Contesting Privilege with Right:
The Transformation of Differentiated Citizenship in Brazil

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Abstract

This paper suggests that new understandings of rights associated with right to the city movements in many cities around the world are subverting special treatment rights (understood as privilege) and the systems of differentiated citizenship that support them. To make this case, the paper examines the Brazilian formulation of differentiated citizenship as a telling historical example of a politics of difference based on a combination of universal membership and special treatment rights. It argues that by denying the expectation of equality and emphasizing that of compensatory equity in the distribution of rights, Brazilian citizenship became an entrenched regime of legalized privileges and legitimated inequalities. The paper then analyzes the insurgence of an urban citizenship in the poor peripheries of Brazilian cities since the 1970s that promotes new kinds of contributor rights, text-based rights, and right to rights. The paper ends with a discussion of the entanglements and contradictions of these formulations of citizenship and rights.

Keywords: differentiated citizenship, rights, privilege, right-to-the-city, urbanization democracy, Brazil

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Contemporary democracy is a force of destabilization, though often promoted as the contrary. Since the mid 1970s, the insurgence of new democracy has undeniably disrupted established formulas of rule and their hierarchies of place and privilege in the most diverse societies worldwide. To be sure, it is not the only force of destabilization, and it gets entangled with others. Yet democracy’s force is itself enough to erode taken-for-granted categories of domination and deference that give both political regime and daily life their sense of order and security. If it did not, democratization would be inconsequential. Categories of domination and deference are typically grounded either on legitimations of history, which accord powers to certain strata of a society on the basis of historical precedents, or on legitimations of nature independent of history, which consider them immanent in certain kinds of people, human nature, or divine cosmological order. In disrupting these legitimations, democracy is as destabilizing of history as a foundation of society and state as of nature. Thus, it challenges natural rights by positing the legitimacy of claims based on use, practice, productivity, settlement, and custom. Yet democracy may also trump historically-specified rights with the “Rights of Man” when it posits human nature as the essence of human beings and ascribes a universal dignity to it. Both kinds of disruption have been characteristic of democratic change, at times simultaneously.

I focus on one sort of democratic destabilization in this essay that strikes at the foundations of entrenched systems of inegalitarian citizenship. I focus on the subversion of privilege by right as people transform their needs into citizen rights. To do so, I
investigate why people think they deserve rights, analyzing the kinds of justifications people use to legitimate their demands. The reframing of needs as rights generally changes the reasoning by which people think they deserve rights, changing in turn the conceptualization of right itself. There are other possible justifications of demands, including universal human needs, revolution, and divine orders. But in the last forty years, rights-based legitimations have trumped alternatives and become established at the core of citizenships worldwide. I want to emphasize the importance for democratic citizenship of these changing conceptions of rights.¹

**Urbanization and Rights Change**

There are several paths to rights transformation. The most significant during the last half century has been the intersection of democratization and urbanization – both of unprecedented global scope – that has made cities the strategic arena for the development of new citizenships. Although this combination is intensely local in combustion, it produces a remarkably similar condition worldwide: one has only to think of São Paulo, Johannesburg, Cairo, Jakarta, and Mumbai to realize that enormous numbers of the planet’s population now live in impoverished urban peripheries in various conditions of illegal and irregular residence, around urban centers that benefit from their services and their poverty. Yet this new urbanism also generates a characteristic response: precisely in these urban peripheries, residents come to make right-claims for their needs on the basis of their dwelling there. That is, residents come to understand their basic needs in terms of their inhabiting the city, suffering it, building their daily lives in it, and making its cityscape, history, and politics. The many meanings of this making often coalesce into a sense that they have a right to the city – in effect, a right to what they have made. This
right to urban production is generally articulated not within a frame of clientalism, class revolution, or human nature. Rather, residents increasingly formulate this right to the city in terms of the legal, ethical, and performative registers of citizenship. Thus urbanization becomes not only the context of democratization but also its text as urban residents mobilize into new kinds of citizens to redress their conditions of daily life through right-claims.

My argument is two fold. In articulating the right to the city as a right of citizenship, the urban poor are also inventing an insurgent urban citizenship as distinct from the national. By citizenship I mean membership in a political association or community that articulates a relation (not a dichotomy) between structures of power and practices of social lives, a relation typically expressed in terms of security, liberty, justice, equality, respect, difference, and participation and formulated in the language of rights, powers, and vulnerabilities. By urban citizenship, I mean a citizenship that refers to the city as its primary political community and concerns an agenda of right-claims that address city living as its substance – issues of housing, property, tenure, transportation, day care, plumbing, and so forth, largely understood to constitute a residential domain of social life. By insurgent urban citizenship, I refer to the political transformations that occur when the conviction of having a right to the city turns residents into active citizens who mobilize their demands through residentially-based organizations that confront entrenched national regimes of citizen inequality. Not all urban peripheries produce this kind of insurgence of city against state. But enough do to qualify this collision of urban and national, local and imperial, insurgent and entrenched citizenships as a global category of conflict. My second point is that with the development of urban citizenship,
claiming the right to make and inhabit the city often leads to a more general conception of a right to rights, the former being a path to the latter. Thus, in what follows I focus on the destabilization of privilege by the right to the city and the right to rights.

The result of these processes in Latin America, Southern Africa, India, and elsewhere have been contradictory. If democratization would seem to hold special promise for more egalitarian citi-zenships, and thus for greater citizen justice and dignity, in practice most democracies experience tremendous conflict among citizens as principle collides with prejudice over the terms of national membership and the distribution of rights. If cities have historically been the locus of citizenship’s expansion, contemporary peripheral urbanization creates especially volatile conditions, as city regions become crowded with marginalized citizens and noncitizens who contest their exclusions. Thus the insurgence of urban democratic citi-zenships in recent decades has indeed disrupted established formulas of rule. However, such destabilization also provokes strong reactions, often violent, some to restore the old paradigms of order and others to express outrage that they still persist, now more visible because disrupted. Thus democracy brings its own kinds of destabilization, delegitimation, and violence. The result is an entanglement of democracy with its counters, in which new kinds of urban citizens arise to expand democratic citi-zenships and new forms of urban violence, inequality, impunity, and dispossession erode them.

To examine the transformation of rights under such conditions of expansion and erosion, it is necessary to understand the dominant formulations of citizenship within which alternatives develop. I begin, therefore, with a brief conceptual-historical analysis of these formulations before discussing insurgent urban citizenship and its new forms of
rights. I close with a discussion of some of their limitations. Throughout, I draw on my own research in Brazil and specifically São Paulo.

**Differentiated Citizenship and the Distribution of Special Treatment**

All regimes of citizenship develop formulations of equality and inequality to manage the differences they recognize among citizens. Like totemic systems of social organization, they determine who is alike and who is different for certain purposes and what that determination means for the distribution of rights and resources. Actual systems of citizenship do so in many different ways, combining principles of equality, equity, and inequality with formal qualifications of membership (e.g., *ius soli* and *ius sanguinis*) to produce historically specific distributions of the substance of what it means to be a citizen to those formally deemed citizens – distributions of rights, resources, powers, vulnerabilities, practices, identities, and so forth. To understand changes in the conception and distribution of rights in specific citizenships, we must first unravel several problems common to contemporary debates about citizenship. They are prevalent especially in discussions proposing to ground citizenship in a politics of difference that institutionalizes difference-specific treatment for oppressed social groups. These problems make it difficult to assess the issue of legalized privilege.

I use Iris Marion Young’s (1989: 251) influential advocacy of a “differentiated citizenship as the best way to realize the inclusion and participation of everyone in full citizenship.” By differentiated citizenship, she means one that formulates special rights for group differences, contrasting it with difference-neutral or difference-blind citizenship. She argues that by enforcing equal treatment for all, the latter disrespects the salient differences of the many peoples and cultures that constitute modern nation-states,
particularly of oppressed groups. The key problem, she (1989: 250) argues, is the formulation of “equality conceived as sameness”: equal treatment homogenizes the differences of minority and marginalized citizens into common denominators that are little more than reflections of the particular interests of the dominant culture. Thus, she (1989: 271) writes that “to the degree that groups are culturally different … equal treatment in many issues of social policy is unjust because it denies these cultural differences or makes them a liability.” Many have made this argument in similar if not identical terms, including Pateman (1989), Minow (1990), Taylor (1992), and Kymlicka (1995). Additionally, Young focuses on “the paradox of democracy” by which the “equality of citizenship makes some people more powerful citizens” (259) and “strict adherence to a principle of equal treatment tends to perpetuate oppression” (251). Thus, Young rejects equality-as-sameness with the charge that its homogenization not only disrespects but also creates norms of assimilation that in fact oppress.

Young’s solution is to propose a group differentiated citizenship that “articulat[es] special rights that attend to group differences in order to undermine oppression and disadvantage” (ibid). Such rights undermine oppression because they compensate for the liabilities that marked cultural differences create. Thus, differentiated citizenship in her account is just because of the compensatory value of the special treatment it distributes. As described in her discussions of affirmative action and workplace rights for pregnancy and maternity leave, this compensation is fair not because it rewards “the deviant until they achieve normality [but because it] denormalize[s] the way institutions formulate their rules” (273) and redresses “the cultural biases of standards and evaluators” (271). She does not specify what compensation entails, whether it is based on past or present
disadvantage or both, how it is calculated, or when it is terminated. In her discussion of democracy, she says that “specific representation [is] only for oppressed or disadvantaged groups, because privileged groups already are represented” (262). But she does not seem to think that after the former receive special treatment that, in this way, they might also legitimately be called “privileged.” Nevertheless, she clearly indicates that her vision of differentiated citizenship entails an unequal distribution of rights to make up for the disadvantages of “particular circumstances” (basically involving negative cultural attributes of race, gender, and class) and that, since everyone has a particular life that expresses ascribed group attributes, “at certain levels of abstraction everyone has ‘special’ rights” (269, note 20). Thus, Young’s system of differentiated citizenship allows for a generalized distribution of specific legalized privileges to compensate for various kinds of difference.

This kind of differentiated citizenship has many contemporary proponents, and its politics of difference often dominates today’s discussions of citizenship, justice, and rights not only in the developed but also in the developing world. While that much is easily evident, it may surprise many in these discussions to learn that most of the world’s citizenships beyond the North Atlantic are decidedly differentiated. In fact, in its generalized form, it has been the dominant form of citizenship in most countries. Young does not give this history, possibly because the specific propagation of its inequalities is little studied and still less compared and because this specificity is not revealed in institutional or legal history alone but more in studies that also analyze citizenship as a history of processes, mechanisms, and practices. Indeed, Young’s account is largely ahistorical and uncomparative (despite phrases like “the exclusion of blacks” in
American history) as an argument that begins from a set of political theories and
generalized concepts and moves to another.

Thus, a significant problem in this account is its conceptualization of citizenship
as a historical subject, both as supposedly universalizing and as differentiating. To use
Foucault’s (1980: 117) similar complaint about pseudo-history and anthropology,
citizenship here is treated as “either a transcendental subject in relation to a field of
events or runs in its empty sameness throughout the course of history.” I use the example
of Brazilian citizenship in the rest of this article to suggest a different sort of concept
work and analysis: one that investigates the efficacies of the constructions, categories,
and rules of citizenship in relation to the perpetuation and transformation of specific
formulations inequality and equality to arrive at an understanding of the constitution of
citizenship as a mode of both belonging and rule within specific historical frameworks.

I begin sometime near the end of the Brazilian Empire (1822-1889) when the
politician, lawyer, abolitionist, and republican Rui Barbosa is credited with coining a
maxim about justice and equality that has become a mantra for Brazilian law students
ever since: “Justice consists in treating the equal equally and the unequal unequally
according to the measure of their inequality.” Barbosa’s maxim recapitulates a concept
of justice of classical foundation, traced to Aristotle who, like Plato and other Greek
thinkers, believed that a just distribution is generally an unequal one. In the
Nicomachean Ethics, Aristotle (1962: 118) argues that a just distribution allocates the
right share to the right person, such that “the ratio between the shares will be the same as
that between the persons. If the persons are not equal, their just shares will not be equal.”
The key meaning of equality (isotes) here is one of proportionality: a proportionally
equal distribution to people who are unequal (i.e., who have different measures of merit, need, and worth) would have to be unequal to be fair. Thus, at least since the Greeks, systems of differentiated citizenship have found legitimation in the argument that justice should be a regime of proportional inequality in which citizens are compensated or penalized differently according to the measure of their differences.³

In Brazil, this notion of differentiation became a fixture of legal education, jurisprudence, and legislation. When I consulted legal textbooks and law students, professors, and judges in São Paulo, they all gave essentially the same assessment: they took the phrase to mean that unequal treatment is a just means to produce equality by leveling or adjusting pre-existing inequalities. While this view of Barbosa’s maxim clearly reproduces its classical roots, it emphasizes the effect of leveling which was, most probably, not Aristotle’s concern. Yet, in fact, the consequences of this method of leveling are contradictory and problematic in ways few appreciated. For example, nearly all of my sources provided the same example, the one commonly found in standard Brazilian law books (e.g., Silva 1992: 199): The law permits women to retire five years earlier than men. This discrimination is just because over the course of a normal life, working women “have more service” than working men in that, in addition to work outside the home, they have to do the housework and childcare in which they are little aided by their husbands. “Thus,” renowned law professor and scholar Silva concludes, “she has an overload of services that is just to compensate by allowing her to retire with less time of service and less age.” The solution for the social facts of inequality in this case – that working women are unequal because they work more – is not to propose to
change the social relations of gender and work. Rather, it is to produce more inequality, in the form of the compensatory legal privilege of earlier retirement.

None of the legal professionals I asked or textbooks I consulted questioned this solution. None considered that whether its compensatory function is actually realized, this kind of justice not only legalizes new inequality but also reinforces existing social inequalities by rewarding them. None suggested that it uses the legal system to distribute unequal treatment throughout society. None observed, furthermore, that in Barbosa’s maxim the unequal may also be the elite who, because of their individual education, wealth, or achievement, deserve to be treated differently. Does not the maxim justify their different standing at law and different recompense, on the basis of different individual capacities, from that of the illiterate and the poor? For example, by this legal reasoning – as standard today as it was in the 19th century – it is not unjust to treat a slave differently from her owner, but only to treat the one as the other or to treat the members of each group differently among themselves. Until recently (1985), the same compensatory logic justified that only literates had the right to vote and hold elected office and, until just 2009, that university graduates (and other “dignitaries”) had the right to a private jail cell. In these examples, the pre-existing measures of elite inequality justify their special treatment rights, even though their inequality amounts to privilege.4

Rui Barbosa’s justice may be a means of compensating an inequality of disprivilege by legalizing privilege. But it may also compensate an inequality of privilege by legalizing more privilege. In either case, it reproduces privilege throughout the social and legal system. It is, moreover, a static concept of justice. It does not contest inequality. Rather, it accepts that social inequalities exist as prior conditions of either
disprivilege or privilege and treats them differently by distributing resources accordingly. Thus, the justice system in which Barbosa’s maxim is a taken-for-granted standard enforces a differentiated citizenship: it maintains a society of social differences by organizing it according to legalized privileges and disprivileges.

Brazilian elites formulated this notion of justice out of Greek (and French elements) because it made sense to them as a foundation of citizenship during the 19th century and, indeed, throughout the 20th. Like other nationalizing elites, Brazil’s founders faced the problem of how to construct a national citizenship to regulate the vast social differences of inhabitants. I cannot review their debates here but refer the reader to my 2008 book. Like so many other nationalizing elites beyond the North Atlantic, their solutions combined a proportional notion of equality with a liberal one – the latter maintaining that individuals are formally equal before the law and equally free to pursue their differences in the market. But they rejected what they perceived to be a revolutionary French concept of democratic equality that established standard measures of substantive rights and opportunities for all citizens regardless of other differences.

Instead, from the beginning of Brazilian nationhood, they created a national citizenship that was universally inclusive in membership and massively inegalitarian in the distribution of rights and resources. The founding constitution (1824) established that the only criteria for citizenship among Brazil-born residents was freedom. Its *ius soli* citizenship was inclusive and unrestricted for all free people regardless of race or religion. Hence, there was never any doubt, unlike in the United States, that freeborn Brazilian blacks, free Indians, and freed slaves were anything but national citizens.⁵ Although an inclusive status, however, Brazilian national citizenship was not an
egalitarian one. From the beginning, inclusion mattered less than the kind and quality of included citizen. All free native-born residents may have been Brazilian national citizens, but not all citizens had legally equal and uniform rights. For example, the first republican constitution (1891) used gender and literacy to restrict political citizenship to literate male citizens, while denying education as a citizen right. It thereby eliminated the expectation that nonwhites and women would become literate and politically empowered as a norm. In legalizing such differences, the constitution denied political rights to the overwhelming majority of Brazilians who were all, nevertheless, national citizens – an enactment of proportional inequality in effect for nearly one hundred years, until 1985. In this manner, Brazil’s differentiated citizenship consolidated social inequalities and perpetuated them in other forms throughout society.

I define this kind of citizenship as differentiated because, in terms of its formal and substantive principles of organization, it uses social differences that are not the basis of national membership – primarily differences of education, property, race, gender, and occupation – to distribute different treatment to different categories of citizens. It thereby generates a gradation of special treatment rights among them, in which many rights are available only to particular kinds of citizens and exercised as the privilege of particular social categories. This paradigm of inegalitarian national citizenship is pertinacious. Brazil’s has persisted to this day under every kind of rule, thriving under monarchy, civilian and military dictatorship, and political democracy. It is a type of citizenship that is also widespread. In fact, most nations have developed differentiated citizenships at one time or another to manage social differences. Their consequences are, moreover, similar: by legalizing special treatment as a matter of course to attend to group
differences, they legitimate and reproduce inequality throughout the social system. What Young proposes is thus a token of this historical type of citizenship, albeit one she imagines restricted to compensating oppressed social groups. Considering its world history, it is difficult not to conclude that this thinking is wishful, if not deluded.

A significant part of the problem of history and ethnography in proposals like Young’s for a politics of difference also derives from their static conception of equality as a mode of sameness. If equality is a condition, a status, it is one that is produced by various kinds of operations. It results from processes whereby measures are taken and considered. The Greek meaning of *isotes* as proportionality conveys this sense of process. It emphasizes the equality that results from a determination of ratios and from their equalization. In more modern terms, this method of proportional reckoning for establishing what is fair may be called an equity consideration. It compensates “priors” (ascribed or achieved differences) with special treatment for specific purposes, resulting in the legalization of difference-based privileges and a politics of differentiated citizenship. This process of equalization contrasts with another that instead of compensating for prior differences between people equalizes them in ways that result in standard measures of treatment. Actually existing regimes of citizenship use both equality and equity as principles of equalization according to which they recognize and manage the differences they distinguish as salient among citizens and between citizens and noncitizens. Their particular combinations give them historical character. Therefore, branding specific citiizenships as “difference-neutral” or “difference-specific,” as is common in discussions of the politics of difference, is a false dichotomy.
Rather than categorizing citizenships ahistorically as one or the other, the key question is to investigate historically and ethnographically how a citizenship problematizes the equalization and the compensation of prior differences and deals with the problems of justice and politics that result. Although the management of difference is an overarching purpose of citizenship, it generates chronic conflict. Inevitably, citizens face massive amounts of differences among them. They confront each other in assessing these differences, making decisions about their significance, assembling regulations for their management, and realizing them in practice. In this process, they calculate the consequences of legalizing differences to legitimate inequality or denying them to establish standard measures. Both moves have problems. A specific right – habeas corpus – may be legislated to ignore social differences and in that way be considered difference-neutral. But the citizenship that makes it meaningful had to problematize these differences for that specific purpose to produce it. All citizenships engage in this political calculation and are generally forced to reevaluate it periodically. Thus, they must be studied historically and ethnographically to understand the politics, the decision-making processes, by which they equalize differences either to standardize or to compensate them. In the social world, equality is never merely “sameness.”

Some so-called difference-neutral citizenships have consistently generated extraordinary turmoil in structuring the differences and equalities of their citizens. Thus, American citizenship has set armies of people against each other and erected libraries of legal opinion to figure out how both to standardize and to legalize differences – for example, whether to admit free blacks as full citizens or preemptively exclude them and whether to give special treatment to veterans (on civil service exams), farmers (crop
subsidies), and minorities (admission to university). The latter questions remain passionately debated. Thus, American citizenship combines problems of equalization and differentiation in matters of both incorporation and distribution, and it struggles with the legitimacy of each combination. The equal protection clause of the U.S. Constitution does not forbid legalizing distinctions and classifications based on differences among citizens. The question Americans debate is rather in what manner. That problem generates endless conflict. The extent to which the American concept of citizen equality allows differentiation has been so divisive that the courts have created a jurisprudence of “strict scrutiny” to determine whether the legalization of a discriminatory practice (such as affirmative action for veterans and minorities) is constitutional.

By contrast, Brazil’s citizenship has managed the differences of Brazilians – no less great than those of Americans – in very different ways. While Americans fought over inclusion, Brazilians opted for universal membership. But by denying the expectation of equality in distribution, Brazilian citizenship became an entrenched regime of legalized privileges and legitimated inequalities. It is theoretically important to stress that its disabilities for the majority of Brazilians result from a differential distribution of rights, not from an explicit exclusion from citizenship itself. If the Brazilian poor were excluded, for example, it would be difficult to explain why they (or the Mexican, Indian, Egyptian, or South African poor) have a strong sense of belonging to the nation. Rather, they are citizens who are discriminated against because they are certain kinds of citizens. The analytic question to ask, therefore is what kinds and how the application of a particular type of citizenship generates their discriminations.
Thus, some citizenships – those I call differentiated – manage differences by taking for granted that they should be legalized. Through this norm, they consistently legitimate and reproduce inequality, even though, like Brazil, they may standardize social differences for national membership to create national societies of vast diversities. Probably the majority of the world’s national citizens live under such differentiated citizenships. As a result, most of them have been denied political rights, forced into segregated and often illegal conditions of residence without infrastructure, estranged from law, and funneled into servile labor.

However, even the most entrenched regimes of inegalitarian citizenship can be undone by insurgent citizen movements. The Brazilian example of the transformation of rights to which I now turn shows this to be the case. It shows that in the peripheries of Brazilian cities, since the 1970s, working class residents have formulated an insurgent citizenship that destabilizes the entrenched. The foundations of this insurgence are found in the conditions urban life in these peripheries, particularly the hardships of illegal residence, house building, and land conflict. These condition became both the context and substance of a new urban citizenship that mobilized residents. Contrary to so much 19th and 20th century social theory about the working classes, residents became new kinds of citizens not primarily through the struggles of labor but through those of the city.

This incitement happened in the realm of everyday and domestic life taking shape around the construction of a home. It began with the struggle for the right to have a daily life in the city minimally bearable, a life with a minimum of dignity. Accordingly, its demands for a new formulation of citizenship got conceived in terms of housing, property, plumbing, daycare, security, and other aspects of residential life. Its leaders
were the “barely citizens” of the entrenched regime: women, manual laborers, squatters, the functionally literate, immigrants and, above all, those in families with a precarious stake in residential property, with a legal or illegal toehold to a houselot somewhere far from elite centers. These are the agents who, in the process of building and defending their residential spaces, not only constructed a vast new city but, on that basis, also proposed a city with a different order of citizenship.

The analysis of rights that follows is thus about the persistence of inequality and the possibilities of change. However, it presents no linear progression. Rather, it shows that the dominant historical formulations of citizenship both produce and limit possible counter-formulations. As a result, different regimes of rights, both insurgent and entrenched, remain conjoined.

**Rights**

“Why do you think you have rights?” I asked a pioneering resident of one neighborhood in São Paulo’s urban peripheries, a retired textile worker and former neighborhood association president who had moved there in the late 1960s, at the beginning, when it had no infrastructure at all, when it was still “bush”:

Well, one part is just what we were saying. I am an honest person, thank God. I don’t steal from anyone. I am a worker. I fulfill my obligations at home, with my family. I pay my taxes. But today I think the following: I have rights because the *Constituinte* [i.e., Constitution] gives me these rights. But I have to run after my rights. I have to look for them. Because if I don’t, they won’t fall from the sky. Only rain falls from the sky. You can live here fifty years. You can have your things. But if you don’t run after your rights, how are you going make them happen?
The public spheres of citizenship that emerged in Brazilian peripheries forced the state to respond to their new urban conditions by recognizing new kinds and sources of citizen rights. These rights concerned issues of both substance and scope that the state’s existing laws and institutions had generally neglected. In that sense, they developed on the margins of the established assumptions of governance: they addressed the new collective and personal spaces of daily life among the poor in the urban peripheries; they concerned women and children as well as men; they established that the state had an obligation to provide services. Without doubt, the greatest historical innovation of these rights is that they initiate a reconceptualization: their advocates began to conceive of them as rights of general citizenship (how this is defined, we examine later) rather than of specifically differentiated categories of citizens, such as registered worker. In these ways, the emergence of new participatory publics in the peripheries not only expanded substantive citizenship to new social bases. It also created new understandings of rights as something other than privilege.

Yet, as the resident’s statement above indicates, this foundation of rights remains a mix of new and old formulations. When I ask residents why they think they have rights and on what basis, they consistently invoke an amalgam of three conceptions. They speak about rights as privileges of specific moral and social categories (“I am honest; I am a worker”), as deriving from their stakes in the city (“I pay my taxes,” “I built my home and helped build this neighborhood”), and as written in the Constitution (“the Constituinte gives me rights”). In other words, they present a hybrid of what I call special treatment rights, contributor rights, and text-based rights.
This typology has a temporal development, following the participatory strategies residents deploy in their housing and land conflicts, in which the understand of both the eligibility for rights and their exercise changes. Thus, text-based rights appear only after the Constitutional Assembly (1986) and remain mixed with the other two in discussion. This is not to say that people never referred to earlier constitutions and laws. But when a few occasionally did, it was to complain that, with the exception of labor rights, they did not apply to them. Furthermore, people use the same concept in these three formulations to describe the realization of rights. They speak of “looking for your rights” or “running after them,” a notion of agency. However, doing so generally means something different in each case, with a different outcome.

The conceptualization of right as the privilege of certain kinds of citizens provides the foundation on which all systems of differentiated citizenship thrive. As long as it prevails, citizenship remains, overwhelmingly, an entrenched means for distributing and legitimating inequality. As it is a foundational concept for citizen differentiation, I discuss its conversion of right into privilege and duty into favor in greater detail.

Rights as Privilege

Residents use the category “rights” in three modalities. It may denote a specific right (direito de), a condition of having rights (ter direitos), and a condition of being right (ser direito). The last refers to a moral condition of correctness: having rights depends on being right and being right is a matter of achieving certain statuses, in Brazil basically those of “a good worker, family provider, and honest person.” Those who have citizen rights deserve them because they are morally good and socially correct in these publicly recognized terms. Similarly, those who fail to be morally right – criminals, squatters,
deviants … an expandable category to be sure – deserve to be denied rights. By extension, the logic of this special treatment citizenship also produces the a priori judgment that those who lack rights – the poor, for example – must be assumed to have failed morally. Both negative judgments allow some Brazilian citizens to assume that other Brazilian citizens lack rights in relation to themselves and therefore that they have no duty to them if they consider them marginals in one way or another.

Thus, access to rights in this conceptualization of special treatment depends on two conditions. On the one hand, people think they have rights because they hold statuses recognized and legalized by the state. On the other, the state only bestows these rights on the right people. Laws establish both conditions. For example, the 1937 Constitution created a perduring construct of social marginality and exclusion by conferring special rights on those with registered formal sector jobs and discriminating against those who are unemployed or work only in the informal economy. However, having or not having rights is not only a determination of law. Rather, legal rights may be available to all workers in theory (as Vargas’s populism proposed), but they can only be acquired and realized by those who deserve them in terms of specific personal attributes (e.g., whether they became literate or registered in a profession). For most residents of the urban peripheries, therefore, the rights exclusions of differentiated citizenship often appear to result less from legal and political causes than from personal failings. This depoliticization perpetuates the legitimacy of exclusionary citizenship rights by blaming the excluded for not having them.

It also perpetuates by assigning to the privileged the powers to determine, through their recognition, those who have the right statuses to deserve rights. As these rights can
only be acquired by the right persons, people who need to use them “have to chase after their rights.” In the context of special treatment citizenship, the ubiquitous phrase “look for your rights” means not only knowing what rights adhere to a particular status. Above all, it means having to prove to the proper authorities that you possess the right status to deserve its rights. Such proof is not only a matter of knowing what rights people have – twenty-five years ago a knowledge not easily obtained and typically requiring the help of someone in the know (a “good boss,” a “special bureaucrat”). It depends much more on proving to the authorities who provide the benefits of rights that the petitioner is worthy, that is, not a “marginal” of any sort. This proof requires having correct paperwork – clear police report, signed work contract, voter registration card, house payment receipts, tax records, and so forth – because only honest persons and steady workers are assumed to have such records.

Fundamentally, however, this proof requires that the correct status and paperwork of the petitioner be acknowledged by the provider, typically a bureaucrat, official, or employer. This personal acknowledgment is required not only because special treatment rights always depend on the identification of subsets of statuses within the general status of citizen. More significant, it is necessary because the application of law in Brazil is rarely routine or certain. Rather, it must be made to apply through the personal intervention of someone in a position to acknowledge the good standing and just deserve of the petitioner. The need for such special pleading exacerbates the struggle of the poor to run after their rights. It always puts them on the defensive, forces them to find the right person to intercede on their behalf, renders uncertain their dignity and respect, and makes them acknowledge their inferiority. Consequently, proving one’s worth to find
one’s rights is always frustrating and often impossible for them. It is therefore not surprising that being “treated like trash” is a reason I frequently hear to explain why people quit pursuing their rights.

The personalization of rights means that their exercise depends on the discretion, not the duty, of someone in a position of power to recognize the personal merit of the petitioner and grant access to the right. This discretionary power converts rights into privileges, in the sense that it becomes a privilege to obtain what is by law a right. A right creates a duty when it makes someone vulnerable to a claimant’s legal powers. In that sense it empowers the claimant. When these relations depend on personal intervention, discretion, and mediation, they become legally subverted. In Hohfeldian (1978) terms, the acknowledger now has the power to decide when rights apply and yet no duty to make them available. He is not liable to the claimant’s legal power and has thus gained an immunity. In turn, the claimant is vulnerable to the exercise of that power, having no right to determine its course. He therefore suffers a disability that can only be overcome by personal intercession. When the latter occurs, the claimant exercises his right only as the favor of the person who grants it.

In a system of citizenship rights thus based on the immunity of some and the disability of others, rights become relations of privilege between some who act with an absence of duty to others who, in turn, have no power to enforce claims. The consequences are profound. The disprivileged lack rights and are vulnerable to the power of others. The privileged experience citizenship as a power that frees them from the claims of others, leaving them unconstrained by legal duty and exempt from legal
responsibility. These personalized relations of privilege and disprivilege constitute the core relations of power that define differentiated citizenship.

Thus, when I first went to Brazil in 1980, I rarely heard the words citizen or citizenship in everyday conversation because it was not an especially meaningful category for rights. Certainly, people spoke about having particular rights. But they did so without an apparent connection with citizenship. Rights seemed to exist apart, conferred by statuses other than citizen, such as worker. When I noticed the use of “citizen” (cidadão), it mostly had a different sense among Brazilians of all classes. It meant someone with whom the speaker had no relation of any significance, an anonymous other, a john doe – a person, in fact, without rights. When I asked directly, people described themselves as Brazilian citizens and suggested how their citizenship (cidadania) had changed under Brazil’s military dictatorship (1964-85). Occasionally in our conversations, people also used the words as a status of respect, for example, to complain that they were “not being treated as citizens but as marginals” by public officials. But at the same time, among themselves, they generally used “citizen” to refer to the insignificant existence of someone in the world, usually in an unfortunate or devalued circumstance. People said “that guy is a cidadão qualquer” to mean “a nobody.” They said it to make clear that the person was not family, friend, neighbor, acquaintance, colleague, competitor, or anyone else with a familiar identity; to establish, in short, not only the absence of a personal relation but also the rejection of a commensurable one that would entail social norms applied in common. “Citizen” indicated distance, anonymity, and uncommon ground.
The new urban citizenships that have arisen in the peripheries confront this core formulation of rights as privilege and duty as favor with new and insurgent conceptualizations of rights. In Brazil, two emerged as residents in the urban peripheries developed new participatory spheres of citizenship. The coexistence of these conceptions creates a mixed and at times unstable foundation for the development of citizenship. In what follows, I give an account of their emergence based on my ethnography. However, I know of no thorough history of the intellectual sources that influenced the triumph of rights-based legitimations in Brazil. Such a history would surely consider the global rise in the 1970s of rights-discourse as the central component of democratization and, somewhat later, the internationally-sponsored promotion of human rights directed at nations like Brazil under dictatorship. Additionally, it would investigate the influence of certain global currents on Brazilian leftist intellectuals with grassroots affiliations, particularly of the Workers’ Party (PT), and on intellectuals of the opposition to dictatorship generally. Important in this regard is the work of Antonio Gramsci on the Brazilian legitimation of democracy over revolution and the insistence that democracy must transform society and culture and not just the political system (see Dagnino 1998) – though the Left in Brazil habitually distrusted both rights and citizenship as bourgeois and “egoistic” and had little to say about the foundation of rights in Marxist thought.

Of greater importance for the “rights turn” in the urban social movements was the influence of Henri Lefebvre’s (1968) work on right to the city and everyday life as the arena of political struggle. Also significant was Manuel Castells’ (1972, 1983) on the urban question and grassroots movements, and David Harvey’s (1973) on social justice and the city – even though both Castells and Harvey were initially critical of Lefebvre’s
right to the city arguments. These ideas captured the imaginations of planners, architects, lawyers, and social scientists who promoted the urban social movements and who eventually became leaders of NGOs and local government. I would, moreover, point to the significance of classically liberal arguments for the rule of law and for the respect of rights to property and political citizenship. These also framed the broad coalition against dictatorship and helped to legitimate rights as the currency of a project of democratization. However influential these intellectual sources may have been, the development of new understandings of rights that ensued in Brazil required masses of urban Brazilians to invent them for their own lives and put them into practice.

**Contributor Rights**

The first new conceptualization of rights to emerge refers to what I call contributor or stakeholder rights. Whereas the rights that workers “paid for” under the old regime of citizenship were overwhelmingly labor rights, contributor rights constitute a different set, of new substance and ethical significance. They concern the rights to the city that were fundamental in mobilizing the new practices of citizen participation in the peripheries – rights to public services, infrastructure, and residence that pertain to urban life as a condition of dwelling. I call them contributor rights because residents advance them as legitimate claims that they think they deserve on the basis of their contributions to the city itself – to its construction through their building of homes and neighborhoods, to city government through their payment of consumption and employment taxes, and to the city’s economy through their consumption. They are stakeholder rights because residents ground their legitimacy in the making and appropriation of the city through these means.
Contributor/stakeholder rights are, therefore, based on three identities unprecedented for most of the urban poor: property owner, tax payer, and mass consumer. These identities engage an agency of self-determination entirely different from that embedded in rights-as-privilege and state-supplied labor rights. Yet, as not all Brazilians share these statuses, they also ambiguously perpetuate some elements of special treatment citizenship.

The fundamental attribute organizing the bundle of contributor rights is that of homeownership, especially referring to the ownership (however contested) of a house lot. For most people, it motivates both their claims and their duties in relation to the city. For most, their identities as tax payers and consumers also develop around the requisites of residential property, as they pay taxes and fees for their residential lots, buildings, and services and as much of their consumption consists in purchases for their homes. As the rate of homeownership in São Paulo’s peripheries is remarkably high, varying between 70 and 90%, the identity of homeowner is predominant. Yet, with regard to landed property, ownership excludes squatters and renters. Although they account for a comparatively small number (10% on average), the distinction between those who have some claim to own their residential lots and those who do not is sharp and often antagonistic among the residents.

Nevertheless, the sense of having stakes in the municipality is not confined to lot owners in the peripheries. Squatters often own their homes, many of which are well furnished and equipped. Moreover, most residents pay a variety of service fees and taxes as consumers, including those for utilities, retail sales, and industrial production. Moreover, some pay income tax. Thus, although the identity of stakeholder is without
doubt strongest among those who have ownership claims to real property, residents very
generally view homeownership, tax paying, and consumption as evidence of their stakes
in the city. This conviction not only legitimates their demands for the right to the city. It
also gives residents the sense that they are citizens of the city, for many a first substantive
understanding of their citizenship and its agency. “If he pays taxes, he is a citizen and
must be respected wherever he goes” is an assertion I hear routinely among residents of
the urban peripheries when I ask why they have rights.

In the stakeholder conceptualization of rights, the “municitizen” (a revealing
phrase I sometimes hear) merits respect not because he or she is a good honest worker or
family provider. He does not have to prove some personal moral attribute individually to
an official or have it acknowledged by the state to “find his rights.” Rather, urban
citizens find their rights by demanding them. They insist without relying on the quid pro
quo of deference and favor precisely as “municitizens,” citizens of the municipality.

This change in attitude results from the conviction that urban citizens have earned
their rights and respect by building the city, paying its bills, and consuming its products.
As a result, they demand their rights on the basis of self-determination, accomplishment,
and earned independence. Contributor rights thus promote a citizenship based on an
entirely different agency from privilege or state recognition. Whereas the latter are
fundamentally other-determined, this agency of urban citizenship is “autoconstructed” –
“autoconstruction” (autoconstrução) being the term they use to describe their house
building. Thus, as city-builders, tax payers, and consumers, these urban citizens have
inverted the real-stakes argument that 19th and 20th century liberals used to exclude
Brazil’s poor from citizenship rights. Instead, they use that very argument, turned inside out, to justify their rights to full citizenship.

Text-Based Rights

On occasion, I have seen people at neighborhood meetings pull a concise edition of the Citizen Constitution from their back pocket and purse to make a point. More frequently, I hear them refer to what it “says in the Constitution.” This reference to the constitution and the legal codes deriving from it secures the second new understanding of rights to emerge in the urban peripheries. It is based on textual knowledge. To residents, text-based rights are evident, clear, accessible, and above-all knowable precisely because they are written down for all to see. People access them in three ways. They read them in inexpensive paperback editions of the 1988 Constitution available at any newsstand. Some consult them on-line. Many utilize new government institutions also associated with innovations in the Constitution. These innovations aim to democratize access to and information about rights as a matter of policy and to make them work for citizens by simplifying legal bureaucracy. Hence, residents frequent Small Claims Courts, Poupa Tempo (literally, Save Time), ProCon (consumer rights bureau), and various departments of public administration that are now more numerous and accessible in the peripheries. As one resident put it, these institutions constitute “a source for you to go to and get a return for your effort; today, you can get a return.” It is no small historical irony that this confidence in text-based rights has turned the popular classes of São Paulo into enthusiastic positivists, not so distant from those of the “Order and Progress” positivism that some of Brazil’s 19th century nation-builders venerated.
The keystone of this new foundation of rights is access to knowledge. If, in the past, it was almost impossible for a poor person to know her rights without the intercession of a superior, today’s access to this information is practically self-evident. It is common in the contemporary peripheries to hear people speak about law in terms of researching its texts. If they have a problem, they search for the legal text that establishes their rights. Access to text-based knowledge has given the urban popular classes an unprecedented confidence in their struggles to achieve citizen rights and respect. Coupled with their sense of being stakeholders, it provides an effective means to challenge the culture of deference that dominated the practices of differentiated citizenship.

This sense of security in knowledge does not mean that residents do not tremble before the legal system that has historically humiliated them. Yet the access to text-based law and the sense of empowerment it brings have fundamentally changed the meaning of “look for your rights” for working-class citizens. Today, they not only emphatically say that “a person has the right to look for his rights,” echoing precisely Hannah Arendt’s (1968: 296-302) notion of justice. The important point, they overwhelming tell me, is that “if you look today, you always find them.” They are certain of this outcome because the rights they seek are accessible, demonstrable, tangible, look-and-point at, written text. These battle-seasoned residents know that knowing rights does not insure getting justice. But as a director of one neighborhood residents’ association observed, “without knowing the laws, one cannot know justice.” Moreover, the justice they seek is not only that of social rights and labor law. Text-based rights now refer to other kinds, including
property, consumer, personal, human, and ecological rights, including the civil rights that have been a particularly problematic aspect of Brazilian citizenship.

In large measure, this momentous change depends on citizens conceiving of their citizenship as a means to establish a common ground and standard measure among them, not the proportional inequality of differentiated citizenship. In turn, this commensurability depends on their sense that their status as citizen has an unconditional, equal worth in rights, one not based on individual market value or on any other status. In that evaluation, rights become egalitarian. There is much to suggest that the deep involvement of the urban popular classes with drafting the 1988 Citizens’ Constitution and its text-based principles created conditions for that kind of assessment. Even though the Constitution contains many provisions for special treatment, residents overwhelmingly understand it as a charter that establishes rights of equal treatment.

Their participation in its construction was grounded in their insistence that the new charter include as a foundational source of social rights and justice their experiences as the modern urban residents of Brazil, as its urban citizens. This insistence resulted in the submission of 122 “popular amendments” to the constitutional assembly (1986-88), based on over 12 million signatures gathered by these organized urban citizens. These signatures represented approximately 12% of the electorate, an enormous portion considering the extensive formal requirements necessary for submission.

A new agent of Brazilian citizenship thus emerges. It is the anonymous citizen, a condition that has virtually no utility in the regime of differentiated citizenship, one who is poor yet civic. These new citizens among the urban working classes constructed a new foundation for rights in the life of the city and in the text of the constitution. It confronts
the old regime by advancing equal treatment as the outcome of citizenship practices. Coupled with new civic participation, the new understandings of rights sustain the growth of significant measures of egalitarian citizenship. The equality of inclusion it demands is insurgent, even though it elbows into the existing system rather than insisting on replacing it. It is insurgent because the right-to-rights that citizens claim is not minimal. It already assumes the totality of possible rights for those who have historically been denied the exercise of most rights. Hence the recognition of these citizens as right-to-rights bearing members creates a radical opportunity to remake Brazilian citizenship for a democratic society.

**Entanglements and Contradictions**

The development of citizenship in the Brazilian urban peripheries remains, nevertheless, contradictory: residents support anonymous citizen equality while also holding that various kinds of social inequality justify the legalization of special treatment. I want to be absolutely clear that, in theory, I am not opposed to equity considerations in developing special treatment rights as a mean to address significant social issues. But I would insist on two points. One is that neither equity nor equality be taken-for-granted or normalized responses. The qualifications and distributions of standard-measure or special-measure rights must be debated so that the consequences and pitfalls of each strategy become apparent. The other is that such debates be historicized, that the issue in question be problematized in terms of its historical and ethnographic frame of citizenship.

Problematizing the Brazilian case in these terms demonstrates that when a citizenship of special treatment becomes the norm, it creates relations of immunity and disability throughout society that entail privilege and disempowerment in the mediation
of rights. In such a system, the “search for rights” engages the poor in a perverse exercise of citizenship which those with immunity and privilege bypass: it not only perpetuates but also legitimates the distribution of inequality, because it gets individuals to defend special treatment for themselves and disqualification for others as the means to confirm their particular worthiness and attain their hard-won recognition, respect, and recompense. In this exchange, it induces the poor to accept the legitimacy of citizenship’s distribution of unequal treatment as a just means to compensate for, if not reward, pre-existing inequalities. It gets them, in other words, to approve compensating inequalities of privilege by legalizing more privilege.

When I discussed questions of privilege and right in the neighborhoods, I found that most people took it for granted that unequal special treatment was a just way to offset pre-existing inequalities, especially among the poor. However, some also observed critically that this compensatory logic legitimates the rights of elites to special treatment. They understood that as a general social principle, compensatory privilege also justifies unequal treatment for the pre-existing measures of elite inequality (i.e., their superiority), even though that may amount to legalizing more privilege. Thus, one resident commented that “legally, the rich prisoner is treated unequally in prison … if a person from the periphery is jailed, see if anyone lets him have a television in there or a private cell as happened with that banker who was jailed.”

Nevertheless, this same resident maintains a contradictory position. After condemning this scheme of justice for perpetuating elite privilege, he uses its logic to justify special treatment rights to compensate for inequalities among his own class. I found this contradiction among many residents. It was typically expressed, for example,
by both men and women with regard to the special rights for women to retire five years earlier than men I discussed earlier. Here is a sample response:

I think it is just. Because if you think about it, a housewife who has a job outside works double. When I arrive home from work, what do I do? I take a shower, watch television, sit on the sofa doing whatever; or I go to the bar and have a beer. What does the woman do? When she arrives from work, she makes dinner, takes care of the children, cleans the house, arranges the kitchen, washes and irons clothes. She works about double my work, if you analyze the question. Therefore, I think that she should have even more time [than five years] to retire before a man, because there still exists a lot of discrimination in the work of women.

Like nearly every man and woman who discussed the issue with me, this resident does not argue for changing the social relations of work and gender, let alone his own behavior, as the means to redress this discrimination. Rather, he wants to keep the laws discriminatory by allowing a compensatory legal privilege that rewards women for their extra work but leaves the causes of inequality untouched.

Most residents held similarly mixed or contradictory opinions with regard to various kinds of rights. They gave some version of universal constitutional equality, as in “the Constitution says that all are equal; it doesn’t matter if you are white, black, or Japanese. If you are in Brazil, you are equal.” Yet most accepted affirmative action for blacks in education, separate courts for military police, and both special compensations and restrictions for women (e.g., paid maternity leave, early retirement, and off-limit jobs). Although two members of the residents’ association in one neighborhood who strongly identify with being black were against affirmative action in any form, most
people justified it by arguing that “if there weren’t a quota, the black would never enter university.”

Many argued, furthermore, that illiterates should not have political rights because they lacked independence and would not know how to vote; that children should have special rights but really problematic ones could lose them by becoming wards; and that “even though criminals are citizens, they don’t deserve rights.” There was, in addition, general agreement that “honest people, good workers, and tax payers have to have rights” and that “criminals, layabouts, and squatters do not.” The same resident who says in one breath that “today, for me even marginals are citizens,” says in another that “we consider ourselves citizens because we are honest persons.” When we discussed the many social inequalities that exist in Brazil, many affecting them directly, none had a problem legalizing new inequalities in the form of special treatment rights as a means to redress existing inequalities.

These pioneers of an insurgent and participatory urban citizenship thus continue to perpetuate key elements of the regime of differentiated citizenship that discriminates against them and that they oppose in many ways. They generally accept without extended reflection the principle that existing social inequality justifies further unequal treatment as compensation. In doing so, they continue to legitimate the reproduction of more inequality and privilege throughout the social system. For them, the equity solution that compensates remains a norm. The difference is that it is no longer the overwhelming norm of Brazilian citizenship.
Notes

1 I would like to thank Julia Eckert for her encouragement in developing this essay for the conference that she and Lale Yalçûn-Heckmann organized on “Re-thinking Citizenship” at the Max Planck Institute for Social Anthropology in 2008. The essay draws on my book, *Insurgent Citizenship* (2008). A fuller account and supporting data for many of the arguments can be found there.

2 For example, see recent studies of urban India for the change from favor to rights and from clientalism to citizenship in the mobilizations of both lower and middle-class residents; e.g. Anjaria 2009, Bhan 2009, and Mukhija 2003. This sort of change happened several decades earlier in urban Latin America.

3 In his famous oration to the law students of the class of 1920 at the University of São Paulo, Barbosa (1921: 26) restates his maxim in terms that emphasize the notion of allocating shares in a regime of proportional inequality: “The rule of equality consists in nothing other than distributing shares unequally to the unequal according to the measure by which they are unequal. In this social inequality, proportioned to natural inequality, one finds the true law of equality.” See Vlastos (1984) for a study of the Greek foundations of this concept of differentiated justice.

4 Until 1985, every Brazilian constitution since the founding of the Republic stipulated that illiterate citizens could not register to vote and that only registered electors could vote. Article 295 of the Code of Penal Procedure in effect from 1916 to 2009 maintains the right of Brazilians who have completed a university degree of any kind to an individual (and typically better-appointed) jail cell if arrested. An expert in the Brazilian prison system I consulted thought that the date of the original statute giving this article its current form was around 1970. Although I verified later that this was not the case, the
expert added that “before then, the right was customary as there was simply no need to state the obvious.”

5 Brazilian society was and remains racist but not, as in the United States, in terms of formal national citizenship. For more on race and citizenship, see my 2008 book.

6 Furthermore, the equalities of citizenship always produce new inequalities as well as the means to contest them. Thus the equal rights of citizens to associate generate organizations of unequal capacities and powers. As citizens advance their interests, these groups are set against each other in the arena of citizenship. In this way, citizen equality becomes the foundation on which new inequality is built. This contradiction is not “the ‘paradox of democracy’ we need to solve now,” as Young claims, because it is internal and normal to the dynamic of democratic citizenship. It is, moreover, also the means by which new inequalities may be challenged by new citizen organization. Of course, there are no guarantees, and an unorganized citizenry is easily dominated. But democratic citizenship is always a risk in this regard.

7 See, for example, Kettner 1978, Smith 1997, Shklar 1991 for studies of American citizenship that focus on conflicts over the regulation of social differences and equalities.

8 I cannot discuss here the fundamental issues of illegality in the housing and settlement of Brazil generally (by both rich and poor) or of violent cycles of illegal land occupations and evictions in cities that mobilized residents to form new kinds of citizen associations. I must refer the reader to my 2008 book.
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