

## CHAPTER 3 *Historic Roots of Modern Land Use Institutions*

*The common bell called the commons to the town from the common streets  
and the green commons to the common hall and in common hall assembled  
a common seal to release their common land, for which a fine is paid into  
their common chest. All is common; nothing is public.*

— F. W. MAITLAND, *TOWNSHIP AND BOROUGH*, 1898, 32

The concepts of property rights and land use law in the United States owe much to the legal systems of Great Britain, France, and Spain at the time of European settlement of North America. In particular, the English “common-law” institutions of private property and local government were transplanted directly to American soil with the founding of the Massachusetts Bay and Virginia colonies and their offshoots in the early seventeenth century. Judicial precedent from the courts of the home country were directly applied in the colonies, and most states today still retain vestiges of the English common law relating to land. States originally settled under Spanish or French conquest, including Florida, Louisiana, Texas, New Mexico, Arizona, and California, also reflect the influence of the “civil law” tradition that prevailed in continental Europe dating to back to early Roman and Germanic roots.

These two imports, common law and civil law, blended in various combinations in different places with native land rights, religious laws, and local custom. As settlement moved westward, new legal doctrines were devised to adapt to different geographic environments, most notably the “prior appropriation” water rights doctrine that evolved in arid regions during the nineteenth century to ensure scarce water for mining and agriculture. After the American Revolution, imported

colonial property law concepts coexisted (sometimes uneasily) with the property rights implications of the U.S. Constitution, as interpreted in legislation, court decisions, and administrative regulations to the present time.

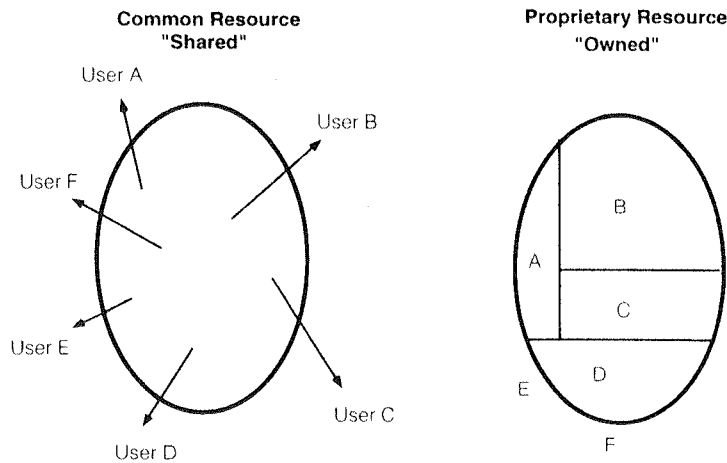
This chapter reviews the evolution of English legal practice concerning land use from its origins in feudalism predating the Norman Conquest of 1066 through the dawn of modern public and private land use institutions in the seventeenth and eighteenth centuries. This discussion leads into Chapter 4, where some of the institutional origins and innovations of the industrial city and metropolis during the nineteenth century are examined.

### *The Feudal Commons: Sustainability in the Dark Ages*

Private ownership of land is fundamental to modern capitalism, the dominant economic system in most developed and many developing countries today. *Capitalism*, according to *Webster's New University Dictionary*, is "an economic system marked by open competition in a free market, in which the means of production and distribution are privately or corporately owned." In terms of land, capitalism involves the fragmentation (or "parcelization") of land resources among multiple ownership units of diverse size and function. Aside from areas reserved in public ownership, the dominant "legal landscape" of capitalist countries today, as noted in Chapter 2, is a mosaic (or "battlefield") of large and small parcels of land held by diverse owners. *Ownership* implies freedom to use land as the owner wishes, subject to minimum legal constraints imposed by society to limit harmful externalities. (See Chapter 7.) A further attribute of capitalism is social inequity, whereby a small fraction of the population owns or controls most of the land while the rest of the population owns little or nothing. The transition from common rights to proprietary rights is illustrated in Figure 3-1.

The purpose at the moment is not to extol or condemn capitalism, but rather to contrast it with its predecessor, the *feudal commons*. Feudalism was the prevailing socioeconomic system of England and continental Europe from as early as the ninth century until approximately the seventeenth century. It prevailed in Japan into the nineteenth century and in parts of China and Russia into the early twentieth century.

Under feudalism, land was not privately owned in the modern sense, but rather was "held" by the Crown by virtue of inheritance, marriage, or conquest. The Crown allocated portions of his or her realm to faithful nobles or *lords* who in turn divided their shares (*fiefdoms*) among local aristocracy known in England as



**FIGURE 3-1** Diagram of common and proprietary (or capitalist) forms of land tenure.

Note the inequality of resulting land holdings and the dispossession of some peasants under proprietary land tenure (right side of diagram).

*barons*. Supporting this pyramid of barons, lords, and Crown was the peasant class (also known as *villeins*, *commoners*, or *serfs*), which provided the labor to wrest food, fiber, and other necessities of life from the land.

Members of the peasantry were assured a minimal level of subsistence and safety provided they rendered a portion of the products of the land as *tribute* to support the households, courts, and armies of the nobility and Crown. Although thus assuring a "safety net" to the peasantry, who were essential to the entire system, feudalism was unquestionably oppressive. Like worker ants in an ant colony, the peasantry were bound to the land and sentenced to short lifetimes of labor, tedium, darkness, and ignorance, lightened only by visions of redemption offered by the church and copious consumption of beer and ale.

Despite its inequity, however, a land use system that endured many centuries in many regions of the world deserves a closer look. The system of mutual interdependence known as feudalism arose not from royal decree or statute but from practical necessity. The collapse of the Roman Empire throughout Europe after the sixth century A.D. ended centuries of urbanism, trade, and military protection, leaving the surviving populations to revert to a precarious agrarian existence. Mere survival against starvation, freezing weather, and hostile attack assumed paramount importance. In the words of Lewis Mumford (1961, 249): "From the eighth century to the eleventh, the darkness thickened; and the early period of violence, paralysis, and terror worsened with the Saracen and the Viking invasions. Everyone sought security."

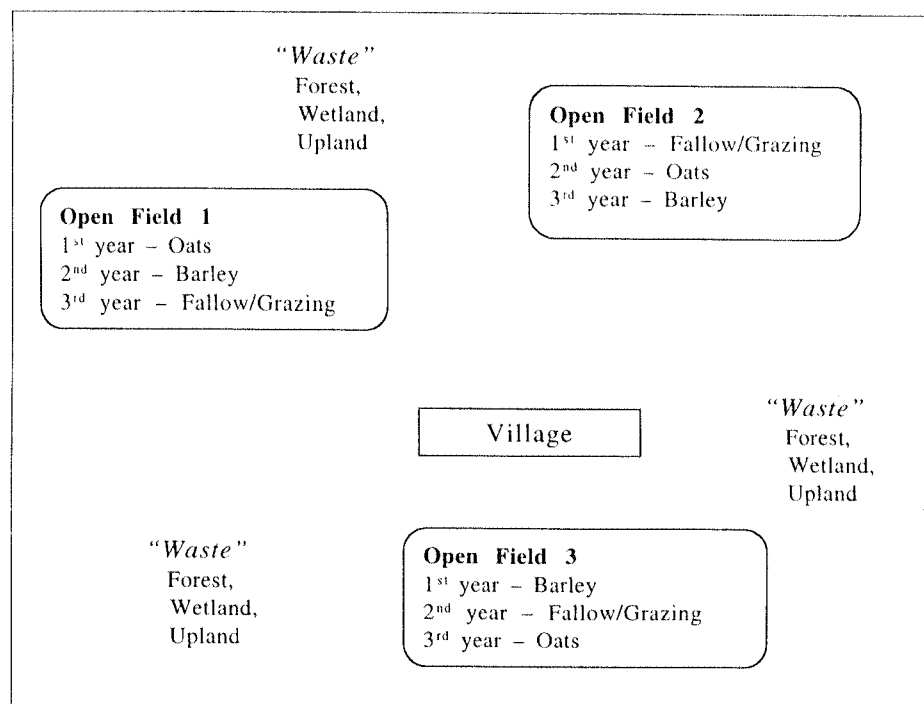
Security was achieved, to the extent possible, through the evolution of the feudal hierarchy of authority. Petty monarchs and local warlords assumed transient control over particular districts only to be overthrown from time to time by invading "barbarian hordes" or jealous neighbors. To sustain continuous preparations for war and to indulge in the pleasures of riotous living during peacetime, the Crown exacted "tribute" from the nobility who in turn demanded the same from the peasantry. Tribute—the upward flow of resources in return for security—included a portion of the food and fiber produced by the serfs, monetary taxes, and able-bodied men to be slaughtered in battle.

The socioeconomic foundation of this entire system was the *feudal manor*, within which the commons was the prevalent system of productive land use. A manor typically consisted of an extensive tract of land divided into (1) *arable* or cropland, (2) *green common* or pasture, and (3) *waste*, including woods, ponds, wetlands, and uplands (Figure 3-2). The nucleus of the manor was a village settlement. This center was no borough or town, but merely a cluster of dwellings huddled near the baron's hall, a parish church, and a water-powered mill. The manorial village had no legal or corporate status but served as the domicile and socioeconomic nexus of the local baron and peasantry. The baron's manor hall served as gathering place and occasionally as court for the village (Trevelyan 1953, 199ff.).

Members of the peasantry shared access rights to the land "in common," that is, they held roughly equal rights to cultivate, graze, fish, and forage upon the common lands. Common rights in land differ markedly from private rights. In a commons, no individual has exclusive and permanent control (*proprietary rights*) over any particular land or resource. Instead, rights of usage (*usufructory rights*) are shared or exercised in common among members of a defined socioeconomic group such as a village or tribe whose members exercise exclusive control over a particular area of land.

The feudal manor in its ideal form represented a balance between population and resources. Use of the land required the limitation of individual greed and desire for short-term gain in the interest of long-term productivity. This situation in turn required a state of legal equilibrium in which all parties, nobility and peasantry alike, were bound by customary rules and constraints in the use of manorial resources.

The degree of control differed among the three classes of manorial lands: *arable*, *green common*, and *waste*. Apparently little regulation was needed regarding the



**FIGURE 3-2** Diagram of land allocation in an English feudal manor. The use of each of the three "open fields" would rotate annually to ensure soil replenishment.

use of "waste." As long as population pressure was low, fish, game, and firewood were adequate (although the killing of wildlife in protected royal forests was a capital offense). "Green common" was normally subject to limitations on the number of livestock that each household, including the baron's, could graze.

Management of the arable was more complicated. A manor's cropland was usually divided into three large open fields. These three fields were rotated annually among wheat, oats, and fallow. This customary cycle allowed the soil to restore itself to ensure long-term productivity. Fertility was also maintained through the application of human and animal wastes. In its fallow year, a field was grazed by livestock to restore its soil nutrients, and "night soil" (human waste) was regularly deposited on all the fields.

Each open field was internally divided into small strips of approximately one acre each. Certain strips were reserved to support the baron's household and provide tribute to the higher nobility. The remaining strips were allocated among the tenants as *commoners*. Each commoner household was assured the use of about thirty 1-acre strips, from which it derived food and fiber for its own sustenance and

for tribute to the baron. (Commoners also had to cultivate the baron's strips.) Allotments of strips within the open fields were interspersed side by side and end to end rather than being clustered in blocks under a single household. What this fragmentation lacked in productive efficiency, it theoretically gained in equity:

It is probable that the strips were scattered in this way in order to give each [commoner] a little bit of the good land, a little bit of the indifferent, and a little bit of the bad. To allot to each owner a continuous area, compensating by extent of area for deficiency in quality, was beyond the powers of a primitive community. (Holdsworth 1927, 39)

Although internally apportioned, the open field was a species of commons. Individual strips were not fenced and were separated only by low ridges of soil that served as both boundaries and footpaths. During the fallow cycle, animals could be pastured without the need to be tethered within particular strips. Undoubtedly, conflicts arose regarding trespass, vandalism, or encroachment on one another's strips. These disputes were settled in a peculiarly feudal institution: the manorial court, an antecedent to the future courts of equity in England and its colonies (Trevelyan 1953, 173–76).

Land management in feudal England was thus dominated by the commons. Much of the manorial land was literally shared in common, and even allocated cropland in open fields was subject to a high degree of collective mutual involvement. The use of one's own strips was dependent on the compatible use of surrounding land. No one, not even the baron, was free to break out of this system and introduce new crops or fence in their strips, as whimsically described by the English legal historian F. W. Maitland in the quotation beginning this chapter.

The last sentence of that quotation ("All is common; nothing is public") is vital to understanding the early development of social control of land use. Under feudalism, there was no *public* regulation or management of land. The manorial system was symbolically subject to the power of baron, lord, and crown. In fact, none of these could tinker with the system of open fields and commons without toppling the entire delicately balanced structure. When William the Conqueror invaded England in 1066, he replaced the vanquished Saxon nobility with his own Norman followers and installed himself as king, but he did not tamper with the equilibrium of the existing system of manor and commons. Instead, he simply inventoried the assets and resources of each manorial unit of his realm. The record of that epic survey survives as the legendary *Domesday Book* of 1086, one of England's most important historic documents (Trevelyan 1953, 171).

This system was perhaps the best example in all history of a land management system that was self-perpetuating and sustainable:

We underrate the automatism of ancient agriculture. . . . So far as the arable land is concerned, the common-field husbandry, when once it has been started, requires little regulation. . . . [By 1803 in Cambridge, England], for some centuries the common-field husbandry had needed no regulation; it had been maintaining itself. (Maitland 1898, 25)

Why was the commons so durable as a land-management institution? In early medieval England and Europe, there was no feasible alternative to the commons as a means of organizing land use to supply a reliable supply of food and fiber. Stability, however, does not necessarily imply efficiency or vitality. The stifling conformity of feudalism discouraged innovation and creativity. The arrival of the plague or "Black Death" in the fourteenth century killed a tenth of Europe's population (Tuchman 1978, Chap. 5). The ensuing depopulation of feudal manors placed increasing pressure on the labor-intensive commons system of land rights. Concurrently, as discussed later, the revival of trade and towns attracted the more enterprising of the peasantry to flee the manors. Trade with the Continent and the rise of wool production in England to serve the looms of the Low Countries stimulated members of the landed nobility to seek approval to *enclose* (fence off) common lands for sheep raising for their private gain.

Because common rights were protected by common law, they could be abridged only by statute. Beginning as early as 1235, Parliament adopted a long series of special acts authorizing specified tracts of land to be *enclosed* or "privatized" to the exclusion of commoners who were forced to choose between working as hired laborers or seeking employment elsewhere (Gonner 1966, 43). The commoners resisted this erosion of their livelihood and security as best they could, sometimes resorting to open violence, but with little success. The enclosure movement represented a gradual but distinct social and legal revolution in which common rights in land were slowly extinguished and replaced with the modern system of private rights in land, a process consistent with the general model of land-law interaction proposed in Chapter 2. Feudalism was thus gradually replaced in England with private ownership of land and its products, the hallmark of modern capitalism. Elsewhere, the end of feudalism was more abrupt, and sometimes led in directions other than capitalism (e.g., the Russian Revolution of 1918).

The early settlement of New England in the seventeenth century coincided with the last stage of the open field or commons system of land tenure in England.

Settlers originating in various districts of England initially established the system of land tenure that prevailed in their place of origin, either open field or private proprietorship. Sudbury, Massachusetts, for instance, followed the open field practice of Sudbury, England, for its first few decades (Powell 1963). Each family was granted by the original proprietors a small house lot and garden for personal use, together with rights to plant crops and graze livestock on the town's open or common fields. Eventually, in both Sudburys the open field system, a legacy of the vanishing feudal manor, yielded to private ownership of farmland.

A type of commons persists to the present time in England and the northeastern United States in the form of patches of green space in the centers of old towns. Yet could a citizen of Boston today cut firewood or graze a cow on Boston Common? Clearly the legal status, purposes, and usage regulations of these open spaces have changed. The village common is no longer common property of the inhabitants, but instead is owned and managed by the local municipal government for such allowed uses as recreation, farm markets, carnivals, and parking.

In a different sense, however, the modern world is awash in common resources: the oceans, major rivers and lakes, the atmosphere, outer space. Streets, parks, subways, and schools have elements of the commons. Traditional village and tribal societies manage fisheries, cropland, and forest resources in ways reminiscent of the feudal commons.

This use today suggests a critical problem concerning the viability of common property regimes, namely the degree to which users maintain control over the common resource and are able to limit or exclude additional users. Under feudalism, common land tenure worked because populations were small and social units were reasonably well defined by locality. Such arrangements are called a *closed-access commons*, and they are characterized by internal order and exclusivity. There are many forms of self-managed, closed-access commons today, such as tribal or village regimes regarding fishing, forestry, wildlife, and other shared resources (Ostrom 1990). Another example is the swimming pool of a YMCA. If open to anyone to use without supervision or rules, chaos and accidents would result and personal benefits would be minimal. By installing lane dividers and requiring lap swimming at peak times, the resource benefits are optimized.

Where access is not closed and potential users are indefinite in number (an *open-access commons*), lack of mutual restraint on overuse may lead to destruction of the resource. This dilemma is a chronic one in the twenty-first century in the context of global warming and degradation of oceans, lakes, and ecosystems. The threat of



failure of open-access common resources has been termed the *tragedy of the commons* by the biologist Garrett Hardin (1968). According to Hardin's gloomy axiom, if shared resources are not regulated through group or social self-restraint, individual users will inevitably maximize their own gains to their eventual mutual harm:

Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. *Freedom in a commons brings ruin to all.* (Hardin 1968, 1244; emphasis added)

Since publication of "The Tragedy of the Commons," the notion of the "commons" has been associated with the threat of global and regional environmental disaster, overpopulation, and mutual genocide. The metaphor of the commons also has been applied to cyberspace, public information, gene pools, and other resources facing erosion through overuse and commodification (Bollier 2002). A central challenge of the twenty-first century may be defined as the avoidance of the tragedy of the commons through new social institutions to control the abuse and destruction of common resources of many kinds, achieving the sustainability of the feudal commons without consigning most of the world's population to serfdom. (See the Ruckelshaus quotations at the beginning and end of Chapter 2.)

### *Medieval Cities: The Municipal Idea*

The feudal commons was essentially a rural institution that was ill-suited to the governance of urban communities. As the quote beginning this chapter so vigorously stated, the commons involved no concept of "public." All transactions were based on custom and personal status, not on formally adopted laws. The revival of towns and cities in England and the Continent starting in the early Middle Ages called for the development of new institutions more suited to the governance of closely built, nonagricultural settlements. One of those new institutions, the *municipal corporation*, has lasted from medieval times into the twenty-first century as the legal form of the modern city and suburb.

### Conditions for Urban Revival

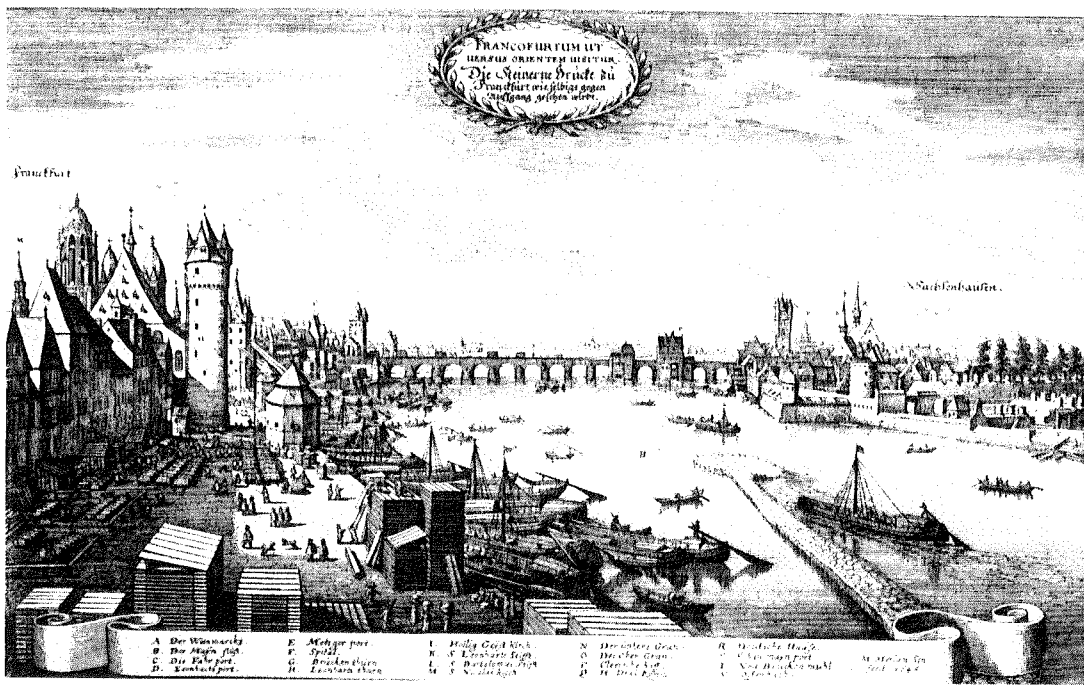
As described earlier, after the fall of the Roman Empire, feudalism blanketed England and Europe like a miasma, smothering commercial and artistic

exuberance and confining most of the population to a short, ignorant, pastoral existence. Only the Christian Church through its far-flung cathedrals and abbeys, as well as Islamic sanctuaries in southern Europe and North Africa, preserved classical literature and art. The cultural deep freeze of the Dark Ages (approximately the sixth through the twelfth centuries A.D.) was accompanied by the stagnation and abandonment of once thriving Roman cities such as Paris, Rome, London, and York.

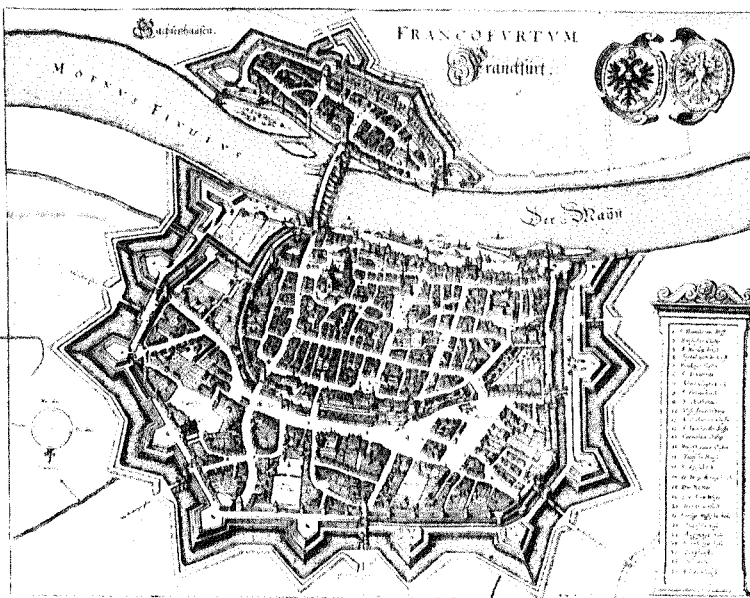
The ancient walled cities would not forever remain moribund, inhabited by monks, cats, and Roman ghosts. By the eleventh century, hints of a coming urban revival could be detected. According to French historian Henri Pirenne (1952), the prerequisite to this process was the revival of trade between regions that in turn gave rise to the need for urban markets and cities in which to hold them. This development would lead to the regrowth of a merchant class that would inhabit cities and towns and give them political as well as functional importance. Broadly speaking, the urban revival was characterized by (1) an increase in urban populations largely due to migration from rural areas; (2) the reappearance of a middle class engaged in manufacturing and commerce; (3) the construction of new buildings both within and outside the old city walls; (4) the emergence of the *municipal corporation* (or *municipality*) as a new legal institution independent of feudalism; and (5) the onset of urban problems such as water supply, disease, crime, and fire.

The market function of medieval cities involved both a *physical* space within the protection of the walls and a *legal* climate within which trade could flourish. The physical marketplace was typically a central open space at the heart of the old walled city, surrounded by the cathedral, town hall, guild hall, and other civic buildings. The marketplace was multifunctional; besides its commercial role, it provided open space for ecclesiastic and civic ceremonies, social interaction, and games (Mumford 1961). Today, many European marketplaces retain these functions, along with outdoor cafes, political demonstrations, street life, and parking.

For a marketplace to function, it had to be accessible. Streets leading from the city gates to the market had to be wide enough for people, animals, and carts to squeeze past one another. Given the scarcity of buildable land within the walls, streets and the marketplace itself were subject to chronic pressure of encroachment by adjoining property owners. This pressure was opposed, not by building laws, which were rarely effective if they existed at all, but literally by the throng of humanity and traffic: "Streets will be as narrow as they can be while allowing for transit of goods and persons" (Saalman 1968, 30) (Figures 3-3 and 3-4).



**FIGURE 3-3** Riverfront view of Frankfurt Am Main, 1646.  
(Source: Saalman 1968, plate 38.)



**FIGURE 3-4**  
Plan of Frankfurt  
Am Main, 1646, a  
classic late-medieval  
walled city. Note bridge  
over river connecting  
the two parts of the city.  
Wide streets and open  
space in the lower part  
of the city would be  
crowded with market  
activity. (Source: Saalman  
1968, plate 39.)

In many cases, the demand for market space generated by growing trade simply outstripped available land within the city walls. As the threat of hostile attack declined, development of new markets and accompanying houses and workshops appeared outside the gates of many new cities. These areas, known in France as *faubourgs*, were the original suburbs. Pirenne (1952) stresses that their commercial functions were not limited to periodic markets or fairs but assumed the continuous nature of modern commercial districts. It is likely that commerce outside the walls was promoted in some cases by a desire to escape the restrictions imposed on trade within the walls.

### Municipal Charters

The medieval city, like its modern counterparts, was both a geographic and a legal entity. Seldom of any great size in area or population, medieval cities nevertheless achieved a high degree of self-governance as virtual city-states. Legally independent of the onerous structure of feudalism, "the symbol of the city in the Middle Ages was eventually found in the sworn community which legally assumed the form of a corporation" (Weber 1899/1958, 105).

The origins of this "sworn community" are obscure. In England after the Norman Conquest in 1066, certain older towns obtained charters or grants of privileges from the Crown. Charters were either purchased or awarded as a token of royal favor. Some towns claimed the benefit of charters on the ground that they had been exercising certain powers of self-government "since time out of mind" (i.e., a very long time) and therefore such powers could not be withdrawn.

The effect of a charter was to release the town and its inhabitants from traditional feudal obligations to render tribute in money, goods, or military service. Municipal courts replaced the whim of the Crown or nobility in petty judicial matters. Persons attending the weekly market would be excused from paying a market toll to the lord, which was regarded by merchants as a hindrance to trade. In place of these feudal obligations, the town was authorized to appoint its own sheriff, raise revenue from any available sources, and render annual tribute in the form of monetary payment to the Crown:

Charters appeared at the close of the Eleventh Century and for the next two centuries they increased both in number and in the extent of the privileges granted. The acquisition of charters finally made the majority of towns communities with extensive rights of self-government and helped to make the townsmen a distinct element in the political, social, and economic life of England. (Lunt 1956, 178)

Broadly speaking, the privileges bestowed by charter included:

- ▶ The right to hold a market
- ▶ The right to adopt municipal ordinances
- ▶ The right to establish a municipal court
- ▶ The right to organize a merchant guild
- ▶ Freedom from feudal tribute, except certain taxes
- ▶ The right to elect municipal officials
- ▶ The right to coin money and to regulate weights and measures

Citizens of towns (*burghers*) enjoyed not only commercial freedom but personal freedom as well. Even peasants who fled from their manors and resided in towns for a year and a day were legally released from their feudal bonds and gained the status of freemen:

The status ... [of the individual under city law] was one of freedom. It is a necessary and universal attribute of the middle class.... Every vestige of rural serfdom disappeared within its walls. Whatever might be the differences and even the contrasts which wealth set up between men, all were equal as far as civil status was concerned. "The air of the city makes free," says the German proverb. (Pirenne 1952, 193)

The medieval town and countryside (*core* and *hinterland*, geographically speaking), however, maintained a symbiotic, not hostile, relationship. Towns depended on their rural hinterlands for the necessities of life as well as products to be traded in their markets. Rural manors needed markets as well as the genteel "night soil" (human waste) from well-fed burghers to fertilize the open fields. Amicable relations were often preserved with the local nobility and the church as well. In general, this period impresses the modern mind with its high degree of pragmatism and mutual interdependence among manor, aristocracy, church, and town.

### Merchant Guilds

Guilds were organizations of merchants or craftsmen that wielded great influence within the medieval town and its economy. The guilds' economic and political power arose from grants of monopoly status conferred on them by the Crown. Thus the wool traders' guild could establish the place and hours of operation, standards of quality, weights and measurement, and terms of credit for all wool trading in the town. Nonmembers of the guild were either prohibited from wool trading in the town or were required to pay exorbitant fees to the guild. In addition,

they could sell only to guild retailers; no nonmember middlemen were allowed (Stenton 1962, 178).

London by the early seventeenth century had more than fifty craft guilds ranging from apothecaries (druggists) to woodmongers, each with its own hall or meeting place. The leading members of the more important guilds were *ipso facto* leading citizens. The guilds provided a social and cultural dimension, and their halls were the scene of banquets, plays, and ceremonies. They also contributed to the physical development of the community. Street maintenance, construction or replacement of bridges, additions to hospitals, repair of fortifications, and most permanent of all, the building of cathedrals were all among the public-spirited works of guilds (Pirenne 1952, 186). The phrase "public-spirited" is deliberately chosen: for the first time since the fall of Rome, there was emerging a new sense of "public."

Ultimately, the influence of the guilds was reflected more enduringly in legal institutions than in bricks or mortar. Over time, medieval cities under their direction, and with the benefit of royal charters described above, assumed a new legal status as *municipal corporations*. As inventions of law, municipal corporations were vested with perpetual existence apart from the terms of particular office holders. They were empowered by charter to (1) own land and buildings, (2) sue and be sued, (3) adopt local laws, and (4) possess a corporate seal for attesting the official status of municipal documents (Holdsworth 1927). These legal characteristics of the municipal corporation have remained fairly constant from the Middle Ages to the present time. (See Chapter 8 for a discussion of modern municipal governments.)

In the medieval city, as in its modern counterpart, municipal authority extended to the entire area within the city walls, except possibly church buildings. This authority comprised public *jurisdiction*, not public *ownership*. The former was (and is) a general power to enact ordinances concerning such matters as land use and building practices within the geographic boundaries of the city. The latter is the authority of the city to directly own certain land and buildings, such as the town or city hall, police stations, schools, and public open spaces.

English municipal ordinances of the Middle Ages may be roughly divided into two classes. First were those concerned with public morals, health, and safety in the urban environment. London, for instance, had ordinances dealing with the removal of dung from stables, the lighting of streets, and "sweating houses, whereunto any lewd women resort" (Hearsey 1965, 11). These ordinances were at best unevenly enforced and, at worst, totally ignored.

The second class of ordinances dealt with offenses against trade and commerce,

such as theft, overcharging, and sale of inferior goods. Penalties for these offenses, which struck directly at the economic welfare of the guilds, were swift and often harsh. For example, a baker caught selling bread of substandard weight was “strapped to a sort of low cart harnessed to a horse and dragged through the streets, accompanied by the City Minstrels playing on tabors and pipes, and finally brought back and released at his own door” (Pendrell 1937, 22). Breaches of the “market peace” such as theft or disorderly conduct were subject to far more brutal punishments:

This city peace was a law of exception, more severe, more harsh, than that of the country districts. It was prodigal of corporal punishments: hanging, decapitation, castration, amputation of limbs. It applied in all its rigor the *lex talionis*: an eye for an eye, a tooth for a tooth. Its evident purpose was to repress derelictions through terror. (Pirenne 1952, 200)

Regulation of the urban environment was clearly of lower priority than deterring crimes against property. Petty theft of commercial goods in a public thoroughfare was a breach of the market peace and was punished severely. The permanent encroachment of private buildings into or above the same public way, however, was likely to be ignored (Saalman 1968, 30–31).

The existence of corporate jurisdiction over the medieval city therefore did not necessarily mean that such power was used effectively to regulate the placement, height, construction, or use of buildings. The resulting cityscape was characterized by narrow and twisting streets, overhanging upper stories, and prevalent use of wood as a construction material. Just as the casual disposal of human and animal waste and lack of clean water contributed to periodic epidemics, the unregulated crowding of buildings posed a constant and growing danger of citywide fire. As in modern times, reform and progress were the result not of enlightened foresight, but of bitter hindsight.

### *The Common Law of Property*

The thirteenth century marked the dawn of the modern era of land law in England. The new era was characterized by the gradual replacement of feudal tenure with *freehold* or proprietary ownership, a process that would extend over the next six centuries (see Figure 3-1). As described earlier, feudal land was not “owned” in the modern sense, but instead was “held” by one party in subservience to another. The holder was essentially entitled only to mere right of usage



(*usufruct*) in exchange for tribute rendered to someone of the next higher rank in the feudal hierarchy. A right of usage did not involve the right to sell, give, or devise the land to one's heirs. Nor, under the custom of the commons, could land be converted to different uses or removed from production: the automism of three-field agriculture simply plodded along until open fields were "enclosed" with fences and controlled by individual landlords to the exclusion of the commoners. This historic process in England, known as the *enclosure movement*, lasted over several centuries.

The transition from feudal tenure to freehold ownership of land first appeared in the reviving towns rather than the countryside. The breakdown of feudal control over land was a concomitant of the growth of personal freedom within city walls:

With freedom of person there went on equal footing, in the city, the freedom of the land. In fact, in a merchant community, land could not remain idle and be kept out of commerce by unyielding and diverse laws that prevented its free conveyance and restrained it from serving as a means of credit and acquiring capital value. . . . Land within the city changed its nature—it became ground for building. It was rapidly covered with houses, crowded one against the other, and increased in value in proportion as they multiplied. . . . Cityhold thus became freehold. (Pirenne 1952, 194–95; emphasis added)

Just as "freehold" or private ownership was essential to city growth, feudalism had to break down in the countryside for innovation to flourish and personal wealth to be amassed (primarily by the landed aristocracy). The transformation of rural land from feudal tenure to freehold began in England with a statute of Parliament in 1290 that permitted the substitution of one landholder for another, subject to the same feudal obligations as the earlier holder. This change in effect legitimized the sale of land from one party to another on a monetary basis, which is the essence of property ownership (Dukeminier and Krier 1981, 358). Over time, feudalism withered away, and virtually all land came to be held by individual proprietors subject only to the obligation to pay taxes.

By the eighteenth century, the institution of private property ownership in both England and the American colonies was solidly established. The concept that "every man's home is his castle" was most forcefully stated by the jurist William Blackstone in 1768:

There is nothing which so generally strikes the imagination, and engages the affections of mankind as the right of property; or that *sole and despotic dominion* which one man claims and exercises over the external things of the world, in exclusion of the rights of any other individual in the Universe. (Blackstone 1768/1863, 1; emphasis added)



Although tinged with hyperbole, Blackstone's view of private property stands the feudal tenure system on its head and exalts the landed aristocracy over the Crown. (In Great Britain today, much valuable urban land still remains under the control of landed estates that lease it for private development under long-term leases, thus helping the upper class afford their Rolls Royces.)

Yet as John Locke declared in a quotation presented in Chapter 2, private property is valueless unless the owner is secure in reaping the "harvest" or other benefits of ownership. Blackstone's proposition declares that the owner is protected from the Crown, but what about one's neighbors? The answer is found in the development of the common-law doctrines of *trespass* and *nuisance* under which a property owner could seek the protection of the courts from offensive conduct by other parties. As stated in Chapter 2, the English common law consists of the accumulated decisions of courts, based on principles declared in earlier cases involving similar issues ("precedent"). There have been innumerable common law precedents concerning trespass and nuisance.

The common law, however, has never been an efficient means of regulating the urban environment and land development practices as it only responds to actual cases brought by victims (*plaintiffs*) against alleged wrongdoers (*defendants*). If the victims are unable to bring their grievances to court, or if the wrongdoers are too numerous or unknown (e.g., as with water or air pollution), the lawsuit-driven common law is ineffective. For that reason, it was gradually supplemented (but not replaced) in the nineteenth and twentieth centuries by *public regulations* such as building laws and land use zoning (discussed in later chapters). Before the advent of such regulations, however, adjudication of disputes between private parties under the common law provided a crude means to control or punish flagrant abuses in the preindustrial urban community.

The most fundamental protection afforded by the common law was against *trespass*. Without security against unauthorized entry of unwanted persons, property ownership meant nothing. The essence of trespass was a physical entry on land or into a building by an individual who had no legal right to do so. Over time, courts expanded the doctrine of trespass to hold parties liable who allowed livestock or even water to enter on the property of another without permission. No proof of any actual damage was required because invasion of the plaintiff's premises is wrongful in itself. Anyone who enters someone else's property without the right to do so is said to be "strictly liable" and may be subject to fine or prison sentence (Prosser 1971, 357-64). The common-law doctrine of trespass since medieval times has always reflected the principle that one's home and land are sacred.

The doctrine of *nuisance* afforded additional protection to property owners under the common law. Unlike trespass, nuisance did not require any physical entry of a premises. Rather, it addressed the externalities of actions originating elsewhere—typically on adjoining land—that injured the beneficial enjoyment of the plaintiff's property. Typical forms of nuisance include blocking off a neighbor's light and air, causing bad odors and air pollution, loud continuing noises, and other externalities that impair the quiet enjoyment of nearby property. The medieval doctrine of nuisance—still cited today—was *Sic utere tuo ut alienum non laedas* (Use your property so as not to harm that of others).

This golden rule of nuisance has always been easier to express than to apply. In deciding nuisance cases, courts have traditionally attempted to *balance the equities*, that is, weigh the social benefits, if any, of the conduct complained of against the degree and type of harm suffered by the plaintiff(s). Courts usually favor the victim when the harm clearly outweighs the value of the activity. With the coming of industrialization, however, plaintiffs often lost cases in which the defendant was an industrial polluter that happened to supply a useful product and employ many people. Courts gradually became more creative in fashioning orders (*injunctions*) that limited the harmful effects of a particular enterprise without terminating it entirely.

### *Building Laws: Rebuilding London after the Great Fire*

While medieval municipal authorities attempted to regulate urban building practices on a piecemeal basis, most rules were ignored. Part of the problem lay in the tragedy of the commons: each property owner viewed the streets and marketplaces as common property to be encroached on for private gain to the maximum extent possible. Such encroachment often took the form of overhanging second floors projecting over narrow streets with consequent loss of daylight and increased risk of fire spreading from one wooden building to another. After centuries of worsening urban congestion, London experienced a catastrophe—the Great Fire of 1666—that forced the king and Parliament to adopt and enforce the first modern building code: the Act for Rebuilding London of 1667.

### London Before the Fire

Between 1400 and 1666, London's population grew from 50,000 to about 400,000 inhabitants. This eightfold demographic expansion reflected both an influx of

rural laborers displaced by enclosure of common lands and immigration of persons fleeing persecution on the Continent. It was accompanied by physical expansion of London's housing stock both within and beyond the city's old Roman walls.

Queen Elizabeth I in 1580 attempted to halt the peripheral sprawl in a famous decree (anticipating the "greenbelt" laws of the mid-twentieth century) that ordered all persons to: "desist and forbear from any new buildings of any house or tenement within three miles from any of the gates of the said city of London" (quoted in Rasmussen 1934/1967, 68). This decree was a total failure as indicated by the continued growth of London outside its walls and gates. By 1666, the walled City of London was described as comprising only one-third of the total urbanized area of London: "The great urban spread had begun, and already a number of the better-off preferred to live outside the City where their work or business was" (Hearsey 1965, 2). What is now the chic West End Theatre District of London was then the rural-urban fringe with large homes interspersed among remaining common fields and small cottages.

The old Roman-walled core of London (now the financial district known simply as "The City") remained in 1666 solidly medieval in character. Prefire London was a labyrinth of narrow, twisting streets with pervasive overhanging upper stories. Wood was the usual construction material. Exterior walls were required to be of brick or stone, but "the precaution was very partially observed" (Bell 1920/1971, 11). The City was connected to the surrounding countryside by gates on the landward side and by the famous London Bridge across the Thames River. The walled City contained more than one hundred parish churches and some fifty guild or livery halls. The ancient gothic St. Paul's Cathedral, the largest in Europe, loomed above the smoky, crowded city (Hearsey 1965, 60).

### The Fire

The Great Fire of September 2–7, 1666, was perhaps the first major catastrophe to be fully described by literate eyewitnesses (at least since Noah's flood!). Samuel Pepys's *Diary* relates the following:

Jane comes in and tells me that she hears that above 300 houses have been burned down tonight by the fire we saw [the night before] and that it is now burning down all Fish-street, by London Bridge. So I made myself ready presently, and walked to the Tower, and there got up upon one of the high places, . . . and there I did see the houses at that end of the bridge all on fire, and an infinite great fire on this and the other side. . . . So down with my heart full of trouble to the Lieutenant of the Tower, who tells me that it

begun this morning in the King's baker's house in Pudding-lane, and that it hath burned down St. Magnes Church [the first of 80 churches to be burned] and most part of Fish-street already. So I down to the water-side and there got a boat, and through bridge, and there saw a lamentable fire.... Everybody endeavoring to remove their goods, and flinging into the river, or bringing them into lighters that lay off; poor people staying in their houses as long as till the very flames touched them, and then running into boats, or clambering from one pair of stairs by the water-side to another ... and the wind mighty high, and driving it into the City; and everything after so long a drought proving combustible, even the very stones of the churches. (Pepys 1666/1898, 392-93)

In the absence of any effective water distribution system, the fire burned unchecked for three days and consumed most of London within the walls and a considerable area outside. Within this area, 13,200 houses were destroyed in some 400 streets and alleys. Over 100,000 were homeless and left camping miserably in fields outside the city. In terms of loss of life, the Great Fire of 1666 was vastly overshadowed by an outbreak of plague in London the previous year. Although 56,558 persons were reported to have died in the plague, only four deaths were attributed directly to the fire out of a population of 400,000.

### The "First Modern Building Law"

The fire epitomized Hardin's (1968, 1244) adage: "Freedom in a commons brings ruin to all." Although London was scarcely a feudal commons, neglect of the urban environment under four centuries of municipal self-government had yielded disaster. Its public spaces were virtually an unregulated commons, with private structures clogging the narrow lanes and passageways and blocking access to the Thames River. In the absence of effective regulation of building size, location, and construction materials, the fire was inevitable. Without access to water, it could not be halted.

The point was not missed by certain leading minds of the time. While the ruins were still smoking, plans for the rebuilding of London were being prepared by Sir Christopher Wren, the city's leading architect, and several others (Bell 1920/1971, Chap. 13). Wren proposed to transform the city into a monumental imperial capital, much as Haussmann would later restructure Paris two centuries later (as described in Chapter 4). The prefire street alignments and property lines of London were to be abolished where necessary and replaced by an orderly, geometric network of major streets and open plazas with lesser streets leading into them. Churches, company halls, and other important buildings would be situated on the

new squares or along the connecting arteries. The Thames embankment would be cleared and reserved for major buildings with open space between and in front of them. Dwellings would be confined to the lesser streets. The city should be rebuilt, according to Wren, along the lines of baroque Renaissance cities in Italy that he greatly admired.

Such a radical proposal for restructuring London, however, was incompatible with the mood of the times. First, the Crown was weakened after the English Civil War (1648–1660); the newly restored Charles II, returned from playboy exile in Europe, sought to avoid the fate of his father, Charles I, namely beheading. Second, Parliament and city authorities could not afford to pay property owners whose private lots would have been taken to implement the plan. Third, Wren's plan would take too long to implement. Finally, the plan was too grandiose and "non-English" to meet with approval of England's upper class (Hearsey 1965, 179).

A week after the fire had subsided, with the advice of Wren and others, Charles II issued a surprisingly modern-sounding proclamation calling for restraint and foresight in the rebuilding process, pending a full investigation of the causes of the disaster. The preamble to the proclamation combined seventeenth-century moralism and twentieth-century civic boosterism:

And since it hath pleased God to lay this heavy Judgement upon Us ... as evidence of His displeasure for Our sins We do comfort Our Self with some hope, that he will ... give Us life, not only to see the foundations laid, but the buildings finished of a much more beautiful City than is at this time consumed. (Quoted in Rasmussen 1934/1967, 117)

The proclamation went on to address five practical city planning aspects of the rebuilding process (Rasmussen 1934/1967, 116–17):

1. Stone or brick was to be used for exterior facades in place of wood.
2. The width of streets was to be established in relation to their importance.
3. A broad quay or open area would be maintained along the Thames for access to water for firefighting.
4. Public nuisance activities such as breweries or tanneries should be removed from central London to more suitable locations.
5. Reasonable compensation should be determined and paid to property owners whose right to rebuild was curtailed by public restrictions.

Like a modern mayor or governor, the king then appointed a "blue-ribbon committee" of experts (including Wren) to draft a law to regulate the rebuilding of the

city. The resulting Act for Rebuilding London was adopted on February 8, 1667, five months after the fire. What the law lacked in immediacy, it made up in detail. The act has been described as London's first "complete code of building regulations" (Bell 1920/1971, 251). It was long, detailed, and practical:

[It] covered important aspects of the rebuilding program: first, the rearrangement of some of the worst features of the old plan, with its apparently wayward meanderings, jutting corners, and frequent bottle-necks; second, the partial standardization of the new buildings, particularly with a view to fire resistance; and third, the raising of money for the public . . . buildings by a tax on coal. (Summerson 1962, 53)

By far the most lasting of the act's legacies dealt with the height and construction of dwellings to replace those burned in the fire. The size of a home that could be built on a site depended on the location and importance of the street or square on which it faced. The use of stone or brick for exterior walls was required. Thickness of walls, heights of ceilings, and other architectural details were also specified. Overhangs above the public way were prohibited. In short, the act "crystallized the best practice of the time" (Summerson 1962, 54). It was, in effect, a building code for the redevelopment of the burned area and a guide to new construction in surrounding areas. The act was farsighted in its provisions for permits and fines, a precedent for modern building codes. In addition, its regulations regarding the banishment of smoky or noxious activities to specified locations anticipated modern zoning laws.

The act was not uniformly effective, for indeed there was little experience or administrative structure to enforce its requirements. Furthermore, it did not purport to change building patterns or land usage to eliminate overcrowded alleys and courts behind other buildings. Working-class London sprang back to life still densely crowded and deprived of light and air. Such conditions would become increasingly intolerable over the next two centuries.

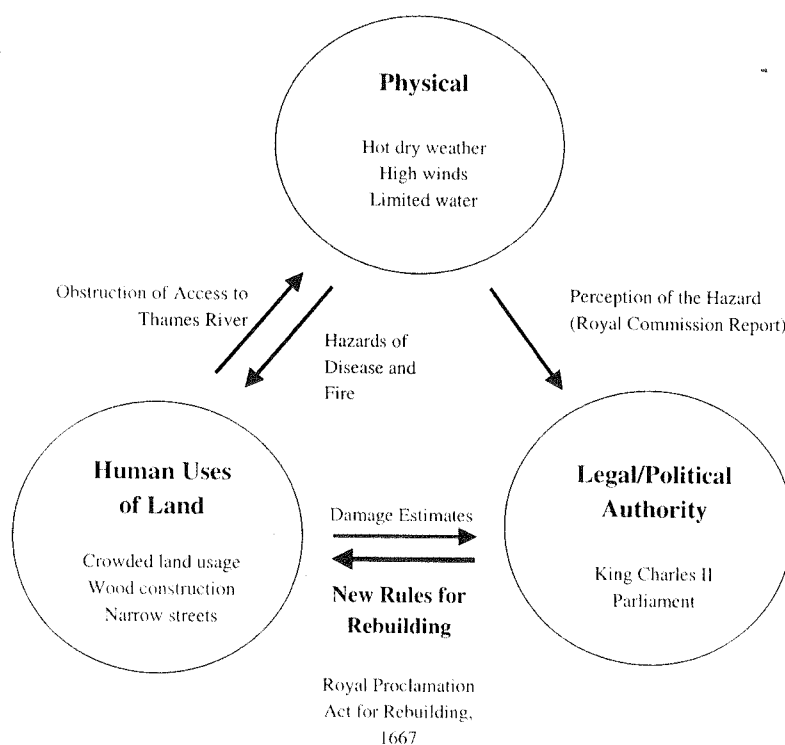
Although the exact influence of the act is difficult to discern from what might have occurred in its absence, it clearly marked a threshold between the medieval and the modern eras of urban land use. The lethal combination of overcrowding, use of flammable building materials, and abysmal sanitary conditions produced the twin perils of the medieval city: disease and fire, both of which struck London in tandem in 1665 and 1666. The Great Fire swept away not only the overhanging wooden houses and the rats they contained, but also the attitude of medieval neglect toward the urban environment. Charles II's moratorium on rebuilding,

reinforced by the commission of experts, marked a sea change in governmental process from Elizabeth's useless edict of 1580. The Act for Rebuilding London represented the beginning of modern urban planning, although two centuries more would elapse before public building codes were widely adopted in England and the United States.

The Act for Rebuilding London exemplified the operation of the land use and society model presented in Figure 2-8: meaningful legal reform affecting the rebuilding of the urban environment resulted from improved perception of the causes of the disastrous Great Fire (Figure 3-5).

### *Private Land Use Restrictions*

At the same time that London was being rebuilt under the 1667 act, the agricultural estates beyond the city's walls were undergoing development for the first time. The building boom north and west of the city proper (including what is now



**FIGURE 3-5** The land use and society model, as applied to the rebuilding of London after the Great Fire of 1666.

the fashionable West End district) was not subject to the act, but displayed nevertheless a remarkable uniformity in land use pattern and architectural style. This uniformity was achieved not through governmental regulation, but through private deed or lease restrictions imposed by aristocratic landlords upon the building and occupancy of new residential districts.

The building of London's residential squares between the 1630s and the 1820s provided new upper-class housing and neighborhoods near the royal palaces, clubs, offices, and social life of London. Much of this development occurred on land held by aristocratic families under ancient feudal grants or acquired when Henry VIII abolished monasteries and sold them to affluent buyers. In either case, the owners, including the royal family, were eager for land development profit. Landlords and upper-class lessees alike agreed that fashion required that the new neo-classical districts must maintain a uniform and haughty appearance to the rest of the world.

A quirk of English legal history was to determine the scale and quality of the development of the London West End. Land was normally inherited by the eldest son, if any, and could not be sold out of the family (*primogeniture*). The land could be profitably developed and leased for long periods while the underlying ownership passed from one spendthrift eldest son to the next. Because ownership of large holdings remained under family control, it was possible to enforce private land use and building restrictions over centuries, thus permitting the careful planning and uniform execution of the squares and residential terraces that characterize upper-class London to the present day (Figure 3-6).

The elegant uniformity of exterior appearance that characterized these developments was achieved through private restrictions known as *covenants*. A covenant is a promise made by the purchaser or lessee of land that the use of the premises will conform to conditions specified by the landlord. Thus the landlord could prescribe the exact locations of streets, squares, and building lot lines as well as the size, appearance, and sometimes the interior layout of buildings.

The enforceability of covenants over time was seldom an issue where the original lessee or purchaser remained in possession. The landlord always had the legal right to enforce covenants against the party that had accepted them. Many leases, however, ran for periods of ninety-nine years or longer, and transfers from one party to another were common. This practice raised the question of whether the covenants would still be enforceable against subsequent parties in possession who had not specifically accepted the restrictions. In 1848, an English court decision



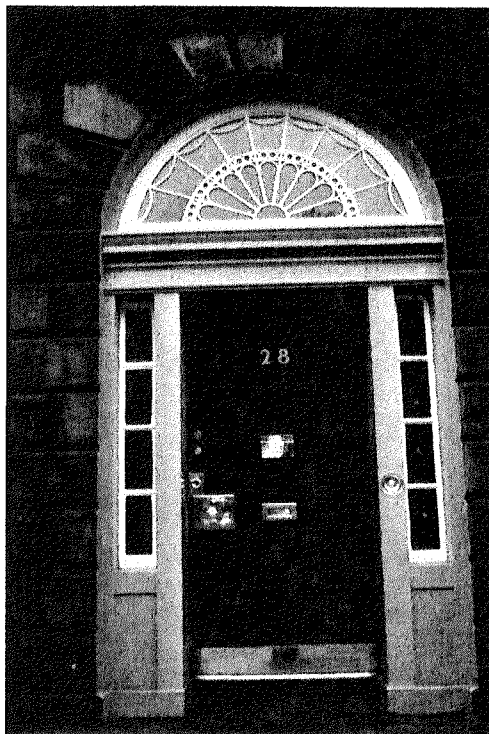


**FIGURE 3-6** Eighteenth-century townhouses at Bedford Square, London. Note the “to let” signs reflecting the practice of using long-term leases instead of outright sale to retain the property in the Bedford Estate. (Photo by author.)

(*Tulk v. Moxhay*, 41 Eng. Rep 1143) concerning London’s Leicester Square ruled that covenants may be enforced against subsequent lessees or occupants of the premises. (In quaint legalese, covenants are said to *run with the land*.)

The neoclassical residential districts regulated through private covenants were the antithesis of medieval unplanned growth. They exuded wealth, conservatism, power, and control in contrast to the irregular, heterogeneous, human scale of older districts. James Craig’s 1766 plan for the “New Town” in Edinburgh stands in startling contrast to the medieval Old Town. Although little of medieval vintage remains today in the Old Town, it retains a mysterious and romantic atmosphere amid the Scottish fog and gloom. Across a narrow linear park (formerly a fetid creek), Craig’s eighteenth-century New Town stands elegant, symmetrical, and respectable, graced by its elegant townhouses and leafy squares, all protected by covenants (Figure 3-7).

In the United States, the English-style residential square inspired several counterparts, notably Louisburg Square in Boston’s Beacon Hill, laid out by private developers in 1826, and New York City’s Gramercy Park, established in 1832. Both



**FIGURE 3-7**

Neoclassical doorway by Robert Adam in Edinburgh's eighteenth-century "New Town." The premises are now a corporate office rather than a home, but the external appearance is protected by lease restrictions.

*(Photo by author.)*

of these squares still remain private parks, with keys available only to owners and tenants of adjacent buildings.

Today, private deed restrictions are widely used to control the use of land and buildings within subdivisions, condominium developments, and office parks, as considered in Chapter 7.

### *Improvement Commissions*

Private deed restrictions served the needs of the wealthy to implant their concepts of style on their elite quarters. Industrial working-class districts, though, which began to grow rapidly in the eighteenth century, were a different story. London doubled from about 400,000 at the time of the Great Fire to 864,000 in 1801. Other British and Scottish industrial cities, including Manchester, Birmingham, Liverpool, and Glasgow, grew at comparable rates. Most of this population increase consisted of migration from the countryside and from Ireland and the Continent to the "satanic mills" of the industrial cities. This migration caused hideous overcrowding of existing dwellings and a proliferation of cheap, shoddy, unplanned tenement districts within walking distance to the factories and mills (Ashworth 1954).

To make matters worse, the old municipal corporations that nominally governed each city had stagnated by the eighteenth century. Municipal offices were allocated according to status and privilege, not experience or interest in reform or public service (a practice not unknown today). The corporations were unresponsive to what Ashworth (1954, 50) has termed "the increasingly lethal nature of the swelling towns." The result was a state of anarchy in the town building process in the eighteenth and nineteenth centuries, apart from elite areas developed under deed restrictions.

Not only the municipal corporations but also the courts were largely ineffectual in confronting the new circumstances. As stated earlier, abatement of *nuisance* through court intervention was limited to case-by-case treatment upon petition of the wronged party. Normally, the harm complained about had to be in existence; it was rare that courts would prohibit a prospective nuisance. In addition, the party seeking a remedy had to own the property, not be a mere tenant. Legal action was also expensive then as it is today. In theory, nuisance actions remained available, but in practice, the courts provided little restraint over the tenement-building process because the victims seldom were able to complain.

The abysmal working-class residential environment of eighteenth-century industrial England was described a century later by socialist reformers Sydney Webb and Beatrice Webb (1899/1963, 50) as follows:

To begin with the houses—springing up on all sides with mushroom-like rapidity—there were absolutely no building regulations. Each man put up his house where and as he chose, without regard for building-line, width of street or access of light and air. . . . Streets of projecting houses nearly meeting at the top rooms with small windows never meant to open; and dirt in all its glory, excluded every possible access for fresh air. . . . The narrow ways left to foot and wheeled traffic were unpaved, uneven, and full of holes in which the water and garbage accumulated. Down the middle of the street ran a series of dirty puddles, which in time of rain became a stream of decomposing filth.

Members of the conservative ruling class in the eighteenth century—including the landed aristocracy and new capitalists—were generally disinterested in the fast-growing squalor within the cities. Creative and large-scale measures to address the crisis—for example, public sanitation and building laws, the public parks movement, urban redevelopment, and model planned towns—would not appear until the second half of the nineteenth century, as discussed in the next chapter.

One simple but practical stopgap measure, however, appeared in the late

seventeenth century to address the need for better public services, namely *improvement commissions*. These commissions were established by Parliament to perform particular functions in specified cities. They were the forerunners of contemporary special districts and authorities in England and the United States. Like their modern counterparts, improvement commissions could overlies general-purpose units of government and indeed could serve more than one municipality. The first of these new institutions was the Commissioners of Scotland Yard established in 1662 to serve London. This commission was not a detective agency but rather was empowered to "make new sewers, enlarge old ones and to remove nuisances . . . to appoint public rakers or scavengers, who were to make daily rounds with 'carts, dungpots, or other fitting carriages' . . . and to remove encroachments upon public ways and to license hackney coaches" (Webb and Webb 1899/1963, 240).

Improvement commissions proliferated throughout England during the eighteenth century, numbering some three hundred by the early 1800s. They assumed many of the functions of modern local governments, such as "paving, cleansing, lighting, watching, and regulating" (Webb and Webb 1899/1963, 242). In addition, they engaged in activities of a more regional nature: building bridges and canals, improving drainage, enclosing commons, erecting markets and slaughterhouses, supplying water, and constructing highways.

Yet like the municipal corporations and courts, the improvement commissions were hampered by institutional constraints in their efforts to stem the deterioration of English cities. They were strictly limited to specified functions and geographic areas as established by Parliament. They had no general jurisdiction or "home rule" authority to address a wider spectrum of urban needs without parliamentary approval. Thus a commission responsible for paving and lighting in a particular district had no authority to deal with drainage or water supply, no matter how obvious the need. Furthermore, the improvement commissions lacked any authority to plan or regulate new building; they were largely limited to dealing with harmful conditions after the fact, not beforehand. By the early nineteenth century, these commissions:

too often concentrated their attention solely on the middle-class districts of their towns, leaving the greater number of streets inhabited by the poorer classes wholly without essential services. However valiantly the improvement commissioners might struggle to cope with the flood-tide of urbanization—and few of them struggled very valiantly—they were fighting losing battles. [They were] constitutionally, financially, administratively, technically, and ideologically ill-equipped to cope with the frightening immensity of the task. (Flinn 1965, 17)

Improvement commissions were established to remove nuisances and improve public appearance and sanitation. The idea of a separate municipal corporation, was to centralize metropolitan

## Conclusion

The creation of municipal corporations was a response to the need to organize and control urban growth. Some of the functions of the municipalities were the same as those of the municipal corporations. The necessity for a separate municipal corporation was a result of the need for a separate municipal corporation. The necessity for a separate municipal corporation was a result of the need for a separate municipal corporation.

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Improvement commissions were thus a temporary eighteenth-century expedient to remedy certain kinds of urban ills on a piecemeal basis until more sweeping public approaches were devised. They totally failed to restrain the continued proliferation of slums and the lethality of the working-class residential environment. The idea of the improvement commission, however, like the municipal corporation, was to become a permanent addition to the institutional fabric of urban and metropolitan government in Great Britain, the United States, and elsewhere.

### Conclusion

The creativity of the English people and their legal system yielded a series of institutional innovations over several centuries to meet perceived needs to better organize and control the use of land. The source of each device differs considerably. Some of the institutions discussed in this chapter, such as the feudal commons and the municipal corporation, arose spontaneously from the “invisible hand” of social necessity. The doctrines of trespass and nuisance and later the recognition of private covenants as restrictions that “run with the land” were products of the English judicial system. The Act for Rebuilding London and the improvement commissions were the result of parliamentary legislation. Judicial and legislative actions continued to be the primary vehicles for reform of land use and building practices through the nineteenth and twentieth centuries. Each of these may be understood as crude efforts of society to understand and correct problems in the development of urban places, as described by the land use and society model of Figure 2-8. The historical narrative of this ongoing process from 1800 to the present time is the subject of the next three chapters.

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