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Part 1

Urban frameworks

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1 Introduction

The development of institutions like property rights . . . was critical to the rise of the West.

F. Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (Harmondsworth 1995), 223.

The construction of the state in nineteenth-century Britain relied heavily on the cities.¹ It was there that intervention in housing, health and public utilities and social policy generally first was tested once it was deemed necessary to ameliorate the adverse human consequences of laissez-faire capitalism. To implement social and environmental policies town councils formed boards and created commissioners to oversee the delivery of local services: gas, water, tramways and electrical power generation had their commissioners; sewers, cemeteries and slaughterhouses possessed their executives; and the civilising missions of libraries and museums, galleries and schools were administered by municipal agencies too.² This civic empire was supervised by a new breed of Victorian barons, the town clerks and city engineers, whose fiefdoms were extensive by the end of the nineteenth century. Their administrative tentacles were everywhere.

This dawn to dusk version of enlarged civic responsibilities harnessed local pride and preserved a strong measure of local autonomy yet bound, though did not shackle, the interests of the municipality to those of the state. Considerable autonomy was gained by newly constituted local councils from the 1830s in return for a degree of administrative conformity.³ As a result, locally delivered services were decided locally as first middle-class and, much later, working-class candidates were elected and appointed to the executive machinery of boards of governors and

¹ A. Sutcliffe, 'In pursuit of the urban variable', in D. Fraser and A. Sutcliffe, eds., *The Pursuit of Urban History* (London 1983), 234–63.

² W. H. Fraser, 'Municipal socialism and social policy', in R. J. Morris and R. Rodger, eds., *The Victorian City: A Reader in British Urban History, 1820–1914* (Harlow 1993), 258–80; D. Fraser, *Power and Authority in the Victorian City* (Oxford 1979), 149–73.

³ G. Morton, *Unionist Nationalism: Governing Urban Scotland 1830–1860* (East Linton 1999).

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commissioners. It was a Victorian version of a 'stakeholder' society in which participation meant compliance with the decision-making process and policy goals.

The present study moves away decisively from public policy and the origins of 'municipal socialism' to put considerable emphasis on the legal and institutional structures within which urban development took place. Trusts, educational endowments and charities provided resources and leadership in the city and so contributed to its identity. These institutions operated in a time frame which was often two or three generations, centuries in some cases, and so provided a stability and strategic continuity within the social and political structure of towns and cities generally, and in Edinburgh particularly. Nor were institutions just a nineteenth-century counterweight of conservatism in a rapidly changing world. They were active, innovative and responsive economic agencies in their own right with resources which were often substantial, greater occasionally than even the town council itself.

So to presume that the family firm or joint stock company was the normal form of business development and wealth creation in Britain is to overlook the contribution of institutions to the economic climate of a city, to its infrastructure, to the social order, personal networks and the basis of trust which underpinned commercial activity. This is not unlike another line of argument, that clubs, societies and associations produced overlapping networks, formal and informal, by which influential individuals forged alliances in business and politics, and in so doing shaped the identity of the town or city. In church and chapel, at the 'Lit and Phil' or the subscription concert, different sub-sets of the middle class established cordial working relationships.⁴ Pluralism flourished in the late eighteenth- and early nineteenth-century city, and institutional and trust-based relationships were instrumental in this.

The present study of trusts and endowments emphasises a consensual approach to social and economic relations rather than a conflictual one as previously embedded in class-based studies of towns and cities organised around tensions between capital and labour.⁵ This is not to deny conflict,

⁴ R. J. Morris, 'Clubs, societies and associations', in F. M. L. Thompson, ed., *The Cambridge Social History of Britain 1750–1950* (Cambridge 1990), vol. III, 395–443; J. Barry, 'Bourgeois collectivism? Urban association and the middling sort', in J. Barry and C. Brooks, eds., *The Middling Sort of People: Culture, Society and Politics in England 1550–1800* (London 1994), 64–112.

⁵ See, for example, J. Foster, *Class Struggle and the Industrial Revolution: Early English Capitalism in Three English Towns* (London 1974); P. Joyce, *Work, Society and Politics: The Culture of the Factory in Later Victorian England* (London 1980); R. Price, *Masters, Unions and Men: Work Control in Building and the Rise of Labour 1830–1914* (Cambridge 1980); T. Koditschek, *Class Formation and Urban Industrial Society: Bradford 1750–1850* (Cambridge 1990).

nor to downplay market forces, nor to reject analyses of municipal intervention as public reactions to unacceptable private actions. It is to offer a corrective to the significant omission of trust-based institutions such as incorporations, charities and livery companies which were present throughout urban Britain during the nineteenth century.⁶

Institutions contributed significantly to the character of towns and cities because they shielded ‘an unusually stable and diverse civil society from the arrogance of the politicians in temporary command of the state’.⁷ Often, these institutions embodied values and followed principles at variance with market economics, and governors, trustees and commissioners, together with councillors, provided a countervailing ideology to the centralising tendency of Westminster. A British version of checks and balances existed in the nineteenth century, therefore, through the intersection of institutional, private enterprise and municipal or public agendas. The effect of this can be more clearly understood in our own recent experience, the 1980s and 1990s, when the decommissioning of boards and consultative bodies, and their replacement by unelected and unaccountable agencies, enabled a small group of powerful ministers to determine national policy.⁸ An ‘elective dictatorship’ consciously diminished the checks and balances on its authority. This ‘hollowing out’ of the state by dismantling the institutional fabric of society was the converse of the nineteenth-century process by which the state was assembled through the creation of public bodies, institutions and pressure groups.

Pluralism and social cohesion in the city were powerfully influenced by the scale and nature of the institutions within it. A temporal horizon of generations and adherence to a set of principles established in a will or trust deed produced a sense of direction and a continuity of purpose which mediated changes in, say, the work practices and family structures associated with industrial change at the beginning of the nineteenth century. Whatever social and economic wreckage was wrought by war and technological change, trusts and charities resolutely pursued their benefactors’ intentions. In a changeable world they were unchanging in their central characteristics. This was an externality in which all who inhabited the city participated and precisely why ‘the development of

⁶ M. Gorsky, *Patterns of Philanthropy: Charity and Society in Nineteenth-Century Bristol* (Woodbridge 1999); S. Yeo, ‘Working class association, private capital, welfare and the state in the late-nineteenth and twentieth centuries’, in N. Parry *et al.*, eds., *Social Work, Welfare and the State* (London 1979); R. J. Morris, ‘Voluntary societies and British urban elites 1780–1850: an analysis’, *Historical Journal*, 26, 1983, 95–118.

⁷ D. Marquand, ‘Commentary: after Tory Jacobinism’, *Political Quarterly*, 65, 1994, 125.

⁸ R. A. W. Rhodes, ‘Hollowing out the state: the changing nature of public service in Britain’, *Political Quarterly*, 65, 1994, 138–51.

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institutions like property rights, contract, and a stable system of commercial law was critical to the rise of the West'.⁹

These long-term horizons and a steadfast adherence to the terms of the will ensured that institutions such as trusts and charities contributed to the climate of gradualism and tolerance in nineteenth-century Britain which enabled liberal political institutions to flourish.¹⁰ Yet, conversely, the very persistence 'of a large number of very rich intermediate organizations [during] industrialization', it has been argued, 'balkanized British society' in the twentieth century since the same longevity associated with trusts, charities, clubs and churches also perpetuated fissures between different social classes and interest groups.¹¹

Institutions were administered by trustees to execute the wishes of an individual. The trust was established to sustain the lifestyle of family members in the form of a private fund administered for their benefit, or, more expansively, for the benefit of the community, however defined. Procedures were developed, rules drawn up; minutes and accounts were presented and decisions ratified.¹² In short, institutions were the progenitors of bureaucracy and were based on defined jurisdictions and regulations. They were rule bound, as examples of trust administration in Edinburgh show.¹³ Institutions were founded on order and procedure, epitomised rationality and ushered in an age of municipal administration based on the same principles. Bureaucracy in the twentieth century assumed a pejorative context synonymous with the inflexible application of procedures, yet in the nineteenth century this was its principal virtue, replacing trust which occurred naturally in kinship and family relationships with a framework of regulations by which strangers could transact business.¹⁴ Indeed, Edinburgh trustees so sheltered behind procedures that when, or if, they dared contemplate some deviation then they sought to indemnify themselves against actions in court should they be considered subsequently to have transgressed their powers and duties. Individualism was subordinated to the will of the trust.¹⁵

The concepts of public service and civic duty, therefore, which permeated the town halls of Victorian Britain were carried over from the

⁹ F. Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (Harmondsworth 1995), 223.

¹⁰ M. J. Wiener, *English Culture and the Decline of the Industrial Spirit* (Cambridge 1981), 13–14. ¹¹ Fukuyama, *Trust*, 251.

¹² As an example of manuals governing institutions see J. B. Wardhaugh, *Trust Law and Accounts* (Edinburgh 1928, 3rd edn). ¹³ See chapter 4.

¹⁴ B. A. Mistral, *Trust in Modern Societies: The Search for the Bases of Social Order* (Cambridge 1996), 65–88.

¹⁵ ECA Merchant Company, James Gillespie's Hospital, Box, 3/8, Memorial as to the Feuing of Colinton Estate 1877, f. 19.

principles by which institutions such as trusts and charities were governed. In Edinburgh, where professional employment was more than double the United Kingdom average and triple that in Glasgow, the code of trust was deeply embedded. From the 1850s, the town clerk's administrative tentacles reached ever further – voter registration, council housing, weights and measures, garden allotments, street lighting, reformatories, regulation of diseased animals, in addition to the responsibilities for sewers, slums and sanitation with which the councils first became involved – yet it is rare to encounter cases of malpractice concerning the award of municipal contracts, stealing or other misdemeanours. Probity in public service owed much to standards set, and enforceable in law, for trustees, governors and officials generally.

Trusts were designed to transmit wealth across the generations; trustees were obligated to administer the assets of the trust for the beneficiaries. Whether as a private trust set up by a father for his spouse and dependants, or as an endowed school, hospital or relief fund for the benefit of the public according to specified criteria, then the procedures and priorities were virtually identical. Property investments were central to trustees' objectives either in the form of land and buildings (heritable property) from which rents were obtained or, in Scotland, in the form of 'feu-duties', an annual payment created by and payable to the landowner or feudal superior. Alternatively, these rights to annual feu-duties (heritable securities) could be sold for a lump sum and the proceeds reinvested in other assets to generate an income from which to pay annuitants under the terms of the will.

The creation of successive tiers of feu-duties by a process of sub-infeudation meant trusts and institutions such as the Church of Scotland were active participants in financial markets, judging when to trade heritable securities and influencing, as a result, the flow of capital available to the building industry. In addition to property, gilts, municipal bonds, bank stocks including some foreign banks, debentures and certain classes of railway shares were admissible investment opportunities for trustees and institutional treasurers. In short, property investment and development was far from being a self-contained sector and switching between different types of investments had far-reaching consequences for the property sector as it had for a wide range of industries and services.

As property investments were an active area of trusts' activities then the detailed study of these contributes to an understanding of the workings of both the trusts and the property market more generally. In Edinburgh, trusts were particularly influential and an analysis of their activities enables the motives and methods of major institutions and small private trusts alike to be unravelled. Over two-fifths of Edinburgh landowners

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with more than a 1 acre holding were trusts and institutions. Six of the seven largest landowners in Edinburgh in 1872 were institutions of one kind or another – they were the Crown (437 acres), George Heriot’s Hospital (180), Edinburgh town council (167), Charles Rocheid’s trustees (96), Sir William Fettes’ trustees (92) and Alexander Learmonth’s trustees (83).¹⁶ In view of these large slabs of landholding it was inconceivable that the institutions concerned would not have an important impact on the timing and nature of property development and building activity in Edinburgh, but that they would also define, in a significant way, the activities of private landowners too. Whether such a highly visible institutional presence necessarily produced an architectural coherence in the built environment is questionable, but because development was subject to the same principles and constraints, then it certainly was more likely to do so than under circumstances where ownership was highly fragmented.

The interface between trust administration and urban development was the lawyer’s office.¹⁷ Solicitors drew up the Trust Deed and Disposition, the will, and were represented almost invariably as one of the trustees. Solicitors drew up agreements concerning the tenure – feuing – of property; they arranged mortgages for a buyer. Where an individual had funds to invest then it was commonly solicitors who acted as a banker, taking deposits from diverse lenders and channelling them to borrowers as mortgages. Clearly, given this degree of involvement in property development and a considerable element of professional trust, lawyers acted as facilitators or ‘lubricants’ in the process of urban expansion.¹⁸ They were not alone in this process, however, and the roles of building associations as highly localised institutions as well as heritable security and other mortgage societies were also significant, as was the role of accountants.

Institutional and legal influences on urban development assumed a varied, but not inflexible, character and as a social construct, the law was responsive in the longer term to changing priorities and societal needs. Nowhere was this better illustrated than in 1818 when the House of Lords decided to reverse several of its rulings over the previous fifty years concerning the legitimacy of James Craig’s plan as a determinant of what could, or could not, be built in the New Town of Edinburgh. In this

¹⁶ *PP 1874 LXXII* pt III, Owners of Lands and Heritages, 1872–3, 66–9. See also chapter 3. These acreages are those still at the disposal of landowners in 1872. In some cases they significantly understate the extent of land available in earlier years.

¹⁷ J. D. Bailey, ‘Australian borrowing in Scotland in the nineteenth century’, *Economic History Review*, 12, 1959, 268–79.

¹⁸ Mistral, *Trust in Modern Societies*, 77, uses this term.

instance Contract Law proved to be an unreliable arbiter of property use in the future and consequently undermined present value. A landmark decision, the judgement meant that, thereafter, feu charters or deeds were to become the instruments by which to restrict certain types of undesirable development. In so doing, property law evolved to protect the interests of property owners and trusts since it reassured investors that obnoxious activities could not be undertaken on their neighbours' property. Without the Lords' decision in 1818, property investment would have been impaired, funds would have sought alternatives such as gilts and, unquestionably, the long-term effect would have been to undermine the visual coherence of many Edinburgh streets since, whatever their initial appearance, without the 1818 judgement they would have been raped over the decades by successive changes of uncontrolled use. This brief example, developed at greater length in chapter 2, demonstrates that property owners were assured that their investments would not be compromised by the actions of others and that they could trust a disciplined legal code which sanctioned transgressors. Put differently, once trust was embodied in social institutions, of which the law is one, then urban development could proceed.¹⁹

Far from the inflexible and invariable application of legal codes and institutional procedures it was their very existence which affected the actions of builders and developers in Edinburgh. The sanction that non-compliance with the building authority, the Dean of Guild Court, might result in the compulsory demolition of an unapproved building was a sufficient deterrent in most instances to impose discipline on developers. A departure from the landowner's feuing plan could result in 'irritancy', that is, the repossession and reassignment of the plot to another builder, without compensation. Not to maintain the steady pattern of interest payments at Michaelmas and Martinmas on bonds issued for loans might instigate bankruptcy proceedings and involve the trustee in bankruptcy in the liquidation of assets in order to pay creditors. In other words, as the daily dramas of urban development unfolded in Edinburgh, as elsewhere, the full weight of the law did not have to be applied since trust between parties in the normal course of business allowed for some elasticity in payment or delivery dates, designs or related matters. Rational choice dictated that few would go to court over the minutiae of an agreement given the expense and the distraction.²⁰ But in the background and secure in the knowledge about how, ultimately, a legal principle would be interpreted or how an institution would function, landowners and developers,

¹⁹ N. Luhmann, *Trust and Power* (Chichester 1979), 88.

²⁰ N. Luhmann, 'Familiarity, confidence, trust: problems and alternative', in D. Gambetta, ed., *Trust: Making and Breaking Cooperative Relations* (Oxford 1988), 94–107.

like other citizens, knew the extent to which they could press an issue. The contours of business strategy, therefore, were defined by the implicit understanding between parties. These relationships were a powerful indicator and ‘a required condition [for] a society to be a stable system in equilibrium’²¹ and, where mutual trust operated, it can be seen as an important form of social capital since it reduced the cost of monitoring and enforcement.²²

Building and property development were indissolubly linked to the legal and institutional framework which operated at several levels and, in the broadest terms, the nature of property rights was central to the political discourse of the nineteenth century.²³ Best known, perhaps, are the issues surrounding the ‘Irish question’ – fair rents and fixity of tenure were amongst the issues as well as compensation for improvements – but there was a wider geographical dimension to the nature of property rights in respect of Settler Acts and the ‘rights’ of indigenous populations in Canada, Australia, South Africa and indeed in most of the ‘white dominions’.²⁴ There was, too, a strong Scottish strand following on issues raised in connection with Ireland as debates about property rights surfaced in the highlands and islands, led to the formation of the Crofters’ Commission and the issue of tied cottages, and then spilled over in the early twentieth century to the condition of miners’ housing before finally being taken up in a Royal Commission established in 1911 to review all aspects of housing and property rights, urban and rural.²⁵

Fair rents in an urban setting were at the heart of Rent Strikes in the west of Scotland during the First World War.²⁶ They were a catalyst in the growth of socialism and of women’s participation in direct political action in Scotland. Both movements were the product of alienation and class tensions between rentier landlords and tenants. Direct links have been made between this pre-1920 trend in housing politics with the growth of council

²¹ T. Parsons, *The Structure of Social Action* (Glencoe, Ill., 1949), 389.

²² J. S. Coleman, *The Foundations of Social Theory* (Cambridge, Mass., 1990).

²³ For recent contributions on various aspects of property law see J. Brewer and S. Staves, eds., *Early Modern Conceptions of Property* (London 1996).

²⁴ See, for example, J. Tully, ‘Aboriginal property and western theory: recovering a middle ground’, in E. F. Paul *et al.*, *Property Rights* (Cambridge 1994), 153–80; D. van der Merwe, ‘Land tenure in South Africa’, *Tydskrif vir die Suid-Afrikaanse Regsgeleerheid*, 1989, 4, 663–92.

²⁵ *PP 1888 LXXX*, First Annual Report Crofters’ Commission, 1886–7; *PP 1911 XXXIII*, Annual Report of the Local Government Board for Scotland for 1910, lxvii, and *PP 1912–13 XXXVII*, lix, for 1911; *PP 1917–19 XIV*, Royal Commission on the Housing of the Industrial Population of Scotland, Rural and Urban, Report; R. Rodger, ‘Crisis and confrontation in Scottish housing 1880–1914’, in R. Rodger, ed., *Scottish Housing in the Twentieth Century* (Leicester 1989), 25–53.

²⁶ J. Melling, *Rent Strikes: Peoples’ Struggles for Housing in West Scotland 1890–1916* (Edinburgh 1983); S. Damer, ‘State, class and housing: Glasgow 1885–1919’, in J. Melling, ed., *Housing, Social Policy and the State* (London 1980), 73–112.