Despite growing scholarly awareness of an historical element of Islamic law concerning the regulation of the medieval and pre-modern Arab-Muslim medina’s architectural environment, a clear statement regarding the history, genealogy, nature, and reach of this element has yet to be made. The present article provides such a report and proposes that this element of Islamic law (fiqh al-bunyan) be considered a discourse that established a legal aesthetic of architectural space and contributed towards the replication of the medina environment.

The historic medinas common to many parts of the Arab world today are the fruition of a long experiment in Arab-Muslim urban design that has its roots in the pre-Islamic past and its decline in modernity. The duration and number of phases in this experiment is debatable, but not the


fact that the existing medinas belong to the final phase, one that was to furnish the empirical data for the otherwise ahistorical concept of ‘the Islamic city’. For the historian André Raymond, this culminating phase dates to approximately 1500–1800 and is best referred to as ‘la ville traditionelle’, as opposed to ‘la ville classique’, the stage that preceded it. Following a second historian’s chronological model, this earlier stage dates to the beginning of the eleventh century.

Although it is no longer possible to experience the spatial structure of this earlier stage, so subsumed was it by what followed, it seems hardly reasonable to conjecture, pace Raymond, that it might have been much different from what replaced it; at least, not with regard to its residential neighbourhoods (sg. ḥawma, ḥāra, maḥalla, etc.), a large proportion of its fabric. Not only are building traditions, by definition, resistant to change; more substantively, there exists a body of Islamic law (fiqh) which indicates that a particular type of neighbourhood space was deliberately replicated in the Arab-Muslim medina from approximately the tenth to the nineteenth centuries – a time frame that encompasses both the ‘ville classique’ and the ‘ville traditionelle’. This body of law forms the subject matter of the present article and illustrates a point made by others, including the philosopher and urban critic Henri Lefebvre, that the replication of space is a politically and ideologically motivated choice.

Despite the hiatus between the pioneering work of Robert Brunschvig and that of Besim Hakim, there is now growing awareness of an historical element of Sunni Islamic law that concerns the regulation of the Arab-Muslim medina’s architectural environment, most especially its neighbourhoods. Brunschvig’s distinction was to offer Western scholarship an appraisal of this regulation, drawing extensively on two key

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3 Jean-Claude Garcin, ‘Le moment islamique (VIIe–XVIIIe siècles)’, in Mégapoles méditerranéennes, 99; Raymond, ‘La structure spatiale de la ville’, 75 (35).
5 Raymond, ‘La structure spatiale de la ville’, 35 (75), but see the important caveat on p. 42 (82).
6 Garcin, ‘Le moment islamique (VIIe–XVIIIe siècles)’, 94.
7 Raymond, ‘La structure spatiale de la ville’, 35 (75).
medieval texts: Kitāb al-qadāʾ wa-nafy l-ḍarar ‘an al-aʃniya wa-l-ṭurqa wa-l-judur wa-l-mabānī wa-l-ṣaḥāt wa-l-shajār wa-l-jamī’ (The book of jurisdiction and the elimination of harm regarding houses, streets, walls, buildings, public squares, trees, etc.) by Ibn al-Imām of al-Andalus (d. 991 or 997); and Kitāb al-lān bi-aḥkām al-bunyan (The book of pronouncing judgements in [matters of] building) by Ibn al-Rāmī based in Tunis (d. after 1333).9

Forty years later, when Hakim came to the subject, an unpublished Ph.D. thesis referring to the above titles had been written, but little else.10 And although his book Arabic-Islamic Cities: Building and Planning Principles tends to oversimplification and has been criticized for being


The merit of these publications notwithstanding, none satisfactorily researches the origins and, more importantly, the extent of this legal engagement with medina architectural space. When such research is done, it becomes clear that this engagement is not restricted to the handful of well-known, discrete works, such as those by the aforementioned Ibn al-Imām and Ibn al-Rāmī. Rather, it becomes possible to talk of an entire corpus of Sunni Islamic law pertaining to the Arab-Muslim medina’s architectural environment, composed essentially of legal opinions (aqwāl) and court records (nawāzil). This corpus dates from approximately the tenth to the nineteenth centuries and constitutes the main body of fiqh al-bunyān (building law), within which the special importance of (primarily domestic) “walls” is reflected in two of the titles it comprises: al-Marjī al-Thaqafī’s (d. c. 1200) Kitāb al-ḥīṭān (The book of walls) and ʿĪsā b. Dinār’s (d. 827) Kitāb al-jidār (The book of the wall). The purpose of the current article is to present this research and to propose considering the corpus a discourse that established a legal aesthetic of urban architectural space.

The History and Genealogy of fiqh al-bunyān
As with much of Islamic law, the origins of fiqh al-bunyān can be traced to the Qurʾān and Sunna, but little more than perfunctorily, especially with regard to the Qurʾān. The Qurʾān contains no verses from which rulings (ahkām) are derived for fiqh al-bunyān, only two or three verses

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13 Regarding publication details for these titles, the latter (K. al-jidār) is not extant, known only through citation in other works; and because the former (K. al-ḥīṭān) is something of a palimpsest, with four different authors/contributors, two versions of it exist in print, each attributed differently. The one used in this article is al-Shaykh al-Marjī al-Thaqafi, Kitāb al-ḥīṭān: Aḥkām al-ṭuruq wa-l-suṭūḥ wa-l-abwāb wa-masāl al-miyāh wa-l-ḥīṭān fī l-fiqh al-islāmī, ed. Muḥammad Khayr Ramaḍān Yūsuf (Beirut: Dār al-Fikr al-Muʿāṣir, 1994), hereafter cited as ‘Kitāb al-ḥīṭān’ only. The second is ʿUmar b. ʿAbd al-ʿAzīz Ṣadr al-Shahīd (d. 1141), Kitāb al-ḥīṭān: Dirāsa fiqhiyya li-aḥkām al-bināʾ wa-l-irtifāq, ed. ʿAbd Allāh Nadhir Aḥmad (Jeddah: Markaz al-Nashr al-ʿIlmī, Jāmiʿat al-Mālik ʿAbd al-ʿAzīz, 1996).

14 That a primary theme of the corpus is domestic walls will be seen below.
that refer obliquely to urban architectural matters and which are occasionally cited in the corpus in the context of rulings derived from elsewhere. For example, regarding the harm (darar) caused by smoke from public ovens and baths, Ibn al-Rāmī cites the verse: ‘Then watch for the day when the sky will bring forth a kind of smoke plainly visible.’ The actual ruling forbidding such smoke is, however, based on opinions established by the eponymous leader (imām) of the Maliki law school, Mālik b. Anas (d. 796), and his disciples.

If the Qur’an occupies only an auxiliary position in fiqh al-bunyān, the corpus’s substantive material from Islamic law’s two primary sources comprises but ḥadīths. In the ḥadīth, the Prophet is reported engaging with the urban environment in more than an extralegal capacity. For example, ‘Do you know the rights of the neighbour? . . . You must not build to exclude the breeze from him, unless you have his permission’, and ‘A neighbour has pre-emption rights over his neighbour’s property. If they share common access and the neighbour is absent, then the other should wait for his return [before selling, etc.]’. Some of these ḥadīths find their way into the corpus. Common ones include: ‘A neighbour should not forbid his neighbour from inserting wooden beams in his


wall’; 19 ‘If you disagree about the width of a street, it is made seven cubits’; 20 and, ‘Whoever wrongfully appropriates a foot of land will [on the Day of Resurrection] be enclosed in the Seven Earths’. 21 As with the Qur’ān, however, these and other hadiths ultimately serve little more than a supplementary role. The width of medina thoroughfares, for example, is frequently either more or less than the seven cubits recommended by the hadith. Furthermore, many are the occasions in fiqh al-bunyān where no hadith is cited in relation to rulings. 22 The one that does get frequent mention is of general import, without specific bearing upon urban architectural matters, namely, ‘In Islam there is no harm or return of harm’. 23

In the near-absence of programmatic material from the Qur’ān and hadith, one must look to the eponymous leaders of the law schools, most especially the Maliki and Hanafi, to find the practical origins of the corpus. 24 In these leaders’ teachings, related and compiled by disciples, lies the first properly substantive architecture-related Islamic law. 25 For the

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21 Muslim, Sahīḥ Muslim, k. al-musāqāt, bāb 30, raqm 142. Cited (with minor variations) in Ibn al-Rāmī, 398–99; and Ibn al-Imām, 2: 125.

22 In all of Kitāb al-ḥīṭān, for example, I have found cited just one hadith: an account of the Prophet’s companion Hudhayfah b. al-Yamān (d. 656) judging a quarrel concerning a hut (klusa). Kitāb al-ḥīṭān, 44; also cited in Ibn al-Rāmī, 276–77. The hadith is collected in Abū ʿAbd Allāh Muhammad b. Yazīd al-Qazwīnī b. Mājah, Sunan al-ḥāfiẓ Abī ʿAbd Allāh Muhammad b. Yazīd al-Qazwīnī b. Mājah, ed. Muhammad Fu’ād Abī ʿAbd al-Bāqī, 2 vols. ([Cairo]: Dār Iḥyāʾ al-Kutub al-ʿArabiyya, 1952), k. al-ahkām, bāb 18, raqm 2365.


25 These orally transmitted teachings came to exert as decisive an effect on the development of law school identity and doctrine as the works traditionally attributed to the leaders themselves. See, inter alia, Schacht, An Introduction to
Hanaﬁ school, to which belongs, for example, Kitāb al-liḥṭān, the principal compilations are by the two disciples considered by some to be the true founders of the Hanaﬁ law school: Yaʿqūb Abū Yūsuf (d. 798) and Muḥammad al-Shaybānī (d. 804). For the Maliki school, to which belong, for example, the texts of Ibn al-Rāmī and Ibn al-Imām, the principal compilation is the multi-volume al-Mudawwana al-kubrā. Compiled by the celebrated qāḍī of Qayrawān, Saḥnūn (d. 855), the contents are a narration from Mālik’s most prominent disciple, Ibn al-Qāsim (d. 806).

Taking the Mudawwana as an example, although its engagements with the urban architectural environment are rarely architecture-specific and include additional issues such as property bequests (waṣāyā), they establish the pattern and many of the precedents for fiqh al-bunyān. For instance, in the chapter pertaining to property division and allotment (qisma), Saḥnūn asks Ibn al-Qāsim a hypothetical question about someone prevented by neighbours from building an oven, hammam or mill on his empty lot (ʿarṣa). Ibn al-Qāsim responds: ‘If what is built will harm the neighbours because of smoke or other comparable nuisances, then they can prevent the project, because Mālik taught (qāla) that one is prevented from harming neighbours.’

Roughly contemporary with Saḥnūn and Ibn al-Qāsim, other disciples and associates of Mālik were also giving opinions and judgements concerning the urban architectural environment. Such figures include ʿAbd Allāh b. Wahb (d. 813); Ashhab (d. 819);28 Ibn al-Mājishūn (d. 827); Islamic Law (Oxford: Oxford University Press, 1964), 57–68; N. J. Coulson, A History of Islamic Law (Edinburgh: Edinburgh University Press, 1964), 51–52; and Christopher Melchert, The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E. (Leiden: Brill, 1997), 23, 60.

27 Ibid., k. al-qisma, vol. 5, p. 2560.
28 Ashhab b. ʿAbd al-ʿAzīz al-Qaysī.
Simon O'Meara

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‘Abd Allāh b. ʿAbd al-Ḥakam (d. 829); Muṭṭarīf (d. 835);29 ʿAshbagh (d. 840);30 and Muḥammad b. ʿAbd Allāh al-Mahdī (d. 853), author of an influential imitation of the Mudawwana, the Wāḍiḥa;31 and Abū ʿAbd Allāh Muḥammad b. ʿAbd al-Mālik b. Ḣabīb (d. 853), the judge and the Mustakhraja, or ʿUṭbiyya. From these scholars’ teachings fiqh al-bunyān also takes its shape. Ibn al-Rāmī acknowledges as much in the introduction to his contribution to the corpus:

This is a book that compiles architecture-related questions concerning walls, the elimination of harm, and gardens and mills, from [the following sources]: government administration records, the books of our contemporaries, the court records of qādīs, and the fatwas of muftis;32 from the Mudawwana, the Wāḍiḥa, and the ʿUṭbiyya; the book of ʿAbd Allāh b. ʿAbd al-Ḥakam, the book of Ibn ʿAbd Allāh al-Mahdī, the book of Ibn ʿAbd Allāh al-Mahdī, the book of Ibn ʿAbd Allāh al-Mahdī, the book of Ibn ʿAbd Allāh al-Mahdī, the book of Ibn ʿAbd Allāh al-Mahdī;33 and Ibn Mughīth,34 from what notaries follow in their legal formularies (wathāʾiq),35 such as the notaries Ibn al-Qāsim36 and Ibn Mughīth,37 and from [the formulary called] al-Muṭṭiyya;38 from what qādīs follow from the judgements (āḥkām) of Ibn Abī Zamanīn,39 the judgements of Ibn Hishām,40 and the judgements of our master,

29 Muṭṭarīf b. ʿAbd Allāh b. Muṭṭarīf.
30 Abū ʿAbd Allāh ʿAshbagh b. al-Faraj.
31 Al-Wāḍiḥa fī l-sunna wa-l-fiṣḥ.
32 ʿHādhā kitāb jumīʿat fihi maṣāʾil al-abniya fī l-jīdār wa-naṣīf al-ṣīrār wa-l-ghurūs wa-l-ṣirāh min waḥāʾil al-ṣīrār wa-maṣāʾil al-ṣīrār.
33 Muḥammad b. Ḫrāḥīm b. ʿAbd Allāh al-Qāyrawānī (d. 874).
36 ʿAlī b. ʿAbī Ṭāṭār al-Jazīrī (d. 1189).
37 Yūnūs b. Muḥammad b. Mughīth (d. 1037).
38 Composed by ʿAlī b. ʿAbd Allāh al-Aḥṣārī al-Mutūfī (d. 1174).
39 Ibn Abī Zamanīn of Andalusia (d. 1008), to whom the authorship of al-Munṭakhab fī l-āḥkām is ascribed.
40 Ibn Hishām of Cordoba (d. 1209), author of the extant Muṣīl al-buḥkām.
the learned, the ascetic, the devout, and God-fearing Abū ʿAbd al-Raḍī,41 may God grant him success and guide him.42

The years 950–1350 mark a particular period for ḥīṭān that might with due levity be considered a golden age, for during this time at least five extant discrete texts on architecture-related law were written: the aforementioned Kitāb al-ḥīṭān and books of Ibn al-Imām and Ibn al-Rāmī, as well as one by Muḥammad b. Ābū ʿAbd al-Raḍī,41 may God grant him success and guide him.42

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It is these discrete works, as well as two or three others written, or reported written outside of this period,45 that has led at least one contemporary scholar to consider the corpus a genre of Islamic law.46 Their importance notwithstanding, these discrete works are, however, just one part of a much larger body of legal writings on the built environment, which has no common literary basis and is not, therefore, a genre, but a looser, uncontrived, and more pervasive formation, what the social sciences refer to as a discourse.47 For the available evidence suggests that the more regular form of fiqh al-bunyān comprises chapters (sg. kitāb or bāb), sections (sg. faṣl), or sometimes just individual cases of longer legal works. In other words, indiscrete texts

41 Ibn Ābū ʿAbd al-Raḍī (d. 1332), chief qāḍī of Tunis, Ibn al-Rāmī’s teacher in legal matters, and author of the extant Muʿīn al-qaḍāt wa-l-hukkām.

42 Ibn al-Rāmī, 274–75.

43 As cited in Nejmeddine, ‘La rue dans la ville de l’Occident musulman médiéval’, 282. It is not extant.

44 Ābū al-Walīd Muḥammad b. Rushd, Kitāb al-qaḍāʾ wa-l-araḍīn wa-l-dūr (The book of jurisdiction, terrains, and houses).44 It is these discrete works, as well as two or three others written, or reported written outside of this period,45 that has led at least one contemporary scholar to consider the corpus a genre of Islamic law.46 Their importance notwithstanding, these discrete works are, however, just one part of a much larger body of legal writings on the built environment, which has no common literary basis and is not, therefore, a genre, but a looser, uncontrived, and more pervasive formation, what the social sciences refer to as a discourse.47 For the available evidence suggests that the more regular form of fiqh al-bunyān comprises chapters (sg. kitāb or bāb), sections (sg. faṣl), or sometimes just individual cases of longer legal works. In other words, indiscrete texts


47 See, for example, Michel Foucault, The Archaeology of Knowledge, trans. A. M. Sheridan Smith (New York: Pantheon Books, 1972), passim.
forming but one element of Islamic law’s exhaustive literature.

By and large, the legal works to which these chapters and sections belong are either compilations of judgements of the type mentioned by Ibn al-Rāmī or compilations of fatwas of the type implied by him. Of the two earliest, but non-extant, allegedly discrete texts of fiqh al-bunyān, namely, Ibn Dīnār’s (d. 827) aforementioned Kitāb al-jidār and Ibn Ābd al-Ḥakam’s (d. 829) Kitāb al-qāḍāʾ fī l-bunyān (The book of jurisdiction in building), the second is now thought not to have been a book (kitāb), but a chapter (also kitāb) of a legal compilation, al-Mukhtaṣar al-kabīr fī l-fiqh.48 The first text was perhaps the same.49 Ibn Sahl’s (d. 1094) ‘Mosques and houses’ certainly belongs to a compilation of judgements, namely, his al-Ahkām al-kubrā;50 as does Ibn Ābī Zayd al-Qayrawānī’s (d. 996) ‘Jurisdiction in building’, which belongs to his Nawādir.51 Similarly, Ibn Farhūn’s (d. 1396) ‘The leaning wall’ belongs to his Tabsirat al-ḥukkām;52 Ibn Hisḥām’s (d. 1209) ‘The book [or chapter] of claims regarding the wall’ belongs to his Muḍīd al-ḥukkām;53 and al-Bāṭī’s (d. 1081) ‘The division of [goods and chattels] between partners, the hire of [those qualified to make and record divisions], and all claims regarding walls’ and ‘On the elucidation of judgement [regarding] harm, the inviolable perimeters of wells, gifts, acts of mortmain, and charitable donations’ belong to his Fūṣūl al-aḥkām.54


49 This work is also cited by Qādī ‘Iyād. Ibid., 1: 375.


53 As cited by Ben Slimane in Ibn al-Rāmī (2), 20.

Regarding the fatwa compilations, two categories exist: those limited to a single mufti, and those comprising fatwas from a number of muftis. To the first category belongs, for example, the compilation of Ibn Rushd ‘al-Jadd’. Scattered in it are fatwas such as ‘A question concerning one who joins his wall to the wall of his neighbour’; ‘On overlooking Houses from [a] minaret’; and ‘On one who installs a door or shop opposite the door of his neighbour’s house on a through-passage (zuqāq nāfiḍh)’. To the second category of fatwa compilations belong, for example, al-Burzul’s (d. 1509) al-Miṣāl al-jadīda al-kubrā and al-Nawāzīl al-ṣughrā. In these works are found numerous architecture-related fatwas, mostly in the chapters pertaining to property division and allotment, partnership (sharīka), and, especially, harm.

315–48.


56 Ibid., 3: 1578.

57 Ibid., 2: 1246.

58 Ibid., 1: 169.

59 Al-Burzul, Jāmī’ masā’il al-akhkām bi-mā nazala min al-qadāyā bi-l-muṣfīn wa-l-hukkām (Tunis: Bibliothèque Nationale de Tunis, MS no. 4851), as cited in Nejmeddine, ‘La rue dans la ville’, 274, n. 2.


If the more usual form of the corpus is chapters or sections of longer texts, history offers some reasons for the efflorescence of discrete works between 950–1350. In the introduction to his edition of Ibn al-Imām’s text, Muḥammad al-Namīnaj argues that the population increase in tenth-century al-Andalus was the underlying cause of this work, for it resulted in a sudden, unlegislated strain being placed on the urban architectural fabric. A similar argument most probably applies to the other works, too. This is an acceptable proposition when one considers the uneven urban growth experienced throughout the Arab-Muslim world during the first seven centuries of Islam. The greatest growth occurred between the tenth to fourteenth centuries, ending with the Black Death from the mid-1300s; exactly the time-frame of the corpus’s ‘golden age’. The proposition is also acceptable when one considers the extent to which solutions to new problems, arrived at in one locale, but not contained or known in the source books (ummahāt) of the law schools, might have been found helpful for solving similar problems elsewhere. There are, for example, some twenty extant manuscripts of Ibn al-Rāmī’s work in the contemporary Arab-Muslim world, a clear indication of its historical utility. Compiled in the form of generalized, viz., non-place specific legal cases plus their assessments (aḥkām), these discrete works would have represented concise summaries of the principal teachings of a law school with regard to the architectural environment, as well as manuals of potential solutions.

64 Garcin, ‘Le Caire et l’évolution urbaine des pays musulmans’, 289–304. See also, idem, ‘Le moment islamique (VIIe–XVIIIe siècles)’, in Mégapoles méditerranéennes, 91–103.
66 Where a place is mentioned, it is either incidental or in relation to the discourse’s application mechanism. The translation of aḥkām as ‘assessments’ follows A. Kevin Reinhart, ‘Transcendence and Social Practice: Muftīs and Qāḍīs as Religious Interpreters’, Annales Islamologiques 27 (1993): 14.
67 For a later period of the discourse (from the end of the fifteenth century), Fernandes suggests as a cause of additional discrete works the desire of rulers to reform the often disorderly urban sites under their command. Idem, ‘Habitat et prescriptions légales’, 426.
An Aesthetic of Space

It would be wrong to consider *fiqh al-bunyān* a prescriptive code for the upkeep and replication of the Arab-Muslim medina’s architectural environment. Rather, the corpus represents a proscriptive legal aesthetic for helping achieve the same results; an aesthetic that came into force only when contested and/or transgressed. That is to say, *fiqh al-bunyān* records from a legal perspective building-related conflicts – contestations and/or transgressions – plus their solutions that occurred in, and referred to, the medina environment’s semi-private and public spaces. It collapses these spaces to their generic architectural elements, commonly walls, effectively encoding the spaces for articulation in later texts of the corpus as well as in related discourses, for example the *hisba* discourse regarding the policing of markets and their environs.68 In this process, *fiqh al-bunyān* established and embodied a legal aesthetic of urban architectural space: a way of talking and thinking about, or judging this space, and hence, organizing it.69 This aesthetic was flexible, as it was informed by local custom (‘*urf*) and commonly negotiated via an application mechanism responsive to local conditions: ‘*amal* or its non-Maliki equivalent.70 By way of example of this process, listed below is a selection of case titles from the twelfth-century *Kitāb al-ḥīṭān*. In the examples the conflicts have occurred long ago and been resolved, and the action of collapsing and encoding the architectural spaces to which they refer is complete:

If two men contest a party wall. On a wall between two neighbours and neither one has roofing [over it], and one of them permits the other to place a roof over the wall. Then he appears to him and says: ‘Remove your roof!’

On a wall between the two houses of two men, neither man having used it for load-bearing purposes, and one of them wants to bear upon it one or two wooden beams.

If a man buys a wall and no mention is made of its land, the sale occurs on

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69 Cf. Abu-Lughod’s comments on the ‘system of property laws . . . whereby a pattern of space was continually reproduced’. Idem, ‘The Islamic City’, 163.

70 For a detailed treatment of this application mechanism, see Simon O’Meara, *Space and Muslim Urban Life: At the Limits of the Labyrinth of Fez* (Abingdon: Routledge, 2007), 39–48.
the wall without the land. Then it is said to the purchaser: ‘Remove your wall!’;  

If a man buys half a wall. On a collapsed wall: if one of two owners wants to  
rebuild it but the other refuses, can the latter be forced to rebuild it?71

For comparative purposes, whilst a similar engagement with the archi-
tectural space of medieval London is found in the Assisa de Edificiis, the  
origins of which probably date to the late-twelfth century, what appears  
unique to fiqh al-bunyān is its longevity and geographical reach.72 For  
the corpus is not an isolated text or two, but as proposed earlier, an  
institutionalized discourse. Precisely when it came to constitute such a  
discourse is difficult to say with certainty, but no later than the mid-tenth  
century, the starting point of what this article has called the discourse’s  
‘golden age’.

Concerning the aesthetic established by this discourse, crucially it  
derives in part from an undatable type of architectural space that pre-
cedes the discourse, is collapsed and recorded in the discourse, and then  
maintained and perpetuated by it. The aesthetic cannot, therefore, be  
considered fully original to Islam, for there is no compelling reason to  
suppose that the type of space from which it first derives reflects more  
than a type of architecture in existence before the Prophet, his compan-
ions and successors, and inherited by them. Certainly, this space was  
later modified by Islam: the discourse’s interventions regarding the  
placement of external doors and windows to ensure visual privacy are a  
good example, an architectural equivalent of the Qur’ānic requirement  
for the covering of nakedness and vulnerability (ʿawra).73 But modifica-
tion by Islam is not the same as origination by Islam, and hence the  
discourse cannot be used to prove the validity of the ahistorical concept

71 Kitāb al-biḥān, case titles cited in order of appearance.

72 Helena M. Chew and William Kellaway (eds.), London Assize of Nuisance  
1301–1431: A Calendar (London: London Record Society, 1973), ix–xi,  
passim. My thanks to Dr. Catherine Batt for alerting me to this parallel. On the  
Islamic discourse’s differences from Roman law and the Coutume de Paris, see  

73 Cf. Eli Alshech, ‘“Do Not Enter Houses Other Than Your Own”: The  
Evolution of the Notion of a Private Domestic Sphere in Early Sunni Islamic  
form an important part of the genre and have been the subject of extensive  
commentary by contemporary scholars. See, in particular, Hakim, Arabic-
Islamic Cities, 33–39; M’halla, ‘La médina’, 59–66; and Ben Hamouche, ‘Sight  
Restrictions’, passim. On the Qur’ānic requirement for the covering of naked-
ness and vulnerability, see, for example, 24:58 and 33:13.
of ‘the Islamic city’ mentioned at the start of this paper.

Of importance, too, for understanding the discourse is the fact that
fiqh al-bunyān concerns the medina’s semi-private and public space
only; not the private, interior space of domestic houses. With reference
to Henri Lefebvre’s critical terminology of space, this is to say the
discourse belongs to a society’s representations of space, not its repre-
sentational spaces. The former are the conceptualized spaces of profes-
sionals (scientists, planners, and so forth) that are ‘tied to the relations of
production and to the “order” which those relations impose, and hence to
knowledge, to signs, to codes.’74 The latter are the largely non-verbal,
symbolic spaces that afford a shelter for the imagination and which are
commonly found, for example, in the domestic house – ‘one of the
greatest powers of integration for the thoughts, memories, and dreams of
mankind.’75 Except as absences, lacunae of privacy (ʿawra)76 demarcated
by the interventions preventing the overlooking (iṭṭiṭāʿ) of courtyard
houses by muezzins atop their minarets, for instance, these representa-
tional spaces form no part of fiqh al-bunyān and await research.77

In the academic study of Islamic architecture and urbanism, it is usual
to find the spaces of a city or building discussed in terms of the struc-
tures that define them. In that regard, such study operates similarly to
fiqh al-bunyān: collapsing space according to the modalities of a dis-
course, that of Islamic art and architecture. Notwithstanding the obvious
merits of this academic discourse, a question yet remains as to the nature
of the knowledge it represents; for in collapsing and hence excluding

74 Lefebvre, The Production of Space, 33.
76 On this legal usage of ʿawra, see Alshech, “‘Do Not Enter Houses Other Than Your Own’”, 309–12.
77 With reference to the representational space of houses only, although there exists no equivalent to Bachelard’s celebrated Poetics of Space for the psychic
space from the investigative framework, the discourse risks, on the one hand, being content with a reduced view of the world that each society creates, inhabits, and competes to reproduce. This is problematic, because a world collapsed of its space offers to knowledge a flattened picture, revealing little of the interactions and interrelations between things, and between things and people. Rarely, for example, is it satisfying to know only the outward, formal aspects of an architectural space – the history, appearance, and intended meaning of the madrasas, mosques, and mausoleums comprising a medina, say. One would also like to know the inner workings of this space; for in this space commingle what these monuments are in historical time and selectively frame out of time\textsuperscript{78} with the lives and beliefs of those subject to them. And from this space arise a society’s representations of the world and the inhabitants’ place in it, which in turn re-inform the space.\textsuperscript{79} On the other hand, in collapsing and excluding space from the investigative framework, the academic discourse also risks rejecting space as a non-ideological phenomenon, when the struggles involved in instigating, maintaining, and replicating environments and their spaces suggest a different reality, as the involvement of `ulamā’ in the neighbourhood disputes shows.

In the foregoing analysis of fiqh al-bunyān, I have attempted to provide a correction to these two risks. In presenting a clear statement regarding the reach and nature of the Arab-Muslim legal discourse, I hope to have contributed to the process of making historical Arab-Muslim urban space increasingly accountable to academic thought.

\textsuperscript{78} ‘The time of architecture is a detained time; in the greatest of buildings time stands firmly still.’ Juhani Pallasmaa, The Eyes of the Skin: Architecture and the Senses (Chichester: John Wiley & Sons Ltd., 2005), 52.