

**Legislation and the Built Environment in the Arab-Muslim City**

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## **Legislation and the Built Environment in the Arab-Muslim City**

An essay on a presentation made by Saleh al-Hathloul to Diwan al-Mimar on April 22, 2002. (1)

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### **Introduction**

The subject of this Arabic-language lecture was based on Saleh al-Hathloul's Ph.D. dissertation at the Massachusetts Institute of Technology (1980) and his book *The Arab-Muslim City: Tradition, Continuity and Change in the Physical Environment* (1996). (2)

Al-Hathloul explores the evolution of the Arab-Muslim city through an analysis of pre-modern legal documents that include records from 14<sup>th</sup>-century Tunis and 16<sup>th</sup>-century Medina. The study is partly an examination of the evolution of traditions. It emphasizes a number of prepositions. The first is that traditions grow out of a community's need for continuity and regulations that govern social life. Another is that traditions are an extremely important source of knowledge, for they express the cumulative knowledge for a given society, and are the informational basis that enables a society to move forward. In spite of the importance of tradition, it should not have absolute reign in determining how society conducts itself. Tradition must be receptive to criticism, adaptable, and capable of development and change.

Tradition can be explained through studying the history of legislation. In many instances, the study of such a history is more informative than the study of traditional narrative history. Legal history generally presents a more candid and accurate representation of the past than narrative history, which represents a subjective view of given historical events. Al-Hathloul also emphasizes that in the Arab-Muslim world, continuity with many of our traditions has been lost, and with it a considerable knowledge base that could have been developed upon in the modern era.

### **Legal Records**

Al-Hathloul's work concentrated on exploring and explaining how traditions relating to the making of the Arab-Islamic city came into being. This he achieved through the study of legal records, which come in two forms. The first consists of manuals of *hisbah*, written between the 11<sup>th</sup> and 14<sup>th</sup> centuries, specifying the obligations of the *muhtasib* (a municipal officer responsible for public morals and regulation of markets), and accounts of actual cases from Tunis related by Ibn al-Rami in the first half of the 14<sup>th</sup> century, and from the court records of Medina since the 16<sup>th</sup> century addressing practical issues observed in the city. The second type of record is that of theoretical issues, which are documented in the opinions, discussions, and theories of the *fuqaha'* (Muslim jurists) from the first three centuries of Islam (7<sup>th</sup> through 10<sup>th</sup> century). He further explained that his study focused on the Maliki school of Islamic jurisprudence (3), mainly because the written materials relating to this school were readily available and easily accessible to him, and because most of the inhabitants of both cities in his study (Tunis and Medina) were followers of the Maliki school. This presented the opportunity to study the applications of a theoretical knowledge base in the practical arena through actual events.

Al-Hathloul presented issues to be studied through both the intellectual materials and the practical examples at hand. These mainly concentrated on the right-of-way, the conception of space, and the concern for privacy.

## Right-of-Way

Al-Hathloul discussed how Muslim jurists categorized roads. The categories include through streets, known as *tariq al-muslimin* (the road of the Muslims), which scholars viewed as public, and in which all inhabitants had a right-of-way. There also were lanes and cul-de-sacs, which the jurists viewed as semi-private roads, pertaining only to the surrounding properties.

The supervision of public roads in the Muslim city mainly was the duty of the *muhtasib*. One book that elaborates on the role of the *muhtasib* is that written by Ibn al-'Ukhuwwa (d. 1329), himself a *muhtasib*. In his book, *Ma'alim al-Qarya fi Ahkam al-Hisba*, Ibn al-'Ukhuwwa discusses roads, and states that people should not be allowed to sit in narrow passages, nor should they be allowed to extend a ceiling to cover an alley, since these are violations that restrict the movement of pedestrians. Al-Hathloul commented that Ibn al-'Ukhuwwa's text is very elaborate and detailed from a legal point of view. It discusses issues such as the prohibition of draining water gutters into narrow alleyways so as to limit slippage hazards for those passing through the alleyway. It was the *muhtasib's* duty to ensure the implementation of such regulations.

On the theoretical side, al-Hathloul examined the documented opinions of Muslim jurists regarding roads. These range from Imam Malik ibn Anas (d. 795) to some of his students, and also students of his students, such as Ibn al-Qasim (d. 807) and Sahnun (d. 854).

Al-Hathloul examined instances of road encroachments in Arab-Islamic history (figure 1). When tackling the issue of encroachment on the right-of-way, jurists did not always pronounce it a violation. Sahnun, who was a student of Ibn al-Qasim, who in turn was a student of Imam Malik, was consulted regarding the case of a man who had encroached on a road. The man's neighbors did not complain until after 20 years had passed since the encroachment. Sahnun was of the opinion that if the encroachment is proven, the man must return what he had claimed of the road since no man should infringe on *tariq al-muslimin*. Ibn Kinanah (d. 802) also was of the same opinion, and even suggested that a penalty be imposed on the transgressor. In another instance, the scholar Rabi'a (d. 753) was asked if a man who is building a mosque could expand it to encroach on the road, and he did not allow it. However, other jurists had differing opinions. Imam Malik stated that in such a case the encroachment may be allowed, provided it does not violate certain conditions, as with obstructing *tariq al-muslimin*. Al-Hathloul pointed out that the differences in opinion between the jurists are important, and indicate that the legal system showed considerable flexibility and diversity. If an encroaching building was constructed along a wide road, they would not necessarily call for its demolition as long as no parties were harmed by the encroachment. An example of this is the jurist Ashhab (d. 819), also from the Maliki school. He was asked if a man would be allowed to increase the width of his house by one or two cubits (4) if what was left of the road was eight cubits. The man's neighbor on the opposite side of the street complained on the grounds that the road formed the *fina'* (open space) of his house. Ashhab ruled that the infringing construction be demolished. However, Ashhab had allowed another instance where a man had expanded his house by transgressing on a *fina'* adjacent to his house, since the *fina'* was wide and spacious and the road remained unobstructed. Al-Hathloul concludes that the legislation was flexible, and if certain criteria were met, scholars generally saw no harm in minor transgressions on the road.

Al-Hathloul continued to expand on the idea of the *fina'* (figure 2). It has been ascribed to the Caliph and Companion of the Prophet 'Umar ibn al-Khattab (r. 634 - 644) that he attributed the ownership of the spaces in front of houses to the house owners, an idea adopted by Maliki jurists. The *fina'* was, therefore, allowed as long as it did not narrow a passageway, obstruct a passerby, or cause harm to Muslims according to the Islamic ruling of '*la darar wa la dirar*' or (There should be neither harming nor reciprocating harm) (5). They also allowed building around the *fina'*, and even its incorporation into a building, if the road was wide enough.

The writings of Ibn al-Rami (d. 1334) indicate that building transgressions on public spaces were very common in Tunis. Ibn al-Rami was a builder and also a student of the Maliki judge Ibn 'Abd al-Rafi' (d. 1333). Because of his expertise in both building and legal issues, Ibn 'Abd al-Rafi' asked him on numerous occasions to serve on arbitration committees to resolve disputes relating to building (arbitration committees usually were formed of people known for their experience and knowledge). Based on his recommendations, Ibn 'Abd al-Rafi' ordered on several occasions the demolition of a number of buildings and wooden structures that encroached on public ways.

Ibn al-Rami documented his experiences in his book *al-'Ilan bi Ahkam al-Bunyan*, which also includes explanations of the opinions of Islamic jurists on relevant subjects. He detailed the cases he dealt with, and explained his judgments in each case. Al-Hathloul pointed out that one should keep in mind that in all the records available for study, the cases recorded are ones in which traditions were put into question. It was only when disputes arose over the content of these traditions that matters were brought to a judge and thus recorded.

Transgressions on roads also were common in Cairo. In 1478, the Mamluk Prince Yashbuk undertook the widening of roads and lanes in the city, including the busy al-Mu'izz Street. Consequently, a Shafi'i judge in the city was asked to rule regarding the removal of encroachments on roads, which included buildings, wooden structures, and constructed benches.

Al-Hathloul went on to explain that Medina has excellent court records starting from 1555, which are amongst the best to survive in the Arab world today. Beginning in 1591, the records are highly organized, and arranged by year. They are divided into individual volumes, are neatly handwritten, and are easy to read once one becomes accustomed to their style of writing.

Al-Hathloul explained that he reviewed, in 1977, Medina court records from 1555 up to 1882, at 50-year intervals. In his study, al-Hathloul came across around 45 disputes relating to right-of-way issues. Al-Hathloul cited the case of a person in Medina who, in 1570, asked the court to appoint someone to measure the width of the street in front of his house before he rebuilt his house to prove that he had not encroached on the road. Al-Hathloul pointed out that this case is very significant since it indicates that there were constant disputes regarding the right-of-way among inhabitants, and that such encroachments occurred frequently.

Al-Hathloul took Medina's land subdivision plan, and attempted to read these plans as physical manifestations of textual cases. In one case, in 1852 (during the Ottoman period), a group of neighbors complained to the court that a neighbor had blocked their lane by extending part of his house across the lane to reach the building on the opposite side. In this case, the man had bought an old house that had collapsed and blocked the lane. When he attempted to rebuild it, he claimed the part already blocked by the rubble. The judge, who in this case was from the Hanafi school of Islamic jurisprudence (the Hanafi rite was the official rite of the Ottoman state), ruled in favor of the man who blocked the lane since the Hanafis place a statute of limitations of 15 to 20 years, after which the neighbors lose their right to object against an encroachment. In another case in Medina, in 1821, a house owner extended wooden beams to cover the road, which indicated to his neighbors that he intended to appropriate the public passageway next to his house. His neighbors brought the matter to the judge, who ruled that the new construction was to be demolished. Al-Hathloul emphasized that such cases were very common to jurists in Muslim cities because of the ubiquity of the gradual usurping of street space and closing of lanes (figure 3).

### The Conception of Space

The *fina'* (pl. *afniya*), an open space around or along a building, and the *zuqaq*, or cul-de-sac (figure 4), have been treated by jurists and city inhabitants as semi-private, collectively-owned spaces. Al-Hathloul presented through his study of Medina's land subdivision plan examples of additions to buildings that encroached on the street. Most of these additions took place in cul-de-sacs where the neighbors usually were all related or closely connected in some other way, and therefore usually did not object when one of them decided to make an addition to his house that encroached on the adjacent lane. In some cases, if a house already had encroached on the street, and then was demolished and rebuilt, it would be rebuilt in a similar manner that still encroached on the street. In this context, Al-Hathloul remarked that in his survey of a thoroughfare emanating from the Women's Gate in the Prophet's Mosque in Medina towards al-Baqi' cemetery, he noticed the existence of a café that had extended into the street, even though this street was a main road (figure 5). Al-Hathloul went on to explain that Islamic jurists saw no harm in people utilizing the *afniya*, whether in front of or behind their houses, as long as the road is not narrowed and circulation is not hindered (figure 6). The concept of the *fina'* as elaborated by jurists can be explained as follows: In a main thoroughfare, the *fina'* is the part near the house door, and does not extend more than half of the width of the street. In lanes and cul-de-sacs, the *fina'* covers the whole area abutting the house, and usually extends to include the whole lane's width. The *fina'*, therefore, can be seen as a space belonging to whoever has a door opening onto the street.

Al-Hathloul also noted that Maliki scholars did not allow the opening of an entry door for one house opposite an entry door for another house (figure 7), the reasons for this being both to preserve privacy and to allow the house owner the personal use of the space in front of his door. He added that in his survey of over two hundred houses in al-Aghawat neighborhood in Medina (figure 8), he found only two examples of doors placed opposite each other. Upon closer examination, al-Hathloul found that one of the doors in each of the two examples was a recent addition belonging to the last fifty years.

Al-Hathloul mentioned that the idea of the *fina'* is a recurrent one in Muslim cities. Also, lanes and cul-de-sacs seem to have had uses identical to the *fina'*. However, owners along lanes and cul-de-sacs enjoyed more freedom than those located along a *fina'* that opens onto a thoroughfare. As long as owners along lanes and cul-de-sacs were in agreement concerning their use and no complaints were made, jurists usually avoided interfering against incursions along them. On the other hand, Ibn al-Rami had written of a group of people who had built a gate for their lane, where the gate's door opened against the wall of another person's house. This person took the matter to court on the grounds that the opening and closing of the gate caused him damage and discomfort. The judge investigated the complaint and ordered that the gate be demolished. Al-Hathloul noted that although this gate was removed, remarkably there was no question regarding the right of those people to have a gate for their lane. Ibn al-Rami emphasized that it has been the custom to have gates in streets in Tunisia, and no one usually objected except when certain harm (*darar*) occurred.

Al-Hathloul surmised that the non-interference of jurists, and presumably *muhtasibs*, in the affairs of lanes and cul-de-sacs, except when petitioned by residents of those lanes, provided sound reasoning for the development of the large number of gates to be found within neighborhoods in Arab-Muslim cities (figure 9). The gate system, according to al-Hathloul, has been explained by orientalist as a security measure to be used when cities suffered either internal troubles or external invasion. Although al-Hathloul does not dispute this reasoning, he noted that the existence of a large number of gates within each neighborhood in the city also clearly indicates that the placement of gates along lanes and cul-de-sacs shows that they were treated as semi-private, collectively-owned spaces.

Related to the concept of the *fina'* are projections and chambers constructed over the street (figure 10). Sources show that these were prominent features of Arab-Muslim cities. Islamic

jurists saw no objection to such practices, as long as no harm was caused to neighbors, and circulation was not hindered. The jurist Ibn Sha'ban was of the opinion that when a house door opens onto the street and the owner wants to build a *janah* (projection) over the street, he should not be prevented from doing so, even if he takes the whole street width, since he preceded others in this construction. However, should the issue be disputed between two neighbors, Ibn Sha'ban would divide the air rights over the street between them in half. Jurists were very specific regarding the clearance between the projection or the chamber and the street's ground level. Ibn al-Rami mentioned that the height should accommodate a rider on the "greatest" camel saddle (*mahmal*).

### **The Concern for Privacy**

Although encroachments upon the street were sometimes allowed, neither residents nor jurists tolerated intrusions into the private life of a household. Al-Hathloul described how issues relating to the invasion of privacy often were brought to the attention of jurists. Such cases were considered to cause great harm, and Muslim law supported the removal of such damage.

Al-Hathloul explained that there were many discussions on the issue of privacy, and also that limits were placed on the physical forms of buildings in order to protect privacy. For instance, in the case of doors and windows that looked upon neighboring houses, two types were recognized in convention: New (*hadith*) openings, which were to be sealed, and preexisting ones (*qadim*), which were left as is. However, even if the opening was not sealed, one would not be allowed to use it to look upon his neighbors, and was to be prevented and penalized if he did not respect the privacy of his neighbors.

In Tunis, many cases regarding the invasion of privacy were brought to court. Sources show that judges would order openings that invaded the privacy of neighbors to be sealed. In a related case from Medina in 1573, a man complained to the court about his neighbor who had opened windows in his upper chamber on the grounds that these windows caused him damage by denying him privacy in his house. After examining the case and confirming the damage, the judge ordered that the windows be closed. The house owner, however, appealed to the judge, stating that intrusion on his neighbor's privacy was not his intention when placing the windows, but rather that he needed them to bring in the sun and ventilate his chamber. The judge consequently appointed a group of experts to search for a solution. They recommended that the man raise his windows to about 220 cm above floor level, so that the inhabitants of that house could not look into the neighbor's house, even if standing on top of a chair. Such an incident shows that judges often attempted to address the needs of all parties. Al-Hathloul added that the issue of opening windows depended to a large extent on physical context, for if a building overlooked an empty plot of land, for example, no one would have complained regarding their placement.

Al-Hathloul then referred to the three types of houses that evolved in Medina. He explained that before the 16<sup>th</sup> century, the dominant type in Medina was the two-story courtyard house (figure 11). Since the 16<sup>th</sup> century, however, visitors to the city increased greatly, as did the economic value of land close to the Prophet's Mosque (especially in the area to the northwest of the mosque). Consequently, the 16<sup>th</sup> and 17<sup>th</sup> centuries witnessed the emergence of two new housing types. The first is the *qa'a* (hall) house (figure 12), and the other is the *mashrabiyya* (wooden grill or grate to cover windows or balconies) house (figure 13).

The *qa'a* house is a house with a small covered courtyard in the center (known as a *qa'a*). Part of the house overlooks the hall, and the other part has views towards the outside. The *qa'a* house is usually three stories high. The *mashrabiyya* house, on the other hand, is a typical row house, with openings on the street, each of which is covered with a *mashrabiyya*, and high openings on opposite sides that allow for ventilation, but preserve privacy. It is usually four to five stories high, with each floor housing a single apartment. The owner usually resided on the ground floor, and rented out the upper floors to tenants. These types of

houses, explained al-Hathloul, were economically viable and responded to an increasing demand for housing near the Prophet's Mosque. The *Mashrabiyyas* provided privacy for these houses, and ensured that even houses located in front of each other would not gain views into each other.

According to al-Hathloul, existing legislation and conventions facilitated the appearance of such building forms. He explained that needs and economic considerations necessitated the development of new urban solutions that nonetheless preserved traditions and conventions. He pointed out that legislations essentially were based on an Islamic legal tradition that allowed for flexibility. It specifies what is prohibited and assumes all other activities to be allowable. From these principles, a body of legal theory came into being and formed the basic social and economic structures of Arab-Muslim society. This legal theory was translated into three aspects relating to the built environment. The first is established conventions for building and construction; the second is the resulting guidelines and standards of use; and the third is actual practical uses. The three aspects were in balance, and ensured continuity of the social structure. These rules were retained in the form of acknowledged social conventions, which were at work in everyday life and insured the smooth social operation of society. If conflict arose, the traditions were referred to in order to seek solutions.

### **Conclusion**

Before wrapping up, al-Hathloul described how current city planning starts from the top, with an imposed city plan that is translated into a set of legal documents providing regulations. He explained that our cities today often are molded through the planners' visions for them. A city plan, he explained, usually starts with sketches that show what a city or street would look like, and then proceeds with the placement of rules to govern issues such as setbacks, street widths, and building heights. The contemporary city, therefore, has a predetermined physical form, with preset final products. All designs would necessarily have to conform to a site brief, provided by a municipal or other building authority. This does not leave much room for experimentation and development because form is already predetermined.

Al-Hathloul concluded by mentioning how the two positions, the traditional and the contemporary, differ in nature. The traditional Arab-Muslim city relied on customs of use for its generation and control of change, while the contemporary city relies on preconceived, prescriptive conventions of form. Implied in the traditional process is a reciprocal relationship between form and use that does not prescribe any preconceived shape or form for the city.

### **Questions and Answers**

One issue discussed following al-Hathloul's lecture was the modern application of the principles of Islamic jurisprudence. A questioner referred to the principle of constant revitalization of property, and inquired regarding its current effect on the development of Saudi cities such as Mecca and Medina over the last 40 or 50 years. The questioner pointed out that much destruction had taken place in the name of modern planning, stating as an example the demolition of the 18<sup>th</sup>-century Ottoman Ajyad fortress in Mecca, which was demolished to make way for an apartment and shopping complex on the periphery of the Great Mosque. Al-Hathloul replied that the concept of property revitalization is the subject of great discussion among judges and jurists. He explained that there are documented cases of judges compelling owners to rebuild derelict properties owned by them. Furthermore, al-Hathloul mentioned that if the owner were not financially capable of rebuilding his property, the judge would normally intervene, and bring in a third person, who would act in the capacity of a modern "developer." This "developer" would be granted the right to use this property for an agreed amount of time, after which the property would revert to its original owner. He further explained that this was largely the case in *waqfs* (pl. of *waqf*, a charitable endowment often intended for the upkeep of a religious building, educational institution, or

other establishment that aimed at serving the public good). Al-Hathloul pointed out that it was the judge who had the responsibility of overseeing a *waqf*, even if an administrator for that *waqf* existed. So, in numerous cases - where the *waqf* had been allowed to run down - the judge would intervene and allow developers to rebuild the property and make use of its income for a certain period of time before it was returned to its original uses according to the *waqf*.

Regarding the question of architectural heritage and what remains of it in Saudi Arabia, al-Hathloul noted that the process of rapid development in Saudi Arabia undoubtedly has led to the loss of a large part of architectural heritage, especially in Medina, where the old city was demolished and now falls within the current extension of the Prophet's Mosque. However, he pointed out that this matter in particular is not an easy one to discuss, especially since there are two million pilgrims who come to pray in the mosque during the *Hajj* (pilgrimage) season. Under such circumstances, al-Hathloul added, it would be difficult to argue against the demolition of older structures in the area to make way for the mosque's expansion. However, he agreed that in the case of Ajyad fortress in Mecca, it could have been preserved, and the *waqf* of the Holy Mosque which is a commercial development project could have been constructed around it.

Al-Hathloul added that the issue of preservation remains an extremely difficult one to argue with people who place no value on architectural heritage. From the developers' point of view, the development mentioned above, as a *waqf* for the mosque, would provide the mosque (after the initial 15 years that the developer is entitled to its income) with an annual income in the neighborhood of 120 million US\$. He explained that the value of land next to the Holy Mosque in Mecca could cost up to 45,000 – 50,000 US\$ per square meter. Pilgrims would pay double for accommodation adjacent to the mosque in relation to what they would pay for accommodation 500m farther away from the mosque. All financial considerations withstanding, al-Hathloul expressed his opinion that this should not justify the destruction of the fortress.

An audience member asked al-Hathloul, as both an academic and a government official, whether he thinks it would be possible to grant as much freedom relating to zoning regulations and land use in the city today as was given in the pre-modern Islamic city. Al-Hathloul responded by explaining that Saudi Arabia can be viewed as a laboratory of city planning within the context of the modern Arab world. Its modern development has taken place over a relatively short period of time so that the complete process can be observed and documented relatively easily and clearly. He went on to explain that, from the mid-fifties until the end of the seventies, a number of new traditions relating to building regulations emerged and consequently were instituted as legislation. He added that it would be unrealistic today to attempt to totally overturn such developments in an attempt to return to legislation that governed the pre-modern Arab-Islamic city.

Al-Hathloul proceeded to give contemporary examples of how one might positively interact with tradition. One example relates to the city of Riyadh during the mid-1980s. In an attempt to improve the quality of residential architecture in the city, the city commissioned 16 architectural offices to design four housing prototypes each. The idea was that residents of Riyadh consequently would have 64 design options to choose from for their houses, and the city even would provide them with construction drawings for the prototype of their choice. Al-Hathloul explained that one of these architectural offices - then known as the Heritage Office, and now known as al-Nu'aim Office - had attempted to re-reconsider regulations and reexamine traditions. Architects Farahat Tashkandi and Mohammad al-Nu'aim focused in their solutions on both the idea of privacy and environmental considerations that suited the hot Saudi Arabian climate. Their design proposal was based on the principle of "first come, first served." They started out with existing regulations regarding setbacks and such, and reassessed them to come up with new solutions. The solutions they developed emphasized

the protection of privacy, but did not conform to existing setback regulations. They developed different models. Some were L-shaped, others U-shaped. In some instances there were no frontal setbacks, in others no side setbacks. Instead of producing four prototypes, they produced around 24 that covered a wide range of possibilities within the urban tissue and that were practical to carry out. As a model, they set out a block with 16 plots, and demonstrated to the municipality how all these possibilities produced quality spaces that did not invade the privacy of one's neighbors. Instead of the customary 2m setbacks, a 4m setback was used, where applicable, to provide a usable space for the house owner. Al-Hathloul noted that the municipality officials were unconvinced of the viability of this solution, and insisted on more conventional models that relied on compulsory setbacks. Al-Hathloul went on to explain that a few years earlier, the municipality started work on the 'Uraija low-income neighborhood, and in this case followed the other extreme of banning side setbacks altogether. In both cases, whether imposing or banning setbacks, we see examples of top-down planning.

A successful example al-Hathloul cited was the residential areas at Hayy al-Safarat (Embassies' Quarter; better known as the Diplomatic Quarter) (6) in Riyadh, designed by Farahat Tashkandi for ar-Riyadh Development Authority (7). The area, according to the zoning plan, had been intended for traditional detached villa types. Al-Hathloul explained that Mohammad Al al-Shaikh, the founding president of the Authority, asked the designers to redesign the residential neighborhood, and also to draft building regulations for the area. The area was redesigned very successfully as a series of open spaces and cul-de-sacs that guaranteed privacy. Al-Hathloul noted that this example was only possible because of the involvement of a flexible authority that accepted and implemented such ideas even though this meant more work for their licensing department. Instead of simply reviewing and approving building plans, each building design now needed to be inspected in great detail to ensure that privacy is guaranteed for one's neighbors, an issue in which municipal employees rarely get involved.

Another audience member asked al-Hathloul to elaborate on the effect of the Islamic ruling of '*la darar wa la dirar*' (There should be neither harming nor reciprocating harm) on the formation of public spaces, and inquired about the specific uses of such public spaces that would constitute *darar* on the public. Al-Hathloul replied that the keeping of animals, such as a horse, outside one's house would cause harm to neighbors because of the resultant odor. Al-Hathloul added that the concept of causing harm or damage created a precise classification for land use within the city, and that there were extensive discussions and elaborations among Muslim jurists on the sources of harm, such as smoke, odor, sound, and vibration. As an example, al-Hathloul related a case in Tunis that Ibn al-Rami had described, whereby a man had built a small stable for an animal behind his neighbor's house. The neighbor complained about the damage caused to him because of the sound and the odor, and the judge subsequently ruled that the stable and animal be removed. However, the animal's owner appealed on the grounds that his livelihood depended on the animal, and requested the opinion of experts to find a way for him to keep the animal, whilst removing the harm his neighbor had suffered. The experts found that the animal's owner should dig a trench behind his neighbor's wall and construct a second wall of a certain width on his own property that started below the ground, and continued up to roof level, providing air space for ventilation between the two walls to remove the "harm." Al-Hathloul noted that the jurists examined the source of the damage, when determining the location of industries within the city. For instance, activities causing severe damage, such as furnaces and tanneries, were not allowed in residential areas, and were relocated outside the city walls. On the other hand, if the damage is considered minimal, and the function necessary for the daily needs of the city's inhabitants, such as that caused by a baking oven, then it was accommodated.

The questioner also enquired as to the types of uses of the *finā*, to which the houses are entitled. Al-Hathloul mentioned that the owners generally used the *finā* to unload goods

from their animals, for trading, or for the building of benches for seating. Also, the building of projections over the *finā* was allowed, as long as the road is not obstructed (see above). He added that, as in the case of Medina, the *finā* also was used for communal functions, such as ceremonial, social, or recreational activities, especially within the old city. With the expansion of the city walls, the spaces became larger, and as in Basra, they were called *rihab* (pl. of *rahba*, which is a public square, vastness, or expanse), and were also used for burials. Al-Hathloul observed that with urbanization and modernization, these public uses of space were dramatically reduced.

On a related note, al-Hathloul was asked about the reason behind the noted absence of common space in Muslim cities, and inquired as to whether this could be attributed to mosques fulfilling the functions of public space. Al-Hathloul answered that this erosion of public spaces, as can be noted in the case of Medina, with examples of large *afniya* being completely built up, can be attributed to the flexibility of legislation mentioned earlier that helped shape the urban fabric of traditional cities. He explained that orientalist usually attributed this to a lack of civil society in the Muslim city, and the absence of strong institutions. Al-Hathloul disagrees with this view, noting that institutions were present in Muslim cities, represented by the judge and the *muhtasib*, who had clear and specific responsibilities relating to public roads, as well as defined cases in which their interventions were required. This orientalist view, explained al-Hathloul, was the result of the comparison of Muslim cities with Byzantine and Roman cities, which had different institutions, and thus different physical characteristics. He added that transformations in the Muslim city were the result of the flexible conceptions of Muslim institutions regarding the city's growth and evolution. Al-Hathloul stressed that these transformations did not reflect any weakness of authority, but rather were the result of existing conventions. Main roads and thoroughfares were closely supervised by the *muhtasib*, while lanes and cul-de-sacs were not interfered with as long as owners along them were in agreement concerning their use and no complaints were made. He referred to al-Fustat, Basra, and Kufa as examples, where references allude to the general allocation of areas in the city to certain tribes, but do not indicate specific instructions beyond that, leaving the tribes themselves to manage, as long as no disputes arise.

An audience member asked al-Hathloul to elaborate on the extent of regulation required in a system that would allow freedom and flexibility in planning. Al-Hathloul gave as an example the building regulations placed for the housing design scheme proposed by the Heritage Office for the city of Riyadh. He explained that in this scheme, a maximum building footprint of 60 percent of the 400 square-meter plots was specified. The designers allowed a maximum of two floors, removed any specific setback requirements, but prohibited the opening of windows directly onto a neighbor's property. Within these broad lines, architects would work to produce their own individual solutions. In another example, the Saudi Beech Group Consultants designed the al-Hamra faculty housing project, allowing a built-up area of 130 percent of the site area. They placed no limit on building height, and did not specify a maximum number of floors. However, privacy was very important, and the opening of windows was not allowed onto any neighboring building. Al-Hathloul noted that in these examples only general building guidelines were given, in sharp contrast with modern building regulations that take on a determinist attitude towards physical planning. He believes that when working with more general regulatory frameworks, architects would present more varied and stimulating solutions.

Al-Hathloul was asked how the transformation of Arab cities, from following an ordered form to a more organic one, took place, and whether there was a vision that led to this transformation. Al-Hathloul responded that judging from the examples he studied in Tunis, along with the accompanying documentation of jurist opinions, it could be surmised that this transformation was the result of a slow incremental process in the traditional city and society. Al-Hathloul explained that he finds the existence of a physical vision for the traditional Arab city to be highly doubtful, pointing out that the Arab city's development at that time was far

slower than it is today. In a modern city such as Riyadh, al-Hathloul added, about 12,000 building permits are issued each year, which necessitates formulating a vision for the city and drawing up clear regulations to cope with the fast pace of urban development.

An audience member noted that issues relating to the built environment in the traditional Arab city were examined only in case a complaint was presented to court. On the other hand, modern laws and regulations are concerned directly with actively tackling urban problems, such as sewage drainage, disease containment, and access to air and sunlight. The questioner inquired whether there were regulations in the Arab-Islamic city regarding public health and air and sunlight rights that were in effect and that would have prevented people from committing violations regardless of whether there were complaints or not. Al-Hathloul responded that in the Arab-Islamic city it was the judges' foremost concern to preserve the public good, and that this preceded any personal benefit. For instance, there were elaborate discussions on the issues of public health and air and sunlight rights. A structure was never allowed to cover the whole street, and prevent sunlight and air circulation. However, al-Hathloul pointed out that there were no specific quantitative regulations governing these issues as there are today, but that the opinions of experts known for their experience and knowledge were referred to when the public good was infringed upon or a dispute arose between neighbors.

Lastly, the noted historian professor Abd al-'Aziz al-Duri (8), who had attended this session, was asked to comment on legislation relating to the Arab-Islamic city. Al-Duri started by pointing out that in Islamic history the Arab-Islamic city went through various developmental stages in response to myriad political, social, and economic factors, and according to the purpose behind a city's inception. Therefore, when a city is discussed, the discussion should specify a certain period in this development. For instance, the establishment of the earliest cities such as Basra and Kufa (638) represented one stage; the establishment of Wasit (705) represented a second stage; and the establishment of Baghdad (762) represented a third.

With regard to the issue of space in the Arab-Islamic city, al-Duri referred to Basra as an excellent example showing the two types of open space in the city. The first type of open space being the plaza (often referred to as a *ziyada*) surrounding the central mosque; and the second type being the space belonging to each tribe, which could house the tribe's own mosque or remain an open space where various tribal activities could take place.

On the issue of regulation, al-Duri discussed the example of planning the markets in al-Karkh outside the Round City of Baghdad (*al-madina al-mudawwara*; the site of the round city established in 762), along with the neighborhoods of al-Karkh, al-Rasafa, and al-Harbiyya, all of which are located outside the Round City, constitute the old city of Baghdad). Ten years after the establishment of the markets, violations were noted in that markets were being constructed beyond the area designated as such. Consequently, markets violating the regulations were demolished. According to al-Duri, in this case, no complaints were made, and the actions were taken to ensure compliance with the regulations set forth for the markets.

Al-Duri also noted that while a judge only considered complaints brought forward to his attention, it was the *muhtasib's* duty to regulate and interfere wherever a violation is perceived to exist. In one example al-Duri presented, a call for prayer was made in the middle of the night in a residential area, during the reign of the caliph al-Mu'tadid (r. 892 - 902), when it was not the time for prayer. When the muezzin (*mu'adhdhin*) was asked why the call for prayer was made, he stated that it was to alert people in the neighborhood that a young woman was being harassed by a Turkish soldier, and that the *muhtasib* had not done his duty to prevent this from happening. This shows how far reaching the duties of the *muhtasib's* were defined. Al-Duri also presented the *waqf* as an example of the strength of Islamic institutions. For instance, the mother of the caliph al-Muqtadir (r. 908 - 932), after making a *waqf*, wanted to rescind her order, but this was refused by the judge who was in

charge of the *waqf*. Even when she brought the matter to her son the caliph, he told her that the authority in matters of the *waqf* were in the judge's hand. Al-Duri explained that *waqf* institutions provided health services, relief for the poor, assistance to pilgrims, educations, and much more. Other institutions in the Arab-Islamic city included the mosques, *hammams* (public baths), and *madrasas* (educational institutions).

In conclusion, al-Duri commented on the issue of legislation and flexibility afforded in Islamic legislation. He pointed out that legislation does not start with the placement of rigid rules, but rather that society and its practices evolve and that Muslim scholars would crystallize the rules following that. Al-Duri believes that practices come first, followed by the rules that would regulate them, stressing the principle of *ijtihad* (the use of individual reasoning) that allows differences in interpretation within an Islamic framework.

**Prepared by Dalia al-Hussaini with Majd Musa and Mohammad al-Asad  
Transcription of Arabic lecture provided by Diala Anabtawi**

### Notes

(1) Saleh al-Hathloul is an educator and a critic in the field of architecture and urban planning. He holds a Bachelor's degree in architecture from the King Saud University, Riyadh, a Master's degree in architecture and urban design from Harvard University, and a Ph.D. in architecture and environmental studies from the Massachusetts Institute of Technology (MIT). He was an assistant professor and chairman of the Department of Architecture at King Saud University; the first chairman of the board of AL-UMRAN (Saudi Society for Architects and Planners); and has been a member in the boards of directors of several governmental organizations in Saudi Arabia.

He has served as a member of the jury for the Organization of Arab Cities' Award for the past four cycles; a member of the 1998 Master Jury of the Aga Khan Award for Architecture; and a member of the Steering Committee of the Prince Sultan Bin Salman Award for Architectural Heritage. He is the author of 3 books, the best known of which is *The Arab-Muslim City: Tradition, Community and Change in the Physical Environment* (Riyadh: Dar al-Sahan, 1996), and more than 40 articles in the field of planning and architecture.

He also served as Deputy Minister for Town Planning at the Ministry of Municipal and Rural Affairs from (1984 – 2004), where his responsibilities included directing and supervising the spatial planning process at the national, regional, and local levels in Saudi Arabia.

(2) Saleh al-Hathloul's book *The Arab-Muslim City: Tradition, Community and Change in the Physical Environment* (Riyadh: Dar al-Sahan, 1996), based on his Ph.D. dissertation at the Massachusetts Institute of Technology (1981), explores the evolution of the Arab-Muslim city through an analysis of pre-modern legal documents including records from 14th-century Tunis and 16th-century Medina.

(3) The Maliki school of Islamic Jurisprudence is one of the four Sunni schools of Islamic law. It was founded in the 8<sup>th</sup> century and based on the teachings of Imam Malik ibn Anas (d. 795). Like other schools of Sunni Islam, Malikism bases its doctrine on the Qur'an, Sunna, and *Ijma'* (universal consensus of the Muslims). For the Maliki school, the Sunna comprises the tradition of the Prophet Muhammad and that of the Companions. For Malikis, *Ijma'* prevails over *Hadith* (an account of what the Prophet said or did, or his tacit approval of something said or done in his presence). Where *Ijma'* cannot provide the answer to a question, the *ra'y* (personal judgment) is to be used in parallel with *Hadith*. *Qiyas* (reasoning by analogy) is applied by the Malikis in cases of *Ijma' al-umma* (the *Ijma'* of the community). The teachings of Malik are best illustrated through his book *al-Muwatta'*, the earliest Islamic

judicial work which has survived to the present day. (Sources: Cottart, N. "Malikiyya," in *Encyclopaedia of Islam* (CD-ROM Edition v. 1.0). Leiden, 1999; and Robson, J. "Hadith," in *Encyclopaedia of Islam*).

(4) A cubit (*dhira'*) is a unit of measurement that varies according to time and place. In Baghdad during the rule of al-Mansur (mid-eighth century), *al-dhira' al-sawda'* equaled 49.5cm. In present-day Syria, it equals 68cm. In Egypt: *Al-dhira' al-baladi* equals 58cm, *al-dhira' al-Istabuli* equals 66.5cm, *dhira' al-handasah* equals 65.5cm, *al-dhira' al-baladi* equals 58cm, and *al-dhira' al-mi'mari* equals 75cm. In Iraq: *Al-dhira' al-halabi* equals 68cm, and *al-dhira' al-Baghdadi or al-baladi* equals 80cm.

(5) '*La darar wa la dirar*' is a Saying of the Prophet Muhammad. Its translation into the English "There should be neither harming nor reciprocating harm" is taken from: Ezzeddin, I. and Johnson-Davies, D. (translators). *An-Nawawi's Forty Hadiths*. Damascus: The Holy Koran Publishing House, 1976.

(6) For more information on the housing project of the Diplomatic Quarter, see AlShaikh, A. Othman, Z. and Ward, G. "The Diplomatic Quarter and Ministry of Foreign Affairs Staff Housing Project, Riyadh," in Sevcenko, M. (ed.), *Large Housing Projects: Design, Technology, and Logistics*. Cambridge, MA: The Aga Khan Program for Islamic Architecture, 1985. The article can be downloaded at <http://archnet.org/library/downloader/document/3738/DPC0395.pdf>.

(7) Ar-Riyadh Development Authority received the Aga Khan Awards a number of times. In a presentation that Suha Ozkan, the Secretary General of the Aga Khan Award for Architecture, delivered to Diwan al-Mimar, Ozkan mentioned that "... Mohammad al-Shaikh, who served as the president of the Authority, was a most effective client. He has strong ideas and a clear vision on a variety of issues relating to the built environment, ranging from landscaping to roads." See the documentation of Suha Ozkan's presentation, "[Development of Thinking and Theory in Architecture](#)," in the E-Publications section of this web site.

(8) Abdul al-'Aziz al-Duri is a professor emeritus of history at the University of Jordan, a member of the Royal Academy for Islamic Civilization Research, and an honorary member of the Jordan Academy for the Arabic Language. His works on Arab history are highly respected both inside and outside the Arab world. He writes in both Arabic and English, and some of his Arabic writings have been translated into English, including *The Historical Formation of the Arab Nation* (London and New York: Croom Helm, 1987), and *The Rise of Historical Writing Among the Arabs* (Princeton: Princeton University Press, 1983).

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Figure 2: An illustration of the concept of the *finā'* as elaborated by the jurists. In a main thoroughfare, the *finā'* is the space located near the house's entry door and extending from the entry door to a distance not exceeding half the width of the street. In lanes and cul-de-sacs, the *finā'* covers the whole area abutting the house's external wall and usually extending to the whole width of the lane.

Figure 3: Examples of street closing in Medina, showing cul-de-sacs that seem to have originally been through lanes. (For locations within Medina, see figure 8.)

Figure 4: The cul-de-sac or *hawsh* (courtyard), as it is known in Medina, is conceptualized as a semi-private space used by residents of surrounding houses for ceremonial, social, and recreational purposes. In the past, such semi-private spaces used to have gates with doors at their entrances; left: *Hawsh al-Jimal*; right: *Hawsh al-Turki*.

Figure 5: Example of a small coffee shop in *Barhat al-Aghawat* in Medina, utilizing most of the *finā'*, which the shop shares with two neighboring houses. (For location within Medina, see figure 8.)

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Figure 8: Plan of *al-Aghawat* neighborhood in Medina, showing the locations of examples illustrated in figures 1, 3, 5, and 6.

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\* All images are courtesy of Saleh al-Hathloul.