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Explorations in Economic History 41 (2004) 1–25

Explorations in
Economic History

www.elsevier.com/locate/eeh

Guilds, laws, and markets for manufactured merchandise in late-medieval England[☆]

Gary Richardson*

Department of Economics, 3151 Social Science Plaza, University of California, Irvine, CA 92697-5100, USA

Received 11 February 2002

Abstract

The prevailing paradigm of medieval manufacturing presumes guilds monopolized markets for durable goods in late-medieval England. The sources of the monopolies are said to have been the charters of towns, charters of guilds, parliamentary statutes, and judicial precedents. This essay examines those sources, demonstrates they did not give guilds legal monopolies in the modern sense of the word, and replaces that erroneous assumption with an accurate description of the legal institutions underlying markets for manufactures in medieval England.

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Keywords: Guild; Monopoly; Medieval; England; Manufacturing; Commerce; Patents

The hardest work that lies ahead of guild historians is in studying the question of monopoly.
Sylvia Thrupp, 1942.

1. Introduction

Popular texts typically assert that guilds of manufacturers monopolized markets for durable goods during the later Middle Ages. Norman Cantor's *Medieval Reader*

[☆] I thank my dissertation committee, my dissertation discussion group, two anonymous referees, and the editor of this journal for comments, advice, and encouragement. I thank the Social Science Research Council, University of California at Berkeley, Department of Demography, and the All-UC Group in Economic History for financial support.

* Fax: 1-949-824-2182.

E-mail address: garyr@uci.edu.

(1994, p. 278) declares “craft guilds’ . . . main purpose and activity was narrow regulation of industrial productivity in order to restrain competition.” Douglas North’s *Structure and Change in Economic History* (1981, p. 134) alleges “. . . guilds organized to protect local artisans. . . [and their strength] in preserving local monopolies against encroachment from outside competition was frequently reinforced by the coercive power of kings and great lords.” Henry Pirenne’s *Economic and Social History of Medieval Europe* (1937, pp. 177–179) proclaims “craft guilds . . . fulfilled the need of economic protection. The pressing necessity to stand by one another, so as to resist competition from newcomers.” Lujo Brentano’s *On the History and Development of Gilds* (1870, p. 98) states “craft-gilds’ . . . dividends depended entirely upon the exclusion of competition.” George Holmes’ *Later Middle Ages* (1962, p. 36) asserts that in medieval England “guilds were monopolies.”

According to the conventional academic wisdom, the source of this monopoly power was the legal system, which gave guilds the right to restrict access to markets (Pirenne, 1952; Postan, 1987). In *How the West Grew Rich*, Birdzell and Rosenberg (1986, p. 24) assert “in England. . . guilds’ charters gave them authority over entry into particular lines of trade or manufacture within a town or borough.” In *Gilds: Their Origin, Constitution, Objects, and Later History*, Cornelius Walford (1888, p. 36) declares “one object of the Gild recognized in the earliest charters was to secure collectively as great a monopoly as possible for the particular town in which it was established.” In *The Guild Merchant*, Charles Gross alleges that English law gave guilds powers with which they

. . . shackled free commercial intercourse . . . blindly aimed to reduce free competition to a minimum, regarded what we now consider legitimate speculation as a crime, deflected from the town every powerful current of trade, mercilessly obliterated the spirit of mercantile enterprise, and crushed out every stimulus to extensive production. The municipal atmosphere was surcharged with the spirit of rigid protection . . . (1890, pp. 50–51).

These anti-competitive provisions reputedly appeared in the charters of guilds, charters of towns, parliamentary statutes, and precedents established by common-law courts.

This essay examines those sources and finds that inferences drawn from them have been exaggerated. English law did not grant to guilds monopolies in the modern sense of the term. In some cases, guilds received limited authority over apprenticeships, employment, working conditions, access to raw materials, and other aspects of input markets. In other cases, guilds received the right to regulate the quality of merchandise made by members. But, the law never permitted the manipulation of output markets or the exclusion from local markets of merchandise made elsewhere.

2. Prior criticisms of the maxim of monopolization

In recent decades, a cohort including Jonathan Scott, Sylvia Thrupp, Eric Hirshler, John Munro, Charles Hickson, Earl Thompson, S.R. Epstein, and Heather Swanson has attacked the maxim of monopolization. Scott (1917) argued that guilds

possessed “monopolies of manufacture” but not “monopolies of trade” and criticized the conjecture “that these two types of monopoly necessarily went together.” Support for his claims came from a series of observations. The right of buying and selling freely existed everywhere in England. Towns were awash with merchandise imported from neighboring towns and industrial centers overseas. Members of one craft often intermeddled in the trade of another.¹

Thrupp (1948) attacked the maxim of monopolization from another angle. Grouping guilds from diverse occupations under the hybrid term ‘craft guilds’ obscured differences among organizations. Reclassifying guilds according to the nature of the industry, size of the association, and wealth of the members revealed dramatic differences in behavior.

in all victualing trades monopolistic tendencies were chronic... In industry, ... it is highly improbable that craftsmen could ever have succeeded in attaining a monopoly within an exclusive guild (1948, p. 169).

Hirshler (1954, pp. 56–57) reached a similar conclusion. Competition among manufacturers was “generally underestimated (Hirshler, 1954, p. 52).” Guilds from different towns fought for customers in the rural villages, market towns, and periodic fairs where they sold most of their merchandise.² Some guilds possessed monopsony power in their hometowns, but barriers to entry were porous, and controls over input markets could be circumvented easily. So, the monopsony power was limited.

Munro (1977, pp. 229–267; 1990, pp. 41–50; 1994; 1999, pp. 1–73, 200; 2000; 2001, pp. 1–47) studied the spectrum of market power lying between the extremes of pure monopoly and perfect competition and found that manufacturing guilds acted as monopolistic competitors. Guilds from different towns sold similar versions of popular products. Consumers chose among the alternatives. When the choices were homogenous and markets large, as with the coarse woolen cloths sold by hundreds of European producers, guilds could not manipulate market prices. When products were heterogeneous and markets were small, as with luxury fabric manufactured by the foremost Flemish draperies, guilds possessed limited price-setting power.

Swanson’s seminal studies of late-medieval York stressed similar ideas. Markets operated fluidly (Swanson, 1983, 1988, 1989, 1999). Craftsmen competed in the marketplace. Artisans often straddled boundaries between occupations so that they could react to money-making opportunities. Governments often ordered guilds to mitigate the externalities of industrial activities. Craft guilds’ economic edifice was more illusion than reality. Epstein reiterated Swanson’s refrain. He observed that “competitive markets were ubiquitous and hard to avoid. Powerful competitive pressures [existed] in manufacturing.” The view that craft guilds were primarily rent-seeking institutions takes their regulations at face value. “In fact, the powers of craft guilds were most frequently illusionary (Epstein, 1998, pp. 685–693).”

¹ Scott’s “monopoly of manufacture” corresponds to the modern concept “monopsony.” His “monopoly of trade” corresponds with the modern concept “monopoly.”

² *Note.* Here foreign is used in its old sense meaning outside one’s hometown rather than the modern sense of outside one’s nation-state.

Hickson and Thompson argued that “there is little evidence that guilds implemented anything like rational monopoly policy.” Regulations created essentially competitive short-run behavior. The traditional monopoly theory of guilds “clearly fails in its central predictions regarding” the principal issues: the “particular policies” of guilds, the incidence of guilds across time and regions, and “the effects on economic prosperity of both the rise and decline of guilds (Hickson and Thompson, 1991, pp. 127–131, 136).”

The arguments of these reformers, however, failed to convince the preponderance of the profession. Academic articles still assert that guilds monopolized markets for manufactures. What sustains the maxim of monopolization despite the evidence mounting against it? Three explanations appear plausible (Richardson, 2001).

First, historians often ignore the evolution of guilds over time and the differences between medieval and modern organizations. During the 19th century, occupational associations and trading companies often possessed legal monopolies. These commercial privileges originated during the Tudor and Stuart regimes. But before Elizabeth’s reign, monopolies, patents, copyrights, and trademarks did not exist. Inferences drawn from the behavior of commercial organizations after her reign, therefore, should not be projected back to medieval times.

Second, revisionist scholarship focuses upon evidence of long-distance trade, product specialization, and the cornucopia of consumer goods available in England and on the continent. Typical guilds produced far more merchandise than local residents could consume and sold surpluses to consumers in distant towns and rural villages. Shipments of raw materials often traveled hundreds of miles from source to destination (Lopez, 1971, pp. 119–20, 139–45). Finished goods traveled even longer distances from point of production to point of sale. In these far flung markets, guilds competed against each other (Bridbury, 1982, p. 16, 33; Lopez, 1971, p. 106, 133; Swanson, 1989, p. 27; Unwin, 1904, p. 55). Guilds in different towns produced similar but distinct merchandise. Evidence of specialization among manufacturers in England and on the continent is abundant and indisputable (Blair and Ramsay, 1991, pp. xxxii, 73; Bridbury, 1982, pp. 66–69; Dyer, 1989, p. 21; Dyer, 1994, p. 21; Pfaffenbichler, 1992, p. 13; Swanson, 1989, p. 71, 80; Unwin, 1904, p. 20). But, strong priors regarding legal monopolies cannot be overturned by this indirect evidence. Skeptics can construct convoluted counterfactuals to reconcile any pattern observed in the data with the belief that manufacturing guilds possessed a set of legal privileges which, according to the argument, just happened to generate the pattern that appears.

Third, the maxim of monopolization has not been replaced by a well articulated alternative. Without a succinct summary of the relevant literature, without easy access to archival evidence, without clear descriptions of the institutions that did in fact exist, and without convincing arguments against the maxim and for the alternative, the historical profession lacked the critical mass of convincing research needed to overturn venerable views of the medieval economy. In sum, dispelling the maxim requires direct evidence about the legal structure of markets for manufactures. The rest of this essay presents such evidence.

3. Sources

This evidence comes from three sources seldom used by economic historians. The first is the database of British borough charters, which contains constitutional documents from 225 municipalities incorporated between 1042 and 1600.³ Concrete conclusions can be drawn from this extensive collection. The sample contains enough observations to ensure conclusions drawn from it reflect conditions that prevailed at the time. The observations were selected neither by region, size, industry, nor founding date. The randomness of the sample ensures inferences drawn from it apply to all types of towns. An observation indicates the year of a town's earliest surviving charter, the provisions contained within it, and the dates and contents of subsequent revisions. Details include the burgess's rights, privileges, and responsibilities; the nature of the franchise; the structure of the judiciary; the modes of trial and rules of evidence; the law of real property; the duties and method of appointing municipal officials; the taxes assessed on people and property; and the obligations of the borough to superior political and ecclesiastic powers. The information relevant to the topic at hand consists of the commercial privileges possessed by the burgesses, the laws concerning industry and commerce, and the mechanisms through which those laws were enforced. Summary statistics for the relevant information appears in Table 1. The columns indicate the number of towns whose residents possessed particular legal privileges, whose residents lacked those privileges, and the towns for which no evidence exists. The middle column must be used with caution. Town records are often incomplete. Towns may have possessed a legal privilege in the past, but because it appears nowhere in their extant records, the database presumes that the town lacked the privilege. Since the survival of documents seems random within towns, there is no reason to assume evidence of one type survived at higher rates than evidence of another.

Ten aspects of borough charters are particularly important for the issue at hand. Six clearly contradict the maxim of monopolization: freedom from tolls, grants of fairs, grants of markets, guarantees of unhindered passage to and from towns, guarantees of liberty to trade throughout the realm, and prohibitions on forestalling and regrating. Freedom from tolls exempted burgesses from taxes imposed on merchants in transit such as pontage, passage, and lastage and on taxes on the sale of goods such as stallage. Grants of fairs and markets permitted towns to host periodic emporiums where courts could meet, taxes could be collected, and merchants could attend with guarantees of royal protection for persons and property. Guarantees of unhindered passage assured merchants that they could visit, sojourn, and depart from towns with the king's blessings and buy and sell whatever they wished. In addition, this clause occasionally guaranteed inland ports that rivers separating them from the

³ The author constructed this database by updating and computerizing the studies of Ballard, Tait, and Weinbaum cited in the note to Table 1. This author added value by translating the lexicon used by Ballard, Tait, and Weinbaum, whose efforts began more than a century ago, into the language of modern social scientists, so that we can clearly comprehend the information that they collected. Copies of the database are available upon request.

Table 1
Database of British borough charters summary statistics

Privileges granted by charters	Towns			Urban population
	Possessing privilege	Lacking privilege	Unknown	Percentage
(a) Freedom from tolls	132	93	475	90.1
(b) Grant of guild	68	157	475	49.8
(c) Grant of fair	46	179	475	21.1
(d) Control over retail and/or commodity sales	37	188	475	17.9
(e) Grant of market	28	197	475	9.4
(f) Grant of toll	20	205	475	36.6
(g) Centralized sales	20	205	475	12.8
(h) Unhindered passage to and from town	16	209	475	16.6
(i) Liberty to trade	15	210	475	6.1
(j) Prohibitions on forestalling and regrating	13	212	475	26.1

Definitions: (a) *Freedom from tolls* exempted burgesses from taxes imposed on merchants in transit such as pontage, passage, and lackage and taxes on the sale of goods such as stallage. Burgesses purchased this privilege from the royal government by paying an annual fee in most cases and a one-time lump-sum payment in a few cases. For most of the top 50 towns, the provision freed townsmen from tolls anywhere in the realm. For some small towns, the provision freed residents from tolls only in their shire. A handful freed townsmen from tolls everywhere except London. (b) A *grant of guild merchant* allowed burgesses to form an organization that to collectively control and manage the trading rights of the town. (c) A *grant of fair* established a commercial emporium that operated for a short period each year. (d) *Control over retail and/or commodity sales* enabled towns to determine whether outsiders could operate permanent shops, sell directly to consumers, or purchase raw materials essential to local industry. (e) A *grant of market* established a commercial emporium that operated one or more days each week (f) A *grant of toll* permitted the collection of tolls from merchants without freedom from toll. (g) *Centralized sales* required materials and merchandise to be sold in a particular place known and accessible to all burgesses. (h) *Unhindered passage to and from a town* assured that whoever sought the aforementioned city “may come, sojourn, and depart in my [the king’s] safe peace, on paying due customs” and in that market have the liberty of buying and selling “whatever they wish.” Considerable variation exists in this provision. Some clauses guaranteed unhindered intercourse during most, but not all, days of the year. Others guaranteed unhindered exchange of commodities except wool and hides, which only burgesses could buy and sell after paying the appropriate taxes. A few clauses guaranteed inland ports that the rivers separating them from the sea would not be blocked by dams, bridges, fishing weirs, and other obstructions. For more details, see Ballard 1913 p. 197. (i) *Liberty to trade* assured the burgesses of a town that they could travel safely throughout the realm. Towns possessing these clauses seem concerned over their right to travel unhindered to and safely within the peripheral possessions of the English king such as Wales, Scotland, Ireland, Anjou, and Normandy. Chester, for example, received special dispensation for trading in Dublin. (j) *Prohibitions against forestalling and regrating* indicate that a town enshrined rules against forestalling and regrating in their municipal charters. These reinforced the rules against forestalling and regrating already existing in common and commercial law.

Notes. This table indicates number of municipalities possessing various privileges according to the Cambridge University Press series *British Borough Charters*. The categories in table correspond to the categories in the original work as follows. Bold face indicates the categories in this table. Plain text indicates the categories in the first volume they appear in the *British borough charters*. **Freedom from tolls** equals Volume 1, V. Mercantile Privileges, A. Market and Tolls (7) Freedom From Toll (General), (8) Freedom From Toll (Partial), (9) Prohibition of Illegal Tolls, (10) Retaliation, and (11) Reservation of Toll. **Unhindered passage to and from town** equals Volume 1, V. Mercantile Privileges, A. Markets and

Table 1 (continued)

Tolls (12) Liberty of Access to Markets and (13) Free Navigation of Rivers. **Liberty to trade** equals Volume 1, V. Mercantile Privileges, B. Guilds and Trading (5) Liberty to Trade. **Grant of market** equals Volume 1, V. Mercantile Privileges, A. Markets and Tolls (2) Grant of Market. **Grant of fair** equals Volume 1, V. Mercantile Privileges, A. Markets and Tolls (3) Grant of Fair. **Grant of toll** equals Volume 1, V. Mercantile Privileges, A. Markets and Tolls (4) Grant of Toll, (5) Schedule of Tolls, and (6) Penalties for Evasion of Toll. **Grant of guild** equals Volume 1, V. Mercantile Privileges, B. Guilds and Trading (1) Merchant Guild. **Control over retail and/or commodity sales** equals Volume 1, V. Mercantile Privileges, B. Guilds and Trading (3) Monopoly of Trade to Guild and (4) Monopoly of Trade to Burgess. Regulations for Foreign Merchants. **Centralized sales** Volume 1, V. Mercantile Privileges, A. Markets and Tolls (1) Ban Of Trade To Borough. **Prohibitions on forestalling and regrating** equals Volume 2, V. Mercantile Privileges, B. Guilds and Trading (12) Forestalling and Regrating, etc. Brokers.

Sources: Institutional data from Ballard (1913), "Table Showing Contents of Charters," pp. cxxxviii–cxlvii. Bateson (1904) and Bateson (1906). Ballard and Tait (1923), "Table Showing Contents of Charters," pp. xc–cii. Weinbaum (1943), "Table Showing Contents of Charters," pp. xxix–lxvii. Population data from A. Dyer (1995), Appendix 1, *The Largest towns in the Poll Tax of 1377*, pp. 56–57. Fenwick (1998), and Russell (1948).

sea would not be blocked by dams, bridges, weirs, or other obstructions. Guarantees of liberty to trade assured burgesses that they could travel under the king's peace in the peripheral possessions of the realm. Prohibitions on forestalling and regrating enshrined in municipal charters the provisions of common and commercial law prohibiting the manipulation of commodity and product markets.

At first glance, four elements of borough charters seem to support the maxim of monopolization. Grants of guilds permitted burgesses to form organizations often labeled *gilda mercatoria* that managed their collective legal and mercantile privileges. The power to control retail and commodity sales enabled towns to determine whether outsiders could operate permanent shops, sell directly to consumers, or purchase raw materials essential to local industry. The authority to centralize sales enabled towns to require materials and merchandise to be sold at times and places known and accessible to all burgesses. Grants of tolls permitted towns to collect moneys due to the king from merchants whose towns lacked freedom from tolls. These four features of borough charters formed the factual foundation of the maxim of monopolization when the theory became popular at the end of the 19th century. Then, the name of the maxim seemed sensible, because the four features fell within the broad definition of monopoly ubiquitous at the end of the 19th century. Now, the label creates confusion, as the last section explained and the next section demonstrates, because the definition of monopoly changed, and the four facts underlying the 19th century maxim of monopolization have little connection with the modern meaning of the term.

The clause permitting the regulation of retail sales, "no one shall sell in the town market without permission of the burgesses," is an illuminating example. The clause did not bar merchandise made elsewhere from local markets. It merely required retailers to be local residents. Locals could always import merchandise made elsewhere for their own use and to sell to their neighbors. Foreigners could also import products, as long as they sold them wholesale rather than retail or received permission to set up shop. Their requests were often approved. Many towns also signed reciprocal

agreements with other boroughs recognizing the rights of merchants to travel and trade. In addition, most towns held weekly markets and periodic fairs and encouraged merchants from the farthest corners of Christendom to attend these events, presumably because markets filled with foreign products attracted consumers from the countryside and filled a town's coffers with fees, tolls, and taxes. Finally, townsmen could purchase foreign merchandise in the suburbs, in neighboring villages, at nearby fairs and markets, and in ecclesiastic and aristocratic liberties located within town walls. Thus, the clause—which appeared in fewer than one in five town charters—did not provide monopoly powers in the Marshallian sense.

Details of charters for medieval England's 50 largest towns, each of whose taxpaying populations exceeded 600 in 1377, appear in Table 2. The first three columns report the number of towns possessing, lacking, and without evidence of each privilege. The next three columns report the same information for the total number of taxpayers residing in the 50 largest towns. The top 50 deserve particular attention, because they were the homes of most manufacturers and merchants, and their legal institutions underlay the expansion of industry and commerce in late-medieval England. Since better information about those institutions helps to separate fact from fiction regarding the maxim of monopolization, the over sampling of large towns sharpens the conclusions of this essay.

Table 2

Database of British borough charters summary statistics for the 50 largest municipalities during the late-14th century

Privileges granted by charters	Towns			Taxpayers		
	With (1)	Without (2)	Unknown (3)	With (4)	Without (5)	Unknown (6)
(a) Freedom from tolls	32	7	11	98,394	10,796	14,057
(b) Grant of guild	21	18	11	54,424	54,766	14,057
(c) Grant of fair	14	25	11	23,019	86,171	14,057
(d) Control over retail and/or commodity sales	8	31	11	19,520	89,670	14,057
(e) Grant of market	7	32	11	10,297	98,893	14,057
(f) Grant of toll	9	30	11	39,999	69,191	14,057
(g) Centralized sales	7	32	11	13,963	95,227	14,057
(h) Unhindered passage to and from town	7	32	11	18,165	91,025	14,057
(i) Liberty to trade	4	35	11	6649	102,541	14,057
(j) Prohibitions on forestalling and regrating	3	36	11	28,448	80,742	14,057

Notes. Of the top 50 towns, 39 with a population of 109,190 appear in the database of British borough charters. Eleven with a population of 14,057 do not appear in the database. The total population of the top 50 towns was 123,247. Thus, 78% of the top 50 towns containing 88.6% of the urban population appear in the database.

Definitions and sources: See Table 1.

The second source employed in this essay is the census of guilds from 1388.⁴ Table 3 describes the 49 census returns that survive from guilds organized along occupational lines. Descriptions include the town where the guild was located, the occupation of its members, the saint to which it was dedicated, and categorical variables indicating the existence of provisions pertaining to professional, monopolistic, social, and religious activities. Professional activities included teaching new craftsmen the techniques of the trade, regulating working conditions for journeymen and apprentices, monitoring the quality of merchandise, coordinating the manufacturing of complex products, and ensuring everyone access to inputs and outputs markets. Religious and social activities included hiring priests, financing parishes, purchasing religious paraphernalia, organizing prayers for the souls of members living and dead, assisting members beset by the adversities of everyday life, and hosting festivals and feasts. The dedication reveals the spiritual affiliation of the organization and also the name that it used on legal documents, allowing scholars to match census returns with other sources. The guild of cordwainers of Lincoln, for example, was officially entitled the Fraternity of the Blessed Virgin Mary. Many contemporary written accounts would have referred to it that way rather than with modern colloquial convention of calling it the guild of cordwainers or the cordwainers' guild. Documentation concerning monopolies—had they existed—would have described the legal sources of monopoly power, such as charters from municipal and royal governments or long-standing traditions enforced in common law courts, the mechanisms that guilds used to keep from their territories merchandise made elsewhere, and the ways that guilds limited members' output, monitored members' sales, and prevented free-riding from lowering prices and raising quantities to market clearing levels.

Tremendous detail appears in the census because Parliament required guilds to describe their goals, rules, structure, income, and assets as well as grants of legal privileges that they had received from royal and municipal governments. The last requirement was enforced by threatening delinquent guilds with the

revocation and perpetual annulling of the charters and letters [patent]. . . and of all the liberties, immunities, privileges, and grants contained in the charters and letters aforesaid (Smith, 1892, pp. 128–129).⁵

This threat makes the census a good place to look for evidence of legal monopolies. Guilds with governmental granted anti-competitive powers had to report them in

⁴ The original returns are available in the Public Record Office. Many translations have been published. The most widely used sources include Toulmin Smith's *English Gilds* (1892) and H.F. Westlake's *Parish Gilds of Medieval England* (1991).

⁵ The Cambridge Parliament commissioned the census in the fall of 1388 and ordered every guild, corporation, brotherhood, fraternity, or similar organization in the realm to reply by February of 1389. Little is known about the procedures followed or the use to which the census was put. Toulmin Smith, who discovered the extant census returns during the 1860s stuffed in a bag in the basement of the Chancery archives, believed the returns had lain unused for several centuries and may not have been examined by anyone since they arrived at the Chancellor's office five hundred years before. Nothing appears to have been done with the census returns. Little or no discussion of them exists in other records. Royal clerks do not appear to have catalogued or summarized them.

Table 3
 Guild census of 1388: summary data

	Identity of guild			Rules regarding activities		
	Town	Occupation	Dedication	Professional	Monopoly	Social/ religious
1.	Beverley	Merchants	?	◆		
2.	"	Smiths	St. Mary			◆
3.	Burford	Merchants	?	◆		
4.	Cambridge	Skinners	St. Katherine			◆
5.	Coventry	Merchants	?	◆		◆
6.	Glemsford	Clerks	?	◆		◆
7.	Holbeach	Tilers	Assumption			◆
8.	"	Shepherds	BV Mary			◆
9.	Lincoln	Clerks	St. Nicholas			◆
10.	"	Archers	Holy Cross			◆
11.	"	Barbers	St. John Evangelist	◆		◆
12.	"	Cordwainers	BV Mary	◆		◆
13.	"	Fullers	Holy Cross	◆		◆
14.	"	Masons	All Saints	◆		◆
15.	"	Mercers	BV Mary			◆
16.	"	Minstrels and Actors				◆
17.	"	Tilers	Corpus Christi	◆		◆
18.	"	Sailors	Corpus Christi			◆
19.	"	Tailors	Corpus Christi	◆		◆
20.	"	Weavers	Exaltation of the Cross	◆		◆
21.	London	?	St. Mary of Bethlehem	◆		◆
22.	"	?	BV Mary & All Saints	◆		◆
23.	"	Whittawyers	?			◆
24.	"	Barbers	?	◆		◆
25.	"	Cutlers	?	◆		◆
26.	"	Glovers	?			◆
27.	"	Painters	BV Mary and St. Luke			◆
28.	"	Pouchmakers	Annunciation	◆		◆
29.	"	Carpenters	Our Lady	◆		◆
30.	"	Girdlers	?	◆		
31.	"	Saddlers	?	◆		
32.	"	Minstrels	?			◆
33.	"	Brewers	?			◆
34.	Lynn	Coifmakers	Ascension			◆
35.	"	Shipmen	Holy Cross			◆
36.	"	Clerk's	St. John the Baptist			◆
37.	"	Merchants	St. John the Baptist			◆
38.	"	Scholars	St. William			◆
39.	"	Merchants	Holy Trinity	◆		◆

Table 3 (continued)

	Identity of guild			Rules regarding activities		
	Town	Occupation	Dedication	Professional	Monopoly	Social/ religious
40.	Malmesbury	Merchants	?	◆		◆
41.	Norwich	Coifmakers	St. Mary			◆
42.	"	Artificers	St. Michael			◆
43.	"	Peltyers	Wt. William			◆
44.	"	Barbers	St. John the Baptist			◆
45.	"	Carpenters	Holy Trinity			◆
46.	"	Saddlers and Spurriers	St. Mary and All Saints			◆
47.	"	Tailors	Ascension			◆
48.	Yarmouth	Cobblers and Tanners	Holy Trinity			◆
49.	"	Cobblers	Society of Arneburgh			◆

Sources: Public Record Office, Miscellany of Chancery Collection, C 47.38 to C 47.36. Westlake (1919, pp. 137–238). Smith (1870, pp. 1–228).

order to keep them. Guilds that failed to do so either did not possess them before the census or ceased to possess them thereafter.

Using the census to test the maxim of monopolization, however, requires caution. Significant numbers of census returns survive only from a handful of towns located in the midlands and along the eastern seaboard. The limited number and skewed sample biases the test. But, this potential complication does not present a practical problem. The bias favors major manufacturing centers and the null hypothesis that guilds in those centers possessed legal monopolies. Guilds with monopolies had stronger incentives to reply to the census than guilds without monopolies, and therefore, evidence of monopolies should appear more often in the census than evidence of other activities. Since the bias favors the null, the census provides a powerful test of the maxim of monopolization.

The third source is a chronological compilation of parliamentary statutes and ordinances known as the *Statutes of the Realm* (Great Britain, 1963, 1828, 1824). This compendium contains every act of Parliament since 1225 including the *Statute of Mortmain* (1279), which regulated guilds' acquisition of land; the *Statute Quo Warranto* (1290), which established procedures for determining the privileges that guilds (and other corporations) possessed and the privileges they did not; the *Assizes of Clarendon* (1166) and *Northampton* (1176), which codified procedures for litigation, trials, juries, and appeals; the *Statute Quia Emptores* (1285), which established procedures for buying and selling land; the *Statute of Merchants* (1285), which standardized rules regarding contracts, debts, and commercial disputes; and the *Statutes of 28 Edward III* (1354) and *42 Edward III* (1368), which publicized the crown's commitment to the ancient Anglo-Saxon custom that no man should be punished until they had been tried and convicted according to the law of the land (Bagley and Rowley,

1966, pp. 49–50; Baker, 1995, p. 112; Richardson and Sayles, 1964, 1966). These statutes elucidate the structure of the legal system, the goals of the government, and the regulation of guilds.

Generations of legal historians have studied the *Statutes of the Realm* and other judicial sources such as law chronicles, precedent setting cases, and documents detailing the operation of the courts (Baker and Milsom, 1986; Milsom, 1969, 1986). Their scholarship provides an independent assessment of the legal issues addressed in this essay and leaves little doubt about what the law allowed guilds to do, what the law prohibited, and when the law was enforced. The next section of this essay establishes these facts by presenting examples drawn from original documents and citing pertinent authorities. The citations ensure the examples represent the consensus of experts in the field and the conditions that prevailed during the later Middle Ages.

In sum, the evidence presented in this essay comes from the literature on legal history and three primary sources: the database of British borough charters, the census of guilds, and the *Statutes of the Realm*. The combination contains enough information to draw definitive conclusions about the legal institutions underlying markets for manufactures. The statutory record is comprehensive. The record of town charters is nearly so. The judicial record contains hundreds of thousands of cases, and legal scholars have studied case law for more than a century. The census of guilds is uniquely suited to the task at hand. Each of these sources has weaknesses, of course. They are 600 years old. But the flaws pale in comparison to the stereoscopic view provided by multiple perspectives, the quality of the evidence, and the quantity of data supporting the hypotheses advanced in this essay relative to the scattered examples and backwards inferences that have sometimes supported the conventional wisdom.

4. The myth of monopolization

Economists use the term *legal monopoly* as shorthand for institutional arrangements that provide some manufacturers with economic advantages over potential competitors. These institutions include laws that designate manufacturers as sole sellers of particular products; regulations that facilitate the manipulation of markets; or combinations of poorly defined property rights, ambiguous regulations, and ineffective enforcement that allow sellers to corrupt the legal system and stifle competition. This multifaceted definition requires the question at the heart of this essay—did guilds possess legal monopolies?—to be parsed into queries that can be addressed with the evidence at hand.

- (a) Did guilds possess rights to be sole sellers in certain markets?
- (b) Did the law allow sellers to manipulate quantities and prices?
- (c) Did the law allow guilds to erect barriers to trade?
- (d) Did the law allow guilds to erect barriers to entry?
- (e) Could guilds use their regulatory powers to restrict competition?

- (f) Was the enforcement of laws lax?
- (g) Could guilds monopolize markets by corrupting the legal system?

These subordinate queries focus on separate sources of monopoly power. This section answers each in turn.

Did manufacturing guilds possess rights to be sole sellers in certain markets? No, they did not. All primary sources concur on this point. None mentions guilds with legal control over local markets. This silence contradicts the conventional wisdom, since if legal monopolies were widespread, they should appear in the Census of Guilds, Database of British Borough Charters, or the Statutes of the Realm. The census and the laws of statistics allow this conclusion to be stated in statistical form. In all likelihood, no guilds possessed legal monopolies. At most, 5% of all guilds possessed court-enforced anti-competitive powers. The Database of British Borough Charters tells a similar tale. In all likelihood, no town possessed the power to exclude merchandise made elsewhere from local markets. At most, 1% of all towns possessed such powers.⁶ Those towns (if any) must have been small and contained a minor fraction of England's labor force, because 23 of 25 top towns in terms of population appear in the database, and none excluded merchandise made elsewhere from local markets. This fact refutes the widespread notion—that royal charters permitted towns to erect barriers to trade and that municipal governments delegated that power to guilds—because towns could not bestow legal privileges they did not possess.

Did the law allow sellers to manipulate prices and quantities? No. The common law prohibited such acts. A series of cases established this precedent. Prominent among them were *Oursom v. Plomer* (the scalding-house action in London, 1375) and *Hamlyn v. More* (the case of the Gloucester school, 1410), whose verdicts calcified the common law principal that nothing should inhibit “drawing away customers by fair competition (Baker, 1995, p. 511, 523).” The government upheld this principal vigorously. Courts punished forestallers, who bought up merchandise before it reached the market in order to drive up the price; engrossers, who hoarded merchandise when expecting prices to rise; and regrators, who purchased products and resold them in the same market at a higher price. The evidence is indisputable. Statutes prohibiting forestalling, engrossing, and regrating appear in royal and municipal records.⁷ Prosecutions of forestallers, engrossers, and regrators appear in court rolls from many towns and cities (Thomas, 1926, pp. 108, 159, 238–240). Legal historians have long agreed the antecedents of anti-trust legislation arose in the deep past, and economic historians have recently noted these facts.⁸ Thirteen towns even

⁶ No towns in the database possessed such powers. The 225 observations and standard statistical tolerances imply, therefore, that at most 1% of all towns possessed such powers.

⁷ *Statutes of the Realm*, vol. 1 pp. 203–204, 308, 325, and vol. 2 p. 227, 268, 272, 290, 291.

⁸ For the legal literature, see *inter alia* Brown (1765), Illingsworth (1800); Maitland and Pollock (1895, p. 662). For historical literature, see *inter alia* Britnell (1993, pp. 174–175), Cunningham (1890, p. 173), Gross (1890, vol. I p. 49; vol. II p. 19, 176, 185, 205, 206, 228, 352, 353), Hilton (1995, p. 79), Lopez (1971, p. 128), Pooley (1947, pp. 19–21).

enshrined anti-trust provisions in their original charters and thus the framework of municipal life.⁹

Did the law permit guilds to erect barriers to trade? No. Hindering trade was explicitly forbidden. The crown guaranteed residents of almost all chartered boroughs the right to wholesale their wares anywhere in England; the right to retail their wares in most of the realm's towns, fairs, and markets; and the right to be "free from tax and toll" while doing so. London's charter from 1130 guaranteed "all men of London and their goods" freedom "from payment of toll, passage, lastage, and all other dues throughout the whole of England and in all the seaports." Liverpool's charter from 1229 promised its citizens exemption "throughout [the] land and in all seaports from payment of toll, lastage, passage, pontage, and stallage." The *Magna Carta's* 13th clause guaranteed cities, boroughs, towns, and ports their "traditional trading rights by land and water," and its 41st clause declared:

All merchants shall have free and undisturbed passage to and from England, and shall be safe and unmolested during their stay and in their travels by land and water throughout the country. No burdensome or extraordinary measures shall be levied upon them, but they shall buy and sell freely on payment only of the proper and established dues. These provisions, however, shall not apply in wartime to nationals of a country at war with us . . . if we find that our merchants are safe with the enemy, their merchants shall be safe with us (Bagley and Rowley, 1966, p. 78, 103, 107).

A treaty between King Canute of Britain and Emperor Conrad of Lombardy limiting the tolls taken from English and Italian merchants was signed in 1027 (Southern, 1953, pp. 43–44). Additional evidence appears in statutes; edicts; judicial records; and treaties between the crown, foreign monarchs, continental cities, and merchant guilds.¹⁰ Conclusive quantitative evidence comes from the Database of British Borough Charters. Of the 225 towns in the data set, 132 possessed freedom-from-toll, including 32 of the top 50 municipalities. This information indicates approximately 59% of all towns possessed freedom-from-toll as did 82% of major municipalities and 90% of all urban residents.

Did the law permit guilds to erect barriers to entry? No, the law prohibited the erection of impermeable barriers and permitted townsmen to practice any profession they chose. Evidence of this guarantee can be found in statutes, edicts, town charters, and court records. A well-known example appears in London's Plea Roll of 1355 where:

the weavers [of London] complained to the Mayor and the Aldermen that the burellers were exercising the trade of weaving in their houses without being qualified by membership of the craft. The burellers boldly claimed the right as freemen of the city to carry on any trade or

⁹ In statistical terms, 5.8% of extant borough charters contain prohibitions against forestalling and regrating, and the 95% confidence interval for the percentage of all towns enshrining anti-trust provisions in their constitutional documents ranges from 2.7 to 8.8%.

¹⁰ Historians have known about this evidence for generations, but it has been scattered in many secondary sources. See for instance Bagley and Rowley (1966, pp. 78–84), Baker (1995, p. 525), Britnell (1993, pp. 174–175), Gross (1890, p. 6, 44), Hilton (1995, p. 7, 38), Lopez and Raymond (1995, pp. 57–58), Pooley (1947, pp. 19–21), Swanson (1989, p. 131).

mystery . . . The weavers attempt to establish their sole right to their craft was so little countenanced by the city authorities, that they did not venture to appear on the day appointed; and the judgement was given to the effect that it should be henceforth lawful for all freemen to set up looms in their hostels and elsewhere, and to weave cloth and sell it at will . . . (Unwin, 1904, p. 30).¹¹

However, some guilds slowed entry into their occupation locally by limiting the education of apprentices and hiring of journeymen. Other guilds monopsonized regional labor markets. A handful of weaving guilds regulated production around their towns, and with the permission of the royal government, prohibited production in the countryside, forcing rural weavers to move to urban areas where taxes could be readily collected and quality could be accurately assessed. Advocates of the maxim of monopolization exaggerate the powers of these organizations. They observe that guilds had the right “to establish their own organization(s), the members of which had exclusive right to produce cloth in a town and sometimes a larger area,” and from that observation, conclude that weaving guilds monopolized markets (Hatcher and Miller, 1995, p. 106). But, their conclusion is incorrect. Such charters were rare.¹² In addition, the charters did not require all weavers in a jurisdiction to pay to participate in the guild’s activities, only to pay dues—now known as taxes—to the organization. The charters never allowed some weavers to prevent others from practicing their craft. The charters established inclusive rather than exclusive organizations. They required everyone to join the organization. They did not prohibit anyone from entering the craft. Even if the charters had been exclusive, they would not have created monopolies in the Marshallian sense. Sole producers in a particular place must compete with producers located elsewhere.

Could guilds use regulatory powers to circumvent the law and restrict competition? Perhaps, but not to any great extent. Authority over the quality of merchandise made by members was unqualified and ubiquitous, but authority over merchandise made by nonmembers was restricted and rare. Special charters permitted some guilds to inspect merchandise similar to their own and sold in their town by outsiders. Reciprocal agreements between towns permitted many guilds to send searchers to distant venues to inspect the quality of merchandise sold in their names. Numerous examples appear in historical texts but none in the data sets used in this essay, suggesting typical guilds seldom possessed such powers. Even if such powers were widespread, they would not have provided guilds with monopoly authority. All of the powers were limited. Guilds could not deem some men competent, and therefore able to work, and others incompetent, and therefore ineligible for employment.

¹¹ See also Bridbury (1982, p. 9), Hilton (1995, p. 7, 38, 79), Ward (1997, pp. 8–9, 28–29).

¹² The census of 1388 contains two examples. These guilds possessed the legal right to require all of their neighbors working in their occupation to pay dues to their organization. The small number of census returns reporting this right suggests that few guilds possessed similar powers. Of guilds with extant returns, 4.08% collected mandatory contributions. The 95% confidence interval for the percentage of all towns with this privilege ranges from 0.0 to 9.6%. Thus, the hypothesis that the percentage of guilds possessing limited local monopsonies approached zero cannot be rejected, while hypotheses that 10% or more possessed limited local monopsonies can be rejected. In other words, standard statistical analysis suggests less than 10% of all guilds possessed such powers.

Quality-control extended to products of competitors only when the products could be confused with those made by the guild, and in these cases, guilds' authority was neither arbitrary nor absolute. Guilds had to apply the same standards to merchandise made by members and non-members. The standards had to be clearly stated and approved by the government. A craftsman accused of violating the standards retained his rights to due process, including a fair trial, impartial judge, and appeals in royal courts. Moreover, a manufacturer unfairly accused in one town could sell his merchandise in another town, in the thousands of markets and fairs scattered throughout the realm, in the rural regions where most consumers lived, or to merchants who would resell the merchandise in distant venues. So, rules regarding quality could be used neither to substantially eliminate competition in markets for manufacture nor to restrict occupations to particular individuals.

Rules limiting influence over output markets resembled those limiting influence over input markets. Customary laws guaranteed all townsmen opportunities to purchase commodities and required residents of most towns to share scarce resources. Municipal codes typically allowed individuals to purchase small quantities of commodities in the morning, prohibited bulk purchases before noon, required persons with stockpiles to sell the excess to others at reasonable prices, and compelled those who bought up recently arrived shipments to divide their purchases among all interested parties. Municipal governments occasionally delegated enforcement of these laws to local guilds. In all of the cases encountered by this author, the checks and balances of municipal life apparently ensured that guilds used this power to expand, rather than restrict, access to resources.

The salutary rationale for regulating markets for raw materials extended to markets for wage labor. Authority to regulate working hours, working days, and the locations of workshops rested with municipal and ecclesiastic authorities, who often delegated this authority to guilds. Delegation did not imply omnipotence. Guilds could not arbitrarily restrict the time and place of employment. These restrictions existed, but borough governments, ancient customs, and Christian doctrine, not guilds, established them and did so for good reasons. Restricting occupations to particular parts of town mitigated unpleasant externalities of industrial activity. Craftsmen's shops were in their homes, and their neighbors heard, saw, and smelled every stage of the production process. Smiths' hammering raised a deafening racket. Tanners' solvents emitted putrid stench. Dyers' wastes polluted potable water. Smelters' furnaces belched fumes that fouled the air and sparks that ignited roofs. Restricting crafts to specific locations – usually downwind and down river—protected people from air and water polluted by smoke and solvents. Prohibiting work after dark permitted craftsmen's neighbors to sleep at night, prevented criminals from adding the cloak of crowds to the cover of darkness, and improved quality, since work completed under the dim and flickering light of candles and torches often proved defective (Basing, 1990, p. 63, 84; Hatcher and Miller, 1995, p. 57; Lopez, 1971, p. 146). Limits on the number of working days had spiritual justifications. The church permitted Christians to work Monday through Saturday but prohibited work on the Sabbath and about fifty religious holidays. Ecclesiastic edicts imposed these dictates. Guilds could not alter them.

Was the enforcement of laws lax? Little evidence exists on this issue, but the data that does suggests the judicial system enforced the law vigorously. Criminal courts prosecuted guilds for anti-competitive activity, and civil courts heard cases brought by individuals harmed by monopolistic machinations. In both venues, judges favored public over private interests (Jacob, 1993, p. 394). Economic historians seem to have assumed the opposite—that courts and the Common Law favored guilds—but this assumption is incorrect. Laws concerning individuals matured more rapidly than those regarding corporations. The well developed rights of individuals superseded the nascent rights of incorporated entities. In addition, like all corporate franchises, the charters of guilds entailed obligations as well as providing privileges. Guilds had to fulfill these duties or risk costly penalties potentially including the revocation of their charter and the suppression of their organization. The same was true for municipal governments. Towns that failed to enforce the law could be subjected to direct royal rule. This happened to dozens of boroughs during the 13th century and a smaller number during the 14th. The same was even true for aristocrats, who the king ordered to protect merchants travelling through their lands. In the *Statute of Winchester (1285)*, the crown threatened “if a lord fails in [this] duty . . . and robberies are then committed, he shall be liable for damages (Bagley and Rowley, 1966, p. 160).”

Did guilds corrupt the legal system, and thereby, acquire monopoly power? No evidence suggests guilds corrupted the legal system, while six facts suggest they did not. First, English law was not arbitrary. Men could not be deprived of life, liberty, or property without due process (Baker, 1995, p. 112). Second, when local authorities failed to enforce the law, individuals could appeal to royal authorities (Baker, 1995, p. 31, 120; Fisher and Jurica, 1977, p. 243). Third, the legal system protected men from false accusations, nuisance suits, and similar legal shenanigans (Bagley and Rowley, 1966, p. 50, 78, 84). Fourth, individuals did not have to wait for the government to protect their interests. Anyone harmed by unlawful acts could sue and win restitution in municipal and royal courts. Fifth, the law forbade depriving another businessmen of customers by harassment, violence, threats, defamation, or other unlawful conduct (Baker, 1995, pp. 521–524).

Sixth, legal monopolies in markets for manufactures were not in the interests of the men who made and enforced the law. The burdens of monopolies would have been born by the most influential men in medieval society, merchants, aristocrats, and ecclesiastics, who had vested interests in trade. The interest of merchants is obvious. Trade was their livelihood. The interests of aristocrats and ecclesiastics is less readily apparent. Lords and priests owned the rights to hold most of the realm’s markets and fairs. These events yielded large sums from tolls, taxes, fees, and rents. Those revenues rose and fell with the expansion and contraction of trade (Hilton (1995, p. 39); Zacour, 1976, p. 49). So, the men who made and enforced the law benefited from high volumes of trade. They also had vested interests in the price of manufactured merchandise. The ability to purchase superior products was one of the principal perquisites of lordly life. Monopolistic pricing threatened that privilege, reducing the wealth of aristocrats, clerics, and merchants relative to the income of artisans and laborers. Monopsonistic pricing also threatened lords’ livelihoods.

Aristocrats and clerics owned most of the flocks, forests, and minerals in the realm, and they wanted to receive high prices for those resources.

In sum, the law forbid manipulating prices and quantities and injuring competitors and consumers, regardless of the methods used. Circumventing the law was costly and time consuming. Corrupting the law was difficult and for typical craftsmen impossible. Monopolistic machinations threatened the most powerful people in the medieval world, aristocrats, ecclesiastics, and merchants, and they opposed craftsmen's efforts to control markets. In addition, craftsmen had little (if any) incentive to act as monopolists, since monopolistic machinations would provoke retaliatory tariffs, civil suits, and criminal prosecutions. Moreover, markets for manufactured merchandise were difficult to manipulate. Manufactures were luxuries. Demand for them was elastic, and they could be shipped from one corner of the continent to another. Consumers could choose among merchandise made by many manufacturers, delay purchases of durables when prices were high, and search for better deals. Thus, manufacturers could manipulate the price of their products neither readily nor for great profit. In sum, there is no reason to suppose that manufacturing guilds possessed legal monopolies. There are many reasons to believe that they did not.

5. The legal structure of markets for manufactures

The myth of monopolization conceals the laissez-faire legal structure of markets for manufactures in late-medieval England. The law did not impede flows of merchandise among towns or from producer to consumer. Markets were free. Entry was easy. Commerce was encouraged. Merchants were protected from rapacious lords, exorbitant fees, and arbitrary taxation. These salutary stimuli emerged from the commercial system's salient characteristics.

Freedom from tolls was the norm. Eight of 10 towns including most industrial and commercial centers possessed the privilege (see Tables 1 and 2). These towns contained more than 90% of the urban population and a higher proportion of all craftsmen and merchants, since industry and commerce were concentrated in the largest municipalities. Merchants from Italy, the Low Countries, and the Hanseatic League also possessed the privilege. Agreements with royal authorities freed them from taxes on merchandise in transit in return for lump-sum payments to the king's coffers and other considerations. The small fraction of the urban population living in towns without freedom from tolls may not have needed it. Their needs could be serviced by the merchants who lived in toll-free towns and foreign merchants who could travel around the realm buying and selling merchandise without paying taxes on goods in transit.

Laws facilitated movements of persons and property. Charters of towns on inland waterways assured passage to and from the sea. The operative clauses prevented downstream parties from erecting dams, docks, fish nets, and other obstructions that impeded maritime traffic. Charters of towns also protected individuals in transit from physical violence. So did the common law, which required lords, sheriffs,

municipalities, and other local authorities to protect merchants from brigands. Those who failed to fulfill their duties could be held liable for losses.

Licensed markets and fairs existed in every corner of the realm. These venues provided the legal and financial services that greased the wheels of wholesale and retail trade. Commercial courts enrolled contracts and adjudicated disputes. Financial intermediaries extended credit and collected debts. Official inspectors verified the accuracy of weights and measures. More than 1200 weekly markets operated during the 14th century. They were sprinkled throughout the countryside, particularly along coasts, waterways, and principal thoroughfares. Almost everyone lived within easy reach of at least one official market.¹³ In the rural areas, the distance from individual homes to the nearest market was 4.2 miles, less than a 2 hour walk. More than 9 of 10 persons lived within six miles of a market. Most lived within that distance of multiple markets (Farmer, 1991). In urban areas, every household was within a few minutes walk of places to shop. Every town possessed at least one official market, and most sizeable towns possessed several. The largest, like London, contained dozens of official emporia. Many fell under feudal or ecclesiastic jurisdiction and competed for customers against municipally-sponsored markets and fairs (Hilton (1995, pp. 46–50)). These independent urban jurisdictions presented a competitive check to municipalities that circumvented the legal restrictions on the manipulation of markets. So did the hundreds of fairs, thousands of unlicensed markets, and innumerable itinerant vendors who sold victuals as well as manufactured merchandise.

Merchants acquired what they wanted most—self governance, legal rights, and predictable taxes—by purchasing from the king privileges enshrined in written charters. These pieces of parchment emblazoned with the royal seal permitted them to manage their own affairs free from the meddling of external authorities and to convert individual tax assessments and ubiquitous user fees into lump sum payments. Revenue-sharing arrangements of this type maximized both taxes and commerce. In the lexicon of game-theoretic social scientists, the king was the principal. Merchants were the agents. The royal government collected lump sums. The merchants received residual payments. This fiscal structure maximized merchants' incentive to conduct long-distance commerce without distorting the relative prices essential for efficient allocation of resources.

Municipal charters guaranteed access to the legal system with its local tribunals (e.g., manorial, municipal, hundred, and shire courts), specialized jurisdictions (e.g., mercantile and admiralty courts and the Exchequer of Jews), and national courts (e.g., Chancery and common pleas). The judicial system possessed procedures for initiating suits, compelling the cooperation of litigants, collecting facts, assessing evidence, preserving records, enforcing judgements, and appealing and overturning incorrect or unjust decisions of lower courts. Local courts kept regular schedules that varied according to the case load. Busy courts might meet two or three days each week. Slower courts might meet once a month. Burgesses could file suits by attending those meetings and paying small fees. Then the officers of the court set a date for the

¹³ For evidence, see studies by Bennett (1987), Britnell (1981), Hilton (1995), and Waugh (1991).

trial and ordered the defendant and witnesses to appear at the appropriate time and place. Burgesses initiated suits in the king's courts by paying small fees for writs which the Chancery dispatched to the appropriate authorities. Writs instructed sheriffs to contact defendants, schedule trials, and ensure litigants appeared in court. The writs of right, entry, and the petty assizes dealt with transactions in real property. The writ of gage (the root of the word mortgage) dealt with loans secured by land and chattels. Writs of contract, covenant, and debt dealt with the enforcement of agreements. By Tudor times, actions on debt had become the commonest class of actions in the Common Law court, and "so they remained for three centuries (Baker, 1995, p. 368)." Breaches of contract that caused physical damage, as when a carrier damaged goods, or involved deceit, as when a seller lied to a buyer, were enforced as trespasses. The word *assumpsit* gave its name to the action, because the defendant 'took upon himself' (*assumpsit super se*) to do something and then did it badly to the damage of the plaintiff. The medieval law of trespasses grew over many centuries into the modern law of torts.

In addition to the judicial system, the government established an array of institutional prerequisites of industry and trade. Standardization of weights and measures facilitated commerce and protected purchasers from fraud. Improvement of roads and bridges facilitated the movement of merchants and merchandise. Royal authorities often mandated that local administrations improve the transportation infrastructure within their jurisdiction. Municipal regulations mitigated the noxious externalities of industrial and mercantile activity. Prosecuting criminals, capturing brigands, and suppressing pirates allowed hard-working craftsmen and merchants to reap the fruits of their labors. This protection encouraged diligence, savings, and investment.

These institutions contributed to the expansion of the medieval economy. During the Middle Ages, merchandise flowed freely from point of production to point of sale. No legal barriers impeded trade among towns. Authorities protected merchants from acts of violence and arbitrary taxation. Courts enforced contracts. The rules of the game were credible, predictable, and common knowledge. The king collected a lump sum for providing all of these services. The law allowed people to act as they thought best, to put resources to their most profitable uses, and to benefit from the division of labor, which as Adam Smith so eloquently argued, impelled economic progress and the accumulation of wealth in the pre-industrial era. In sum, England's salutary legal structure facilitated the gradual, Smithian expansion of commerce and industry the lifted England from the depths of the Dark Ages, when it was one of the poorest places in Europe, to the more prosperous era of the Later Middle Ages, when its standard of living began to approach that of the wealthier regions of the continent.

6. Discussion

The scope and scale of these conclusions should not be exaggerated. They possess chronological, geographical, and occupational limitations. The conclusions apply to

flows of manufactured merchandise, but not to flows of foodstuffs. Victuals were necessities that could not be stored for long periods or shipped significant distances. Supplies varied continuously and seldom exceeded sustenance levels by wide margins. Court records reveal that many victuallers tried to manipulate markets, which they could with little effort and for great profit.

The conclusion applies to commerce within England, but not necessarily beyond its borders. Barriers to trade existed in the wider world. Throughout the Middle Ages, piracy plagued merchants at sea. Brigands bedeviled merchants on land. Wars intermittently interrupted commerce in broad regions. Tariffs and quotas impeded flows of trade across national boundaries. States employed embargoes as a method of making war. England used these tactics as often as its continental opponents. English kings, for example, occasionally embargoed exports of wool to Flanders and prohibited importation of cloth from the Low Countries. The Low Countries banned imports of English woollens on several occasions. The English government also occasionally engaged in tit-for-tat tariff battles with the Hanseatic League and Italian cities. Without doubt, these disruptions of trade had large and lasting impacts on the medieval economy. But, it is important for scholars to distinguish barriers to trade among nations from barriers to trade among markets within nations. The phenomena have different causes and consequences.

The conclusion applies to the later Middle Ages, but not to modern times. The Tudor monarchs imported an array of legal institutions from the continent. During Henry VIII's reign, the Crown began granting exclusive rights to trade in distant lands. In 1555, the Muscovy Company took northern Europe beyond the Baltic. In 1560, a century-old company, the Merchant Adventurers, took the Netherlands, Germany, and Central Europe. In 1581, the Levant Company took the Mediterranean region. In 1600, the East India company took Central Asia. During Elizabeth I's reign, the Crown adopted the continental practice "of granting monopolies to individuals who introduced new inventions into the realm. Thus began the history of patents for inventions (Baker, 1995, pp. 511–512)." The Crown reaped great profits from these 16th-century monopolies. It demanded cash for issuing patents and royalties for the continuing exploration of new inventions and explorations. The profitability of this practice motivated Ministers to grant patents for many existing products under the pretext that they were new inventions. "By the end of the Tudor Period there were so many chartered monopolies that the matter was raised as a grievance in the parliaments of 1597 and 1601 (Baker, 1995, pp. 512–513)." In 1621, Sir Edward Coke, who regarded monopolies as the principal economic grievance of times, advocated a reform bill finally enacted as the Statute of Monopolies of 1624. The bill declared 'utterly void' all monopolies for the sole buying, selling, making or using of anything within the realm, but before it was passed, Baker notes, the original legislation was amended modified by the insertion of several exceptions designed to preserve the status quo. The exceptions included patents for the 'sole working or making of any manner of new manufacture' granted for not more than fourteen years to 'the first and true inventor;' patents concerning printing and certain other trades of public importance, and charters to 'corporations, companies or fellowships of any art, trade, occupation or mystery (Baker, 1995, p. 512).' The last

exception provided a loophole. Instead of granting a monopoly to an individual, the individual and his compatriots formed a company, such as the Westminster Soap-makers (incorporated 1631) or the Yarmouth Saltmakers (1636), which received a “blatantly private monopoly.” The number of these companies multiplied rapidly, and the duties on sales that they paid to the Crown yielded a vast income, which ended only after the English Civil War, when privileges of all types came under attack, and the new government ceased granting domestic monopolies (Tawney, 1926, pp. 70–79, 169–191, 234–236).

The proliferation of monopolies between the Wars of the Roses and the Civil War reinforces a widely-known hypothesis. The development of monopolies drove entrepreneurial and innovative activities from towns to the countryside during early-modern times. The spread of monopolies coincided with the shift of industry from towns, where monopolies proliferated, to villages, where monopolies were scarce, setting off costly legal and political battles among urban artisans seeking to benefit from or defend against monopolistic machinations. Moving to the countryside allowed them to avoid those costs.

The prevalence of monopolies before the Civil War and the prominence of their opponents after the interregnum may explain why historians writing at the end of the 19th century mischaracterized medieval guilds. The late 19th century was the heyday of Whig history, an academic age when scholars portrayed English history as a story of gradual, steady, inevitable progress. A Whigish predisposition colored historians' conjectures about the Middle Ages; conjectures based on the earliest era that they had facts about, the 17th century, when chartered companies with legal monopolies enriched the government, exploited the public, and impeded entrepreneurial activity. Conditions which were bad during the 17th century must have been worse during the 16th century and even worse farther back into the past. So, they surmised, monopolies must have been ubiquitous during the later Middle Ages. Yet, while some companies were ancient, these corporations purchased monopolies during the Tudor and Stuart dynasties. None acquired legal monopolies before the 16th century, and most acquired them during the 17th and 18th centuries.

These facts call into question Hickson and Thompson's hypothesis that guilds evolved to protect fixed capital from expropriation by local bureaucrats and foreign aggression (Hickson and Thompson, 1991). Their idea sprang from Thompson's analysis of taxation and defense of twentieth-century nation states (Thompson, 1974, 1979). They argued that guilds and/or governments established maximum real prices, limited investment in coveted capital, and restricted entry into occupations. Stricter guilds evolved as capital stocks and profitable commerce increased. States with stricter guilds had stronger militaries. The demise of guilds coincided with the introduction of “broadly based national capital taxes (Hickson and Thompson, 1991, p. 150).” But, those patterns do not fit the facts presented in this essay. The apogee of medieval English guilds occurred a century before Tudor monarchs intervened in industry and trade.

The evidence presented in this essay also questions the rent-seeking hypothesis for the origins of medieval guilds and suggests that scholars study those cooperative institutions from a broader perspective. Guilds did not exist to exploit particular

economic opportunities. No single motive convinced craftsmen to pursue collective goals. Almost all guilds began as religious and fraternal organizations. These socio-religious societies operated for decades, sometimes generations, before engaging in industrial activities. Many guilds began pursuing occupational objectives in hopes of enhancing incomes and economic circumstances. Some did so only when required by government. Almost all of these fraternities ceased operating in the first half of the 16th century, when the Tudor monarchs suppressed organizations with religious roles. Royal auditors visited every guild in the realm, expropriated property, and imposed fines that had to be paid for the organizations to continue operations. A few paid the ransom, most did not. The Tudor chartering of monopolies began in this new environment.

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