

A LEGAL AESTHETIC OF MEDIEVAL AND PRE-MODERN ARAB-MUSLIM URBAN ARCHITECTURAL SPACE

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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-bunyān*) 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.¹ The duration and number of phases in this experiment is debatable,² but not the

¹ See, inter alia, Hugh Kennedy, 'From *Polis* to *Madina*: Urban Change in Late Antique and Early Islamic Syria', *Past and Present* 106 (1985): 3–27; and André Raymond, 'La structure spatiale de la ville', in *Sciences sociales et phénomènes urbains dans le monde arabe: Actes du colloque de l'Association de Liaison entre les Centres de Recherches et Documentations sur le Monde Arabe (ALMA), Casablanca, 30 novembre–2 décembre 1994*, ed. Mohammed Naciri and André Raymond (Casablanca: Fondation du Roi Abdul-Aziz Al-Saoud pour les Études Islamiques et les Sciences Humaines, 1997), reprinted in André Raymond, *Arab Cities in the Ottoman Period: Cairo, Syria and the Maghreb* (Aldershot: Ashgate, 2002), 35 (75).

² See, for example, Jean-Claude Garcin, 'Le moment islamique (VIIe–XVIIIe siècles)', in *Mégapoles méditerranéennes: Géographie urbaine rétrospective. Actes du colloque organisé par l'École Française de Rome et la Maison Méditerranéenne des Sciences de l'Homme (Rome, 8–11 mai 1996)*, ed. Claude Nicolet, Robert Ilbert, and Jean-Charles Depaule (Paris/Rome: Maisonneuve et Larose/École Française de Rome, 2000), 99; Sylvie Denoix, 'Unique modèle ou type divers? La structure des villes du monde arabomusulman à l'époque médiévale', in *Mégapoles méditerranéennes*, 913–23; and Raymond, 'La structure spatiale de la ville', 75–82 (35–42).

fact that the existing medinas belong to the final phase,³ one that was to furnish the empirical data for the otherwise ahistorical concept of ‘the Islamic city’.⁴ For the historian André Raymond, this culminating phase dates to approximately 1500–1800 and is best referred to as ‘la ville traditionnelle’, as opposed to ‘la ville classique’, the stage that preceded it.⁵ Following a second historian’s chronological model, this earlier stage dates to the beginning of the eleventh century.⁶

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. *hawma*, *ḥāra*, *maḥalla*, etc.), a large proportion of its fabric.⁷ 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 traditionnelle’. 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.⁸

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

³ Jean-Claude Garcin, ‘Le moment islamique (VIIe–XVIIIe siècles)’, in *Mégapoles méditerranéennes*, 99; Raymond, ‘La structure spatiale de la ville’, 75 (35).

⁴ *Ibid.*, 35 (75); also Janet Abu-Lughod, ‘The Islamic City – Historic Myth, Islamic Essence and Contemporary Relevance’, *International Journal of Middle East Studies* 19 (1987), 155–60.

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).

⁸ Henri Lefebvre, *The Production of Space*, trans. Donald Nicholson-Smith (Oxford: Blackwell, 1991), *passim*.

medieval texts: *Kitāb al-qaḍā' wa-nafy l-ḍarar ʿan al-afniya wa-l-ṭuruq wa-l-judur wa-l-mabānī wa-l-ṣāḥāt wa-l-shajar wa-l-jamīʿ* (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-ʿlān bi-aḥkām al-bunyān* (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

⁹ Robert Brunschvig, 'Urbanisme médiéval et droit musulman', *Revue des Études Islamiques* 15 (1947): 127–55. For variant titles of these Maliki texts, different editions, and manuscript locations, see Jean-Pierre Van Staëvel's Ph.D. dissertation, cited below. The editions used in this article are: ʿĪsā b. Mūsā b. Aḥmad b. al-Imām, 'al-Qaḍā' bi-l-mirfaq fī l-mabānī wa-nafy al-ḍarar li-ʿĪsā b. Mūsā b. Aḥmad b. al-Imām al-Tuṭīlī', ed. Muḥammad al-Namīnaj, 2 vols. (*Diblūm al-dirāsāt al-ʿulyā fī-l-dirāsāt al-islamiyya* degree thesis, University of Sidi Mohammed Ben Abdallah, Fez, 1992), hereafter cited as 'Ibn al-Imām' only; Abū ʿAbd Allāh Muḥammad b. Ibrāhīm al-Lakhmī b. al-Rāmī, 'Kitāb al-ʿlān bi-aḥkām al-bunyān', *Majallat al-fiqh al-mālikī wa-l-turāth al-qaḍā'ī bi-l-Maghrib*, nos. 2, 3, 4 (1 vol.) (1982): 259–490, hereafter cited as 'Ibn al-Rāmī' only; and idem, *al-ʿlān bi-aḥkām al-bunyān: Abū ʿAbd Allāh Muḥammad b. Ibrāhīm al-Lakhmī b. al-Rāmī al-bannāʾ*, ed. Farid Ben Slimane (Tunis: Centre de Publication Universitaire, 1999), hereafter cited as 'Ibn al-Rāmī (2)' only. No translation exists for Ibn al-Rāmī's text, but for Ibn al-Imām's, see Barbier, 'Des droits et obligations entre propriétaires d'héritages voisins', *Revue algérienne, tunisienne et marocaine de législation et jurisprudence* 16 (1900): 9–15, 17–23, 42–56, 93–104, 113–44; and 17 (1902): 65–84, 89–108.

¹⁰ Saleh A. al-Hathloul, 'Tradition, Continuity and Change in the Physical Environment: The Arab-Muslim City' (Ph.D. dissertation, Massachusetts Institute of Technology, 1981). Additionally, in a special issue of *Ekistics* (vol. 47/280, Jan/Feb 1980) dedicated to 'Islamic Human Settlements', some articles abridged from *The International Symposium on Islamic Architecture and Urbanism* (Jan 5–10, 1980, King Faisal University, Dammam, Saudi Arabia) had raised the subject. Finally, some court cases involving walls and their maintenance had been mentioned in Galal H. El-Nahal, *The Judicial Administration of Ottoman Egypt in the Seventeenth Century* (Minneapolis: Bibliotheca Islamica, 1979), 52–53.

partisan, it was instrumental to the development of the subject as an area of academic research.¹¹ In quick succession, other works followed its publication, culminating in the three-volume Ph.D. thesis of Jean-Pierre Van Staëvel, 'Les usages de la ville'.¹²

¹¹ Besim Selim Hakim, *Arabic-Islamic Cities: Building and Planning Principles* (London: Kegan Paul International, 1986). For criticism of Hakim's book, see Nezar Alsayyad, *Cities and Caliphs: On the Genesis of Arab Muslim Urbanism* (New York: Greenwood Press, 1991), 38.

¹² Jean-Pierre Van Staëvel, 'Les usages de la ville: Discours normatif, habitat et construction urbaine dans l'Occident musulman médiéval (Xe–XIVe siècles)', 3 vols. (Ph.D. dissertation, University of Lyon II 'Lumière', 2000). An extract of this dissertation has since been published as idem, 'Savoir faire et le faire savoir: L'expertise judiciaire en matière de construction, d'après un auteur tunisois du 8e/14e siècle', *Annales Islamologiques* 35 (2001): 627–62. The other publications on the subject comprise Hisham Mortada, *Traditional Islamic Principles of Built Environment* (London: RoutledgeCurzon, 2003); Hentati Nejmeddine, 'La rue dans la ville de l'Occident musulman médiéval d'après les sources juridiques malikites', *Arabica* 50/3 (2003): 273–305; *L'urbanisme dans l'Occident musulman au Moyen Âge: Aspects juridiques*, ed. Patrice Cressier, Maribel Fierro, and Jean-Pierre Van Staëvel (Madrid: Casa de Velázquez/ Consejo Superior de Investigaciones Científicas, 2000); Mustapha Ben Hamouche, *Fiqh al-ʿumrān al-islāmī: Min khilāl al-arshīf al-ʿuthmānī al-jazāʾirī (956/1549–1246/1830)* (Dubai: Dār al-Buḥūth li-l-Dirāsāt al-Islāmiyya wa-l-ḥyāʾ al-Turāth, 2000); idem, 'Sight Restrictions in Maghrib Muslim Architecture', *Intellectual Discourse* (Malaysia) 7/2 (1999): 133–54; Moncef M'halla, 'La médina: Un art de bâtir', *Africa: Fouilles, monuments et collections archéologiques en Tunisie* 12, *Special issue: Arts et traditions populaires* (1998): 33–98; Akel I. Kahera and Omar Benmira, 'Damages in Islamic Law: Maghribi Muftis and the Built Environment (9th–15th Centuries CE)', *Islamic Law and Society* 5/2 (1998): 131–64; Akel Ismail Kahera, 'Building, Dwelling and Reasoning: A Discourse on Maliki Legal Practice and the "Ordering" of Habitat in the Medieval Maghrib' (Ph.D. dissertation, Princeton University, 1997); Khālīd Muḥammad Muṣṭafā ʿAzab, 'Takhṭīṭ wa-ʿimārat al-mudun al-islāmiyya', *Kitāb al-umma* (Qatar) 58 (1997): 9–141; Jean-Pierre Van Staëvel, 'Casa, calle y vecindad en la documentación jurídica', in *Casas y palacios de al-Andalus*, 53–61; Farid Ben Slimane, 'Ibn al-Rāmī et l'art de bâtir', in *Itinéraire du Savoir en Tunisie: Les temps forts de l'histoire tunisienne*, ed. Hassen Annabi, Mounira Chapoutot-Remadi, and Samia Kamarti (Paris: CNRS Editions, 1995), 78–83; Farid Ben Slimane, 'Entre Ibn Al Imām le Tudélien (mort en 996) et Ibn Al Rāmī le Tunisois (mort après 1333)', *Sharq Al-Andalus* 8 (1991): 109–12; Leonor Fernandes, 'Habitat et prescriptions légales', in *L'habitat traditionnel dans les pays musulmans autour de la Méditerranée*,

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-ḥiṭān* (The book of walls) and °Isā b. Dīnār's (d. 827) *Kitāb al-jidār* (The book of the wall).¹³ 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.¹⁴

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 Qur'ān and Sunna, but little more than perfunctorily, especially with regard to the Qur'ān. The Qur'ān contains no verses from which rulings (*aḥkām*) are derived for *fiqh al-bunyān*, only two or three verses

Rencontre d'Aix-en-Provence (6–8 juin 1984), Vol. 2, L'histoire et le milieu (Cairo: L'Institut Français d'Archéologie Orientale, 1990), 419–26; Jamel Akbar, *Crisis in the Built Environment: The Case of the Muslim City* (Singapore: Concept Media Pte. Ltd., 1988); and André Raymond, 'Espaces publics et espaces privés dans les villes arabes traditionnelles', *Maghreb-Machrek* 123 (1989): 194–201.

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-ḥiṭān*) 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-Thaqafī, *Kitāb al-ḥiṭān: Aḥkām al-ṭuruq wa-l-suṭūh wa-l-abwāb wa-masāl al-miyāh wa-l-ḥiṭān fī l-fiqh al-islāmī*, ed. Muḥammad Khayr Ramaḍān Yūsuf (Beirut: Dār al-Fikr al-Mu'āšir, 1994), hereafter cited as 'Kitāb al-ḥiṭān' only. The second is °Umar b. °Abd al-°Azīz Ṣadr al-Shahīd (d. 1141), *Kitāb al-ḥiṭān: Dirāsa fiqhiyya li-aḥkām al-binā' wa-l-irtifāq*, ed. °Abd Allāh Nadhīr Aḥmad (Jeddah: Markaz al-Nashr al-°Ilmī, Jāmi'at al-Mālik °Abd al-°Azīz, 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 (*ḍarar*) 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.’¹⁵ 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.¹⁶

If the Qurʾān 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’;¹⁷ 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.]’.¹⁸ 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

¹⁵ Qurʾān 44:10. Ibn al-Rāmī, 300.

¹⁶ *Ibid.*, 300–301. In Ibn al-Rāmī’s text, eleven Qurʾānic verses are cited, only three of which have some, if any, urban architectural relevance; the other eight being of even broader import, for example the influential but general ‘Hold to forgiveness, and command what is right’ (7:199). Ibn al-Rāmī, 276. The other verses cited by Ibn al-Rāmī are 50:9, 43:33, 23:18, 21:32, 9:107, 7:85, 7:58, 3:9, and 3:7. Ibn al-Rāmī (2), 253. In Ibn al-Imām’s text, two Qurʾānic verses are cited: 9:107, and 21:78. Ibn al-Imām, 2: 207. In Ibn Sahl’s (d. 1094) text, 7:85 is cited. Abū l-Aṣḥāb ‘Īsā b. Sahl al-Andalusī, *Wathāʾiq fī shuʾūn al-ʿumrān fī l-Andalus ‘al-Masājid wa-l-dūr’ mustakhraja min makḥṭūṭ al-Aḥkām al-kubrā li-l-qāḍī Abī l-Aṣḥāb ‘Īsā b. Sahl al-Andalusī*, ed. Muḥammad ‘Abd al-Wahhāb Khallāf (Cairo: al-Maṭbaʿa al-ʿArabiyya al-Ḥadītha, 1983), 99, 101, hereafter cited as ‘Ibn Sahl’ only. I have found no Qurʾānic verses cited in *Kitāb al-ḥiṭān*.

¹⁷ Abū Bakr Muḥammad b. Jaʿfar b. Muḥammad b. Sahl al-Sāmarrī al-Kharāʾifī, *Makārim al-akhlāq wa-maʿāliḥā wa-maḥmūd tarāʾiqihā wa-marḍihā* (Beirut: Dār al-Fikr, n.d.), 59.

¹⁸ Majd al-Dīn al-Mubārak b. Muḥammad b. al-Athīr al-Jazarī, *Jāmiʿ al-uṣūl fī aḥādīth al-Rasūl*, ed. ‘Abd al-Qādir al-Arnāʾūṭ, 5 vols. (Beirut: Dār al-Fikr, 1995), 1: 582. See also the appendix ‘Selected Sayings of the Prophet’ in Hakim, *Arabic-Islamic Cities*, 146–56.

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 *ḥadīths* 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 *ḥadīth*. Furthermore, many are the occasions in *fiqh al-bunyān* where no *ḥadīth* 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 *ḥadīth*, one must look to the eponymous leaders of the law schools, most especially the Maliki and Hanafī, 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

¹⁹ Abū al-Ḥusayn Muslim b. al-Ḥajjāj al-Qushayrī, *Ṣaḥīḥ Muslim bi-sharḥ al-Nawāwī*, ed. °Iṣām al-Ṣabābiḥi et al., 11 vols. (Cairo: Dār al-Ḥadīth, 1994), k. al-musāqāt, bāb 29, raqm 136. Cited in Ibn al-Rāmī, 294; and Ibn al-Imām, 2: 1, 8.

²⁰ Muslim, *Ṣaḥīḥ Muslim*, k. al-musāqāt, bāb 31, raqm 143. Cited in Ibn al-Rāmī, 430, and Ibn al-Imām, 2: 145.

²¹ Muslim, *Ṣaḥīḥ 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-ḥiṭān*, for example, I have found cited just one *ḥadīth*: an account of the Prophet's companion Ḥudhayfa b. al-Yamān (d. 656) judging a quarrel concerning a hut (*khuṣṣ*). *Kitāb al-ḥiṭān*, 44; also cited in Ibn al-Rāmī, 276–77. The *ḥadīth* is collected in Abū °Abd Allāh Muḥammad b. Yazīd al-Qazwīnī b. Mājah, *Sunan al-ḥāfiẓ Abī °Abd Allāh Muḥammad b. Yazīd al-Qazwīnī b. Mājah*, ed. Muḥammad Fu°ād °Abd al-Bāqī, 2 vols. ([Cairo]: Dār Iḥyā° al-Kutub al-°Arabiyya, 1952), k. al-aḥkām, bāb 18, raqm 2365.

²³ 'Lā ḍarar wa-lā ḍirār [fī l-Islām].' Mālik b. Anas, *al-Muwatta° li-imām al-°imma °ālim al-Madīna Mālik b. Anas*, ed. Muḥammad Fu°ād °Abd al-Bāqī, 2 vols. ([Cairo?]: Dār Iḥyā° al-Turāth al-°Arabī, n.d.), k. al-aqḍiyya, bāb 26, raqm 31 [vol. 2, p. 745], and k. al-mukātab, bāb 11, raqm 13 [vol. 2, p. 805].

²⁴ For the Shafī°i school's engagement with walls, see Otto Spies, 'Islamisches Nachbarrecht nach schafāitischer Lehre', *Zeitschrift für vergleichende Rechtswissenschaft* 42 (1927): 393–421.

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-ḥiṭān*, 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.'²⁶ Some pages earlier in the same chapter, Ibn al-Qāsim is asked about the division of streets and walls (*qismat al-ṭarīq wa-l-jidār*). For a wall that is to be divided between two co-proprietors, he responds: 'I did not hear anything from Mālik on this matter, but my opinion (*arā*) is that so long as no harm comes from it when it is divided, then it may be divided.'²⁷ These and similar generic teachings find their way into *fiqh al-bunyān*.

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.

²⁶ Mālik b. Anas, *al-Mudawwana al-kubrā li-l-imām Mālik b. Anas al-Aṣbahī, riwāyat al-imām Saḥnūn b. Saʿīd al-Tanūkhī ʿan al-imām ʿAbd al-Raḥmān b. Qāsim*, 6 vols. (Beirut: Dār al-Fikr, 1998), k. al-qisma, vol. 5, p. 2569.

²⁷ *Ibid.*, k. al-qisma, vol. 5, p. 2560.

²⁸ Ashhab b. ʿAbd al-ʿAzīz al-Qaysī.

°Abd Allāh b. °Abd al-Hakam (d. 829); Muṭarrif (d. 835);²⁹ Aṣḡagh (d. 840);³⁰ and Muḡammad b. Saḡnūn (d. 870). Included, too, are °Abd al-Mālik b. Ḥabīb (d. 853), author of an influential imitation of the *Mudawwana*, the *Wāḡiḡa*;³¹ and Abū °Abd Allāh Muḡammad b. Aḡmad al-°Utbī (d. 869), author of the *Mudawwana*'s alleged supplement, the *Mustakhrāja*, or °*Utbīyya*. 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 *qāḡīs*, and the *fatwas* of *muftis*;³² from the *Mudawwana*, the *Wāḡiḡa*, and the °*Utbīyya*, the book of °Abd Allāh b. °Abd al-Hakam, the book of Ibn Saḡnūn, the book of Ibn °Abdūs,³³ and the *Nawādir*;³⁴ from what notaries follow in their legal formularies (*wathā'iq*),³⁵ such as the notaries Ibn al-Qāsim³⁶ and Ibn Muḡhīth,³⁷ and from [the formulary called] *al-Muṭṭīyya*;³⁸ and [lastly], from what *qāḡīs* follow of the judgements (*aḡkām*) of Ibn Abī Zamanīn,³⁹ the judgements of Ibn Hishām,⁴⁰ and the judgements of our master,

²⁹ Muṭarrif b. °Abd Allāh b. Muṭarrif.

³⁰ Abū °Abd Allāh Aṣḡagh b. al-Faraj.

³¹ *Al-Wāḡiḡa fī l-sunna wa-l-fiqh*.

³² 'Hādḡā kitāb jumi°at fīhi masā'il al-abniya fī l-jidār wa-nafy al-ḡirār wa-l-ghurūs wa-l-arḡiya min ummahāt dawāwīn wa-kutub al-muta°akḡkḡirīn wa-nawāzil al-quḡāt wa-masā'il al-muḡṭīn.'

³³ Muḡammad b. Ibrāḡīm b. °Abdūs al-Qayrawānī (d. 874).

³⁴ Abū Muḡammad °Abd Allāh b. °Abd al-Raḡman b. Abī Zayd al-Qayrawānī, *al-Nawādir wa-l-ziyādāt °alā mā fī l-Mudawwana min ḡayriḡā min al-ummahāt*, ed. °Abd al-Fattāḡ Muḡammad al-Ḥulw et al., 15 vols. (Beirut: Dār al-Gharb al-Islāmī, c. 1999).

³⁵ The formularies would likely have been similar to the architecture-related *wathā'iq* documents presented in Ibn al-°Aṭṭār, *Kitāb al-wathā'iq wa-l-sijillāt li-l-faqīḡ al-muwathḡiq Muḡammad b. Aḡmad al-Umawī al-ma°rūf bi-Ibn al-°Aṭṭār (330–399 AH) (Formulario notarial hispano-árabe)*, ed. Pedro Chalmeta and Federico Corriente (Madrid: Academia Matritense del Notariado, Instituto Hispano-Árabe de Cultura, 1983), 117–23.

³⁶ °Alī b. Yaḡyā b. Qāsim al-Jazīrī (d. 1189).

³⁷ Yūnus b. Muḡammad b. Muḡhīth (d. 1037).

³⁸ Composed by °Alī b. °Abd Allāh al-Anṡārī al-Muṭṭī (d. 1174).

³⁹ Ibn Abī Zamanīn of Andalusia (d. 1008), to whom the authorship of *al-Muntakḡab fī l-aḡkām* is ascribed.

⁴⁰ Ibn Hishām of Cordoba (d. 1209), author of the extant *Muḡṭd al-ḡukkām*.

the learned, the ascetic, the devout, and God-fearing Abū Ishāq b. °Abd al-Raḥī°,⁴¹ may God grant him success and guide him.⁴²

The years 950–1350 mark a particular period for *fiqh al-bunyān* 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-ḥiṭān* and books of Ibn al-Imām and Ibn al-Rāmī, as well as one by Muḥammad b. °Abd Allāh al-Zubayrī (d. 989), *Kitāb al-abniya* (The book of buildings),⁴³ and another by Ibn Rushd ‘al-Jadd’ (d. 1127), *Kitāb al-qaḍā’ 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

⁴¹ Ibn °Abd al-Raḥī° (d. 1332), chief *qāḍī* of Tunis, Ibn al-Rāmī’s teacher in legal matters, and author of the extant *Mu°in al-quḍāt wa-l-ḥukkām*.

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 Abū al-Walīd Muḥammad b. Rushd, *Kitāb al-qaḍā’ wa-l-araḍīn wa-l-dūr* (Rabat: Bibliothèque Générale à Rabat, MS no. 424).

⁴⁵ Muḥammad b. Ibrāhīm b. °Abdūs b. Bashīr (d. 874), *Kitāb al-dūr* (The book of houses) (not extant), as cited in Qāḍī °Iyāḍ, *Tartīb al-madārik wa-taqrīb al-masālik li-ma°rifat a°lām madhhab Mālik*, ed. Muḥammad Sālim Hāshim, 2 vols. (Beirut: Dār al-Kutub al-°Ilmiyya, 1998), 1: 434; Muḥammad al-Barūdī (d. 1831), *Fath al-Raḥmān fī mas°alat al-tanāzu° fī-l-bunyān* (The victory of God in building disputes) (Tunis: Bibliothèque Nationale de Tunis, MS no. 3933), as cited in M°halla, ‘La médina’, 40, n. 16; and Abū °Abd Allāh Muḥammad b. Ḥasan Bayrām I (d. 1900), *Risāla fī l-ḥa°iṭ al-munhadim* (Treatise on the falling wall) (Tunis: Bibliothèque Nationale de Tunis, MS no. 187), also as cited in M°halla, ‘La médina’, 40, n. 16.

⁴⁶ M°halla, ‘La médina’, 38.

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 ʿAbd al-Ḥakam's (d. 829) *Kitāb al-qaḍāʾ 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-Aḥkām al-kubrā*;⁵⁰ as does Ibn Abī Zayd al-Qayrawānī's (d. 996) 'Jurisdiction in building', which belongs to his *Nawādir*.⁵¹ Similarly, Ibn Farḥūn's (d. 1396) 'The leaning wall' belongs to his *Tabṣirat al-ḥukkām*;⁵² Ibn Hishām's (d. 1209) 'The book [or chapter] of claims regarding the wall' belongs to his *Mufīd al-ḥukkām*;⁵³ and al-Bājī'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 judgements [regarding] harm, the inviolable perimeters of wells, gifts, acts of mortmain, and charitable donations' belong to his *Fuṣūl al-aḥkām*.⁵⁴

⁴⁸ Jonathan E. Brockopp, *Early Maliki Law: Ibn ʿAbd al-Ḥakam and his Major Compendium of Jurisprudence* (Leiden: Brill, 2000), 62. Qāḍī ʿIyād (d. 1149) lists the title as one of Ibn ʿAbd al-Ḥakam's works, never implying it might have been only a chapter of a longer work. Qāḍī ʿIyād, *Tarṭīb al-madārik*, 1: 305.

⁴⁹ This work is also cited by Qāḍī ʿIyād. *Ibid.*, 1: 375.

⁵⁰ To the best of my knowledge, the only edited version of *al-Aḥkām al-kubrā* was originally presented as the editor's doctoral thesis at St. Andrew's University: Abū l-Aṣḡagh ʿĪsā b. Sahl b. ʿAbd Allāh al-Asdī al-Jiyyānī, *Dīwān al-aḥkām al-kubrā: al-Nawāzil wa-l-aʿlām li-Ibn Sahl*, ed. Rashīd al-Naʿīmī, 2 vols. (Riyad: R. al-Naʿīmī, 1997).

⁵¹ Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa-l-ziyādāt*, 11: 93–112.

⁵² Burhān al-Dīn Ibrāhīm b. ʿAlī b. Abī l-Qāsim b. Muḥammad b. Farḥūn, *Tabṣirat al-ḥukkām fī uṣūl al-aqḍiyya wa-manāhij al-aḥkām*, ed. Ṭāhā ʿAbd al-Raʿūf Saʿd, 2 vols. in 1 binding (Cairo: Maktabat al-Kulliyāt al-Azhariyya, 1986), 2: 339–40.

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

⁵⁴ Abū al-Walīd Sulaymān b. Khalaf al-Bājī, *Fuṣūl al-aḥkām wa-bayān mā maḍā ʿalayhi l-ʿamal ʿinda l-fuqahāʾ wa-l-ḥukkām*, ed. al-Bātūl b. ʿAlī (Rabat: Wizārat al-Awqāf wa-l-Shuʿūn al-Islāmiyya li-l-Mamlaka al-Maghribiyya, 1990),

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’.⁵⁵ Scattered in it are *fatwas* such as ‘A question concerning one who joins his wall to the wall of his neighbour’,⁵⁶ ‘On overlooking houses from [a] minaret’,⁵⁷ and ‘On one who installs a door or shop opposite the door of his neighbour’s house on a through-passage (*zuqāq nāfidh*)’.⁵⁸ To the second category of *fatwa* compilations belong, for example, al-Burzulī’s (d. 1438) *Jāmi‘ masā’il al-aḥkām*,⁵⁹ al-Wansharīsī’s (d. 1509) *al-Mi‘yār al-mu‘rib*,⁶⁰ and al-Wazzānī’s (d. 1924) *al-Nawāzil al-jadīda al-kubrā* and *al-Nawāzil al-ṣuḡhrā*.⁶¹ In these works are found numerous architecture-related *fatwas*, mostly in the chapters pertaining to property division and allotment, partnership (*sharika*), and, especially, harm.⁶²

315–48.

⁵⁵ Abū al-Walīd Muḥammad b. Aḥmad b. Aḥmad b. Rushd, *Fatāwā Ibn Rushd*, ed. al-Mukhtār b. Ṭāhir al-Talīlī, 3 vols. (Beirut: Dār al-Gharb al-Islāmī, 1987).

⁵⁶ *Ibid.*, 3: 1578.

⁵⁷ *Ibid.*, 2: 1246.

⁵⁸ *Ibid.*, 1: 169.

⁵⁹ Al-Burzulī, *Jāmi‘ masā’il al-aḥkām bi-mā nazala min al-qaḍāyā bi-l-muftīn wa-l-hukkām* (Tunis: Bibliothèque Nationale de Tunis, MS no. 4851), as cited in Nejmeddine, ‘La rue dans la ville’, 274, n. 2.

⁶⁰ Aḥmad b. Yaḥyā al-Wansharīsī, *al-Mi‘yār al-mu‘rib wa-l-jāmi‘ al-muḡhrib ‘an fatāwā ahl Ifrīqiya wa-l-Andalus wa-l-Maḡhrib*, ed. Muḥammad Ḥajjī, 13 vols. (Rabat: Wizārat al-Awqāf wa-l-Shu‘ūn al-Islāmiyya li-l-Mamlaka al-Maḡhribiyya, 1981–83).

⁶¹ Abū ‘Īsā Sīdī Muḥammad al-Mahdī b. Muḥammad b. Muḥammad b. al-Khaḍir al-Wazzānī, *al-Nawāzil al-ṣuḡhrā al-musammā bi-l-Minaḥ al-sāmiya fī-l-nawāzil al-fiqhiyya*, 4 vols. (Rabat: Wizārat al-Awqāf wa-l-Shu‘ūn al-Islāmiyya li-l-Mamlaka al-Maḡhribiyya, c. 1993); idem, *al-Nawāzil al-jadīda al-kubrā fī-mā li-ahl Fās wa-ghayrihim min al-badw wa-l-qurā al-musammā bi-al-Mi‘yār al-jadīd al-jāmi‘ al-muḡhrib ‘an fatāwā al-muta’akhhirīn min ‘ulamā’ al-Maḡhrib*, ed. ‘Umar b. ‘Abbād, 16 vols. (Rabat: Wizārat al-Awqāf wa-l-Shu‘ūn al-Islāmiyya li-l-Mamlaka al-Maḡhribiyya, c. 1998).

⁶² See, for example, the chapter ‘Cases of Harm, Flowing Water, and Building’ of al-Burzulī’s compilation (f° 281–313, cited in Nejmeddine, ‘La rue dans la ville’, 283); the chapter ‘Cases of Harm and Building [Matters]’ of al-Wansharīsī’s collection (8: 435–87, and 9: 5–73); and the chapter ‘Cases of Harm and Vindication’ of al-Wazzānī’s *Nawāzil al-jadīda* (3: 459–520).

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.⁶³ 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'.⁶⁴ 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.⁶⁵ Compiled in the form of generalized, viz., non-place specific legal cases plus their assessments (*aḥkām*),⁶⁶ 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.⁶⁷

⁶³ Al-Namīnaj in Ibn al-Imām, 1: 53. Cf. a related argument in al-Hathloul, *Tradition, Continuity and Change*, 16, 138.

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.

⁶⁵ Ibn al-Rāmī (2), 28–29. There are at least four extant copies of Ibn al-Imām's work, and a similar number of *Kitāb al-ḥīṭān*. Ibn al-Imām, 1: 62–65; Ben Slimane, 'Entre Ibn al-Imām', 110, n. 6; *Kitāb al-ḥīṭān*, 10–12.

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 *ḥisba* 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 (*ʿurf*) and commonly negotiated via an application mechanism responsive to local conditions: *ʿamal* 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-ḥiṭān*. 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

⁶⁸ See, for instance, the neighbourhood dispute section of *Kitāb Niṣāb al-iḥtisāb*, as reproduced in Mawil Izzi Dien, *The Theory and Practice of Market Law in Medieval Islam: A Study of Kitāb Niṣāb al-Iḥtisāb of ʿUmar b. Muḥammad al-Sunāmī (fl. 7th–8th/13th–14th Century)* (Warminster: E. J. W. Gibb Memorial Trust, 1997), 82–85.

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 architectural 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 precedes 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 companions 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 (*'awra*).⁷³ But modification 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-ḥiṭān*, 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 Brunschvig, 'Urbanisme médiéval', 130, 140, 153, n. 1.

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 Thought", *Islamic Law and Society* 11/3 (2004): 309–12. These interventions 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 nakedness 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 *representational spaces*. The former are the conceptualized spaces of professionals (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 (‘*awra*)⁷⁶ demarcated by the interventions preventing the overlooking (*iṭṭilā‘*) of courtyard houses by muezzins atop their minarets, for instance, these representational 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 structures that define them. In that regard, such study operates similarly to *fiqh al-bunyān*: collapsing space according to the modalities of a discourse, 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.

⁷⁵ Gaston Bachelard, *The Poetics of Space*, trans. Maria Jolas (New York: The Orion Press, Inc., 1964; reprint, Boston: Beacon Press, 1994), 6. Cf. Lefebvre, *The Production of Space*, 147, 166.

⁷⁶ On this legal usage of ‘*awra*, 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 dimensions of Muslim houses, Paul Wheatley has hinted at their significance. Paul Wheatley, ‘Levels of Space Awareness in the Traditional Islamic City’, *Ekistics* 42, no. 253 (Dec. 1976): 354. Perhaps the closest that has come to Bachelard’s book is Joëlle Bahloul, *The Architecture of Memory: A Jewish-Muslim Household in Colonial Algeria, 1937–1962*, trans. Catherine du Peloux Ménagé (Cambridge: Cambridge University Press, 1996). See also, Carel Bertram, ‘The Turkish House: An Effort of Memory’ (Ph.D. dissertation, University of California, Los Angeles, 1998), esp. 1–30.

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 time⁷⁸ 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.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.

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.

⁷⁹ Cf. Richard van Leeuwen, 'Space as a Metaphor in *Alf laylah wa-laylah: The Archetypal City*', in *Myths, Historical Archetypes and Symbolic Figures in Arabic Literature: Towards a New Hermeneutic Approach; Proceedings of the International Symposium in Beirut, June 25th–June 30th, 1996*, ed. Angelika Neuwirth et al. (Beirut/Stuttgart: Franz Steiner Verlag, 1999), 493.