concerned with, then, is the history of colonial tradesmen's *justifications* for the work they did and the commerce they desired -- justifications made in precise languages within contemporary political and legal institutions.

¹¹This study will refer to the importance of women, free black workers and slaves in the New York trades, but it is primarily concerned with the economic activities of free, white male workers and the political and legal foundation of their place in society. I am fully aware that the privileged place of free, white male workers was based practically if not rhetorically upon the denigration of women and black workers, and I have benefitted from the growing body of work on women and black workers in colonial New York. The sexism and racism of my subjects was effortless because they simply had no conception of our contemporary views of the universal dignity and equality of all human beings. Given that I have set my self the task of depicting this unashamedly sexist, racist, and unegalitarian view, I have chosen to focus on my subjects (the free white males) rather than obscure them behind a comparative study of the multiplicity of grades and positions which constituted eighteenth century society.

In this respect my subject is not only the colonial tradesman who labored in the workshop and whose fortunes were subject to the anonymous economic forces described so well by the market and social historians. My subject is also the tradesman as a political and legal actor who, in so far as he was able, petitioned authoritative institutions for advantages and played a role in his own history. When New York City tradesmen justified their commercial strategies before local officials (magistrates, aldermen, or the mayor), they appeared not only as men involved in petty manufacturing and trade, but also as subjects of the crown claiming fundamental rights, freemen of the city, and men with and without certain privileges. This bundle of identifications underpinned a tradesman's place in colonial society and differentiated him from the strangers, women, slaves, and indentured servants who occupied different places within the social scheme. It was on the basis of this legal and political condition that men claimed respect for and commercial privileges in their trade and an acceptable level of reward for the work they did. A tradesman's ability, or inability, to appear and make claims in various legal guises had important effects on his commerce and success or failure in the colonial marketplace.¹²

The foundation for these claims to rights and privileges -- to the idea of an artisan's place -- and for the sanctions which enforced obligations in commerce and daily life, was

¹²My consideration of politics and law and concern with the interdependence of the propositional content of a justification and the language within which it is made draws upon Quentin Skinner, *The Foundations of Modern Political Thought* (London: Cambridge University Press, 1978) 2 vols., 1: preface; James Tully ed., *Meaning and Context in the History of Ideas. Quentin Skinner and his Critics* (London: Cambridge University Press, 1988), 29-119; Anthony Pagden, ed., *The Languages of Political Theory in Early Modern Europe* (London: Cambridge University Press, 1987), preface, and in this volume J.G.A. Pocock, "The Concept of Language and *metier d' historien*: some considerations on practice," 19-41; also useful is Michael Ignatieff and Istvan Hont, "Needs and Justice in the *Wealth of Nations*: an introductory essay," in Ignatieff and Hont eds., *Wealth and Virtue. The Shaping of Political Economy and the Scottish Enlightenment* (London: Cambridge, 1983), 1-45.

the natural law tradition which exerted a profound influence on the politics of seventeenth-century Holland and England. In this tradition natural rights were understood as part of a divine and morally well ordered universe; a universe lent certainty and structure by the law of nature. Natural law accorded men natural rights which as interpreted by a variety of Dutch and British thinkers became broadly interchangeable with the rights of Dutchmen and Englishmen guaranteed by the Dutch and English constitutions. Natural law also imposed natural obligations: that men live in societies obeying the laws and keeping the promises upon which those societies depended. Thus rights were a means to an end and always accompanied by the obligation that the holders use their rights correctly: in the interests of the common good while respecting the rights of others.

Rights and liberty in seventeenth-century Holland and England referred to very different things from what we now understand by these terms. In the seventeenth century liberty was a natural right and, bearing the influence of thinkers from Francis Suarez to Hugo Grotius, Thomas Hobbes and John Selden, it was a right of property. Men had property in their liberty just as they had property in their lives, and they could give up that property either voluntarily or involuntarily. Involuntary loss of liberty was the product of conquest and violence and amounted to a form of slavery. Voluntary slavery, where one literally sold or gave up one's liberty, was also possible within this scheme and an important justification for contemporary bound labor systems from apprenticeship and indentured servitude to the ever expanding European slave trade. Between voluntary and involuntary slavery, however, lay the notion that at some point in the past, usually dim, distant and unrecoverable, free men had chosen to give up their natural rights to the sovereignty of a higher power and entered into a specific form of civil society.¹³

¹³For useful overviews of the significance of the natural law tradition in seventeenth century Holland and England see, Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton: Princeton University Press, 1994), 3-18; Knud

Free born seventeenth-century subjects lived under a conception of natural and divine governments which logically and historically preceded an individual's membership within them. Had there ever been a natural or pre-political human condition, it lay beyond the philosophical frameworks of mainstream seventeenth-century thinkers. Governments were not made by men to protect their rights, but predated man in civil society and, over time, had developed laws and histories which decided what men's rights would be. Born into pre-existing societies, men had no pre-political condition and mainstream seventeenth-century political thought was more concerned with the legitimate use of power and the source of authority, than with how governments had originally been formed. Thus seventeenth-century discussions held little or no place for the notion of popular sovereignty and government by active and periodically reaffirmed consent which we now believe to be the benchmark of a legitimate, democratic society. Seventeenth-century tradesmen did not question the origins of English society or enter it on their own volition; they were born into society and into a place within a rule bound social order upon which that society depended. Consent had been expressed in the unrecoverable past when natural rights were delegated, and it was this moment of delegation which was foundational to the Dutch and English constitutions and with which seventeenth-century political philosophy was almost exclusively, at times obsessively, concerned: its timing, the extent and justification of the delegation, and from this, the origin and nature of government, sovereignty, and the source of legitimate human law and authority.

This giving up or delegation of natural rights was the conceptual basis for the relationship between ruler and ruled; for some the relationship was contractual, but for all

Haakonssen, *Natural Law and Moral Philosophy. From Grotius to the Scottish Enlightenment* (New York: Cambridge University Press, 1996), 310-336; Richard Tuck, *Philosophy and Government, 1572-1651* (London: Cambridge University Press, 1995), 154-279.

it began with the renunciation of natural rights in return for the rule of law supplied by the sovereign power. Thereafter the provisions of law, in the interests of the common good, endowed individuals and groups with rights and obligations on the basis, not of nature, but of the social compact which existed between them. Thus free men living in certain polities were granted specific rights, and required to meet obligations, on the basis of their membership in that polity. In the seventeenth century, freeborn Dutchmen and Englishmen, or colonists claiming that status, claimed rights to life, liberty and property. But they claimed these rights on the basis of the history, customs and laws of England and Holland, and not in terms of their common condition as men.

In this older natural law tradition liberty bespoke a subject's freedom *from* certain things (such as arbitrary rule or tyrannical laws) rather than a freedom to pick and choose governments as one pleased. In this respect, as men sharing rights to life, liberty and property, Dutch and English men of different stations were equal to one another whatever their rank in society. However, this equality had nothing to do with a natural, pre-political condition, but derived from their position as subjects under a common sovereign and constitution. In addition to their fundamental rights as Dutchmen and Englishmen, individuals and groups claimed privileges on the basis of their place in society. Thus the constitutions which guaranteed free born subjects their liberty, and considered them equal subject to the sovereign power, also provided for the inequalities which existed between them.

It was a founding principle of seventeenth-century thought that society divided into natural or divinely ordained ranks of men, and it was a matter for common sense that the better sort should govern.¹⁴ Just as the better sort claimed the privilege of government

¹⁴Keith Wrightson, *English Society, 1580-1680*, (London: Hutchinson, 1982), chapter one.

on the basis of natural, divine and written law, so men of all degrees claimed the privileges of whatever place they occupied within the rule bound social order. Privileges or exceptions and public preferences granted under human law were accompanied by duties: men who claimed the privileges of their position had in return to fulfil their duties and observe the properly held privileges of others. Once granted, these privileges were sometimes referred to as rights by their holders, but only in the sense that a particular privilege was properly possessed or appropriately held and exercised -- an ownership and enjoyment of privileges which others had to respect given the rightfulness of the claim. Thus Dutch and English society consisted of an association of freeborn subjects differentiated by privileges granted in recognition of their place in society and protected under law.

The social world of free men in colonial New York was ordered on the basis of rank and estate. From governor to freeman of the city, the colonists inhabited a place within the prescriptive hierarchy and held certain privileges which everyone else had a duty to respect. The purpose of divine and natural government was the common good, rather than the protection of individual rights; thus work and relations of production in New York's colonial trade economy were regulated in ways which permitted and at times dictated certain kinds of practices and disallowed others. Tradesmen enjoyed their fundamental rights as free subjects but also claimed certain privileges on the basis of their position within society. In this sense the law singled out certain individuals or groups and endowed them with an exceptional status by virtue of their possession of the privileges appropriate to their place. Production and exchange in colonial New York was thus more than a material and technical process bounded by considerations of location and resources. It was also a continuing negotiation involving recognition of rights and obligations within

social hierarchies grounded upon subtle reciprocities, differences, and inequalities whose existence was both the outcome and the basis of legal argument.

Perhaps the easiest way to appreciate this seventeenth-century view of rights and privileges is through comparison with the Lockean notion of universal unalienable rights which ultimately displaced it. Over the course of the eighteenth century the colonists' view of their rights changed fundamentally from what it had been in 1700. By 1776 Americans declared that all men were created equal, and that governments were, or at least should be, formed on the basis of the consent of the governed. The seventeenth-century view of immemorial society as the foundation for politics, the source of rights, and the moral obligation that subjects obey their sovereign was displaced by a universally equal, rights-bearing individual.

In this new liberal view the idea of liberty played a different and far more consequential part. The rights-bearing individual refused to be ruled by obligations and governments which he himself had no hand in choosing. Rights-bearing individuals would no longer be content with liberty *from* certain constraints and the guarantees of society for their political condition as freeborn men. The actions of the English government after 1763 showed that this was too precarious a foundation for American freedom. Now it was asserted that a free man's right to life and liberty did not derive from his membership in the English empire, but from God and nature, and that individuals formed governments with the express purpose of protecting these natural, divine, and unalienable rights. The individual became the new foundation for a society and a political system in which he asserted his ability to impose moral obligations upon himself; Americans claimed the liberty to make and break their own governments. By 1776, if Thomas Jefferson can be considered a reliable witness, this view of rights was not only discussed in educated and powerful circles but had become a self-evident truth the defence of which could incite

popular protest against English rule. Considering that claims of this sort were almost entirely absent from mainstream seventeenth-century European and American political thought, the development of the revolutionary generation's view of their rights took place over a remarkably brief period of time.

Although this study ends in the mid eighteenth century, my discussion of the development and ultimate demise of the idea of an artisan's place points to changes within popular ideas of rights and privileges which prepared the way for the acceptance of the Lockean rights bearing individual. Over the course of the late seventeenth and early eighteenth centuries colonial tradesmen changed and were made to change how they justified their commerce and place in society. As early as 1730 the relationship between the privileged place of the tradesman, as against the rights of society over what he produced and the manner in which he worked was becoming strained. In place of an earlier concern for the common good an increasingly formal and impersonal legal system adjudicated individual conflicts and disagreements which appeared as a normal, even a natural, part of daily commerce. Public claims and practices within the trades, once the subject of legal arguments, were increasingly viewed as archaic customs and traditions with a consequent reduction in their purchase upon the community's consideration. The eradication of the legal and political guarantees which underwrote the privileged place of the artisan created a growing population of socially undifferentiated colonial workers; workers who shared rights to life, liberty, property and the unregulated condition of men who labored for whatever wages were available. Before we can understand the significance of the demise of the artisan's place, however, we have to examine how the idea first came to colonial New York in the mid seventeenth century.

CHAPTER TWO.

Burghers, bakers, and the tradesman's place in New Amsterdam, 1640-1661.

1. How it Came that Bakers Bake No Bread.

In October 1661 New Amsterdam suffered a bread shortage which provoked a minor dispute in the local economy. The inhabitants complained to the Director Peter Stuyvesant and officials within the municipal government that the city bakers had ceased baking twice a week as required by a local ordinance. The bakers protested that they "ought not to be obliged" to bake at all in consequence of their need to "purchase of grain." Deciding that it was necessary to "deliberate so that neither the bakers on one side nor the community on the other be taken short," the court sent for the baker Hendrick Willemsen and demanded to know "how it came that the bakers bake no bread."

When Willemsen was called before the court, he reported that the bakers had ceased baking because they "are afraid to buy grain for beavers as they may suffer loss...[and that] no baker can bake his bread under a crown." The authorities disagreed and demanded compliance with the baking ordinance, ordering the bakers to "bake good bread and to keep continually large bread in the shops" or face exclusion from the trade for "a year and six weeks." Ten days later, however, the burgomasters relented and increased the price of bread by thirty percent to ensure that the bakers would make a profit.¹⁵

¹⁵Berthold Fernow, ed., *The Records of New Amsterdam from 1653 to 1674 Anno Domini*, 7 vols. (Baltimore: Genealogical Publishing Company Inc., 1976), 3: 378. Hereafter, *RNA*. A year and six weeks was the residency requirement for freemen in the city.

The bakers' refusal to bake was prompted by the instability of local currency values. New Amsterdam's tradesmen relied on various money forms and in particular upon beaver skins and "zeewan" or wampum; wampum was small blue/black and white beads made from shells and traded as individual beads or on strings. Beavers and wampum were considered "current money" or regulated forms acceptable in local trade and the bakers had to accept wampum if it was offered in exchange for bread. The values of beavers and wampum were often calculated in terms of the Dutch currency of guilders and stivers. For example, in 1658 twenty-one guilders wampum equalled fifteen guilders beaver and ten guilders silver value. In spite of regulation, however, the values of beaver and wampum fluctuated in response to supplies. Wampum was particularly unstable because seasonal traders from outside New Amsterdam inflated the local supply by bringing large quantities to trade in the town. The imported wampum was often unstrung or of a poor quality which the indians could and did refuse, but which the bakers had to accept. Having bought flour for beavers, a more valuable currency restricted by natural supply, the bakers sold their bread for devalued wampum and lost profit on each loaf sold.¹⁶

¹⁶In Holland there were twenty stivers to three and one third schellings to one guilder (or florin). England's sterling currency divided into twelve pennies to a shilling and twenty shillings to a pound. Throughout the period exchange rates between Amsterdam and London remained relatively stable at thirty seven schellings to one pound sterling. In New Amsterdam the stiver and guilder were the most frequently used values. Using the European exchange rates as a rough guide, then, there were a little over eleven guilders to one pound sterling and just under thirteen stivers to an English shilling. John J. McCusker, *Money and Exchange in Europe and America, 1600-1775* (Chapel Hill: University of North Carolina Press, 1987), 42-45, 156-161; Curtis P. Nettles, *The Money Supply of the American Colonies Before 1720* (Madison: University of Wisconsin Press, 1934), 203-228. Strung wampum was a cross-cultural product, for the beads could only be pierced and drilled for stringing with the European's iron tools. For an analysis of the cross-cultural intricacies wampum exchange see Daniel K. Richter, *Ordeal of the Longhouse. The Peoples of the Iroquois League in the Era of European Colonization* (Chapel Hill: University of North Carolina, 1992), 84-86; Lynn Ceci, "The Value of

Throughout the seventeenth century the authorities in New Amsterdam monitored commerce in accordance with local law. They licensed trades such as baking, butchering and inn keeping; lay down standard weights, measures, and exchange rates; and regulated public markets and entry into and out of local trade in the interests of the common good. In 1657 the authorities introduced the *burgherrecht*, a civil status which restricted local commerce to registered tradesmen or burghers and set out their public privileges and duties within the town. All native born residents, and anyone who lived in New Amsterdam for a year and six weeks or paid twenty guilders, qualified and were required to apply for the *burgherrecht* if they wished to trade. Burghers had to maintain their residence, or keep an open shop, pay taxes, swear allegiance to local authorities, and obey the law. In return they were granted the privilege of trading freely in the city and sharing in the local commerce regulated in their favor.

When Hendrick Willemsen came before the court in 1661 then, he appeared not only as a man in trade, but also as a burgher and baker in the city. Willemsen's economic fortune was intimately bound up with his publicly recognised position. As a burgher Willemsen made a general claim that he and his fellow tradesmen receive a fair profit from their work and that the regulations take account of the costs involved in their trade. As a baker, Willemsen's claim related to the price of flour, bread, and the current exchange rates for beavers and wampum. The bakers' claim for a reasonable price for the bread they baked rested on their position in New Amsterdam not simply as men interested in profit, but as burghers and bakers with certain publicly acknowledged privileges and duties; men interested in profit who occupied a specific position within a prescriptive hierarchy and justified their claims to commercial gains as rightful given their place. In its

Wampum among the New York Iroquois: A Case Study in Artifact Analysis," *Journal of Anthropological Research*, XXXVIII (1982), 97-107.

settlement of the dispute the court recognised the claims of the bakers and the community. In the interests of the community bread supply and the common good the magistrates ordered the bakers to bake. However, the authorities also increased the price of bread ensuring the bakers a profit. For those who still refused to bake the court threatened prohibition from the trade for a year and six weeks, the time it would take them to re-establish their residency as a burgher before they could reapply to become a baker in the city.

This corporatist resolution of the clash between the bakers' commercial aspirations and the community bread supply is familiar to historians of colonial commerce. For many years the prevailing view considered provisions for the *burgherrecht*, trade privileges, and economic regulations as Old World throwbacks or legal relics dying slow deaths on the colonial frontier. Pointing to the origins of corporatism in the traditions of medieval European towns, historians describe their seemingly inexorable end in the commercially permissive conditions of the American colonies. Studies focused on corporate ideals — such as a locally protected burgher market — and finding instances where practices contradict prescription traced the system's demise. In this view seventeenth and early eighteenth-century corporate regulations represent vestigial practices doomed by their commitment to anachronistic principles of control and social hierarchy. In this view the bakers appear as self-interested businessmen, proto-capitalists, hampered by regulations which lack the sophistication of modern economics and an appreciation of the impact of changes in the money supply upon the price and demand for bread.¹⁷

¹⁷Beverly McAnear, "The Role of the Freeman in Colonial New York, *New York History* 21 (1940), 418–430; Richard Morris, *Government and Labor*, 148–49; Michael Kammen, *Colonial New York: A History*, (New York: Oxford University Press, 1975), 132.

Over the last thirty years, however, social historians have criticized this tendency to read individualistic and proto-capitalist values back into the colonial period. Instead, social historians would set the dialogue between the bakers and the municipal authorities in the context of a preindustrial, "moral" economy. Drawing upon the same medieval, Old World, traditions, this "moral" economy combined municipal and elite paternalism with the customary expectations of ordinary folk in a conservative system of production and exchange predicated on replication and survival rather than acquisition and increase. Men worked for their competence and to maintain their independent status in a world where dependency could mean poverty and a miserable existence. Tradesmen eschewed individual accumulation for accumulation's sake but organized their trade in respect of custom and traditions rather than competition and profit. The communities in which they lived also prohibited the unbridled pursuit of self-interest and organised commerce to ensure a sufficient supply of vital goods available at "fair" prices in regulated markets. This pre-industrial perspective remained vital and a viable alternative to capitalism until the late eighteenth century. In this view we might consider the bakers as proud and skilled artisans who control their own labor, defend customary norms and expectations, and insist upon a "fair" return for their work.¹⁸

I would like to reconsider the clash between the bakers and the authorities, the morality of the colonial market place, and what it meant to be a burgher and baker in New Amsterdam, from a slightly different perspective. All the existing interpretations emphasize the force of custom and tradition, tracing corporate trade regulations and privileges claimed by Willemsen as a baker and a burgher to the medieval towns and

¹⁸E.P. Thompson, "The Moral Economy of the English Crowd," 76-131; Gary Nash, *The Urban Crucible*, 3-54; Barbara Clark Smith, "Food Rioters and the American Revolution," *William and Mary Quarterly*, 3d Ser., (1994), 3-38.

practices of early modern Europe. However, the origins of municipal government, the *burgherrecht*, and baking regulations in New Amsterdam can be located quite specifically in the struggles surrounding local commerce and politics from the late 1640s. When Dutch settlers set out to regulate trade in the interests of the common good they did so by introducing measures and urban privileges new in the colonial context and adapting and older practices to suit their needs. Considering these measures as evidence of enduring traditions, therefore, risks missing the features which were expressions of contemporary concerns. Though corporate regulations of baking and urban privileges like the *burgherrecht* can be found in older European settings, they were new to New Amsterdam in the mid 1650s, and we need a clearer understanding of why and how they came about and with what results for commerce and the fortunes of local tradesmen.¹⁹

Similarly, though the term the *burgherrecht* and references to commercial regulations can be found throughout the early modern period, the political language within which tradesmen in New Amsterdam claimed their privileges is as historically specific as the circumstances of its utterance. The settlers in New Amsterdam justified claims made in regard of trade privileges and the *burgherrecht* within the terms of a broader contemporary political language in which concepts such as rights and privileges played particular roles. In the seventeenth century rights referred to fundamental liberties possessed by all free born Dutchmen and privileges were exceptions or preferences granted under law to individuals or groups in recognition of their place within local society. The *burgherrecht* was a privilege claimed under local law which recognized an

¹⁹On the problem of interpreting traditions see Raymond Williams, *The Country and the City* (London: Chatto and Windus, 1973), 1-60; Gerald Sider, *Culture and Class in Anthropology and History* (New York: Cambridge University Press, 1986), 74-95; William Roseberry and Jay O'Brien, eds., *Golden Ages, Dark Ages. Imagining the Past in Anthropology and History* (Berkeley: University of California Press, 1991), preface.

individual who was a subject, a resident, a taxpayer, and a tradesman or merchant in the city. Hendrick Willemsen was a burgher who possessed additional advantages as a baker and he and his colleagues organised their trade on the basis of these specific legal favors. In seventeenth-century New Amsterdam corporate regulations and trade privileges represented less timeless traditions enduring through force of inertia than contemporary claims to the privileges of place actively asserted in conflicts over the bread supply; conflicts which represented microcosms of more general debates regarding the nature of government, authority, and obedience in the seventeenth century.

When the settlers complained of the bread shortage and Willemsen complained about the cost of flour in relation to bread, they made claims regarding a material problem of price, profit, supply and demand in a public language of privilege and duties peculiar to the seventeenth century. When Willemsen appeared before the court it was to seek the protection of the court for the trade and the profit which the bakers rightfully claimed for baking in the city. The price of raw materials and declining rate of profit decided when the bakers ceased to bake and force a reconsideration of existing regulations. But this material motivation played little or no role in deciding *how* the bakers would justify their cause and whether or not the authorities would recognize the justice of their claim and alter the price in their favor. To understand fully the substance of the community's grievance and the bakers' defence therefore, we need to know about more than the price of flour and the declining rate of profit on bread – although we certainly need to be aware of these material factors. To understand how Stuyvesant and the burgomasters deliberated "so that neither the bakers on one side nor the community on the other be taken short", we have to know something more of the language within which bakers and their customers justified their positions; of how this language and the institutions and

practices it relied on developed in New Amsterdam, and of the kinds of claims it was possible to make within its terms.²⁰

2. The *Burgherrecht* in New Amsterdam.

In 1638 the States General directed the Dutch West India Company to employ whatever “inducements and pre-eminences” necessary to attract settlers to New Netherland and save the colony from immanent demise.²¹ The States General awarded the West India Company a charter in 1621, directing the shareholders to develop the colony as a strategic base for Dutch power in the northern Americas. The charter granted the company a monopoly of all Dutch trade with America and West Africa and the authority to make war and peace with indigenous powers, maintain naval and military forces, and exercise all judicial and administrative functions.²² The West India Company's charter provided for its absolute authority where ever it traded; authority which the company delegated to its Directors and their hand-picked officials in New Netherland.

The company tried various schemes to maintain small, self-sufficient settlements intended to provide cheap access to the lucrative fur and Indian trade. However New Netherland consistently disappointed shareholder expectations. While the Dutch were

²⁰Anthony Pagden ed., *The Languages of Political Theory in Early Modern Europe*, introduction, 99-123.

²¹E.B. O'Callaghan, edit., *Documents Relative to the Colonial History of The State of New York* (Albany: Weed, Parsons and Co, 1856), 15 vols., 1:106. Hereafter, *DRCNY*. On the dissatisfaction of the States general see, E.B. O'Callaghan, *The History of New Netherland*, (New York: D. Appleton and Co, 1845), 1: 175-180.

²²C.R. Boxer, *The Dutch Seaborne Empire, 1600-1800* (London: Penguin Books, 1990), 27, 53-56; Jonathan I. Israel, *Dutch Primacy in World Trade, 1585-1740* (Oxford: Clarendon Press, 1989), 156-171.

clinging on in New Amsterdam, the English communities to the north thrived and prospered. In 1640 following the States General directive the company opened up the fur trade and extended political privileges to the settlers in New Netherland. Promising free land, guarantees of safety, and even a schoolmaster for the settlers' children, the company also provided for a local voice in the administrative matters. The West India Company hoped to attract new immigrants to secure the colony and make it profitable and declared its intention to administer New Netherland "according to the style and order of the province of Holland and the cities and manors thereof."²³

New settlers came and spread out across New Netherland seeking their fortunes in the fur trade and from the available land. When Director William Keift's inept administration dragged the settlers into war with local Indians, however, the instability of the Dutch settlement was immediately apparent and New Netherland faced extinction once again.²⁴ The man charged with securing the colony and organizing settled communities, and the Director from 1647 until the arrival of the English in 1664, was Peter Stuyvesant.²⁵ In a battery of reforms covering everything from street cleaning, fire

²³Thomas J. Condon, *New York Beginnings: The Commercial Origins of New Netherland* (New York, 1968), chapters 2, 3; Van Cleef Bachman, *Peltries or Plantations: The Economic Policies of the Dutch West India Company in New Netherland, 1623-1639* (Baltimore: Johns Hopkins University Press, 1969), 74-154.

²⁴Director William Keift exploited the Indians by making them pay for protection; this led to a war which nearly wiped out the Dutch settlement in 1645. For the miserable condition of the colony following Keift's War see "Memorial of Eight Men at the Mannhattans to the States General," and the "Report of the Board of Accounts on New Netherland, 1644," *DRCNY*, 1:139, 149-156; E.B. O' Callaghan, ed., *The Documentary History of the State of New York*, 4: 1-19, hereafter *DHSNY*; Oliver Rink, *Holland on the Hudson. An Economic and Social History of Dutch New York* (Ithaca: Cornell University Press, 1986), 117-118, 134-138.

²⁵*DRCNY*, 1: 160.

prevention and the location of slaughter pits, to church attendance, the exchange rates for wampum and the proper weight of bread, Stuyvesant transformed the organisation of New Netherland with New Amsterdam as its centre. From the outset, however, certain merchants and settlers with important ties to Holland challenged Stuyvesant's officially unquestionable authority. The struggle for an autonomous burgher government, and the subsequent provision of the *burgherrecht*, developed out of this critique of West India Company rule.

The challenge to Stuyvesant and the West India Company's administration of the colony developed out of the difference between settler and company ambitions in New Netherland. Intent on increasing its chances for profit, the company was keen to encourage trade and expansion. The company supported Stuyvesant's reforms — such as stabilizing currency exchange rates, public order measures, and consumer protection — which encouraged immigration and commerce. However, the same officials opposed measures which in their view restricted trade and discouraged newcomers.²⁶ The settlers also desired more trade, but sought to develop the colony in ways which favored those who had gambled their lives and fortunes and made New Amsterdam their home. The settlers believed they should be permitted to control trade in the interests of the inhabitants as they would if they had lived in any other provincial Dutch town. To do this, however, they would require a municipal authority made up of local men who could play a role in regulating commerce.

²⁶In the 1650s the company objected when Stuyvesant regulated prices for bread, wine and beer, when he fixed the wage rates of carpenters and masons, and it struck down the Director's attempt to enforce punitive duties foreign traders who exchanged with the Indians but evaded the duties claimed by the city, see E.B. O'Callaghan, *Laws and Ordinances of New Netherland, 1638-1674* (Albany, 1868), 148, 150, 152-153, hereafter, *Laws*; *DRCNY*, 15: 251; Harold C. Syrett, "Private Enterprise in New Amsterdam," *William and Mary Quarterly*, 3d Ser., XI (October, 1954): 536-550.

Soon after arriving in New Amsterdam, Stuyvesant noted the presence of "Scotch merchants and Petty Trader who...come over in the ships from the Fatherland...spoil trade and business by their under selling: they dispose of goods with the utmost speed; give 11 or 12 guilders in loose Wampum for one Beaver, and when sold out go back again in the ships of the same year." Stuyvesant prohibited the itinerants from trading "unless they take up their abode here in New Netherland for three consecutive years and...build in this city New Amsterdam a decent citizen dwelling, each according to his circumstances."²⁷ The West India Company vigorously opposed measures such as this, arguing that restrictions discouraged newcomers as "the expectation of gain is the greatest spur to induce people to go hither, as experience has already sufficiently demonstrated."²⁸ Keen to extend settlement and expand trade, the company undermined Stuyvesant's efforts to rebuild the colony after Keift's War. Limiting his reforms to measures which would encourage trade, the company left Stuyvesant with no way of dealing with the itinerant traders who paid no taxes and threatened the local economy by underselling in competition with the residents and periodically flooding the market with wampum which destabilized currency values causing damaging slumps in local trade. In addition, the company denied the settlers the privileges of trade regulations and local monopolies which they believed themselves entitled to as residents.

In 1648 Peter Stuyvesant appointed a board of Nine Men to consult on local affairs. Within a year the Nine Men produced a remonstrance criticising Stuyvesant and his administration. The settlers' key complaint united their interests and the colony's future prosperity with a call for a local burgher government. The Nine Men argued that as

²⁷New York Historical Society, *Collections*, (1885), 1-4. Hereafter, NYHS, *Collections*.

²⁸*Laws*, 149-150.

residents in New Amsterdam they were entitled to regulate trade in their own interests and exclude outsiders. Pointing to the success of the English communities to the north, the Nine Men argued that only regulated trade under a local burgher government would encourage others to come from Holland and settle: The colony "would then prosper, especially had it what we consider to be the mother of population, good Privileges and Exemptions, which could encourage the inhabitants."²⁹ To make their case the Nine Men sent delegates to Holland to seek redress before the States General in the hope that they might be "entirely relieved and released from oppression and slavery."³⁰

Over the following three years settlers from New Amsterdam conducted a campaign for local control and trade privileges, in the colony and before the States General of the United Provinces in Holland. In May 1650, fearing for its charter, the company again redrafted the freedoms and exemptions applicable to the colony and encouraged Stuyvesant to work with the settlers – now calling themselves burghers and leaders of the "commonality." As the Director and the burghers competed for the

²⁹"Petition of the Commonalty of New Netherland to the States General, 13 October 1649," "Additional Observations on the Preceding Petition" and the "Remonstrance of New Netherland," all in *DRCNY*, 1: 259, 262, 275-318. Specific reasons included losing the ship, *Princess*, Indian attacks, inroads made on local trade by itinerant traders, and Stuyvesant advancing his favorites at the expense of others, "Hence arises this evil: the government does what the subjects do – to wit, carries on trade there, and that in competition with the people." For subsequent discussions see, "Short Digest of the Excesses and Highly Injurious Neglect...", in *DRCNY*, 1: 332-337.

³⁰For critiques of the company's administration which threatened its charter rights see, "A study of the Public Charges in New England," "Information Respecting Land in New Netherland," and "Report of the Committee of the States General on the Affairs of New Netherland," *DRCNY*, 1: 359-376, 388-395. The petitions success reflected the influence of independent urban oligarchies in the States General and authority of the newly returned States of Holland in the Dutch Republic. Jacob L. Price, *Holland and the Dutch Republic in the Seventeenth century. The Politics of Particularism* (Oxford: Clarendon Press, 1994), 13.

strategically significant support of the "commonality," public confrontations resulted. In September 1650 when the Director detained a ship and demanded payment of local taxes, Augustin Herman reported that he went to the dock to display "a flag for the Burghers, but Stuyvesant will not allow it to be carried." Relations between the Director and the reformers worsened and the burghers in New Amsterdam wrote to their delegates in Holland of how they "dread[ed] the effects of [Stuyvesant's] daily menaces." Stuyvesant rarely missed an opportunity to humiliate his opponents and in April 1652, "with a view to insult and affront" the burghers, he ordered that "the benches in their pew in the Church to be torn up, and take [sic] possession of it himself." The burghers complained that they were "obliged to listen every day to scoff and sneers," as Stuyvesant told all who would listen that his critics were "nothing but a waste of money and that Amsterdam will never support them against him and introduce reforms."³¹

International events favored the burghers' cause. England's introduction of the Navigation Acts in 1650 discouraged the States General from undermining the West India company's authority and revising its charter. However, the renewed English threat to maritime trade made it imperative that the republic secure New Netherland and the Dutch presence in North America. Following an enquiry into the New Amsterdam delegate's case, a States General report argued that the preservation of the colony "originally granted to all the stockholders of the West India Company... demands other orders than those issued for the government thereof."³² In the spring of 1652, under pressure from the

³¹"Selectmen of New Amsterdam to the States General," 13 September 1650 and "Extracts of Letters, Journals, Resolutions, &c from New Netherland, 1650-1651" in *DRCNY*, 1: 420, 421, 444-457. For other clashes between Stuyvesant and the burghers see *RNA*, 1: 166, 172-173; 2: 16-17, 107, 204.

³²See in particular the "Report of the Committee of the States General on the Affairs of New Netherland," the "Plan for the Colonization of New Netherland," *DRCNY*, 1: 359-376, 388-395.

States General, the company directed Stuyvesant to placate his critics and equip New Amsterdam with "a Burgher Government," a *schout*, two burgomasters, and five *schepens*. The West India Company remained a powerful authority in the colony and clashes between the burgomasters and the Director continued. But the settlers had their burgher government.

The authority of the burgomasters in relation to the West India Company and the nature of municipal government in New Amsterdam has been the source of some historiographical debate. Older nineteenth-century interpretations stressed the Dutch context for the burgomasters' struggle and the importance of claims regarding rights to liberty and the privileges of freeborn Dutchmen. These older histories argued that the claims to rights and the campaign for municipal government revealed a seventeenth-century Dutch commitment to "natural liberty" which anticipated the development of democracy in America and even the revolution at the end of the eighteenth century.³³ More recent work has described the hierarchical structure of Dutch society, the absence of provisions for, or even claims to, equal participation in politics and the undemocratic attitudes and practices of the burgomaster who represented an aristocratic elite. Considering these factors, historians have rejected the nineteenth-century whiggish view and, pointing to the undiminished authority of the West India Company, have argued that the burgher government played little or no role in the city's administration and even after

³³E. B. O'Callaghan, *History of New Netherland* (New York, 1846-48), 2 vols, 1: 392-93; 2: 192-193; John R. Brodhead, *History of the State of New York*, (2nd ed., of vol. I, New York, 1859), 24, 107, 192, 193, 452; Mariana Griswold Van Rensselaer, *History of the City of New York in the Seventeenth century*, 2 vols., (New York, 1909), 1: 218-21; the most recent work on New Amsterdam has stressed once again the ties binding the merchants in New Amsterdam and Holland and the merchant influence in municipal government, Dennis Maika, "Commerce and Community. Manhattan Merchants in the Seventeenth century," Ph.D. Diss. New York University, 1995.

the "privilege of municipal government was granted in 1653, the central government of the company still retained ultimate power over local affairs."³⁴

When older histories focused on the burghers' language they found claims resembling references to natural rights which they took to be the first faltering steps towards a Lockean view of unalienable rights. Yet subsequent scholars, examining the practices of institutions and policies of the rulers, describe an autocracy dominated by the West India Company. The problem with the first view is that it attributes modern notions to men who had little or no conception of such ideas, and who asserted their claims in support of an entirely different notions of political life. Yet if, as the second view argues, the company always dominated the government of New Amsterdam, how do we account for the behavior of the burgomasters who stubbornly opposed the company -- risking their fortunes and personal liberty -- and then appeared to settle into their municipal roles following the decision of the States General in 1653? The burgomasters plainly thought their condition had changed. To appreciate why, we have to understand what they meant when they claimed their right to live as free men under a government which strikes us today as autocratic.

In its 1640 reforms the West India Company declared its intention to govern the colonial communities in the style of Holland. The burghers' campaign for municipal rule drew heavily upon metropolitan precedents and comparisons. Powerful town

³⁴Philip L. White, "Municipal Government Comes to Manahattan," *New York Historical Society Quarterly*, 37, (1953), 146-57; Langdon G Wright, "Local Government and Central Authority in New Netherland," *New York Historical Society Quarterly*, 57 (1973), 7-29; John Murrin, "English Rights as Ethnic Aggression: The English Conquest, the Charter of Liberties of 1683, and Leisler's Rebellion in New York," in William Pencak and Conrad Edick Wright, eds., *Authority and Resistance in Early New York* (New York: New York Historical Society, 1988), 56-94; Joyce Goodfriend, *Before the Melting Pot. Society and Culture in Colonial New York City, 1664-1730* (Princeton: Princeton University Press, 1992), 8-9.

governments formed in the Dutch provinces by the mid fifteenth century, and the defence of urban privileges rallied support for the revolt in 1572. Spain's defeat effectively canonized the authority and liberties of Dutch urban government placing them at the heart of the constitution of the republic.³⁵ Throughout the United Provinces, oligarchic urban elites oversaw the daily administration of burgomasters, drawn from their own ranks, assisted by lesser *schepens* and the local militia. These provincial elites in the towns and, as representatives to the States General within the republic, justified their authority with arguments favoring the government of virtuous aristocracy first made during the sixteenth century and the Dutch revolt.³⁶ Ordinary burghers rarely participated in the formal activities of government and had no role in electing or selecting those with authority over them.³⁷ This was the kind of municipal government which the delegates from New Amsterdam petitioned for before the States General in Holland.

³⁵Price, *Holland and the Dutch Republic in the Seventeenth century*, 5-57; Jonathan Israel, *The Dutch Republic. Its Rise, Greatness, and Fall, 1477-1806* (Oxford: Clarendon Press, 1995), 113-125, 328-353.

³⁶The United Provinces drew upon the resistance theories of European calvinists and the argument that a commonwealth was entitled to repudiate its king if he became a tyrant. Following Spain's defeat, Frans Vranck argued in his "Short Exposition" (1587) that the Dutch constitution and government, of nobles and College of Magistrates and town governments, "represent[ed] the whole state and entire body of the inhabitants." See Martin Van Geldern ed., *The Dutch Revolt*, (London: Cambridge University Press, 1993); for the significance of Dutch arguments in contemporary European, and specifically English, political philosophy see Tuck, *Philosophy and Government*, 154-158, and Zuckert, *Natural Rights*, 95-146.

³⁷However, this did not mean that the commonality exerted *no* influence in urban politics. Craft guilds and local tradesmen carried out and in many ways effectively regulated urban commerce and played an important role in public order. Ruling elites relied on the *schutterij*, or local militias of shopkeepers and tradesmen to keep the peace; in moments of extreme unrest, the militia drifted into the ranks of the crowd it was supposed to suppress. See Price, *Holland and the Dutch Republic in the Seventeenth century*, 90-108. The significance of crowds as an informal check on elite power in early modern Europe has also been noted in studies of France, England, and colonial America see

The rhetoric and the timing of the campaign for municipal rule in New Amsterdam represented more than just self-interested merchants and traders recreating metropolitan practices to guarantee commercial advantages for their own fortunes and the sake of tradition. The delegates who travelled from New Amsterdam to Holland in 1650 presented their case to a republic recovering from the severest constitutional crisis since the counter-remonstrant *coup* of 1618.³⁸

Since 1618 the Dutch republic had been governed by the supreme and centralized authority of the Stadtholder. When Stadtholder Frederick Hendrik died in 1647, a struggle for mastery developed between his successor, Stadtholder William II, and Holland, the richest and most powerful province in the States General. Asserting its provincial rights, Holland undermined the supreme central sovereignty claimed by the Stadtholder. William's death, following his successful *coup* in July 1650, left Holland in control of the States General. This dispute over the balance of sovereignty between the Stadtholder and the states within the republic revived popular arguments regarding the importance of autonomous states and towns within the Dutch constitution. These older arguments advocated a republic of freeborn, land owning Dutchmen led by an aristocratic elite who administered the Dutch military and commercial empire around the world.³⁹ It

George Rude, *The Crowd in History* (London: John Wiley and Sons, 1964), part one; Thompson, *Customs in Common*, 185-352; Edward Countryman, "The Problem of the Early American Crowd," *Journal of American Studies*, 7, (1973), 77-90.

³⁸Israel, *The Dutch Republic*, 596-609.

³⁹E.H. Kossman, "Freedom in seventeenth century Dutch thought and practice," in Jonathan I. Israel, *The Anglo-Dutch Moment. Essays on the Glorious Revolution and its World Impact* (London: Cambridge University Press, 1991), 289-290. The writings of Hugo Grotius and Petrus Cunaeus were particularly important in this republican revivalism. Cunaeus was a young friend of Grotius' and student then teacher at the University of Leiden where he lectured on Latin and politics. There were at least seven editions of his *De Republica Ebraeorum* published between 1617 and 1700, including an English

was these popular arguments which favored the New Amsterdam burghers' claims to privileges of residents in local governments and their challenge to the West India Company's arbitrary administration. As freeborn Dutchmen, the burghers appealed to the sovereignty of the States General *over* the chartered privileges of the West India Company.

This powerful combination of an appeal to the Dutch Revolt, the role of independent minded provinces, and the potential for an empire of commerce governed by provincial aristocrats came together in the person of the leading delegate from New Amsterdam, Adrien Van Der Donck. Leader of the Nine Men, suspected author of the 1649 remonstrance, and self-styled "President of the Commonality of New Amsterdam," Van Der Donck even wrote a book extolling the virtues of New Netherland as a new province which would add to the greater glory of the Dutch republic.⁴⁰ Not surprisingly the West India Company despised Van Der Donck as the "notorious ring leader" of a "lawless and mutinous rabble." When the company's Amsterdam Chamber refused him

translation in 1653, at the height of republican revival. Tuck, *Philosophy and Government*, 154-158; Haitsma Mulier, *The Myth of Venice and Dutch Republican Thought in the Seventeenth century*, trans. G.T. Moran (Assen: Van Gorcum, 1988), 26-77.

⁴⁰A graduate of University of Leiden and recipient of the degree of *Juris utriusque Doctor*, in civil and canon law, Van Der Donck worked as an Advocate in the Holland's Supreme Court before settling in New Netherland as the sheriff of Rensselaerswyck, where he acquired a reputation for defending settlers against the company. His work extolling the virtues of New Netherland was published as *Description of New Netherland (such as it now is) Comprehending the Nature, Character, Situation, and Fruitfulness of that Country; together with the profitable and desirable opportunities which it offers for the support of people (whether natives or foreigners) Also the manners and peculiar characteristics of the Indians or aborigines of the country. And a particular account of the wonderful nature and habits of the beaver; to which is also added a Discourse on the situation of New Netherland between a New Netherlands Patriot and a New Netherlander*, General Jeremiah Johnson translated 1656.

return passage to the colony, Van Der Donck turned his "extraordinary civil banishment" into yet another critique of the company's arbitrary power, having "no other justification so far as he knows than — such is our pleasure and in this case we are own masters..[and] have no superior according to the Charter granted to us." In his successful appeal to the States General Van Der Donck invoked the memory of the Dutch revolt signing his complaint as the,

Delegate of the Commonalty of New Netherland...a native freeman of this country, whose mother's father by the capture of the city of Breda with the turf boat, whereof he was exporter and part owner, participated in the acquired freedom⁴¹

The burgomasters claimed their liberty before the States General and men learned in the law, such as Adrien Van Der Donck, made precise (even sarcastic) legal and historical arguments to criticize the West India Company's tyranny. When the company argued that the protesters were "guilty of resisting authority and had conspired to revolutionize the State and reduce it under another ruler and government," the burgomasters vehemently denied this, arguing that they sought no more than to live like freeborn Dutchmen as if they inhabited any other town in the United Provinces.⁴² The first item on the Nine Men's list of requests in 1649 was a "suitable municipal (*borgerlycke*) government, such as your High and Mightinesses shall consider adapted to this Province, and something resembling the laudable Government of our Fatherland."⁴³ Thus these men claimed a right to live under a specific form of government, not any kind of government they might make. They did not claim to possess a right as men to form their own government but a right as Dutchmen to live under a Dutch municipal authority. In Holland, just as in every other seventeenth-century European state, this government

⁴¹Adrien Van Der Donck's rather long winded appellation referred to his rights a free born citizen of Breda and his lineal descendance from Ariaen van Bergen, part owner of the famous turf boat in which a party of Dutch troops were smuggled into Breda Castle in 1599 and successfully overcame the Spanish defenders in a major victory for the republican cause. Van Der Donck's progress in Holland can be followed in *DRCNY*, 1: 477, 478, 485.

⁴²"Petition of the Commonalty of New Netherland &c to Director Stuyvesant," in *DRCNY*, 1: 550-555.

⁴³*DRCNY*, 1:259-61.

prescribed a hierarchical rule bound social order wherein men occupied a certain station with the privileges and duties appropriate to their position. Thus there was nothing contradictory in claiming one's fundamental liberty to live in, what may appear to us good Lockeans today as, an autocratic state. In 1653, the burghers succeeded in institutionalizing their claim within a recognised burgher government and thereafter the Dutch view of a society of freeborn subjects whose rights and privileges were guaranteed by a hierarchical state governed by the elite became clear.

With the municipal authority established, the burgomasters could now make claims regarding the administration of local trade as they might had they been leaders any other Dutch town. Shortly after its establishment in 1653, the municipal government in New Amsterdam clashed with the Director regarding the taxes necessary to fortify the city in readiness for an imminent attack by the English navy.⁴⁴ Resisting Stuyvesant's attempts to bully and cajole them into submission, and denying his characterisation of their activities as subversive, the burgomasters called "some of the principle burghers and inhabitants" to an assembly of English and Dutch settlers and produced a remonstrance making the case for local privileges and the authority of the burgher government.⁴⁵ Finding common cause against the authoritarian Stuyvesant, and sharing a view of the privileges that the settlers could rightfully claim, the English and Dutch participants drew up a petition in English and then translated it into Dutch for presentation to the Director and the States General.

The remonstrance drawn up in December 1653 declared the settlers' allegiance to the principle of "paternal government which God and nature have established in the world

⁴⁴For lists of assessments and contributions and Stuyvesant's request for more taxes and subsequent calling in of debts owed to the company, see *RNA*, 1: 66-69, 91, 92, 104.

⁴⁵*RNA*, 1: 131, 134, 144-145.

for the maintenance and preservation of peace.”⁴⁶ In the burgomasters' view society was natural and divine and the foundation for politics. Though citizens of New Netherland, the remonstrance went on, the settlers were first subjects of “God the Lord [and the] the States General as His ministers,” and a government intended “to promote the welfare of their subjects...within the United Provinces and in the foreign settlements.” The end of government was the provision for the common good; they made no mention of their individual rights other than the right as Dutchmen to live under a suitable government. As subjects of this government, the petitioners argued, they had settled in New Netherland “on mutual covenant and contract entered into with the Lords Patroons,” and with the “consent of the Natives the original proprietors of these lands from whom we purchased the soil.” At no point had the settlers given up their freeborn condition, nor seized land through conquest which another might then claim as their own beyond the law. Appealing to the laws of God and nature, the petitioners presented their society as one of freeborn Dutch men who had freely entered into agreements with the West India Company and Indian inhabitants.

Having declared their support for the principle of divine and natural origin of society and identified themselves as members of the polity of the United Provinces, the petitioners claimed particular privileges under the laws and government of that state. Although thousands of miles away the petitioners held their “privileges to be the same, harmonizing in every respect with those of the Netherlands, being as a member state and not a conquered or subjected people.” Reviewing Stuyvesant’s commercial dealings and administration in light of this assertion, the petitioners feared the “establishment of an arbitrary government” which exercised “exclusive power to dispose at will of the life and

⁴⁶“Petition of the Commonalty of New Netherland &c to Director Stuyvesant,” in *DRCNY*, 1: 550-555.

property of any individual." Acknowledging Stuyvesant's high office, the petitioners argued that they were, nevertheless, his equals as free subjects of the republic; thus Stuyvesant's arbitrary "enactment of new laws or orders affecting the commonalty, or inhabitants, their lives or property is contrary and opposed to the granted Freedoms of the Dutch government, and odious to every freeborn man." Claiming, as wealthy denizens of New Netherland, the privilege of being represented and of representing the commonality, the petitioners turned the company's critique of their disaffection against its own chartered absolutism. As citizens of the Dutch Republic living in a foreign possession, the burgomasters "humbly submit[ed] that tis one of our privileges that our consent or that of representatives is necessarily required in the enactment of such laws and orders."⁴⁷

The precision of the burgomasters' arguments reveal that they were neither champions of indistinct, or embryonic, radical notions of popular rule nor simple minded traditionalists driven by an innate sense of convention to secure municipal privileges. Their arguments did not represent faltering steps towards democratic claims for autonomy and popular consent in government: such ideas held little or no place in contemporary Dutch political thought. Rather the burghers offered a clear and coherent critique of West India Company rule and demanded rights as freeborn Dutchmen to live under the same kind of aristocratic, hierarchical municipal government which prevailed and provided for the common good in ordinary Dutch towns. These men advocated a specific form of aristocratic republicanism challenging not the fact or rightfulness of the West India Company's authority, but the corrupt and arbitrary administration which threatened the colony's common good and worse, what it was to be a freeborn Dutchman and not the miserable subject of a vanquished state.

⁴⁷Ibid.

Appeals to philosophical abstractions such as divine and natural law only served to establish the divine and natural foundations of society. The burgomasters' polity was the United Provinces to which they had, in theory, delegated their natural rights, and from which, in practice, they now claimed their rights as Dutchmen. Preeminent amongst these rights was their liberty, which they had never given up to the West India Company but retained following the arrival in the colony. In addition to their rights as Dutchmen the burgomasters claimed privileges in respect of their place within local society. For the specific form of New Netherland's government and the privileges they could rightfully claim as residents of New Amsterdam, the burgomasters looked not to each other *nor* even their newly established government. Instead they invoked the Dutch constitution, republican history, and the known law.

These elements combined to prescribe a polity wherein an aristocratic elite governed a citizenry of free burghers recognizing the privileges and duties of each in their place and administering affairs in the interests of the common good. The burgomasters' claims to rights rested on their common condition as members of republic and their claims to privileges on the position they occupied in local society. They had no existence as individuals outside the rights and privileges granted them by the republic. And the nature and purpose of those rights and privileges could be found only by looking into the constitution, laws, and history of the republic. Under the privileges of its charter granted by the States General the West India Company also rightfully claimed authority in the colony and the colonists owed allegiance to the Director and the company just as they did to the burgomasters and *schepens*. The burgomasters claimed a share in power but also recognized the prerogative of others as long as their claim rested on the source of all legitimate authority in the Holland: the laws of the republic under the government of the States General and the Stadtholder.

Although it rebuked the magistrates for their insubordination and disobedience, in the months following the remonstrance of 1653 the West India Company recognized a formal and effective role for the burgher government in New Amsterdam. The burgomasters took charge of the schools, weigh house, docks, and piers, and were granted control of the excise tax and could levy "any new small excise or impost with the consent of the commonality." As magistrates the burgomaster and *schepens* held court and tried civil cases for one hundred guilders or less and introduced ordinances regulating trade and public order. Stuyvesant and his hand-picked council acted as an appellate court, continued to introduce their own regulations, and had to approve ordinances introduced by the burgomasters. In keeping with the practices in Holland, Stuyvesant acted as a nonelected executive power and appointed any new burgomasters from lists drawn up by the existing office holders.⁴⁸

In the mid 1650s, New Amsterdam was plagued once again by traders who flooded the city with low grade wampum. Wampum inflation disturbed urban trade causing commodity values to fluctuate wildly and threaten closely calculated profit margins. Having secured the place and proper function of a local government, the burgomasters were better able to organise and act in response to a crisis in local trade. Their response was quick and comprehensive compared to the efforts of the isolated Director and his council, hampered by the West India Company, a few years earlier. In a series of measures the burgomasters regulated trade and provided for the economic prosperity of the town on the basis of regulations and commercial preferences that now formed part of the privileges claimed by the burghers of New Amsterdam.

⁴⁸*DHSNY*, 1:598-602.

The burgomasters and Stuyvesant agreed to introduce the *burgherrecht* as a privilege of residency and required of all who traded in the city.⁴⁹ To avoid incurring the displeasure of the West India Company, the order proposed that outsiders could register for the *burgerrecht* and trade in the city as long as they established and maintained a retail store and paid taxes. All native-born residents and anybody who had lived in New Amsterdam for one year and six weeks, married "native born daughters of Burghers," or paid twenty guilders, was eligible for the lesser *burgherrecht*: this granted them the freedom of the city and the privilege of practising a trade and engaging in commerce. Residents who had been and were at present "in the High or Supreme government of the Country," and former and present burgomasters and *schepens*, ministers of the gospel, military officers, or persons of higher standing who paid fifty guilders, and the male descendants of all these ranks were entitled to claim the greater *burgherrecht* qualifying them to fill all "offices and dignities within this City, and consequently be nominated thereto."⁵⁰ Women were permitted to register for the greater and lesser right and, though not expressly prohibited, free blacks and were excluded from the *burgherrecht*.⁵¹

⁴⁹The ordinance of 1657 was reissued by Stuyvesant his council in 1660 and by the burgomasters and *schepens* in 1660 and 1661 in, NYHS, *Collections*, (1885), 12-36.

⁵⁰"Resolution of the Council of Amsterdam on the Conditions for the Encouragement of Emigration to New Netherland," and "Draft of Conditions offered by the City of Amsterdam to Emigrants to New Netherland," in *DRCNY*, 1: 618-625

⁵¹For the Dutch slave trade Johannes Menne Postma, *The Dutch in the Atlantic Slave Trade 1600-1815* (Cambridge, 1990); on blacks in New Amsterdam see Joyce D. Goodfriend, "Black Families in New Netherland," *Journal of Afro-American Historical Genealogical Society* 5 (1984), 95-108; "Burghers and Blacks: The Evolution of a Slave Society at New Amsterdam," *New York History*, 59 (1978), 125-144.

The response to the introduction of *burgherrecht* was swift and comprehensive. The majority of free white male settlers in the city registered with the burgomasters.⁵² The burgomasters swore in the new burghers with oaths of allegiance and vigilantly enforced the requirement that they maintain a residence or shop within the city. The burgomasters also refused the privilege to some. In April 1657 Asser Levy, a local Jewish merchant, applied for the *burgherrecht* and claimed that "he ought not to be refused as he keeps watch and ward like other Burghers, shewing a Burgher certificate from the city of Amsterdam, that the Jew is a burgher there." After deliberating the court refused Levy's request and bid him apply to the Director. The burgomasters introduced regulations for registered burghers in all kinds of public dealings: burghers had to maintain their property to acceptable standards, respect municipal regulations and officials, and pay fees and taxes when required; drunkenness, disorderly behaviour and nefarious business practices were all penalized.

The codification of municipal citizenship provided the foundation for extensive commercial regulations, of the kind which Stuyvesant had had trouble in passing by the company previously. The burgomasters issued ordinances requiring that "All bakers, brewers, shopkeepers and merchants" should "sell their goods at reasonable prices to the people." Outsiders or "strangers" were forbidden to offer their wares for sale except at stated times and places.⁵³ In July 1658 the burgomasters resolved to "fix Certain hours of the day when working people should go to their work and come from their work, as well

⁵²Between 1657 and 1661 some 210 tradesmen registered for the lessor *burgherrecht*. The roll of those registering for freemanship from 1657 to 1866 is reproduced in New in the "Burghers of New Amsterdam and the Freemen of New York. New York," in NYHS, *Collections*, (1885), 16-238.

⁵³*RNA*, 1:26-7, 43, 46, 47, 40, 48; *DRCNY*, 14: 216, 269-70, 278, 315, 418; Syrett, "Private Enterprise in New Amsterdam," 540-41.

as their recess for meals.⁵⁴ Hostility to outsiders continued and petitions complaining that the Scots traders and itinerant peddlers made too much and contributed too little to the city continued to be submitted to the burgomasters and *schepens*.⁵⁵

It is only when we overlay the history of company rule in New Amsterdam with the structure of urban government in the United Provinces, something of the history of Dutch republicanism, and the arguments presented by the burgomasters, that we get a clearer picture of the nature and timing of their demands, and the origins and significance of the *burgerrecht* in struggles surrounding commerce and local politics in New Amsterdam. Originally governing with absolute authority guaranteed by its charter, the West India Company introduced political privileges to attract settlers. The settlers who sought to regulate trade in the local interest claimed this regulation as a fundamental residential privilege, the basis for individual survival and foundational for the community and common good. To represent this local burgher cause a group of prominent merchants set themselves up as magistrates and leaders of the "commonality." Institutionalizing this claim with the establishment of a burgher government in 1653, the burgomasters set about organizing local trade in the city's interests.

The *burgherrecht* lay at the centre of burgomasters' commercial and civil regulation of New Amsterdam. Restricting commerce to registered tradesmen and inhabitants, the *burgherrecht* defined the privileges, duties, and place of local tradesmen and provided the basis for the claims that they would make for a share in local trade and provisions for their survival within the community. Perhaps the clearest illustration of the way in which power was shared between the burgomasters and West India Company who

⁵⁴*RNA*, 2: 410.

⁵⁵See the "Administrative Minutes of New Amsterdam," in *RNA*, 7: 140-267.

jointly ruled the town and its inhabitants is the oath that all new burghers had to swear on registering with the city:

I Promise and Swear in the Presence of Almighty God to be true and faithful to the Sovereignty of the Noble High and Mighty Lords States General of the United Netherlands and Supreme Jurisdiction of the honorable Lords Directors of the Privileged West India Company as Lords and Patroons of this New Netherland Province, their Director General and Council already appointed or hereafter to be appointed; and to show in the first place them, the burgomasters and Rulers of this city, present and future, all respect and reverence and to obey them in all honest and just matters as a faithful Subject and good Burgher is bound to do, as long as I shall continue in this Province. So truly help me God Almighty.⁵⁶

For the ordinary New Amsterdam tradesmen, then, the transatlantic struggle between the burgomasters and the West India Company of a few years previously came into focus in the status of *burgherrecht* which ordinary free men now enjoyed and which protected their town and its trade from outsiders. Just as in Holland, ordinary burghers played no role in deciding the personnel or policies of their government, but this did not mean they held no place in the consideration of the body politic. As burghers, ordinary settlers claimed privileges in local trade and were required to fulfil the duties of their position. Representing the "commonality" was an important claim made by both sides during the argument over municipal rule and the burgomasters were careful to curry favor with groups of tradesmen in the late 1650s and early 1660s. This was especially the case with the city's bakers. Considering the fortunes of the town's bakers through the 1650s and 60s, it appears that ordinary tradesmen also made claims within the language of rights and privileges and benefited from living under a burgher government in New Amsterdam.

⁵⁶NYHS, *Collections*, (1885), 19.

3. The *Burgherrecht* and the Bakers.

In November 1649, shortly after Peter Stuyvesant came to the colony, New Amsterdam's inhabitants petitioned the Director regarding the scarcity of coarse bread, the light weight of the white bread and the fact that "the savages or natives of this country take the white bread from the bakers without inquiry for or scrutiny of the black bread or price in wampum." New Amsterdam's bakers produced a variety of breads and other baked goods at different prices for different markets. The loaf of choice was the coarsest, cheapest bread which supplied the inhabitants with their daily sustenance. However the bakers also baked more expensive white breads, cakes, "cracknels" and "pones," which might not provide for the town's needs, but were lucrative for the bakers. If the townspeople could not afford or did not want the white bread and cakes, then the bakers sold them to the Indians nearby. In 1649 this left the town short of bread and the bakers' "greed and the desire for profits cause[d] the savage and barbarous natives to be accommodated with the best before the Christian nation."⁵⁷

Recognizing the temptation that the Indian trade offered the bakers, Stuyvesant moved to close it down: prohibiting the baking of white bread, except for special occasions, Stuyvesant forbade its "wanton consumption and general sale to inhabitants as well as natives." Then, to ensure that "inhabitants and natives" were not defrauded by bakers baking light loaves, Stuyvesant set down weights and standards for all bread produced in the town. Henceforth the bakers were to make bread from clean wheat or rye as it came from the mill, and the loaves were to weigh eight, four, or two pounds.⁵⁸

⁵⁷*RNA*, 1:14.

⁵⁸*Ibid.*

Needing to provide sufficient coarse bread for the community required that Stuyvesant protect the Indians, no less than the settlers, from deceptively light loaves. Eliminating the Indian trade as a source of easy profit, Stuyvesant's regulations ruled out a key commercial strategy for the bakers and required them to devise new ones, lose money, or face charges of trading illegally.

Through the mid 1650s the bakers suffered along with everyone else from the wampum inflation in the town. When grain prices rose, supply slowed, or the value of wampum wavered the bakers suffered.⁵⁹ With no firm regulations in place, the bakers could only refuse payment and resort to baking suspensions when the market offered them a meagre return for their time and investment. In August 1653 Daniel Litschoe, a prominent local merchant, charged the baker Andries de Haes with refusing to accept wampum as payment.⁶⁰ Faced with fixed prices for bread and diminishing wampum values the bakers held back supplies of flour, went back to selling bad bread and light bread to the Indians, and once again refused to bake coarse bread for the townspeople.

In October 1656, when the inhabitants complained of bread scarcities once again, Director Stuyvesant introduced new measures ordering that "all who follow the profession of baking" were to bake at least once or twice a week or face charges, heavy fines and

⁵⁹In October 1655, Joost Teunisson assaulted Francois Fyn when they disagreed over the terms of a firewood deal, and the following February Teunisson was in court again demanding 70 florins worth of grain from Samuel Mayhew—as promised in a note exchanged between the two the year before. Mayhew acknowledged the debt but responded that "he has waited long here for the corn and sent vessels expressly for it and still expects news," Teunissen demanded an arrest. Mayhew's vessel was secured and he was prevented from leaving the city. For these and other cases involving bakers suing or being sued for debt, see *RNA*, 1:100, 108, 114, 120, 123, 125, 322, 377; *RNA* 2: 39, 53, 90, 93, 159.

⁶⁰Litschoe registered for the great *burgherrecht* in 1657, NYHS., *Collections*, (1885), 19.

exclusion from the trade. Comparing the problems in baking with "tapping" or inn keeping as another trade plagued by fraud "since there is as yet no guild nor certain body known," Stuyvesant declared that henceforth "no person shall follow the business of baking or tapping unless he first apply to the court" and receive a license. The Director ensured the enforcement of this order by promising the *schout* one third of the fines for successful prosecutions of those charged with baking bad or light bread.⁶¹

In late 1656 and early 1657 the inflation crisis which brought about the introduction of the *burgherrecht* also provoked a protest by the city bakers. On 8 January 1657, a month before the introduction of the *burgherrecht*, the *schout*, Nicosius de Silla, reported to the court that Joost Teunissen's bread, "both white and brown," Andries de Haes's and Hendrick Willemsen's breads were all lighter than the regulation weight. The bakers appeared, but offered truculent rejoinders rather than humble apologies to the charges: Andries de Haes simply stated that "he is unable to pay the fine fixed;" Teunissen declared that "he can give nothing for the established price and weight" noting (sarcastically) that even "the honorable company's loaf of 7lbs is fixed as 12 stivers on account," a weight and price in breach of the company's own regulations. Faced with a baking suspension and protest by leading bakers, the court postponed judgement and moved on to another case.⁶²

The decision to postpone judgement was followed by a special meeting to discuss the declining value of wampum which, it appears, caused the bakers' protest. In court

⁶¹The prices set were as follows. Coarse Loaf: Double, 8lbs, 14 stivers; single, 4 lbs, 7 stivers; half, 2 lbs, 3.5 stivers. White Loaf: double, 2 lbs, 8 stivers; single, 1lb 4 stivers; half, .5 pound, 2 stivers. The licensing provision to be administered by the burgomasters and schepens was similar to one applied to butchers and slaughterers and came out of a general assessment of the city's tax collection *RNA*, 2: 204..

⁶²*RNA*, 2: 255-56.

Stuyvesant acknowledged that in the six months since wampum was last assessed, its value in relation to other currencies had fallen by a third. This inflationary pressure on the value of wampum had made life increasingly difficult for the bakers: if they refused to accept wampum, customers could take them to court, as Daniel Lithscoe had taken Andries De Haas; if the bakers baked light bread, sifted the flour, or made up their losses selling bad bread or white bread to the Indians, the *schout* could charge them in court and ask for a heavy fine, of which he received one third. Baking regularly and accepting wampum, however, meant selling bread for currency worth less than when they purchased the flour, and the bakers were bound to lose money on each loaf sold. The only options available were to trade illegally by lightening the bread or adding to the flour, or cease baking, provoke a debate, and force a reconsideration of the price of bread or the value of wampum. The bakers appeared to have chosen the latter course, and they succeeded. When Stuyvesant directed the town's merchants to consider what measures might be taken to "render the zeewant [wampum] as current beavers or other pay," the merchants retired and invited Joost Teunissen, a baker, to join their discussion.⁶³

It was clear that some kind of devaluation was required. However the spokesmen for the meeting argued that since the merchants now held large wampum to devalue it straight away would "create considerable confusion." The merchants argued that if they reduced the value of wampum the Indians "will know it immediately" and "charge more for everything and...enrich themselves" and never again "be brought to the previous rate." Rather than invite such "confusion," the meeting recommended that the change of rating be postponed until "the [Indian] trade comes in and everyone can get rid of what zeewant he has." In the interim they suggested that an ordinance establish the difference between

⁶³*RNA*, 2: 260-61.

wampum and other currencies "as already exists among all as well in trade as in labor." The merchants had proposed local amendments to value to prevent further erosion of profits in the short term. Then once everyone had traded all the "zeewant he has" with the Indians, the currency could be safely devalued wiping out Indian instead of settlers' profits. This was the kind of precise commercial strategy which the town's merchants and burgomasters considered appropriate trade regulation in the interests of the common good and which could ensure the bakers' profits.⁶⁴

The suspension of baking had won the bakers a seat at the table of the ruling group. Having succeeded in forcing a re-evaluation of the exchange rates for wampum, the bakers repitioned their new found allies the following day. On 9 January the bakers appealed to the burgomaster and *schepens* to rescind the licensing requirement imposed by Stuyvesant the previous October. Noting the Director's order requiring the bakers to register and pay one Flemish pound every three months, the burgomasters and *schepens* revoked it. Justifying their decision, the magistrates argued that "it is not customary in any place for trades people to pay anything in this shape," and that if it was required of the bakers now, "it would hereafter be imposed on other handicrafts, to prevent the same in time."⁶⁵

Here the burgomasters used an argument in support of free trade which the West India Company used previously to counter the burgomasters' demands that they be allowed to limit trade in the interests of the settlers. Thus we have to be careful how we read the court's defence of "customary" practices and their apparent unwillingness to set regulatory precedents restricting the urban trades. On the day the burgomasters revoked

⁶⁴Ibid.

⁶⁵Ibid., 265

the licensing requirement for bakers in the interests of encouraging "handicrafts," they upheld it for tapsters and inn keepers. The burgomasters permitted innkeepers to charge what they pleased for wine, "as the price and pay for wines are different and not so necessary for the common people." In return the innkeepers promised to pay the license fee and sell beer at the regulated price. In addition, having bucked Stuyvesant's authority on the baking licenses in January, the burgomasters invoked the Director's orders in April. Rejecting an application from a Jewish baker, Jacob Cohin Hendricus, to bake and sell bread within the city the court argued it would be "contrary to the privileges granted by the honorable Director General and council to the burghers of this city."

These negotiations within and around privileges and duties were guided more by self-interest and the machinations of local politics than respect for widely acknowledged customs and accepted practices. In unfavorable markets bakers suspended baking and in 1657 they secured a debate on the problem of local inflation and the revocation of unpopular licenses which operated as a tax on their trade. The burgomasters and their merchant constituency re-valued wampum to favor their own and the town's trade and then the court asserted its authority to support the bakers and revoke the licenses. This trading of interests was justified in a range of ways from the need to avoid "confusing" the Indians, to respect for customs and the privileges of burghers; in defiance of Director Stuyvesant's authority and subsequently on the basis of privileges granted by the "honorable Director and the council."

Are we left with superficial rhetorical justifications for naked self-interest, or did the negotiations and justificatory arguments actually factor in and influence the course of events and actions taken? The burgomasters and bakers manipulated and invoked the institutional preferences of burghers and employed the language of privilege to make their case, but they were constrained by the range of its terms and their meaning. The

burgomasters and bakers relied upon references to the common good, the privileges and duties of burghers, and the justifications of custom and the authority of the Director which could not be used in any fashion they pleased. Their reliance on arguments within this language of privilege permitted certain claims at specific times with certain expectations of success. The moments when these claims — which relied on a sufficiently common understanding of history, law, authority, and social difference — could be made with any confidence of success depended on the balance of social and material circumstances in the colony.

The Indian population of New Netherland offered an important market and potential trading partners for the bakers. As a source of furs, and especially beavers, however, the Indians also represented commercial antagonists who possessed items of value that the colonists wanted very badly.⁶⁶ With this in mind, what is interesting is the manner in which the differences between Indian, or "savage," and white settler are invoked by different people depending on the circumstances. In 1649 Peter Stuyvesant advocated a single standard of bread so that "neither Christian nor savage" should be taken advantage of by the bakers. And yet a few years later he sanctioned the manipulation of currency values which was expressly designed to take advantage of the Indian trade. These two relatively insignificant events do not add much to our store of knowledge regarding Indian/white relations. However what is noteworthy is how Indian exploitation factored in the bakers' fortunes; fortunes which depended upon the alliances the bakers could or could not make within the broader community of settlers and the kinds of claims they could make and reasonably expect to have accepted.

⁶⁶Daniel K. Richter, *The Ordeal of the Longhouse. The Peoples of the Iroquois League in the Era of European Colonization* (Chapel Hill: University of North Carolina Press, 1992), 75-105.

In 1649 when the bakers made cakes, cracknels and pones to sell to the Indians they asserted their liberty to bake what they liked, but failed in their duty to provide sufficient bread for the settlers. To ensure that the bakers made sufficient coarse bread for the town Stuyvesant had to regulate the consumption and standards of bread sold to all in the colony, both natives and Christians. Only by including the Indians in consumer protection could Stuyvesant ensure that the bakers would not focus on the Indian market as a source of easy profit, the Indians buying whatever was offered to them, and thereby guarantee the bread supply and the common good, the legitimate end of government in the colony. Something which had been an informal expectation within the community (that bakers bake sufficient coarse bread) had become part of the bakers' formal duty under the terms of an ordinance on the size and weight of bread, and the Indians, as consumers, were included in this provision. The inadequacy of subsequent marketing strategies and the declining value of wampum eroded what the bakers felt was a justifiable profit. Charged with baking light bread and engrossing supply, they joined the debate on the value of local currency which ended in the revaluation they sought. In an extension of the currency debate, while merchants protected their own fortunes, the bakers successfully appealed for a decent living and secured the revocation of the licensing fees, this time invoking customary practices and the interests of the common good.

When the bakers were able to unite their production and profit concerns with broader community questions, such as the value of wampum and merchant profits, they realized benefits both individually as bakers and collectively as a group of tradesmen. For their claims regarding the regulation of the economy to succeed the bakers had to be able to represent their interests as the interests of the common good. In these moments the bakers became more easily identifiable as a class of workers who, having common interests, acted collectively and most significantly of all acquired power through

organization and political representation. Winning influence in a process that witnessed the redefinition of the Indian from a consumer worthy of equal protection to a trade competitor and dumping ground for soon-to-be-devalued wampum the bakers benefited from the process of Indian domination and exploitation. But it was more than simply the Indian's presence as the "other" upon which the bakers built their advantage in trade. Before the Indian could become the "other" and excluded from local considerations as a consumer of the town's baked goods, circumstances had to permit this exclusion to be rationalized in terms of the common, rather than simply the bakers', good.

The bakers benefited from the representation of the burgomasters whose own position depended on their ability to manage situations like the wampum crisis and the bakers' remonstrance effectively. The burgomasters proved a receptive audience to the bakers' claims and a powerful ally for their interests in local trade. Although the bakers won occasional entry to important debates and secured license and tax breaks from the burgomasters, their fortunes remained subject to vicissitudes of economic trends as long as they were unable to control the supply and price of ingredients and the market for baked goods effectively.

The problems of baking and making a profit when the value of currency and the price of grain fluctuated while the price of bread remained fixed by rigid local ordinance would never be solved until either currency stabilized -- unlikely in a colonial economy starved of currency one minute and awash with wampum the next -- or the prices and supply of ingredients were co-ordinated within a controlled system of production and retail trade. Director Stuyvesant had shown little patience in his dealings with the bakers and to secure their fortunes on the basis of their privileges as burghers, the bakers would have to build a more stable and enduring version of the alliance which secured the favorable outcome in the wampum crisis of 1657. They were able to do this after 1657

because of the growing influence of the burgomasters and *schepens* and the introduction of a formal *burgherrecht* status which made trade regulation and the organisation of baking a more viable prospect.

As early as September 1658 New Amsterdam's bakers were grumbling again. On September 19th. they petitioned the council regarding the New England traders who paid twenty-five percent more in wampum for local goods "whereby this place is so over stocked [with wampum] that it is held in no esteem and the bakers, brewers, traders and laborers and others are so particular that much difficulty is experienced in managing it." The council obliged the bakers by re-valuing wampum and confirming the regulations that prohibited outsiders from baking. The bakers' campaign for protection for their trade continued and assumed an increasingly bolder tone. In April 1659 Joost and Jacob Teunisson and Andries De Haas, petitioned the council arguing that since the last bread ordinance the price of grain had increased, "the wheat not being bought from the sellers for under four guilders in beavers." To this, the petitioners explained, they had to add the two hundred and eighty florins freight and milling costs for bringing four hundred skepels to the bakery. And this was in competition with the bakers at Fort Orange, Albany, where "tis notorious and known that...grain is easier to be had and more abundant." The bakers submitted their petition in the hope that considering the "market price of said grain" the council would "fix another and higher value" on the bread and "such pro rata price as by the rise and fall of grain shall be considered the petitioner's *right*."⁶⁷

The force of the bakers' claim that they were entitled to have the value of bread linked to the price of grain was evident in their claiming it as a right. Their presumption reflected a growing confidence in the bakers' relationship with the city. Members of the

⁶⁷RNA, 7: 219, my emphasis.

baking trade had recently won appointment to some of the minor municipal offices established with the introduction of new trade regulations: in December 1658 the council appointed Andries De Haes Stamper of Cans, Ells, and Weights, and the following year Cornelius Barenson was appointed measurer for all grain and lime coming into the city and allowed him a percentage of the value as fees for his service. In 1659 the court added to De Haes's responsibilities when they entrusted him with the key to the newly constructed meat market.⁶⁸

Following the complaint in 1659, the council obliged the bakers with another increase in the official price of bread. However business does not appear to have greatly improved. In June 1660 Cornelius Janzen Clopper, a local smith, demanded seventy-six florins and eleven stivers from Hendrick Willemsen for iron work requested by Willemsen on the water mill at Gouwanus. Willemsen tried to evade payment by arguing that he had only requested twenty-seven or twenty-eight florins worth of work; Clopper then produced a bond disproving Willemsen's claim and won his case. In August Peter Rudolfus's action against Andries de Haas for one hundred and six florins in beavers offers further evidence that the bakers were experiencing cash flow problems. Possibly hoping to delay payment, De Haas told the court that he had never been shown an account and if Rudolfus could furnish him with one, he "would be happy to pay the same." Rudolfus obliged De Haas the following week, producing his account in court. Andries de Haas was forced to acknowledge the debt and apologize to the court pleading "he has no beavers, nor can he get any."⁶⁹ The continuing slide in the value of wampum combined with the baker's dwindling beaver and grain reserves set the stage for the general action in 1661.

⁶⁸*RNA*, 3: 27, 259.

⁶⁹*RNA*, 3: 173-175, 195, 202.

In February 1661, Anthony De Milt became the first New Amsterdam baker to seek public office, when he stood for the post of *schepen*.⁷⁰ De Milt's attempt at high office is a further indication of the bakers' growing confidence in municipal affairs and marked a step above the minor municipal posts of the previous few years. That De Milt sought the office at all speaks of the aspirations of this local tradesmen, particularly given the stated restriction of office holding to those enjoying the privilege of greater *burgerrecht*.⁷¹ That De Milt only secured two nominations in support suggests that his circle of influential friends was still limited. A week after the nomination of new *schepens*, as if to confirm his position as one of the governed rather than a member of the government, De Milt was taken to court by the *schout*, Pieter Tonneman, for baking light bread. De Milt's case was the first of a series of similar such arrests which culminated in the collective suspension of baking by the bakers of New Amsterdam in October 1661.

In February 1661 the *schout*, Pieter Tonneman, charged Anthony De Milt with "having his bread, both large and rusk, under weight."⁷² Tonneman demanded a one

⁷⁰De Milt's standing in the community is uncertain, however, assessment lists for taxes and contributions for work completed on the fort suggest he was not one of the wealthiest bakers. De Milt is not mentioned on a means tested assessment in 1655 when bakers Andries D'Haas, Hendrick Willemsen and Joost Teunissen contributed 20, 25, 25 florins respectively. Ten years later Hendrick Willensem was assessed at 250 florins, Renier Willemsen, 100, Clas Jansen, 150, and De Milt contributed 50 florins; De Milt's contribution was less than the carters Tomas Fransen, Ambrosius de Weerham, and Rosolvert Waldron, in *RNA*, 1: 367; 5: 30-33, 221-25.

⁷¹De Milt's bid for power is impressive when one considers the close the ranks of the ruling elite. Two burgomasters and five *schepens* held office each year from 1653-1664 giving a possible total of 84 positions. Over these twelve years these 84 positions were filled by 28 men serving an average of three terms each in rotation. Goodfriend, *Beyond the Melting Pot*, 20. De Milt registered for the lessor *burgherrecht* in July 1658, NYHS, *Collections* (1885), 25.

⁷²The case appears in, *RNA*, 3: 262-264, 285.

hundred and fifty florin fine and costs in accordance with the regulations introduced by Stuyvesant six years before. De Milt defended himself arguing, with precision, that the 1656 regulation made no mention of the weight of rusks and the *schout* could "have no complaint about him on that account." As to the light weight of his large loaf, De Milt asked the court to hear the views of Hendrick Willemsen and Cornelius Barends, "being acquainted with baking." Willemsen appeared and was asked if dough weighed out in due quantity can lose a quarter pound in baking. He replied "yes," and "that he can shew it immediately if the magistrate will please see it." The magistrates did not insist on the practical demonstration settling instead for an explanation. Willemsen described how properly weighed out dough can lose weight during baking, if left too long in the oven or if the temperature is too high. To strengthen De Milt's case, Cornelius Barends added that the customary penalty for light baking in Holland was a warning for the first charge and a small fine for the second offence.

De Milt also argued that he should receive a warning, when he was recalled to plead his case. De Milt contended that he had meant no criminal offence but had been away from his bakery at the time. He had weighed out the dough correctly but left his servant in charge and the loaf had turned out light. Stressing his compliance with the regulations, which insisted on regular baking, De Milt added that he had baked all week and on the day in question there was less bread than usual in the oven. Consequently, the temperature had been higher and the lighter loaf had resulted. De Milt's servant was called and confirmed that his master had indeed been "out for yeast" while the bread was baking. Though De Milt had offered a complex defence supported by the other bakers, he faced unusual difficulties on this occasion: he had sold his underweight bread to the *schout's* own son who returning home presented the loaf at his father's table. De Milt's case was lost, and he was fined but allowed to continue baking. Shortly thereafter, the

court amended the baking ordinance to include rusks and rolls to prevent similar attempts at evasion in the future.

A similar case the following month showed that the bakers' patience was running out with the regulations and those who sued under them. *Schout* Tonneman arrested Hendrick Jansen and demanded one hundred and fifty guilders for baking light bread and a further one hundred and fifty for seizing the offending loaf from Jan Juriaansen Becker after Becker reported it as light. In a separate action, Maria Becker, Jan Becker's wife, complained that Jansen had "berated her for a whore, a swine, an informer and jade," and she now insisted that he be "held to restore her character honorably and profitably." Attempting a similar defence as De Milt, Jansen argued that the bread "was reduced by the heat." Responding to the second charge of seizing the bread, he argued, innocently, that he had wanted "to weigh it and to see if was too light," and that he had done so in front of witnesses — his son and his servant. Responding to Maria Becker, Jansen simultaneously admitted and denied slandering her saying that he was "not aware of having abused her for a whore and a trollop, and if he did 'twas thro' passion." When asked if he had now had anything against her, he replied, sarcastically, "No: saying further that she is a decent woman, who does not give to another, what belongs to him." Which was, of course, precisely what Maria Becker had threatened to do when she reported the light loaf to the *Schout*. Just as with De Milt, the court condemned Jansen to pay the fine but let him off the prohibition from baking. They also took Jansen's side against Maria Becker, dismissing her case merely "charging him to guard himself against such for the future."⁷³

Through the months that followed the continuing uncertainty of the bakers' fortunes is evidenced by their appearance as defendants in debt cases.⁷⁴ On 17 September

⁷³*RNA*, 3: 269-283.

⁷⁴*RNA*, 3: 295, 301, 325, 343, 353.

1661 there was a further indication that the grain and thus flour shortage was beginning to bite. This time however it was a rift in the ranks of the bakers which brought the problem to light. Hendrick Willemsen, until now a spokesman for the bakers who had supported Anthony De Milt in his case, came before the court to complain of the actions of his fellow bakers. He remonstrated that one baker had outbid another, probably Willemsen himself, on a grain purchase. Furthermore, some were baking with bran in the flour, a practice "forbidden in Holland." Willemsen then broadened his attack and complained that some bakers left their ovens in the charge of their "youngsters when now and again away from home." As a consequence, the dough was insufficiently worked and the "bread is indifferently baked and that on the contrary no baker in the Fatherland leaves it to the boys to set bread in the oven" What is interesting about Willemsen's complaint is that a practice he had tacitly accepted when speaking up for Anthony De Milt in January had, by September, become a transgression of the laws of Holland and the customs of the "Fatherland."⁷⁵

Willemsen was really grumbling about being beaten out of a grain deal by a baker who already had plenty of flour, but the justification behind his complaint, the invocation of the practices of the "Fatherland" is noteworthy. His material purpose was recognized by the court when it ordered that all bakers bake both wheat and white bread when they have flour, or face a fine and prohibition from the trade. And that an additional fifty guilders fine be exacted from "those who are found to have flour and will not bake and still twenty-five guilders more to be forfeited by those who have not baked good bread fit to be eaten." Then the council went further declaring that henceforth the bakers were "ordered by the *schout* to govern yourselves according to the penalties stated in the

⁷⁵*RNA*, 3: 359.

proclamation and to designate the bread you bake with a special mark." The council appointed two bakers, Willemsen and Hooglandt, official bread inspectors and ordered the rest to register their marks within seventy-two hours. Thereafter, bakers who baked unmarked bread would have the loaves confiscated and face a twenty-five guilder fine. In the interests of the community bread supply and in response to baker's petitions, the council had established a an official guild of registered city bakers.

With the establishment of the bakers guild in 1661 we are back at the point which opened this chapter. The month following these new regulations the bakers suspended baking once again and Hendrick Willemsen was called before the court to explain "how it came that the bakers bake no bread." As Willemsen explained the high price of flour in relation to the officially regulated price of bread, made the bakers reluctant to buy new supplies with beavers. The council ordered the bakers to bake, but increased the price of bread by thirty percent the following week.⁷⁶

Following this price revision, and wielding the self-governing authority granted them in September, the bakers worked effectively to control the trade. When Jacob Teunissen was charged with baking bad bread he tried to blame both the grain, which had sprouted at the mill, and the customers, who would not wait for the bread to fully bake; he was fined fifty guilders but let off the prohibition from baking with a warning. The *schout* and the new baking inspectors worked together, examining bread, passing judgement, sending some for prosecution, and allowing others to pass. In August 1662, the court introduced spot checks, ordering that the "officer shall go around once a week, without observing a precise day, with one of the inspectors of baked bread." When the price of bread did not reflect the price of flour and in the relation of wampum to beavers a simple

⁷⁶*RNA*, 3: 390.

petition, rather than a suspension of baking was sufficient for the bakers to secure a review of the prices.⁷⁷

By 1661 the bakers had succeeded in coming together as a trade and secured the authority to "govern themselves" according to regulations set by the council. The development of a coherent group of city bakers over the previous twelve years depended on the bakers' ability to claim trade privileges which established their place in the city's trade and to have those claims recognised by the burgomasters and *schepens*. The bakers were successful because they managed to identify their interests with powerful interests in the city, join in the organisation of baking as official inspectors, and in so doing petition for favorable regulations. Municipal respect for the bakers' privileges permitted them to exclude others from the trade and, above all, secure regular revisions of the price of bread in relation to flour supplies and currency which assured them a fair price for the bread they baked.

This success in the political arena was predicated on the bakers coming together as a group in trade. Over time bakers constituted themselves as a group of skilled workers worthy of special consideration through the claims they made on the basis of the trade in which they engaged. Claims regarding the price of flour in relation to beavers and bread, the peculiar problems of New Amsterdam's bakers over bakers from other towns, the customs of "the fatherland" appropriate to baking and the punishments for those who broke the law, and even technical arguments regarding the effects of over baking on the weight of bread – explanations which the town's bakers could unite behind and assert their authority as knowledgeable practitioners of the craft. The steadily forming group of

⁷⁷*RNA*, 3: 404; 4: 37, 101, 111, 165, 215.

bakers was even able to withstand external criticism and suits alleging ill mannered and abusive behaviour.

4. Burghers, bakers, and tradesman's place.

Given the importance of bread in the diet of New Amsterdam's settlers, the bakers played a vital role in ensuring the survival of New Amsterdam. The need for an adequate supply of fresh bread made baking a target for the concern of towns people and the authorities alike. In the 1640s Peter Stuyvesant prohibited the bakers from baking certain kinds of bread and ordered them to keep their shops supplied with coarse bread. The Director stressed the bakers' duty to keep the town well provided in periodic regulation of the weight and price of bread. In return for their co-operation the bakers claimed special consideration, or privileges, before the law. In particular they insisted that they be allowed a reasonable profit from the bread they baked and they were prepared to vary their products and markets to secure what they believed their just deserts.

The bakers' commercial strategies which included adding bran to flour, baking a quarter pound light in an eight pound loaf, selling wet bread, and calculating the return on sales of different kinds of bread and cakes in town to settlers and outside to Indians, show they rarely relied on crude measures such as simply increasing prices or forestalling supply to realize a profit. The cases of customers suing when loaves were a fraction under weight, sold wet, or with impurities suggests that the buyers of bread were no less precise in their calculations than the bakers. When the baker's suspended baking, then, it was to force a reconsideration of the regulations surrounding commerce rather than to extort more money from their customers, customers who, the bakers must have known, would report the shortage to the authorities soon after the shops ran out of bread.

The problems surrounding New Amsterdam's bread supply and the regulation of bread prices in relation to flour and beavers were political problems resolved through local ordinances rather than economic disputes between buyers and sellers who confronted each other in the market. When the bakers could identify their cause with powerful merchant interests and portray their commercial concerns as in keeping with the common good, they won important concessions for their trade. However, comprehensive attempts to regulate local commerce, such as the restrictions on strangers trading in the town, were frustrated by the West India Company's ambitions in the colony. Baking and the bakers' fortunes were intimately bound up with the management of the local economy, and that management required the development of local political institutions sensitive enough to balance the bakers' claims for a fair profit and the inhabitants' need for a sufficient supply of coarse bread.

In 1639 the West India Company undertook to govern New Netherland "according to the style and order of the province of Holland and the cities and manors thereof," and placed the introduction of "liberties and freedoms" at the centre of its plan to attract new settlers to save the beleaguered colony. The settlers took the company at its word and justified their criticism of the company's administration on the basis of rights they held as freeborn Dutchmen and the privileges they claimed as residents of New Amsterdam. The social and political order in place in New Amsterdam after 1653 was modelled on the practices of urban government in the United Provinces. The burgomasters and *schepens* claimed the privilege of representing the commonality as leading members of the local community and this led to conflicts with Stuyvesant and, ultimately, the West India Company.

The burgomasters and *schepens* advocated the role of a natural aristocracy in the administration of the colony and never disputed the West India Company's claim to

authority on the basis of its charter. The burgomasters and Stuyvesant did not differ in their views of the divine and natural origins of society and the pre-eminence of the sovereignty of the States General in the Dutch republic and New Netherland. Where they differed was in regard to what the company's charter entitled it to deny the settlers of New Amsterdam; settlers who were free born Dutch subjects and not company employees. The burgomasters protested the arbitrary administration of the company rather than the principle of unquestioned authority exercised within a hierarchical society of citizens occupying different and unequal places.

The essence of the case made by the delegates to the States General was that the burgomasters, commonality, and even Peter Stuyvesant and officials of the West India Company were equal as free born Dutchmen and entitled as such to assert their right to live under a Dutch form of government. Beyond this fundamental claim, the burgomasters asserted that each was entitled to claim the privileges of his place in the social order. Under the terms of its charter, the West India Company and Peter Stuyvesant could demand the obedience of the colony's inhabitants, but as leading residents of New Amsterdam the burgomasters claimed the privilege of a burgher government and a say in local affairs. In 1653 the burgomasters succeeded in winning recognition for their government and shift in the locus of authority in the colony from the West India Company's charter to the sovereignty of the States General and the history and laws of the republic.

Just like the West India Company's officials and the burgomasters, the ordinary burghers had a place with privileges and duties in this hierarchical order. Burghers were entitled to live under a Dutch form of municipal government which regulated the economy in the interests of the inhabitants and the common good. Shortly after the establishment of a local government in 1653, the place of tradesmen as burghers and members of the

commonality was codified in the *burgherrecht*. The *burgherrecht* formalized the notion of a tradesmen's place in New Amsterdam social hierarchy. New Amsterdam's tradesmen registered with the city and claimed a share in the local monopoly of trade in return for meeting the duties of residents in the town. The bakers now had a recognized basis for their claims to privileges in local trade, the foremost of which were concerned with who should bake and the setting of prices for local bread. The respect of bakers' privileges produced a core group of city bakers coherent enough to withstand internal dissent, the antagonism of customers, and ultimately win considerable influence over trade for themselves.

Operating within a commercial world constrained by the rhetoric of privileges, duties and the common good the bakers' business strategies were limited by what could be justified in these terms. Rather than unmediated reflections on things they did, what bakers said about their work formed part of a rhetoric defending their place. When Anthony De Milt argued that the baking regulations made no mention of rusks, so the authorities could not charge him for their being underweight, he invoked his liberty to bake what he liked within the terms of local ordinances; a local ordinance amended to include rusks immediately following De Milt's hearing. When the bakers referred to local practices, technical details of the trade, and the laws and customs "of the Fatherland," it was to support arguments made for privileges or to mitigate the force of penalties under municipal regulations. Flourishing under public recognition of their position, the bakers developed common justificatory claims for their arguments which carried weight in New York because all the bakers in the town agreed upon them, at least for most of the time. As a result of these common justificatory claims and arguments the bakers came together as a group and successfully claimed the privileges of their place in New Amsterdam.

CHAPTER THREE.

Bakers, carters, commerce and the courts: the transition to English rule, 1664- 1684.

1. Introduction.

The burgomasters' assertion that "privileges and exemptions" would be the "mother of population," that political freedoms would bring people and prosperity to the colony were borne out by the success of New Netherland after 1653.⁷⁸ By 1664 the population of New Amsterdam had swelled to fifteen hundred. New settlers spread throughout the colony and joined the trade in furs, timber, whale oil, and grain. New Amsterdam became the primary market for the colony's products which were exchanged for tobacco from Virginia, Maryland, and the Delaware River area, sugar from the Dutch and English West Indies, and manufactures from Holland and England.⁷⁹ In the late 1650s the colony's success attracted the attention of powerful English interests jealous of the Dutch commerce.⁸⁰ Within months of the restoration of Charles II in 1660, parliament adopted a second Navigation Act confirming England's intention to drive the Dutch from American trade. The keenest advocates of England's commercial empire gathered around the king's younger brother James the Duke of York. By March 1664

⁷⁸In 1664 the magistrates estimated the male population of New York at fifteen hundred fifty, six percent of whom arrived in colony within previous ten years. O' Callaghan, *The History of New Netherland*, 1: 540; RNA, 6: 110; Goodfriend, *Beyond the Melting Pot*, 15. Evarts B. Greene and Virginia D. Harrington, *American Population Before the Federal Census of 1790* (New York, 1932; reprinted, 1966), 93.

⁷⁹McCusker and Menard, *The Economy of British America*, 188-200.

⁸⁰Israel, *Dutch Primacy in World Trade, 1585-1740*, 196-291.

James had succeeded in persuading his brother to grant him part of Maine and a handful of islands near its shores. The most substantial part of James's grant awarded him control of all the territory between the Delaware and Connecticut rivers -- the territory comprising New Netherland.

Soon after receiving his grant, James Duke of York dispatched Colonel Richard Nicolls with four frigates and two thousand soldiers to secure the "entyre submission and obedience" of his new north American subjects. Nicolls demanded Stuyvesant's surrender on August 20 1664 declaring that the King would not tolerate foreigners "how near soever they be allyed...to occupy his dominion."⁸¹ Stuyvesant was prepared to make a fight of it, although the city was short of food and defended by the dilapidated Fort Amsterdam boasting only one hundred and fifty badly armed men. When ninety-three prominent citizens including the Director's own seventeen year old son drew up a petition denouncing resistance as folly, Stuyvesant relented and negotiators from both sides met to draft the Articles of Capitulation.⁸² With the surrender of the colony New Netherland and New Amsterdam became New York, New York.

On paper at least the English take-over was swift and uncomplicated. Considered from the perspective of New York's tradesmen the transition was more gradual and complex. English and Dutch political philosophies were sufficiently close to allow for continuity and the grafting of new orders and practices onto old ones. The similarity between Dutch and English conceptions of the fundamental rights of liberty and property enjoyed by free subjects of their respective states and the privileges individuals and groups claimed on the basis of their position appeared to provide for an easy transition in local

⁸¹*DRCNY*, 2: 411- 413

⁸²"Remonstrance of the People of New Netherland..." 5 September 1664, *DRCNY*, 2: 248-49.

government and commercial regulation. In the city of New York Nicolls retained the municipal structure merely changing the titles of burgomaster, *schepens* and *schout*, to mayor, aldermen and sheriff, and placing his own appointees in key positions to the newly named common council.⁸³

Tradesmen were still required to reside in and register with the city, and in return they continued to claim a share in the locally regulated monopoly of retail and handicraft trades. In June 1675 a shoemaker, a tailor, and a carpenter petitioned the New York City Mayor's Court for admittance "to the Burgery of this Citty to ye end that they may follow their trades and calling." Following their admission, the magistrates reminded "all persons whatsoever that live in this city or that come from other parts to trade or exercise their profession" that they were required to apply for "their burgership or freedom...within fourteen days."⁸⁴ Thus eleven years after the English take-over tradesmen and the authorities still referred to burghers or collapsed English and Dutch differences into a colonial vernacular of "burgership or freedom." The three tradesmen's application for their freemanship in 1675 reveals two important themes for this chapter. The importance of the continuity of forms of argument from the Dutch to the English period and the ways in which New York's tradesmen would have to negotiate the transition if they were to succeed in realizing the privileges of their place.

⁸³Under English rule the freemanship privilege also prevented creditors from seizing freemens' property in cases for debt unless they failed to appear in court or made ready to leave the city. After 1664 freemen were also entitled to vote in local elections a practice alien to the Dutch municipal tradition, but common in the English corporate towns. Robert Ritchie, *The Duke's Province. A Study of New York Society and Politics, 1664-1691* (Chapel Hill: University of North Carolina Press, 1977), 31-51.

⁸⁴Minutes of the Mayor's Court, Division of Old Records, County Court, New York City, 1674-1675, 52. Hereafter, MCM.

The Dutch and English shared a view of the divine and natural origins of government and of the art of governing men in hierarchical societies. Where they differed, unsurprisingly given the different laws and histories of the two distinct states, was in the specific rights and obligations of subjects and the privileges and duties of men in their place. Though the terminology and structure of government remained the same following the English take-over, the reference for justifications and the source of authority for the resolution of disputes shifted from the local institutions considered in terms of the Dutch Republic, to the local institutions and their relationship to the laws and traditions of England. This shift introduced a disparity in the status of the Dutch and English settlers. After 1664 Dutch tradesmen could no longer invoke the laws of the United Provinces or the customs of the "Fatherland." Instead they looked to the Articles of Capitulation, which they took as the guarantee of their fundamental rights, and claims made under local laws and practices to secure local privileges. The growing numbers of Englishmen in the city, particularly after 1675, however, appealed beyond local authority to the laws and customs of England, asserting their rights as freeborn Englishmen in addition to claiming local privileges.

2. From Burghers to freemen.

The English invasion transformed what had been a rhetorical justification for resistance to the West India Company into the actual condition of the Dutch in New York: as a conquered people the Dutch settlers had to negotiate terms with the English and establish their rights and privileges on a foundation other than appeals to the constitution of the United Provinces. James delegated absolute authority to Nicolls and ordered him to govern with a hand picked council. Under the Articles of Capitulation Nicolls promised

no punitive expulsions and respect for Dutch property rights, religion, language, inheritance customs, and contracts.⁸⁵ After the English take-over, New York's majority group of Dutch tradesmen relied on the Articles of Capitulation to guarantee their rights as freeborn men. Breaches of the Articles undermined their authority and the foundation of Dutch status in the newest English colony.

Nicolls realized that with the settlers being expected to bear the burden of providing the ducal revenue, little good would come of an oppressive transition. Initially at least the English governors balanced Dutch insecurities with their desires for trade and revenue. The colony's government centred on the governor and his council which also sat as a court of assizes replicating the previous appellate function of Stuyvesant and his advisors. For the colony at large Nicolls introduced the Duke's Laws as a frame of government, civil and criminal code based on the laws of neighboring colonies particularly New England.⁸⁶ The Burgomasters' Court became the Mayor's Court and civil law combined Dutch and English legal procedures in complex and variegated jurisprudence which moved beyond the formal boundaries of both traditions in its effort to compromise commercial disputes. When the pace of change threatened the Articles of Capitulation, Nicolls appeased the Dutch by publicly guaranteeing the terms of their surrender.

The new English governors had to rely on revenue from local taxes to pay the colony's costs, realize the Duke's income, and provide for their own personal emoluments. The difficulty of levying and collecting taxes outside the city, together with New York's existing role as a port for colonial trade encouraged the governor to focus revenue collection in the city and, regulating urban trade, collect taxes and duties as commodities

⁸⁵The Articles of Capitulation are reproduced in *DRCNY*, 2: 248

⁸⁶*Laws*, 1: 6-71; Ritchie, *The Duke's Province*, 34-37.

passed through the port. Nicolls and his successors could rely on the inhabitants to support this scheme as it benefited the merchants and tradesmen who kept shops in New York. The municipal authorities continued to register freemen and license tappers and innkeepers; they appointed official gaugers, corn measurers, and inspectors of pipe staves and packed meat; inspectors of roads and highways, vendue and weigh masters monitored infrastructure, public markets and traffic through the city's dock. The city franchised (or "farmed") the excise collection on liquor and butchering, establishing ferry services at set fees. New York's tradesmen attempted to take advantage of the regulatory zeal of the new administration. Some worked for the city in a variety of municipal offices and functions and had their wages and work practices regulated by the local ordinances. Others remained in the private sector, seeking to organize their trade between themselves sometimes relying on the sanction of the city for a commercial privilege.⁸⁷

To assist in this revenue gathering and providing for the soldiers in the fort, the English governors (military men and new to the area) relied on the local merchant elite and existing municipal government.⁸⁸ Nicolls permitted the merchants to trade with the other English colonies and, for a time, with Holland contrary to the Navigation Acts. In 1668 New York's merchants petitioned Francis Lovelace, Nicolls's successor, to restrict Albany's trade in New York City's favor. In 1670 Lovelace obliged them by requiring that all goods bound for Albany, and the Indian trade, be unloaded in New York, pay duty, and

⁸⁷*RNA*, 6: 26, 27, 75, 83, 84, 139, 141, 170, 177, 189, 214, 222, 225, 231, 232, 273, 291.

⁸⁸Victor H. Paltsits, ed., *Minutes of the Executive Council of the Province of New York: Administration of Francis Lovelace, 1668-1673* (Albany, 1910), 2: 522-23, hereafter *Executive Council*; Maika, "Commerce and Community. Manhattan Merchants in the Seventeenth century," 129-156; Petition of Frederick Philipse, 9 March 1668, requesting that Albany's trade be opened in *RNA*, 6:138-141.

then reloaded on boats owned by the city's freemen for the trip upriver. Dutch and English co-operation depended on respect for the Articles of Capitulation and the city's hegemony in provincial trade. In the first eight years of English rule, if the sought-after ducal income remained beyond the governors' grasp, the colony remained stable.⁸⁹

This tentative coexistence came to an abrupt end with the outbreak of the third Anglo-Dutch War. In 1672 the forces of the States General briefly reoccupied the colony, but Dutch settlers' hopes of being restored to the republic were short lived. England and the Netherlands sought a quick end to the war, and James was restored to his proprietorship following the Treaty of Westminster in 1674. The new governor, Edmund Andros, came with strict instructions to secure the colony and obtain the Duke's revenue.⁹⁰ Andros promised "the inhabitants of the Dutch nation that they should participate in the same privileges as those of the English nation," and the common council ordered that thereafter the Dutch would be considered as Englishmen.⁹¹ Andros's arrival and the drafting of the Dutch into the ranks of Englishmen marked a step away from the Articles of Capitulation, at least as far as Andros was concerned, and had a profound effect on Anglo-Dutch relations.

The new governor proved less flexible towards his Dutch charges than his predecessors. When local Dutchmen refused to take a new oath of allegiance on the

⁸⁹Paletsits, *Executive Council*, 1: 28, 40, 63, 68, 80, 82, 109; see also reports by Governor Nichols, Andros, and Dongan on their administrations in *DHSNY*, 1: 85-93, 147-189.

⁹⁰On Andros's return and the surrender negotiations and terms, *DHSNY*, 3: 65-85; Ritchie, *The Duke's Province*, 85-107.

⁹¹*RNA*, 7: 138; Herbert L. Osgood, ed., *Minutes of the Common Council of the City of New York, 1675-1776*, 8 vols., (New York: Dodd, Mead and Company, 1905), 1: 26. Hereafter *MCC*.

grounds that it contravened the Articles of Capitulation, Andros cited their refusal as disaffection, charged them with trading in the colony as aliens, or nonfreemen, and seized their property.⁹² Under instruction from London, Andros also compromised the autonomy of the Dutch Reformed church by installing Nicholas Van Rensselaer as pastor in Albany.⁹³ Van Rensselaer's appointment was a serious breach of the Articles, which had guaranteed Dutch religious freedom, and of the practices of the Dutch Reformed Church which only accepted ministers ordained by the Classis of Amsterdam. Andros had shown he was prepared to orchestrate civil trials, abuse religious freedoms, and manipulate the freemanship privilege to his own advantage in his determination to bring the colony firmly under English rule. His efforts saw some yield and freely co-operate while others backed down but bore grudges against the regime. This forced divisions within the Dutch community on the basis of different individuals' views of how Andros's policies subverted their rights as freeborn Dutchmen. Many committed to the cause of religious freedom quit their membership in the Dutch church; others withdrew their civil disputes from the increasingly anglicized New York City Mayor's Court.

The Duke of York's continued refusal to permit a local assembly a role in the authorization of its own taxes left Andros with the same revenue raising policies as his predecessors.⁹⁴ Andros embarked on a scheme of improvements, announcing the building of a new wharf in 1676, designed to increase the income generating potential of the city in provincial trade. He restricted the river trade to New York City freemen and boat owners,

⁹²Petition to Andros, 16 March 1675, *DRCNY*, 2: 740-43; for development of case see *MCC*, 1: 21; Ritchie, *The Duke's Province*, 140-142.

⁹³Gerald Francis De Jong, "Dominie Johannes Megapolensis: Minister to New Netherland," *NYHS, Quarterly*, 52 (1968), 7-47.

⁹⁴*DRCNY*, 3: 230; Ritchie, *The Duke's Province*, 101.

and compelled Albany trappers to sell their fur in the city, and New York was once again granted a monopoly of the export trade.⁹⁵ The Common Council encouraged freemen in the city to "take on the abandoned property for the good of the city though in law it may belong to another." Those moving away and failing to "keepe fire and Candle Light and pay Scot and Lot" lost their freedoms and were required to re-register and pay the fee upon their return.⁹⁶ Andros's efforts favored a group of Dutch merchants and urban tradesmen in provincial trade, and this favoritism set the stage for another conflict around the notion of freemanship and privileges in trade in the late 1670's.⁹⁷ This time the challenge came from a group of English merchants interested in New York's trade who claimed a superior right as freeborn Englishmen over the privileges of residents who were freemen in the city.

Following the Treaty of Westminster in 1674, English merchants took a greater interest in the New York market.⁹⁸ These men were established in international trade and had powerful connections in London and Parliament.⁹⁹ In the summer of 1676 when the

⁹⁵*DRCNY*, 13: 502-3, 531-32,

⁹⁶*MCC*, 1: 3, 7, 10, 11, 17, 20, 21, 24, 26, 75, 78.

⁹⁷While it was almost certainly self serving Andros's response to his critics in 1681 recounted how he came to New York and "found the place poore, unsettled & without Trade, except a few small coasters," but by 1681 the city "greatly increased in people, trade, buildings and other improvements." Governor Andros's Answer to Mr. Lewin's Report, 31 December 1681 in *DRCNY*, 3: 308-313.

⁹⁸The 1676 tax lists revealed a dramatic increase in the English merchant class who now constituted twenty tow of the forty eight men judged to be of considerable estate, Ritichie, *The Duke's Province*, 139.

⁹⁹Robert Brenner, *Merchants and Revolution: Commercial Change, Political Conflicts and London's Overseas Traders 1550-1653* (Princeton: Princeton University Press, 1993), conclusion.

English merchants complained of the cheap and, under the Navigation Acts illegal, Dutch goods available for sale in the colony, Andros prohibited them from trading as aliens even imprisoning the most vocal of his opponents. Andros's actions provoked disaffection and an attack on the proprietary administration. The English merchants charged Andros with favoring Dutch merchants, corruption, misuse of tax revenues, breaches of the Navigation Acts, manipulation of civil trials, and above all the failure to provide for an elected assembly; a litany of abuses which the merchants asserted amounted to a denial of their rights and privileges as Englishmen.¹⁰⁰ The merchants' contacts in London were powerful enough to secure Andros's recall and the protestors seized the opportunity afforded by his absence to pursue their campaign.

The merchants' struggle with proprietary authority and the transformation of the city's Dutch oligarchy into a Dutch and English merchant alliance has been examined elsewhere, as have the connections between Dutch and English merchants and counterparts in Amsterdam and London. Historians have traced the protest of English merchants and considered their economic motives for wanting to control trade and have a say in the regulation of local trade and the levying of taxes. Also noteworthy, however, is the manner in which the rhetoric and unfolding of the English merchants' struggle paralleled the burgomasters' conflict with the West India Company thirty years earlier. The similarities can be seen in two particular areas: firstly, the importance of metropolitan discussions of government and authority on debates in the colony, secondly the claims regarding the origins of government and the rights of freeborn subjects, and the view of society as a natural hierarchy of free men occupying unequal places with specific privileges and duties.

¹⁰⁰Ritchie, *The Duke's Province*, 116-117.

Like the burghers in 1649-53, the English merchants' critique of proprietary rule in New York coincided with an assault on arbitrary monarchical power in metropolitan political debate. Andros's recall and the merchants' campaign took place within a general attack on the Stuarts by the Whigs in parliament and their attempt to exclude James Duke of York from the succession. From the Exclusion Crisis to the Glorious Revolution the Whigs articulated a challenge which balanced radical ideas, such as opposition to the monarchy in the name of the rights of freeborn Englishmen, with a conservative view of the English constitution.¹⁰¹ There were some, most famously John Locke, who advocated radical ideas of popular sovereignty and the notion that the foundation of government lay in the people as rights bearing individuals.¹⁰² However, mainstream Whigs and their leaders opposed this view arguing that, while divine and natural law and contractual ideas of government permitted resistance to the crown, these abstract notions did not provide for claims that sovereignty lay with the people.¹⁰³

¹⁰¹J.G.A. Pocock, "The Varieties of Whiggism from Exclusion to Reform: A history of ideology and discourse," in *Virtue, Commerce, and History* (London: Cambridge University Press, 1985), 215-311; Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton: Princeton University Press, 1986), 17-39, 128-228.

¹⁰²Mark Goldie's analysis of Whig pamphlets from the period showed that less than ten percent endorsed Locke's view which was "utterly uncharacteristic" because it was "unusually abstract," in "The Revolution of 1689 and the Structure of Political Argument," *Bulletin of Research in the Humanities*, 83 (1980): 473-564. This noted in Zuckert, *Natural Rights*, 102.

¹⁰³This and the following discussion on Whig philosophy from H. T. Dickinson, *Liberty and Property: Political Ideology in Eighteenth century Britain* (London: Wiedenfield and Nicholson, 1977), 65; Harro Hopfl and Martyn P. Thompson, "The History of Contract as a Motif in Political Thought," in *American Historical Review*, 84 (1979): 919-44; Zuckert, *Natural Rights*, part two.

Sovereignty, and the requirement that Englishmen obey, lay not in the people and whatever compact they chose, but in the ancient constitution which already existed between them and the moral obligation it imposed upon them arrayed in their unequal offices and estates. For the Whigs in England appeals to divine and natural law only served to establish the idea that society, not individual rights, was the foundation of government which, given its divine and natural origin, could be legitimately defended against fundamental threats to their existence. Having established the divine and natural origins of government, Englishmen looked into their laws and history, rather than nature or the Bible, for guidance on constitutional matters.

The government and the rights of Englishmen were founded upon the ancient constitution whose continued presence and effectiveness was apparent in the contemporary laws and customs of England. It was through appeals to these known laws and precedents that disputes in the ordinary course of events and the questions of James's succession would be decided. With this rhetorical balancing act the Whigs were able to argue for the exclusion of the Duke of York and, ultimately, for resistance to James II as threats to the ancient constitution and contrary to divine and natural law. At the same time, however, the Whig argument provided for the superiority of the ancient constitution over royalist and radical arguments, whether secular or theological, which relied on abstract principles to support claims for the divine right of kings, or the universal Christian equality and popular sovereignty of free men. In the Whig view and practical politics the rights and liberties of English subjects derived from the ancient constitution and laws of England not God or nature. Thus these rights and liberties did not belong to human beings but to Englishmen, and not even equally to them, but arrayed in their estates and specific places.

This was the mainstream view of politics and the place of freeborn Englishmen which the English merchants drew upon to challenge proprietary rule in New York. In a series of widely publicized trials during 1680 and 1681, the English merchants challenged the regime's right to tax them without an assembly. A grand jury called to hear one of the protesters' cases turned into a public affirmation of the English right to be taxed by representatives of their own choosing and drew up a petition making a "submissive addresse to yor Royll Highs therein Representing the Greate Pressues and Lamentable Condicon of his Majties Subjects." The petition decried the "arbitrary and absolute power...by which a yearly revenue is extracted against out wills...contrary to the laws, rights, liberties, and privileges..the undoubted birthright of all his [the king's] subjects." Like the Dutch in 1653, the English drew upon metropolitan comparisons and justified their claim for an assembly "as is Usuall and practicable with the Realm of England." By September 1681, the colony's lieutenant governor Anthony Brockholls could only report to his superiors in England that the New York, "was a government wholly overthrown and in the greatest disorder and confusion possible."¹⁰⁴

The parallels between Whig and English merchant arguments in colonial New York are clearest in the Charter of Liberties which followed their struggle. Under attack from the Whig opposition in England and fearing that unpopular taxes in New York would drive more settlers to East Jersey and Pennsylvania, the Duke conceded the charter to colonists in the hope of securing his taxes. In September 1683 the new governor, Thomas Dongan, called for delegates to a colony-wide assembly to consider all important matters and foremost, the provision of taxes to pay the colony's expenses. The charter confirmed

¹⁰⁴Ritchie, *The Duke's Province*, 156-167; *DRCNY*, 13: 549. Proceedings of Dyre's trial in NYHS, *Collections*, (1912): 8-15; Dyre's petition for relief, *DRCNY*, 3: 318-21.

supreme legislative authority in the King and the Duke to be exercised forever by a "governor council and the people, mett in a General Assembly." The assembly constituted itself as a mini parliament and declared the fundamental liberties and privileges of settlers in language taken, almost verbatim, from the Magna Carta and the 1628 Petition of Rights. The merchants were not antimonarchical proto-democrats but challenged the proprietor's arbitrary administration in the name of English liberties. Like the Whigs and Tories in parliament, the English merchants in New York were opposed to radical claims of any sort regarding the rights of men, and concerned themselves with affirming the liberties and privileges of Englishmen arrayed in their various estates and the privileges of individuals and groups according to their place within the rule bound social order.¹⁰⁵

Though the symbols and references had changed between 1653 and 1683 the structure of political discourse remained the same. Instead of the laws and customs of the United Provinces, leading settlers in New York now looked to the ancient constitution and laws of England. Free men in New York continued to claim fundamental rights and

¹⁰⁵Historians disagree regarding the nature of the Charter of Liberties and its relationship to Leisler's Rebellion in 1689. Scholars have generally connected the two events and the personnel involved as part of a progress towards democracy (either successful or repressed) or as evidence of groups competing for power and influence. See Jerome Reich, *Leisler's Rebellion: A Study of Democracy in New York, 1664-1720* (Chicago: University of Chicago Press, 1953); Lawrence H. Leder in Michael G. Hall, Lawrence H. Leder and Michael Kammen, eds., *The Glorious Revolution in America: Documents on the Colonial Crisis of 1689* (Chapel Hill: University of North Carolina Press, 1964); David S. Lovejoy, *The Glorious Revolution in America* (New York: Harper and Row, 1972), 98-122, 251-271. More recently John Murrin has argued that the Charter was an act of ethnic aggression by the English against the Dutch, in "English Rights as Ethnic Aggression: The English Conquest, the Charter of Liberties of 1683 and Leisler's Rebellion in New York," in William Pencak and Conrad E. Wright, *Authority and Resistance in Early New York* (New York: New-York Historical Society, 1988), 57-94.

certain privileges on the basis of their membership in a specific polity and their place within the local community. The merchant elite claimed to represent the interests of local tradesmen just as the burgomasters had early claimed to represent the "commonality." Tradesmen continued to claim their privileges given their place in the local community. What made the transition to English rule so seamless and apparently easy, were the Dutch and English similarities in the way they spoke about politics, ways which ensured that burghers would become freemen.

The first item of business following the charter was to levy new duties on a wide range of goods and raise the tax revenue promised to the Duke; following that the assembly declared a "free and voluntary" gift to Governor Dongan in return for his support. In November 1683, following the first session of the assembly, the mayor and aldermen of New York asked Dongan for a charter to further guarantee the monopoly of the flour and river trade, and to better regulate the admission of freemen, and thus the control of commerce, within the city. Recognizing New York's claim as an "Antient City," that had "Antiently been a body Politick and Corporate," and in confirmation of all the "liberties, privileges, franchises, rights, royalties, free Customs Jurisdictions and Immunities which they...antiently held," Dongan granted the charter.¹⁰⁶ The charter confirmed the city's claims to certain privileges based on known law and the customs stretching back across the Dutch period. In the name of liberties and privileges a reconstituted oligarchy had assumed authority in New York City, now a chartered English corporation. Early in 1684 New York's leaders dispatched their charter to London where

¹⁰⁶Charles Z. Lincoln, ed., *The Colonial Laws of New York from the Year 1664 to the Revolution*, 5 vols., (Albany, 1894), 2: 575, 577. Hereafter, *Colonial Laws*. Dongan's charter divided New York City into six wards each with aldermen, common councilmen, constables, and assessors elected by the freeholders and freemen; Ritchie, *The Duke's Province*, 164-178.

they confidently expected it would receive the approval of the proprietor the Duke of York.

3. Bake According to the Laws of England or Not At All: The Bakers and the Transition to English Rule.

On the ninth of August 1666 the inhabitants petitioned the court complaining that the bakers “dared to deal out and sell both brown and white bread” which was not of “due quantity and quality.” In their defence the bakers' complained that strangers were baking and selling bread in the city and others were buying bread and then transporting it for sale to the Indians outside. Faced with these incursions on their trade privileges the bakers resorted to their usual tactic of suspending production. Testing their position with the new English authorities, the bakers' complaint also highlighted a practice contrary to the governor's aim to restrict trade to local freemen and centralize commerce in the city. The council tightened baking restrictions ordering that “all and every, be they who they may, are forbidden to peddle bread or cakes along the houses, but they may only sell in form at retail in their houses.” This prevented opportunistic bakers and nonresident itinerants who did not have the facilities to sell “at retail” in their homes and shops. Furthermore, the authorities forbade “all bakers or any other person or Indian” from transporting “bread and cakes from this city to the Indian plantations in order to expose for sale and sell the same there.” Insisting that the Indians came into the town for their purchases protected the bakers' market and ensured that trade, currency, and taxes came to the city.¹⁰⁷

The bakers benefitted in various ways from the English administration's strategy to collect revenue in the city following the take over in 1664. English rule opened up the Caribbean colonies as a lucrative market for baked goods and especially for flour bolted,

¹⁰⁷*RNA*, 6: 30-43.

milled and sifted in the city. The bakers seized the opportunity to supply this overseas market and attempted the same kind of profiteering strategies they had tried in their own locale.¹⁰⁸ In March 1671 the council sent for the bakers and asked “whether they thought it convenient that the corne might be transported from hence to forraigne parts.” The bakers replied that, if “exportation be permitted,” they worried that it might not be “possible that the town can be supplied by them this next summer with bread.” They recommended suspending the grain export unless “it was made into flower or bread by which coopers and other mechanics and other laborers kan [sic] in some part gett their livelihood.” Interestingly, the bakers did not report concerns for a natural dearth which might leave the town unstapled “next summer.” Indeed, they expected there to be enough grain to provide bread for the town *and* to export “flower or bread” to the colonies.

The bakers' advice reflected their concern with the competition of exporters who sought to supply the Caribbean colonies — colonies with planters rich with specie from the sale of sugar and other products of slave labor who could pay more for a sack of grain than the average cash starved New York baker. The bakers' recommendation eradicated the export competition for grain produced by the colony's farmers at the same time as it guaranteed a market for the export of processed grain in the form of bolted flour or baked goods. The bakers' advice was sent on to “his honor the governor,” and the following day the colony council decreed that “no wheat in grain to be exported for a year.”¹⁰⁹ Thus far, at least, the bakers seemed to be taking the transition to English rule in their stride.

¹⁰⁸In September 1667 Captain Morrison sued Cornelius Pluvier the New York baker for twice selling him bad bread which he transported to Barbados, *RNA*, 6:95.

¹⁰⁹The order was reissued in June 1672 and April 1673; in June 1673 the order was suspended but then reissued a month later together with a reassessment of the value of wampum following a petition by the bakers against the “surveyor or cure master of bread and flour.” The order was reaffirmed in the spring of 1675 and continued in 1676. In 1676 Jonathan Selleck's petition seeking permission to export grain to Barbados was

The return of Dutch rule in 1672 presented the New York City bakers with opportunities they were poised to take advantage of. This was especially true in the case of the politically ambitious Anthony De Milt, who attained the high office of *schout*. Either the money to be made from fines encouraged De Milt's zeal for the law, or the townspeople had a problem with the baker who would be *schout*, but in the next few months there was a sharp increase in the number of prosecutions for public order offences and drunkenness. When the English returned, De Milt lost his office, and in 1675 he was charged in company with leading Dutch merchants for refusing to take the oath they believed contravened the Articles of Capitulation. All the objectors except De Milt were charged with trading illegally and had their property seized. It may have been his status as a baker or, compared to his fellow protesters, his lack of status which saved the canny De Milt. Whatever the reason, De Milt avoided the punishment of the others and by 1683 he was back in local politics as an assessor in his ward.¹¹⁰

The bakers were able to maintain their position in local trade because they played an important part in Andros's plans to raise revenue in the colony. On 19 February 1675, Andros opened a special meeting at the town hall to consider a business proposal made by Samuel Griffeth captain of the *Diamond*. Griffeth proposed that his ship be "specially supplied with ...Bisquit for his voyage to Europe," for which he would pay fifty-one shillings "in silver or beaver" for each hundred weight. The meeting at the town hall appointed four of the city's bakers to "goe and consult about the matter and bring their report to the Mayor at 2 of the clock." The bakers duly returned and outlined a production plan to supply Griffeth with fifteen thousand pounds of biscuit at the agreed

denied by the council. Berthold Fernow, compiler, *Calendar of Council Minutes 1668-1783*, (New York: Harbor Hill Books, 1987), 13, 16, 18, 19, 21, 25, 24.

¹¹⁰*RNA*, 6: 409; 7: 5, 6, 7, 9, 10, 18, 28, 29, 43, 44.

rate. The deal promised to bring valuable currency to the local economy and revealed the bakers' ability to organize production on the kind of scale necessary to take advantage of the transatlantic trade.¹¹¹

The bakers were not the only tradesmen to benefit from Andros's intention to monitor and restrict access to the trades in New York following the return of English rule in 1674. Early in 1675 the coopers on Long Island petitioned the court "concerning the making of Oyle Cask and great deceit by Strangers Coopers." The authorities ordered that no one should be allowed to make casks without the consent of the magistrates and officials in the towns. The freemanship regulations were reaffirmed and their provisions enforced and innkeepers, carters, and boatmen were all given detailed instructions on the prices and practices for their trades. The city required the tanners to move their pits outside the town. Appointing "two men to be tanners of this city," they ordered that "Noe Butchers bee Permitted to bee Curriers Shoemakers Or Tanners Nor shall any Tanner bee Either Currier Shoemaker or Butcher Itt beinge Consonant to the Lawes of England."¹¹²

When the council received "several complaints made as well by the inhabitants of this city as also strangers that resort here that they cannot get bread for their money," they ordered "all and every person and persons yt shall att any time or times hereafter Vse or Exercise the trade mistery or occupacon of a baker shall bake and sell to the inhabitants and strangers both bisket and house bread according to ye Lawes of England or not sell anything at all." As far as the bakers were concerned, baking according to the laws of England seemed to imply building on the trade privileges they had first secured under Dutch rule. By the late 1670s a regular flow of exportable surpluses came to the city from

¹¹¹MCM, 1674-1675, 35.

¹¹²MCC, 1: 3-20.

farms around Albany, Esopus (Kingston), and Hempstead. The bakers and city authorities continued to work together to secure markets and a monopoly of critical ingredients, and within a decade, baked goods had become one of the colony's major exports.¹¹³

The city and its bakers took one more step towards limiting the trade to local men following during the struggle for the city's charter in 1684. During the tax protest and the breakdown in the colony's administration which resulted in the Charter of Liberties in 1683, the provincial towns ceased to observe the monopolistic regulations favoring city trade. In particular, the rural farmers had ceased bringing their flour to the city for bolting and packing, and this threatened the baker's trade. In the spring of 1683, the New York City common council successfully petitioned the recently arrived Dongan for a reinstatement of the city's monopolies. The common council phrased their appeal in the language of privilege and claimed preference in the flour trade on behalf of the city and its residents.

This City being the Matropolis of the Province hath from, tyme to tyme, been the Mayne Suporte thereof the flowerishing or Decay of which Doth influence all its Parts, and by, itt's Industry in trade and Traffique mayntained by itt's Number of Inhabitants hath gained Credit and Reputation Abroad by whose meanes alone Foreigners Commerce and shipping, Is Drawed hither.

The council went on to argue that "The Manufacture of flower and Bread" represented a chief means of support for the city and "Inhabitants of all Degrees."

¹¹³In 1681 Governor Andros reported that city merchants exported approximately 60,000 bushels of grain and close observers claimed that an equal amount was gristed and barrelled as flour for the Newfoundland fisheries and West Indian plantations. By the end of the century there were some two dozen merchants exporting wheat and flour to the southern colonies and the West Indies. Cathy Matson, "Damned Scoundrels and Libertisme of Trade: Freedom and Regulation in Colonial New York's Fur And Grain Trades," *William and Mary Quarterly*, 3d. Ser., no. 3, (July 1994): 389-418.

Furthermore, while Long Island could rely on "Husbendry and Whaling," and Albany on the Indian trade, New York has "noe Other Advantage Or Way of Liueing but by Traffique." The case was clear: without the grain and flour monopolies New York would not survive, and without New York farmers would have no market and the future of the colony would be threatened. The following month, having taken account of the "Seurall good and Weighty Reasons," set forth, the Governor and his council passed the Bolting Act in 1684 and prohibited the "Packing of flower and makeing bread for Exportation att any Other Place then att the Citty of New Yorke."¹¹⁴

With the flour and bread export market secure, the bakers moved to better regulate production and price. In October 1685, under the auspices of the city's new charter, Teunis Decay and Anthony De Milt, now holding offices within the common council, were appointed, with Renier Williamson, to be supervisors of bread: "That at any time when they shall be thereunto required...they will give their judgement (upon the view of any bread baked to be baked in this city) wither the same be according to the city or no." Further more they were to bring a list of "what bakers are necessary and fitt for employment within this city by the next court day." What the bakers now had was *carte blanche* to decide what kinds of bread could be baked by whom within the city, within the restrictions of the ordinances, which they themselves had a role in setting. Pursuant to this request, the bakers submitted a list of approved bakers and agreed on the bread assizes at the next court day.

With a list of accredited bakers working on a planned schedule, the bakers had achieved a level of control which could finally mitigate the structural uncertainties of the

¹¹⁴*MCC*, 1: 149-153. The debate around the New York bolting and baking monopoly, and the efforts of Albany merchants and bakers to defeat the measure, can also be tracked in *Calendar of Council Minutes*, 37-39; *Colonial Laws*, I: 326, 449.

colonial baking trade; uncertainties that they had faced on an ad hoc basis for the previous forty years. Having risen to the high office of aldermen, Anthony De Milt and Renier Williamson were subsequently requested to “bring in a report of the price and waight [sic] and goodness as bread ought to be according to ye prices of wheat as it rises and falls.” The bakers now had regular price assizes controlled by them through their own inspectors who would also control entry to the baking trade and monitor the activities of hucksters and peddlers. Henceforth the bakers would focus their efforts on controlling production and pricing within the city and less on the supply of grain from outside.¹¹⁵

The schedule of approved bakers and their days for baking reveals certain new names who had never formally appeared as bakers.¹¹⁶ The presence of these unregistered bakers in the trade is noteworthy given the baker's periodic protests regarding strangers and unregistered bakers practising the trade in previous years. The appearance of these unregistered bakers is understandable if one keeps in mind the duty official city bakers owed to the community to provide a reasonable supply of bread and the control over production and pricing they had just succeeded in obtaining.

Since the late 1640s the bakers' duty to bake sufficient coarse bread had, at times, restricted their commercial strategies and brought them before the court for failing to

¹¹⁵MCC, 1: 172-74; Anthony De Milt would eventually be Sherrif of New Orange, see Paul Hamlin and Baker, *Supreme Court of Judicature in the Province of New York 1691-1704*, 3 vols., (New York, 1952), 2: 323.

¹¹⁶The schedule of official listed the following. Mondays: Hendrick Willemsen, Thomas Lawrence, Huyg Barentson, Gersie Lewis Tuesdays: Hendrick Johnsen van Veurden, Antony Demilt, Catrina Hooghlant. Wednsdays: Jacobus De Kay, Marretie the widow of Nicles the baker, Gerret Cornelissen, David Provoost. Thursdays: Brymer Willemsen, Luycas Kierstede, Peter Jansen de Paap. Fridays: Jasper Nessipat, Anna Van Vleck widow, Lendert Huygen de Kleyn, Johannes Vander Spregeel. Saturdays: Teunis DeKay, Jan Van Slensburgh, Nicholas Demeyer, Isaac Forrest, Jacobus Virhulst, Anna Popelaers widow. MCC, 1: 176.

supply the community. If the registered bakers were the only ones who baked, then the whole town relied on their flour supply, and it was harder for them to experiment with different products -- cakes, cracknels, and pones -- in Indian and West Indian markets beyond the city limits. When peddlers and unregistered bakers shouldered some of the responsibility for the community bread supply, it allowed the registered bakers to pursue more lucrative ventures knowing that the townspeople would still be provided for. However in difficult times, when grain was scarce and markets competitive or unresponsive, the city trade was the bakers only source of profit; in these periods peddlers and itinerants became irksome competitors who sapped revenue out of the local economy. At these moments the bakers would have to come before the court and petition to have their trade protected from "outsiders," as they had in 1666.

After 1684, however, the bakers controlled the price of bread in relation to the price and supply of grain in a regulated local economy with the valuable overseas market assured, at least for now, by the city's flour bolting and export monopoly. This control meant that New York bakers could afford to include these, formerly, informal, bakers in a quasi official role. Having increased their authority to the level of master bakers who could include and exclude people from the trade at will, the leading bakers in New York City could regulate the trade without having to suspend baking and appeal to the city. The Mayor's Court recognized the different role of master bakers and others who baked in the city in August 1693. Following a series of complaints regarding the quality of flour shipped to the West Indies and the misrepresentation of New York bread with false marks, the court ordered that "ye clerke give an assizes of bread to the master bakers of this city [and if] ye conflict with the rest of the bakers what assizes of bread would be proper to be

established and what persons will continue baking according to such assize as by ye magistrates of ye city shall be thought proper and convenient."¹¹⁷

The manner in which the bakers reaffirmed and then extended their trade privileges following the English take-over of New York suggests the parallels between Dutch and English notions of the place of tradesmen in the city. Before 1664 bakers defended their place with reference to local law and the customs of the "Fatherland" and excluded others from the trade and secured regular revisions of the price of bread which assured them a reasonable profit for the work they did. After 1664 the same bakers, often identifying themselves with anglicised names, continued to exclude itinerants and influence prices and markets by invoking their privileged place with reference to local laws and the stated aims of the English governors to control trade in the city. The bakers showed that they could move easily within the language of privileges, baking as easily according to the "laws of England" as with respect for the "customs of Fatherland." By the late seventeenth century a favored group of master bakers organized production and pricing and their strategies for profit had become integral to the administration's view of effective government and the provision for the common good in New York City.

4. Carters and carting in seventeenth-century New York.

It would be wrong to generalize the bakers' success as if it represented the common experience of tradesmen during the Dutch period or the transition to English rule. Although bakers referred to their privileges as skilled men and claimed a fair price for the work they did, they were only one group of tradesmen and their success resulted

¹¹⁷MCM, 1682-1695, 350.

from their ability to make quite specific claims in the language of privilege within the context of changing contemporary circumstances. As such the bakers' commercial fortunes and material security had little to do with enduring craft traditions or respect for custom (Dutch, English, or local) and did not represent something we might think of as a common artisanal condition. This much becomes clear when we compare the bakers' success to the fate of the city's carters during the transition to English rule.

The evidence on carting before the arrival of the English is slight. There was little if any regulation of carting other than to prohibit the riding of carts through the streets and working on the Sabbath.¹¹⁸ As a low entry level profession carting attracted men from poorer backgrounds and provided additional employment for those experiencing difficulties in other lines of work -- though not all carters were from impecunious circumstances.¹¹⁹ Wolphert Webber who carted with his son, Arnou, in 1660s and 1680s was a small farmer and tried his hand at inn keeping. John Coursen and Sigismundus Lucas were shoemakers, or at least worked at the trade on occasion. Thomas Verdon was a registered beer carrier and weigh house porter. Carting did not require any particular skills or tools other than a horse and cart and the ability to drive

¹¹⁸In 1659 the *schout*, Rosevelt Waldron, sued Romein Servien and Thomas Verdon for riding their carts through the streets in breach of an ordinance. *RNA*, 3: 91, 92. In 1663, *schout* Pieter Tonneman sued Jan Mienderzen for working "at his cart last Sunday." *RNA*, 4: 342.

¹¹⁹For Wolphert Webber and his life as a farmer see *RNA*, 1: 162, 168, 247, 326, 334, 339, 355, 390; *RNA*, 2: 10, 127; Webber and innkeeping in Martha J. Lamb, *History of the City of New York*, (New York: A.S. Barnes and Co, 1877), 182; Sigismundo Lucas and shoemaking in *RNA*, 5: 6; Thomas Verdon and his appointment as weigh house porter, *RNA*, 2: 84; John Coursen, alias John Cherry, also worked as a carter but was listed as a shoemaker when sued by Ann Watkins whom he publicly slandered as "a whore, a damned whore, and horse faced bitch," *MCM*, 1675-1677, 133.

them, a common enough skill amongst seventeenth-century farmers and workingmen.¹²⁰ As a consequence the carters' trade was susceptible to encroachment by strangers and carters unregistered in the city.

If the backgrounds of the carters were diverse, their daily work was united around the carrying trade in New York and, in particular, the supply of firewood to the city. Several disputes between men later identifiable as carters and firewood suppliers reveals the importance of the firewood trade to the carters and the narrow margins for profit in their dealings. In April 1660 Thomas Verdon sued Jan Quisthout for 22.5 florins for firewood and an axe supplied to him. Similarly Thomas Fransen appeared in court in November 1663 when he broke a firewood deal he had earlier made with Jan Arrianson.¹²¹ The carters in New York were generally the poorer and less successful of the colony's inhabitants and worked in the carrying and portering business of the city, especially gathering and delivering firewood. Some worked together, organizing collection and

¹²⁰Complaints by carters that "boys" were riding carts and taking from their employment emphasizes how open their work was see, RNA 7: 122.

¹²¹For Thomas Verdon see *RNA*, 3: 156, 159, 211. On the 13 November 1663, Jan Arriansen sued Thomas Fransen for three ells (a measure of length usually taken from the shoulder to the wrist or tip of the fingers, rather like the English yard) of duffels (a coarse woolen cloth) at seven guilders the ell. Fransen had promised to give Arriansen "firewood at sixteen guilders the hundred [sticks], free before his door." However Fransen had only delivered "one load of twenty five pieces and another of twenty five pieces" of poor quality or "light" firewood. When Arriansen protested, Fransen "iltreated him." In court Fransen declared that if Arriansen returned the firewood, he would return the duffels. Judging the case, the court required Arriansen to pay Fransen eight guilders and ten stivers for the wood and Fransen to return the three ells of duffels. Thomas Fransen had been a carter in New Amsterdam at least since April 1657 when he registered for the lessor burgerrecht as a "carman" in "The Burghers of New Amsterdam and the Freemen of New York, 1675-1866," in *New York Historical Society, Collections*, (1885), 21. Thomas Verdon and Thomas Fransen appear to have worked together on occasion, *RNA*, 5: 139,140.

transport by boat and cart; others worked alone. But all worked with a commodity which required hard labor to collect and move and offered a narrow margin for profit.

On 8 June 1667 the carters appeared in court complaining of Stoffel van Laer who employed other wagons "for carting his tan." Van Laer admitted that he had "hired Kier Woltersen's wagon by the day to ride his tan from the bush to the scow at the shore and again from the shore to his house." The court permitted Stoffel to continue using Woltersen's wagon, but promised an "ample ordinance" on the question.

Three days later a motley collection of artisans, laborers, small farmers, and porters came together to petition the council that they "may be confirmed in their actual number and no more, in form of a guild like the weigh house porters," and that "all newcomers may be forbid to cart within this city." The council assented to their petition, and, on June 11, decreed that until more carters are required in this city, "no one except the appointed carmen shall be privileged to cart any goods within the city, whether for burgers or merchants." Individuals were permitted to cart their own goods and whatever they brought to the city from outside. Recognizing the carters' privilege in local trade, the court also outlined their duties to the community they served: carters were not to charge more than ten stivers per load in the city, under penalty of twelve stivers for the first offence, double for the second, and loss of place for the third. Carters had to seek annual confirmation in their place and were obligated "in time of fire to repair on the ringing of the fire bell," and to "render all possible assistance extinguishing the flames."¹²²

¹²²*RNA*, 6:70. There were eight carters bound that day: Thomas France, Willem Kock, Jan Meyndersen, Ambrosius de Weerham, Jan Smedes, Pieter Wessels, Pieter Roelofs, and Joris Jansen. The carter's complaint regarding Van Laer suggests that they operated an informal monopoly before their request for official gaurantees in 1667. Stoffel Van Laer was a tanner who contracted with the city's shoemakers to keep them supplied with leather, see note 137 below.

In the ensuing years, as the bakers secured their privileges as independent tradesmen, the carters lost ground just as steadily. The June 1667 ordinance confirming the eight petitioners as the only carters in the city appeared, at first sight, to guarantee similar privileges as those granted to the bakers. However, the carters' combination derived from a unequal bargain with the authorities and possessed none of the coherence and political effectiveness of the baker's group. Rather than recognizing the carters' monopoly as a private privilege like the protection afforded the bakers' trade, the council treated carting as a public utility and the carters as a quasi municipal work force. This attitude restricted the kinds of claims that carters could make for local preferences in trade. Soon after allowing the carters petition for protection as the city's carters, the council unilaterally amended the terms of their agreement and added to the carters' duties.

In April 1667 Jan Jansen Langstraat, Thomas Hal and Kier Walters had been appointed overseers of Roads and Fences upon the recommendation of the farmers living around Fresh Pond. The overseers monitored fence building and road maintenance, ensuring that livestock did not escape and that throughways were kept clear; like other municipal officials, the overseers could charge offenders in court and received a percentage of any fines for their trouble. In December 1667 the overseers charged the carters, "being ten in number," and condemned them to a fine of six guilders or the loss of "one day's time in repairing the highway about Fresh Water." The carters, whose numbers had jumped to ten since the summer's order restricting the trade to eight, cited the terms of the local order which required the inhabitants living beside a particular stretch of road repair it, and that, not living at Fresh Water, "they are not included in this instruction." The court agreed that the ordinance related to "householders and planters on this and the other side of Fresh Water." Ignoring the carters' defence, however, the court sided with the overseers, and the farmers who had supported their appointment. Then, in

what can only be described as a trade off, the court allowed the carters' petition that they be "set at liberty to ride in their carts in the streets," but added to their duties ordering that the carters were "bound to keepe in repair the streets and highways" not just around Fresh Pond but "within this city."¹²³

This amendment of the carters' privileged status reveals the authority's willingness to manipulate their liberties to secure municipal ends, and the carters inability to affect matters by securing influence in the local polity. When the common council received complaints that "several of the karmen of this citty do not perform their duty in takeing good care of the goods which they do kart for burgers and strangers," and that "some of the said karmen do many times use ill and bad language to the burgers," they summoned all the carters before the court warning them that upon complaint of any burger and proefe [sic] made...such karmen shall be dismist and others may be employed in their stead." In September, the council confirmed the existing ten as carters, held their rates at ten stivers per load, and added garbage collection to the carters growing list of public duties: the carters were required to turn out every Saturday afternoon and remove the garbage loaded onto their carts by the householders, presumably leaving the carters to off load it at the city dump.¹²⁴ By 1672, the carters' duties were broadened even beyond express definition

¹²³*RNA*, 6: 99-105. The carters were permitted to ride their carts but were prohibited from driving "hard along the streets" and, if any accidents were caused, they would lose their horse and cart, or "if it should happen that any person should be kild in soo [sic] riding...the life of the karmen shall be under the lapse of the law." In January 1670 Jan Langstraat extended his municipal service with an appointment as overseer branding of horses and cattle feeding in the city; the overseers collected a share of the fee that residents paid to the city to have their livestock branded. Langstraat subsequently worked as a carter and was favored with city contracts, *MCC*, 1: 205, 206.

¹²⁴For Langstraat and the branding see *RNA*, 6: 215, 259. For admonishing and confirmation of the carters see, *RNA*, 6: 217, 259, 273. In 1670 the carters still numbered ten, but some new faces had appeared. Thomas Fransen, William Kock, Ambrosius de Weerham, Jan Smedes, Jan Mynderse remained from the original group. Aernout

to "do other such public work as they are commanded by ye magistrates." As if to underscore the lack of coherence among the city's carters, when the city picked an overseer for the carters they chose Charles Floyd—one of only two Englishmen carting in the city and new to the trade in the previous two years.¹²⁵

More significant than this routine public denigration of the carters' privileges, was the city's usurious attitude toward them and the apparent lack of concern for the protection of the carters' livelihoods in two specific areas: public works and firewood gathering. The carters' value in local building projects such as the fort and the wharf was indisputable. As the city changed hands from Dutch to English rule and back again, both sides set a priority on restoring the fort and the town's defences, and the carters were essential in the transport of stone, timber, bricks and lime. There is evidence that the city negotiated agreements with the carters, but there is more evidence that, when necessary, the authorities invoked the carters' duty to perform public works and threatened to dismiss those who refused.¹²⁶ This was true under Dutch no less than English rule, hardly

Webber, son of Wolphert, applied for and was given a position in August 1670, and three new English men were also appointed: John Watkins, Thomas Griffin, and Charles Floyd. See *RNA*, 6: 251, 360.

¹²⁵Details on 1672 reconfirmation in *RNA*, 6: 360. There is some evidence that Floyd was an unpopular choice with other carters. In September 1672, Floyd reported Thomas Fransen, and the council declared that "if the said Francen will not obey the overseers civil commands, that he shal not be suffered to be a carman any longer in this town." Fransen, a carter for over ten years, might have been encouraged by the recent declaration of war between Holland and England and the prospect of a Dutch reconquest of the colony, *RNA*, 6: 387.

¹²⁶In December 1675 an order prohibiting carters from riding their carts and working on the sabbath also prohibited them from "digging land in unlawful places," suggesting that the carters might have been trying their hand at brickmaking, see below in chapter five. The same month Thomas Gibbs, the sherrif, brought an action against Sigismundus, the carter when he refused the "governor's order to cart..[and] replied that

surprising given that the local leadership continued to be drawn from essentially the same group of well-to-do settlers.¹²⁷ The clearest manipulation of carters' privileges by the city came as a consequence of Governor Andros's determination to increase local trade and taxes by building a new wharf, while keeping the costs as low as possible.

In January 1676, the plan to build a new wharf promised plenty of carting for some time to come. The project was expensive, and Andros's determination that special public works should be paid for by extra taxes meant new levies and a restricted budget: the council ordered that the work was to be done "by the inhabitants as they are devided into compaynyes" and an agreement reached with the carpenters "to Vndertake the worke and to bee agreed with at the Cheapest rate." Confirming the carters in their place in November 1676, the council once again held the rates at ten stivers per load except for lime, wine, and bricks, for which they received sixpence per load. However, in 1677 relations between the council and the carters soured; in October the court cited twelve carters for contempt and ordered the "discharge of all and every of the above said persons to be cartmen within this city or liberties thereof until further order."

To regain their places the dismissed men had to pay a fine of three shillings or each carry fifteen loads to the wharf construction. When the carters yielded and "prayed to be admitted," the council seized the opportunity and revised the rates "for ye public use of this citty for eight stivers a load."¹²⁸ As we have seen the "public use" could be a remarkably flexible category of definition, and now the rate was cut from ten to eight stivers.

he would not cart for the governor not nobody else." The authorities ordered "that he will cart no more until the court...admits him thereunto." in, MCM, 1674-1675, 27.

¹²⁷*RNA*, 6: 51.

¹²⁸*MCC*, 1: 65.

The exact cause of this disagreement is unclear. However, the city's failure to limit the number of carters and protect their market, as it had for the bakers, made it increasingly difficult to earn a living at the trade in the years before the dismissal. In April 1674 the council refused Ambrosius De Weerham's petition to be admitted as a cartman maintaining "the number of cartmen is full." Weerham had to wait until Wolphert Webber retired that summer, to become one of the eleven official carters. In September the carters complained that there were people who "intruded upon their employment" and (possibly referring to Wolphert Webber) "on their departure sold their carts, horses, and places with privilege to cart." The carters also complained of "certain boys" who rode in carts "above the number [of carters] fixed." The authorities prohibited all except the official carters from the trade, and adding Jan Langstraat and Jan Pietersen, the elder, to the roster brought their number up to thirteen.¹²⁹ Shortly after this and probably to assist with the wharf project, the city must have decided to increase the number of carters privileged to work in the city. Careful scrutiny of the minutes reveals that in October 1677, of the twelve carters dismissed, at least five were either new to the trade or had returned after an absence.¹³⁰

¹²⁹*RNA*, 6:122.

¹³⁰Of the twelve carters dismissed, Jan Langstraaw, Peter Wessels, Symon Lucas, Ambross Warren, are easily recognizable from earlier rosters; John Maynarde could be an anglicized version of Jan Mynderse, and Hensbord Elbertyes, was related to, Geerite Elbertyes an official carter. Thomas Griffith worked as a carter in 1670, disappeared from the roster following the Dutch reconquest in 1673, but reappears as one of the dismissed in 1677. William Cooke, Claus Johnson, John Coursen, Hendrick the Spaniard, and Daniell Waldren all appear as carters for the first time. A close reading of the minutes of the common council reveals that whether or not all the carters were suspended in 1677 must remain an open question, and it is certain that they were not all suspended in 1684. This puts my interpretation at odds with Graham Hodges, *The New York City Cartmen, 1607-1850*, (New York: New York University Press, 1986), 1-56.

The local authorities had always required that bakers provide sufficient coarse bread for the inhabitants, and when they failed to do so held the bakers to account both individually and as a group. Within the boundary set by this duty, however, the bakers secured respect for the privilege to work as private tradesmen in a protected market as private tradesmen; indeed the bakers even enjoyed the flexibility to mitigate the limitations imposed by the requirement that they bake sufficient coarse bread, by allowing peddlers and unregistered bakers to contribute to the towns need when it served the interests of the core baking group. From the outset, however, the carters failed to receive a similar level of respect for their privilege as private tradesmen. Instead carting was valorized as a public utility. As a consequence, the city's view of a carter's duty, the other side of privilege, was far more open ended and flexible than in the baker's case.

From demonstrable acts of good citizenship like assisting in fire extinguishing, the carters were used for road mending and general maintenance, and garbage collection. Where bakers withstood and even contemptuously denied charges of ill temper and unprofessional conduct, the carters appear to have been in constant trouble for their rude and abusive manners. Where bakers were fined but never disbarred from their trade, the carters were ordered to work for free, and take fifteen loads to the wharf, or were dismissed at a moment's notice. Every time the city added to the carters' duties, and failed to respect their privilege, they undermined the language of privilege as it applied to carting and treated the trade less as a private privilege and more as a public utility. In so doing the authorities elevated the city's and its inhabitants claim to what the carters did, over the carters claim to the privileges of their place given their function in the local economy. Regulating the trade, rather than endowing the tradesmen with the wherewithal to regulate himself, diminished the position of the carters as men in trade.

The city continued to undermine the carters' privileges and, adding to the roster of city carters, exacerbated the divisions and competition within the trade. By the late 1670s the authorities required new carters to carry thirty loads for the city free of charge or to provide sponsors and bonds of ten pounds surety in return for the privilege of carting in the city and to guarantee their performance as city carters.¹³¹ Between 1678 and 1680 the city admitted seven new carters in the city. Taking the twelve suspended carters in 1677, and assuming that one continued working through the other suspension, means that by the early 1680s there were twenty carters working in the city. This figure was confirmed in March 1684 when, making no new appointments, the council restricted the trade to the twenty "Soe Apoynted." In ten years the number of carters had doubled intensifying the competition within the trade while rates for the private hire remained the same and the rates for the city had been reduced by twenty percent. In the same period, the carters had to contribute to local levies, pay a tax on their horses, and work on all manner of public works projects. It is in this context of the rising numbers of carters, static or in real terms falling rates, and internal competition that we must consider the firewood trade and the carters strike in 1684.

Firewood was essential to the city and its supply formed a key part of the carters' trade. The size and standard of firewood was a perennial source of complaint and in

¹³¹In April 1678 the Mayor's Court allowed John Pound to cart provided he obey the laws and customs and "carry for the use of the city thirty loads." MCM, 1677- 1682, 83. In 1680, admitting Henry Garnsey to "ye office of Carmen," the common council required the usual duties *and* a sponsor, Francis Hendricks; the two men were "jointly bound in ye summe of Tenn Pounds," to ensure that Garnsey "performe the Said Office faithfully according to ye Lawes and Customes here Established." In August Coneradus Vanderbeake and Egburt Vanderson were admitted as carters, Hendrick Johnsen offering the ten pounds surety for Vanderbeake and Timothy Vanbursom for Vanderson. On the same day, however, the council admitted Tunis Hercks, Garret Cozyn and Egbery Ffopen without bonds. MCC, 1: 84-86.

February 1677 the court regulated the correct size for firewood and the corded bundles.¹³² The size of firewood bundles continued to provoke disagreements and in March 1684, the council established a "place of cording" where city porters would cord the wood, to the agreed standard, for sale. Firewood customers could now buy wood direct from the carters for one shilling, or pay one shilling and sixpence for firewood carted from "ye boat to the place of cording and after corded to the owners house." The city hoped to eliminate the problem of short bundles by having the porters "Determine Any Difference therein that Arise between the buyer and the seller;" the porters to receive four pence half penny from the sellers (the cartmen) of the wood. The inhabitants had to pay an extra sixpence for the officially corded wood, but the carters were the real losers: they had to make one trip from the boat to the "place of cording," off load the wood, have it gathered into the correct bundle size, reload the corded wood, and then deliver it. Paying the porters four pence half penny, the carters could sell the wood for one shilling six pence: in effect, they were receiving one pence half penny for a trip within the city which should have earned him at least three, or, as a difficult load, arguably six pennies.

The inhabitants were not prepared to pay the extra sixpence for officially corded wood, and continued to buy direct from the carters. Not required to meet the porters adjudication, the carters resumed selling small bundles and within a week the council had received "many complaints" regarding the "Sale of firewood by the stick being of uncertaine and unequall length, and Bigness, and Often tymes seurall notches put on a

¹³²Heeding the "Complaint beinge made of the great abuse Practized by diuers [persons] who Expose Firewood to Sale in the Government and Particularly in this Citty by reason the inequality of ye sticks for length and bigness," the court decreed that following the first of May "noe firewood bee exposed to sale in the Gouverment or Brought to this city but by the Cord The Length of Each stick to bee foure foote The cord fire foot in height and Eight foote in Length and fitt Corders to be appointed." *MCC*, 1: 41. For confirmation of the order in May see *Calendar of Council Minutes*, 19 May 1677, 29.

stick whereby they are defrauded of their due (itt being only att the pleasure of the boatmen and carmen what they will call one hundred sticks)."¹³³ The council affirmed the dimensions of an acceptable cord but the following week, citing the carters' refusal to obey the "lawes and Orders of this city," summarily dismissed fifteen of them. Then the council threw open the trade declaring that "all and every person or persons within this city have hereby free lyberty and lycence to serue for hyre or wages as Carmen (the said carmen now discharged and slaves excepted) till further order." The council had clearly declared its intention to break the carters strike.¹³⁴

On 6 April the council declared that none of the former carmen would be readmitted "without first acknowledging their fault" and then paying a fine of six shillings, twice the fine of 1677. Under these terms three of the striking carters -- Joris Johnson, Garrit Cousine, and John Carlssen -- were readmitted. Assuming that there were five remaining when the fifteen had been suspended, this pushed the total of official carters to eight working with the support of an unknown number of people taking advantage of the opening up of the trade. Whatever chance the carters might have had was gone. So ignominious was their defeat, that their return to work was not even worthy of recording in the minutes.

¹³³*MCC*, 1: 145.

¹³⁴After considering the petition of the porters and appointing a committee to consider "their number, and the rates and prizes by them taken," the suspended fifteen carters: Jn Longstreete, Jn Myndersen, Clas Jansen, Hendrick Jansen, Egbert Forken, Conradus Verbeck, Jurain Hagle, William Pearce, Thomas Griffin, Gisbert Egbert, Jan Carlissen, Paulus Verbeck, Garrit Cousins, William Morse, Joris Jansen. *MCC*, 1: 47; *The Common Council Papers, Municipal Archive, New York, New York*, 1: 5. Hereafter *CCP*; "Petition of the owners and masters of sloops and boats," March 1684, *CCP*, 1:4.

4. The law and the trades, 1664 - 1691.

The bakers' and carters' experiences reveal the importance of the attitudes of the local authorities in deciding whether or not a tradesmen would receive special consideration given his place. The bakers were able to build on their earlier successes under Dutch rule, secure a significant amount of leverage in organizing their trade and ensure their commercial fortunes. As protected city workers the bakers enjoyed the privileges of freemen and licensed tradesmen while the carters struggled to secure even a basic subsistence. Production and exchange in many trades, however, were not as intimately connected to municipal politics as baking and the carting. While all tradesmen were subject to some form of regulation a substantial amount of commerce took place between private individuals. In private commerce tradesmen relied on the courts to ensure that they received their just due or payment at an appropriate level given their skills and place in the rule bound social order. The courts decided what was fair or foul in commercial exchanges and as such provided the other major foundation for a tradesmen's claim to a fair price for his labor and special consideration given his place in local society.

Following the introduction of municipal government and the burgomaster's court in 1653, New Amsterdam boasted a highly developed justice system based upon the laws and customs of the Netherlands. Litigants brought their cases to court and were heard by magistrates who decided the case on its merits or on the advice of arbitrators appointed to compromise the disagreement. After the English conquest, little effort was made to alter the structure and function of the court system as it had existed in New Netherland with one exception. The Duke's Laws required courts to provide jury trials -- a practice alien to Dutch law -- for litigants who desired them at the litigants' own expense. However, the structure and practices of the court remained broadly similar and until the 1690s the

Mayor's Court relied on a combination of Dutch and English legal forms and procedures.¹³⁵

New York's tradesmen and merchants exchanged work and goods on credit and for commodities and a bewildering array of currencies in a variety of agreements both formal bearing written obligations and informal promises. Since most of the hard currency was scooped up by royal authorities as taxes or by local merchant financiers in payment for debts, local tradesmen relied for most of their trade on credit and commodities.¹³⁶ Thus disputes concerning the value of commodities were intimately bound up with claims for wages or consideration for work, leaving the court to decide what could and could not be considered fair in terms of local practices given the nature of the work or the commodity offered in exchange. The courts and commercial law in the late seventeenth century were flexible and permitted diverse claims and references to local practices as tradesmen attempted to secure amounts they felt were fair in regard of the work they had done.

Men agreed to work or trade with one another under various kinds of agreements. Covenants were formal written contracts signed before witnesses and often under seal wherein the defendant promised to perform a certain action or trade on specific terms.

¹³⁵On advanced state of Dutch law see Joseph Goebels, "The Courts and the Law in Colonial New York," in A.C. Flick, ed., *History of the State of New York*, 10 vols., (New York: Columbia University Press, 1933, 3: 4-43; Herbert A. Johnson, *The Law Merchant and Negotiable Instruments in Colonial New York, 1664-1730*, (Chicago: Loyal University Press, 1963), 22-26; a good review of the current debate is Stan Katz "The Problem of Colonial Legal History," in, Jack P. Greene and J.R. Pole, eds., *Colonial British America. Essays in the New History of the Early Modern Era*, (Baltimore: The Johns Hopkins University Press, 1984), 457-489.

¹³⁶For bond payable in tobacco, *Daniel Cavoire and Francis Lee v Mathew Force*, 1685, The Mayor's Court Papers, Division of Old Records, County Court Building, New York, 1:5. Hereafter, MCP. For money substitutes see *RNA*, 6: 23.

Under covenants plaintiffs might claim compensatory damages for the defendant's failure to complete the terms of the agreement between them. When sued under a covenant either side might challenge the agreement's existence or the interpretation of its terms. In 1670 Conrad Tenicke, Abel Hardenbrock, Kaersten Laersen, Jan Harberdingh, "appearing in court for themselves as well as for the other shoemakers," complained that Arian and Stoffel Van Laer neglected to ground and pound their tan in accordance with an agreement entered into between them and the shoemakers in the city. The Van Laers successfully defended their case by arguing that it was impossible for them to profitably crush the tan given the price agreed in the contract and they therefore renounced the agreement as they were entitled to do having given one year's notice.¹³⁷

When plaintiffs sought to recover a specific amount from breaches of agreements they sued for debt. Suits for formal debts included written bonds or "obligations" of one kind and another. However, plaintiffs also sued for debts without formal written bonds or contracts on the basis of spoken agreements and past exchanges.¹³⁸ That men in commerce differentiated between formal and informal agreements, and that litigants and the court were prepared to hear claims in regard of both, is clear from the distinction made

¹³⁷Alternatively, in June 1668 Isaacq Van Tright sued Gelyn Verplanck to whom he had sold a parcel of "Osnaburgh linen at 20 ells for one [pack of] good, whole, strong Albany beaver." Van Tright complained that Verplanck paid him with "poor Southern beavers." In his defense Verplanck argued that their agreement had been that Van Tright should "first come and see the beavers if they pleased him which he had also done and when he had thrown some out of the pack, he received to the amount of fifty beavers." The jury found for Verplanck; see also *Jan Smedes v Capt. Martin Crieger*, January 1667, *RNA*, 6: 55, 133, 273.

¹³⁸In July 1667 Saertie Kiersteade sued Ryntie Pietersen for "earthenware delivered." Pietersen denied the debt, claiming that she had paid Kiersteade's recently deceased husband eleven beavers. Kiersteade denied that payment had been made and declared that her husband "spoke to her of the debt shortly before his decease." *RNA*, 6: 86; also see *RNA*, 6: 271, 280.

by Cornelius Van Ruyven in his suit against Jan Hendrick Steelman in 1666. coming to court, Van Ruyven presented a note (a formal, written obligation) drawn up by Steelman on 20 October the previous year. In the agreement Steelman promised to pay Van Ruyven three hundred and twenty-two florins and ten stivers for one hundred and twenty-nine ells of osnaburgh linen. Steelman admitted the debt in court, acknowledging that he had signed the agreement which was "fairly drawn."

Van Ruyven had a winning case under the law, and the court could have proceeded to judgement on the basis of the formal agreement and Steelman's admission. However, Steelman complained that he had refused to pay the debt because the price of osnaburgh linen set in the note was too high. Responding to Steelman's defense, Van Ruyven told the court that "notwithstanding he has an absolute obligation," he was prepared to "submit to the judgement of one or two impartial persons as to the price of Osnaburgh linen." Furthermore, he went on, he would not have forced the issue in the first place "had not the def given evil and insulting words instead of payment."

Van Ruyven's distinction between his "absolute obligation" under which he was entitled to payment and the judgement of two impartial persons reveals the intimate relation between local expectation and the law in the late seventeenth century. In a local economy run on credit it was sometimes more important that tradesmen and merchants retain their reputations than make what might appear to be an unjust profit on a deal. Van Ruyen's willingness to settle the case through impartial adjudication was a shrewd commercial decision taken to protect his name from any suggestion of unfair dealings. In other cases when defendants attempted to plead that the exchange was legally binding but unfair, the plaintiff disregarded the claim and pushed for payment anyway.¹³⁹

¹³⁹Rabba Cooty v Reinier van der Cole, June 1667, *RNA*, 6: 74.

To maintain this intimate contact between local practices and notions of fair exchange, the courts had to allow pleading forms and encourage procedures open to these kinds of claims. In addition to single covenanted transactions and debts for specific exchanges, colonial tradesmen did business on account. Like covenants, suits involving accounts were precise and could be challenged on the basis of specific details.¹⁴⁰ Responding to a claim for debt made on the basis of an account or a covenant, a defendant might introduce offsets which encouraged a general reconsideration of the state of accounts between the parties. In June 1666 Mdm. Beekman sued Wolfert Webber the carter for eighty-six florins zeewan (wampum). Webber admitted the debt but countered that "he has paid the plt by the brickmaker more than the plt gives credit for."¹⁴¹ In some cases the production of offsets turned the case into a general reconsideration of dealings over many years and brought in third and fourth parties, not simply as witnesses but new factors in the dispute.¹⁴² In effect this meant that not only the transaction brought before the court, but any number of transactions between the parties prior to the one in consideration could be called into question making it difficult to distinguish cases for covenant, debt or account from one another.

The procedures the court employed to hear the issue in dispute reflected the variegated manner in which cases came to court. Throughout the first twenty-five years of

¹⁴⁰In June 1668 Robert Coe sued the aptly named butcher, Roelef de Slaughter, for forty seven florins in wampum owed on an account. De Slaughter replied that he had paid the defendant "by Egbert Myndersen" and the court ordered that "in Case Egbert Myndersen could not proeve the paymt of the sd fl 47 to the plt: that then this def. shl pay the debt." *RNA*, 6: 133-134.

¹⁴¹*RNA*, 6: 91.

¹⁴²In June 1666 Jacob Wolfersen van Couwenhoven sued Jacob Stoffels for the balance of fifteen skepels of wheat in payment for a boat which Couwenhoven delivered to Stoffels twenty three years previously, *RNA*, 6: 11, 16, 20, 22.

English rule plaintiffs personally appeared in court to commence their cases. If the defendant admitted the obligation and agreed to settle, the case ended there. Plaintiffs and defendants were permitted three defaults, or failures to appear and offer a plea, before either side could request judgement on the basis of this failure to appear. The court observed and enforced the default rule, throwing cases out where people failed to appear on the third occasion or delayed proceedings with requests that the court deemed unnecessary.¹⁴³

However, the court placed a premium on the testimony of litigants and witnesses for and against the case, and was prepared to delay proceedings and wait for key witnesses from either side and to call for appearance on more than three occasions.¹⁴⁴ In 1666 Johannes de Witt sued Jacob Couwenhoven for ninety-one guilders in *zeewan* which Couwenhoven admitted he had owed but claimed he had repaid with five elk hides for which De Witt had not credited him. De Witt requested a suspension of the case until his wife returned from Albany to testify on his behalf, and the court agreed. However, De Witt's wife's testimony was not enough to secure his case. Producing his account showing the five elk hides, Couwenhoven claimed that "an item of 91 fl *seewan* is unjustly debited by the plt to def," and "that therefore there is due to him the def by the plt the balance in *zeewan*." The jury found for Couwenhoven, and De Witt lost his case.¹⁴⁵

¹⁴³*RNA*, 6: 259, 264.

¹⁴⁴Even after defaulting on three occasions the magistrates allowed Arian Van Laer to delay his trial when he explained that he "has to work at Vlackebos (Flatbush) and has 5 or 6 hands with him." *MCM*, 178; *Capt Richard Martin v John Cooley* 24 September 1667, *RNA*, 6: 96.

¹⁴⁵*RNA*, 6: 96.

When the parties in dispute could not agree the court offered a number of alternatives for judging the case. Much of the time the magistrates simply passed judgement following a hearing.¹⁴⁶ In many cases litigants preferred to rely on the magistrate's fiat in the first instance. However, Dutchmen did appeal to jury trial if they failed to win a favorable judgement before the magistrates the first time the case went to court.¹⁴⁷ One reason for preferring a speedy decision by the magistrates was no doubt to minimize the costs involved in a case. Under the Duke's Laws all those bringing cases to court were entitled to have their case heard by a jury of local men; but the cost of the jury (food, wine and other expenses) had to be covered by the litigants. After 1667 litigants who used a jury also had to submit a written declaration eight days before the trial. For many this might have required the expertise and additional expense of a notary public or attorney. Even when people brought their own cases and did not require a jury there might be costs for materials used in drawing up the case and court official's fees. In the first decade after English conquest, however, the costs of litigation related primarily to public court costs which were regulated with varying degrees of success. Litigants could minimize their costs by appearing in court when expected to and agreeing their differences without juries or lengthy hearings which might involve feeble officials to serve warrants, gather the jurymen, and deliver messages to various parties.¹⁴⁸

¹⁴⁶Henry Breser v Egbert Myndersen, January 1668 and Dirck Claesen Pottebacker (brickmaker) v Teunis Tomissen, a mason March 1670 March in *RNA*, 6: 170, 225.

¹⁴⁷Hendrick Obe v Frederick Phillipse, July 1666, *RNA*, 6: 6, 12, 15.

¹⁴⁸Regulation of court and municipal officer fees had been enforced since the early days of Dutch rule. The Duke's Laws included a whole section on fees for public officials but made no mention of private attorneys. On June 11 1667 the court set fees for the "Sheriff, Secretary, Messenger, and Attornies of this City," but it is not clear if this related to private individuals. When inhabitant's complained about fees it was against overzealous court officers. In 1672, "Uppon Complaints Made to this Court that some of the Officers

In addition to judgement and jury trial, the court used arbitrators to bring parties to agreements and then report their judgements to the court. Examples abound of the court directing small groups of local men to "examine the a/c hear the parties arguments and reconcile them in this regard if possible, and if not to report their award to the court." While the arbitrators met to decide the case they were provisioned with food and drink at the litigant's expense. The costs of arbitration encouraged litigants to have their books straight before the arbitrators sat to consider the case. In June 1666 when Blathazar lost his case against Joost Vander Lind he had to pay for the defendant's "loss of time, [and for] meals and drinks money advanced for wine for the arbitrators and witnesses," and the costs of the court since the arbitrator's decision.¹⁴⁹

In addition to the arbitrators appointed by the court, litigants often chose their own arbitrators in a dispute and then came to court to settle the case before the magistrates. In July 1666 Jacob Vis came to court and reported that the partnership accounts between himself, Johannes Vander Meulen, and Capt Jacob were too confused "and the arbitrators cannot give an absolute decision." Vis proposed to that Willem Bogardus make up the accounts provisionally before the arbitrators considered them again. Alternatively the court often ordered the litigants to go and find their own arbitrators and return when they had agreed a settlement.¹⁵⁰ By admitting the cases in this form and hearing the appraisal of

do exact their fees much more as by the Law is allowed," the court declared that fees and charges had to be signed off by the Mayor or his deputy. This provision ran until 1687 when a committee formed to investigate fees leading to the regulation of the mid 1690s. When complaints of overcharging were made to the court, it was against these public officials who sometimes over stepped their authority in demanding fees from litigants. *RNA* 1: 220; 3: 46, 168, 199, 205; 6: 77, 106, 107, 178, 363-64; *Colonial Laws*, 1: 136; *MCC*, 1:63; Hamlin and Baker, *Supreme Court*, 260-261

¹⁴⁹*RNA*, 6: 2,14.

¹⁵⁰*Marretie Gerrits v Mary Goosens*, November 1668. Marretie Gerrits sued Mary Goosens for the two hundred and ninety florins zeewan owing for "carpenters tools

arbitrators appointed by the litigants the court added legal sanction to the agreements reached between tradesmen outside of the court. The parties also kept the costs down and brought a clearer issue for the magistrates to decide without requiring a jury trial.¹⁵¹

The court used arbitration to resolve cases between parties and added its own judgement to enforce the agreement reached. This was apparent in cases where debtors tried to avoid paying for work or claimed that the work of a tradesmen was "badly done." In June 1671 Mistress Anthonie sued Jan Harmensen for the return of 25 florins paid for a churn made by Harmensen which Anthonis claimed was not merchantable. Harmensen declared that the churn "is saleable" and offered to "submit himself to the decision of two impartial coopers." The court appointed Jan Jansen Van Briested and Evert Wessels to inspect the churn and to decide the disputed on the quality of the churn. Similarly in September 1667 John Cooley sued Capt Hatshwell for twenty-eight florins in wampum for work completed over the summer, but Hatshwell "replyeth that the work was not made fit for service." Upon reviewing the work, the court sought to reconcile the parties by requiring Hatshwell to pay sixteen guilders and the costs be split between them.¹⁵²

This could drag out cases and require the courts to hear all manner of presentations and expert witnesses. When Goert Olphertsen, a carpenter, sued Annatie Gerrits for one hundred and six florins in wampum for wages and lime delivered "as per account," Geerits's son in law defended her case arguing that Olphertsen work "is not properly done and he also says that he can pay in linen." The court authorized Sanders

sold to Mary and picked up by her son." The court listened to the two women and heard the "declaration of Jan van Bommel, who [had] appraised the tools at parties request." The court found for Gerrits and ordered Goosens to pay what she owed. *RNA*, 6: 156.

¹⁵¹*RNA*, 6: 26-27.

¹⁵²*RNA*, 6: 96, 304.

Stulther and William Churcher to inspect the work and make a report. Following Stulther and Churcher's report the court ordered that Olphertsen should make the work "good and tight" provided that Gerrits "furnished the materials at a proper season." If they failed to supply the materials, a second investigation was ordered to establish the extent of the work and how much Geritts could subtract from the principle sum for the value of the work left undone.¹⁵³

When the court and litigant appointed arbitrators reported their decisions to the court they rarely detailed their discussion and the reasons behind their decision. We can get an idea of the kinds of disagreements they adjudicated, however, from the disputes they were asked to resolve and the cases decided in court and recorded in the minutes. A common disagreement in cases on account and contracts arose over the reckoning of debts and the value of commodities and services in transactions and liabilities for payment. In these disputes men were able to make appeals to conditions which did not form part of the express agreement or were presented in a formal written pleading: thus in June 1667 Rabba Cooty sued John Coely for nondelivery of some pipe staves, "whereas the def has delivered him a parcel of staves at five score in the hundred and the common number by all merchants is six score." Citing the terms of the agreement, Coely argued that the two had agreed the rate of five score in the hundred and he asked for "two indifferent persons" to "view the staves...[and decide] whether they be not good according to the covenant." From the minutes it is not clear who won the day, but no one raised an objection to Cooty's claim other than that it may be considered weaker than whatever he had agreed to do in the express details of the covenant. The importance of locally accepted ideas of value and the supporting testimony of local people is particularly clear in the practice of

¹⁵³*RNA*, 6: 313, 317.

settling cases upon the oath of the defendant that they did not owe the debt. For cases where no written agreement existed the imputation of a debt was suspicious if witnesses supported the debtor's denial and the defendant was prepared to swear an oath refusing the debt.¹⁵⁴

Following the return of English rule, after the Dutch interlude of 1672-74, Edmund Andros enforced stricter legal practices and changed the operation of the court in subtle ways. On 17 November 1674, the Mayor's Court ordered that "no more papers" were "to be brought in the Dutch language." In 1677 the court drew up a revised schedule of fees payable by participants in cases.¹⁵⁵ The business of the court changed after 1675, most notably in the reduction of the number of petty cases for small amounts. Compared to the earlier period, the number of minor cases declined. The requirement that written documents be submitted in English, new court fees, and Andros's use of the courts for political ends appears to have driven many out of the courts. We cannot know for sure, but either Dutch tradesmen ceased to argue over trade (which seems unlikely), or they withdrew from the English court and settled their disputes through the arbitration procedure which had straddled the world of private contracts and civil litigation for the previous ten years.

Even after 1675, however, the court continued to allow pleas which made claims to local practices, and offer a flexible procedure for legal resolution of disputes. The court

¹⁵⁴Rabba Cooty v John Coely, 11 June 1667; Johannes de Wit v Jacob Leendersen, *RNA*, 6: 20, 76. Oaths played a similar role in earlier English law, see A.W. Simpson, *A History of the Common Law of Contract. The Rise of the Action of Assumpsit* (Oxford: Clarendon Press, 1975), 139.

¹⁵⁵Hamlin and Baker, *Supreme Court*, 1: 260.

heard cases for debt presented informally without a specific plea.¹⁵⁶ The court also admitted imprecise suits for debts settling in the interests of equity rather than legal precision.¹⁵⁷ Yet on other occasions the details of the case could be tried with impressive precision. When Jacob Leisler sued the baker Reynier Williamson for debt in June 1683 he referred to the "balance of accounts made up the 28th of February 1679." Williamson successfully defended his case by establishing that the "salt therein charged was never delivered."¹⁵⁸ Litigants also continued to appeal to local circumstances and have these appeals recognized by the magistrates. In 1675 John Sharpe sued Ralph Hutchinson and declared that they "hath had dealings together for years and years," but Hutchinson refused to render a true account until forced to do so in court. When compelled to reckon his account Hutchinson charged Sharpe 480 guilders freight for five thousand bricks from Oysterbay to the city. Sharpe argued that this was deliberately exorbitant and "ye world cannot but cry out shame att y unreasonableness of [Hutchinson's] demand," which was far in excess of what it would have cost to bring the bricks from Albany, more than twice the distance.¹⁵⁹

The procedures of the court continued to favor the involvement of litigants and local considerations. There was a noticeable tightening of the rules regarding defaulters

¹⁵⁶On 9 March 1675 Dirrick Evert sued John Blackwell claiming that "he hath layed out and disbursed services and monys for the defendant. Having heard what both had to say the court ordered Blackwell to pay Evert "his just due and costs of suit." MCM, 1674-1675, 221.

¹⁵⁷William Moore, a marine v Edward Read, master of the ship the *Golden Hind*, 15 January 1683, in MCM, 1682-1695, 89. See also the two other cases for wages owed by Read which followed Moore's success.

¹⁵⁸Jacob Leisler v Reynier Williamson, 5 June 1683, MCM, 1682- 1695, 57.

¹⁵⁹John Sharpe v Ralph Hutchinson, MCM, 1675 -1677, 129.

after 1684 and a general increase in the formality of the tone of pleadings; it is after 1683 that some litigants begin to present their cases in the formal language of the English common law -- some even offering pleas in assumpsit about which we will hear more later. However, the court still allowed some litigants more than three defaults: in June 1686, the court called John Cooley to appear and defend his case thirteen times and sent the sheriff to look for him on more than one occasion, before finding him in default for the sum of nine pounds six shillings and eight pence. The execution of judgements also still relied on plaintiffs returning to court to complain of the defendant's failure to submit to the terms of the magistrates' decision.¹⁶⁰

5. Conclusion.

In the seventeenth century claims to rights and privileges formed the basis for various struggles in colonial work and daily life. Bakers and carters represented themselves as a group to secure advantages and then competed within their trades as individuals seeking commercial gain. Work did not simply happen within the static terms of a prescriptive order, and all tradesmen did not address the colonial market as equals. Colonial commerce took place within a continual process of negotiation around privileges and duties. The transition to English rule which some bakers negotiated to attain a favored position could just as easily result in the subjection of a group of men seeking their fortunes as the city's carters.

The success or failure of an individual or group did not rest on their entrepreneurial skills and the vicissitudes of the market alone. Success depended on an

¹⁶⁰Thomas Ashton v Sam Wilson, 21 April 1675, MCM, 1674 -1675, 53.

individual's or group's ability to claim privileges recognized by powerful agencies and then to assume responsibility for the associated duties. These reciprocal sets of privileges and duties could be set out in local ordinances such as the freeman's claim to a share in the urban trade and his duty to pay taxes; or they could be informal expectations such as the bakers' claim for a fair return for their bread and the requirement that they provide for the town's needs. The division between the two was never absolute. Informal claims for a fair profit could be formalized with municipal inspectors and an assize of bread linked to the price of grain; informal obligations, to repair highways and collect the public garbage on Saturdays, could be formalized in service agreements and in no time at all become part of the "laws and customs of this place." As they asserted claims to certain privileges, some successfully others not so, tradesmen played a role in their own history. In so far as they protected their trades by excluding outsiders, they also played a role in the history of others.

The city's response to tradesmen's petitions affected the material conditions of working men and women and the language of privilege within which they made their claims. The bakers were more successful than the carters at securing their place within trade and the urban polity. We can trace some of the differences between colonial artisans, individually and in their respective groups, based on their ability to claim privileges sourced in legal and customary precedents and have these claims recognized. The authority of the New York City corporation, was vital in the process of group formation.

The bakers were treated as a guild or at least had their claims for privileges dealt with as private interests worthy of support by the city. Baking privileges were maintained in the service of the common good and in respect of the bakers' position as providers of the town's bread. In the case of carting, however, the city valorized the trade rather than

the position of the tradesmen, and regulated carting in the interests of the common good; carters became workers in a public utility, which eroded their privileged independence as private tradesmen, albeit in the interests of the common good. The implication of this different treatment for the language of privilege is important. The treatment of carters as public workers diminished the privileges they held, or could even claim, as private tradesmen. More importantly, it elevated the claims of the inhabitants, their clients, over the service the carters provided. Gradually, even unintentionally, the privileges the carters claimed as tradesmen lost ground and were subsumed by the claim that citizens rightfully made on the carters as public workers: a rightful claim, supported by the city, to a well mannered, efficient carter who carried merchandize for a set price.

The support of bakers' privileges operated in exactly the reverse, and, leaving baking to private tradesmen, elevated their status and diminished the effect that customers and even the city could have on the trade. The bakers developed as a coherent group because they were perceived as a coherent group; this enabled them to withstand internal dissent and external critics, exert influence on the market, the supply and price of raw materials and baked goods, and even to manipulate the entry and exit of unregistered bakers to the trade. Even the bakers were not immune from the effects of a crumbling language of privilege which underwrote their position within the local economy. In the late 1640s, Hendrick Willemsen had been summoned to represent all the bakers and explain why they baked no bread. By 1685 bread was identified with individual marks and production monitored in spot checks by some bakers, who had migrated from their bakeries to the ranks of municipal officialdom as bread inspectors, weighers, and measurers of various sorts. If this creeping individuation was as yet insufficient to undo the bakers as a trade, it nevertheless reveals that both the bakers and carters experienced changes in status based on the deterioration of the language of privilege in the latter part

of the seventeenth century. In as much as it occurred within the same public discourse on privileges and duties, this experience was the same. However, given the different contexts inhabited by carters and bakers and the degree of difference in their experiences, the two groups had distinct histories.

Nowhere are these distinctions clearer than in the impact of the struggles over privileges and duties on these tradesmen's material lives. The bakers used their autonomy to avoid punishment, control trade, and move up the social scale through municipal appointment and elected office. The carters, remained dependent on the whim of city, were subject to constant supervision and disciplinary action, and, for the most part, lived lives in miserable obscurity. Overall, the fortunes of the two groups can be tracked by simple measures: the price of bread kept pace with a volatile and inflationary currency and the bakers increased their personal wealth and standard of living; the fees for carting were held at a low rate, or even reduced, while competition increased within the trade, and carters suffered real deprivation as a consequence.

As the magistrates who sat in the Mayor's Court the men who formed the municipal authority also considered tradesmen's claims regarding the standards of work and remuneration in their craft. Tradesmen and their customers looked to the Mayor's Court to decide what it was reasonable to expect from a skilled craftsmen and what their work was worth when completed properly. Litigants enjoyed a degree of latitude in the kinds of cases they brought and the manner in which their evidence was presented and heard. In particular the courts considered claims in regard of local practices and established views regarding fair dealing, even when they lay beyond the express terms of formal contracts or pleadings in court. Law was not yet an arcane practice requiring specialized knowledge and those who represented others were usually family members, wives, neighbors, and business associates; the attorneys who did represent others were

men for whom the law was a sideline in addition to their usual business as a merchant or high level municipal employee. The court's readiness to move beyond the specifics of contracts reveals its commitment to the idea that tradesmen had a justifiable claim regarding the value of their labor above and beyond the express terms of formal contracts. As such it was possible for different tradesmen to make claims regarding "fair" payment for their services with a reasonable expectation of success.

CHAPTER FOUR.

Liberties, Privileges and the Claim of Custom in the Eighteenth-Century Trades.

1. Introduction.

By 1684 the Whigs were in retreat and Charles II and his Tory supporters controlled parliament once again. The case for colonial autonomy and charter rights was presented as James the Duke of York returned from Scotland a stronger and more formidable figure than before. New York's Charter of Liberties became one target in a wholesale assault on colonial charter privileges. When James succeeded to the throne in 1685 he established the Dominion of New England to increase control and facilitate revenue collection in England's fractious north American colonies. The Dominion headed by New York's old adversary Edmund Andros took over the colony's government. The colonists in New York despaired as the city records which set out the local laws and guarantees of liberties and privileges were taken to Boston, the seat of government for the Dominion.¹⁶¹

In New York tax collection became more stringent, the colony's economy stagnated and settlers moved to Pennsylvania where the inhabitants enjoyed greater guarantees for their rights and privileges. By 1686 Pennsylvania's population had surpassed New York's, although it had only been established in 1672. The Governor,

¹⁶¹Jennifer Levin, *The Charter Controversy in the City of London, 1660-1688, and its Consequences* (London: Athlone, 1969), 2.; David S. Lovejoy, *The Glorious Revolution in America* (Hanover: Wesleyan University Press, 1987), 115-121.

Thomas Dongan, promoted his fellow catholics in local affairs and the attacks on the autonomy of the Dutch church continued. In 1687, while the French marshalled their forces to the north, Dongan insisted that the inhabitants of New York swear a loyalty oath to James II, an avowed catholic. It seemed to many as if the colony were slipping slowly but surely into catholic hands and that even the future of the European Protestant reformation was in jeopardy. In the spring of 1689 rumors of James's flight to France and the accession of the Dutch Prince William and his English wife Mary to the throne of England filtered into the troubled and divided colony.

When news of the Glorious Revolution in England reached America, the colonists acted. In Boston a mob clapped Edmund Andros in irons. In New York a combined force of Long Island town militias and disaffected Dutch and English inhabitants in the city united under a local merchant and Protestant zealot, Jacob Leisler. Leisler declared his intention to hold the city for William and Mary against the "Popish Doggs and Divells." The insurgents in New York banded together in defence of their lives, liberties, and the Protestant religion and prepared for a possible French invasion from the north in support of James. One cannot discount the economic woes and frustrated ambitions of local merchants over recent years as causes for the revolt. However, Leisler's Rebellion was motivated first and foremost by a concern for the Protestant reformation and the protection of political liberties: an anonymous Leislerian subsequently recounted that the townspeople's "great dread" was that "the late King James was bound in Conscience to indeavour to Damn the English Nation to Popery and Slavery."

There were radicals in the uprising, even the administration, who sounded like English Levellers and spoke of the rights of men. But Leisler and the majority of his followers took their compass from mainstream seventeenth-century notions of social and political order built upon hierarchy and deference. The Leislerians were theological

radicals fighting for the Protestant reformation and their political liberties as freeborn Englishmen and Dutchmen, not proto-democrats in search of equal rights for men regardless of their place. Leisler was a deeply religious and wealthy man who ruled the colony with arbitrary authority and an iron hand which eventually proved his undoing. The political legacy of Leisler's rebellion was a provincial factionalism dominated by urban and landed oligarchies endlessly vying for the support of urban freemen and provincial farmers, rather than a movement for Lockean liberty. Leisler appeared as terrible reminder of a distant but nervously remembered European past to the wealthy merchants who had ruled and profited from New York for so long. The unpredictability of his politico-theology harked back to the radicalism and regicide of the English Civil War. Wealthy and powerful New Yorkers used their London contacts to persuade William and Mary of the dangers of such an unstable, if ardent, supporter and the crown responded with alacrity.¹⁶²

In 1691 the newly appointed Governor Sloughter arrived in New York, removed Leisler's government, and tried him and his cohorts for treason before a hastily convened court: Leisler and six others were convicted and sentenced to be "hanged by the Neck and being Alive their bodys be Cutt Downe to the Earth that their Bowells be taken out and they being Alive burnt before their faces that their heads shall be struck off and their Bodys Cutt in four parts and which shall be Desposed of as their Majesties shall Assigne."¹⁶³ While waiting for confirmation of the sentence from London, Sloughter set

¹⁶²David William Voorhees, "The Fervent Zeal of Jacob Leisler," *WMQ*, 3d Ser., (1994), 447-472.

¹⁶³Reich, *Leisler's Rebellion*, x-xx.

about reforming the colony's government, religion, and law to ensure future stability and the security of English rule under King and Parliament.

Under the settlement of 1688 Englishmen had their ancient rights guaranteed and placed in the trust of the government of William and Mary and parliament.¹⁶⁴ After 1688 the sovereignty of the king in parliament was indivisible, irresistible, credited with the force of the common law, and dignified by the divine authority of the Church of England.¹⁶⁵ The rule of law which held all men as its subjects underpinned the rights and liberties secured in the Glorious Revolution and parliament's claim on the obedience of Englishmen. Eighteenth-century law was the institutional expression of this Whig political philosophy and a defining aspect of political discourse in the eighteenth century.¹⁶⁶ Law provided the foundation upon which English subjects everywhere claimed the rights and

¹⁶⁴J.C.D. Clark, *The Language of Liberty, 1660-1832. Political Discourse and Social Dynamics in the Anglo-American World* (Cambridge: Cambridge University Press, 1994), 46-125

¹⁶⁵This the concept of sovereignty adapted from seventeenth century debates by William Blackstone in his *Commentaries on the Laws of England*. For the significance of Blackstone's conception in eighteenth century American politics see, Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1969), 198-229; Gordon Wood, *The Creation of the American Republic 1776-1787* (Chapel Hill: North Carolina University Press, 1969), 344-354; J.C.D. Clark, *The Language of Liberty*, 1-41.

¹⁶⁶For the dominance of common law in English political debate and colonial courts, see Howard Nenner, *By Colour of Law: Legal Culture and Constitutional Politics in England, 1660-1689* (Chicago: University of Chicago Press, 1977), and Zechariah Chaffee, Jr., "The Colonial Courts and the Common Law," In David H. Flaherty ed., *Essays in the History of Early American Law* (Chapel Hill: University of North Carolina Press, 1969), 53-82.

privileges of freeborn men. Throughout the eighteenth century claims regarding law and the rights of Englishmen were invoked to both celebrate and inhibit assertions of imperial power. Indeed it would be a dispute over the legality of political authority, trade, and taxes which ultimately divided England from her colonies.

In addition to these ancient and fundamental rights free men in New York claimed privileges which were granted and guaranteed by local law. Privileges were public enhancements, more precise definitions, of an individual's status or position over and above the condition of liberty which all freeborn Englishmen enjoyed. Privileges were granted with duties that the holder use their privileges in the interests of the common good and recognize the privileges of others. The duty one had to use one's privileges properly and observe the correct use of others drew its sanction from the moral obligation that subjects obey the sovereign at the foundation of the English constitution and colonial society. As described by the Whig oracle, Edward Blackstone, the obligation under the English constitution required "that the community should guard the rights of each individual member, and that (in return for this protection) each individual should submit to the laws of the community." The only effective guarantee for rights and privileges was the obedience of all men to the rule of law under the sovereignty of the king in parliament "without which submission of all it was impossible that protection be certainly extended to any." ¹⁶⁷

¹⁶⁷Knud Haakonssen, *Natural Law and Moral Philosophy* (London: Cambridge University Press, 1996), 321.

The victory of the Whigs and the accession of William and Mary affirmed the force of the rule of law over the claims of hereditary monarchy. The form of government Sloughter established in New York implemented this constitutionalist Whig view compromising England's imperial authority with colonial claims to a privileged say in local affairs. The governor was a royal appointee and headed the government ruling with a council of hand picked local notables (also appointed by the crown) on the governor's recommendation. The council served as executive advisors and an upper house in the provincial polity. A colonial assembly served as the popular lower house to which all counties sent two representatives, except New York City and county which sent four. The governor's commission required that he pass laws with the "advice & consent of the Council and Assembly." Throughout the eighteenth century the governor's view of New York's role in imperial policy and the assembly's interest in purely local concerns clashed. For the remainder of the colonial period New York's political scene would be dominated by political factions trying to secure power and influence through the popular vote and the assembly or by currying favor with the governor and his council.¹⁶⁸

The Ministry Act in 1693 provided for public support of the Church of England in colonial New York. Many in the colonial assembly opposed public funding for an established church. In 1692 Governor Benjamin Fletcher, Sloughter's successor, addressed the question of public funding and turned the language of privilege, so often

¹⁶⁸Carl Lotus Becker, *The History of Political Parties in the Province of New York, 1760-1776*, (Madison: University of Wisconsin Press, 1960), 5-23; Alan Tully, *Forming American Politics*, (Baltimore: Johns Hopkins Press), 213-249.

used by the colonists against imperial authority, in his favor. When the assembly refused to agree funding for the Anglican church, Fletcher sarcastically pointed out that "There are none of you, but are big with the privileges of Englishmen and Magna Charta, which is your right; and the same law doth provide for the Religion of the Church of England, against sabbath breaking and other profanities." The argument over the funding and selection of ministers for an established Church raged on, but when construction commenced on Trinity Church in 1697 Governor Fletcher's charter dated its existence from the 1693 Act. It was in the reform of the judiciary, however, that New York's tradesmen would feel the change in government most keenly.

On 6 May 1691 the Governor and the assembly passed an Act for Establishing Courts of Judicature. The statute set up a centralized Supreme Court in New York with original jurisdiction over all civil pleas valued at twenty pounds or more and an appellate jurisdiction to review cases worth more than twenty pounds originally decided in the lower courts. In New York the Mayor's Court continued to serve as the Court of Common Pleas and met once a week. The Act authorized judges to make appropriate procedural rules subject to one condition, that they provide for jury trials. All disputed matters were to be resolved by "the verdict of twelve men of the neighborhood," except where judgement was entered against a defendant for failure to plead.¹⁶⁹

¹⁶⁹Judgements of the Supreme Court worth one hundred pounds or more could be appealed to the governor and his council. The statute also described lower courts in the province. Hamlin and Baker, *The Supreme Court*, 1: 3-78.

Passage of the 1691 Judiciary Act affirmed the English common law, its forms and procedures as the law governing commerce in the colony. The act also initiated a series of struggles between the governor and assembly over the structure and nature of legal practice in the colony. There was noticeable tightening of procedures in the late 1690s and early 1700s as a consequence of the public discussions of the courts.¹⁷⁰ Over the course of the previous century the English common law had become the primary commercial law in England, and its confirmation in New York removed all vestige of Dutch legal practice. Under the influence of the common law the New York Mayor's court formalized judicial proceedings and used English precedents as its source of legal reference. Prior to 1691 tradesmen routinely invoked local practices and values to support their cases. As the eighteenth century progressed, however, professional lawyers assessing the merits of a case passed over local considerations and referred to English legal opinions and the wisdom of custom represented by the ossified precedents of the English common law. The formalization of the law of commerce undermined the place of the artisan and tradesmen's claims to a fair price for the work they did in ways which we shall examine in chapter six.

On the municipal scene, however, the affirmation of the common law and the assertion of custom as a sanction bolstered claims for local privileges. From early in the seventeenth century English lawyers defended the force and wisdom of the common law

¹⁷⁰New procedural rules were introduced in 1699, 1702, 1703, 1704, 1706, 1721, 1722, 1727. Hamlin and Baker, *The Supreme Court*, appendix.

by grounding it in the authority of custom, as the "accumulations and refinements of experience." The common law differed from the immediacy of statute and written law, which contained little more wisdom than a single generation's or parliament's, philosophical reflection. As Sir John Davis argued in 1612,

For a custome taketh beginning and groweth to perfection in this manner: When a reasonable act once done is found to be good and beneficial to the people, and agreeable to their nature and disposition, then do they use it and practise it again and again, and so often by iteration and multiplication of the act it becometh a *Custome*; and being continued without interruption time out of mind, it obtaineth the force of a *Law*.¹⁷¹

In spite of the logical implication that customary law implied constant legal adaptation to new circumstances, however, custom in the English common law was ahistorical and ossified as ancient practice. In the view of lawyers and English political thought, the common law and the English constitution were not merely ancient and the work of remote legislators; they were immemorial in the precise legal sense of dating from a "time out of mind," a time beyond the memory of man and historical record. By stressing the authority of custom as legal sanction the affirmation of the English common law enhanced claims regarding the rightfulness and legality of local practices and privileges. Throughout the seventeenth century New York's leaders and its tradesmen had referred to the customs of Holland, England and the colony to support claims to certain privileges. After 1691 justifications supported by claims to custom took on greater force given the significance of custom as sanction within the English common law.

¹⁷¹J.G.A. Pocock, *The Ancient Constitution and the Feudal Law. A Study of English Historical Thought in the Seventeenth Century* (New York: Cambridge University Press, 1987), 33.

Custom continued to play an important part in rhetorical strategies as long as political debate remained loyal to the seventeenth-century refusal to accept arguments which move beyond specific references to English history and laws. The settlement of 1688 showed that mainstream political debate was unprepared to admit justifications supported by claims to universal abstracts such as the natural or divine rights. When political disagreements arose men were expected to look into history, custom and the known laws of England for their resolution. In this scheme arguments using custom occupied a specific and potent place. The effectiveness of custom as a sanction lay in its claim to the authority of experience and common good. A custom was a "reasonable act" which was found to be "good and beneficial to the people" so that they "practise it again and again" and "being continued without interruption time out of mind, it obtaineth the force of a *Law*." Custom was an authority beyond positive law but within experience which could challenge the whims and interests of legislators without having to rely on claims to abstract divine and natural principles. Custom could be invoked by men at different levels to support local practices and its place within the English common law added weight to the legal claim of those practices. In eighteenth-century New York claims to custom played an important role in arguments regarding the right use of property and respect for privileges and, as such, in the eighteenth-century idea of a tradesman's place.¹⁷² In the years following the affirmation of the English common law in the

¹⁷² The following discussion relies upon Haakonssen, *Natural Law and Moral Philosophy*, 15-61, 310-336; Peter Birks and Grant McLeod, "The implied contract theory

colony, merchants and tradesmen invoked the force of custom to justify their self interested claims to the privileges of their place and to support certain views of the correct use of property. When the city and its tradesmen pursued their interests they invoked the sanction of custom and grounded their appeals in the moral obligation at the heart of the Blackstonian conception of the English constitution. Thus the affirmation of the English common law and the claim of custom within it served to bolster the claims of some tradesmen to special consideration given their place and the usual practice of the locality. When arguments between individuals and groups claiming conflicting privileges developed they were resolved through petitions and complaints made to the mayor and aldermen, either as the common council or as the magistrates who sat in the Mayor's Court.

2. The Customary Privilege of the Flour Bolting Monopoly.

Under the ancient constitution and English common law freeborn English subjects had a right to property. However, this right to property was a political right to be protected in one's tenure of things properly possessed and did not mean that men had a right to *use* property (meaning, as we use the term today, absolute possession of land, labor, and chattels) in any way they thought fit. In the seventeenth century rights referred

of quasi contract: civilian opinion in the century before Blackstone," *Oxford Journal of Legal Studies*, 6 (1986), 46-85; for the traditionalism and historical sensibilities of English constitutionalism and the common law mind see, J.G.A. Pocock, *The Ancient Constitution*, 1-56, 255-389.

to faculties or specific things properly possessed by all, such as trial by jury or taxation with the consent of parliament. Use of property was regulated by the common council, provincial assembly, and governor in the interests of the common good. Use of property took account of the privileges and duties of tradesmen in their place. Thus the bakers' privileges limited access to and production methods in the trade in return for which they kept the town supplied with good quality coarse bread.

As a chartered corporation with rights and property like any individual the common council claimed privileges for New York on the basis of the city's position within the colony's social and economic order. The idea that the city and its residents qualified for special consideration given their role in provincial trade dated back to the burgomasters' campaign against the West India Company in the 1650's. The early English governors granted the city preferential treatment in the interests of encouraging commerce and the Dongan charter of 1686 provided a written, legal foundation for the notion that the city enjoyed a privileged place regional commerce. In the early 1690s the city was called to defend one of its most important privileges: the monopoly on bolting (milling) grain and packing flour for export from the colony.

Restrictions on the free movement and retail of the colony's grain dated back to the Dutch period and measures passed to ensure a sufficient bread for the towns peoples' needs.¹⁷³ Following the English take-over in 1664 the city had translated these concerns for community bread supply into a valuable commercial favor requiring farmers to bring

¹⁷³*RNA*, 1: 27, 50

their surplus to New York for bolting, packing, baking and resale. An order passed in 1671, and renewed on and off thereafter, guaranteed the city a monopoly in the grain processing and export trade and ensured regular work for local millers, bolters, coopers, and bakers. The city justified this restriction on provincial farmers trade by arguing for the need to provide for the bread supply and to prevent the export of adulterated flour which undermined New York's international reputation in trade. In 1684, in the wake of the Charter of Liberties, the city secured the passage of the Bolting Act which further strengthened their claim to the monopoly which they zealously enforced. However, during Leisler's Rebellion the administration repealed the monopoly and ordered that "all towns and places shall have equal freedom to bould [flour] and bake [bread] and to transport where they please...and...one place shall have no more privileges than the other."¹⁷⁴ Following the Governor Sloughter's arrival and Leisler's execution, a group of provincial farmers opposed to the city's bolting privilege organized opposition within the assembly and persuaded Governor Fletcher to suspend the monopoly in 1694.¹⁷⁵

Exasperated by the repeal of one of its key commercial privileges, the common council instructed John Graham, the recorder, to begin "a diligent search and inquiry into the antient rights and privileges of the citty," and "bring the best arguments he could

¹⁷⁴Leisler's repeal is in *DRCNY*, 3: 717, 796-800.

¹⁷⁵For other views of the flour monopoly see, Herbert Osgood, *The American Colonies in the Eighteenth Century* (Gloucester: Peter Smith, 1958), I: 263; Bridenbaugh, *Cities in the Wilderness*, 183-184; Cathy Matson, "Damned Scoundrels and Libertisme of Trade," 418-419.

conceive for the defence of the Right of the said citty." Graham's, and ultimately the city's, defence referred to local laws such as the Bolting Act, the city's right to self-preservation, and the rational and history behind the original settlement of New York City. What gathered these themes together and gave them justificatory force, however, was the city's appeal to the time honored place and function of the city within provincial commerce and the obligation which this customary function placed upon the farmers. The city's defence of the flour monopoly illustrates the continuity of claims to privileges and duties in language traceable from the seventeenth century. The vehemence and tone of the city's campaign reveals their indignation at the suspension of the monopoly. The fact that the city lost the argument suggests that the language of privilege was losing its purchase on the attention of colonial Americans as early as the 1690s.

John Graham gleaned empirical data from the archives and placed New York City at the center of a successful mercantile system. He produced a schedule of shipping revenues and flour exports from 1678 to 1694 showing that the city's shipping had almost doubled over the period. Since the late 1670s the number of houses in New York had almost trebled, and the common council estimated that six hundred of the nine hundred and eighty-three households in the city depended in some way upon the flour trade. The council argued that when the assembly ended the monopoly in 1694 it transformed "every planter's hut throughout this province...[into] a market for wheat, flour, and bisket." Consequently, "though it be after one of the plentifullest harvests that has ever been know," the farmers did not bring their grain to the city for packing and sale. Suspending

the monopoly damaged the commerce of millers, bolters, coopers, and shippers; bakers refused to observe the regulations on the price and quality of bread, and the inhabitants and especially the poor were unprovided for. Freed from the city's supervision provincial farmers "bolt[ed] with a mixture of other grains with wheat to such a degree that the reputation of New York" was damaged abroad no less than at home. Suspending the grain monopoly damaged trade, encouraged migration out of the city, and threatened the urban economy and domestic markets upon which imperial revenues and even the local farmers depended.¹⁷⁶

The common council drew direct parallels between its own position and England's mercantile policies which regulated colonial trade in the interests of the English state. The council argued that privileges such as the flour bolting and export monopoly sustained New York in provincial and overseas trade and provided for the city's survival and prosperity. Repeating justifications originally offered in 1684, the council declared that the city's monopoly did not prejudice the trading privileges of others but inhered, physically and rationally, in its location and place within the provincial economy. The flour monopoly was one of the properties of the city in the sense that it was a characteristic of a major trading center. New York rightfully claimed privileges as the central market, just as Albany predominated in the fur and Indian trade, and Long Island in

¹⁷⁶CCP, 1: 8, and MCC, 2: 6. For earlier examples of the city's position offering similar arguments and justification see 1685, "Petition and Address Concerning ye Privileges of ye City of New York," in CCP, 1: 5. Graham was a city member of the House of Representatives, see certificates for his attendance in 1694/95 in CCP, 1: 7.

agriculture and whaling. The flour monopoly merely recognized New York as the most valuable port in a provincial economy which could only ever effectively support one such center.

Without this privilege the corporation seemed in little doubt that the city, and thus the colony, would suffer and fail to prosper as before. Citing the erratic fortunes of other English colonies, the corporation reminded the governor that New York's inhabitants had originally been encouraged to establish the city as the foundation for the settlement of the province. The city could only provide this foundation, and continue to supply a market ensuring future prosperity, because of its role as the primary setting for provincial trade: for "neither merchant nor tradesman [in New York City] can live without trade and commerce and if it were not for trade no man would be encouraged to improve more than what he has occasion for then this vast country would neither be subdued nor peopled."¹⁷⁷

We could read the council's arguments as mere verbiage masking self-interested motives in trade. When we do this, however, we risk missing the significance of the language used to justify different positions and are unable to explain why people adopted certain rhetorical strategies rather than others, why it was possible to claim some things at certain times and not others, and how discussions of self-interest changed over time and permitted new claims which may have been inadmissible in public debate at earlier times. The city's indignation as it justified the flour bolting monopoly runs through their argument and their claim that "through this libertisme of trade and confusion of mercate the whole

¹⁷⁷MCC, 2: 30-36.

government is reduced to an anarchy every man doing what seemeth good in his own eyes." Without appreciating the potency of the claim to custom it is difficult to describe the city's rhetoric as anything more than the self-interested bluff and bluster of politicians protecting merchant profits. There is no doubt that city was protecting an important area of its commerce but we still need to understand the moral basis of their self-righteousness..

The common council combined references to empirical data, written law, mercantile strategies, geography, the good of the province and the city's right to self-preservation to support its claim on the flour bolting monopoly. Pointing to the fur trade in Albany and whaling off Long Island, the council claimed the bolting monopoly as a privilege for the city. By implication the corporation accused the provincial farmers, who had worked through the assembly to suspend the monopoly, of failing in their duty to respect the city's privilege when there was an opportunity to make some easy money by freeing up the flour trade. For this criticism of the farmers to be effective the city had to produce a sanction for its privilege which rose above a simple declaration of self-interest.

Natural law endowed men with natural rights to life, liberty, and property and imposed a duty upon them to live sociably, keep promises, and respect the rights of others. Rights were not simply powers granted, but powers granted for a purpose; they had a right use, namely, that of contributing to the overall moral order. Men formed civil societies with whatever governments they agreed to on the basis of voluntary, but most often dim and distant, compacts which then provided for the rule of human laws. Men in

civil society were compelled by God and nature to obey divine and natural laws which required that they keep their promises and live in societies. Individuals and groups within society occupied a specific place and received privileges on the basis of their place; privileges which were accompanied by duties that the holder use the privileges correctly and respect the correct usage of others. Thus natural law united men in a common condition as possessors of natural rights, but did not limit the possibilities for privileges granted under subsequent civil law to unequally differentiate between them *and still* require obedience and impose the duty that each recognize the other in their place.

In this view Englishmen yielded their natural rights at some point in the immemorial past for the rule of the ancient constitution under which they enjoyed rights as Englishmen to life, liberty, and property. Thereafter, the history and laws of England provided for a hierarchical society based on deference wherein each individual or group enjoyed the privileges of their place and had a duty to respect the privileges of others. It was here in the idea of place and the duty each owed to respect the rights and privileges of others that history and the authority of custom played a crucial part. Men were born into their place in the social order and worked at whatever calling was appropriate to them. Knowledge of the privileges and duties of these different roles within which different individuals and groups worked derived from experience and by the persons concerned behaving in ways institutionalized in the past: Kings and barbers signalled their place in the social order, by acting in a regal manner and by hanging a sign in the window and offering to cut people's hair. When individuals and groups, or kings and barbers, fulfilled their

role they contributed to the overall moral order. This fulfilment of a role over time which was recognized and benefitted from by others imposed an obligation upon those others. An obligation implied in their acceptance of an individual who has acted in ways customarily accepted as proper for their place and which required that everyone respect the individual's, group's (or king's and barber's) claim to the rightful enjoyment of the privileges of their place.¹⁷⁸

This claim to the sanction of custom and the obligation it imposed on the provincial farmers provided the key rhetorical strategy for the city in its defence of the flour bolting monopoly. It had to do this given the structure of contemporary political argument. If bolting and exporting flour was an English right, then it could justifiably be claimed by all in the colony as fundamental to their freedom or survival -- provincial farmers no less than the city on behalf of its merchants and bakers. Yet if the liberty to bolt flour and bake bread for export was a privilege granted under human, positive law, then it could just as easily be revoked by the same law. Everyone had to obey the law as long as the local authorities acted in a legitimate fashion, which the assembly had undoubtedly done in this case. To evade this problem, the city had to employ a justification which lay beyond the reach of positive law, so that the assembly could not veto it, but within experience and thus nearer than the general English rights, so that the provincial farmers could not assert their own counter claim. It was here, in the

¹⁷⁸Here I am using Knud Haakonssen argument in *Natural Law and Moral Philosophy*, 316-319.

space between known law and abstraction of general rights provided by experience, that the city invoked the force of custom so recently ennobled with legal imperative by the affirmation of the English common law.

Throughout its presentation, the corporation built their justification for the flour monopoly around the claim to custom. The corporation argued that the city had always benefitted from commercial privileges such as the flour monopoly, drawing evidence from the earliest days of the colony under the Dutch. From these empirical sources, the corporation made the conceptual connection that what had always been the practice within the colony was the custom of the colony. The corporation was clear in its regard for these local practices which "though the said customs cannot strictly be so termed according to the laws of England...they are of the like force having been always without controale or contradiction since the first settlement of the said city."¹⁷⁹ It was at this moment, when the city adapted the customary basis for the English common law to provide authority for an argument regarding colonial trade, that it appealed to the moral imperative of the idea of a community based on a known and respected hierarchy of men and groups in different estates with certain functions.

What united the disparate strands of the corporation's argument -- ranging from political economy, to law, to natural rights -- and provided its clearest, and rhetorically most effective justification, was the notion that the city had a customary role within provincial trade which others should recognize. A relationship wherein New York

¹⁷⁹MCC, 2: 34.

rightfully enjoyed the privileges of a central, monopolistic market for trade and export. This role originated with the colony's founding and Dutch rule. It was recognized and nurtured by the policies of English governors within the imperial system; a system which relied on the city as a trading center to develop the colony, and which provided for the city's privileges in royal orders, charters, laws, and government. On the strength of this customary role, the inhabitants of New York settled the city and organized their commercial lives within a protected urban economy which provided the market vital for the colony's survival and prosperity.

Above all, the corporation's presentation of New York's history showed the city's customary enjoyment of privileges which the rest of the colony, including provincial farmers, acknowledged in trade and benefitted from. Tracing the history of the colony from 1619-1694, the corporation's argument rested on the claim that it was impossible for their opponents to deny the widely acknowledged relationship of the city to the province was that of a central market within a wider, developing colony. The exasperated tone of the corporation's petition arises from the sincere conviction that the prosperity of the colony which produced a group of successful provincial farmers provided irrefutable evidence of the city's effectiveness as a market and port. Thus the farmers own success was the clearest indication of the rightfulness of the city's claim to its flour bolting monopoly. If, since time immemorial, the city acted as a privileged central market, and the rest of the colony accepted and benefitted from this, there could be no basis for

suspending the flour monopoly which the corporation now, understandably, claimed as its right.¹⁸⁰

In spite of their efforts and a lengthy campaign involving petitions and counter attacks on the assembly and its rural supporters, the city lost the argument and the flour bolting monopoly. However, the dispute over the flour monopoly contained two significant portents for the language of politics in colonial New York. Remaining true to seventeenth-century views of society, the common council had invoked the history, known laws, and customs of the colony to support its claim for the flour monopoly. Invoking the authority of colonial custom to establish a legal claim "of like force" to the English common law, the council took a radical, albeit unintentional, step beyond English authority and established the claim of colonial precedents and legislative institutions. The farmers won the day because they had greater control of politics and won the governor's support for their interests. In so doing they took an unintentional step towards a radically different conception of property rights which they enlarged to include a right to do exactly as one pleased with a personal possession regardless of claims to privileges made by others on the basis of their position within an unequal and hierarchical order; a claim to absolute dominion over property which they relied on the state to enforce. Here at the end of the seventeenth century the elements of a new conception of colonial society came

¹⁸⁰The argument continued over the ensuing years. See "Petition of the City to the King of England" requesting the "sole bolting of flower and baking of biskett for transportation.," and the the "Report of the Committee for addressing his Majesty for repealing ye Bolting Act," and "Report of Committee for examining the Ancient Rights and Privileges," in CCP, 1:8.

into focus for a moment. A society composed of men with equal and absolute rights to property governed by the laws of an assembly which could, and did, override the claims of custom, colonial or English.

3. Municipal and Commercial Liberties and Privileges.

The arguments the city employed to justify its claim to certain privileges, and the appeals to the moral imperative of custom and place, were also used by working men and women seeking liberties and privileges in eighteenth-century New York. The city regulated, and tradesmen appealed for the regulation of, property in the interests of the common good. In addition to the rights they claimed as freeborn Englishmen, tradesmen also claimed certain privileges before the law. Just as with the bakers and carters, the success of these claims often depended on the position of the petitioner within the political and economic structure of New York society. When a privilege was granted, however, it was for a specific or right use, namely contributing to the moral order or common good. Bakers could not use their monopoly of the baking trade to unfairly extort money from the inhabitants and freemen could not benefit from their share in local trade and then evade their taxes or fail to keep a residence in the city.

Between 1690 and 1730 the common council heard all manner of petitions from residents seeking privileges for different reasons. The council granted petitions when they were in the interests of the common good, or at least claimed to be. The minute books

and papers of the common council are filled with petitions from individuals and groups in the city seeking recognition for specific privileges and liberties ranging from posts in local government and corporate franchises, to acknowledgement of customary rights of way and uses of the public commons. All privileges were accompanied by duties expected of the holders that they would use the privilege properly, that is in the interest of the common good, and respect the proper usage of other's privileges. Within this prescribed social world free men in colonial New York conducted their business in a market regulated by local ordinances enforced by municipal officials. The petitions from individuals and groups within the city provide fascinating insights into not only the concerns and ambitions of ordinary working men and women in colonial New York, but also the justifications they believed supported their claims to preferences over others.¹⁸¹

New York's historians have described and discussed the multiplicity of municipal offices and commercial regulations at length.¹⁸² My purpose is to consider these privileges and regulations within the moral and political philosophy which underpinned justifications

¹⁸¹Examples of many of the petitions appear in Herbert L. Osgood, ed., *Minutes of the Common Council of the City of New York, 1675-1776*, 8 vols., (New York: Dodd, Mead and Company, 1905). However, Osgood omitted some petitions from this published collection and abbreviated most of them; the manuscripts are in the collection referred to previously as the Common Council Papers, CCP, in the Municipal Archive and Records Center, New York, New York.

¹⁸²See Arthur Everett Peterson and George Edwards, *New York as an Eighteenth century Municipality* (New York: Longmans Green and Co., 1917), 2 vols., 1: 40-125; Carl Bridenbaugh, *Cities in the Wilderness*, 207, 213, 218, 232, 239; Hendrick Hartog, *Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870* (Chapel Hill: University of North Carolina Press, 1983), chapter one.

in colonial New York and which derived from the seventeenth-century view of tradesmen and their place in the social hierarchy. In the late 1690s, the common council deftly employed the language of privilege during the debate over the flour monopoly and revealed its commitment to a society constituted by individuals and groups holding specific places and privileges which it was the duty of everyone to recognize. As arbiter of tradesmen's petitions for privileges, the corporation of New York adjudicated disputes and decided on acceptable and unacceptable practices in local trade. As such the council was in position to decide whether or not the kind of moral order it advocated in the flour debate would endure in the city.

Since the Dutch period New York had relied on local men to fill municipal offices vital for the running of the city.¹⁸³ The city increased its oversight of the urban trades in the final quarter of the seventeenth century. Commercial regulations proliferated and the city required hosts of municipal inspectors, gaugers, measurers, bread inspectors, overseers of roads and highways, and weigh masters to enforce them. These municipal officials received the privilege of public office and a fee income from whatever they inspected or monitored for their dutiful service. Whether a man held the high office of vendue master or surveyor of the city or came lower down the scale, as an inspector of fire buckets, or slaughterhouses and tanning pits, the form and function of office was the

¹⁸³The offices ranged from court messenger and town crier, to gauger of barrels, measurers of grain, lime, bricks, overseers of roads, horses, fences, herder of hogs, scavengers, as well as inspectors of meats, bread, fire places, chimneys and so forth. *RNA*, 1: 23, 78, 90, 151; 2: 356, 272, 337; 3: 390; 6: 111, 113, 215, 222, 237, 239.

same. Throughout the eighteenth century one can trace the rise of local New York City tradesmen from low level offices to positions of greater influence within the ranks of local government; municipal careers usually accompanied by an increase in social status and material wealth.¹⁸⁴

In addition to the privileges of municipal office the city awarded, or "farmed," potentially lucrative municipal franchises on the basis of competitive tender. Local tradesmen competed for the right to operate the public ferries between Manhattan and Nassau Island (Long Island) and Staten Island, and for tracts of land inside and outside the city. Inhabitants also proposed and applied for privileges and liberties intended to support specific commercial opportunities. In 1699 the baker Jasper Nessepot petitioned "for liberty to build a mill at Kings Bridge." The common council allowed the petition providing that Nessepot promised to clear the channel and allow boats to pass through "upon reasonable request." In 1704 the city granted Jeremiah Calcutt, a butcher, petitioned for a piece of ground for him to build a wharf and dock to operate a ferry which he used to transport cows from Nassau Island to market in New York City.¹⁸⁵

Applicants for offices and franchises often had to provide substantial bonds to guarantee the corporation's rent or fee and the individual's adequate performance of their duties. The application process -- requiring a petition, personal appearance, and often the

¹⁸⁴See "petition of William Bogard to be treasury of the city of New York," CCP, 1: 5.

¹⁸⁵MCC, 2: 97; CCP, 1: 12..

support of bondsmen and guarantors -- tended to restrict these municipal offices and franchises to those with the local connections necessary to support their bid. It also encouraged the forming of cartels and interest groups to bid for control of the most promising city franchises. Once a franchise was awarded the holder was bound to provide the service and pay the rent, even when what might have seemed a sound commercial opportunity realized a meagre return. For its part the city gained a municipal work force which, in theory, paid for itself and the promise of a regular income from the leasees of the municipal liberties and privileges.

Seekers after municipal privileges relied on various justifications to support their applications -- stressing their need for subsistence and suitability for the position, their integrity and commitment to the common good. In 1702 William Waldron petitioned, somewhat dramatically, that the court take account "of the deplorable condition of the petitioner," an "ancient citizen of this corporation," with a wife and "many small children and nothing to support him but his own dayly labor," and "order him to be one of the publick corne measurers of this city there being a vacancy in that imploy and also to give him a lycence to be an inviter to the burials of deceased persons."¹⁸⁶ Tradesmen needed to produce convincing arguments in support of their candidacies because competition for municipal offices and franchises -- and the status and fees which went with them -- could

¹⁸⁶"Petition of William Waldron," in CCP, 1:11, and his confirmation as public corn measurer and license to be an official inviter to burials in MCC, 2: 212. For similar petition invoking personal circumstance and survival see "Petition of Sarah Vanaernam Widow," for a piece of ground with her house and garden on, CCP, 1:12.

be stiff. In addition to an income from fees, municipal privileges offered the holders the opportunity to trade in the local economy on the city's behalf, as the official ferryman, vendue master, or inviter to the burials of deceased persons. Often, this meant that in addition to the title, municipal officers acquired significant purchasing power which enhanced their position in local trade.

In January 1718 James Harding, who had applied for a renewal of his privilege as ferry master, supported his application with a recommendation from the colony's governor, Robert Hunter. Hunter pointed out that Harding had offered the council "as much for ye ferry as any other and that his competitors have braged that they are resolved to overbid whatever he thinks fitt to offer." In light of this bragging, Hunter supported the current ferry master pointing out that the ferry had been well tended, the rent paid on time and Harding's "subsistence and security unquestionable." Hunter gently pressured the council to choose wisely between the existing master and a group of men who had nothing to recommend them "except an earnest desire to be possest of the ferry at any rate which indeed...renders them suspicious." The following week the corporation reappointed James Harding as ferry master.¹⁸⁷

In 1729, the decision to erect a city ammunition store provoked a competition for the position of keeper which illustrated the range of justifications for municipal privileges.

¹⁸⁷CCP, 1:13. Harding began life in New York as a cooper and was subsequently elected as a petty constable before securing the ferry franchise, see NYHS, *Collections*, (1885), 74; Kenneth Scott, *New York Court Records, 1684-1760. Genealogical Data From the Court of Quarter Sessions* (Washington: National Genealogical Society, 1982), 96.

On October 24 1729 Edward Man, a cooper, petitioned the common council for the office of keeper in the new ammunition store and pointed to his lengthy residency in the city and status as a registered freeman. The ammunition store would receive and issue gunpowder stored in various sized barrels and Man was careful to stress his rightful claim on the office, given his skills: Man argued that as a cooper, he would be "more use than any man of another profession," as store keeper. The next month, Robert Crannel also petitioned for the post. Crannel was an experienced municipal employee having worked for the common council in various positions -- even managing to wangle municipal glazing jobs for his son, Robert Crannel Jr. In his petition Crannel pointed to his history of municipal service, the "great poverty of him and his family," and his earlier military service which, he argued, made him "well acquainted with the nature and duty" of the office.¹⁸⁸

The third contender, and the eventual winner, was a local brazier, Garret Viele. Viele was also an experienced municipal official and better connected than either of the other two. He supported his petition by arguing that his current position as a local shopkeeper permitted him to take charge of important deliveries and requests concerning the ammunition store at a moment's notice.¹⁸⁹ Mindful of Man's candidacy, Viele argued

¹⁸⁸Edward Man and Robert Crannel's petitions are in CCP, 2:11. Robert Crannel was granted his freemanship gratis "being a poor man," in March 1699. In 1714 he was appointed marshal, on the death of Benjamin Barnes, and thereafter the minutes of the common council make reference to him and his work and the common council papers contain his bills for various work and for that of his son, Robert Crannel Jr., glazier, MCC, 3:59, 364 and CCP, 1:13. Crannel later became an official of the Mayor's Court and is listed as process server, in *Jacob Franks v Dennis Mahoney MCP*, 15 August 1729.

¹⁸⁹CCP, 2: 11. Garret Viele had been a church warden and overseer of the poor. He was appointed as one of the surveyors of roads and highways in 1717 and reappointed

that he "looked upon himself as capable to do all such cooper's work as may be requisite." Indeed, Viele was so keen to serve as keeper, and sufficiently well provided for from his shop, that he offered to work "without any reward until the first of May next." This proved a persuasive presentation and Garret Viele was appointed official keeper and given the keys to the ammunition store.¹⁹⁰

Securing a municipal privilege and the advantages which accompanied it was a delicate process requiring petitioners to present arguments and draw on whatever support was available to them. Robert Harding defeated a wealthy and well organized local cartel through a letter of recommendation from the governor. Hunter's letter did not guarantee success but made it more difficult for the common council to pass over Harding's petition in favor of another's without looking "suspicious." Lacking distinguished patrons, Edward Man and Robert Crannel stressed their existing places within the community arguing that their trade, experience, and residency qualified them for the position. Garret Viele did not rely on simply offering to work for free but showed sufficient respect for the other's

every year until early in 1727, see Scott, *New York City Court Records*, 31, 33, 34, 35, 36, 37, 38, 40.

¹⁹⁰Unfortunately for the enterprising Viele he would never enjoy the benefits of future rewards. On the 2 June 1730, the first month that Viele could have expected payment for his services as store keeper, the council was informed of his death and demanded that his widow hand over the keys to the ammunition store. A new round of petitions followed, and this time Robert Crannel was successful after he had given surety of two hundred pounds, *MCC*, 4:14. Accounts for the store reveal that the keeper could expect a healthy fee income; the audited accounts for 1733 show a fee income of fourteen pounds four shillings and six pence for the keeper, *CCP*, 3: 1.

petitions, when he countered with a presentation of his own social position and the skills which he argued qualified him for the office of store keeper.

Beyond staffing the municipal inspectorates and managing the city's properties and franchises, the common council also heard petitions from ordinary citizens seeking privileges in their private commerce and local affairs. The motives behind the petitions, and the privileges and liberties sought, varied as endlessly as the opportunities and workaday problems of daily life. In January 1695, a butcher, petitioned for the "liberty to build a fence around a plot of land;" in March a group of residents from Harlem were granted "liberty to let their hogs run free," as long as their fences were of a sufficient height.¹⁹¹

Business of all sizes began with petitions to the common council for a publicly recognized privilege. The granting of a privilege was evidence of the city's support for the project and protected the holder from the damaging competition of others. In July 1721, Josiah Quincy applied for a grant of land near Kingsbridge, very probably near the mill built by Jasper Nessepot twenty years earlier. Quincy petitioned for permission to erect a fishery and have "liberty to fish in the river and that no other person have liberty to sett up or carry on any other fishery contiguous to him or so near to him as may prejudice the fishery carryed by the petitioner." He supported his proposal by highlighting the benefits to the town and the common good of having fresh fish available daily. His petition was

¹⁹¹MCC, 1: 358, 402. See also "Petition of the inhabitants of Broad Street," CCP, 1:9

granted on the condition that once a year he gave a "good dish of fresh fish" to the corporation.¹⁹² In 1708 George Norton, a butcher, secured permission to open a new shop in the market at Burghers Path -- a market opened following a collective petition by the inhabitants of Burghers Path, seeking liberty to hold it six months previously.¹⁹³ The common council heard from petitioners seeking privileges for elaborate ventures such as Mathias Dubois's plan to erect a blacksmith shop and for simpler, but no less significant enterprises, such as Susanna Dally who prayed the council "grant her a licence to sit in the said [Fly] Market and sell coffee, chocolate, cakes, and pies."¹⁹⁴

Just as the corporation justified the privilege of the flour trade as vital for the city's survival, individual tradesmen and groups petitioned for what they represented as a rightful claim to work at their trade or calling; work which provided for their survival in their place as inhabitants, freemen, and skilled craftsmen. At the foundation of the idea that men occupied a specific place in society was the assumption that tradesmen had a

¹⁹²MCC, 3: 255. Beyond the municipal boundaries petitions for similar kinds of commercial opportunities were made to the governor and his council as is evident in Palsits, *Minutes of the Executive Council*, 1: 21-194.

¹⁹³Petition of inhabitants of Burghers Path for a market in CCP, 1:10; Norton's petition in MCC, 2: 352; see also John Marsh petition for liberty to build a mill near Hell Gate, MCC, 2: 112; petitions of the inhabitants of South Ward for a market, of the inhabitants of the East Ward for a market at Clorhos Slip, and the "Petition of Capt Depeyster [and others]...in behalf of themselves and other inhabitants," requesting the city to fill in a certain pier, all in CCP, 1: 9, 13, 14.

¹⁹⁴For other examples see Abraham Delanoy, a baker, petition for "liberty to build an oven under the ground fronting his house, MCC, 3: 46; petition of Roger Baker for a slip of ground in Smith's Street, CCP, 1:10;

right, in the sense of rightful claim, to earn a living at their chosen trade. In 1718 William Dugdale and John Searle petitioned for liberty to construct a building to house a rope walk in the city. The two men justified their petition citing their English apprenticeship and expertise in the trade and the usefulness of the enterprise for the city. Dugdale and Searle doubted "not but that it will very obviously appear to your worships to tend a publick as well as a private advantage by giving encouragement to the raising of hemp tarr as also by imploying of journeymen and laborers and bringing up of boys;" The common council was persuaded, and granted them ground as tenants at will, having them reapply on an annual basis.¹⁹⁵

Though in many cases the justifications offered in the petitions must have reflected actual circumstances -- many petitioners really were in need and sought privileges to better provide for their subsistence -- there is also evidence that petitioners stressed certain qualities and qualifications in their appeals. It is certain that John Searle and William Dugdale were more than the simple rope makers they portrayed themselves as in 1718. John Searle had been a mariner and master of the ship, *Content* which sailed between New

¹⁹⁵Dugdale and Searle's petitions see, CCP, 1:14, and MCC, 3:193-94. In April 1722 the decision by Trinity Church to sell some lots which cut across the rope walk prompted a second petition from Dugdale and Searle. The two men asked for more land and permission to lay the workshop out differently and offered similar justifications as before, in CCP, 2:5. For similar case see "Petition of Gideon Kerstine, Rope Maker," in MCC, 3: 141.

York and the West Indies and William Dugdale was a petty merchant who eventually rose to the respected office of High Sheriff in the city.¹⁹⁶

In the summer of 1719, the year after establishing the rope walk, the two were listed as "reapers" when they registered the apprenticeship of John Galloway. In July 1721, the two appeared again, this time as men with merchant reputations who combined their knowledge of grain and shipping in the export trade out of New York. In court Dugdale and Searle recounted how they paid eighty pounds to Thomas Kearney on 29 December 1720 on the understanding that Kearny would deliver one hundred half barrels of flour before February 1, "at the rate of twelve shillings and three pence per hundred forths flower and twenty-five shillings and six pence per tun for the cask and nailing." Between December and February 1 Kearney could only deliver forty-three barrels, yet he produced the outstanding fifty-seven barrels in the next seven days. When Dugdale and Searle opened the barrels at Bridgetown market, Barbados, however, they found the flour was "mixed and bad" and they had to sell it "below market price," to their discredit "among the inhabitants of the said Island of Barbados."¹⁹⁷

¹⁹⁶As master of the *Content*, Searle was sued for wages by three mariners in January 1717. Given Searle's imminent involvement in the rope walk partnership, it is likely he was trying to pay his crew short in and maximise the profit on the voyage to provide for his next investment. Samuel Browne v John Searle, John Morton v John Searle, Roger Thomas v John Searle, in MCP, 4:20, 37, 48. Searle was elected High Sherrif in the mid 1720s, Scott, *New York Court Records*, 40, 88, and Hamlin and Baker, *The Supreme Court*, 1: 299.

¹⁹⁷William Dugdale and John Searle V Thomas Kearney, 29 July 1721, MCP, 5:74, and MCM, 1720- 1723, 292; additional evidence that they were involved in the grain trade is in an unfinished complaint against the New York baker Garret Van Laer in, MCP, 5: 75; Dugdale and Searle purchased Galloway's remaining time, eleven years and three months,

Rather than dedicating themselves to ropemaking, Dugdale and Searle turned their hand to whatever promised a return on the investment of their time and money. Like other eighteenth-century tradesmen they survived not by devoting their energies to a single trade but by working with familiar materials and in known markets. In Dugdale and Searle's case this meant the maritime trades and West Indian flour markets which they knew well and where they were known. When they petitioned for land to build a rope walk, however, they represented and titled themselves as skilled ropemakers with apprenticeships completed in London; they did this because it added weight to the justification within their petition that, as ropemakers, they were entitled to special consideration and the privileged grant of a long strip of land suitable for a rope walk in the city. When required, the two men would also claim knowledge of reaping which they would impart to an apprentice, and in a straightforward case for debt they were simply merchants who claimed damages in compensation for the deception of their trading partner. This is not to suggest that the two men went around misrepresenting themselves and fooling municipal authorities. It is more to note the manner in which they appeared in different guises given the circumstances and their need to make different justifications for their commerce in different situations.

Once granted, privileges became the rightful possession of the holder under the terms of their tenure. Titles to privileges, like titles to other things held as property, had to be respected by others and could only be challenged in certain ways. Challengers could

from Peter Colvell for twenty pounds, promising to teach him "to be a reaper," NYHS, *Collections*, (1911), 120-121.

argue that the privileges possessed by another were nullified by stronger claims based on appeals to earlier statutes or ordinances. Alternatively, a challenger might argue that the privilege claimed by one individual or group violated the fundamental rights of Englishmen to which all were equally entitled. Between claims made in regard of known laws, and claims made on the basis of general English rights, lay claims supported by local custom. Just as the city cited provincial custom as having the "like force" of English law being the immemorial local practice, New Yorkers challenged each other's privileges and duties on the same basis. For individuals, no less than for the city, the justification of custom was always an effort to increase the force of claim or challenge to privileges and duties by drawing parallels between the authority of local practices and the English common law tradition.

In 1719 the butcher William Wieblin's dispute with ferry master James Harding highlighted the sensitive boundaries between privileges and duties in the often conflicting contexts of commerce and customary practice. Wieblin complained that on the August 26 he arranged with Harding, the ferry master, to transport to the city two cows delivered to the ferry cattle pen on Nassau Island. By August 28, however, the cows were still on the Nassau Island side, and Wieblin had to return and "turn the cattle into pasture after they had stood starving in the pen for four high tides, during which time he had no beef for market but what he borrowed." When Wieblin complained, Harding retorted that "Jeremiah Calcutt was dead and he [Harding] would make all butchers in New York truckle to him before Christmas nor would he bring said cattle over unless your petitioner would come over and help load them." Wieblin protested to the common council and argued that in his nine years as a butcher "the ferry men have always thought it their duty to load and bring over the cattle that have come to the ferry for the butchers." Wieblin saw no reason why "the butchers shall be forced to goe and load the cattle themselves now

Jeremiah Calcutt is dead more than they did before." Rather, Wieblin asserted, the council should order the ferryman to "do his duty in such manner as has always been the practice of said ferry."¹⁹⁸

It is not clear who loaded the cattle thereafter, but in a subsequent reversal of fortune William Wieblin soon found himself in a position to appreciate James Harding's difficulties as a ferry master. He also showed himself adept at manipulating the language of privilege to his own ends. Things turned bad for Harding in the spring of 1720. Following a small pox outbreak in the city, Nassau Island farmers were reluctant to come to the city, and Harding's ferry business suffered.¹⁹⁹ The following year William Wieblin applied for and was granted a privilege to run a ferry service for which the city charged him an annual rent. By 1722, Wieblin was already experiencing difficulties in his new line and appealed to the city for a convenient place to land his goods and passengers on the wharf across from his dock on the Long Island side; without such provision he feared he would be "utterly defeated of the benefit of the said farm [the ferry franchise] and the good intent which he hath for the discharge of his duty as a ferry man according to the contents of his lease."²⁰⁰ The city granted Wieblin dockage privileges between the old slip and the great dock.

¹⁹⁸Harding might have dealt with Wieblin in a clumsy fashion, but the appeals for succour from lease agreements by almost every person who held ferry leases from 1700-1730 suggests that it was a privilege with a small and uncertain return.

¹⁹⁹See James Harding's petition for relief from rent payments, CCP, 2:3.

²⁰⁰William Wieblin also sued Gerard Schuyler for eighteen pounds borrowed on a bond, William Wieblin, butcher v Gerard Schuyler, merchant, 3 November 1722, in MCP, 7: 99, 100. See also case of Patrick Moore v James Bowne, 2 April 1723 with William Wieblin, now an innholder providing bail, MCP, 7:82.

Unfortunately for Wieblin's enterprise, however, in the wake of Harding's troubles the corporation had also permitted others to run ferries. In 1723 Wieblin complained to the council of John Deane and others who

daily invade and encroach upon the rights and privileges of your pet[itioner]...by loading and unloading goods and provisions between the old slip and the great dock...[which]if not prevented will not only render your pet[itioner]unable to keep his covenants with your worships but will terminate in his utter ruin and will tend wholly to impoverish himself and family...[Wieblin] prays they ask Deane to attend and show cause if any why he intrudes on the privileges of this petitioner.

William Wieblin was a butcher and ferryman who manipulated the language of privilege easily to his advantage. When Jeremiah Calcutt ran his ferry, James Harding loaded cattle possibly hoping thereby to retain valuable business by offering this extra service which saved the butchers a trip to Nassau Island. When Calcutt died and his ferry service ended, Harding tried to amend the terms of his commerce with the butchers and refused to continue loading the cattle. Hoping to force him to continue the service, William Wieblin cited his loading and unloading of the cattle as customary practice, and thus an acknowledged aspect of ferry master's duty. On this occasion Wieblin asserted the authoritative justification of custom to push work onto Harding. A couple of years later, however, when faced with others whom he felt encroached upon his privileges to load and unload between the slip and the great dock, Wieblin insisted that the city, and John Deane, observe the express terms of his privilege to load and unload between the old slip and the great dock: if it was part of Wieblin's privilege as ferry master to load and unload on a particular stretch of the wharf, it could not be somebody else's as well. Furthermore, if the city did not respect his rightful possession of the ferry master's privilege, then how it could

expect him to fulfil the conditions of his covenant and meet his duty to pay the required rent.²⁰¹

Disputes over privileges and duties, rights and obligations also combined claims to custom and the specifics of written documents and deeds in the manner of the city's presentation regarding the flour monopoly. In September 1721 Cornelia Norwood and Catherine Lorea petitioned the common council on behalf of themselves and "the rest of their sisters," daughters of the widow Gertie Vndercliffe, deceased. In their petition the women related how "during the time of her widowhood," Gertie had sold sundry plots of land to various people in the city. "For the accommodation of these purchasers," and anticipating subsequent land sales, Gertie had also "out of her own ground designed and laid out several streets namely Cliff Street, South Street, Golden Street, Orange Street, Rudder Street, and other streets as yet not named." The two sisters complained that, since their mother's death, several people not involved in the original purchase had "encroached" and "built houses fronting to one of your petitioners streets." Opposing this encroachment the women asserted their inherited property rights and the protection of a custom in force in their mother's time. They argued that the owners of the new houses who encroached had "no right to do so without permission for that thirty years ago" no one "would presume to front his house to Golden Street until he had agreed with your petitioner's mother for the sum of five pounds for privilege of the said street." Naming the parties involved Cornelia, Catherine, and their sisters, "all being poor widows," prayed that the

²⁰¹MCC, 3: 326; CCP, 2:9; for similar claims on the wharf and disputes regarding the privileges of ferrymen see "The petition of the executor of the last will and testament of Andrew Teller, 10 June 1734, and "The petition of Israel Horsefield of Brookland Kings County, butcher, 17 January 1734," and the "Report Concerning Mr Horsefield's Petition," all in CCP, 3:1.

offenders be prevented from further encroachment, the area surveyed, and an allowance of money ordered in respect of their inherited right.²⁰²

Privileges and duties were enforced in multiple ways. The common council relied on its municipal inspectors and officials to report breaches of local ordinances and levied fines on offenders, a proportion of which went to the arresting official. As the men who sat in the Mayor's Court the mayor and aldermen brought criminal proceedings and prosecuted tradesmen for selling unmerchantable goods and breaking local ordinances. The common council also enhanced the authority of its office holders for repeated infringements of municipal orders and disregard for the privileges of its officials. In 1702, James Spencer, who worked as a carpenter, victualler and held municipal office as the dockmaster, complained to the council that boatmen using the dock evaded paying him his due as master. Lacking the power to arrest offenders, Spencer reported that "before he can gett the mayor's officer to summon them before the Mayor to cause them to make payment...[the offenders] weight anchor and are gone." The court gave Spencer the authority to detain offenders, hold their property, and bring them before the Mayor.²⁰³

Municipal office holders could also seek recourse to civil law to recover moneys owed in respect of their privileges. In these civil law cases, as in the justifications of the original petition, claims were supported by reference to customary usage and written

²⁰²In 1686 the Dongan Charter awarded all unappropriated lands on Manhattan to the Corporation of New York. The Corporation occasionally sold land to raise money, but after 1700 preferred to lease desirable sections. This led to congestion in sought after districts and probably precipitated the encroachment on the frontage claimed by the widowed daughters of Gerties Vndercliffe, see Bridenbaugh, *Cities in the Wilderness*, 147.

²⁰³MCC, 2:198; James Spencer appears as a victualler in 1698, Scott, *New York Cout Records*, 12.

law.²⁰⁴ In January 1712 Jeremiah Callcutt, then a rising figure in the ranks of city butchers, attempted to evade the fees payable to the clerk of the market, Jacobus Van Cortlandt. Representing Van Cortlandt, Thomas George reminded the court of the fees payable to the clerk of the market by butchers who slaughtered cattle and that "he the said [Jeremiah] for the time aforesaid there using and exercising the art and mystery of a butcher" owed Van Cortlandt thirteen pounds eight shillings and ten pence in fees. Jeremiah, through Henry Wileman his attorney, refused to pay the charges and denied the debt "in form and manner." Thomas George then produced a copy of the city's charter, pointing to the sections which granted the common council the authority to make laws and ordinances. Next George produced Van Cortlandt's commission as clerk of the market and the law relating to the fees payable by butchers, noting that the law had been repeatedly renewed and was in force during the period under question. Then George showed the jury evidence that "the said Jeremiah Callcutt the def in the Occupation of his trade of a Butcher has killed cattle great and small within the said City of New York from the fourteenth day of October 1710." Lastly, George produced a copy of the freeman's oath wherein Callcutt promised to obey all laws and ordinances passed by the common council and fulfil his duty as he ought. The jury deliberated through March and finally found for Van Cortlandt.²⁰⁵

The privileges discussed above are not unfamiliar to historians of colonial New York. Our view of these privileges and those who petitioned for them, however, depends

²⁰⁴Mathias Nichols v John Cooley, 2 May 1691, MCP, 1: 46. There were earlier examples of litigants citing custom to oppose or defend the privileges of municipal officials, see Geertie Denys v Frederick Phillipse, MCM, 1677- 1682, 310-312; see similar cases in MCP, 2:139; 3:2.

²⁰⁵Jacobus Van Cortland v Jeremiah Callcutt, 8 January 1712, MCM, 1710-1715, 168-174.

upon our appreciation of the rhetoric of the claims and its place within a broader languages of early modern politics. Historians have noted the petitioner's self-interested motives and their evident striving for position, but treated the language of the petitions, and the form of the privileges, as little more than evocative of a bygone age.²⁰⁶ The history of colonial commerce in these older views, is the history of frontier opportunism, and nascent American individualism, struggling to break free of the restrictions of transplanted old world corporatism and medieval practices. But William Wieblin and James Harding did not do business in a world of tradition bound stasis or medieval vestige. Far from being hampered by the European traditions of privileges and place, ordinary colonial men and women justified their self-interested ambitions using this language and disputed important *contemporary* questions of profit and loss: questions regarding access to streets and wharves, new business ventures and whose responsibility it was to load cows onto the ferry now that Jeremiah Calcutt was dead.

More recent colonial history has criticized the tendency to see emergent individualism and capitalist beginnings in colonial stores and work shops, and has benefitted from a greater appreciation of the inequalities in colonial work and daily life. Unfortunately, much of this work has also rejected the earlier, insightful, portrayal of the colonist's self-interested motives when they petitioned for privileges to better their own and their family's circumstances. Instead, many recent histories appear to have accepted the tradesmen's talk of customs, common good, and the need for subsistence at face value, without considering the function of these statements as justifications within a language which held a special place for references of this kind. This acceptance, rather than analysis, of the rhetoric of place has led to the curious, but surprisingly widely held,

²⁰⁶Carl Bridenbaugh, *Cities in the Wilderness*, 7, 28, 45, 89, 137.

conclusion that eighteenth-century tradesmen did not care to profit from their labors; that working men and women only aimed to secure their "competence" or sufficiency, and subsist at whatever level they happened to find themselves.²⁰⁷ Given that this second view was developed largely in defiance of the first, with its portrayal of proto-liberal frontiersmen, it is ironic that in the revisionist history, colonial workers are once again consigned to a nostalgic and tradition bound world, wherein community and family took precedence and "competence" was preferred to profit.

Reading the petitions and their rhetoric within the context of a language of privilege changes our view of the petitioners in several important ways. Eighteenth-century society was a rule bound social order consisting of fixed and stable relations between subjects inhabiting specific and unequal places. Within these terms individuals and groups petitioned for privileges and sought opportunities which were appropriate to their place. Privileges were granted to, and duties expected of, the successful petitioners, whose exercise of that privilege was intended to contribute to the overall moral order and common good. In this respect, a privilege that any fair minded person would consider proper for the petitioner, given that petitioner's place in the social order, was by virtue of its very appropriateness a benefit to the whole.

Dugdale and Searle undoubtedly hoped to profit from their rope walk, as rope makers it was entirely reasonable for them to expect the granting of a piece of ground and to argue that both private, their own, and public, the community's, interest would be served by their venture; when they acted as rope makers, Dugdale and Searle followed their trade, or at least a trade they claimed, and in following that trade they fulfilled their

²⁰⁷For discussions of this "preindustrial," "nonaccumulative ethic" see Marcus Rediker, *Between the Devil and the Deep Blue Sea* (New York: Cambridge University Press, 1987), 147; Gary Nash, *The Urban Crucible*, chapter one.

social role and contributed to the overall common good. In this conservative, anti-individualistic view problems only arose when people lost sight of the relationship between unequal places and the privileges and duties rightfully held by each in their place. When men pursued their own interests and profit, ignoring their duty to observe the rights and privileges of others, confusion and disorder followed. At these moments, as the corporation of New York City remonstrated following the suspension of the flour monopoly, "the whole government is reduced to an anarchy every man doing what seemeth good *in his own eyes*."

Within this corporate view of obligations upon those occupying unequal places, custom defined the privileges and duties of particular places, and thus became the focus for struggles over the scope and meaning of those privileges and duties. When we understand the authority of the invocation of custom in the colonists' justificatory claims, it is easier to appreciate why petitioners ranging from the corporation of New York, to a city butcher, and a group of widowed sisters all invoked custom to press their self-interested pursuits. Sometimes these arguments may have referred to actual practices, such as the access to a river bank or road previously enjoyed by residents of a certain place. There examples of recent and narrowly considered practices being defined as custom, however, suggest that custom functioned more as a justificatory claim in disputes over privileges and duties.

4. Conclusion.

Throughout the early eighteenth century tradesmen and residents in colonial New York claimed the privileges of their place, as freemen, bakers, rope makers, and so forth. They also sought the privileges, and material rewards, of municipal office and petitioned

for liberty to establish commercial enterprises and enjoy certain preferences before the law. In their petitions tradesmen made finely graded claims and counter claims, to specific usages — of an area of wharf, or stretch of river — and practices, such as how to retail in local markets and operate the ferry. In addition, just as the corporation claimed sole privilege to a flour monopoly for the city, so the privileges of place were exclusive and prejudiced when others encroached upon them: the privilege to load and unload between the great dock and the slip, or to construct a weir and farm fish, meant little if others came and used or obstructed one's space on the wharf or fished the same stretch of river, there could be only one keeper of the ammunition store, and a fixed number of corn measurers and inviters to the burials of deceased persons.

Tradesmen justified their claims regarding the precise nature of privileges and duties, with reference to written law, self-preservation, and custom. Assertions made on the basis of self-preservation, and a right to work at one's calling, derived from the English notion that tradesmen occupied specific places, and routinely appear in all manner of petitions: from William Waldrons's search for office, to Dugdale and Searle's rope making business. Justifications in terms of known and written law relied on documentary evidence of the kind that John Graham gathered in the archives to defend the city's flour monopoly, and the widows Cornelia Norwood and Catherine Lorea brought to court to prove their deceased mother's property title. Without specific documents, ordinances, or precedents, however, legal arguments were difficult to press. And since everyone might claim a right of self-preservation, this was, on its own, a weak justification for securing or confirming a privilege: on the basis of self-preservation the provincial farmers could claim the flour monopoly just as easily as the city merchants. The corporation would have found it difficult to distinguish the candidates for keeper of the ammunition store had they all argued that their lives depended upon securing the appointment.

Claims made to custom provided greater flexibility than written law, and more precision and rhetorical force than self-preservation. In so doing claims to customary liberties and privileges, or to duties owed by others, could eliminate possible counter arguments and increase the chances of success. The authority of claims made within custom were enhanced by the repetition of a local practice over time: William Wieblin insisted that James Harding should load the cattle onto the ferry, because in his nine years as a butcher in the city that was the way things had always been done. Practices which had no history could hardly be claimed as customs, but custom's authority did not rest only on the existence, real or claimed, of practices. Custom's authority resided in its position within the English common law as the "a reasonable act once done is found to be good and beneficial to the people," which "being continued without interruption time out of mind, it obtaineth the force of a *Law*."

When lawyers in the Mayor's Court referred to custom in the English common law, they meant the ahistorical and ossified record of precedents which guided the judgement of legal cases. Custom in the common law acted as a conservative check on claims to the authority of local practices, but the imperative of custom as a sanction added force to claims made in regard of local practices outside the domain of the courts. When the colonists in New York referred to custom, however, they frequently referred to actual practices within the colonies. When men and women invoked custom in the early eighteenth century it was most often in a conservative sense to protect an existing practice, rather than to justify radical new idea political ideas. This was particularly the case for claims regarding, privileges, the use of property, and the common good. The affirmation of the legal force of custom by the English common law and its adoption by the colonists as a justification in extralegal contexts, and in particular in trade, carried important implications for the future of colonial politics.

Decades before its revolutionary implications became apparent, ordinary colonial Americans invoked the authority of their own customs, comparing their legal force to that of the English common law, to adjudicate local disputes over municipal and commercial privileges. It was on this narrow rhetorical ledge, which required reference to neither positive law nor abstract universal principles, that Americans constructed justifications requiring reference to neither the laws of England nor their condition as Englishmen. In time these kind of justifications would permit a new and radical justification, that the customs practiced amongst us are the laws which we choose to live by. The subversive implication of the imperative of custom within the English common law lay in the future. Rather than self-conscious assertions of colonial autonomy and the first faltering locutions of a language of independence, early eighteenth-century appeals to custom were key claims within an older, decomposing, language of privilege spoken in a society organised around an accepted hierarchy of unequal stations bound together by the moral imperative of implied obligations acquired over time.

The prevailing conventions of public life in eighteenth-century New York meant that many disputes between tradesmen were conducted with reference to public privileges and duties. Others were not, however, because not everyone was able to assert the entitlements and privileges claimed by some. Many aspects of the relationships within the trades derived from circumstances and expectations that were unconnected with the expectations and practices of the courts and municipal authorities. If the language of privileges and the talk of duties magnified the differences between tradesmen and their customers on what often appear as minor points, it also masked many of the similarities between them. In particular it masks a fluidity and impermanence in the relations surrounding colonial work which has hitherto remained hidden behind our impressions of life in trade and the workshop economy.

CHAPTER FIVE

Trading in the Colonial Craft Economy.

1. Introduction.

In spite of their significance in the history of the later eighteenth century and the transition to capitalism debate, we know very little about how artisans organized their work, financed their ventures, and survived the seasonal ups and downs of the colonial economy in the earlier part of the century.²⁰⁸ Following English and French scholars, American historians have focussed on the relationship between working men, radical politics and the market revolution at the end of the eighteenth century. Relying on the speeches and declarations of revolutionary artisans and their leaders, historians have described a golden age for free labor in colonial America where skilled craftsmen worked in small, fragmented workshops and took pride in their independence and craft traditions. Masters, journeymen, and apprentices shared in the product of the shop and worked for their "competence." Gathered together these concerns for custom, craft skill, and independence constituted a popular artisanal culture; a culture derived from the organization of production in the shop and the artisan's material experience of work and daily life. In the later eighteenth century market forces — such as de-skilling, subcontracting, and increasingly insecure terms of employment — undermined work practices previously governed by custom and tradition and, over time, artisans transformed

²⁰⁸For the shortage of studies on early American artisan commerce see McCusker and Menard, *Economy of British America*, 327.

their cultural claims regarding custom and competence into a class based opposition to the onslaught of free market capitalism.

Social history's focus on craft identity as foundational to artisanal culture and, ultimately, working class consciousness draws support from the colonial studies which use tax lists and civic rosters to describe the "social structure" of early New York and other colonial towns.²⁰⁹ Men are identified as hatters, bricklayers, or carpenters and grouped with others in the same trade on the basis of enumeration on an official roll or declaration in court. Identified in this way it has been usual to consider men from the same trade within a particular craft tradition. However as we have seen occupational titles carried a rhetorical and political significance in different contexts and far from denoting a common status or condition often masked differences between individuals and groups in New York. Studies of colonial "social structure" acknowledge that carpenters and shoemakers could be found up and down the scale, and that shoemakers generally did not do so well as carpenters. Yet despite the differences in their social and material lives, artisans are presumed to have shared a perspective or culture as independent men proud of their skills and craft traditions. Having gathered tradesmen into a general craft or trade, it is difficult to then explain why some fared so well and others did so poorly.

In addition, our existing view of the social and economic condition of skilled laborers in the early eighteenth-century seaport towns such as New York contains seemingly contradictory elements. On the one hand, we are told, New York at the end of the seventeenth century was little more than an "overgrown village" where dealings with strangers were the exception rather than the rule and neighbors conducted a face to face

²⁰⁹Tom Archdeacon, *New York City, 1664-1710: Conquest and Change* (Ithaca: Cornell University Press, 1976); Bruce Martin Wilkenfield, *The Social and Economic Structure of the City of New York, 1695-1796* (New York, 1978); Goodfriend, *Beyond the Melting Pot*, 65.

commerce. Labor was in such short supply that unemployment was "virtually unknown," and wages, even for common laborers, higher than those in the Old World. The numbers of people on public relief were surprisingly low and there are few records of imprisonment for debt before the late 1720s. And yet as early as 1695 New York City's tax list reveal that there were already severe inequalities in the distribution of wealth; inequalities which condemned many in this economy of abundant employment and high wages to a subsistence existence while others added to their steadily increasing store of wealth. This contrast between a world of commerce and employment filled with opportunities and potential, and a daily reality of impecunious toil has been attributed to the seasonal ups and downs of labor and artisanal disinterest in commerce for commerce's sake. But explanations of structural inequalities which rely on seasonal employment trends and a psychological disinterest in profit risk naturalizing socially produced differences which more often arise from specific relations of production and exchange.²¹⁰

Close study of early eighteenth-century commerce reveals that tradesmen were not only concerned with achieving their "competence," but worked hard to do quite a bit better than that. Once we set the claims regarding the customary practices, and a reasonable price for work done within the rhetoric of seventeenth-century languages of privileges and law, it is easier to see the intensely commercial activity carried on behind the moralistic allusions to the common good. The mistake has been to assume that these claims represented actual practices – for example a concern for the common good before

²¹⁰Gary Nash found that as early as 1695 the wealthiest ten percent of the population controlled forty five percent of New York's taxable wealth while the bottom half shared ten percent between them. The quotes in this paragraph are from Nash, but his discussion of low unemployment, high wages (at least compared to England), and the shortage of skilled labor is a restatement of an enduring and broadly accepted view in colonial social history. Gary Nash, *Urban Crucible*, 3-76; Carl Bridenbaugh, *Cities in the Wilderness*, 35-37, 135-139; Kammen, *Colonial New York*, 182-184.

one's self -- rather than justifications within a rhetorical scheme. A scheme wherein one cited concern for the common good while as far as possible pleasing one's self. If tradesmen remained at work in small ventures and rarely acquired large amounts of surplus from their work, it had more to do with the restrictive effects of the credit economy within which they worked than a "precommercial" disinterest in the market. Artisans in the early eighteenth century rarely worked at the same trade for life or in autonomous workshops turning out bespoke products with apprentices and a handful of journeymen. Complicated relations of credit and exchange suggest intimate and vital connections between brick yards, bakeries, workshops, and those who worked there. Production and exchange in the colonial craft economy, depended on groups of men and women organizing work within networks controlling the supply of credit, materials, and access to markets and customers. Tradesmen superficially identified as bricklayers and carpenters occupied very different positions within the commercial hierarchy of free and skilled workers in the city. Whatever status they might have shared in the sight of the law, tradesmen had distinct histories based on their position in the economy and the opportunities it afforded them. Through the late seventeenth and eighteenth centuries a client patron system of credit ensured that some achieved positions of comfort and influence while many struggled to survive in the urban economy.

2. The uncertainty of credit and client/patron relations in colonial New York.

Eighteenth-century New Yorkers suffered from an acute shortage of hard currency. The Atlantic mercantile system operated on the assumption that England was locked in a struggle for military and commercial rivalry with other European states.²¹¹ Colonies like New York were intended to enrich England with exported raw materials and specie by purchasing English manufactures. Beginning with the English take over in 1664, and throughout the eighteenth century, New York consistently imported more manufactured goods from England than it exported in raw materials leaving a balance of payments deficit.²¹² New Yorkers tried to make up the difference with the gold and silver earned from the colony's West Indian trade and, at least in the 1690s, from piracy ventures sponsored by New York merchants. The English campaign against piracy after 1700, combined with a decline in the fur trade and the price of West Indian sugar reduced the value of New York's export trade and added to the drain of cash out of the colony. Beginning in 1709 there were occasional local issues of paper money, usually in response to war time demands and increase in trade, but these issues were never sufficient to encourage a shift in commerce away from a system of exchange based on credit, money substitutes, bills, and notes of exchange; these various currencies and forms of credit were always reckoned in at local exchange rates or as "current money of New York."

²¹¹Tully, *Locke in Contexts*, 179-242; Lawrence A. Harper, *The English Navigation Laws*, (New York: Columbia University Press, 1939).

²¹²In 1723 Cadwallader Colden commented that "whatever advantage we have with the West Indies, it is hard to make it even with England, so tht the money imported from the West Indies seldom remains six months in the Province before it is exported to England, current cash here is being wholly in current bills of the province and a few Lyons Dollars," in Virginia D. Harrington, "The Colonial Merchant's Ledger," in Alexander C. Flick ed., *The History of the State of New York* (New York: Columbia University Press) 2: 331-372.

New Yorkers used a bewildering variety of currencies to make their exchanges. Throughout the period court records make regular mention of English pounds and Dutch guilders, Spanish pieces of eight, gold, silver, and wampum, as well as West Indian and other colonial money of various denominations.²¹³ Since any money acceptable to English merchants drained out of New York, local tradesmen relied on commodities and money substitutes. Bakers bought flour for beavers, mariners were paid in tobacco, and tradesmen paid each other with liquor and other commodities whose values were supposed to be regulated or at least stable.²¹⁴ Money substitutes presented peculiar problems: commodities were difficult to store while tradesmen waited for a suitable exchange; prices fluctuated from colony to colony and even between New York and Albany; commodity money drew tradesmen into exchanges in a variety of markets and some in which they were less knowledgeable players.

In addition to money substitutes and payment in kind New York tradesmen used negotiable instruments, particularly promissory notes and bills of exchange. A promissory note was a written promise by one person to pay another a certain sum of money: when Andries Barhyt sued Joost Sooy for debt in 1724 he demanded repayment for shoemaker's work and for a note, witnessed by J.S. Demyer and Cornelius Tenereau wherein Sooy had

²¹³On 10 October 1681, a committee reporting on the contents of a chest owned by a dead traveller, Mr Kirk Hall, discovered, "eight and a half pistoles in gold and one spanish piece...silver money to ye value of one hundred and fifty peeces of eight and five shillings...three gold buckles for shuus [sic] and one silver seale. One silver cupp and one brasse, peece of eight and one peece of eight more and two small peeces of silver found loose." in CCP, 1:1; *Christian Van Rijk v Garrett Wendell*, 23 September 1721, regarding a bag of money containing two gold pieces of eight, eight doubloons, forty two pieces of eight and twenty two pieces of Dutch money worth twenty eight stivers each, and two pairs of gold buttons, MCP, 7:6.

²¹⁴For transactions involving tobacco and commodity exchanges see *Daniel Cavore and Francis Lee v Mathew Force*, 1685, MCP, 1: 5; *RNA*, 6: 23.

promised to pay Barhyt three pounds five shillings.²¹⁵ A bill of exchange was a written order from one person directing a second to pay a third.²¹⁶ To make matters a little more complicated, under mercantile custom and the English common law, both instruments were assignable and could circulate to third or more parties.²¹⁷ Thus in 1706 Thomas Williams owed Elizabeth Jordan nine pounds. However, Williams was owed nine pounds by Ralph Astin who was himself owed nine pounds by Evert Garner, a mariner. To settle his debt with Jordan, Williams ordered Astin to pay Jordan; then Astin ordered Garner to pay Jordan. Short of reserves, and having no one indebted to him, Garner could not pay

²¹⁵From approximately 1722 onwards, the catalogue of the Mayor's Court Papers for many of the documents changes from a box and file number to the date of the case in file identified by a period from one year to another. Thus Andries Barhyt v Joost Sooy, 24 October 1724, is in MCP, 1722-1725. For other notes see John Ellison v Thomas Hooke Jr., 21 March 1713, MCP, 3: 110; William Peacock v Lawrance Garaner, 26 August 1721, MCP, 6: 87; Charles Congreve to Terwit Caley of London, 27 June 1722, MCP, 7: 12; Abraham Butler v Anne Hunt 6 March 1725, and Thomas Gleaves and John Darkins v William Bradford, 19 March 1725, and Henry Hazel v William Stafford, April 1725, all in MCP, 24 September 1722 to December 1725; John Bole v Thomas Lawrence, 6 Jan 1726, MCP, January 1726 to 27 February 1728.

²¹⁶John Cholwell v Adolph DeGrove, 20 June 1713, MCP, 3: 109. See also Thomas Clarke v John Kelly, 19 August 1723, MCP, 7: 122; Zachariah Angerin v Jeremiah King, vintner, 1701, MCP, 1: 85; David Bonefoy and wife Catherine v Daniel Pelltroe, leatherseller, 6 December 1701, MCP, 1:122, and his plea that when the bill was drawn up Catherine was covert, 16 January 1702, MCP, 1: 123; George Norton, butcher v Isaac De Riemer, merchant, 30 April 1706, MCP, 2: 99.

²¹⁷The Duke's Laws of 1665 provided for the assignment of written instruments formally executed under seal and witnessed, and a statute of 1684 extended assignability to all written instruments see *Colonial Laws of New York*, 1: 17, 153; Johnson, *The Law Merchant*, 35. Merchants had traded notes since the fifteenth century in England and their assignability was formally recognized in English common law in the case of Clerks v Martin in 1704, see William Cranch, "Promissory Notes before and After Lord Holt," (1804) in *Select Essays in Anglo-American Legal History*, 3 vols. (Boston, 1907) 3: 72-97; William S. Holdsworth, *A History of English Common Law*, 17 vols. (London, 1903-1972), vol 8 (1926), 170-178.

or assign a debtor of his own; Jordan sued Garner for a debt responsibility of which he had previously been happily unaware.²¹⁸

The scarcity of hard currency and instability of other forms of money encouraged men and women to do business on account.²¹⁹ Exchanges on account, in any currency, were most often calculated in the correct amount of New York money and then written down in that denomination. Far from the norm single, terminal exchanges for definite amounts were unusual and often the culmination of lengthy dealings. Money payments represented an endpoint rather than the usual course of a commerce characterized by short and long term credit relations rather than multiple, complete transactions. A business relationship might end or require some form of settlement for various reasons: the death or relocation of one of the parties, a difference of opinion, or the winding up a collaborative project. Financial pressure, such as an antagonistic civil suit, would require one tradesmen to convert some of the value held by another into a more flexible medium of exchange. Notes and bills which detailed a specific payment period also forced settlements: instruments issued from one trader to another for one transaction, could circulate to third and fourth parties and then, falling due, enforce a terminal point in an entirely different context from when they were first issued.

At any given moment and in any given exchange a New York City tradesmen might have to calculate the possible return in terms of multiple currencies and money

²¹⁸Elizabeth Jordan, widow v Evert Garner, mariner, 23 November 1706, MCP, 2: 96. Also see Nicholas Bayard, merchant v John Staples, gentleman, 1710, for payment on a bill of exchange originally drawn up by George Lane of Maryland on Samuel Grime of London, merchant, and made payable to Thomas Lee and later made payable by Thomas Lee to John Staples, and then owed by John Staples to Nicholas Bayard, MCP, 1: 134.

²¹⁹The tendency for unstable currency to drive commerce to credit in the eighteenth century is discussed in B.L. Anderson, "Money and the Structure of Credit in the Eighteenth century," in *Business History*, 12 (1970) 85-101.

forms for deals with various sellers and buyers in local, provincial, and international markets. In New York the urban market was in some ways even harder to predict given the city's commercial regulations which restricted commerce and enforced taxes which encouraged a few to conduct at least some of their affairs outside the city beyond the prying eyes of the municipal inspectorate. Calculating the outcome of a deal in this unregulated economy could be even more difficult than doing so in the public market. Lacking the security of a capital fund which could guarantee a living from investments, New York City tradesmen had to balance their ambitions in various markets with available credit and ensure they maintained a cash flow adequate to meet unforeseen obligations which might arise amid the shifting fortunes of urban trade. To secure a livelihood and a modicum of profit, tradesmen had to keep the calculations as simple as possible and avoid markets other than ones in which they were highly knowledgeable players. This restricted many to local and provincial trade, leaving the overseas markets to merchants and mariners with the necessary knowledge and contacts to provide a measure of security for their contracts.

Given the absence of sufficient and stable specie and the complicated nature of exchanges, credit was an unavoidable aspect of colonial commerce. New York tradesmen required credit to meet short term demands for cash and long term commitments to landlords, family, the city, and business associates. Credit was asked for and given at different moments and in different ways and was subject to various conditions and repayment terms; some debts were created in an instant and repaid soon after; others emerged out of lengthy periods of commercial dealing with payment endlessly deferred -- giving the impression of timeless trust or a lifetime of commerce on account with neither side ever seeming to require settlement. Most significantly, the operation of the credit system also

encouraged tradesmen to engage in diversified commercial activities and spread their interests across the local economy rather than focus on one core trade.

Not surprisingly New York tradesmen relied upon merchants and wealthier inhabitants of the city for much, but not all, of their credit. Wealthy plaintiffs suing for debt consistently cited the terms of bonds signed by both parties, often in front of witnesses, under which money had been loaned to a local tradesman. Bonds were drawn up between local men for anything from two or three to several hundreds of pounds, and tradesmen used the loans to finance business ventures and meet short term credit needs.²²⁰ Bartholomew Feurt's difficulties in the spring of 1701 illustrate the importance of credit for taking advantage of business opportunities and recovering from business failure. Feurt — a mariner with a part share in the sloop, *Katherine* — borrowed money from the merchants Benjamin Faneuil and Claude Boudwein to fund a voyage to Curacao. When he failed to pay on time both men sued in the Mayor's Court. Feurt then turned to Paul Droillett, a French merchant, who offered Feurt's debtors a bond in recognizance: three hundred pounds for Faneuil and six hundred pounds for Boudewin.²²¹ In addition to loans, or promissory notes bearing value, tradesmen relied on wealthier patrons to provide surety and bail for everything from bonds of recognizance to avoid for debt liabilities and guarantees for performance in public offices, to good behavior following civil charges.²²²

²²⁰Virginia D. Harrington, *The New York Merchant on the Eve of the Revolution* (New York: Columbia University Press, 1935), 47-126.

²²¹Claude Boudewin, merchant v Bartholomew Feurt, mariner and formerly part owner of sloop *Katherine*, 14 March 1701, and bond between Paul Droillet and Feurt, MCP, 1: 124, 125; Benjamin Faneuil, merchant v Bartholomew Feurt, 14 March 1701, and bond between Droillet and Feurt, MCP, 2: 12, 13.

²²²*Rex v Betty Batton and John Finey*, in Scott, *New York Court Records*, 5, and the continuation of the case in MCM, 1682-1695, 242.

Successful tradesmen also acted as patrons to those further down the scale. In June 1712 John Cure, by Jacob Regnier his attorney, sued the established ships carpenter John Ellison. Two sailors, Thomas Hicks and Edward Mackeny, owed John Cure three pounds four pence half penny and two pounds eight and nine pence respectively. John Ellison had guaranteed their debt for John Cure and promised to pay Cure in full when "he John Elsworth should receive what is remaining due to the two for their shares of the prizes lately brought into the port by captain Charles Ropinkthman." Cure sued and won after Captain Ropinkthman's ship had been and gone and Ellison had still failed to repay the sailor's debts.²²³

In the later seventeenth century wealthy merchants and tradesmen in New York increasingly used penal bonds to protect themselves from creditors who failed to pay on time. Penal bonds were agreements under which money was lent for a specific period and failure to repay carried a stated penalty. In the Dutch and early English periods the only defences available to a debtor sued for non-payment of a formal written agreement was to claim that payment had already been made, or show that the bond was fraudulent. After 1680, however, the Mayor's Court admitted cases of bonds which were strictly private agreements and were not executed and signed before a sworn notary public or other official witness and the number of defences claiming fraudulent inducement increased. The admissibility of defences based on the origin of the transaction provided debtors with latitude in their defence and undermined the assignability and certitude of formal obligations. Since the assignee of a bond took it with all possible defences which might be raised against the assignor, he would need to know all of the details concerning the original transaction. It was this diminishing certitude of the formal written obligatory

²²³John Cure v John Elsworth, 16 June 1712, MCM, 1710-1715, 279, 280.

which encouraged the development of penal written obligatories which included not just a debt and interest at the appropriate rate, but also a hefty penalty to be forfeited if the obligator failed to make timely payment on the debt. By the early eighteenth century penal bonds commonly required the borrower to repay double the amount if he failed to repay on time or under the terms of the bond.²²⁴

When one examines the network of credit and exchange within which artisans worked, the role of women – and particularly widows – as backers and customers of the urban trades is clear. The funds and properties controlled by New York's widows represented significant assets and pockets of value in the local economy. Wealthy women lent considerable sums of money, rented houses and land, and engaged in local and international commerce on their own account and in partnership with others.²²⁵ Women of lesser means also lent and borrowed money and traded commodities. On 31 May 1714

²²⁴Johnson, *Law Merchant*, 32. In July 1719 the merchant partnership of Francis Harrison and Gilbert Livingston drew up a bond wherein Jacob Swan, a hatter, and Oliver Schuyler, a merchant, agreed to pay Harrison and Livingston six pounds, unless they repaid the loan of three pounds on or by 1 May 1720, MCP, 5: 3, 109.

²²⁵For cases involving complicated investment and substantial amounts see John Deforest, by order of his mother Sara Deforest v Obe Kendrick, 30 May 1684, MCP, 1: 8, 9; Gertuyd Van Cortlandt v Servis Marrisset, armourer, October 1704, nonpayment of rent for a house in Cannon St, MCP, 2: 81; Benjamin Faneuile v Engeltie Moll, 20 September 1709, MCP, 3: 14; Jane Tothill, executrix for the widdow Hellogont Dekey, deceased v Jacques Cortileau, March 1711, in particular Tothill's fifteen page defense against Cortileau's charges in, MCP, 3: 66, 67, 68, 92, 93, and MCM, 1710-1715, 57, 61; Abraham Wendall v Jane Tothill, widow and excutrix of will of Jeremiah Tothill, 1711, MCP, 3: 89; Jane Tothill v James Wright, 1710, MCP, 3: 51; Anne Graveraedt, widow v John Garner, 31 May 1712, nonpayment of rent on ahouse, MCP, 3: 102; Agnis Janeway v Jacob Swan, 23 August 1718, nonpayment for one year's rent on a house and for an unpaid bond, MCP, 4: 77, 79, 80, 81; Mary Bloodgood v Francis Garrabrant, merchant, 23 June 1722, MCP, 6: 97; Jannica Breasted, widow v Richard Ashfield, executor of will of Peter De Reimer, for a note of one hundred and eight pounds; Hellogond Selighthenhorst v Jacob Swan, August 1707, MCM, 1704-1710, 283; John Barberie v Ann Culyer, widow, August 1693, MCM, 1682-1695, 358.

Joanna Markham drew up a bond lending Jacob Swan — now in partnership with Joseph Luane, a vintner, of "Brookland," Kings County — ten pounds; when they failed to pay on time she sued in court to recover the loan and a penalty of twenty pounds.²²⁶ In addition to merchants and widows, tradesmen also borrowed from each other or entered into short and longer term partnerships to set up new ventures. This kind of lending and trading on credit between men and women of different social status occurred within measured agreements usually reached after sober reflection where repayment terms and penalties were clearly set out. At these moments men and women chose who they would be in a business relationship with and lent money or provided surety as part of a calculated strategy designed to strengthen their own financial position within the local economy. Every person to whom one extended credit became a debtor and could then be called upon to settle or offered in payment for one's own liability in the future.

Even credit secured on lengthy, favorable terms fell due at some time, and New York's tradesmen had to ensure they had the wherewithal to meet their obligations when required. There were some in New York who ran businesses on credit and others who made a business of lending money and notes. Local butchers, bakers, and storekeepers sold on credit to customers who were unable to pay for each item as they bought it. Periodically, these tradesmen cleared out their accounts and brought several cases to court

²²⁶Joanna Markham for twenty pounds to Joseph Luane, vintner, of "Brookland," Kings County and Jacob Swan, hatter of New York, 31 May 1714, and her subsequent complaint to recover the money, in MCP, 4: 36, 37; Sarah Sanford v Adolph Dyrck, 11 April 1702, nonpayment for cedar timber sold, MCP, 2: 54; Miriam Napthaly v Anthony Young, tallow chandler, 1709, MCP, 3:31; Dorothy Wright, widow v Joseph Berry, tailor, 1710, MCP, 3: 62; Joanna De Bruyn, widow v Thomas Parmiter, pipemaker, 7 March 1710, MCP, 3: 8; Joanna Markham v Thomas Whitehead, 1712 MCP, 3: 95; Miles Foy v Elizabeth Jourdain, 8 September 1722, MCP, 7: 64; Andries Hardenbrook v Margaret Rottery, 7 Septmeber 1723, MCP, 8: 9. Also see, Jean P. Jordan, "Women Merchants in Colonial New York," *New York History*, 58 (1977), 412-439.

to recover money owed.²²⁷ The most significant collection agents, however, were the wealthy merchants in the city who provided credit to local tradesmen, but were most often major borrowers from each other and from London merchants higher up the trans Atlantic credit chain.

London merchants extended long, and nervous, credit lines to their colonial counterparts and New York's merchants faced constant demands to settle their English accounts.²²⁸ Periodically those who provided credit and lent money on bonds came to court to sue one or a handful of local tradesmen for payment -- hoping to scoop up any precious currency which might have collected through the normal course of tradesman's commerce. In March 1721, the merchant partners Francis Harrison and Gilbert Livingston brought suits against six local men for monies owed from bonds drawn up in the previous two years.²²⁹ This kind of action, or any other circumstances which required

²²⁷In the spring of 1710 George Norton, a butcher brought individual cases against, Richard Lloyd, Robert Crannel, John Corbett, John Stevens, Mary Parker, Joseph Prosser, and Richard Lloyd, MCM, Sept 26 1704 - Nov 21 1710, 498, 514, 519, 522, 538, 557. See also the innkeeper Edward Buckmaster's cases against Fredrick Arentsen, John Peterson Slott, and Henrick Bemicke in 1691, MCP, 1: 34, 35, 36, and MCM, 241; suits by Giles Shelley, merchant, MCP, 3: 44, 45, 46; Thomas Weyman, innkeeper, MCP, 1: 15, 25.

²²⁸As early as the 1670's John Windser's account book revealed substantial amounts of business, and indebtedness, between New York merchants and trading partners in London, in MCM, 1677-1682, 211-213. The shortage of currency and pressure to pay debtors in England continued throughout the seventeenth and eighteenth centuries, see Lawrence Leder and Vincient P. Carusso, "Robert Livingston (1654-1728): Businessman of Colonial New York," *Business History Review*, XXX (March, 1956), 26; Philip L. White, ed., *The Beekman Mercantile Papers, 1746-1799*, 3 vols. (New York, 1956), 11, 13, 211, 490; Harrington, *New York Merchants*, 164-206.

²²⁹For example the merchant partnership of Francis Harrison and Gilbert Livingston and the example of the cases filed by them in 1721 versus Thomas Banks, Edward Blagg, John Dunn, James Bussey, Edmond Hawkins, Jacob Swan, in MCP, 5: 140, 105, 106, 107, 108, 109.

tradesmen to claim some of what was owed to him on account sometimes caused a ripple effect through the courts as suit and counter suit were filed before relationships settled once again. Using the complaints filed with the clerk which record every suit threatened, rather than the court minutes which only record cases that proceeded to trial, we get a clearer sense of the impact of a civil suit on others.

When a tradesman was sued by a local business partner he had to settle the debt or risk a loss of local confidence in his solvency which might produce a run on his credit. Such was the effect of the merchant Gabriel Minviell's action against John Righton, a hatter, in January 1700. Minviell successfully sued Righton for the one hundred and seventeen pounds and fifteen shillings, money borrowed under a bond the previous year. A few weeks later Righton was unable to pay a local merchant, Abraham Isaac, the twenty pounds he owed. When Righton failed to appear, Isaac went to the court and secured an order to attach "all the goods and chattells of the defendant, John Righton to be found in his bailewick." Isaac's suit and Righton's disappearance brought suits from other creditors. The creditors had Righton's goods and chattels, but Righton was nowhere to be found.²³⁰

Faced with a run on his credit, all that lay between the New York tradesman and destitution, imprisonment, or flight, was the timely intervention of another with the wherewithal to offer security for repayment at some point in the future. Lacking the support of a patron, a debtor could offer to work the debt off. But this meant putting oneself at the mercy of a creditor who might resent not only the failure to pay but also the cost of provisioning the debtor who joined his household as a servant. When Mary Vanderige was unable to pay what she owed the shoemaker Joost Sooy and his wife

²³⁰Minviell's complaint against Righton in MCP, 1:77, and subsequent cases in MCM, 1695-1704, 146, 153, 155; see also various parties v John Munroe, November 1727.

Sarah, she indentured herself as an apprentice to the Sooyes for four years. When Mary became ill Sarah Sooy paid for "a few odd necessarys to the amount of forty-six shillings and six pence and engaged [agreed] to pay the doctor." However, though Mary claimed to have served her master and mistress "faithfully and truly tho under the greatest hardship...[going] almost naked and seldome had stocking and shoes on her feet either winter or summer," Sarah Sooy did not pay the doctor. Towards the end of the indenture, the Sooyes moved out of the city and hired out Mary for her remaining time to "John Parra of this city brickmaker for the sume of nine pounds." At the end of her indenture, the Sooy's refused to give her "such apparall as was suitable to her imployment but on the contrary has found her nothing so that y pet must undoubtedly perish." To make matters worse, Mary was "dmnd by the doctor for to pay him for his medecines and attendance," a bill Mary "humbly conceives in right is not obliged to pay lest she was free."²³¹

From the mid seventeenth century local tradesmen in New York relied on merchants, widows, and each other for credit. Tradesmen sought and gave different kinds of credit as a part of their trade, each form carrying its own advantages, disadvantages, and risks. In spite of the seemingly timeless quality of exchanges made on account, the complaints filed with the Mayor's Court reveal that creditors, old and new, might seek payment at any time and for all kinds of reasons. This meant that the financial position of the average New York tradesmen was to some considerable extent dependent on the quality of credit relations he had managed to secure in the locality. Credit secured as part of trade could be negotiated and brokered, but credit under penal bonds borrowed to meet short term needs or desires was expensive and the borrowers could find themselves paying

²³¹CCP, 2: 2; Morris, *Government and Labor*, 359.

back twice the amount within a short space of time. A tradesmen who fell on hard times might find himself forced to seek credit on unfavorable terms driving him further into dependency ending up, in the worst case, as servant to another. New York City tradesmen had to balance their need for credit and ambitions in new commercial enterprises with a concern for their debts with existing creditors.

The ever present threat of an antagonistic suit leading to a credit squeeze was not the only kind of uncertainty in colonial trade. Uncertainties in colonial commerce also emerged out of the kinds of exchanges that tradesmen and New York dealers engaged in. In the summer of 1700 William Norman -- master of a London based ship *Newnham*, on the last leg of a voyage from Madeira to the West Indies, New York, and back to England -- manipulated local credit arrangements as he prepared to set sail for home. Norman experienced difficulties gathering his crew together and had to go to court to compel Rowland Johnson, a mariner who had deserted the *Newnham*, to return to the ship. No sooner was Johnson on board than Norman was confronted by Elizabeth Jarret, a local housekeeper. Jarrat complained to Norman that two other members of his crew, William Wasset and William Toble, owed her seven pounds for board and lodging and she would have them arrested. Norman gave Jarrat two pounds -- promising to pay the rest with credit held by Rip Van Dam, a local merchant -- if she would agree to allow the men to rejoin his crew. The following week Norman sailed for London, the mariner's debt remained unpaid, and Elizabeth Jarrat went to court and attached William Norman's goods which she believed were held by Rip Van Dam. When Van Dam appeared in court, however, he declared that he had nothing belonging to Norman at the time of the attachment and Jarrat's case and the five pounds was lost.²³²

²³²William Norman v Rowland Johnson, 22 June 1700, and Elizabeth Jarrat v William Norman, 1700, in MCP, 1: 100, 103; Elizabeth Jarrat v Rip Van Dam, August 1700, MCM, 1695-1704, 176, 177, 179, 182. Under a writ of garnishment a creditor

In addition to falling victim to sharp practices, New York's men and women exchanged commodities in deals which contained unavoidable degrees of risk and ambiguity. Tradesmen conducted a large amount of their business on account and were buyers and sellers of a range of products, aside from what they produced as craftsmen, in local networks of production and exchange. The flurries of legal action surrounding a local man's actual or suspected departure suggests the presence of these networks and that movement in and out of them was closely monitored. Trading in a network had certain advantages: different men operated as checks and balances on the others and served as witnesses in court cases when deals went wrong or someone attempted a deception. Unsecured credit which no one was witness to was difficult to prove in court as Henry Soaper, a farmer from out of town, discovered in September 1718. Soaper accused Lesley, a New York merchant, of failing to render a proper account of what became of the half a boat load of lime he held on account for Soaper, but Lesley denied ever having received the lime and the case petered out.²³³

Trading in a network also meant that those who wanted to exchange had to choose from within the range of whatever was on offer within the network of people they associated with. This drew tradesmen into complicated disputes over value and a range of different items which required them to have a knowledge of markets other than one in

could attach, or seize, a debtor's goods held by another who became the garnishee, see *William and Peter Hamby v Paul Husch attachment and John Burrow garnishee*, MCM, 1704-1710, 42; *Joseph Latham v Susannah Elliot attachment and John Shepard garnishee*. The garnishee's usual defence was deny having in their possession anything belonging to the debtor. Thus John Shepard denied having anything belonging to Elliot at the time of the attachment. The case went to trial and Shepard lost the case when Joseph Latham proved that Shepard was holding two slaves belonging to Elliot, MCM, 1704-1710, 62.

²³³Henry Soaper v John Lesley, 13 September 1718, MCP, 4: 102, 103.

which they worked at their craft. Payment in kind led to uncertainties and detailed disputes over the exact nature and form of the exchange agreed upon. In June 1723 Jonathon Gleaves, a joiner, sued Jacob Hayes for failing to deliver a bed, with curtains, valance, curtain rods, and "other appurtenances," which Hayes had promised Gleaves for making him a chest of draws and a table.²³⁴ Uncertainty also resulted from procrastination, as tradesmen cast around for acceptable forms of payment or changed the terms of a deal in an effort to protect their profit.²³⁵ On 1 December 1700 Thomas Willis sued Peter Adolph, a carpenter, for four pounds payment for twenty bushels of wheat. Adolph denied the debt saying that "on the fourth day of June last passed at Mucskola Cove," Willis "did bargain and sell unto him" one hundred bushels of wheat and that Adolph promised to pay Willis "for the same and not before parte of which one hundred bushells is the aforesaid twenty bushels and noe others."²³⁶ Alternatively, when Gabriel Minviell sued Jan Hendrick Van Gunst for two hundred and seventy guilders owed for three cases of glass, Van Gunst defended himself arguing that he had offered to pay for the glass "in money which the defendant refused to receive." Bringing the agreement to court with him, Minviell pointed out that Van Gunst had originally promised to pay for the glass in "merchantable Long Island wheat," and he insisted on this form of payment.²³⁷

Changes in the organization of the credit network produce ripple effects throughout the local economy. When local people died or remarried the effects could be

²³⁴Jonathon Gleaves v Jacob Hayes, 29 June 1723, MCP, 7: 67.

²³⁵James Graham v Adam Wright 5 June 1683, MCM, 1682-1695, 55; John Leisly v Thomas Roberts, 21 January 1706, MCP, 2: 95.

²³⁶Thomas Willis v Peter Adolph, MCP, 1: 112a, 112b, 112c.

²³⁷Gabriel Minviell v Jan Hendrick Van Gunst, MCP, 1677-1682, 332; Nicholas de Mayo v Anthony De Milt, 7 September 1675, MCM, 221; RNA 6: 15.

seen in suits to recover debts from newly wealthy widows or widowers, or the estates of people who would, given their demise, no longer be actively trading.²³⁸ When Thomas Hooke Jr. married the widow Mary Gurney, John Ellison sued him for merchandise and a loan which Mary's first husband left unpaid upon his demise.²³⁹ Alternatively, a newly married husband might seize upon his wife's debtors whose obligations he inherited from his spouse's predecessor. The intimacy of commercial relations within different networks made for complex but precise claims to ownership and liability. The difficulty of establishing title to goods is evident in the cases of attachment, when goods seized to satisfy a debt were claimed subsequently by people other than the those named in the suit.²⁴⁰

The secret of commerce in New York was having an eye for an opportunity without losing sight of the risks if things did not work out as planned. Elizabeth Jarrat gambled that the captain of the *Newnham*, recently arrived fully loaded from the West Indies, had business in town with partners she could sue if he shipped out without paying the debt. Faced with two penniless sailors or the chance for a claim on their captain, Jarrat's was a calculated and mostly unavoidable risk. This idea of calculating one's strategy within a range of unavoidable risks, sums up the business practices of many. To join in trade meant becoming part of a network of production and exchange and once one

²³⁸Robert Crook and Richard Sanger v John Haines, 2 July 1723, MCP, 7: 45.

²³⁹John Ellison v Thomas Hooke Jr., and his wife Mary, executor of the will of John Gurney, barber, 21 March 1712, MCP, 3: 111. Tirwhyte Cayley and wife Elizabeth, late Elizabeth Glencross, widow, v Abraham Wendell, merchant, for bond debt made when she was sole, MCM, 239; David Bonefoy and wife Catherine v Daniel Peltrow, 16 January 1702, and the plea that when the bill was drawn up, Catherine was under covert being the wife of one Merciere, who was then living, MCP, 1: 123.

²⁴⁰John Chevalier v Ducie Hungerford, 1700, MCM, 1605-1704, 165.

entered into commercial relationships one was to large extent subject to the fortunes of those relationships and those one traded with. In this respect eighteenth-century suits for debt and other civil actions did not simply represent moments of business failure or crisis; credit was part of the ordinary operation of commerce between tradesmen who accepted debt as a part of daily life and appeared in courts wherein litigation served to channel value within and around the local economy. To be a success a tradesmen needed to insulate himself from the consequences of unexpected events in his own and his trading partner's lives: An important trading partner who quit town or remarried a less amenable husband with an eye on his new wife's debtors; a failed business venture or a special tax levied by the city which required ready cash, or even a successful enterprise which might result in suits as creditors circled seeking a share in the value accumulated, at least momentarily, by another.

The complaints filed with the Mayor's Court illustrates the importance of local supplies of credit to ordinary New Yorkers making a living in trade. Credit was almost impossible to avoid and the uncertain nature of eighteenth-century commerce threatened disaster for the unwary or reckless tradesmen. Given the significance of credit to success in commerce, one might assume that the predominance of certain men in local trades was based upon their easy access to credit from their neighbors and close associates; credit relations which bound neighbors together and excluded strangers from borrowing and full participation in local markets. In fact, exactly the reverse seems to have been the case. Far from being restricted to local people, credit appears to have been available to pretty much everybody who was able to work.

Historians have long noted the shortage of labor in colonial towns which offered free men better opportunities in American than Europe. This general labor shortage seems to have encouraged lenders to bail out any who were fit and active and could continue

working. The Duke's Laws had provided for imprisonment of defaulting debtors and the assignment of poor debtors to the service of their creditors. Amendments introduced after 1684 required debtors to be released if their creditors refused to let them work off their obligations; all debtors had to be liberated or assigned by the end of the court term following arrest unless it could be proved that they were holding concealed assets. In spite of the inequalities in wealth and the numbers of people living at a subsistence level, imprisonment for debt and the relief of poor debtors did not become a significant problem in New York until after 1725 and the city did introduce regulatory relief until 1730. This was because merchants and tradesmen of all ranks offered credit to those who needed it permitting beleaguered debtors to avoid gaol, but remain in debt and at work.²⁴¹

The impression of relatively easily available credit given by papers filed in the Mayor's Court is borne out by the existing work on poverty and public relief in early New York. Comparing the volume of debt litigation with the numbers of people listed on public relief or in prison for debt in the period 1690-1730, the figures show a surprisingly low level of indigence among free working men. The Mayor's Court minutes detail an increasing case load from approximately 135 cases commenced between 1691 and 1694 rising to roughly five hundred cases between 1726 to 1730.²⁴² The vast majority of these cases were cases for debt brought by tradesmen, merchants and wealthy widows. For the same period Steven Ross finds that a dozen people received relief for the first time in 1691-1694 and the number rose to 140 people between 1726 and 1730. These figures are especially interesting when one considers the profile of those receiving relief. Ross's study

²⁴¹Peter J. Colman, *Debtors and Creditors in America. Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900* (Madison: State Historical Society of Wisconsin, 1974), 105-130.

²⁴²Deborah Rosen, "Commerce and the Courts: The Formative Period of Legal Practice in New York, 1690-1760," (Ph.D. Diss., Columbia University, 1990), 145.

finds that for the early and later periods by the far the largest number of recipients were mothers with infants, widows, and orphaned children who accounted for ninety percent of those on the register and gave infirmity, sickness, and an inability to work as their reason for needing relief.²⁴³

In spite of a rising tide of debt litigation healthy men who ended up in court were not put in the poor house or in debtor's prison, but found willing bondsmen. The number of tradesmen who worked as freemen but drifted in and out of debt dependency cannot be established precisely. However the estimates of the distribution of wealth allow us to roughly define the size of this growing group in the early eighteenth century. According to the census in 1730, New York's population stood at 8,622 -- 7, 045 whites and 1, 577 blacks. A comprehensive property assessment in the same year found that forty nine percent of white taxables held property worth ten pounds or less. With this kind of an estate almost half of the city's white taxable freemen and their families lived in or perilously close to difficult circumstances. Assuming that the city's servant and black population were no better off than this section of the white population, it seems reasonable to assume that nearly three-fifths of the city's inhabitants lived at or near a subsistence level and would be unable to weather a serious economic crisis without recourse to a financial patron of some kind.²⁴⁴

²⁴³The Church Warden's list of permanent poor in 1700 identified thirty five people, and by 1725 the list totalled forty two. For poverty and poor relief in early New York see Steven Ross, "Objects of Charity: Poor Relief, Poverty, and the Rise of the Almshouse in Early Eighteenth century New York City," in Pencak and Wright, *Authority and Resistance in Early New York*, 138-172; Raymond Mohl, "Poverty in Early America, a Reappraisal: The Case of Eighteenth century New York City," *New York History*, 50 (1969), 5-27; Robert E. Cray, *Paupers and Poor Relief in New York City and its Rural Environs, 1700-1830* (Pennsylvania: Temple University Press, 1988), 35-66.

²⁴⁴Bruce Wilkenfeld, "New York City Neighborhoods, 1730," *New York History*, 57 (1976): 164-182.

Despite rising levels of urban poverty and debt litigation, then, healthy men who could work managed to stay out of jail, off relief, and in the work force. The best way for a tradesmen to ensure he remained out of debt and dependency was to have others indebted and dependent on him and tradesmen made willing bondsmen for those who found themselves in a jam. The availability of credit even to those who look on paper to have been poor investments, provides the clearest insight into the client patron system of credit which provided the foundation for the trades in colonial New York.

The insufficiency and instability of specie encouraged merchants and tradesmen to conduct the majority of their business on credit. The merchants in New York had to generate specie to pay their London backers who regularly demanded payment and employed agents to pursue their cases in the New York City Mayor's Court. Wealthy merchants might recoup valuable currency from large exchanges with counterparts in Boston or Barbados. But they could also realize a steady stream of income from well managed credit relations with a network of local tradesmen who earned small amounts of hard currency in their individual enterprises which the merchant patron could then recoup through civil suits.

Merchants sought specie to settle debts with London partners, and tradesmen required small amounts of cash to cover certain expenses such as city taxes or licenses, a timely debt repayment or investment in a new enterprise. But these cash reserves represented a fraction of an established tradesmen's actual annual trading turnover and most urban commerce was conducted on credit. When tradesmen built up a stock of valuable notes or, less frequently, cash, there were several options open to them. They could save the money, which was dangerous given currency instability and the ever present threat of a antagonistic suit. Or they could invest in trading voyages, which could be risky, or buy land as many did for reasons of security and status.

Alternatively, New York's tradesmen could reinvest the value they possessed in new exchanges and in securing the obligation of debtors who found themselves in court; peripatetic sailors needing credit while they waited for their share from a recent voyage, or a jobbing carpenter short of work in the off season but skilled in his trade and a reasonable risk until business picked up again. Reinvesting in new trades and debtors was a more viable option for small amounts held by the average tradesmen which was insufficient for land purchases. Value invested in trade was more flexible and easily convertible or assignable than land. Most important, given the volatility of the values of money and commodities, regularly investing any surplus permitted tradesmen to renegotiate their assets (or update their portfolio, if you will) at current market values and upon better terms than they may already possess.

The dynamics of the client patron credit economy also explains why so many men nominally identified as carpenters, butchers, bakers, and cordwainers, also appear as dealers in commodities unconnected with what, we might assume, is their core commercial concern. If, given the volatility of the local economy, any substantial accumulation of wealth was unlikely a measure of security and comfort was possible for the tradesman who could find a position for himself within existing client patron networks, or develop subsidiary networks of his own. Whatever a tradesmen's declared craft and area of expertise the more he invested in trading and providing credit for others the greater the opportunity to secure access to specie earned by others in businesses to which the lender had no direct access, and the greater security of having multiple debtors who could be assigned when required. Because one had no way of knowing when the next suit would be filed and debts claimed, the credit system encouraged those with cash reserves or good credit to maintain a diverse portfolio of investments and become involved in a variety of markets and areas of commerce.

The uncertainty of the credit system, indeed of the economy in general, encouraged greater and greater participation and diverse investments as the only sure way to mitigate its effects. Thus the credit system motivated New York City tradesmen to do exactly the *reverse* of what historians have previously considered their normal commercial enterprise: rather than mastering one trade and working as a skilled artisan in a workshop turning out bespoke products for local customers, survival and success for colonial tradesmen depended on their active participation in diverse enterprises and markets which promised a profit. The quickest way to debt and insecurity was to remain in the workshop waiting for customers to come by in search of a bespoke pair of shoes or jobbing carpenter to build a house. In addition to a craft which might form their core business, New York's tradesmen relied on all manner of commercial enterprises to ensure their survival and freedom from debt dependency. This is clear if we consider the ups and downs of commerce from one tradesmen's perspective.

3. John Dunn: a tailor?

In 1723 Joseph Latham Jr and Samuel Pell, both shipwrights who also worked as boatmen in the Hudson River carrying trade, sued John Dunn, a tailor, for breach of a covenant drawn up in 1714. Under the covenant Dunn had hired out his slave to Latham and Pell promising that "if the slave should be absent himself or neglect his service, then the time would be made up."²⁴⁵ In court Latham and Pell complained that Dunn called his slave home for ten days to help slaughter some cattle and they were never compensated for this loss of time. In his defence Dunn produced the agreement and argued that the

²⁴⁵Joseph Latham, Jr. and Samuel Pell v John Dunn in, MCM, 1723-28, 221.

covenant permitted him to use the slave if Latham and Pell agreed, which Dunn said they had. The jury found for Dunn and the plaintiffs were required to pay the costs of three pounds three shillings and nine pence. A fairly straightforward case of breach of covenant, disputed, tried and judged. What is interesting about this case is that a dispute unconnected with ship building or tailoring should have brought these tradesmen to court nine years after the fact. It is easier to understand the diversity of the three men's interests and the timing of the dispute if we consider the transaction within John Dunn's commercial career as a whole.

There is no way of knowing for sure when John Dunn first came to New York, but he registered for his freemanship as a tailor on 2 June 1713.²⁴⁶ The following year he called home his slave from Latham and Pell's service to slaughter some cattle and by 1717 Dunn had acquired at least one more slave to assist in his business and for hiring out to others.²⁴⁷ In addition to working as a tailor, hiring out his slaves, and trading in livestock, Dunn also speculated by providing bail for those sued in court. On 18 June 1720 Richard Dyer sued Kenneth Cowan a sailor for seven pounds, three shillings, and six pence lent in May the previous year, Dyer also demanded damages which brought the total to twelve pounds. When the case came to court on the 5 July 1720 Dunn drew up a penal bond lending Cowan nine pounds to meet the debt. Under the terms of the bond Cowan had three weeks to repay the debt or he would owe Dunn twice the amount – the debt and the penalty – amounting to eighteen pounds four shillings. Cowan failed to pay on time, and Dunn sued him for the full amount on the first available court day, the 29th of

²⁴⁶New York Historical Society, *Collections*, (1885), 92.

²⁴⁷On 6 Nov 1717, Wan and Tom, John Dunn's slaves were flogged for getting drunk and committing "several misdemeanors," in Scott, *New York City Court Records*, 32.

July. When Dunn presented the signed and sealed penal bond, it left Cowan no defence and he was forced to confess the debt.²⁴⁸

In November 1721 John Dunn sued John Depress for fourteen pounds five shillings and two pence, "as well for the work and labor of him the said John Dunn as a taylor as for diverse necessities and conveniences by him the said John for him the said John Decrees and at his special instance and request in and about the aforesaid work found and provided." The phrase "diverse necessities and conveniences...work found and provided," appears on hundred complaints filed with the Mayor's Court, and usually there is no way of knowing to what it refers. To support his case against John Depress, however, Dunn produced a copy of his account in court. The account provides a glimpse of the diversity of this New York tailor's commerce with one man over the course of two or three years.²⁴⁹

²⁴⁸In May 1720 Dunn, and a local gentleman Thomas Lyell, provided security for Mary Hortons good behavior after she was sued for assault by Elizabeth Bawler, see MCP, 4:109, for the criminal case see Scott, *New York City Court Records*, 34.

²⁴⁹MCP, 5: 79; For a similar account submitted with a case see, Jacob Haas v William Willson, 16 March, 1699, MCP, 1: 99.

John Deprees debts to John Dunn Viz

1718		
December 17	For a bridle	0. 6. 0
	3 A quart of rum by your order to the (brags)	0. 2. 0
1719		
January 4	To cash lent you at Hoppers Mill.	0.1. 0
	A pair of stockings	0. 9. 0
February 20	A hatt.	0.18.0
March 15	Another hatt	0.18.0
	To his mother a pair of shoes from John Dunlap	0. 5. 6
	paid for frage of his horse	0. 1. 6
	To expences two journeys to Tapon	1. 4. 0
	To passage of his wife mother and other relations from Turtle Bay to New York	0. 3. 0
	To horse keeping with oats hay and barn From December 10. 1719 to the 4th April following 1720 116 nights 1.3 per night	7. 3. 0
	To Capt Blagg for pound the horse twice	0.13.6
	John passage from Sandy Hook	0. 1. 6
1720		
September	Making 2 dozen breast buttons	0. 1. 5
	Thread and tape	0. 3. 9
	Making the waistcoat and breeches	0.12.0
	To ? weeks diet	0. 6. 0
	To pasturing his horse at Mr Stuyvesant's farm	
	May 18th 1720 to ?ber ?pm at 6 pm	1. 7. 0
	To a pair of shoes from John Dunlap	0. 7. 6
	To shoes and removes for the grey horse to Lawrence Gardiner	0. 6. 0
	To bleeding the grey horse	0. 1. 0
	To ditto and Drenching	0. 3. 6
May 4		
	To bleeding ditto	0. 1. 0
	To cash lent at Tho Parmyters	0.10.0

John Dunn's account with John Depress reveals that, though he was known as a tailor, Dunn did far more than make clothes. Over the course of two years Dunn provided credit to Deprees in cash and money substitutes, ferried his family around the colony, took care of his horses, provided him with food and lodging, and ran errands. Dunn sold Deprees not only hand made clothes but hats, and shoes bought from John Dunlap, a shoemaker. The reason for the civil suit is unclear, though Depress did make a forlorn attempt at a counter suit. The court accepted Dunn's account and Deprees had to rely on Thomas Slow, a local victualler, to bail him out for thirty-eight pounds. Slow agreed to provide security for Deprees. When the debt remained unpaid, Dunn sued Slow and took possession of the bail bond.

Following John Dunn's progress in the courts through the 1720s, his trade appears as diversified as his business with Latham, Pell, and Deprees during his early years in New York. In March 1721 Dunn provided bail of five hundred pounds for Daniel Ponton, a bricklayer, who was being sued for slander by Stephen Mileman; it is probable that the bail was part of a land deal which Dunn and Ponton were in the midst of negotiating. Then Dunn was sued, along with others, by the merchant partnership and financiers Francis Harrison and Gilbert Livingston for money he had borrowed the previous year. In September 1721, Dunn entered municipal service for the first time when he was elected tax collector in the north ward. Hardly one of the most esteemed public offices, but a position which suggests that Dunn had settled down in New York and made local contacts in commercial and political life.²⁵⁰

In the early 1720s Dunn dabbled in the livestock business, and was sued by John Holfinaer for money owed in payment for twenty-four sheep and five lambs. From animal

²⁵⁰MCC, 3:264.

husbandry, Dunn moved into the boating and carrying business quite possibly using money borrowed from Elias Brevoort and John Palmer who sued him in separate suits for money loaned to him. It was when Dunn entered the boating and carrying trade that Latham and Pell decided to bring their suit against him for the ten days of lost service in 1714. There is no way of knowing for sure, but the coincidence of Latham and Pell's suit with Dunn's entry into an area of local business in which they were significant players might account for the dispute between them men over an agreement for a slave's labor made nine years previously. As we have seen, Dunn defeated Latham and Pell's suit, but shortly thereafter his boating business brought him to court again. In December 1725 Edward Blagge reported Dunn to the authorities for landing one hogshead of molasses and failing to declare it and pay the duty as required; Blagge received one third of the fine for his troubles.

Dunn's involvement in the boating and importing business brought him into partnerships with others in the trade. In 1726 Dunn bailed John Stephens, a mariner and master of the sloop *Swallow*, who was being sued by Peter Marschalck. By this time Dunn had also extended his livestock business and was charged with public nuisance for keeping a hog sty by his house. Refusing to dismantle the sty, Dunn was bailed out for ten pounds by Alexander Moore, a saddler, and subsequently returned to court and promised to follow its order.²⁵¹ Business picked up during the mid 1720s, and in July 1727 Dunn contracted John Hybon, a local carpenter, to build him a house on the land acquired from Daniel Ponton, like John Smith's "except for closets and chimney pieces." That same year Dunn went into partnership with John Salnave and Roger Groves when the three borrowed one hundred and eight pounds from Samuel Weaver, a local merchant.²⁵² This

²⁵¹Scott, *New York City Court Records*, 39

²⁵²MCM, 1723-28, 454.

was to be the last partnership and business venture for the enterprising Dunn. John Dunn died a man of modest means in 1730 leaving his house and the ground upon which it stood to his wife and daughter.²⁵³

Reading the minutes of the Mayor's Court and picking one's way through the complaints filed with the clerk, it is difficult to discern patterns to describe the type and rate of litigation. As an historical source, legal records are a low grade ore, and the lists of names, legal terms, and judgements make difficult and, frankly, dull reading. There are the singular suits for compensation in cases of assault and trespass, and the occasional flurry of activity following the death of a prominent merchant, a failed sea voyage, or an innkeeper's or butcher's effort to clear his accounts. Many cases bear the names of litigants never seen before -- itinerants, sailors, farmers from outside of the city -- who appear to resolve a dispute and then vanish following their day in court. Reading on, however, certain names appear with some frequency and, after a time, one even starts to look for and expect to see them: the names of attorneys and court officials, local merchants, the well to do with multiple business interests, and, if one reads for long enough even local tradesmen like John Dunn.

The litigation history of John Dunn shows that appearances in court were a frequent and integral part of eighteenth-century commerce. When one concentrates on these local tradesmen and the lenders and borrowers of local finance, a curious sort of rhythm within the practice of litigation emerges. It is almost as if one is watching the ebb and flow of value within the economy as the holders distribute it through notes and bills, tradesmen work in whatever diverse activities they feel will turn a profit, and then payment

²⁵³In 1730 John Dunn's bequeathed his "house and lot which I have in the Fields near Sping Gardens in New York and which I purchased from Daniel Ponton, bricklayer" to his wife Mary and, after, to his daughter Elizabeth, NYHS, *Collections*, (1894), 82.

creeps back — a preemptive civil suit speeding up the process when the flow begins to slow. Merchants and men of means provided credit for New York's tradesmen and then waited for them to accumulate small amounts of specie before calling in their notes, going to court to force collection or assignment to a better prospect or bondsman if the debtor was not forthcoming. Beneath these wealthy men who made their profits by investing in the work of others were tradesmen like Latham, Pell, Dunn, and others who extended credit to each other and those lower down the scale in the normal course of business and with similar motives to those from whom they borrowed. This cycle of credit and repayment could take place over the long or the short term, but it operated on the basis that one's personal value was better invested than held and debtors were good as long as they remained in trade and in the network.

Far from concentrating on one trade, tailors like John Dunn tried their hand at whatever might offer a return. Their commercially motivated involvement in markets and trades far removed from their, superficially, main enterprise explains tradesmen's appearance in all manner of commercial contexts. To really appreciate the flow of credit and value through the system we have to consider an individual's trade within the network of artisans, slaves, laborers, widows, sea captains, and merchants, without whom they could not have operated. The uncertainty of trade and shifting nature of partnerships and commercial alliances belie our current image of independent tradesmen at work in discrete and isolated workshops. Rather these were associations formed and held, either for brief moments or longer periods, within an endlessly turning kaleidoscopic network of credit, partial payment and promises. Credit articulated responsibilities and expectations in within an ongoing social and commercial dialogue between all those who worked in trade. When hard currency appeared it represented less a simple medium of exchange than a terminal or turning point in commercial relationship which might have endured over considerable

time. A turning point when two or more tradesmen attempted to capture the state of affairs and distribution of value between them which had previously eluded or not required definition.

4. The Structure of the Eighteenth-Century Trades.

Tradesmen joined all manner of money making schemes within networks of production and exchange wherein survival and prosperity depended on shrewd negotiation and constant vigilance of one's credit worthiness. Tradesmen needed to be sensitive to the ups and downs of urban trade -- the rise and fall of currency and commodity values and insecurities of international relations -- and prepared to change the focus of their activities if they were to survive and prosper. In many cases the markets for what tradesmen produced were neither durable or stable and an individual's commercial tactics changed depending on the circumstances of a specific deal.

If the trades were not organized with regard to enduring craft traditions and customary workshop practices, than what did account for the success of some artisans within certain trades and the success of some craft enterprises over others. Social historians have shown us that artisans could be found up and down the social scale and that goldsmiths and ship's carpenters were generally better off than shoemakers and mariners. This much we can learn by glancing at any tax list or collection of wills. Yet it would be a mistake to consider this variety of success as simply evidence of superior entrepreneurial skills securing the ambitious positions of wealth and status in the community. There were other factors built into the structure of work and daily life which favored some over others.

The fortunes of individuals in trade, and of the trade itself, depended on access to raw materials and the durability of the markets upon which tradesmen depended. Depending on the availability of supplies and customers at any given moment, and the position of an individual within a local network of credit and exchange, a tradesman's commercial strategy and fortune might vary considerably. Circumstances in colonial New York favored certain individuals over others and permitted some bricklayers and carpenters to rise to prominence in the local economy while others eked out a living on the margins of the urban poor. Similarly, local conditions and the attitudes of the common council ensured the commercial prosperity of trades such as bakers and butchers while others failed to become established in the colony and provide for a group of successful craftsmen easily identifiable with the trade.

John Dunn and others who worked as tailors, shoemakers hatters, often produced finished goods sold directly to the customer for cash or credit. When tailors and others made goods to order, the connection to the customer might be fleeting and terminal ending once the suit of clothes or shoes were finished. In these circumstances tradesmen could profit by making a suit as cheaply as possible saving some of the materials, often supplied by the customer, for another job in the future. In 1719 Benjamin D'harriette sued Jeremiah Chardavine, a tailor, for damages recounting how he engaged Jeremiah to make "a good and fashionable coat" for his son and promised to pay so much "as he the said Jeremiah should reasonably deserve to have." D'harriette delivered "three yards of good fine black cloath" with which Chardavine was to make the coat. But the tailor did not use all the cloth "but a greate parte thereof out of the coat aforesaid did detaine take and to him self did keep." In fact, Jeremiah "so inartificially did cut out and make that the same coat... detaining and keeping parte of the cloath... [that] the body of him the said Benjamin D'harriette it doth not fitt but is so scanty and was by him the said Jeremiah so pieced and

patched up that the same coat became of no use." Jeremiah denied the charge and called Isaac Twentymen, another tailor, to testify on his behalf. Twentymen testified that D'harriette had complained that the coat "was so long for him and that thereupon the depont cutt some part thereof to witt from the forepart thereof above an inch and something all round the bottom." But the court was unconvinced and Jeremiah lost the case and ten pounds damages.²⁵⁴

Tradesmen like Jeremiah Chardavine, Isaac Twentymen, and John Dunn were buyers as well as sellers in the market. Not every customer supplied his own materials and tailors, hatters, and shoemakers had to have reliable supplies of cloth, buttons, thread, leather, and furs. In addition they purchased necessities such as food and drink and paid rent and taxes like everybody else. For the more enduring contacts upon whom they depended for their livelihoods, tradesmen had to form part of a local credit network which could provide the support necessary to weather the difficult times which periodically plagued New York trade. Short term gains like snipping cloth from a coat or shorting someone on a deal carried greater implications if attempted within a network of relations than when attempted against a single, unsuspecting customer. Participation in a network opened up new commercial opportunities, as John Dunn's career as a farrier, livestock keeper, and boatman suggests, but it also precluded the kind of quick and easy profit attempted by Jeremiah Chardavine in his agreement with Benjamin D'harriette. Participation in different areas of commerce, away from tailoring or shoe making, drew tradesmen into new markets and disputes over commodities and values removed from their core craft. And yet unless they could make a success in these diversified markets, the

²⁵⁴MCP, 1: 89, 90; 2: 76; 4: 70, 123; 5: 100.

shoemaker, hatter, and tailor faced bleak future, waiting for the next customer to come through the shop door.

It was within this patchwork of minor manufacturing, trading, retail and service provision that New York's working women made their livings. We have already noted the role of women as investors in and customers for the trades, women also traded and worked at skilled trades. Court records reveal women engaged in commerce at all levels from early in the period of English rule. In September 1669 Jannetie Cooley sued Ralph Warner for a "Mare and Coult which shee hath several times demanded but cannot obtain." Throughout the period women appear as trader: from the mariner John Leisley's suit against Katherine Apple for payment owed for one hundred and ten gallons of rum, to Mary Payne's action against Joseph Meeker Jr., a boatman, for five pounds owing from the sale of three barrels of pork Payne had entrusted to Meeker for sale outside the city.²⁵⁵ In April 1690 Capt. John Manning sued Mary Gosens for selling drink to one of his soldiers and taking a "pawne for the same contraire to Ordr."²⁵⁶ The women who worked

²⁵⁵Jannetie Cooley v Ralph Warner, *RNA*, 6: 194, 195; John Leisley v Katherine Apple, widow, February 1709, MCP, 3:27; Mary Payne v Joseph Meeker Jr., December 1709, MCP, 3: 40. The papers of the Mayor's Court contain many more examples of women traders, see Jacob Mayle, merchant v Gersie Vanderclife, widow, October 1698, MCP, 1:59; Paulus Turke v Gersie Vanderclife, 1699, MCP, 1:82; Jospeh Bueno, merchant v Judith DeMerse, widow, January 1700, MCP, 1: 67; Mathew Ling, merchant and bolter v Engeltie Garret, widow, January 1700, MCP, 1:76; William Sharpas v Elizabeth White, widow, 6 July 1700, MCP, 1:106; William Cullen v Elsie Leisler, widow, 17 January 1708, MCP, 2:110; Catherine Brett, widow v John Baker, 5 January 1723, MCP, 7:39. Rachel Levy v Victor Bicker, 18 January 1728, MCP, January, 1726 to 27 February 1728.

²⁵⁶Capt. John Manning v Mary Gosens in *RNA*, 6: 176. See also Katherine Evans v John Thomas, "indebted to her 82 florins wampum as appears by a bill under his hand for fictualls and drinck." *RNA*, 6: 197; Anne Elderton v Marmaduke Freeman, "for food lodging and washing for him and his three slaves;" Rachel Hunt v Lewis Taliten, mariner, April 1700, MCP, 1: 96.

in recognizable trades had often taken on the business following their husband's death. Girls were apprenticed to women who worked as seamstresses and milliners; one woman worked as a butcher and another as a vintner.²⁵⁷ It may be assuming too much to claim that the men who sued for nonpayment for "diet and drink," were recovering debts incurred following their wife's work caring for lodgers. But many women do appear as housekeepers, innkeepers, and retailers of food and drink.²⁵⁸ Women also worked as laborers of various kinds, but carrying no legal or occupational title, this work is all but invisible in the records.²⁵⁹

Within this diverse economy of fleeting opportunities and partnerships men and women moved from job to job depending on their prospects. Much of this movement resulted from seasonal downturns in ship building or construction, but there were other factors involved in occupational mobility. Many craftsmen took their occupational title from the materials they used or the skills they possessed: Jacob Swan, and other hatters, were also called feltmakers, and carpenters skilled at using lathes were also called turners.²⁶⁰ These multiple job titles suggest the significance of a man's skill in certain

²⁵⁷MCP, 5: 63; 6: 62.

²⁵⁸MCP, 2: 30, and 7: 43. In 1685, when the bakers drew up the schedule of who would bake, they directed Marretie, the widow of Nicles the baker, to bake on Wednesdays. The schedule also identified Catrina Hooghlant, Anna Popelaers widow, and Anna Van Vleck widow, as bakers.

²⁵⁹In his 1720 accounts for the council, Robert Crannel lists the "hire of two women to cleane the city hall," six shillings, or eighteen pennies a day, in CCP, 2: 3. For women working as laborers see MCP, 3: 113; 6:3.

²⁶⁰The *Compact OED*, lists turners as a person who fashions pieces of wood, bone or metal on a lathe; the term also related to potters, especially those responsible for finishing and smooth the pot before it was fired. Several cases with Jacob Swan indicate the occupational title variance, for example John Perow, mariner v Jacob Swan, feltmaker, 2 November 1708, MCP, 2:122; Joanna Markham widow v Jacob Swan, hatter, 2 February 1717, MCP, 4: 35.

materials or processes, rather than his identification with a distinct craft tradition. Skills and access to raw materials or markets provided for movement within and between trades. Men identified as shipwrights in one context and boys apprenticed to the trade, appear as house carpenters and joiners at other times. Brickmakers also worked as bricklayers and laborers, and blacksmiths and farmers made bricks; bakers became bolters and mariners turned their hands to rope making. Men worked at whatever trades their skills and knowledge of materials and processes permitted and these changes of focus reflected the shifting fortunes of tradesmen in various markets.

Beyond the varieties of work within trades and the logical extensions from them on the basis of knowledge of skills and raw materials, men identified with a specific trade engaged in all manner of commerce. Some quit craft work altogether to become shopkeepers and small time merchants and traders.²⁶¹ Gerrit Van Horne was a bolter involved in the flour trade. Later in life he became a small time slave owner and took out a part share in a brigantine which sailed between New York and the West Indies.²⁶² Peter Willemse Roome worked as a carpenter in the early eighteenth century, even building a ferry house for the city. He later served in municipal office and continued to do business with the city and later established a small trading business which included supplying bread for resale by agents like Mary Thompson.²⁶³

²⁶¹Stephen Crego v Wonter Breasted, 1685, nonpayment for half share in sloop on a voyage to the west end of Bahama islands, MCP, 1:7.

²⁶²For slave owning see, Scott, *New York Court Records*, 12, for bolting see MCC, 2: 250, for participation in trade see John Corbet v Gerryt Van Horne, part owner in brigantine, nonpayment of charges relating to a voyage to Surinam in, MCP, 2:51.

²⁶³MCP, 1: 127, 2: 30; MCC, 2: 4, 22, 99; 3: 147.

Mariners in particular appeared in multiple commercial contexts. The cases of men deserting ships and mariners working at land based jobs suggests that many saw opportunities in New York which impressed them more than life at sea. Mariners were important petty commodity dealers in New York and traded goods between New York and the West Indies and up and down the Hudson river.²⁶⁴ They supplied local tradesmen with raw materials for their work. Mariners also appear as small time slave dealers and, like others, hired out slaves to others for work at daily rates. In July 1704 John Davis, a mariner sued John Macklening, master of the sloop *Beginning*, for nonpayment for the work of two slaves, London and Tom. Some mariners, especially those who had worked as ship's masters, settled on land and opened shops and land based trading networks, probably using their contacts from their years at sea.²⁶⁵

The liquor business, inn keeping and working as victualler were also popular lines of business for New York City tradesmen. Throughout the early eighteenth century goldsmiths, hatters, carpenters, mariners, bricklayers, coopers all tried their hand at selling food and drink.²⁶⁶ Tradesmen risked falling foul of local licensing laws, which were

²⁶⁴Nicholas Stengthen v Jospeh Barker, mariner, for nonpayment for filling land in Smith Valley, July 1698, MCP, 1:62; Joshua David v Andrew Depue, mariner, 1704, nonpayment for rent, MCP, 2:59; John Leisly, mariner, v Thomas Roberts, cooper, December 1706, nonpayment for hoop poles and timber, MCP, 2: 96a; Harman Rutgers v Dirck Adolph, mariner, April 1709, nonpayment for casks of beer, MCP, 3:43.

²⁶⁵John Leisly, mariner v John Ellison, joiner, March 1709, nonpayment for cable of the weight of four hundred and sixty pounds MCP, 3: 78; William Symonds mariner v James Beard, mariner, June 1701 nonpayment for merchandise, MCP, 2:36; Cornelius Quick, mariner v Thomas Clark, merchant, July 1700, nonpayment for a slave called Sambo, MCP, 1: 104; Ralph Row, mariner v Jacobus Davis, mariner, June 1701, nonpayment for a slave, MCP, 2: 32; John Perow, mariner v Jacob Swan, feltmaker, November 1708, for repayment of sixty three pounds and twelve shillings, MCP, 2: 122.

²⁶⁶Warner Wessels v Humphry Davenport, RNA, 6: 220; Mary Leaver v Simeon Soumaine, victualler who was earlier a goldsmith, MCP, 1: 101a. Jacob Swan, the hatter and later a vintner, MCP, 7: 93, 94. Thesophilus Elsworth, carpenter, ferryman and later a

vigorously enforced by sheriffs who received a share of the fines. But the temptation of making extra money and settling debts by offering liquor was an opportunity that few could resist. If a tradesmen received a barrel of rum in a deal, he could make a small profit by opening his house as an inn and selling the drink off in small measures. Realizing this, it is easier to appreciate the numbers and variety of tradesmen who appear as victuallers and tappers.

The occupational instability of many New York City tradesmen is at odds with the current view of eighteenth-century artisans who proudly worked one trade for life. Rather than dedicating themselves to a craft, and in spite of their nominal identification as hatter or shoemaker, many New York City tradesmen moved within and between different trades and commercial enterprises seeking profits where they could. The successful in this broad group were those who could develop a sideline to their core business, avoid borrowing too heavily, and keep careful accounts with their trading partners to guard against losses. A tradesman might try his hand at livestock keeping, boating, or petty trading. Alternatively, he could secure a municipal post as corn measurer, inspector of hearths and fire buckets, or keeper of the ammunition store and look forward to an annual fee income, insurance against the ups and downs of the colonial economy.

The occupational instability in the eighteenth-century trades challenges the image of stability and enduring urban trades offered by occupational breakdowns based on tax lists and civic rosters and presented as the "social structure" of colonial New York.

merchant and vintner, CCP, 2: 1729; MCC, 3: 362; NYHS, *Collections*, 193; MCP, 4: 100. Abraham Van Laer worked as a mariner and vintner, MCP, 2: 106. Daniel Ebbets a bricklayer who became a vintner, MCP, 4: 124e; MCM, 1704-1710, 98; Joost Sooy who went from cooper to shoemaker to inn keeper, NYHS, *Collections*, (1885), 103; NYHS, *Collections*, (1909), 179, 180; Robert Crannel, from penniless soldier to city employee to innkeeper, CCP, 2: 172; MCP, 6: 93a; MCM, 1723-28, 15; MCC, 3: 364; Lawrence Eckles, gentleman, victualler and innkeeper, MCP, 2: 137; 3: 6, 24.

Municipal tax lists and civic rolls represent snap shots or moments in time when a tradesman was identified with particular craft for official reasons. Two men identified as shoemakers or carpenters often had very different experiences of work and daily life. The less successful of New York's tradesmen lived at or just above subsistence level. An economic downturn, run on their credit, or any one of a number of personal crises could dislodge these men and their families from their precarious position. They survived by working for themselves when they could and for others who would hire them as by the day, week, or longer to work in at ship building, building, brickmaking, harvesting, and all manner of laboring work. The success of some and the survival of many in the eighteenth-century trades depended less on concentrating on a single craft and more movement within trades and between different kinds of work. The combination and balance of these activities reflected the ebb and flow of commercial prospects and the fleeting terms of employment available in core trades.

Above these two broad groups of day laborers and jobbing tradesmen, there were others who resembled the artisan who has been the social historians' stock character in recent years: men who inherited their craft skills and tools from their fathers and continued to work in the same trade, sometimes with the same associates, over many generations; men who were recognized by the city and others and as leading ship builders, bakers, and builders and handed on a business on to their sons when they passed away. The predominance of certain families in these trades resulted from their position within the local political and economic scene, the nature of the work they did, and the durability of the markets within which they operated. These political and economic advantages enabled some men to attain positions of influence within local networks and, as a consequence, enjoy a degree of security existence and greater opportunities for gain. It was less a commitment to craft tradition and pride in skills that kept these men working in ship yards

or building houses, and more an awareness of the fate which awaited them if they left a secure position in a well established network and took off on their own.

The stability of markets for trades such as butchering and baking enabled some to develop enduring networks of supply and retail. A certain supply of raw materials and durable markets regulated by local price guarantees permitted higher levels of investment and possible returns than the economy of fleeting exchanges within which John Dunn operated. With a little capital, a good marriage, or a helpful patron some of those who worked in carpentry, bricklaying, and ship building rose above the level of jobbing tradesmen to become contractors and employers of others within their own trade. Once established they could expand and integrate production, develop enduring networks of suppliers, subcontractors, and customers and diversify from core trades into new areas. These men were able to buy more slaves or hire other people's and employ lessor tradesmen on larger jobs where they controlled the purse strings. Commercial success provided the foundation for activity in municipal politics, as an elected official or minor inspector, which permitted access to the committees responsible for local regulations. Licensed tradesmen who produced bread and meat for the local economy enjoyed a protected market and could rely on an expectation of regular consumption and a predictable turnover. The key to a successful butchering business was a reliable supply of fresh meat and the existence of regular markets and prices which promised a reasonable return. Dealing with a perishable commodity, butchers planned a season ahead to ensure that they would be constantly supplied with meat to satisfy local demand. This is evident from the cases of butchers suing farmers for failure to supply meat promised the year before. In 1700 Jacob Adams, a butcher, sued Robert Smith, a New Jersey farmer for failing to deliver a pair of oxen for which Adams had paid fourteen pounds and ten

shillings the previous September.²⁶⁷ These inventory calculations were precise: when James Harding failed to bring over William Wieblin's cattle on the ferry, part of Wieblin's complaint described how he had no meat for market that day and had to borrow some from another butcher.

We have seen how effective the bakers were at securing municipal respect for their trade privileges and organizing production to their advantage. By the late seventeenth century New York's bakers produced a schedule of who would bake, on what days, and for how much. As the city's bread inspectors, and in some cases as municipal officers and aldermen, the bakers also had a role in deciding the price of bread in relation to the price of grain. Without this kind of organization of production it would have been difficult if not impossible for the city's bakers to control production and exchange of bread which permitted them to take advantage of the growing markets in New York and the West Indies. We have seen that as early as the 1680's New York City bakers were organizing production to take advantages of opportunities like the one presented by Captain Griffith in 1675.

A successful bakery relied on similar kinds of planning for supply production, and retail. Leading bakers ran bakeries in different parts of the city and planned production schedules so that no two of them were baking on the same day. The bakers who won municipal offices as aldermen and assessors could also make life easier for themselves in other ways. Shortly after the baking schedule was drawn up in 1685, the council ordered that the inhabitants of certain streets build public wells, with stone walls, at their own expense. It may have been serendipitous, but three out of the five wells were situated next

²⁶⁷Jacob Adams, butcher v Robert Smith, New Jersey farmer 6 July 1700, MCP, 1: 83; John Knowles, butcher, v William Hill, boatman, October 1712, MCM, 1710-1715, 242, 243, 244, 245.

to the baker's house in the street.²⁶⁸ By the mid eighteenth century the trade in grain and grain products within which the bakers played a crucial role was the most valuable export commodity leaving mid Atlantic region. The production of bread and biscuits and other grain products on such a massive scale relied on provincial networks uniting credit, raw materials, and the various facets of the productive process.²⁶⁹

Once he had established reliable sources of supply and a position within the local retail network, a city baker or butcher could expect a regular income from his shop. Providing there were no drastic changes in the local economic situation, this regular business permitted the bakers and butchers to either expand and diversify their commercial interests or to become active in local politics and city franchises. This is why so many butchers also appear as ferrymen and traders in different commodities and bakers had the time to run for municipal office, attend meetings, and influence decisions in ways which favored the trade. Jeremiah Calcutt, William Wieblin, and George Norton were all butchers who also ran ferries, bought and sold slaves, and traded in land and commodities. A city franchise or office enabled the holder to further strengthen his position in urban trade. Robert Harding's bills submitted while he was in charge of the ferry claim for expenses for "sweeping the chimneys," the hire of men to work on the ferry house and "45 days eating and drinking," "liquor for the workmen," and "for the glazier's diet."²⁷⁰ Harding's position as a licensed ferryman permitted him access to the city's purse which

²⁶⁸MCC, 1: 181.

²⁶⁹McCusker and Menard, find that between 1768 and 1772 the total value of export in grain and grain related products from the middle colonies (New York, Pennsylvania, and New Jersey) stood at approximately UK\$ 379,380. The next most significant export for the same period was exported flaxseed valued at UK\$ 35,956. McCusker and Menard, *The Economy of British America*, 199.

²⁷⁰CCP, 1:21.

increased his spending power in the local economy and thus his significance within local networks of credit and exchange.

Bakers, butchers, and franchise holders benefitted from municipal respect for their privileges which they translated into a more significant role in the local economy and greater opportunities for profit. Others might not receive such close attention to the needs of their trade, but could still benefit from city sponsorship for the work they did. Common council accounts for the late seventeenth century reveal that public construction projects like the new City Hall required materials from a variety of sources and a skilled men from many different trades. The council bought timber, nails, rope, lime, oyster shells, from locals as well as seeking the services of local brickmakers, carters, glaziers, and iron workers. The council also bought substantial quantities of food, drink, and liquor to provision the work force for the duration of the job.²⁷¹ The council often relied on its own members to provide the materials and form committees to organize production and arrange for the hiring of tradesmen and slaves. However, they also bestowed contracts for work on favored city tradesmen who organized production on the city's behalf. The benefits for individual tradesmen who could secure some management of larger projects was the same as the benefit for tradesmen when the assumed municipal offices and franchises. Controlling the budget for a city construction job enhanced the purchasing power of an individual tradesmen in the local economy.

In September 1699 Johannes Tiebout, a carpenter, was elected an assessor in the north ward. Through his new municipal office, Tiebout secured a place on the committee ordered to call "to their Assistance such Carpenters and Bricklayers" as they needed and

²⁷¹See "Accounts of the Severall Disbursements to the fortifications of the New Citty Hall," in CCP, 1:7; "Ledger Number 1, Chamberlain's Office Corporation of the City of New York, May 11, 1691 to November 12, 1699," in NYHS, *Collections*, (1909), 2, 3, 27, 28, 38, 84.

to make an estimate of what "Stone, Bricks, Lime, Timber and other materials," would be required for building in the new City Hall, and the block house by the governor's garden which the council thought might make a suitable prison. In 1700, Tiebout was appointed as a tax collector and then an assistant in the Dockward, and this led to more work on committees of construction for public buildings. Johannes Tiebout maintained a small time business and developed local contacts from which his son Teunis would ultimately benefit.²⁷²

Teunis Tiebout first worked for the city in March 1711. However, his employment became more regular after 1717 when he was paid for work on altering the course of the common sewer at the end of Broad street and cleaning the city dock. In 1719 the council directed Alderman Jansen to arrange for the repair of a bridge and an area of the dock, and Jansen used Tiebout for the job. When Jansen submitted his accounts to the council, he included Tiebout's account which claimed twenty pounds and five shillings for work as a carpenter and money owed to Jacobus Van Cortlandt "for nails," Martyn Creiger "for boards," Harevell Matyse "smith," carting expenses, and for "1 negro for 2 days work." The source of Tiebout's materials reveals that he was negotiating his way through the existing network and moving closer to the coveted position as a favored tradesmen for city contracts: Van Cortlandt, Crieiger, and Matyse were all municipal officers, insiders, who regularly benefitted personally by selling materials to the city.

By the following year, Tiebout no longer had to rely on being hired by Alderman Jansen, but submitted his accounts directly to the common council. In October he submitted three pages of elaborate accounts claiming sixty-six pounds ten shillings and ten pence. He included a daily schedule of work and expenses since the 20th of June and

²⁷²Johannes Tiebout v John Marshall., 1 May 1711, MCM, 1710-1715, 91.

breakdowns of the nails, timber, and locks, hinges, glass bought from Jacobus Van Cortlandt, Robert Crannel, Oliver Teller, and Abraham Keteltas, and David Jansen. He also claimed wages for himself and other family members, Henry Tiebout and John Tiebout. Accounts submitted throughout the following year confirmed that the Tiebouts had become the preferred city carpenter on municipal jobs. By 1723 Teunis had expanded beyond carpentry and was engaged to supervise the iron work at the ferry house which he subcontracted to local men. Tiebout developed his municipal jobs as a family concern providing accounts claiming wages for Henry Tiebout, Albartus Tiebout, and Johannes Tiebout Jr. The following year, like his father before him, Teunis moved into municipal service and was elected an assessor for the north ward.²⁷³

Tiebout's success as a carpenter in the city depended less on his craft skills and workshop toil and more on his ability to move out of the ranks of common carpenters and into the position of favored city contractor. Tiebout's story is unique only in the detail and he represented one example of a class of workers who secured favorable attention from the city and others who organized the profitable jobs in New York. Beneath Tiebout and others skilled at developing networks of credit, supply, and exchange, were many more carpenters, bricklayers and others who were limited to smaller, one-off jobs and hired themselves out to the more successful contractors in the city.²⁷⁴ Tiebout and others who entered the market with the authority of the public purse enjoyed special advantages, but

²⁷³For the Tiebout's their municipal service and trade see, *MCC*, 2: 88, 92, 94, 98, 99, 101, 109, 113, 117, 239, 362, 383, 386, 403, 408; 3: 4, 149, 191, 218, 239, 262, 280, 327, 340, 361, 427; *CCP*, 2: 1, 3, 5, 6, 7, 8.

²⁷⁴Competition for skilled labor could work to the tradesman's advantage. In May 1711 Gideon Mossman sue John Shorter claiming that he had tried to attract away one Daniel Austin whom Mossman had engaged as a ships carpenter, *MCM*, 1710-1715, 92, 93.

similar kinds of benefits were available to any who could establish themselves as major buyers and sellers in a given trade in the local market.

Tradesmen working in ship building and construction relied on the nature of production to build significant positions in buying and selling networks which strengthened their position in relation to others and ensured that they would survive rough periods where less established tradesmen fell by the way. In trades like ship building and construction tradesmen often dealt more with one another than with the final customer: the customer for the building of City Hall was the common council, but only certain men submitted accounts directly to the council and everybody else worked for these contractors.

Families like the Lathams, Waltons, and Pells predominated in the ship and boat building trade because they developed networks of supply and exchange which provided for greater security than the more fleeting opportunities available to independent craftsmen working alone. The construction and boat building consisted of a hierarchy of skilled workers from successful contractors down to skilled men hired for brief periods and laborers and slaves hired by the day. The dangers of working outside the network are evident from the petition of John Parlie in 1720. Parlie was not a local man but had come from Richmond County to work in the city where he had "built a ship for sale and brought her to the dock in the city at a cost of three hundred and fifty pounds." Parlie had been unable to find a buyer for his ship and it had remained in the dock for three years "for want of a market." Parlie had been forced to sell the ship at a loss to the "absolute ruine of my self and poor family and there being due three years dockage of the said ship."²⁷⁵

²⁷⁵CCP, 2: 3. Christine Daniels has found that craft dynasties were also more likely in trades which require high capital investment in initial tools or property, in "From Father to Son: Economic Roots of Craft Dynasties in Eighteenth century Maryland," in Howard Rock, et al., *American Artisans*, 3-17.

Successful New York City tradesmen worked in extensive and enduring trade networks, rather than isolated and independent workshops. An individual craftsman might benefit from municipal respect for trade privileges, favorable city contracts, or a position of strength within a specific trade and hold a respected position within local politics and the economy. Others who enjoyed none of these advantages may find themselves working for the more successful and trying to better their condition by dabbling in all manner of commerce in and around the city. Whatever the position a tradesman held, the greatest threat to his existing position and future prosperity lay in any threat to his place within the network. It is in these terms that we can understand the cases for slander between tradesmen in the early eighteenth century.

The Mayor's Court periodically heard cases for slander from local inhabitants. When women were slandered, by men or other women, they usually came to court to defend their reputations from accusations of moral impropriety. When tradesmen slandered each other, however, they disparaged each other's skill or honesty as tradesman: In 1722 James Arden, a carpenter, sued George Talbot, another carpenter, after Talbot visited one of Arden's jobs and said that "there is not an inch of true work in Mr Bickley's house." Struggling craftsmen were particularly sensitive to criticism by the sons of the more established. On 28 June 1720 John Bell sued Cornelius Tiebout, who had been his apprentice, "concerning carpenters work done on the house of Abraham Wendell by the said Cornelius Tiebout." Cornelius had declared in public that he had worked "fifty days and no more at the house of Abraham Wendell," whereas "in truth Cornelius had worked sixty-eight days...for which Abraham hath fully paid." The slander that Bell was charging a customer for work which his apprentice claimed not to have done was compounded by the fact that the apprentice was the son of Teunis Tiebout one of the most important

contractors in the city. John Bell won his case and damages of four pounds sixteen shillings and three pence.²⁷⁶

5. Conclusion.

The urban trades in eighteenth-century New York operated within the terms of an mercantile trade system designed to benefit English merchant and imperial interests. More significant than the imperial taxes and trade regulations which drew specie out of the colonies and limited local commerce were the private arrangements between colonial merchants and their London counterparts. If the English authorities permitted the Americans a degree of autonomy in their political affairs during the early eighteenth century, the ties that bound colonial merchants to London partners rarely slackened, and if anything grew tighter, as the century progressed. The emergent upper classes in colonial New York depended on England for luxury manufactures and finance for their enterprises and increasingly wealthy lifestyle. Keen to gain access to the trade between America and the West Indies, London merchants extended long and nervous lines of credit to their colonial associates. The demands of the mercantile system and the operation of merchant credit gave New York a permanent deficit which urban merchants and those who worked in the city were under pressure to service but, of course, fail to ever pay off in total.

The drain of hard currency out of the colony and imperial control over issues of paper money meant that artisanal enterprises were established and maintained with the support of local credit. Early American manufacturing was an eclectic process requiring tradesmen to gather together materials, labor, and customers. Some worked alone; others

²⁷⁶James Arden v George Talbot, 1722, MCP, 6: 94; John Bell v Cornelius Tiebout, 28 June 1720, MCM, 1720-23, 25.

joined partnerships or small groups of like-minded men for the duration of a project or for dealings over many years. However, none was truly autonomous given their reliance on local credit and networks of supply for grain, flour, buttons, bricks, cloth, leather, timber, nails, planking and the multiplicity of raw materials required to complete a job. Within these networks men bartered and exchanged commodities in place of hard currency, but could not avoid requiring credit from a local merchant or trading partner at some point in their dealings.

New York's merchants traded in primary products from the colony with other colonial commercial centers, and for the valuable sugar and slaves from the West Indies using the currency earned to meet accounts in London. Local merchants also played an important role in New York's trade as patrons and financiers for artisanal enterprises. Banking tradesmen permitted merchants access to the small amounts of specie generated in local markets by hundreds of artisans and petty dealers. The same principle operated further down the scale: just as the wealthy financed and bailed the not so wealthy who were fit and able to work, so the borrowers became lenders and supported those beneath them in the hope of profit. Locally established tailors and hatters such as John Dunn and Jacob Swan turned to the merchants Francis Harrison and Gilbert Livingston for loans, and mariners such as Kenneth Cowan turned to John Dunn as his bondsman when he found himself unable to pay his debts in town.

Rather than broadly similar experiences marked by general and undifferentiated concerns for "competence," craft traditions, and customary ways, colonial tradesmen had different expectations and histories of success and failure in work. Their position within the local economy depended on a range of factors from parentage and marriage partners, through to the chosen trade or the usefulness of their political contacts. New York

tradesmen occupied different positions on a finely graded local ladder of success and a man's business options and opportunities for success depended on his position.

For those at the bottom of the urban trades, the unskilled or semi skilled, the transient, elderly, or infirm, work was at the center of a struggle to subsist on the urban scene. Despite training in a certain trade, these men turned their hands to all manner of laboring to survive the leaner periods in the local economy. Lacking political contacts, capital, or promising partners, these men might find themselves working for those better established in local trade engaged in projects large enough to warrant hiring extra men on. A downturn in local commerce or credit squeeze could threaten these petty ventures and cast the hireling into the ranks of the laboring poor, the service of another, imprisonment for debt. When trade was up, he might get regular work at his trade, enter into partnerships and new ventures with others, and earn a little extra to withstand the impact of subsequent downturns.

Above these less successful men stood a group of better established and more fortunate tradesmen. Having built up their local trade, these men might own their own home and have a slave or apprentice or two about the place. For access to raw materials and markets they relied on networks of suppliers, customers, and other tradesmen with whom they had built up business over many years and with whom they did business on account. To supplement their core business, and ensure they could come up with cash reserves or offset debtors when required, these men maintained diverse commercial interests, alone or in partnership with others. Some looked to municipal contacts for deals or franchises or maybe secured appointment to a minor municipal post. Some joined the markets as petty dealers, trading in flour, corn or liquor, or subcontracted and sold the time of apprentices, servants, and slaves. Those who owned or rented a plot of land might keep livestock or grow a crop which enabled them to weather difficult times that might

wipe out isolated, transient individuals less established in the city. It was these advantages, or combinations of them bundled together, which constituted what it meant to be a "local," and ensured the predominance, and survival, of local people in trade. At the top of trade society were those who lived lives of greater stability and worked for longer at a core trade in the manner with which we are familiar from social history. However, the success of these men in trades like baking, butchering, ship building, and construction had less to do with craft traditions and pride in their skills and more with sophisticated management of local conditions. A combination of political contacts, favorable regulation, and control of networks of supply and retail assured some trades a greater degree of security and thus prosperity than others. These trades were not immune to shifts in the city's economic situation, but certain men within them had risen to a point at which they could weather the storms of colonial commerce. On the basis of their prominence in local city trades, some of these men built craft dynasties and rose above the level of petty tradesmen to become small time merchants and minor politicians. Rather than the force of custom and craft skill outside the market, these tradesmen success depended upon the precise and effective manipulation of the city's market for materials, labor, and manufactured goods in their own interests.

The organization of work and trade in the local economy both undermined and supported the idea of a tradesman's special place in the local economy. Stretching back to the introduction of the *burgherrecht* in 1657, the common council's declared aim was that none but registered freemen would trade in the colony and that urban commerce would be regulated and managed in the interests of the common good of the freemen and the city. In the late seventeenth century the authorities had enforced the provisions and continued to regulate the commerce and behavior of freemen in the eighteenth century. This was an ideal shared by local many tradesmen like the bakers and carters who sought protection

for their trade from outsiders and a fair price for the work they did. As a privilege reserved for residents and registered tradesmen, the freedom to trade in the city constituted part of the tradesmen's place. The claim that trade be restricted and local tradesmen earn a decent living working at their trade or in their town was foundational to the tradesmen's view of himself as a freeborn and independent man; independent not in the sense that he didn't rely on or work with others, but in the sense that he depended on no one other than himself for his livelihood.

The butchers and bakers whose businesses were protected by local ordinance worked in trades which approximated the ideal. Entry into their trades was regulated as was the supply and price of raw materials and the finished product. Butchers and bakers could point to a long history of urban regulation as the basis for their special place. The management of trades in this way offered powerful symbols of the presence of the common council in commerce and the vitality of corporate regulations. However, both small-time and established artisans and their more successful peers could also point to the coherence of their trade networks and the superior fortunes of local men over strangers and transients as evidence of the effectiveness of the freemanship status. Though the stability and availability of employment in trades like ship building and construction depended on the expertise and disposition of leading contractors, the effect was approximately the same: local men received preferential treatment in city trade and, at least in prosperous times, could expect to earn their livings in trade either as skilled craftsmen or laborers on various projects.

In other ways the organization of work and dealing in the local economy undermined the idea of the tradesmen's place through its subversion or illusionary guarantees of a society based on social hierarchy and deference. The notion that society was constituted by individuals occupying related but unequal places wherein each found a

role from which society benefitted relied on the notion that each would prosper or at least attain their competence as long as they remained within their place. The permissiveness of commercial opportunities and the relative openness of minor roles in municipal government saw many tradesmen rise above their station as humble men suited to the workshop. With a good marriage and the right contacts, a New York tradesmen could begin as a carpenter and end life amid the ranks of merchants and landowners. Others could work hard, but lacking the requisite advantages, live a miserable existence on the margins of the laboring poor. More importantly, the success of local men in trade based on the networks of credit and production and exchange, undermined the idea of a tradesmen's place by presenting a false sense of its enduring significance.

There was very little concern for the common good in the credit system which saw one tradesmen constantly trying to get ahead of another and. The volatility of the colonial economy encouraged many to trade with caution and spread investments across diverse areas rather than specialize in one area to the exclusion of all others. The eclectic and co-operative nature of commerce in a credit based, and uncertain colonial economy, generated complex and enduring local networks of production and exchange within which some New York tradesmen did better than others. Lower down the scale, a large group, carried a burden of debt or lived in precarious circumstances which meant that, though they remained in employment, they were unable to accumulate more than enough for a basic standard of living. The operation of the credit system in the economy also created a large group of poor craftsmen who lived and worked on the edge of poverty and to whom the fine talk of the privileges of freemen of the city must have had a hollow ring. Beyond the legal prescription of privileges sought, granted or denied, lay an unpredictable world of commerce which variously supported and undermined this system of fixed and rigid hierarchy. Beneath the rhetoric of place and status was a commercial world of uncertain

fortunes which saw some rise to positions of prominence following success in trade and others fall into miserable obscurity.

CHAPTER SIX.

The Decline of Privileges in Trade.

1. Introduction.

By the early eighteenth century New York had established the trade patterns which shaped its commerce for the remainder of the colonial period. By the mid 1720s the number of ships clearing the port increased to over two hundred a year carrying more than seven thousand tons of cargo. Many of these were locally owned vessels whose owners enjoyed a share of the trade with the British West Indies and southern North American colonies. The decline of the fur trade after 1700 increased New York's reliance on wheat and flour for its export revenues; an enterprising few experimented with naval stores and sugar refineries. The control of land by an elite group of families made New York a less attractive option than Pennsylvania and colonies to the south for new migrants. However, the colony's population continued to grow rising from just over eighteen thousand in 1698 to more than forty thousand in 1723. In the city a schedule of laws and ordinances relating to the freemanship, retail markets, municipal franchises, private and public commercial privileges, weights and measures marked off the boundaries of free trade.²⁷⁷

Economic expansion brought threats to New York City's valuable commerce and New York's leaders became ever more jealous of the city's rising revenues. Following a series of disputes during the 1720s concerning control of the Indian trade and protection

²⁷⁷Nash, *Urban Crucible*, 124-125; Kammen, *Colonial New York*, 161-190; McCusker and Menard, *The Economy of British America*, 189-211.

for urban manufacturers and artisans versus the free trade landed-interests and import/export merchants, the city sought confirmation for its chartered rights and privileges. Neither of New York's first two charters -- Nicolls's charter in 1664 and Dongan's in 1683 -- bore the royal seal, and the common council sought to remove all possibilities regarding its status as a corporation. In its petitions for a new charter the common council invoked principles which would not have been out of place in the 1650s: the council declared that "our frontier province of New York does in a greater measure depend upon the welfare and property of our said City," and that confirmation of the charter would "give Encouragement to the said City inhabitants and citizens and... wholly take away all and all manner of Causes Occasions and matters whereupon Such Questions Doubts Opinions Ambiguities Controversies or Debates...may or can arise." In 1731 the Montgomerie Charter confirmed all previous "Ancient Rights and Priviledges thereunto belonging and for such Additional Grants Emoluments and Priviledges as Can be Obtained for the Advantage of good Rule and Government of the inhabitants of this City."²⁷⁸

Over the previous seventy years leading figures in the city had struggled with a variety of authorities to secure the influence of municipal government and New York's advantage in regional trade. The burgomasters challenged the West India Company and the English merchants claimed their rights and privileges in the face of arbitrary, proprietary rule. As the city settled down after Leisler's Rebellion disputes between the common council, assembly and the governor concerning trade and local law continued. Throughout all of these struggles the structure of the arguments and of the language within which they were made remained true to their seventeenth-century origins. New

²⁷⁸A copy of the charter is in Jerrold Seymann, compiler., *Colonial Charters Patents and Grants To the Communities Comprising the City of New York* (The Board of Statutory Consolidation of the City of New York, 1935), 29-31; see also Hendrik Hartog, *Public Property and Private Power*, 13-32

Yorkers of all levels claimed the rights of freeborn Englishmen and preferences before the law in regard of their specific place within the hierarchical social order. The common good and the smooth operation of natural and divinely ordained government depended on every member of the social order obeying the rule of law and observing the property exercised rights and privileges of the others.

In the early eighteenth century a tradesmen in New York was still presumed to occupy a special place defined by his status as a freeborn subject, freeman of the city, tax payer, resident, skilled worker in local trade. Above and beyond this general condition many local men were distinguished by local refinements or additional privileges and liberties. Men claimed exclusive fishing or unloading privileges or special consideration as residents of a neighborhood from the common council who adjudicated these claims in the interests of the common good. Men working at specific trades, running city franchises or in the employ of municipal inspectorate claimed the preferences appropriate to their position and were required to fulfil their duties. In many cases tradesmen had secured the privileges of their place because of their ability to bend to different circumstances. The bakers had succeeded in claiming their position on the basis of the customary practices within baking from Dutch and English authorities alike. The introduction of the English common law after 1691 enhanced the colonists' claims to privileges on the basis of local customs rather than, or in addition to, references to English practices. The operation of the credit economy ensured that men embroiled in local networks were more likely to prosper, and the success of locals over strangers gave at least the appearance of favoring the freemen of the city.

Even before the end of the seventeenth century, however, there were several points at which the practice of commercial life and public discussions of trade privileges appeared to contradict the ideal. For many at the end of the seventeenth century work in

the city was already becoming a dull round of wage paying jobs and bouts of unemployment with the ever present threat of a credit squeeze which might lead back to the patron and greater indebtedness. For others the status of carpenter or tailor covered a career of multiple occupations -- as petty commodity dealer, inn keeper, small time farmer -- or municipal sinecures, which undermined their identification with a particular occupation. Claims to privileges were not only weakened by changes in social and economic conditions or by the disinterest of the tradesmen, they were also weakened by being invoked in new contexts where, even though the tradesmen appeared to win concessions, their victory was not based on recognition of their place in the seventeenth-century sense of the term.

In the late seventeenth century the carters' attempt to secure the privileges of their place had been rebuffed by the municipal authorities. When the city treated carting as a public utility it diminished the carters' claims to customary practices in their trade because it refused to recognize carters as tradesmen with a history of ways of working and publicly acknowledged standards. Instead the carters became part of a loosely organized municipal work force, regulated by the common council with little or no power to influence commercial regulations or the market for their services.

The return of imperial authority after Leisler's Rebellion brought changes from which the carters benefitted. During the rebellion many of the carters, along with most of the tradesmen in New York, had supported the rebels. After 1691, the common council sought to bind the carters to the city through favors rather than force them into submission with threats. The establishment of an elected assembly and a franchise based on property and the freemanship transformed the carters from a ragged band of day laborers into voters and a valuable source of support in a colonial polity dominated by factions competing for power and influence. The construction of Trinity Church in 1695 took

place amid an urban building boom which provided the carters lucrative contracts for moving large quantities of stone, timber, lime. Carters began to subcontract their work to free black workers who were prohibited from owning a cart but hired themselves out by the day. In a practice which became common in the eighteenth century a carter took a job for a daily rate of three shillings and paid half that to a poorer white laborer or gave a few pennies or a measure of liquor to a black worker for a day's effort. As the carters' conditions improved, they began to apply for and hold municipal appointments as corn measurers, overseers of the public drains and so forth.²⁷⁹

As New York's commerce grew, the carters were able to hold their numbers down and earn a reasonable profit. The common council raised carting rates to cushion the carters from the serious business downturns of 1718 and 1719, and in 1729 it published a detailed schedule of the carters' privileges and duties, enumerating carting weights and rates for more than a hundred commodities. Licenses restricted entry to the trade; all carters were required to drive carts of standard dimensions and paint their registration number, in bold red paint, on its side. It became common for sons to inherit their father's carts and remain in the trade. Benefitting from municipal patronage, the carters became more and more significant on the local political scene. By the mid eighteenth century the political strength of the carters was such that the William Livingston, lawyer and editor of the city's first political journal, chided the common council as men "who stand [more] in

²⁷⁹For Trinity Church and building records see, "First Recorded Minutes Regarding the Building of Trinity Church in the City of New York, 1696-1697," in the Trinity Church Archives, New York City. The following draws upon Graham Hodges, *New York City Carters*, 28, 31, 43-49, 60-61, and his "Legal Bonds of Attachment: The Freeman's Law of New York City, 1648-1801," in Pencak and Wright, *Authority and Resistance in Early New York*, 227-244.

Awe of a band of Carmen than of an Armed Host; because that proceeds not so much from natural Timidity as a more political one."²⁸⁰

There are a number of interesting points concerning the carters' change of fortune. Firstly, the change in their influence on the trade had little or nothing to do with changes in their material conditions. After 1700 carters still engaged in a low skilled trade which was threatened by all the woes which had led them to first seek protection in 1667. By the early eighteenth century, however, the carters' trade privileges received the support of more powerful supporters interested in the carters' support in local elections. By the middle of the eighteenth century the carters appear to have secured the protections and special consideration they failed to win at an earlier time.

Although similar in form and substance, the carters' privileges did not match the bakers' position in the seventeenth. The carters were not awarded trade privileges in recognition of their place in hierarchical social and economic order. They did not make a successful appeal that the city recognize their customary ways of working or rights and privileges in the trade. The political favors granted the carters did not permit them to influence the trade and the market or to develop a public and legally defensible identity above and beyond their status as freemen. The carters received their privileges on the basis of shrewd political dealings — a seemingly effective but less enduring foundation than the one the bakers had built their fortunes on. In spite of the impression of unity and influence the carters gave as they assembled to cast their votes in local elections, their hold on a privileged place within the local order was considerably weaker than the bakers and similar trades.

²⁸⁰Hodges, "Legal Bonds of Attachment," 231; Bridenbaugh, *Cities in the Wilderness*, 332.

The carters' eighteenth-century success was based on the transformation of the freemanship from its older association with the idea of place to a newer role in urban life as a qualification for the suffrage. Since the introduction of the *burgherrecht* in 1657 tradesmen had been required to register with the local authorities. The city expressly requested the privilege of restricting the retail and handicraft trades to registered freemen under the Dongan charter of 1686. In the late seventeenth century the freemanship was still a powerful and much used tool of municipal government. Increasing control over New York's fractious artisan population after Leisler's Rebellion, the newly installed common council increased trade regulations and ordered that all "shall bee warned by Mr Thoms Clark to produce their ffreedoms to Retails or use any handicraft trade within this citty within fourteen days...upon forfeiture of Twenty shillings." The freemanship was used to identify tax payers as part of a revenue gathering drive. In January 1695 the council ordered that a list of names of freemen of this corporation be drawn up and an alderman be on hand from nine to eleven each Wednesday morning to administer an oath to "all such as shall be made free or are already free according to the usage and practices of the corporations of England."²⁸¹

In spite of appearances the freemanship was already in decline by the 1690s. Many of those who registered between 1694 to 1696 had long been resident in the city and others were registering for a second time. Freemen continued to enjoy freedom from arrest for debt (unless they failed to appear in court) and protections from naval impressment. During economic downturns the common council supported local tradesmen by raising the price of the freemanship and enforcing the restrictions on strangers trading in the town. The registering of people who had long resided in the city

²⁸¹MCC, 1:164; Kammen, *Colonial New York*, 133.

in 1695, however, reveals that even in the late seventeenth century there were men working in the city who were not registered as freemen. Studies have shown that though many men continued to register throughout the eighteenth century, there were many more who routinely worked in the city and even held office without being registered freemen.²⁸² The problem presented by the freemanship was a microcosm of the colony's commercial conundrum which had its roots in burgomasters' dispute with the West India Company in the 1650s. When trade was free commerce expanded but the city's residents lost out to competitors who undersold them and left New York with valuable cash reserves and without paying taxes, thereby threatening the community's prosperity. Trade restrictions such as the freemanship discouraged newcomers limiting commerce and the colony's potential. The same shortage of skilled and free labor which made it easy for men to secure local credit, dissuaded the common council from zealously enforcing the restrictions on work and trade and excluding men from the city. By the early eighteenth century, nonfreemen traded with relative impunity in the city and were hired to work and enumerated in public lists of voters and residents alongside registered freemen. Every newcomer who worked in the city without registering diminished the registered freemen's claim to privileges in local trade. By the mid eighteenth century the freemanship had become a largely political device permitting municipal officials to stand for office without holding property in the ward they represented and allowing candidates to pack the electoral roll with supporters, such as carters, just prior to elections.

The cases of the carters and the freemanship provide examples of the declining significance of the tradesman's privileged place in New York and the role of the municipal authorities in this process. It is noteworthy that the change in tradesmen's status did not

²⁸²Beverly McAnear, "The Place of the Freeman in Old New York," in *New York History*, (1940), 418-430.

result from an intentional campaign against trade privileges by the common council. The decline of the freemanship was an unintended consequence of the common council's choice not to prosecute strangers who failed to register with the city. Just as the derogation of the carters' claim to privileges in the seventeenth century followed, unintentionally, from the common council's favoring of the city's transportation needs over the carters' claims for the privileges of their place. Setting out to ensure prosperity and cheap, available carting, the city diminished the status and privileges of men in trade. This left groups of tradesmen addressing the market as anonymous workers lacking social distinctions and seeking employment on whatever terms were available. It is the impact of unintended consequences such as these on the tradesman's place in New York with which this chapter is concerned.

2. Dirck Vandenburg and the English Standard for Bricks.

The authorities in New York regulated work and daily life through local ordinances covering all manner of things: from regulations on imports and exports, the proper locations, times, and manner of sale at public markets, the value of different currencies, the duties of slaveholders. These and other ordinances were affirmed, printed, and published, every three months by the common council. Though some laws remained on the schedule throughout the period, others came and went in recognition of changes in local circumstances. Many of these ordinances outlined acceptable practices in specific trades: Carters, butchers and tanners, boatmen, innkeepers, curriers, shoemakers, midwives, and others were all subject to licenses and regulations in the city.

The council also laid down standards for what tradesmen produced. Thus the bakers had to bake bread of a certain weight and sell it at a fixed price, or face exclusion

from the trade. To ensure that its regulations were followed the council regulated entry into and out of the baking trade, requiring bakers to bake bread with identifying marks and work on agreed schedules under the supervision of inspectors and master bakers. The regulation of baking set limits on the baker's commercial strategies, but also invested the baker with a public status and certain privileges upon the basis of which he claimed a fair price for his bread and provided for his commercial fortune in the city. In this respect the regulation of baking rested on regulating the baker. However not all commercial regulations invested tradesmen with a special status and relied on regulating the producer to ensure the quality of production. When the focus of local regulations shifted from recognition of a tradesman's control of production to a concern for the standard of what he produced it undermined claims to the privilege of a special place.

In June 1703 Dirck Vandenburg, a brick layer, petitioned the General Assembly of New York to complain of the standard of bricks in the colony. Vandenburg protested that, "the Brichmakers in this province, making their Bricks not according to the Standard of England, is prejudicial to this Province." Responding to Vandenburg's complaint, the assembly expanded an order concerning local weights and measures to include the size of bricks, and ordered that henceforth "all bricks shall be according to the standard of England" and that

no person or persons, be he master or servant, shall make, or suffer to be made, in any place or places within this colony, any bricks, or kiln of bricks, but such as shall be well and thoroughly burnt, and of the size and dimensions following, that is to say, Every brick to be and contain nine inches in length, four inches and one quarter of an inch in breadth and two inches and one half inch in thickness thereof, all well struck off, in good and workman like order and manner and made of right and well tempered mould or clay, on the penalty of six shillings for every neglect therein; to be paid by the master or owner of the said bricks or kiln, in whose

hands, or wheresoever the neglect or offence aforesaid shall be discovered or found out, except well bricks.²⁸³

The petition on brick standards was added as an after thought to an order regarding weights and measures and passed, without comment, in the assembly. It joined the colony's heterogeneous schedule of local ordinances relating to trade. When noted by historians, the brick regulation has usually been counted an incidental detail of colonial corporatism, evidence of a gradual shift to English practices, or as one bricklayer's concern for the standards in his craft.²⁸⁴ As we have seen in the struggles around quantities and qualities of bread, firewood and in the discussions of who should load cattle onto the ferry, a tradesmen's profit was calculated within the limits imposed by these local orders. Ordinances regulating and measuring the size and weight of the commodities in which working people traded possessed an important contemporary significance for tradesmen in colonial New York. To better understand the petition relating to brick standards we have to investigate three related topics: Dirck Vandenburg, English brick standards and brickmaking in seventeenth-century New York.

Dirck Vandenburg was born a native of New Amsterdam in March 1661 and as a young man learned his trade in Albany before settling in New York. Dirck's family background appears to have factored more in his success as a bricklayer than any

²⁸³"An Act to Ascertain the Size of Casks, Weights and Measures, and Bricks, within this Colony," *Colonial Laws*, 5: 554-57. The Act was reported by Lord Cornbury at the time as evidence of the growing anglicization of the colony, and has been described by historians in like manner subsequently, see "Lord Cornbury to the Lords of Trade," (July 12, 1703), *DRCNY*, 4: 1064-65, and Goodfriend, *Before the Melting Pot*, 187.

²⁸⁴Goodfriend, *Before the Melting Pot*, 68.

superlative skill with trowel and hod, and it is worth sketching out.²⁸⁵ His parents Lucas and Annetje Dirckson Vandenburg were ex-employees of the West India Company and tavern keepers who conducted a brisk trade during the 1660s -- investing their profits in small parcels of land. When Lucas Vandenburg died, Dirck's mother married Jacob Fabritius a German Lutheran minister.²⁸⁶ The young Dirck joined a small Lutheran congregation, unpopular with the Dutch Reformed Church, who did nothing to enhance their reputation with the Dutch when, hoping for protection and religious freedom, they supported the English take-over in 1664.²⁸⁷ Fabritius was an unpleasant and violent man who beat his wife and coveted the fifteen hundred florins which Lucas had bequeathed his children. The Vandenburg children secured their inheritance with the assistance of Bay Crosevelt, a family friend who acted as their attorney. In 1686 Dirck followed his father's example and, in partnership with Crosevelt, invested his legacy in a small piece of land.²⁸⁸

Following his return from Albany in 1689, Dirck established himself as a bricklayer in New York and remained loyal to his Lutheran congregation, opposing the Calvinist

²⁸⁵The details of Dirck Vandenburg's early life can be found in Howard Thomas, *Lucas Dircksen Vanderburgh of New Amsterdam and his son Dirck. Progenitors of the Vanderburgh Family of Dutchess County, New York* (By the author, 1951).

²⁸⁶Fabritius came from Holland 1669 and was established in a church at Albany. He was suspended for bad behavior and came to New York where he met and married Annetje. It was not long before Annetje petitioned the court to have Fabritius removed from her house for his ill treatment. Fabritius was finally imprisoned for disturbing the peace and sent to Delaware. He reappeared in Philadelphia in 1677, but died a blind and poor man in 1691. See Miecislau Haiman, *Poles in New York in the Seventeenth and Eighteenth Centuries* (Chicago, Polish R.C. Union of America, 1938), 44-50.

²⁸⁷For tensions between Lutherans and Dutch Reformed Church, and Fabritius see *DHSNY*, 3: 103-108, 399-402, 404; Bridenbaugh, *Cities in the Wilderness*, 101. Bay Crosevelt registered as a feltmaker, *NYHS, Collections*, 1885, 73.

²⁸⁸In November 1686, Dirck purchased the land in Dutchess County which would be the Vandenburg family home for the remainder of the eighteenth century.

leaders of Leisler's Rebellion. Dirck was attacked by the rebels but rewarded for his loyalty by the returning royal government. In 1691 Dirck began a lengthy career in municipal service when he was appointed a member of a committee of four ordered to "goe round the Town and View each fire place and Chimney that they be Sufficient and Clean Swept." The following year Dirck was appointed tax collector for the west ward and the year after that he became the sole "Overseer and Viewer" of hearths and chimneys with the power to call in the constable to assist in his duties.²⁸⁹ Dirck's municipal contacts and support for English rule resulted in many lucrative local government contracts and his business prospered. Dirck was hired for mason's work and bricklaying contract on the chapel and the fort; he supplied the city with building materials and billed the authorities for use of his servants and sloop; in 1702, along with local notables such as Henry Beekman and Barne Cosens, Dirck was granted a special license permitting him to purchase Indian lands in Dutchess County.²⁹⁰

It was Dirck's connection to the Lutheran church, however, which gave him his biggest break in the early American building trade. In 1695 the leaders of the Anglican

²⁸⁹Dirck Vandenburg's brother, Cornelius Vandenburg, was a prominent silversmith in New York and might also have been important in Dirck's early success. Given the valuable materials of their trade, silversmiths were often well connected and Cornelius held posts in the municipal government; in 1684, with Jacob Boelen, Cornelius was appointed keeper of gold and silver weights for the newly instituted standards. For Cornelius Vandenburg and examples of his silver work see Roderic H. Blackburn and Ruth Piwonka, *Remembrance of Patria. Dutch Arts and Culture in Colonial America, 1609-1776* (Albany: Albany Institute of History and Art, 1988), 279-280. For Dirck's municipal service see MCC 1: 428; Bridenbaugh, *Cities in the Wilderness*, 207.

²⁹⁰Dirck Vandenburg's account for nine hundred pounds for work on Kings Chapel, in *DHSNY*, 3: 406-7; Dirck's his bills for work ordered by the city in *NYHS, Collections*, (1909), 13, 22, 32, 47, 55, 60, 66, 70, 74, 82, 97; Fernow, *Calender of Council Minutes*, 98, 103, 104, 108, 109, 112, 113, 114, 119, 121, 125, 128, 147, 152, 164, 177, 187.

community chose a plot of land owned by the Lutheran congregation as the site for the new Trinity church. An elder in the congregation, Dirck assisted in the conveyancing, and was awarded the contract to organize the bricklaying and mason's work. The building of Trinity church confirmed Dirck Vandenburg's place as a leading contractor in the colony. Vandenburg edged his way up the social and political rankings, winning favors from the authorities.²⁹¹ In 1704 Dirck was made a Justice of the Peace and in 1705 Alderman Vandenburg was appointed to the high office of surveyor of the city.²⁹² Continuing to invest the profits from his various businesses in land and slaves, Dirck now moved in social circles far above his familial roots in tavern keeping and itinerant preaching. More than just a bricklayer, Vandenburg had risen above the level of a simple tradesman and spent his time organizing major construction jobs and serving in various municipal offices.

Seventeenth and eighteenth-century bricklayers quoted for work by the rod, frequently including the price of the brick in the cost.²⁹³ The brickmaking and bricklaying trades were often related as tradesmen attempted to retain control over costs and ensure a better return by making and laying their own bricks. Contractors like Vandenburg, however, who had to keep as many as eight to ten bricklayers supplied on projects like

²⁹¹In October 1698 Dirck successfully won the reprieve the death sentence passed on one of his slaves convicted of burgling a neighbor's house. In November 1698, he received a silver tankard valued at twelve pounds for his part in the building of Trinity Church.

²⁹²Dirck continued to buy and sell land. In February 1706 he sold a lot on the South side of Queen St. to Ebenezer Wilson. In February 1707 he sold a lot on Smith's Fly to Rosevelt Waldron, in Thomas, *Lucas Dircksen Vanderburgh of New Amsterdam*, 27-35; when he died in 1710, Dirck Vandenburg left a house and land in Dutchess County and an estate valued at three hundred and fifty pounds, NYHS, *Collections*, (1892), 279-80.

²⁹³A rod was measure of brick work sixteen and half feet square or two hundred and seventy feet in all, *The Compact Edition of the Oxford English Dictionary*, 2565.

Trinity church couldn't afford to make all his own bricks. This meant that Vandenburg was a buyer as well as a layer of bricks. His interest in the standard of brick made in the colony may have represented more than a concern with English traditions and pride in his craft and it explains why it was this particular brick layer who petitioned for standards in 1702. The question remains, however, as to what this Dutch man knew of English bricks, and what was the standard that he and the assembly so readily agreed upon in 1702.

Tracing the history of English brickmaking and laying, one finds continental European expertise at its foundation.²⁹⁴ The knowledge of brick and tile making was not native to England, but introduced in the thirteenth century by Flemish refugees from the Low Countries. Throughout medieval England and into the seventeenth century, the Dutch were renowned for their brick and tile making expertise.²⁹⁵ The other major influence on early modern English masons work, and the origin of the word brick, was France. In the fourteenth century the French bond brick laying technique (a more solid and sightly arrangement than the medieval English practice of piling stones on top of one another) became so popular that by 1480, renamed Old English bond, it was the standard throughout the realm.²⁹⁶

²⁹⁴The following discussion relies on Nathan Lloyd, *A History of English Brickwork. With Examples and Notes of the Architectural Use and Manipulation of Brick from Medieval Times to the end of the Georgian Period* (London: H. Greville Montgomery, 1925); Alan Cox, *Brickmaking. A History and Gazetteer* (Bedfordshire: Bedfordshire County Council and the Royal Commission on Historical Monuments, 1979); Jane A. Wight, *Brick Building in England From the Middle Ages to 1550* (London: John Baker, 1972).

²⁹⁵Joan Thirsk, *Economic Policy and Projects. The Development of a Consumer Society in Early Modern England* (Oxford: Clarendon, 1978), 48.

²⁹⁶English lords, who spent long periods fighting in France during the hundred years war (1337-1453), admired and recreated French architecture and brickwork upon their return.

Statutes provide no clearer origin of a specifically English brick. In the two hundred and fifty years preceding Dirck Vandenburg's petition in New York there were three pieces of English legislation referring to bricks and tiles.²⁹⁷ Edward IV's 1477 statute dealt with roof tiles only and established the regulatory principle of laying down periods for digging and preparing the clay to try and ensure that the proper seasons were observed and the quality was assured. In 1567 Elizabeth I's charter to London brickmakers outlined the protections for their trade, but left it to them to decide the kinds of bricks they should make. In 1625 Charles I's Proclamation extended Edward IV's seasonal demarcation from roof tiles to bricks, set the size at nine, by four and a half, by two inches, and established price limits on brickmakers' charges.²⁹⁸ This regulation hardly constituted a significant statement of an English standard, however, and merely confirmed a brick size already widely in use; a brick size originally introduced to England by the Flemish three hundred years previously. Furthermore, in spite of the regulations, a survey of English brickmaking from the thirteenth to the eighteenth century concludes that "the great variations in size found in the same wall, even the same course, preclude the use of brick size as a viable measure of date or standards."²⁹⁹

National history provides an inadequate basis for English brick standards because brickmaking techniques were relatively uniform throughout early modern Europe. Where brick sizes and colors varied, as they undoubtedly did, it resulted from local, material considerations and fashionable preferences.³⁰⁰ The tools of the brickmaker's trade — a

²⁹⁷Lloyd, *History of English Brickwork*, 42-48.

²⁹⁸Alan Cox, *Brickmaking. A History and Gazetteer*, 37.

²⁹⁹Lloyd, *A History of English Brickwork*, 6-12.

³⁰⁰Different guides to brickmaking in the seventeenth and eighteenth centuries describe a similar process with the only variance being in respect of local conditions and

table with a stock, a moulding frame, and a wire bow for skimming the mould – varied little from place to place across centuries. The types of bricks and the preferred method of firing was conditioned by the kinds of clay available to the workmen, and the different sizes, shapes and colors they chose to make. As one observer of English brickmaking commented in 1749, "workmen tell me they are forced to have above one method in making of bricks not for fancy sake but out of pure necessity; the reason which proceeds from different qualities inherent in different earths." The significance of local conditions and "different earths," makes it difficult to understand what anyone making bricks in colonial New York could have meant by their advocacy of an English standard brick.³⁰¹ When we consider the process of production, a regulation requiring the manufacture of bricks to a certain standard seems even less plausible.

Brickmaking was a long, hard, labor intensive, but surprisingly sensitive process, the results of which were often difficult to guarantee. Locating a suitable area of ground, the brickmaker dug through the winter using the frost and freezing rains to break down the piles earth. In the spring, brickmaking commenced in earnest. First the clay was puddled: wetting and stirring it to the right consistency, the brickmaker filled the mould with tempered clay, and skimmed the top with a strike, or wire bow; the green, or raw, brick was then turned out and set on a prepared area for a month or more to dry. Firing usually began in April and continued through the end of the summer. Whether

clay types. The following discussion draws from descriptions in "The manner of making bricks at Ebbisham in Surrey," letter to the Captain James Twiford, sherrif in Bristol, June 1683, in Lloyd, *History of English Brickwork*, 34–40; T.D.W. Dearn, *The Bricklayer's Guide to the Mensuration of All Sorts of Brick-Work According to the London Practice with Observations on the Cause of Smokey Chimnies* (London, 1809).

³⁰¹T.D.W. Dearn lists the different kinds of bricks made around London as place bricks, grey and red stocks, marle stocks, and red rubbers, Dearn, *The Bricklayer's Guide*, 2–6.

brickmakers built their own kilns or used another's, firing was a laborious task, as every brick had to be picked up and set in the kiln. The bricks had to burn slowly for up to three days, then the temperature was increased for a couple of days, and finally the brickmaker sealed the kiln, waited for the fire to burn out, and left the bricks to cool for a further week to ten days.

Flaws and defects in bricks resulted from mismanagement of any stage of this precise process. Poor soil or clay, ineffective puddling and tempering, incorrect molding, stacking, drying, or early firing could all cause problems. Even when the brick was molded and prepared correctly, unavoidable faults could still develop in the kiln. As one English guide pointed out in 1679, this was because in every kiln "besides the goodness or badness of the Earth and the well ordering of the Clay, there are three degrees for Brick goodness." The first and best sort were those which lay next to the fire in the kiln and always "exceed all the rest." The second class were those which lie next to the first; the third "and worst sort" are those "which lie on the outside of the Keele [kiln] where the fire hath not so much power," and of these the "outside" bricks on the windward side of the kiln are the "most worstt [sic] of all."³⁰² Thus, having taken six to nine months to make and prepare the bricks, the brickmaker could never know for sure exactly how many would turn out well until after the firing; if he was unable to get his bricks closest to the fire in the kiln, the chances of greater spoilage increased. Appreciating the vagaries of brick production and the uncertain fortunes of the brickmaker, we can now return to Dirck Vandenburg's petition and brickmaking in colonial New York.

If the standard of bricks in New York in 1703 was poor, it was not for lack of skilled brickmakers and local knowledge. As early as 1628 Domine Jonas Michaelius,

³⁰²Alan Cox, *Brickmaking*, 31.

reported that "they bake brick here," and bricks were being made regularly in the Hudson Valley by 1634.³⁰³ From the 1640's on fire prevention ordinances required householders to use bricks for their chimneys and fireplaces.³⁰⁴ Around 1650 men began manufacturing bricks and roof tiles in Albany, where Dirck Vandenburg probably served his apprenticeship. Following the style in Holland, Dutch tradesmen used bricks in house construction, particularly for the status conscious, from the 1670's on.³⁰⁵ Daniel Denton's report in 1670 that "New York is built most of Brick and Stone, and covered with red and black tiles," is confirmed by Governor Edmund Andros in 1678 who wrote of "our buildings most wood, some lately stone and brick."³⁰⁶ Before and after 1702, New Yorkers used bricks that were both larger and smaller than the "standard" advocated by

³⁰³Reverend Jonas Michaeliusto the Reverend Adrianus Smoutius, 11 August 1628, *DRCNY*, 769; Kiliaen van Rensselaer to Worter van Twiller, 23 April 1634, in A.J.F. van Laer, ed., *Van Rensselaer Bowier Manuscripts* (Albany, N.Y.: University of New York, 1908), 266-288.

³⁰⁴Isaac N. Stokes, *An Iconography of Manhattan Island: 1498-1909* (New York: Arno Press, 1967), 4: 112, 113, 183.

³⁰⁵That the colonists also imported bricks is clear from Cornelius Barenson's petition to the burgomasters in 1660. Barenson, a baker, requested that he be appointed Teller of Bricks and Tiles coming from "Patria and other places," "as he cannot support his family as Measurer of Grain an Lime and similar things," *RNA*, 7:250. However, Richard O'Connor has argued that structures as small as twenty by forty feet required approximately forty thousand bricks. The tonnage capacity of eighteenth century vessels, and risks of maritime travel made foreign bricks prohibitively expensive, Richard O'Connor, "A History of Brickmaking in the Hudson Valley," Ph.D. Dissertation, University of Pennsylvania, 1987, 41-83..

³⁰⁶John Sharpe's suit against Ralph Hutchinson in 1675 for overcharging for delivering bricks from Albany to New York suggests the regularity of the trade as does the setting of standard prices for carter transporting bricks and regulations requiring there use, in *MCM*, 1675-1677, 108, and *MCC*, 1: 28, 135, 256; Blackburn and Piwonka, *Remembrance of Patria*, 91-100.

Vandenburgh and visitors to the city noted the variety of brick and stone work in fashionable districts around lower Broadway.³⁰⁷

Given the well established brick and tile industry, if there was a lowering of standards around 1703, it must have resulted from something other than a sudden dearth of knowledgeable brickmakers. Furthermore, when we appreciate how bricks were made, it is not at all clear that there was a "standard" brick in use, even in England, to which Vandenburgh, a Dutch man in a distant American colony, and those who granted his petition might have referred. Regulations prohibiting the manufacture of bad bricks were meaningless unless they applied to those who set out to make bad bricks, or dug clay at the wrong time and made a sloppy job of the various stages of production. When the English statutes dealt with quality and standards they laid down a seasonal schedule for digging, moulding, and firing to ensure that stages were not rushed or performed early or late. However, Dirck Vandenburgh's petition made no mention of production methods and seasons, and simply required that all bricks be "well struck off in a good workman like fashion." In light of his position in the construction business and the absence of a clear English standard, it appears that Vandenburgh was less concerned with how bricks were made and more with the standard of bricks offered for sale. This Dutch contractor's petition in 1703 represented a self interested appeal to an ideal standard; a standard Vandenburgh termed English to ensure the reception of his petition and easier passage of the regulation through the provincial assembly.

³⁰⁷In 1704, Madam Sarah Kemble Knight, a gentlemwomen from Boston travelled to New York and noted of the buildings in New York, "The Buildings Brick Generaly, very stately and high, though not altogether like ours in Boston. The bricks in some of the Houses are of diverse Coullers and laid in Checkers, being glazed look very agreeable." "The Journal of Madam Knight," in Wendy Martin ed., *Colonial American Travel Narratives*, (London: Penguin Books, 1994), 69.

Vandenburgh's concern for the quality of bricks raises the question of the state of local relations between producers and purchasers of bricks in New York. Given the uncertainties of brick production, the colonial brickmaker could never know for sure how many would turn out well and how many would spoil, especially if he used another's kiln and could not organize the firing to his own design.³⁰⁸ The question of who would bear the cost of this routine spoilage produced a point of issue in any negotiation between brickmaker and brick purchaser at the moment the bricks were exchanged. When a brickmaker promised to make a kiln of bricks, he would have to negotiate a price for the job with the customer which accounted for the spoilage or at least spread the cost. If the customer could pick bricks out this would leave the brickmaker bearing the total cost, in labor expended for no return. Instituting a standard for bricks sold, Vandenburgh's petition would permit the purchaser to refuse any subpar bricks and shift the cost of spoilage resolutely away from the builder and back to the brickmaker. That precisely this kind of struggle, over value of bricks at the moment of exchange, occurred in New York's brickmaking agreements is clear from Jacob Fairen's civil suit against John Demares, a planter from East New Jersey in 1699.³⁰⁹

In May 1692 early in the brickmaking season, Demares agreed to provide Fairen with meat, drink, washing, lodging, and "soo much as he should reasonably deserve for his labor and pains in making and burning," a kiln of bricks on Demares's farm. Over the course of the summer, Fairen made a kiln and burned twenty thousand bricks. The

³⁰⁸Permanent kilns or ovens used the heat from fires more effectively and produced consistently better bricks. Alternatively brickmakers made a kiln, or clamp, from the raw bricks themselves, a cheaper but less effective method. These temporary kilns were used frequently in colonial New York where brickmaking provided part time employment for many tradesmen, see O'Connor, "A History of Brickmaking in the Hudson Valley," 52-53.

³⁰⁹MCP, 1:78; MCM, 1695-1704, 136.

disagreement over value arose when Demares subsequently used the bricks to build himself a house. Seven years later, Fairen argued that -- given the value of the house and Demares promise to pay what he should reasonably deserve -- he had been insufficiently compensated for his work that summer, and deserved twelve pounds. Bringing suit in the Mayor's Court in New York, Fairen had Demares arrested, and when no defence was offered, he won his case and financial restitution. One man suing another for a long outstanding debt was not unusual in the colonial economy and Fairen's suit against Demares does not show men in dispute over the spoilage rate. The case does suggest, however, the value of a kiln of bricks was difficult to establish at time of production and this would be exacerbated by spoilage. Furthermore, brickmakers like Fairen sued on the basis that the value of their work could not be divorced from the value of the bricks, in 1692 or even seven years later; he had a claim as a skilled man to a fair price for his work and this was recognized by the court.

The difficulties of producing good bricks were increased when clay was scarce, the yield of a given piece of land more precious, and the spoilage rate within production of greater significance. Dirck Vandenburg's construction business flourished and he rose to public prominence in the 1690's on the basis of a building boom in the city. The work on Trinity Church and a new Dutch Reformed Church was barely completed in 1698 when the corporation announced plans for an impressive new City Hall; in addition to these large projects the council minutes record almost continual work on bridges, docks, a ferry house, and the city jail. Although the city abounded with building work, and contractors like Vandenburg made healthy profits, there is evidence that local brickmakers were having a more difficult time competing for clay and competition for the brickmaking business was increasing around the turn of the century.

In March 1700 Richard Moore, a local brickmaker, tried to increase the productivity in his yard by subcontracting to two English brickmakers, John Ackerson and Edmond Heynes. The two subcontractors fell out that summer and in February 1701 John Ackerson sued Edmond Heynes, recounting how he had drawn up a "covenant conact articles and agreement" with Edmond Heynes that the two "in firm partnership joyntly would work with and carry on the one half parte of a certain brick work...at ye brickyard of Richard Moor." The two men intended to protect themselves from the prospect of unemployment by agreeing to combine their efforts on "any other brickwork or brickmaking...for one summer season either working together or apart," and "to render and pay unto each other y one moyely or half parte of all such net gaynes and gettings as should be so by them gained and gotten." However, Heynes reneged on the deal and earned twenty-four pounds from "a certain person in New York" for the "moulding making and burning of a certain number of bricks." Twenty-four pounds which Heynes refused to "pay or render in any manner of acct of his net gayns and gettings."³¹⁰ In spite of his efforts, Moore ran short of credit and in May he was sued for debt by Henry Coleman, a butcher. In 1702, Moore was still petitioning the common council seeking payment for bricks provided in the construction of City Hall several years previously.³¹¹

The money the city owed Richard Moore for bricks dated from the mayoralty of Isaac De Reimer and the failure of that administration to pay the brickmaker's account was a minor incident in a period marked by financial mismanagement and corruption. As the brickmaking season commenced in the fall of 1700, a dispute over the usage of common land revealed more double dealing by Reimer and the clay shortages faced by the

³¹⁰John Ackerson v Edmund Heynes, February 1702, MCP, 2:50.

³¹¹Coleman v Moore, 17 November 1702, MCM, 1695-1704, 318.

brickmakers. On 18 September 1700 the common council appointed a committee to confer with the brickmakers Henry Cordus, Richard Moore, and Vincient Delamontagne regarding their petitions for use of a piece of ground "lying near Inclaembergh" in the city.³¹² The timing of the petitions suggests that the brickmakers were seeking land to begin digging in readiness for the following summer season.

That clay was running short was evident the following week, when the common council ordered that "all such persons as have dug holes in the Citty commons on the south side of fresh water be forthwith Ordered to fill up the same and that if they refuse so to doe that they be bound over to the sessions for nuisance." On the 3rd of December the committee appointed by the council awarded the land to Henry Cordus for a fifteen pound charge on a twenty-five year lease; Cordus had beaten Moore and Delamontagne to the land and now the two disappointed petitioners appeared as culprits for the illegal digging. On the day the that Cordus's grant was confirmed, Richard Moore's petition for "some land near where he dwelleth in the Bowery," was rejected and the council ordered Moore to "desist from digging any more holes in ye commons and...[to] fill up those he has already made or else...be sued for trespass."³¹³

A few days later, Vincient Delamontagne was also charged with illegal digging on the commons, but defended his actions citing an official privilege. Delamontagne, petitioned the council claiming that during the "mayoralty of Mr Isaac De Reimer your hon petitioner had the promise of the sd mayor y then aldermen and common council to hire out for a certain term of year a certain parcell of marsh land belonging to y commonage of sd citty upon a certain rent payed whereupon to digg clay and make

³¹²MCC, 2:110. Henry Cordus registered as a freeman and farmer in 1731, NYHS, *Collections*, (1885), 118.

³¹³MCC, 2:113.

bricks." Giving credit to this agreement, Delamontagne declared that he had "made considerable progress and hath layed out and expended much money...to the impoverishing him and his great family." On that very day, however, Delamontagne recounted how he "and his hands were at work upon ye land digging of clay in order to gett his livelyhood." When the constables in the outward and members of the common council ordered him "and hands immediately to desist from digging any more clay...upon our outmost perill." The council were unimpressed and denied Delamontagne's petition. With Christmas approaching, and the digging season already well under way, Delamontagne petitioned for and was awarded a plot of "swampy land" adjacent to the ground recently leased to Henry Cordus.³¹⁴

The problem of finding good clay for making bricks appears to have continued through the following two seasons. In the spring of 1703 Vincient Delamontagne was digging for clay and making bricks on the commons again. On this occasion his questionable digging brought a counter petition by a group of prominent farmers and traders, who asserted a public right to the commons over Delamontagne's, purported, privilege to dig clay. The counter petition of George Sydenham, Jacob Cornelisse and others complained that they had been "oppressed and abused by several inhabitants" of the outward who encroached upon the commons and erected fences, "digged and carried away great pieces of earth...with hands [and] made ye sd commons very dangerous...to ye petitioners and inhabitant's cattle." In a clear reference to Delamontagne, the petitioners complained that some brickmakers had even "taken certain sum or sums of money by letting out that privilege they claim from ye mayor aldermen and common council of ye City of New Yorke granted them in yeare 1700." Invoking their right to pasture cattle on

³¹⁴Ibid., 126-128.

the commons and employing standard rhetorical justifications, the petitioners warned that they "will become incapable to subsist there family paying taxes or doeing any said Queens offices if ye privileges of the sd common be taken from us." Alderman John Clapp added his own note in the margin of this petition, confirming that "I have often heard all y above Aligations are true."³¹⁵

This influential opposition to the brickmakers and the accusation that Delamontagne was subcontracting his supposed privilege proved more than the council could bear. The New York authorities which had struggled so keenly for its property rights was not about to see this control diluted by common brickmakers subletting areas of corporation ground. The council clamped down on the brickmakers ordering that people who "dig any holes in the Commons of this city on the south side of the fresh water or take or carry away earth or Mould...shall for every Offence forfeit and pay the sum of fourty shillings...half for the informer and the other halfe for the use of this corporation." Shortly thereafter, John Ackersen, having left Edmund Heynes and gone into partnership with Henry Cordus, formally petitioned for land near Incloambergh "for the making of bricks." In November 1703, to ensure that there would be no repetition of the illegal digging of recent years, the common council added the prohibition on digging the commons to the schedule of ordinances published every three months. There were no

³¹⁵The enmity between Sydenham and Delamontagne can be traced back to a series of disputes two years previously. In January 1700 Sydenham successfully sued Delamontagne for trespass and destroying his fences in the Bowery with horses and a wagon. Delamontagne immediately brought an action against Sydenham for debt, and Sydenham counter sued for debts owed by Delamontagne. The two appeared in court throughout the summer of 1700, when Delamontagne finally got the better of the judgement. See *George Sydenham v Vincient Delamontagne*, January 1700, MCP, 1: 69, 79; MCM, 1695-1704, 146, 153, 160, 162, 164, 179, 182. The two ended up in the Supreme Court and, interestingly, Sydenham called John Ackerson as a witness for the prosecution against Delamontagne, Hamlin and Baker, *Supreme Court*, 2: 233.

more reports or complaints of mysterious excavations on the commons, by person or persons unknown.

The story surrounding the introduction of the regulation of a standard brick raises some interesting questions regarding the place of the artisan. It also further illustrates the dangers of taking occupational titles like bricklayer at face value without investigating the individual behind the, seemingly, common trade. What artisans said about the work was not always an unmediated reflection on the things they did. Dirck Vandenburg's appeal had less to do with pride in craft skills and more to do with immediate concerns of brick qualities and prices. Considering the personal histories of Dirck Vandenburg, Henry Cordus, Richard Moore, Vincient Delamontagne it is clear that their experiences in trade were very different. Comparing Dirck Vandenburg's position in municipal and business circles and his commercially useful access to provincial politicians with the fleeting partnerships and covert digging on the commons of Ackerson, Moore and Cordus it is clear that these men competed for surplus value in a local construction business sensitive to shortages of raw materials and profit calculations.

Whether Dirck Vandenburg advocated the English brick standard as a concerned citizen or a profit minded contractor is not at issue here. There is no way of knowing for sure whether Vandenburg's business ever benefitted from the brickmaking regulation, or whether brickmakers were ever fined the forty shillings for making bad bricks threatened in the ordinance. It is not the motivation of Vandenburg's petition which concerns us but its implication and the way it was justified. Given the rhetorical significance of claims to custom and metropolitan precedents, it is noteworthy that by 1702 a Dutch tradesmen consciously employed an appeal to English standards as the basis for his petition to the assembly. More significant than Vandenburg's crafty citation of English standards is the way in which his petition recast the relations between the purchasers and producers of

bricks which mitigated against brickmakers subsequently claiming the privileges of men in a specific trade.

The ordinance on brick standards elevated the claim of the customers to certain kinds of exchanges over the brickmakers' liberty to make and sell bricks in their own way and to their own "standard." Furthermore the regulation addressed all "person or persons, be he master or servant" and was unconcerned whether the brickmaker was a free man, apprenticed or even experienced in the trade. By regulating the brick and ignoring the brickmaker the new standard provided for a subtle shift in the relationship between the purchasers and the manufacturers of bricks. Moving the focus away from production, and the duties (and therefore privileges) of brickmakers to produce decent bricks, the order focussed on the moment of exchange and required that all bricks, except well bricks, be of a certain standard. The corporation did not care who made the bricks as long as they were "well struck off, in good and workman like order and manner." Ignoring the tradesmen, the city granted any consumer who bought bricks the privilege of buying bricks of a certain size and dimension.

Simply requiring a standard brick, the order ignored the brickmaker and struck at the root of the notion of place and the duties of men arrayed in their unequal estates. In so doing it made a tentative, and largely unintended step toward a new conception of the tradesman's place in New York. The new brick standard effectively rejected the seventeenth-century ideal of a natural hierarchy wherein brickmakers granted certain privileges were under an obligation to fulfil their duty and make acceptable bricks. The new brick standard represented a declaration by the state that henceforth *whoever* made bricks had to make them to a certain standard or face a penalty. In so doing the authorities eliminated the brickmaker as a public subject who might make claims to certain trade privileges.

3. Apprenticeship and the Eighteenth-Century Trades.

In the early 1690s the cordwainer (shoemaker) William Jackson fled religious persecution in Edinburgh, Scotland, and came to New York where he married Anna Weasels a local Dutch woman. Jackson soon established himself as a cordwainer in the city and ran a thriving business taking apprentices into his shop. One of those apprentices, John Dunlap, joined the Jacksons on 1 October 1698 indenturing himself and promising to serve for five years. In the indenture William Jackson promised to train Dunlap in the cordwaining trade and to give him "meat Drinke Washing and lodging and Cloathing fit for an apprentice and likewise his winters schooling." Jackson also promised Dunlap "two Suits of Cloathing One Suite to worke in the Other for Sunday's" upon completion of the indenture.³¹⁶ The Jackson's built up a fair trade and, following William's death, Ann Jackson continued to do business in the city. She bought and sold commodities in New York and supplies to the common council and regularly appeared in court both defending and commencing civil suits.³¹⁷

In 1703 John Dunlap completed his indenture with the Jacksons and registered as a freeman and cordwainer in the city. It took some time for Dunlap to establish himself in trade. In September 1709 Garret Vanlaer sued Dunlap for nonpayment of the three pounds he had borrowed the previous year. Dunlap's circumstances must have improved, however, for when Abraham Gouverneur sued William Galt for four pounds rent on a house

³¹⁶On William Jackson see Joyce D. Goodfriend, *Before the Melting Pot*, 59, 95; John Dunlap's indenture is in "Indentures of Apprenticeship begun February 19th 1694 and ends January 29th 1707" in New York Historical Society, *Collections*, (1885), 585-586. The following section also uses the other extant records in "Indentures of Apprentices, 1718-1727," in New York Historical Society, *Collections*, (1909), 113-199.

³¹⁷MCM, 1723-28, 43; MCC, 3: 151; MCP, 5: 4, 9, 40, 61, 89; 6: 10, 42, 61.

in November 1712, he identified the building in question as "behind John Dunlap's shop." By March 1719 Dunlap had some regular customers and was joining retail networks as is evident from his appearance on John Dunn's account for John Deprees. His growing success may have encouraged Dunlap to develop his business or enter the speculative economy: in September 1719 "John Dunlap of the city cordwainer" became "firmly obliged to Richard Higgins in the sum of ten pounds." Shortly thereafter Dunlap became a petty constable, and later high constable, in his ward. In February 1720 he joined Thomas Hodges, also a cordwainer, as a bondsman for John Deare who was being sued by Richard Bishop for nonpayment of twenty-pounds. Gaining a more certain hold in the credit economy and making the transition from debtor to creditor, Dunlap sued Michael Spragg for nonpayment of thirty pounds in 1721. Spragg was forced to call upon John Dyer, a tallow Chandler, and Thomas Mortimer, a cordwainer, to put up bond guaranteeing the debt.³¹⁸

The story of the Jacksons and John Dunlap continues to inform our view of apprenticeship in the eighteenth-century trades. Tracing the origins of apprenticeship to medieval and Tudor England, historians describe the relationship between the master and apprentice (often in the ideal terms of the indenture) and the role of apprenticeship in the trade economy. The system of apprenticeship, we are told, was designed to reproduce a skilled labor force for the city and rested on a special bond between masters and their apprentices. Masters agreed to provide sufficient food and clothing for the apprentice and to train him in the mysteries of the trade. The apprentice promised to obey the master in

³¹⁸The litigation history of John Dunlap can be traced through various sources. He was sued by John Ellison in 1702, Hamlin and Baker, *Supreme Court*, 2: 93; thereafter the cases appear in MCM, 1704-1710, 414-418; MCM, 1720-1723, 41; MCP, 3: 101, 4: 111, 112, 5: 76, 77; for Dunlap as a constable and later high constable see Scott, *New York Court Records*, 94, 104.

all things and to serve him well and faithfully. If he did so, the apprentice would one day become a freeman and master in his own shop, as John Dunlap did after leaving William Jackson. Studies have noted the existence of variations on this theme, but most argue that apprenticeship remained a viable institution until the end of the eighteenth century.

Historians trace the decline and ultimate end of apprenticeship to the same combination of economic and social forces responsible for the disappearance of the urban trades and the emergence of modern relations of production and exchange.³¹⁹

If we examine apprenticeship in eighteenth-century New York, and even the Jackson's cordwaining business a little closer, however, apprentices' experiences appear less tradition bound and uniform and more contingent and varied. Three years into John Dunlap's apprenticeship, William Jackson took John Reade, "a poor fatherless and Motherless child aged Eight Years and a halfe, or thereabouts," as an apprentice in his shop. With two years of Dunlap's time remaining Jackson was probably planning ahead and preparing a new boy to replace Dunlap following his departure. However, Reade joined Jackson on very different terms from Dunlap. Isaac Kip and Garret Viele, Church Wardens and Overseers to the Poor, brought John Reade to Jackson and indentured him for twelve years "until he shall be twenty years." The terms of Reade's service also differed from Dunlap's. The indenture promised only "Usual provisions" and that Reade would be taught to "read and write the English tongue." There was no mention of suits at

³¹⁹Early studies noted the variation in apprenticeship experience and apprenticeships role as a front for child labor, see Samuel McKee, *Labor in Colonial New York*, chapter two and Richard Morris, *Government and Labor*, 363-389. More recent histories have missed these early insights and treated apprenticeship in less precise terms. See especially Gary Nash, *Urban Crucible*, 16; W.J Rorabaugh, *The Craft Apprentice. From Franklin to the Machine Age in America* (New York: Oxford University Press, 1986), 3-56; Ian M.G. Quimby, *Apprenticeship in Colonial Philadelphia* (New York: Garland Publishing, 1985).

the end of the term or winters in the school. Furthermore, unlike Dunlap, John Reade never reappeared on the city's register of freemen as a cordwainer, or indeed anything else and there is no way of knowing for sure what became of him after he left William Jackson's service.³²⁰

The different fortunes of Dunlap and Read shows that apprentices entered upon their indentures on very different terms and enjoyed varying degrees of success following completion of their indentures. In the sight of the law, however, apprentices possessed the same privileges and were bound by the same duties to their masters and the wider community. By the late seventeenth century indentures were available as prewritten forms to which the master and the apprentice added the details of their agreement. During the Dutch and early English periods, the local authorities recognized the status of apprentice and compelled both masters and apprentices to meet their obligations to one another. Indeed, in contrast to the derogation of the privileges of carters and brickmakers, the authorities in colonial New York worked hard to maintain apprenticeship as a vital, legal institution in the city.³²¹

In January 1695 the common council required masters to register their apprentices' indentures with the mayor and ordered that apprentices would become freemen upon successful completion of their term. The order declared that thereafter, "none [were] to take an apprentice nor teach him a trade or calling without indentures bound before the mayor or recorder or town clerkes, not for a terme less than four years and at expiration of indentures apprentice shall be made free if he has well and truly served him, the master... and that the clerk for registering the apprentice shall have three shillings." The

³²⁰NYHS, *Collections*, (1885), 593.

³²¹RNA, 3: 392; 6:153.

city also regulated the term of the indenture ordering that apprentices serve at least four years. In 1711 the common council extended the mandatory term to seven years, declaring that four years produced too few skilled apprentices.³²² Throughout the early eighteenth century the city regulated apprenticeship as a status carrying certain privileges and duties, and masters and apprentices sued in court to secure the provisions of indentures.³²³

The most significant threat to the city's effort to maintain the vitality of apprenticeship as an institution came from the masters and their apprentices. Throughout the period they drew up indentures for longer and shorter periods than the regulations declared; masters sometimes failed to register their apprentices; apprentices ran off or were enticed away, usually by their parents following the basic training in the rudiments of a craft. Families were pleased to have another assume the cost of the child through the indenture's early years, but following a little instruction the earning potential of the apprentice could prove hard to resist. In 1719 Cornelius Kierstead sued Conrad Tenicke whose son, Jacob, Cornelius had "receive[d] and retheyne[d] in his service as apprentice... to live with the said Cornelius as an apprentice in the art and trade of a silversmith for the space of seven yeares." Kiersted recounted how he had trained Jacob in "the art and mistory of silversmith so far as he was able," and provided "good and sufficient meat and drink washing and lodging for him the said Jacob." A year into the indenture, however, Conrad "procured and enticed [Jacob to] become an apprentice to one Charles Laroux of

³²²The 1695 order that tradesmen register their apprentices was republished in 1697, 1701, 1702, 1706, with a fine for noncompliance in 1707 and then reaffirmed in 1711 and 1712, in *MCC*, 1: 374; Kammen, *Colonial New York*, 132, 133.

³²³In 1683 Jacob Hansen was released from the service of William Palmer "who neglected to instruct him in trade of ships carpenter," in *MCM*, 1682-1695, 14.

the same city silversmith to the great disparagement of him the said Cornelius in his trade."³²⁴

For many the apprenticeship began before the registering of the indenture. It was common in New York for masters to have local boys and girls living and working with them before they officially registered them as apprentices.³²⁵ This trial period could last for anything from three months to several years and offered benefits to both sides. A trial period enabled the master to remain free of public scrutiny until he decided whether or not to take on an apprentice, and the promise of an indenture ensured the obedience of apprentices who wanted to remain with a particular master. More importantly, by delaying the registration of an indenture until after the apprentice was trained in the rudiments of a trade, the trial period could ensure that the master only placed himself under an obligation to the city and secured his legal claim after the apprentice became valuable as trained and skilled labor in the workshop. If the apprentice ran away or misbehaved after the indenture was registered, the master could seek recourse to the law.

For apprentices the trial period provided the child and his or her parents with an opportunity to try out with a master before entering a formal indenture which might keep the boy or girl under the charge of another for seven years or more. This was important because tradesmen often apprenticed their sons to other masters in their own or different trades. Apprenticing sons in a variety of trades ensured that different family members would work in diverse and sometimes complementary areas.³²⁶ The use of trial periods reveals that masters and apprentices had some respect for local regulations but adopted

³²⁴MCM, 1682-1695, 14, 43; MCP, 4: 82; RNA, 1: 212.

³²⁵NYHS, *Collections*, (1885), 578, 584, 585, 588, 595, 597, 600, 606; NYHS, *Collections*, (1909), 115, 123, 124, 131, 140, 146, 148, 154.

³²⁶NYHS, *Collections*, (1885), 591, 594; NYHS, *Collections*, (1909), 117.

strategies to minimize the restrictions. In addition the trial periods and the degree of differences between the terms of service reveals that the registering of an indenture was significant moment of negotiation and more than a mere formality of filling in a prewritten document. All apprentices were entitled to claim training in a given trade, but extras were negotiable and registering the indenture was the only chance to formally set the terms of their service for the ensuing years.

Negotiated elements in an indenture covered a variety of things. Apprentices bargained over the years of service, provisions of food clothing and schooling, and the freedom dues upon completion. In December 1718 Johannes Harperdink, a shoemaker, registered indentures for two new apprentices. Accompanied by his father and mother, Thomas and Catharyna Nobel, David Noble agreed to work for seven years in return for "training and sufficient meate, drink, apparell lodging and washing fitting for an apprentice," and "Every Year three Months Schooling and Stockings and his Wearing Clothes." In addition "when his time of service is expired," Harperdink promised the young Noble "six shirts, four neck cloths a Good beaver hatt, two pairs of shoes, One Coat, West Coat and a pair of Breeches." On the same day Martin Crankheytt accompanied by his mother Sophia Palding also agreed to serve for seven years but was promised no schooling or extras during the term and only a "good suit of clothes when his time of servitude is compleat."³²⁷ In other cases a parent or guardian might stipulate that the indenture would be void if the master moved away from the city or made the apprentice work at anything other than the trade for which he was training. For girls apprenticed to masters and mistresses, the indenture often provided for termination if the mistress of the house passed away.³²⁸

³²⁷NYHS, *Collections*, (1909), 116.

³²⁸NYHS, *Collections*, (1885), 581; NYHS, *Collections*, (1909), 136.

The trial period and support of a local parents or guardians was especially significant for those who lacked these advantages.³²⁹ Orphans or the children of poorer parents were more often apprenticed in lower level trades such as shoemaking, they also served for longer terms from earlier ages and were unable to negotiate the extras such as schooling and freedom dues. Even children from relatively prosperous homes could find themselves bound out if trouble disturbed the family. Edward and Elizabeth Buckmaster ran a successful tavern in New York through the 1690s. Early in September 1699 they apprenticed their son, Richard aged fourteen, to Jacob Dekey, a baker and bolter, for six years. On 7 October 1699, however, a grand jury in the Supreme Court presented "Simon Smith Chaplin of his Majesty's Fort New York for marrying Elizabeth Buckmaster wife of Edw Buckmaster to Adam Baldrige without license for so doing." The day before the case appeared in court Elizabeth Buckmaster, accompanied by Adam and his sister Elizabeth Baldrige, indentured her daughter Mary Buckmaster aged thirteen to Peter White, a joiner, and his wife Catherine for four years on the condition that "in the case of Catherine's death indentures void." On the day after the case was heard Elizabeth, this time only accompanied by her new sister-in-law, apprenticed her youngest daughter Hannah aged twelve for five years to Joseph Latham, a shipwright, and his wife Jane, a milliner and seamstress, subject to the same condition.³³⁰

³²⁹The sources record some 312 indentures registered with the Mayor between 1694-1707 and 1718-1727. A sample of the first sixty indentures from each group shows that a third of the apprentices were accompanied by both parents or a significant local guardian, a third were accompanied by their widowed mother or mother. The final third roughly divides between orphans and paupers, girls and contracts for labor which were apprenticeships in name only.

³³⁰For Edward and Elizabeth Buckmaster as inn keepers see, MCP, 1: 34, 35, 36, 46, and MCM, 1682-1695, 241; Edward served as a constable and high constable, Scott, *New York Court Records*, 89, 92; for the bigamy see Hamlin and Baker, *Supreme Court*, 1: 154, 365, 366; the children's indentures are in NYHS, *Collections*, (1885), 581-583.

There were some who seemed to make a practice of indenturing children from difficult circumstances or those who needed a place quickly and were unable to hold out for better terms. In December 1723, James Brown (who appears in the records at various times as barber, wig maker, and vintner) apprenticed Vandercliffe Baratel, "son John Baratel late of the city of New York chyrurgeon deceased." The following year Brown registered the indenture of an eight year old orphan, William Mahon, for thirteen years. On the same day he apprenticed Sarah Cracraft, also aged eight, daughter of Sarah Wignall the widow of Robert Wignall, a mariner. The indenture was for ten years and Brown undertook "to teach [Cracraft] the art or mystery of housewifeness." In March 1725 this latter day Fagin added John Eccles "son of Lawrence Eccles, blacksmith, deceased" to his household of apprentices.³³¹ These apprentices were engaged for general service rather than to learn a trade and that they represented more than an unfortunate few is apparent from the following table.

In addition to the variable experiences of apprentices, there were many indentures which appear to have been no more than simple labor contracts seeking the cover of an apprenticeship indenture. The word indenture applied to all manner of contracts and not just to the agreements signed between a master and an apprentice. Thus in July 1696 Bastian Congo, a twenty-seven year old free black man, sought to protect his agreement with Abraham and Jesse Kip, local merchants. Congo agreed to work for the two for one year at the rate of thirty shillings a month and "after the manner of an apprentice or servant to dwell." Scattered through the apprenticeship indentures are agreements similar to the one between Congo and the Kips.³³²

³³¹NYHS, *Collections*, (1885), 576-578; NYHS, *Collections*, (1909), 160, 167-168, 186.

³³²NYHS, *Collections*, (1885), 569, 571, 599, 603; NYHS, *Collections*, (1909), 119; see also MCP, 4: 21, 82.

In spite of the orders passed by the common council designed to ensure that apprenticeship provided for an adequate training and a preparation for the freemanship, apprenticeship had ceased to operate as it was intended as early as 1700. After 1731 the common council ceased its routine regulation of apprenticeship and more often included references to apprentices along with servants and mariners in public order regulations.³³³ Entry into and the experience of apprenticeship were as idiosyncratic as every other aspect of eighteenth-century commerce. Factors such as gender, family background, and above all local connections were important in setting the terms of the indenture and providing, or failing to provide, support for the apprentice throughout his term. The agreement made in the indenture and the continued supervision of supporters from outside the master's house influenced the training an apprentice received. Some learned trades and set up for themselves while others were used as general laborers and without a clear path to independence as a master in their own right. There is no way of knowing for sure how many of these young people went onto work at the trade for which they were apprenticed.³³⁴

Once we appreciate the range of experiences and success and failure within apprenticeship it seems futile to discuss the demise of apprenticeship as an institution. Apprentices, no less than bakers, carters, and brickmakers, had distinct histories and experienced the derogation of apprenticeship in different ways and at different moments depending on their circumstances. Orphans and poor children were apprentices in name only, and used as cheap child labor, long before the effect of economic forces such as

³³³The common council reaffirmed the mandatory term of seven years in 1731. Thereafter there was no legislation on apprenticeship in New York until acts passed in 1763, 1773, 1784, and 1786; NYHS, *Collections*, (1885), 474, 484.

³³⁴Of the one hundred and twenty indentures in the sample, however, only thirty appeared as freemen and tradesmen in their own right in the city's official roll.

expansion of markets and the oft cited rise of free labor were felt in the later eighteenth century. If we consider apprenticeship as an institution felled by monolithic processes, we cannot account for its survival in some areas of commercial life and its demise in others. It is noteworthy that, as social and labor historians of the late eighteenth and early nineteenth centuries have pointed out, apprenticeship in New York remained effective in the trades which we have seen were able to protect their commerce through municipal privileges, manipulation of the market, or the political favors of later in the century -- trades such as butchering, baking, carpentry, and house building. These trades, and their apprentices system, survived and flourished not because of the force of tradition or because they remained outside the market, but because they could rely on useful access to political contacts and successfully managed local networks of production and exchange.

When Bastian Congo made a deal to work and live "after the manner of an apprentice or servant," it is clear that he was seeking to protect his labor agreement with the cover of a legally enforceable status. In Congo's case, and in similar cases, the concern of the parties to the indenture was not with mysteries of craft skills and standards in the trade but with cheap, reliable labor and immediate personal survival and possible bonuses in the future. If the aim of apprenticeship was to ensure the reproduction of a skilled labor force in the city, it declined for the free blacks, girls, orphans, and the poor long before the end of the eighteenth century. As the examples of the perversion of the principles of apprenticeship multiply, it becomes difficult to discern anything resembling a typical experience. By the early eighteenth century, apprenticeship functioned less as an institution with generally observed regulations and more as a claim, invoked to secure recognition for certain privileges before the law.

As a claim, apprenticeship continued to serve the interests of some while offering nothing more than a fading legal title to others. For the local young boys coming from

stable families with contacts in local networks apprenticeship still might provide the opportunity to gain a skill and then establish themselves in trade. These young men were the sons of New York's established tradesmen and they more often than not they entered the trades which promised the brightest future. Yet even for the young men we might consider typical apprentices, the status was decreasing in significance. Undermined from within by the abuse of masters and apprentices alike, the significance of apprenticeship was also diminishing as the idea of the freemanship and the tradesman's place lost ground in New York.

By the early eighteenth century the city's efforts to regulate and enforce apprenticeship had produced destabilizing contradictions in local law. All men who traded in the city were supposed to be freemen with preferences before the law and a vote in local elections. Yet as early as the 1690s there were many nonfreemen who traded in the city and, subsequently, some who even held office without registering as freemen. The confusion surrounding the freemanship was matched by the uncertainties in apprenticeship. After 1695 all apprentices had to be registered with the city and all those who served "well and faithfully" and completed their indentures were supposed to become freemen. But what of the girls, and free blacks who could never become freemen or vote in elections? What became of the orphans and laborers who could have become freemen following completion of their indenture, or already should have been freemen before they contracted to work in the city? Their transition from apprentice to freeman was becoming muddled and mediated by considerations of family background, gender, race, and the terms of the indenture. Every new criterion which factored in deciding whether an apprentice would become a freeman detracted from the authority and status of apprenticeship and freemanship as privileges regulated and respected solely upon the basis of the laws and customs of the city.

5. Conclusion. The Decline of Privileges in Trade.

A tradesman's claim to special consideration as an apprentice and subsequent commercial preferences and a fair price for the work he did constituted the privileges of his trade. Gathered together these privileges underpinned the place of the artisan in colonial New York. Tradesmen's enjoyment of the privileges of their trade depended on the recognition of powerful local agencies such as the common council and the local assembly. The decline of privileges in trade occurred when authoritative institutions ceased to recognize or sustain in the usual way the claims of those seeking special consideration. A crucial aspect of this process was the unintended consequences of the local authority's actions as they responded to the petitions placed before them. The city did not always set out to diminish a tradesman's claim to privileged place, and it continued to justify its actions with reference to the interests of the common good, and the laws and customs of England and New York. Nevertheless, the idea that skilled men held a special position in the social order ebbed away through a variety of process during the eighteenth century.

The fate of the carters whose status as tradesmen was bound up with the fortunes of the freemanship is emblematic of other trades, such as shoemakers, tailors, and hatters, who also failed to secure the protections of a quasi guild and relied on their condition as registered freemen for claims to trade privileges. Over the course of the eighteenth century and through the years of revolutionary struggle, the freemen of the city played an increasingly significant part in common council elections and popular political campaigns. Drawn into the political arena by office seekers in need of local support, local tradesmen came to appreciate the benefits of supporting the victors in municipal elections. But their

status was far removed from the complicated combination of economic and political privileges which supported the position of seventeenth-century bakers.³³⁵

The consequence of mapping the carters' trade privileges from the political, economic, and social foundations of the seventeenth century to the party political favors of the eighteenth finally became clear at the end of the eighteenth century. In the bitterly contested elections of the 1790s New York City politicians continued to manipulate entry into carting and the registering of freemen with a view to advancing their supporters at the polls. Wary of the potential lower class support for their opponents, the ruling Federalists denied the freemanship, and thus the vote, to men working as carters, inn keepers, porters, or grocers, and denied renewed licenses to those who would not vote for the Federalist Party. The split between registered and non registered carters threatened the trade with the old problem of unlicensed practitioners provoking a major labor dispute in 1791. The carters fought back and assisted by the Republican allies managed to secure some of their old privileges. However, the victory served to underscore the dependency of working men, from whatever trade, on the exchange of their vote for political favors for privileges which could be taken away by a future administration.

The diminishing significance of the freemanship and tradesmen's claims to the privileges of their place was matched by a reduction in the potency of claims made in other areas. When the city laid down standards for production without concern for who worked in the trade, like the standard for bricks made in the colony, the brickmakers all but disappeared as subjects who might appear as men working at a specific trade, brickmaking, in public forums and claim the privileges of their place. There could be no

³³⁵Gary Nash has described the rise of popular artisanal support for candidates who addressed the concerns of the lower sort for their diminishing fortunes in urban life. Nash, *Urban Crucible*, 227-230.

appeal to the customs and practices of a given trade when entry into and out of it, and the organization of production were overridden by a simple requirement that *whoever* worked produced goods to a certain standard. In these circumstances claims to trade privileges were undermined by the authorities disinterest in them which made it pointless for tradesmen to claim a special status. With every invocation of a common standard regulated by the known law, claims to customary practices and expectations receded into anachronism, becoming associated with a bygone era rather than contemporary circumstances.

It is beyond the scope of this project to track the shifts in justifications as they related to every trade, as it would only repeat the points made. More importantly, however, the decline of privileges needed a more comprehensive force than the heterogeneous measures of the corporation of New York which altered the circumstances of carters and brickmakers, but continued to recognize the privileged place of hosts of other tradesmen, as bakers, butchers, and some freemen. To undermine the privileges of these more coherent trades there would need to be a more general shift in the language of rights and privileges in commerce beyond the scope of the corporation. There was only one arena and public discourse within which such a widespread redefinition of rights and privileges, obligations and duties, could take place and that was in the courts where commercial disputes were adjudicated under the English common law.

CHAPTER SEVEN.

New York City Tradesmen, the English Common Law and the End of Trade Privileges.

1. The right use of property in labor.

Under the terms of the ancient constitution Englishmen delegated their powers to defend and preserve themselves to the sovereignty of the king in parliament in return for civil society and the rule of law. Thereafter all freeborn Englishmen claimed their rights to life, liberty, and property. Rights in the eighteenth century referred to specific things such as an Englishmen's right to trial by jury or to be taxed with the consent of his representatives in parliament and an Englishman held these things as property – meaning he held them legally, properly and with a title which could not be challenged or abrogated outside the law without doing legal and moral harm to him. Property was central to the English definition of liberty and had a broader reference than the way in which we use the term today. More than a material thing which the possessor was free to dispose of as they saw fit, property was a political concept and named *anything* a person or group possessed and rightfully claimed as a exclusive and private. To have property in one's liberty meant, literally, to have ownership of oneself.³³⁶

³³⁶Blackstone, *Commentaries on the Laws of England*, 1: 122-145; Tully, "After the Macpherson Thesis," in *Locke in Contexts*, 79-83; Richard Tuck, *Natrual Rights Theories*, 58-171; Tim Harris, "Lives, Liberties and Estates': Rhetorics of Liberty in the Reign of Charles II," and the introduction in Tim Harris, Paul Seward and Mark Goldie, eds., *The Politics of Religion in Restoration England* (London: Basil Blackwell, 1990), 1-28, 217-241.

An Englishman's right to liberty was granted with the obligation that the holder use that liberty correctly, that is in accordance with the laws and in the interests of the common good. Similarly, in commerce men were free to trade but had to observe set boundaries deemed necessary for the interests of the common good. Laws regulating commerce recognized an individual's liberty to trade and earn a living at his calling, but the law also regulated the use of real and personal property interests of the common good. Thus an Englishman's right to property did not imply an absolute right to use his property in anyway he saw fit. Like liberty, property had a right use.

All freeborn subjects and tradesmen in New York -- whether high born or of the meaner sort, registered freeman in the city or passing strangers -- had property in their liberty and ownership of themselves. Tradesmen's rights to life, liberty, and property included the property they held in their own labor. A free man's labor was his to keep, sell or give away, just like his liberty. Tradesmen in New York agreed to work for others under the specific contractual terms or in certain publicly recognized capacities. When tradesmen contracted for work their agreements differed in no way from the agreements for the lease of other aspects of their property: a horse, cart, or slave. Men did not sell their labor so much as rent socially defined aspects of it in agreements where consideration of various kinds was exchanged for their property, in this case the property that men held in their labor.

Men not bound to anyone else had a property right in their labor, and wages were paid in return for the use of that labor. Just as rights to property such as land and chattels were recognized by legal entitlement, so the extent of purchases of labor were limited by the precise terms of the contract or agreement to work. Possession of another's labor under an agreement for work did not imply purchase of that labor for unlimited purposes, unless the parties specified general work. Thus it was common for mariners to sue sea

captains for changing course midway through a voyage because such changes in course did not form part of the original agreement and the express terms under which the mariner had agreed to join the crew. Similarly men engaged as carpenters expected to work and be remunerated as carpenters, and a promise to pay a tradesmen in a specific form could not be evaded by subsequently substituting a different currency of, supposedly, equal value.³³⁷

The notion that government should regulate the use of property in the interests of the common good ran through seventeenth and eighteenth-century debate: from the burgomasters' dispute with the West India Company to the New York City corporation's campaign on behalf of its flour monopoly. The provincial and municipal authorities in New York also regulated all aspects of the urban trades (from the size of bricks to the location of tanning pits) in the interests of the common good. Claims regarding use of property and the common good were not only enforced from on high. Tradesmen petitioned the common council and provincial assembly regarding the right use of ferry's, roads, and the public commons. It was Dirck Vandenburg's concern for the standard of bricks and the colony's reputation which resulted in the regulation on brickmakers in 1702. Tradesmen also sought privileges in their specific trades which formed part of a general claim concerning the right use of their labor in the city. New York's tradesmen invoked their status as freemen or skilled bakers or ropemakers to secure certain privileges which

³³⁷Here I disagree with Marcus Rediker who argues that sailors as "collective workers" sued their masters and captains when they calculated that the employer would make a bigger profit by altering the ship's course. While the sailors' concern for their fair share no doubt motivated the suit, it was insufficient to sustain it in law: sailors could not claim that they deserved more simply because the captain was making more. Rather they claimed their just due because the alteration of the ship's course was not part of the original agreement, and the captain had to pay them for the new terms under which they served. Marcus Rediker, *Between the Devil and the Deep Blue Sea*, 138-140.

they justified with claims regarding law, custom and their right to self-preservation. Thus the idea of right use contained within it a claim that a tradesmen be paid a reasonable or fair amount for working to an accepted level of expertise at a given trade.

Just as some tradesmen debated the right use of property such as ferries and public commons through reference to customs, the law and rights to self-preservation, so others claimed wages and conditions of accepted and expected kinds. The significance of tradesmens' claims to a right use of their labor provides one explanation for the enduring significance of occupational titles in the eighteenth century. Artisans engaged in all manner of commerce and rarely dedicated themselves to one trade. However men invoked occupational titles such as bricklayer and rope maker when petitioning regarding brick standards or for a rope walk. Tradesmen identified themselves with trades when that identification factored in a particular claim made before the authorities regarding the privileges of place. The invocation of an occupation underpinned the tradesmen's rhetorical justification that they be considered, not generally as skilled workers, but specifically as a bakers, bricklayers, or carters with a place in the rule bound social order. The specificity in tradesmen's private contracts for work reflected not simply a concern with precision but also an assertion of their claim regarding the right use of their property or their labor. A tradesman's concern for his occupational identity and ways of working have more often been understood as evidence of an affinity with a craft and a, somewhat romantic, pride in skills. As I have shown, however, when men spoke about custom it was not always an unmediated reflection on local practices but also a powerful rhetorical strategy within public debate.

Claims regarding occupation were similarly focussed in precise, legal and commerce minded ways. When men made claims regarding their occupational identity and ways of working it had less to do with defending traditions for the sake of honor and pride

and more with securing recognition of privileges which enhanced their pay and conditions. The precise legal significance of claims regarding the right use of labor is clear when we bear in mind that they were invoked by employers and workers alike: when the express terms of contracts did not dictate otherwise, tradesmen *and* their customers supported claims to contractual obligations on the basis of what they could reasonably expect from a tradesmen given the capacity in which he had agreed to serve. Thus notions of fair price and standards in the trade were used to limit as well as support skilled workers' claims regarding wages and conditions. ³³⁸

The claims of tradesmen and their customers regarding the right use and reward for their labor used in the proper way were given force by the recognition of local law. Even when not expressly stated the force of expectations contained in occupational titles were present in contracts for work. When men sued for a fair return for their labor as a mariner or bricklayer their argument differed in no way from when they sued a trading partner for debts owed from other agreements such as the lease of a house or purchase of materials. In all cases they appealed for payment for the use of their property under express and implied contractual terms. Tradesmen claimed their due as rightful given their place in society and the usual payment for their work at a given trade.

The significance of law in recognizing, and thereby sanctioning, these claims is especially apparent when one considers a whole class of workers excluded from this favor: the women who managed their own affairs and worked for wages in colonial New York. Throughout the eighteenth century, women workers occupy a limited place in legal records concerning employment and contracts for work. Where they were entitled to a

³³⁸Robert Meers, master of ship *Unity* v James Bell, mariner, for desertion, October 1666, *RNA*, 6: 46; Thomas Lyons, a mariner v John Lewis, master of the ship *Mary*, October 1703, wages for having "done and performed the service and work of a saylor," *MCP*, 2: 65.

public status of their own, for example as apprentices, wives of male traders, *femme sole* business women, debtors, tax payers and civil litigants women had privileges and duties. However, legal recognition of occupational status was limited to certain kinds of work and not extended to women's work — such as seamstress, milliners, housekeepers — which were identified with household labor and related to assumptions about the non public nature of female work. The anonymity of hundreds of colonial women workers is powerful testimony regarding the force of law in defining the boundary between public and private. Where the law did not supply an occupational title which could be asserted or challenged as the basis for privileges or duties, little record of the things women said and did survives.³³⁹

Prior to 1691 New York's tradesmen relied on a mixture of Dutch and English law to litigate disputes arising from private agreements.³⁴⁰ The language of the courts was always formal and plaintiffs represented their cases to recover debts and damages under various forms broadly common to Dutch and English law. We cannot say for sure what motivated this mixture of legal forms and produced a system that was a somewhat clumsy

³³⁹ An important exception to the legal invisibility of women's work was the midwives who worked in the city. In July 1716, the common council "Ordered, that no woman whatsoever within this corporation of the city of New York shall be Capable of, or in any manner whatsoever Use or Exercise the Office or imploy of a Mid Wife within the said corporation until she shall...take the oath of a Midwife hereafter mentioned." MCC, 3: 121.

³⁴⁰ For background to the law of New York and the transition from Dutch to English rule see Richard B. Morris ed., *Select Cases of the Mayor's Court of New York City, 1674-1784*, (Washington: American Historical Association, 1935), 42; Herbert A. Johnson, *The Law Merchant and Negotiable Instruments in Colonial New York, 1664-1730*, (Chicago: Loyal University Press, 1963), 22-26; Stan Katz in "The Problem of Colonial Legal History," in, Jack P. Greene and J.R. Pole, eds., *Colonial British America. Essays in the New History of the Early Modern Era*, (Baltimore: The Johns Hopkins University Press, 1984), 457-491.

hybrid which nevertheless insisted on some precision in its forms and procedures. In practice, however, litigants in the late seventeenth century enjoyed a degree of latitude in the kinds of cases they brought and the manner in which their evidence was presented and heard. Pleading and legal procedure relied less on prescribed forms and formal or arcane terminology and more on the attendance of litigants in court and the adjudication of magistrates, juries, and arbitrators -- both court appointed and those chosen by the litigants.

The attitude and practice of the courts permitted consideration of formal and informal commercial relationships extended over many years and involving multiple parties. The courts were also prepared to hear claims regarding local practices and established views regarding fair dealing, even when such views lay beyond the express terms of formal contracts or presentation of the case. In these circumstances when men could not agree on the value of a commodity or the standard of a cooper's or carpenter's work, the court routinely dispatched arbitrators to decide the issue and divided liabilities and responsibilities as it saw fit. Tradesmen came to court and supported their arguments with claims made on the basis of local practices and what was reasonable given their trade or position in local society.

After 1691, the English common law supplied the terms under which a tradesman's labor could become, for a time, the property of another. The affirmation of the English common law removed all vestiges of Dutch law and ended the period of legal heterogeneity and formalized commercial law in New York.³⁴¹ The common law in

³⁴¹In the opinion of Julius Goebel "the law of New York [after 1691] bore the aspect of a mere parasite grafted on the law of England," Julius Goebel Jr., "The Courts and the Law in Colonial New York," in A.C. Flick, ed., *History of the State of New York*, 10 vols., (New York, 1933-37), 3: 1-43; also Herbert A. Johnson, "The Advent of Common Law in Colonial New York," in his, *Essays on Colonial New York Legal History* (Connecticut, 1981), 37-55.

colonial New York reflected developments within its forms and procedures in the previous century and the pressures of local circumstances. The rise of a group of professional lawyers had a particularly significant effect on legal practice. Beginning in the late 1690s, and culminating with the establishment of New York's first Bar Association in 1729, the courts and the practice of the common law fell increasingly to a growing number of trained professionals well versed in the intricacies of pleading and procedure in the English common law.

The lawyer's role in professionalizing appeals to the common law had a fundamental affect on the kinds of claims which tradesmen could make in law and consequently on the language of privilege as a language relating to work and daily life. When the law upheld a tradesman's right to property and claims regarding the rightful use of his labor, it supported the seventeenth-century view of society as a natural hierarchy constituted by free men occupying unequal but privileged places. It also enable him to recover a reasonable return for the work he did and thus remain in trade and meet whatever credit obligations he had acquired in the normal course of business. When the law, for whatever reasons, failed to support these claims to rights and privileges, it chipped away at the basic principles governing social and institutional life. A chipping away that would ultimately provide the foundations for the expression of new kinds of social relations within work, production, and exchange.

2. The English common law.

In the century before its formal introduction to New York, the English common law had become the primary commercial law in England. Growing in stature since the Middle Ages, the common law absorbed the jurisdictions of local fair and borough courts

which failed to develop the legal doctrines necessary to govern complicated commercial transactions. In the course of that rise to primacy, however, the law underwent substantial changes in form and function.

As late as the mid sixteenth century the jurisdiction of the common law was still limited to local disputes by the venue rule which required a jury be drawn from the neighbourhood in which the dispute originated. The common law settled cases on the basis of existing precedents, but it also recognized local customs and accepted practices as legally enforceable. The venue rule ensured that a jury of men familiar with local practices would decide the case. In this respect common law juries were witnesses to the dispute, in as much as it related to the practices of their locality, as well as adjudicators of the facts presented in court.³⁴²

Over the course of the sixteenth century, English lawyers evaded the venue restrictions through the introduction of a legal fiction which permitted a plaintiff to acknowledge that the dispute originated elsewhere, even outside England, but then immediately assert that this foreign place was situated within the jurisdiction of the court. The relaxation of the venue rule allowed common law courts to hear cases from outside their locality. However, as the common law grew in stature as the law of commerce in England, the function of juries also changed. The lifting of the venue restriction and increased controls in the later seventeenth century meant that juries were less and less

³⁴²For this section see William Holdsworth, *A History of English Law*, 16 vols., (London, 1936-72) especially vols 4, 6, 8; A.W.B. Simpson, *A History of the Common Law of Contract: The Rise of the Action of Assumpsit* (London: Oxford University Press, 1975), 43-198.

required to judge disputes in light of local practices, and more to decide the facts of a case which were presented to them in the prescribed terms of common law pleadings.³⁴³

Permitted to hear cases which originated outside England, the common law became an important court for the reconciling of disputes arising from England's expanding foreign trade. Throughout the late fifteenth and sixteenth centuries continental merchants had to deal with the English courts of chancery, admiralty, and trading towns competing for jurisdiction. One of the major obstructions to the expansion of the common law and its absorption of the practices of continental merchants was its inability to hear cases of informal contracts and breach of promises giving rise to claims for negligence and damages.

Under the medieval English common law litigants brought suits under formal writs of covenant, debt, and detinue. Common law suits were "real" and related only to formal agreements and executed, or completed, contracts for specific sums. In real actions the plaintiff complained of a wrong committed against him which the common law court aimed to rectify. Thus a defendant who had broken a formal covenant could be compelled to meet his obligation and debtor to pay what rightfully belonged to the plaintiff. Plaintiffs could not sue for breaches of informal agreements, and mere promises to perform a certain action were not actionable in common law. Legal wrongs which could not be put right fell under the action of tort and trespass and within the jurisdiction of royal courts which ordered compensation for plaintiffs irrevocably wronged.

Until the mid sixteenth century the common law lacked an effective form of action, or writ, which could deal effectively with cases of breaches of unexecuted contracts, unfulfilled promises to perform a certain action, or circumstances where it was

³⁴³Simpson, *History of the Common Law*, 599-620; Holdsworth, *History of English Law*, 6: 388.

unreasonable or futile to expect a written bond or deed. This inadequacy in the common law severely limited its ability to compete for jurisdiction with royal and admiralty courts in commercial disputes based on informal agreements and promises. In the late sixteenth and seventeenth centuries, however, the common law developed a new action, *in assumpsit*, to fill the void. The meaning of assumpsit is difficult to pin down. In its most general sense assumpsit implied an undertaking to do something. More precisely, assumpsit asserted that a defendant had made himself strictly responsible for bringing something to pass, with the consequence that he was answerable even if it was not his fault that the event did not occur. Responsibility also extended to an obligation on a defendant who had taken something into his control, custody, or use, and therefore taken another's trust upon himself. When a defendant was adjudged to have taken something into his control, custody, or use, the extent of his obligation could be implied by the terms of the relationship between two or more parties.³⁴⁴

With the development of the action in assumpsit the common law possessed a writ which permitted plaintiffs to sue for damages on the basis of informal or unexecuted contracts. The major objection to the introduction of this flexible writ was that it threatened the formality of the common law and, many believed, it would admit all manner of casual and possibly fraudulent suits. Indeed the volume of litigation in mid-seventeenth-century England had increased to the point at which it became a form of "sanctioned aggression."³⁴⁵ In response to this litigiousness the courts limited the action of assumpsit with the doctrine of consideration: the requirement that a plaintiff had to have supplied some kind of consideration for an action of assumpsit to hold. The

³⁴⁴Simpson, *A History of the Common Law*, 125-270.

³⁴⁵*Ibid.*, 602.

combined effect of the loosening of the venue rules and the rise of assumpsit diminished the role of juries as suppliers of circumstantial facts and provided for the rapid assimilation of the practices of continental merchants into the common law. By the Restoration and on the eve of England's takeover of New York the English common law had absorbed the practices of continental law and provided a form of action for the settling of disputes arising from unexecuted and informal agreements or promises.

3. The English Common Law in New York.

Passage of the 1691 Judiciary Act confirmed the English common law as the law of commerce in colonial New York. The Judiciary Act initiated a series of struggles between the governor and assembly over the structure and nature of legal practice. Amid arguments regarding the powers of appointment and the jurisdiction of the courts, there was noticeable tightening of procedures in the late 1690s and early 1700s. In 1694 the council ordered the publication of the first official schedule of fees chargeable by attorneys representing cases in the colony's courts; a schedule which attorneys subsequently ignored with relative impunity.³⁴⁶ In 1699 Governor Bellomont ordered the introduction of new property restrictions on jurors to eliminate "the great hurt and damage [which] does arise to ye inhabitants of this province by reason of ye great abuses in ye returning of jurors not sufficiently qualified to discern ye Causes in question upon Tryalls between party and party." Henceforth, to be a qualified juror, a man had to be at least twenty-one and hold a ten acre freehold or in New York City and Albany a dwelling house free of all

³⁴⁶Hamlin and Baker, *Supreme Court*, the appendix details the introduction of procedural rules in 1699, 1702, 1703, 1704, 1706, 1721, 1722, 1727, 1730; *DRCNY*, 5: 216.

encumbrances or a personal estate valued at fifty pounds. The measure disqualified approximately two thirds of the city's adult white males.³⁴⁷

The affirmation of the force of the common law in New York after 1691 was apparent in the Mayor's Court minutes in the increasingly formal procedures and prescribed pleadings. In 1702 the Mayor's Court introduced new rules regarding the serving of writs and the procedures of the court. The regulations set regular hours and duties for court officials and required that sheriffs and other officials perform their duties with greater efficiency and alacrity. Under the common law writ system a plaintiff chose the writ most appropriate to his action, for example in covenant, debt, or assumpsit, and followed the appropriate mode of trial and procedure, his action either standing or falling on that choice. The use of writs was intended to force plaintiffs to phrase their complaint in a specific legal form leaving the court and the jury to decide the veracity of the facts of the case and the location of legal right. If a plaintiff or defendant erred in drawing up a writ, or defence, or followed the wrong mode of trial it could cost them the case.³⁴⁸

After 1691 suits were initiated in one of two ways: the sheriff delivered the plaintiff's writ requiring the defendant to appear or took the accused in to custody. The Mayor's Court of New York only arrested non resident defendants or men who were suspected of imminent departure from the city. The court could only arrest a freeman of the city if he had been previously been summoned and had failed to appear. When local men were arrested they usually put up bail and were not held for very long. If the

³⁴⁷Bellomont's revision of the jury law was undertaken at the behest of the King and the act was affirmed in 1710, 1729 and 1726. In 1741 the proportion excluded rose to over 75% with less than 25% of men meeting property qualifications. Hamlin and Baker, *Supreme Court*, 1: 178-79, 112-437; *Colonial Laws*, 1: 708, 1021; 2: 345.

³⁴⁸Mayor's Court rules are in MCM, 1695-1704, 199-202; on writs and procedures see F.W. Maitland, *The Forms of Action at the Common Law*, (Cambridge, 1936), 1-13.

defendant subsequently failed to appear in court when required, or if he failed to take some other action ordered by the court, the sheriff would assign the bail bond to the plaintiff who could then sue the defendant and those who had stood surety for him. Once the parties to the case were established the plaintiff had to file and serve a declaration and post security for the costs of the case, or the defendant could move to have him nonsuited. When the declaration was filed, the defendant had to enter a plea within a set time, usually three court days or the time it took for three defaults, or lose the case. The court could enter a final judgement immediately after the default only for a specific amount owed or if the damages were fixed, for example in a penal bond where the liability was clearly stated in the obligation. Otherwise the court had to issue a writ of inquiry to convene a jury to determine the extent of damages.³⁴⁹

If the defendant chose to contest the action he would then file a plea in defence. The defendant could admit the facts but deny that they were sufficient to maintain the cause. This "demurer" raised a legal issue which would have to be decided by the judges. If the judges decided for the defendant, they entered judgement against the plaintiff and the case would be over. If they decided for the plaintiff then the case continued on to trial and resolution. Alternatively the defendant could deny the validity of the general plea or plead specially, admitting certain facts alleged by the plaintiff and denying others, or alleging different facts which required the plaintiff to respond. The plaintiff's response required a further formal rejoinder by the defendant. The process continued until the case had been narrowed down to the point at which the issue in dispute was established, drawn up and filed with the clerk of the court. The case then went to trial by jury which would decide the case on the basis of the dispute as it appeared on the issue roll. If the defendant

³⁴⁹Deborah Rosen, "Commerce and the Courts, 41-51.

was successful the court usually awarded the plaintiff to pay his costs. If the plaintiff won, and the defendant failed to meet the judgement of the court, the plaintiff drew up writs ordering the sheriff to seize the defendants property to satisfy a financial claim or to seize the defendant himself and place him in gaol until the judgement was met.

Comparing the court minutes to the period before 1691, the transition to the common law appeared to have least effect in the pleading of cases which already relied on presenting formal agreements and writings obligatory. Where the plaintiff could produce a written agreement showing that the defendant had promised to perform a certain action, he could sue for breach of covenant and claim damages just as before 1691. Thus in April 1713 Abraham Wendal sued Frans Wenne "being a common carrier of goods wares and merchandize by water from the city of Albany to the city of New York" for nonfulfillment of an agreement to "buy tar at Albany and deliver it to New York City." Actions of covenant could also be brought for breaches of lease or mortgage agreements, apprenticeship or servitude indentures, and other agreements, usually for large sums, written, signed, witnessed and often under seal. Covenants had to be formal and specific, and defendants could deny elements of the agreement or the validity of the covenant in law.³⁵⁰

Just as prior to 1691 an action of account forced the defendant to render a true and fair statement of the commercial relations between himself and the plaintiff. In February 1719 Henry de Tregrer sued John and Joseph Read, executors of the will of Thomas George. De Tregrer demanded that the two "provide a reasonable account of the time that Thomas was Bayliffe for Henry and received monies for him." In particular Tregrer sought recovery of "three hundred pounds in various sumes and wares which he

³⁵⁰MCP, 1: 58; 2: 7, 50; 3: 77, 99, 101, 131.

never tendered while alive." The action of account was intended to secure a fair appraisal of the current state of the accounts. After that if any money was found to be owing, the plaintiff recovered the amount as a debt for a certain sum.³⁵¹

Where a plaintiff claimed a specific amount owing for an agreement under seal, the correct writ was debt. Under a writ of debt a plaintiff had to demand a specific sum pursuant to a formal agreement or an executed contract for exchange of goods or services. Plaintiffs could not sue for uncertain amounts and if the debt was constituted by different amounts, they had to specify the parts. When Andries Barhyt sued Joost Sooy for debt he broke down the amount into money owed on an unpaid note, for shoemaker's work, and other work and merchandise. Once he had claimed a specific amount the plaintiff had to claim this certain figure throughout the pleading of the case. If he vacillated on the amount or presented it in uncertain terms he stood to lose the case. If the defendant successfully defended part of the suit, the plaintiff only succeed in recovering part of the debt. And if the debtor could show that he owed *more* than the plaintiff claimed, the plaintiff stood to lose the whole case -- the amount being deemed uncertain. There was nothing to prevent the plaintiff from returning to the court at a later date with a clearer writ for a debt he may have lost at an earlier time. However, this required him to begin the process from the beginning and pay the costs of the new suit.³⁵²

³⁵¹MCM, 1710-1715, 15-17; MCP, 1: 112; 4: 122; 6: 99. For actions of account see Simpson, *History of the Common Law*, 177.

³⁵²Complaints for debt are among the most common in the Mayor's Court Papers and constituted a significant proportion of Mayor's Court case load. However the number of debt cases which reached trial was surprisingly low at less than ten percent of all trials between 1700 and 1750. This suggests that as cases for debt became more formal they were more difficult to defend and the accused settled before a trial was necessary, see Rosen, "Commerce and the Courts," 143.

Although this appears to rule out all debts except those for which there had been an express agreement between the parties, it is important to distinguish between the real events of the case and the legal requirements of formal pleadings. The law required that a plaintiff suing for debt *demand* a certain amount, but this did not mean that the original agreement had to have been for an expressly stated sum. Where prices of goods and services were regulated by local law – for example the prices for carting or the fees for weighmaster in the city – a plaintiff could sue for debt owed and cite the public price as the certain amount. The defendant might claim, of course, that he had never agreed to the amount demanded, but this need not effect the success or failure of the plaintiff's case. For it would be up to the jury to decide the justice of the plaintiff's suit. If he claimed a publicly acknowledged amount, he had a pretty fair chance of recovering the debt. The pleading for debt composed the facts of a case in an easily decidable form and limited the debtor's defence. Under a writ of debt it was not possible to claim uncertain sums, vary the sum mid way through the case, or sue for damages for breach of informal promises or unexecuted contracts. The only defence available to a debtor was to assert that the debt was paid or to deny its existence in the form claimed by the plaintiff or claim that it was already paid. This was difficult to sustain in the face of bond or promissory note, a written instrument, which contained the details of the agreement. Debts claimed on the basis of bonds and formal agreements were easily proved and suits for debts for services provided or goods sold could be supported by the testimony of witnesses that an agreement had existed between the two and been fulfilled by the plaintiff. The writ of debt provided an effective way to compose disputes easily decidable by the jury and as consequence the number of debt cases which proceeded to trial were far fewer than the number of cases brought before the court.

In spite of the seeming continuity in the forms of action of covenant, debt, and account before and after the introduction of the common law, the practice of litigation had changed in important ways. Though the writ of debt could be used to demand sums which might not have been expressly agreed, the language of law required a plaintiff to demand a specific sum and this presentation of the dispute within the bounds of pleading narrowed the kind of consideration given to debt cases. The requirement that the plaintiff sue for certain amount did impinge upon the older practice of varying the amount owed once in court or of choosing to take the case back out of court to be arbitrated and represented at a later date.

Prior to 1691, and the availability of the action of assumpsit, actions to recover debts included formal and informal agreements. Litigants were encouraged to compose their disagreement with their own or court appointed arbitrators before entering court to present their case. Plaintiffs bringing actions for debt and account could choose from a range of procedures: the judgement of the magistrates, jury trial, arbitration, or mixture of all three. Tradesmen suing for debt claimed a sum which might then be altered by the introduction of new facts, witnesses, or an arbitrators report. The court placed fewer restrictions on the kinds of cases it heard and the manner of their presentation and admitted claims which would be inadmissible or difficult to sustain without challenge following the introduction of the common law.

After 1691 any variance in the amount claimed could be used by the defendant's attorney to have the case thrown out on the basis of an uncertain amount. This removed the consideration of the dispute from the variegated uncertainties of daily commerce and composed the disagreement within the narrow bounds of pleadings and legal rules. The benefits of clarity in the presentation of cases were paid for with a reduction in the flexibility afforded litigants and their cases. The pleading forms in the English common

law separated and distinguished between forms of action -- in covenant, account, and debt -- which had routinely collapsed into one another in a general consideration of the case during the 1660s, 70s, and 80s. The formality of pleading placed limits on claims and defences and discouraged informal appeals to local practices and accepted ideas of value. Discussions of this nature were pushed further along the litigation process to the jury stage where a panel of local men, and after 1699 the better off the local men, considered the facts of the case as they were presented through the pleadings.

New York City tradesmen continued to deal in the same commercial world of credit, buying and selling, but the manner in which they resolved their disputes had been fundamentally altered. The restrictive effects of the actions of debt, account, and covenant were most visible in the shift in the most popular forms of pleading of cases brought before the court. Prior to 1691 the common law plea of assumpsit was rare and only generally employed by lawyers or educated plaintiffs knowledgeable of the procedures in English law.³⁵³ After 1691, by the far greatest number of cases were no longer litigated under debt and covenant, but came to court as actions in assumpsit -- the most flexible form of action in the English common law and now the only pleading available to litigants seeking redress for unexecuted contracts or uncertain sums, the most common kind of agreement in the credit economy of colonial New York.

The introduction of the English common law after 1691 produced a drift through the language of pleading away from increasingly formal and restricted actions of covenant, debt and account and towards the action of assumpsit which became the major pleading form of the first half of the eighteenth century. The rise of assumpsit reflected

³⁵³The earliest reference to this action is when James Graham, a man knowledgeable in the law who held a various senior appoints in local politics, sued Adam Wright in 1682. *James Graham v Adam Wright*, June 1683, in *MCM*, 1682-1695, 55.

the push of the formalization of the pleading of covenant and debt and the pull of assumpsit's effectiveness as a plea to recover debts and damages for breaches of informal agreements. It was within the subtle space provided by assumpsit for the hearing of informal agreements that customary claims to occupational expectations and local practices could still be made in cases brought before the Mayor's Court. Any restrictions upon the action of assumpsit, however, would close of the only remaining avenue for the legal assertion and recognition of claims of this kind.

4. Assumpsit.

Following the introduction of the English common law and throughout the eighteenth century, the most popular form of writ in the Mayor's Court was actions in assumpsit. As we have seen assumpsit had a variety of meanings and cases brought in assumpsit took various forms. In cases of *indebitas assumpsit* plaintiffs claimed payment for services performed or goods provided. In these cases the plaintiff's plea alleged the existence of an agreement and then declared that even without express agreement the plaintiff deserved to recover the amount given the defendant's assumpsit. The plea was a claim for debt based on the relationship between the parties and asserted that given the sale and delivery of goods or work performed, the defendant was indebted to the plaintiff, being so indebted the defendant had undertaken or assumed upon himself a promise to pay a certain sum claimed.³⁵⁴

Just as with other common law writs, a mistake in the drawing up of the complaint could result in the loss of the case. When tradesmen sued for payment for work done they were careful to ensure that their trade was correctly described in the complaint. In July

³⁵⁴MCP, 5: 110; Jacob Swan, hatter v Edmund Thomas victualler, 18 January 1707, MCP, 2: 105.

1719, when John Marsh sued Clement Elsworth for wages of eleven pounds and one shilling, the complaint identified the debt for "the work of him the said John as a mason." Before the complaint was filed with the court, however, "mason" was crossed out and Marsh was correctly identified as a carpenter. This reflected the importance of occupational titles as a possible basis for the defendant to appeal for a nonsuit on the basis of the uncertainty of the complaint.

The significance of claims made in respect of occupation and the continuity of claims regarding a fair return from the earlier period is particularly clear in actions for assumpsit *quantum meruit*. Under this action tradesmen asserted that they were entitled to claim so much as their labor at a given task was reasonably worth. In November 1718 Jeremiah Marharte sued John Hickford and Adolph Degrove for four pounds and ten shillings "for work done and performed before that time as a mariner at the special request of the said John and Adolph...for thirty days on board a sloop called the *Rose*." Marharte declared that he has worked on the "rigging and fitting out" of the *Rose* and that the two promised that "they would pay what he reasonably deserved to have and he says he reasonably deserves to have the rate of three shillings per day."³⁵⁵ Throughout the complaints filed with Mayor's Court for work done, tradesmen claimed an amount they reasonably deserve to have for their work often identifying the specific tasks or positions held and claiming different rates of pay for different positions. Though no fixed price had been reached at the outset they successfully sued for wages on the basis of their occupation and the service performed.³⁵⁶

³⁵⁵MCP, 4: 65.

³⁵⁶Assumpsit could also be brought nonfeasance or misfeasance, meaning either the failure to perform a promised action or the inadequate fulfillment of an action or service. In July 1700 Jacob Adams, a butcher sued, Robert Smith of Elizabeth Town New Jersey for failure to deliver a pair of oxen which the Adams had paid for the previous

As we have seen in cases involving the sale of goods, the plaintiff could plead *assumpsit indebitas* and assert that the defendant had undertaken to pay a certain sum for goods sold and delivered. Alternatively, the case could be phrased as an *assumpsit quantum valebant*, or whatever the delivered goods should be reasonably worth. In May 1710 Phillip Travis sued Cornelius Dirckse, a cooper, for four pounds and two shillings "being for 370 oak bolts...before that time at the special request of....then and there delivered sold." Travis asserted that Dirckse had promised to pay "so much money as the said three hundred and seventy oak bolts should be reasonably worth to the said Philip," and that the "bolts at the said time of the sale and delivery thereof were then and there reasonably worth four pounds and two shillings current money."³⁵⁷

The flexibility of *assumpsit* made it a popular form of pleading and in the first half of the eighteenth century and between sixty to eighty percent of the cases which proceeded to trial were actions in *assumpsit*.³⁵⁸ But compared to the earlier practice of a relatively open set of pleading and procedural options, even *assumpsit* introduced new restrictions. Cases brought in *assumpsit* sought to recover specific debts and damages rather than consider the general state of commercial relations between parties. The court was increasingly unprepared to hear the kinds of claims to informal practices and accepted notions of value offered a few years previously. This made it difficult for small time tradesmen to defend themselves by introducing informal exchanges and lengthy periods of dealings which were not noted down in accounts or formal obligations.

season. When William Norman gathered his crew for the return voyage to England in the summer of 1700, he sued Rowland Johnson who had deserted the ship for failure to fulfill his promise to work aboard the *Newnham* for the whole trip, MCP, 1: 83, 103.

³⁵⁷MCP, 3: 87.

³⁵⁸Rosen, "Commerce and the Courts," 122-123.

To defend against an action in assumpsit, the accused could only deny the assumpsit "in manner and form" claimed by the plaintiff or declare that the debt was paid. He then had to demonstrate this to the jury and could no longer rely on bringing in his own arbitrators or having the court expend time deputizing local men to consider cases within the long view of commerce carried on over many years. The process of law was shifting from a concern with equity based on a variety of admissible pleas and arguments towards a win/lose process where the force of claims made in the language of the common law won out over claims made with references beyond the confines of the formal pleadings. In addition, to present or defend a case in assumpsit the litigants had to rely on juries and any restrictions on this mode of settlement would force a consequent reduction in the purchase of informal claims on the judicial process as it related to commerce.

5. The rise of the lawyers.

The rise of a group of professional practitioners who interpreted the law relating to commerce was in many ways even more significant than the affirmation of the common law and the court regulations which provided for its formal application.³⁵⁹ In the late seventeenth century most people represented their own cases or relied on family members, business associates or men from whom the law was a part-time concern. In the early 1690s legal talent was in such short supply that litigants occasionally retained all available

³⁵⁹Joseph Goebels commented that the growing presence of educated and English trained lawyers in New York produced a "thoroughgoing metamorphosis of [legal] practice after 1700 and especially after 1714," Julius Goebel Jr., "The Courts and the Law in Colonial New York," in A.C. Flick, ed., *History of the State of New York*, 3: 35-37.

counsel to prevent their opponents from securing effective representation.³⁶⁰ By 1695 the practice had become common enough to provoke "A bill against feeing all Attorneys at Law" in the assembly. The bill was defeated but a subsequent Act limited litigants to two attorneys per case. The problems arising from the shortage of lawyers were soon resolved, however, by the arrival of new practitioners in the later 1690s and early eighteenth century.³⁶¹

As late as 1699 Governor Bellomont writing to the Lords of Trade complained of New York's lawyers saying that "there is not such a parcel of wild Knaves and Jacobites as those who practice the Law in the province of New York...all ignorant and usurpers of that hon'ble profession; their only skill Consisting in Chicane and sirring up the people."³⁶² The early eighteenth-century profession included learned practitioners, eager amateurs, and a few downright dishonest men. For the most part, lawyers were unregulated and following complaints and disputes regarding fees the Governor, William Burnett, appointed a "Committee to Hear Grievances in the Practice of the Law" in 1728. Probably as direct result of these events, a professional bar association was formed and the colony's lawyers began to regulate themselves. In 1729 several prominent members of the bar, who were opposed to the practice of the law by ignorant, incompetent and corrupt

³⁶⁰In the late seventeenth century men regularly appearing as lawyers usually worked as municipal and provincial officials and merchants, treating the law as something of sideline. Hamlin and Baker, *Supreme Court*, 1: 84; Paul Hamlin, *Legal Education in Colonial New York*, (New York: De Capo Press, 1970), 135-150.

³⁶¹Between 1691-1704 there were approximately twenty men regularly practicing as attorneys in the Supreme Court and they also represented cases in the New York City Mayor's Court. Hamlin and Baker, *Supreme Court*, 1: 99-105; Victor Hugo Paltsits, ed., *Minutes of the Executive Council of the Province of New York* (Albany, 1910), 3:148.

³⁶²Govenor Bellomont to the Lords of Trade, in Stokes, *The Iconograhpy of Manhattan Island*, 4: 8 September 1699.

men, set out to restrict access to the profession. They drew up an agreement in which the signers promised not to assist recently qualified lawyers or to give legal counsel to anybody who employed lawyers from outside their selected circle. This marked the beginning of a series of measures which ultimately restricted control of New York's legal profession to a group of well-to-do men who established standards for training and professional conduct for those who wished to register and practice in New York.³⁶³

As the eighteenth century progressed the tone and practice of litigation changed as it fell increasingly to the lawyers in the city. The lawyers drew up official pleadings and forms necessary to an orderly practice, adapting English models to colonial conditions. Following the instruction of the 1691 Act, the lawyers drew their precedents from English common law; practices and precedents from before 1691 were consigned to a legal limbo of pre-history and had no bearing upon eighteenth-century cases. English cases and English statutes served as a *corpus* to which reference was made and two cases taken to the Supreme Court in ensuing years would be adjudicated with reference to an English case with the second colonial case making no legal reference to the first.

The story of the establishment of the New York Bar and its influence on the formalizing the law has been well told elsewhere.³⁶⁴ What is less commonly noted is the effect of this change on colonial tradesmen and their claim to special consideration as skilled workers which underpinned their place in local society. The introduction of the English common law and the prescribed pleadings and forms of action set formal legal

³⁶³Paul Hamlin, *Legal Education in Colonial New York* (New York: De Capo Press, 1970), 135-150; Milton Klein, "The Rise of the New York Bar: The Legal Career of William Livingston," *William and Mary Quarterly*, 3rd. Ser., (1958), 334-358; Anton-Hermann Chroust, *The Rise of the Legal Profession in America*, 2 vols., (Norman, Okla., 1965), vol. 1: 161-174

³⁶⁴Deborah Rosen, "Commerce and the Courts," 119-160.

proceedings at odds with the older procedures which sought recourse to local considerations of value on the basis of acknowledged prices of commodities and occupational claims. With the formalization of law disputes between tradesmen and their customers shifted away from a more open admission of all pertinent facts in a case to a greater concern with the procedures of the law. This placed a greater stress on the formalities of the case and allowed plaintiffs and defendants technical defences in regard of the nature of the agreement and the form of the pleading.

Skilled lawyers consistently used technical challenges which were perfectly legal but rarely in evidence before the introduction of the common law. In October 1700 Susanna Elliot, a widow, and Daniel Ebbits, a bricklayer, fell out over the terms of an agreement regarding some building work Ebbits had agreed to undertake on Elliot's house. Ebbits left without finishing the work and the two ended up in court. When Ebbits sued Elliot for payment, Elliot's attorney, Edward Anthill, succeeded in having him nonsuited for incorrectly filing his complaint with the clerk of the court.

The following week Elliot appeared "in her own proper person" to sue Ebbits. Elliot complained that Ebbits did "bargain, covenant and agree with ye said plaintiff to finish both within and without what appertains to either bricklayer or plasterer." To support her case she brought to court "a certain agreement between ye sd plaintiff and ye def bearing date of y 5th October 1700 in which covenant ye said def did bind himself to ye plaintiff faithfully and justly to perform sd work as will plainly appear in ye sd agreement in his own handwriting." However "notwithstanding sd deft ye sd covenant and agreement," Ebbits had quit the job before the work was finished and Elliot now claimed damages in the amount of ten pounds.

No doubt still smarting from his defeat the week before, Ebbits engaged Barne Cosens to act as his attorney. On Ebbits behalf, Barne Cosens defended the suit by

arguing that the action of covenant brought by Elliot could not stand because "the plat in the said declaration hath set forth that the said defendant did bargain covenant and agree to do something for the said plt but what when and whereto be done for what consideration the said plt in the said declaration hath not set forth." The imprecision of Elliot's covenant lost her the case. There is no record of Daniel Ebbits receiving payment for the work he had already done, or whether the building work in Susanna Elliot's house was ever completed. What is noteworthy about Ebbit's defense is that tradesmen regularly engaged in work without express terms stating what was to be done and for how much as is evident by the number of cases of tradesmen suing customers for so much as their work was worth given their work in a specific calling. Elliot must have thought that she had a cast iron case when she brought the covenant into court, but she had not counted on the formality of the law.³⁶⁵

The case of *Elliot v Ebbits* is one of a growing number of examples where lawyers litigated the case in terms of legal precision rather than confronting the issue. When the evasion was beyond reasonable bounds the plaintiff could appeal to the court and challenge the defence. In December 1710 Thomas Willet, a local merchant, sued Phillip Battin, a butcher, for twenty-five pounds and two shillings rent owed on a house. Willet's attorney presented the terms of the lease to the court and showed that Battin had agreed to rent the house for four years at twelve pounds a year. Defending the case, Battin's attorney, Thomas George, declared that "he the said Phillip Battin owes nothing to the said Thomas Willet in manner and form as Thomas Willet has above declared." George argued that Willet rented the premises to Battin at twelve pounds a year "and yet by the said declaration saith that the debt due from the defendant amounteth to no more than

³⁶⁵MCP, 1: 35; 2: 7; 3:115.

twenty-five pounds two shillings and two pence." In George's view this made the declaration "inconsistent and repugnant in itself" and on this basis he argued that Willet should be nonsuited. On appeal the prosecution found that the reasons set forth by the defence were "altogether insufficient and evasive in law to arrest the judgement," and Battin was condemned to pay what he owed. As the century wore on such trials required charge and counter charge dragged on and added to the costs of the case involved.³⁶⁶

The increasing time and costs involved in cases may have encouraged plaintiffs to threaten suits and defendants to try and plea bargain their way out of a costly trial proceeding. In many of the papers the plaintiff drew up his complaint and left the amount to be claimed blank, filling it in at a later time. Given that plaintiffs suing for debt had to nominate a specific sum, this would suggest that an interim period of negotiation between filing the complaint, thereby threatening a suit, and proceeding to court.³⁶⁷ In addition, defendants occasionally came to court offering to settle for less than the full amount if the plaintiff would drop the suit. In August 1719 Wynaut Van Zandt sued Johannes Ten Eyck for eight pounds five shillings and six pence and damages of ten pounds "for the work as a turner and blockmaker and at his special instance and request for diverse wares and merchandises provided." Ten Eyck's attorney, William Bickley, appeared and declared that his client had brought "six pounds and five shillings and six pence" to the court and pleads "discount as to the residue."³⁶⁸

³⁶⁶Willet v Battin, MCM, 1710-1715, 14; Christina Beenvos, widow v Hendrik Gerrits, MCM, 1710-1715, 271.

³⁶⁷MCP, 2:109.

³⁶⁸Wynaut van Zandt v Johannes Ten Eyck, 8 August 1719, MCP, 5:34.

The spiralling costs of litigation also encouraged the introduction of a new kind of bond, unseen before the end of the seventeenth century. Beginning in the early eighteenth century the Mayor's Court Papers include a growing number of protective bonds taken out by tradesmen and others who feared that an antagonistic suit might be pending against them. Under these bonds a tradesmen lent another man a sum of money and the borrower bound himself to repay double the sum to meet the costs and damages of a suit if the lender was successfully sued by his creditor. If the lender won his case the borrower would still owe the principal sum, but the terms and timing of the greater sum were void. In this way the effects of legal formalization entered the credit relations in the economy. Lenders insured themselves against indebtedness and borrowers could secure cheap credit by speculating on the credit worthiness and legal chances of their trading partners.³⁶⁹ In addition to the technicalities of pleading and litigation, the rise of a professional lawyer class and the formalization of law affected legal procedure in more general ways during the first half of the eighteenth century.³⁷⁰

The regulation of court procedures encouraged a shift towards reliance on court officials to serve papers on litigants and ensure that the orders of the court were complied with. Increasing amounts of the court's time was taken up with directing these officials and with procedural motions and orders to plead or appear, and this gradually lengthened the time it took to hear even simple cases. In the 1690s only twelve percent of the minute entries in the Supreme Court were taken up with orders directing litigants to plead and less than one percent were orders terminating procedures for failure to plead. Although the court only met for one week every six months disputes were quickly resolved: cases

³⁶⁹MCP, 5: 11

³⁷⁰The figures in the remainder of this section are from Deborah Rosen, "Commerce and the Courts," 160-210.

which went to trial took an average of two months and two to three court appearances, warranting three to four minute entries, before a judgement was reached. In contrast, by the 1750s, approximately twenty-six percent of all minute book entries included orders to plead and eight percent of entries ordered termination of proceedings for failure to plead. In addition only seventeen percent of orders to plead were actually followed by a resumption of the case, meaning that the greater number simply fell into default. Cases which used to take two months now needed an average of twenty months and four to five court appearances to reach this stage.

A similar change took place in the Mayor's Court where the period required to bring a case to trial increased from three to nearly ten months and the number of court appearances increased from just under four to ten. Under the new court regulations it even took longer for defendants to default on cases brought against them in court. The increasing time required to hear a case was especially significant given the rise of a professional, feeable, class of lawyers. In spite of attempts to regulate their fees, New York's lawyers disobeyed the orders of the court and charged more than they were supposed to for their services. In 1709 the Assembly tried to enforce a ceiling of fifty shillings for cases in the Supreme Court and twenty shillings for cases in the Mayor's Court. The lawyers organized against the restriction and succeeded in having thirty-eight steps in legal procedure accepted as feeable services. Attorneys charged their clients for every appearance in court and every action taken on their behalf. By the 1750s a plaintiff taking a case to a jury trial would require fifty feeable services costing from fifteen to sixteen pounds -- more if he lost the case and had to cover the defendant's costs as well. Defendants who hired attorneys to plead their case could pay nine to ten pounds for a successful defence at jury trial. A defendant's costs would be significantly reduced,

however, if he chose not to oppose the case and simply defaulted incurring no attorney's fees at all.

The combined effect of slowing down the legal process and the increasing costs of attorney's services caused what can only be described as a collapse in the number of jury trials, especially for the small sums which ordinary tradesmen sought to recover. The average annual wage of a tradesmen of approximately sixty pounds compared to a merchant earning nine hundred pounds plus per annum, mean that the law and jury trials in particular were becoming increasingly less accessible to ordinary colonists. Between 1694 and 1696 seventeen percent of the cases handled by the Mayor's Court went to jury trial, but by 1754-55 this figure had fallen to four percent. Factoring in increase in case load of the court as the colony's population and the number of litigants increased, the rate of jury trial in the 1750s was less than fifteen of what it had been at the start of the century. Rather than pursue their cases to jury resolution and incur high legal bills, more and more plaintiffs, and in particular tradesmen suing for small amounts, chose to default or not even contest the action in court. In the 1690s only thirteen percent of defendants defaulted or confessed judgement without challenging the case. By the 1750s defendants defaulted in over seventy-five percent of the cases brought into court. As the eighteenth century progressed cases for debt were won easily with written evidence and agreements presented to the court and claims made under assumpsit were increasingly less likely to be pursued to the jury stage and adjudicated by local men.

6. Conclusion.

Claims regarding the right use and fair reward of labor were foundational to the idea that a tradesmen held a specific place within local society. Carpenters were not

simply men who worked with wood and built things, they were skilled men who occupied a specific station in eighteenth-century society and fulfilled an important social and economic function. As tax payers and freemen of the city they enjoyed legal and political advantages. And as skilled men they expected to be paid a reasonable amount for the use of their labor. A tradesman's ability to claim a fair price for his labor depended on two related processes: his ability to make the claim to in public fora, and then to have this claim recognized by authoritative institutions. As the institution which adjudicated private commercial disputes and awarded damages and costs to the successful, the courts in New York were perhaps the most important public forum of all. The sanction of the law transformed claims based on custom and expectations into publicly discussed and defensible conditions of trade. Thus changes in the law carried significant implications for the language of privileges and the idea of a tradesman's place in colonial New York.

In seventeenth and early eighteenth-century New York men contracted for work and were paid with a variety of commodities and money forms. The nature of these payments and of the credit economy upon which tradesmen relied drew them into the market as not only practitioners of a craft but also as petty commodity dealers, farmers and investors. This provided for complex relations of production and exchange extended over long periods and/or multiple dealings. These relations of production and exchange connected city bakers to wealthy merchants and forced both to rely on the adjudication and authority of local courts. Thus long before the end of the eighteenth century, indeed from early in New York's history, men produced for a market with an eye to making a profit and improving their conditions in trade. As the city grew so did trade and tradesmen's involvement in commerce. However, there were some significant changes in the law relating to commerce in the colony.

Prior to 1691 men sued each other in court for debt and breaches of contract. In these disputes the values of commodities and services were subject to considerations beyond the terms of express agreements; considerations and expectations regarding the value of local commodities, the rightful reward for a given task or the level of skill one might expect from a tradesmen at a given craft. During the late seventeenth century all these factors played a part in the presentation of cases and were recognized by the law in its procedures and its judgements. It was at these moments – in the meetings with arbitrators and presentations and discussions in court – that tradesmen successfully claimed their just due and thereby enhanced the cogency of their claim to special consideration, to a place as a skilled worker. Increased regulation of the courts after 1675, drove smaller cases (especially those of the Dutch tradesmen) out of the courts and towards arbitration, but the Mayor's Court continued to recognize the customs of merchants and local practices as legally enforceable and judged cases with a view to deciding the equity at stake in the disagreement.

In 1691 the introduction of the English common law marked the beginnings of a formalization of pleadings and procedures of the law. The comprehensive and rapid movement away from pleadings of debt, account and covenant to the more flexible writ of assumpsit reveal that the former pleadings were increasingly inflexible and no longer suitable for presenting the kind of informal promises and obligations which characterized much of New York's tradesmen's commerce. Under actions of assumpsit skilled workers could still sue trading partners for whatever they reasonably deserved to have for working at a given trade, and for whatever they made and sold was worth to them on the day it was delivered. Tradesmen could still make claims to custom and local practice, but now they would phrase it in the language of the law.

The shift to *assumpsit* changed the nature of the tradesmen's claim in subtle ways. Prior to 1691 the law permitted litigants to invoke local circumstances and set their dealings within the context of trade over many years or multiple exchanges. Following the rise of *assumpsit* as the most popular form of action for breach of informal obligations or failure to perform a promised action, the court considered each dispute as a specific and isolated debt or wrong. The court no longer allowed a tradesmen to argue that the creditor was mistaken in his suit or to offset an amount from another dealing. Instead the defendant had to offer a formal defence and proceed to trial on that basis. Presentations in court had shifted from consideration of the facts of case, supplied by litigants, arbitrators, or the jury, to considerations of the *legal* facts presented in the pleadings. The imposition of a comprehensive system of law gradually eliminated references to the individual and endlessly variable aspects of commercial life.

The introduction of the English common law not only altered the kind of arguments which tradesmen might present, it also undermined their ability to make claims before a jury. The rise of a profession of knowledgeable lawyers transformed law into an arcane practice accessible only to those who had learned counsel and effective representation. The formality of pleadings in the hands of trained lawyers and the time and costs involved in bringing a case, transformed legal procedure into a sequence of routine practices wherein the court required clear evidence of obligations and was unprepared to countenance complicated defences based on informal appeals to local practices and expectations. Furthermore, the restrictions on juries turned the adjudicators of suits over to the better off among tradesmen who were the employers of labor and the buyers of commodities. The decline of juries as suppliers of facts and their transformation into adjudicators of the legal presentations combined to make it increasingly difficult for men and women claiming smaller amounts to represent their cases to a jury conclusion.

Lacking effective access to a jury many chose to default and minimize their costs. The routine appearance of tradesmen claiming their just due in court became a thing of the past.

What changed then was not the way that men and women did business nor even whom they were in business with, but the manner in which they litigated their disputes and the kinds of claims they could realistically make before the court. The change was not immediate and did not affect everyone at the same time or with equal force. But the trend was towards the diminishing significance of claims to local practices and the notion that someone deserved payment at a certain level given their trade and place in the rule bound social order. The idea of a tradesman's place and exceptional consideration in trade was gradually being supplanted by the assertion of the formal terms of contracts and whatever could be proved in court with deeds, bonds and documents. The courts concerned themselves less and less with imprecise claims to custom and expectations and more with the obligations which men, whatever their station, could rightfully claim under contracts presented in the formal terms of the English common law. Privileges in trade were giving way to the rights that men enjoyed under contracts, rights which they expected the law to uphold.

CHAPTER EIGHT

Conclusion: From Privileges to Rights.

In April 1747 a group of local bricklayers and carpenters petitioned New York's Governor, George Clinton, to act against the strangers who traded illegally and with impunity in New York. The builders' petition employed standard terms and references from within the language of privileges to defend their place in the city.

We his [the King's] and Your most constant and zealous subjects are invaded and attacked by illegal and circumventing malpractices, against the peace and Interests and priviledges of this City...by sundry and numerous persons, *not Freeman of this City*, but inhabitants of the Neighboring provinces, and more especially of the Jerseys, who in Several numerous Companys Several times heretofore have and still do make a practice of coming into this City *after the laying of our taxes yearly* there to exercise their several handicraf trades such as *Carpenters, Bricklayers* etc undermining Us the *ancient Freeman* of the aforesaid City by offering the Services of themselves, Journeymen, and Servants...at the rate of 20 or 30 pounds per job or distinct article of workmanship *less than has been agree for by use and so proportionable to every Agreement* or Undertaking we shall or can make. They the said invaders to Our Libertys and propertys and indeed Our Livlihood Our All, sometime before the collecting of taxes yearly as aforesaid carrying away Such Moneys so Surreptiously got here, with them into the Jerseys to pay for their own Government, not so much as buying a pair of Shoes in the City of New York but frequently bringing *Nails and other materials for Building* etc along with them from the Jerseys.³⁷¹

The petitioners hoped that the governor would "out of your Paternal Care and Benevolence to Us Your Excellency's oppressed petitioners and people exert Your

³⁷¹NYHS, *Collections*, (1885), 507-511.

Authority and goodly Offices...for the Remedy and prevention of this *not* growing but long practiced Evil and Grievance." Aside from protecting their trade and livelihoods, the builders sought relief so that they might "Better be enabled to Love Our said gracious Sovereign, and his most honorable Governor," and "also gain relief for Our Selves and Familys which otherwise must inevitably Suffer or be compelled to leave this Our Country and these *Our Settlements*." Far from supporting their case, the governor rebuked the petitioners and referred them back to the city. The manner of the builders' appeal and the tone of the governor's response provides an illustrative situation for the conclusion of this study.

Before Governor Clinton responded to the petition, his council read it and then advised him of the status of the signers. Of the ninety-nine names on the petition the council noted that Henry Van Maple and James Glenn had "signed twice" and that the names Jolmack Caye, Waert Banta, Elihjah McPerson were "feigned;" next to the name Johannes Seez the council noted "no such man;" Duncan Dufie was identified as a "higlander," Jacob Hallet a cordwainer, and Abraham Brower and John Campbell as laborers. Clinton denied the petition, upon the council's advice, and referred the building workers to the "city charter [which] has prescribed a Remedy which is when any stranger comes to this city and exercises any Trade or Occupation upon application and complaint to the Mayor he is to order such person to...take up his Freedom or in default he is Subject to the penalty of 5 sh." Then Clinton observed that there "are about Ninety-nine Names to this Petition... [and] That the Bulk of the persons who may be supposed to have subscribed their names are obscure people altogether unknown to us." Furthermore, "If they are Freemen... they must be very ignorant and forgetful of the Obligations of the Oath of a Freeman of this City" which requires them "The Franchise and Customs thereof to maintain and the City to keep harmless." The governor ordered the petitioners to "pursue

the Ordinary and regular methods prescribed by the Laws of the City" and observe the "Duty of every Freeman when the privileges of the Citizens are invaded (to use the word of the petition)."³⁷²

Given the points made in this study, we are now in a position to judge which elements of the builder's petition in 1747 were novel and which were not. What was certainly not a recent development was the hostility of local tradesmen towards strangers who threatened the "the interests and privileges of the city." Defending the urban market and local control over commerce had been common themes in city politics throughout the preceding century. New York's tradesmen had always produced for a local market (some for export as well) and their place in the economic order had been supported by networks which provided access to credit, raw materials, business partners and customers. The petition's complaint that Jersey builders brought their own materials and took away the profits "so Surreptiously got here" without buying so much as a pair of shoes, reveals that the New York tradesmen were defending not only their ancient liberties but also their contemporary interests and connections.

If the material circumstances of competitive trade within a sensitive local economy were not a recent development, neither was the language with which the builders defended their position and defined themselves in relation to the authorities. Claiming the status of freemen in the city, the carpenters and bricklayers sought protection for their trade — protection which underpinned their commerce and "Our Libertys and propertys and indeed Our Livelihood Our All." Trade privileges were not only essential for the builder's survival, but also for the survival and prosperity of the city. Only by supporting their place in trade, could the governor guarantee the builder's continued affection and loyalty

³⁷²Ibid., 511.

and ensure the tradesmen's survival and continued presence in the city. Here was the usual combination of deference bound up with respectful caveats which routinely appeared in all manner of petitions throughout the preceding hundred years.

What is most striking about the bricklayers' and carpenters' petition in 1747 is its somewhat cavalier attitude towards the local regulations and the tone of the governor's response. Firstly, if the governor and his council are to be believed, the conditions of trade in the city had become so anonymous that even after consultation they were no longer sure who worked there and at what trade. Indeed city workers thought they could add false or obscure names (even signing twice) to add numbers and weight to their petition. What makes the builders' attempted deception noteworthy is that not only did they hope to have their commerce protected, but also they did not fear being charged for trading as unregistered workers. That the builders felt able to invoke a local privilege against the Jersey men without fearing that it would result in a charge against themselves suggests that the freemanship status was no longer clearly connected to the actual position of the city workers and had become instead a somewhat worn cover for self interested claims.

The contradictions in the builders' petition reveal that by 1747, while the desire for protected commerce and the terms within which it was asserted remained much the same, public claims regarding the freemanship and privileges of trade were beginning to lose their purchase in public fora. Issuing a veiled threat directed at the New York workers who were "altogether unknown to us" or "ignorant and forgetful" freemen, the governor refused to act in even the most superficial way against the Jersey builders. From this mild rebuke Clinton moved on to pedantry, reminding the builders of the existence of a city charter and the procedures within it for the remedy of their problem. Less than a century earlier complaints by the bakers and even the carters had warranted serious consideration

by the authorities. By the mid eighteenth century, however, claims to privileges in trade had become enervated and the object of sarcasm bordering on derision. It was this, rather than the competition within the building trade, which was new to New York City commerce.

In the years after 1747 thousands of new immigrants came to the colony and New York City grew in size and stature. In just over two decades the colony's population doubled to over one hundred and sixty thousand, and by 1771 the city boasted more than twenty thousand inhabitants — the second largest urban population in North America behind Philadelphia. English merchants sent increasing numbers of trading ships direct to New York rather than routing them through Boston, whose trade continued its long and slow decline begun in the late seventeenth century. The ranks of New York's merchants swelled with men who relied on trade and English contacts; a self consciously urban elite which vied with the more established provincial land owners in the colony's factious political campaigns.

Newcomers to the city increased the size of the local market and the available pool of labor. The expanding economy provided for a rich commerce in timber, grain, and cattle brought to the city to be exchanged for manufactures or sold on as part of the West Indian trade. Some tradesmen in New York benefitted from the expansion: William Walton who opened his first ship yard in 1720 ran six such sites twenty years later. However, the newcomers also brought increased competition for business and could not all be accommodated within the old regulatory procedures. Competition for stalls in local markets increased, and in 1741 the city ceased distributing stalls to tradesmen on the basis of petitions; henceforth the market house authorities sublet the stalls to the highest bidder at public auction. The vagaries of economic trends even drew relatively secure working groups like the bakers back into confrontation with the authorities. In 1741 the high price

of wheat led to a "general combination of the Bakers not to bake until the Price fell..[which] Occasioned some Disturbance and reduced some, notwithstanding their Riches, to a Want of Bread." By the 1750s hatters, tailors, furniture makers, silver workers and others advertised their individual craftsmanship and honesty in local papers and, by implication, questioned these qualities in their competitors. Men announced their arrival in the city following a superlative training in London and distinguished their finely honed skills from the amateurish efforts of others.³⁷³

The occupational composition of the labor force also changed after 1750. Between 1694 and 1708 over five hundred and eighty people registered as freemen in the city and identified themselves with eighty different trades. By the middle of the eighteenth century identification with a trade was giving way to "laborer" as a commonly claimed status. In 1741 forty-two freemen were admitted and four identified themselves as laborers; by 1756 almost half of the sixty-six men registering were listed as laborers. More and more men entered the market in search of whatever work was available, and they were prepared to turn their hand to whatever might provide a living wage. By 1753 the numbers of unskilled tradesmen and the decline of apprenticeship in New York provoked a commentator in the *New York Post Boy* to complain that too many "Tradesmen (if I may call them so) are permitted to follow their Occupations, after having served a Master-Workman not above two or three years, and sometimes not above a few months; such as Carpenters, Masons, Shoemakers, Tanners, Smiths, Taylors, and many

³⁷³Kammen, *Colonial New York*, 278-280; Bridenbaugh, *Cities in the Wilderness*, 331-332, 337, 350, 358. Rita S. Gottesman has compiled a collection of the advertisements placed by New York City tradesmen in local papers from 1726, in *NYHS, Collections*, (1938).

other Trades, who are Jobbers and Cobblers [rather] than Workmen...It is almost incredible to think what Number of such Insects infest this Country.”³⁷⁴

In existing studies of colonial work it is this demographic change and commercial expansion which carries the burden of explanation for the decline of the trades and the preparation of colonial society for the American Revolution and the advent of liberal ideas and the pursuit of profit over the common good. For an earlier generation of scholars these changes represented the rise of “free labor” and a movement towards a *laissez-faire* approach in commercial life. Recently, historians have termed this transition the process of “commercialisation” and placed it at the centre of a view which now commands broad support within the field. Prior to 1750, so this view argues, artisanal production took place within a moral, or at least a preindustrial, economy characterized by concerns for independence and the common good. The impact of increases in population, broadening of markets, and reliance on waged work transformed skilled craftsmen into nondescript workers and entrepreneurs. Confronting the demise of social hierarchy, deference and a united concern for the common good, urban artisans (depending on one’s point of view) joined in America’s progress to a market society or developed class based arguments to tackle their new found liberal foes.³⁷⁵

³⁷⁴Samuel McKee, *Labor in Colonial New York*, 27, 30-31; Nash, *Urban Crucible*, 76-129, 198-233.

³⁷⁵See notes 6, 7, 8, and 9 above. It is difficult to exaggerate the influence of this view of colonial America as a precommercial era. The independent and unalienated urban artisan is also a key character in current interpretations of what historians term the “market revolution” in the early nineteenth century. Charles Sellers, *The Market Revolution. Jacksonian America, 1815-1846*, (New York: Oxford University Press, 1991); Melvyn Stokes and Stephen Conway, eds., *The Market Revolution in America. Social, Political and Religious Expressions, 1800-1880*, (Charlotte: University of Virginia Press, 1996).

My study revises this view in significant ways. The rise in immigration and increase in numbers of laborers and tradesmen after 1750 brought many changes to New York, but profit motivated and market orientated commerce was not one of them. Behind the claims regarding privileges and duties, custom and the common good New York's urban tradesmen had engaged in a brisk and profitable commerce for the previous hundred years. In the process individuals such as Dirck Vandenburg and trades such as the bakers had used whatever skills, contacts and political influence they could muster to advance their interests and rise to positions of wealth and prominence. For others trade life was a mixture of borrowing, lending and dealing in various markets to secure a living and survive the ups and downs of colonial commerce. Rather than concentrate on one skilled craft, tradesmen moved within and between trades or quit them altogether to become innkeepers, ferry masters, farmers or petty commodity dealers of one kind or another. For still others, even in the late seventeenth century, trade life was characterised by fleeting periods of employment and indebtedness. Until 1730 at least the debtors generally remained free and at work facing a constant effort to rise above a subsistence existence. Yet if the uncertainties of the market were already a part of daily life in the late seventeenth century, then their supposed intrusion later in the eighteenth century cannot adequately account for the decline of the tradesman's place and changes in attitudes towards work and politics.

Although New York's tradesmen may have been unfamiliar with the classic texts of seventeenth and early eighteenth-century political philosophy, they nevertheless inhabited a world of political and legal institutions which reflected the concerns of contemporary European society. In the seventeenth century tradesmen in New York occupied a special place in the social and political order, a place supported by a bundle of identifications which defined certain men as skilled workers, freemen, tax payers and residents,

differentiating them from common laborers, servants and slaves. Holding a general place as free skilled workers, tradesmen divided themselves more precisely through identification with specific occupations and ways of working. Thus making bread, running ferries and establishing rope walks in colonial New York was more than a technical process bounded by considerations of location and resource. It was also a continuing negotiation involving recognition of rights and privileges, obligations and duties within social hierarchies grounded upon subtle reciprocities, differences, and inequalities whose existence was both the outcome and the basis of legal argument.

Studying these negotiations and legal arguments, it is possible to discern common terms and references and a structure to the claims and justifications which, I have argued, constituted the language of privileges spoken within and around work. The language of privileges was not simply a tradition transported from the Old World to the New which the colonists unpacked upon their arrival. Skilled men were not always confirmed in their place by authorities eager to recreate familiar social forms in unfamiliar surroundings. Tradesmen had to claim their place and the respect and just deserts for the work they did from authoritative institutions. Thus the language of privileges was less an imprecise cultural disposition or vestigial force, and more a shared way of talking about politics; a public discourse within which men negotiated questions of production and exchange. Mediating negotiations over the boundaries of acceptable commerce, the language of privileges restricted a tradesmen's business strategies and affected their material conditions: some securing preferences and prosperity, while others lived impecunious lives on the margins of urban poverty.

The coherence and effectiveness of the language of privileges relied upon its invocation and recognition in authoritative contexts such as municipal politics and the courts. From late in the seventeenth century the language of privileges and the place of

the artisan were undermined by a series of distinct but related processes. The uncertain fortunes of tradesmen in local markets contradicted the claim that all possessed to a special place in the city's political and social order. At any given moment a privileged freemen and skilled worker might find himself looking for waged work or requiring the support of another to survive a business downturn. Alternatively, when some succeeded and rose above the level of ordinary tradesmen it had less to do with skills and craft work and more with political contacts and market manipulation. Distinctions between free men of the city and strangers became increasingly unclear, apprentices received imprecise and unregulated training, and municipal authorities were more concerned with local prosperity than sustaining heterogeneous and finely graded claims to the privileges of place. When the city failed to recognize a tradesmen as brickmaker or carter and regulated exchange with local standards rather than production with a balance of privileges and duties it undermined the place of the tradesman. The introduction of the English common law made it almost impossible for men to make reference to complex past dealings, local notions of value and thus claim their just deserts. Men confronted each other in expensive win or lose law suits phrased in the arcane terms of a professional class of lawyers, and fewer and fewer could afford to sustain their cases in court much less present them to a jury of local men – a jury increasingly drawn from the better off sections of local artisan society.

Throughout the colonial period New York's tradesmen engaged in competitive commerce with customers near and far and newcomers drove a steady expansion of population and local trade. Without appreciating the significance of the language of privileges, it is difficult to describe the fate of different individuals and groups within the trades beyond the fortunes of a general subjective category such as the artisan. It is especially difficult to trace the trajectories of different groups of colonial workers from

skilled men possessing a special place to workers in the more recognizably modern condition of waged employees, stripped of claims to privileges, who enter the market in a nondifferentiated and more easily commodifiable form. The brickmakers and carters faced these conditions long before the bakers and certain ships carpenters. Similarly, apprenticeship became a cover for cheap child labor in the cases of girls, the poor and orphaned decades before the bond between master and apprentice would be sundered in the city's leading trades. Even the increasing numbers languishing in the debtors prison may have been driven more by changes in legal practices which made amicable reconciliation unlikely and encouraged speedy and summary treatment of those unable to defend themselves before the law.

Finally, perhaps the most significant contribution of the concept of the language of privileges to colonial American history is the insight it provides into the reception of Lockean ideas in the colonies after 1740. In terms of the seventeenth-century language of privileges the colonists were freeborn Englishmen who enjoyed their rights as subjects of the King and parliament and beneficiaries of the laws and ancient constitution of England. In this conservative world of rank and estate each claimed the privileges of their place under custom and the known law. In these terms bakers and bricklayers secured formal and informal preferences for their trades and commercial advantages in the city. Holding an immemorial community rather than an abstract individual at the foundation of its political philosophy, this view was concerned with the history, customs, and the known laws of specific societies and could not tolerate claims based on appeals to philosophical abstractions such as the universal, unalienable rights of men. As such the language of privileges acted as a profound check upon the development of the kind of natural rights arguments which marked later eighteenth-century American political philosophy. Before 1740 the view that everyone in New York, let alone the colonies, were equal to each other

and might claim a say in their own government, much less assert the illegality of English sovereignty, was simply untenable. It is difficult to see how the Lockean view of man as a rights-bearing individual who established government on the basis of consent to defend those rights could have taken root in a society ordered upon these fundamental principles.

Before tradesmen could join a struggle to defend the universally equal rights of free men regardless of their citizenship and condition, they would have to move beyond a view of politics which secured their rights and privileges on the basis of their condition as Englishmen and their privileged place in local society. The potential for the revision of the language of privileges was clear in the transformations of the previous century.

Tradesmen had justified their privileges with reference to the customs of Holland, then England, and ultimately “of this place” and demonstrated their ability to transform the justifications of commerce to suit local circumstances. The shift of customary claims from Europe to the colonies is one indication of the ways in which colonial New Yorkers ceased to live as subjects of distant realms and began to conceive of themselves as free men who lived by local laws. Asserting colonial precedents especially when they differed from English customs required the colonists to break with history and discontinue the immemoriality of the ancient constitution. When custom and the known law ceased to be the work of immemorial and remote legislators, they became the preserve of local assemblies and local history.

The demise of the tradesman’s place meant that gradually, even unintentionally, the privileges of local freemen were surpassed by the right which all men claimed to provide for themselves and their families, taking whatever work was available in or out of the city. After 1750, when tradesmen sought commercial advantages they were less likely to troop to City Hall bearing a petition, and more likely to take out advertisements in the local paper or vote for politicians in return for municipal favors. The precise and publicly

acknowledged differences which distinguished tradesmen from each other and separated city workers from strangers became increasingly imprecise and were gradually eradicated. The decline of orchestrated commerce left in its wake an undifferentiated population of individuals engaged in trade and the pursuit of self-interest. Commercial disputes were litigated in courts concerned only with the details of express and legally enforceable contracts. Far from seeking compromise, the cold hard logic of the law recognized self-interest as an unavoidable and irresolvable condition of trade. In short, colonial America was increasingly populated by men who believed themselves to be free and subject to their own laws and customs; men who pursued their self-interest in local and international markets and were no longer required to justify their activities in terms of customs, the privileges of their place or the common good. The only thing which united colonial Americans in commerce were their rights under contracts which they shared equally before the law. The preconditions for the reception of Lockean ideas and the values of possessive individualism associated with the emergence of liberalism, capitalism, and modern relations of production and exchange were in place.

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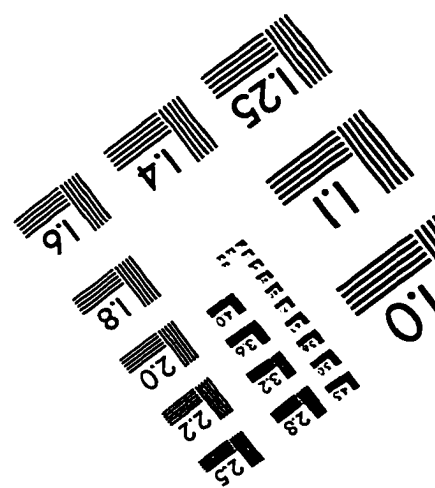
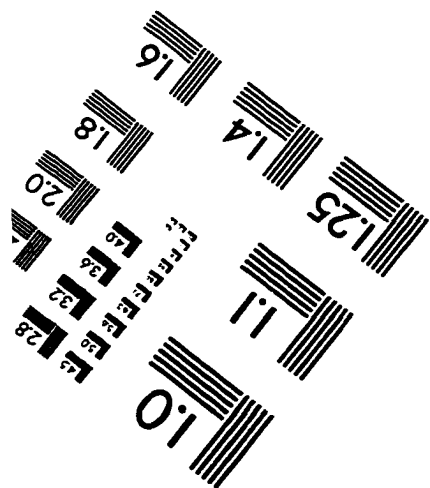
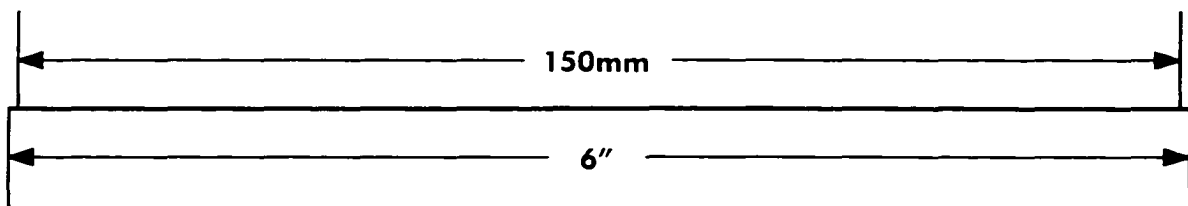
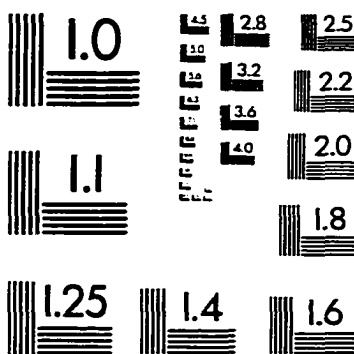
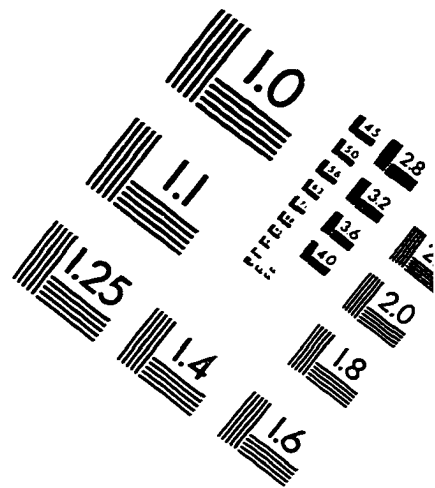
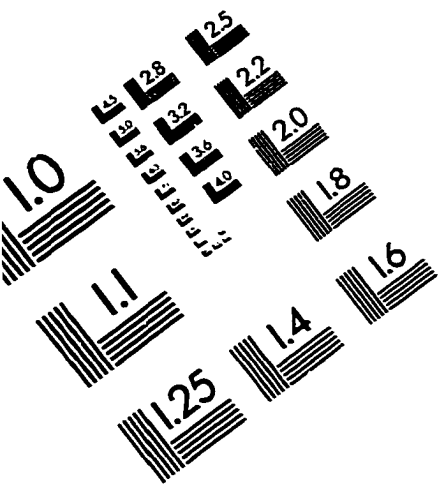
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