Journal of Posthumanism

2025
Volume: 5, No: 5, pp. 13–25
ISSN: 2634-3576 (Print) | ISSN 2634-3584 (Online)
posthumanism.co.uk

DOI: https://doi.org/10.63332/joph.v5i5.1304

The Impact of Islamic Jurisprudence Principles on the Urban Planning of Historic Cities

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Abstract

Architecture constituted the most tangible signature of medieval Islamic civilisation, yet its forms were never left to personal whim or isolated royal decrees. Instead, a dense corpus of juristic writing—especially Mālikī treatises on construction (bunyān) and easements (irtifāq)—functioned as a de facto planning code guiding historic Muslim cities. Analysing three foundational manuals (Ibn ʿAbd al Ḥakam, 271 AH; ʿĪsā al Tuṭīlī, 386 AH; Ibn al Rāmī, 8th c. AH) alongside fatwā collections and nawāzil, the article reconstructs a coherent set of urban regulations embedded in classical fiqh. It demonstrates how the maxim "no harm and no reciprocal harm" and allied principles of public interest, lesser harm choice, and custom shaped city form, from street hierarchies to industrial zoning. The study shows that juristic rulings mandated load bearing limits, demolition of unsafe walls, minimum road widths, and height clearances for balconies; outlawed dumping debris and discharging wastewater into streets; located smoke emitting crafts outside residential quarters; protected courtyards, gardens, and riverbanks; and prescribed privacy features such as inward oriented houses and high, narrow windows. These regulations reveal fiqh as a dynamic instrument of urban sustainability rather than a static legal relic. By correlating textual rulings with archaeological maps of Medina, Fez, and Marrakesh, the paper evidences their materialisation in street dimensions, courtyard proportions, and craft districts. The findings invite contemporary planners and heritage professionals to mine fiqh archives for locally resonant sustainability guidelines that complement international charters. It positions Islamic jurisprudence as a resource for global urban history and culturally rooted regeneration of historic fabrics. Five findings emerge: overarching legal maxims, structural safety codes, public health prescriptions, environmental zoning, and privacy/sanctuary rules. Methodologically, the article unites close readings of Mālikī texts with morphological evidence from Medina, Fez and Marrakesh, showing how written rulings translated into street widths, garden buffers and industrial quarters, yielding insights for heritage tourism and context sensitive planning.

Keywords: *Islamic Jurisprudence, Urban Planning, Mālikī Fiqh, Historic Islamic Cities, Heritage Conservation, Environmental Zoning.*

Introduction

It is well known among scholars of civilizations that architecture is the material face of any civilization. Therefore, to study ancient civilizations, researchers turn to their architectural remains. What survives of historic cities is undoubtedly an embodiment of the cultural and civilizational system that produced them. Accordingly, cultural heritage is no less important than architectural heritage in understanding the nature of human civilizations; indeed, the former is a fundamental key to understanding the latter, for it is the cultural heritage that produced and organized the architectural heritage throughout history. This understanding became so

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established that they coined the maxim, "Architecture is among the hallmarks of cities." ( )

This principle helps explain many aspects of the relationship between Islamic architecture and Islamic heritage in general, and specifically the relationship between historic cities and the fiqh (jurisprudential) heritage. It thereby clarifies the influence of Islamic teachings on architecture and urban planning. ( )

One who studies the ancient urban planning of venerable cities—such as al-Madīnah al-Munawwarah, Baghdad, Fez, Kairouan, and Marrakesh, and even the Islamic monuments in Granada—finds that there was a legal system framing these cities. This system accompanied the developments of Muslim urban societies throughout history with codification and regulation. A close examination of the Mālikī fiqh heritage in the field of construction confirms that Islamic jurisprudence has an inherently urban character ( ). Mālikī jurists even authored independent books on easements and the laws of architecture, works of significant legal value that merit study. For example, we can mention without limitation:

- The Book of Adjudication in Construction (Kitāb al-Qaḍāʾ fī al-Bunyān), by the Mālikī jurist ʿAbd Allāh ibn ʿAbd al-Ḥakam (d. 271 AH),( ) which is one of the earliest books written on building regulations.
- Adjudication by Easement in Buildings and Elimination of Harm (Kitāb al-Qaḍāʾ bi-l-Marfiq fī al-Mabānī wa Nafy al-Ḍarar), by Imām ʿĪsā ibn Mūsā al-Tuṭīlī (d. 386 AH).
- The Announcement of the Rulings of Construction (Kitāb al-Iʿlān bi-Aḥkām al-Bunyān), by Muḥammad ibn Ibrāhīm, known as Ibn al-Rāmī al-Tūnisī (8th century AH).

In addition to these standalone works in the field of urban development, there are many other discussions embedded in comprehensive fiqh encyclopedias and collections of legal cases (nawāzil) that addressed building regulations and related judicial rulings.

These discussions evolved to the point that the jurists identified a distinct discipline called "ʿIlm ʿUqūd al-Abniya" ("the science of building construction"). They defined it as: "a science by which one knows the conditions of building structures and how to make them sound, and the ways to improve them — such as constructing well-fortified castles, arranging beautiful dwellings, erecting sturdy bridges and the like — as well as the methods of digging canals, maintaining aqueducts ( ), plugging flood breaches ( ), drawing out water ( ) and conveying it from lowlands to highlands, and so forth…"( ) They identified the benefit of this science as "the construction of cities, houses, and fortresses…"( ) based on the principle of procuring benefits and repelling harms.

From this it is understood that Islamic cities, in both their general layout and their details, were subject to fiqh rulings — whether explicitly textual or derived through juristic reasoning — which were continuously updated in step with societal development.

If this is established, one may ask: Is it possible to benefit from the fiqh heritage to decipher the mysteries of historic cities, by researching the rich juristic legacy on urban matters and restoring old cities to their original appearance, preserving their original forms? Likewise, one can explore the possibility of investing that fiqh heritage in developing a scientific basis for tourist guidance that educates visitors about architectural heritage using sound explanations drawn from the legal and cultural system that produced this architecture.

This study aims to contribute to this subject by uncovering some aspects of an urban dimension

within the Islamic fiqh heritage. It does so by presenting examples of fiqh codification in the realm of urban development that demonstrate the importance of the juristic heritage in explaining ancient urban planning. We will examine this through five sections:

1. First Section: Some Islamic Legal Maxims Regulating Ancient Urban Planning

2. Second Section: Fiqh Heritage and Observance of Building and Road Safety Requirements

3. Third Section: Fiqh Heritage and Observance of Health Requirements in Urban Planning

4. Fourth Section: Fiqh Heritage and Preservation of the City's Environment

5. Fifth Section: Ancient Urban Planning and Respect for Privacy and the Sanctity of Residential Homes

First Section: Some Islamic Legal Maxims Regulating Ancient Urban Planning

The old cities—especially those of the Islamic eras—were not built without order or law; rather, they were subject to a juristic system that answered their problems and novel issues whenever needed. The rulings of this system revolved around general maqāṣid-based fiqh maxims, which the urban jurists of old applied in practice. These can be summarized in four maxims:

- Averting harm and securing benefit
- Prioritizing the public interest over the private interest when they conflict
- Choosing the lesser of two harms
- Upholding customary practice

Below we will briefly address how each maxim relates to urban regulation, along with some examples.

Averting Harm and Securing Benefit

Jurists based the derivation of most rulings related to architecture and construction on the prevention of harm, relying on the numerous sharīʿah evidences that obligate the avoidance of injury. Among these is the Prophetic hadith: "There should be no harm and no reciprocating of harm." ( ) They invoked this hadith in most issues of easements (irtifāq). In Mālikī law, the topic of easements was coupled with the prevention of harm, as is evident from the titles given to those discussions. For example, the jurist Ibn Juzayy al-Gharnāṭī (d. 741 AH) in his work devoted chapter fifteen entirely to "Easements and the Prevention of Harm." ( )

On the basis of this maxim, the jurists resolved all matters of easements. For instance, they prohibited a tanner from causing harm to his neighbors with the fetid odor of his tanning, and likewise forbade locating a furnace, bathhouse, or threshing floor( ) near gardens…( ) in short, everything that would damage the urban environment (as will be explained in later sections).

Prioritizing the Public Interest over the Private Interest in Case of Conflict

Interests (maṣāliḥ) that must be observed are classified, in terms of scope, into private interests—benefiting individual persons—and public interests that benefit the community at large. In urban affairs, these two types of interests may at times conflict. However, the jurists long ago resolved such conflicts in favor of public interests, due to the strength of the evidence supporting them

and the general benefit they entail. An example is their prohibition of individuals expanding their personal easements at the expense of public roads and courtyards. They cited, as evidence for this, the report that "a blacksmith set up a forge in the Muslims' marketplace... ʿUmar ibn al-Khaṭṭāb, may God be pleased with him, passed by and saw it and said, 'You have constricted the market,' then ordered it to be demolished." ( )

Accordingly, Imām Ashhab al-Mālikī (d. 204 AH) held that the ruler has the authority to order the demolition of any structure built encroaching on a public road. He stated: "No one should add to the Muslims' road—whether the road is spacious or not, whether the addition is harmful or not—he is to be ordered to demolish it." ( )

They also cited, in support of prioritizing the public interest and prohibiting encroachment upon it, the decision of ʿUmar, may God be pleased with him, regarding the afniyāʾ (open courtyards) in favor of the owners of adjoining houses. That is, he allowed people to benefit from those courtyards for seating, tying animals, setting up benches, and for vendors to sit there with light goods, and he forbade that they be appropriated by building on them or fencing them off.( )

Choosing the Lesser of Two Harms

There was juristic consensus on the rule that one must commit the lesser of two harms when faced with a choice between them.( ) This maxim became applicable in all areas of life, especially in matters of building and urban planning. It was invoked in many rulings. For example, a judge may rule that a neighbor must permit his adjacent neighbor to have workers and builders enter through the neighbor's property in order to repair a wall that faces his side—this being done as the lesser of two harms. The two harms in this scenario are the entry into the neighbor's property versus the necessity of making the repair, and entering the neighbor's property is the lesser harm. From this, it is understood that if a neighbor's latrine pit is accessible only through his neighbor's house, the judge will likewise rule that the neighbor must allow the other's workmen to enter his property for the needed maintenance. ( )

Upholding Customary Practice

Linguistically, ʿurf (custom) is the opposite of the unknown ( ); technically, it is defined as "that which people's minds find agreeable and which their natural inclinations accept."( ) In essence, it is what people mutually recognize and practice among themselves. ( )

Custom is considered one of the most important sources of legislation that jurists turn to when applying fiqh rulings to actual circumstances in many domains, such as personal status, transactions, and others. Upon examining their discussions on urban issues, we find that they relied very heavily on this maxim, especially in resolving disputes between parties over easement rights. It is mentioned in some fiqh books: "If two people dispute over a wall between their two houses, it is to be judged in favor of the one for whom custom testifies that he exercises over it such control as owners exercise over their own property – for example, using it to support beams, attach brackets ( ), expose brick or mudbrick facing, and the like." ( )

Second Section: Fiqh Heritage and Observance of Building and Road Safety Requirements

Respecting building safety conditions to avert foreseeable hazards was a self-evident matter in the fiqh codification of urban issues. The jurists took care to regulate procedures in construction and related matters according to sound architectural principles as a precaution against disasters and calamities. For this purpose, they emphasized many safety regulations, among which we mention:

Respecting the Load-Bearing Capacity of Roofs When Adding Floors

Multi-story construction was known in ancient civilizations. Since wood was most often used for roofing and was quick to become fragile and decay, the jurists stipulated the necessity of taking into account the ability of walls and the roof to support additional floors. Imām Ibn al-Qāsim (d. 191 AH), one of the leading Mālikī scholars, was asked about a person who owns an upper story and wants to build another level on top of it, while the owner of the lower story objects. He replied: "As for light construction that does not harm [the lower structure], that is permitted for him. But anything feared to cause harm to [the lower structure] is to be prevented, and he is allowed to proceed only with what is not feared to cause harm." ( )

Out of the same concern about the weight of upper floors on a wooden roof, Imām Ashhab of the Mālikīs further held that even if "a beam of the upper story breaks, one may insert a similar replacement in its place, but he is not allowed to insert something heavier than it, as that would cause harm." ( )

The Necessity of Demolishing Walls Threatened with Collapse

Applying the maxim of preventing harm whenever possible, the jurists built most of their anticipatory rulings in construction on not being lax toward imminent dangers resulting from dilapidated buildings and walls. In this regard, Imām Ibn al-Qāsim was asked about "a wall between a man's house and his neighbor's house that has leaned severely such that its collapse is feared. Do you think the ruler, if the neighbor complains about it and about the harm he fears from its collapse, may order its owner to demolish it?" He said: "Yes. It is obligatory for him to order him to demolish it." ( )

Preventing Leaning Walls and Demolishing Them if Built Improperly

In the context of respecting sound construction standards, fiqh did not permit any structural defect in a building. Ibn al-Qāsim was also asked about "a man who is constructing a tall building and it becomes crooked at the top and leans into another person's airspace. The owner of that airspace then builds on his own property, and when he reaches the crooked part, he stops [the first man]. The first man cannot straighten his wall except by demolishing the crooked portion – do you think it should be demolished?" He answered: "Yes, and he has no right to intrude into someone else's airspace." ( )

This juristic ruling is for two reasons. First, it prevents an encroachment on the rights of others, represented here by the neighbor's airspace (i.e. the space above his property).

Second, leaning walls are generally prone to collapse, so in order to uphold safety requirements they should be straightened.

Moreover, in Mālikī law no consideration is given to the expenses that were spent on a wall built in violation of construction rules. It was said to Ibn al-Qāsim: "Demolishing it would entail the loss of a great sum that had been spent on that building." He replied: "Demolish it, no matter how great the expense that was incurred." ( )

Guideline for Installing Overhanging Ledges and Balconies

In old architectural style, it was common to construct rufūf (overhanging ledges) and shurafāt (balconies) overlooking public roads. However, they were not put up without regulation—fiqh laid down conditions for them as well. Imām ʿAbd al-Salām Saḥnūn al-Mālikī (d. 240 AH) was asked about "ledges and projecting structures overlooking the road – should the official prevent

their builder from doing that?" He said: "No. Such balconies and ledges have always been made by people to overlook the road, so I do not think anyone should be stopped from that, as long as it harms no one." ( )

Among the conditions they stipulated for these projections was that they be high enough above the road so as not to cause harm to those passing under or near them—whether riders, pedestrians, or people carrying loads. If the projections were not high and did harm those who passed beneath or close by, the Mālikī scholars held that they must be removed and the harm eliminated for people using the roads. ( )

Required Width of Roads

The jurists correlated the width of a road with the type of use it receives, and they articulated a significant principle that was the basis for the varying breadth of streets in old cities. Its gist, as stated by some jurists, is: "that people be left from the width of the alleys and roads an amount sufficient for the widest and largest thing that passes through their lanes, such that it causes no harm – like a camel with the largest of loads, or a cart, and the like of whatever is useful. And we have no fixed measure for that except the measure of need." ( )

Based on this principle, they distinguished three types of roads and specified their widths:

- Footpaths ( ): width of seven cubits. If it is less than that, it must be increased from the adjoining properties of people until it reaches seven cubits ( ), based on the hadith: "If people differ about the road, its limit is seven cubits." ( )
- Livestock routes: width of twenty cubits. ( )
- Private lanes (ṭarīq al-makhdaʿ) ( ): width set at four cubits. ( )

Prohibiting the Narrowing of Roads

The jurists unanimously prohibited narrowing public roads by taking any part of them, based on the report that the Prophet ﷺ said: "Whoever appropriates an inch of land from the Muslims' road or their courtyard, Allah will collar him with it from seven earths on the Day of Resurrection." ( )

Accordingly, Imām Mālik forbade the division of the open space (fanā') and the yard (marāḥ) that lie in front of houses alongside a road, because "those are areas from which the public derives benefit. At times the road becomes filled with people and animals, and a mounted or walking person or someone with a load swerves off the road into those courtyards and open spaces by the doorways, thereby making the thoroughfare wider. Thus, the owners must not narrow them nor alter them from their original state." ( ) Similarly, the jurists prohibited setting up any shops in those areas. ( )

Ibn Ḥabīb al-Mālikī (d. 238 AH) said: "I asked Mutarrif and Ibn al-Mājishūn about a man who builds small projecting structures in the road attached to his wall – should he be prevented from that and ordered to demolish them if he has done so?" They answered: "Yes. He has no right to introduce anything into the road that diminishes it, even if what remains of the road is spacious enough for those who travel it." ( )

Prohibiting Digging or Damaging the Road

For this reason, the jurists stressed the obligation of properly covering any pit for a latrine dug in a roadway. Imām Saḥnūn was asked about digging a kanīf (toilet pit) in the road near one's

house and then covering it – should a person be prevented from doing that or not? He replied: "If he covers it and does a thorough job of covering it, leveling it with the road so that it harms no one, then I do not see that he should be prevented." ( )

Prohibiting Obstructing the Road with Debris or Other Barriers

The Mālikī jurists stated that "if a man demolishes his house, he has no right to deposit the rubble and what he has torn down in the road if that would harm passersby." ( ) They further held that whatever results from the demolition—such as dirt and trash—its owner must rent a place to dispose of it ( ), in order to avoid causing harm to the city's roads.

Third Section: Fiqh Heritage and Observance of Health Requirements in Urban Planning

Among the overarching objectives (maqāṣid) of Islamic law is the preservation of human life in all its facets. Since the health aspect is among the most important of these, the jurists insisted on safeguarding it in their codification of many matters of the city. For example:

Managing Water Drainage

It has been established by experts that used water carries many health hazards, as it is a source of filth and a collection of impurities. Therefore, Mālikī fiqh regulated the drainage of water in the city through procedural measures: they forbade channeling household wastewater into the roads and streets. This is indicated by Imām Saḥnūn's response when he was asked if a man is permitted to open an outlet( ) into the Muslims' street to drain his water into the road – he answered: No ( ). The Mālikī jurists also prohibited disposing of water in a manner that causes harm to neighbors and their walls, considering that a form of unequivocal harm that must be prevented. ( )

All of this shows that they must have employed an alternative method for disposing of used water, most likely an underground system of pipes and channels, so as to avoid visible filth and the odors and harm resulting from it. Moreover, the Mālikī jurists drew a distinction between household wastewater, which should not be discharged into public thoroughfares, and rainwater, which is permitted to flow out from houses even if it pours into the street, because its harm is unavoidable and it is a prevalent occurrence ( ). They did, however, emphasize the obligation of installing drain spouts (miyāzīb) to channel rainwater away.( )

Sweeping and Maintaining Latrines

Latrines (marāḥīḍ) were also given attention by the jurists in service of preserving human health. Imām Ibn al-Qāsim was asked about "a toilet (miṛḥāḍ) that became unusable – whether the responsibility for fixing it lies with the owner of the upper level or the lower level?" He said: "The owner of the lower level must build up what is in the lower part until it reaches the roof, and the one who has the upper level must construct the wooden part." ( )

With regard to cleaning these latrines, the Mālikī jurists affirmed that it is obligatory. In the event of a dispute between partners sharing a latrine pit about who should bear the cost of cleaning it, the jurists ruled that the expense is divided among the partners according to the number of people in each household ( ). And when a landlord rented out his house, cleaning out the dirt and emptying the latrine pit was required of the homeowner, unless he stipulated [otherwise] upon the tenant.( )

From this, we conclude that people in the old cities would jointly use a single latrine pit, and that historically they relied on this system for sewage disposal.

Managing Light, Sunlight, and Air

It is known among physicians that light and sunshine are essential for a healthy residence. The jurists recognized this long ago and permitted making openings ( ) and windows in homes to admit light and sun, on the condition of not causing harm to neighbors. Some leading Mālikī authorities were asked about a man opening a kūwah (small high window) in his wall despite his neighbor's objection, where the opening is high up and cannot be looked through except by using a ladder. They answered: If it causes no harm to the neighbor, then I see no problem with opening it, because it is a source of benefit. ( )

Al-Qarāfī states in Kitāb al-Dhakhīrah: "Some of our scholars have said that a person is prevented from blocking ventilation openings by his building; likewise, if [his building] causes a house to become dark or blocks the air [it is not allowed]."( )

Fourth Section: Fiqh Heritage and Preservation of the City's Environment

The jurists were concerned with protecting the environment, drawing on Qur'ānic and Prophetic texts urging the preservation of architecture and the prevention of ruin, and by exercising ijtihād to derive rulings that would regulate urban development in light of sound environmental conditions. Based on the principle of preventing harm, they approached the environmental realm from the perspective of its impact on people's essential interests in life. They affirmed the obligation to preserve the environment and not to cause harm to it, considering the environment a protective fortress for the continuity of human life. Therefore, they attempted to locate industrial establishments outside the city( ), and they safeguarded the buffer zones and courtyards of buildings and roads—including gardens, orchards, and water sources—regulating all of that with rulings and penalties that ensured the continued soundness of the environment in Islamic cities. The following are some of their measures in this context:

Regulating Industries

If the modern city has created industrial zones relatively distant from residential areas to avoid harming people, the Islamic city had adopted this measure long ago. In their fatwas and judicial decisions, the jurists prohibited setting up bathhouses, ovens, mills, tanneries, blacksmith shops, and the like in the midst of residential neighborhoods. Imām Saḥnūn said that if someone establishes ovens or blacksmith operations adjacent to another person such that it harms his neighbor, "he is to be prevented from that and it is to be ruled against him."( ) Similarly, Imām Ibn al-Qāsim was asked about a man who has an open lot next to some people's house and wanted to make that lot into a hammam (public bath) or oven or a place for a mill, but the neighbors refused. His view was that if any of those would cause harm to the neighbors from smoke or the like, then the neighbors have the right to prevent him.( )

They based this prohibition on the principle of averting harm, and they identified the potential harm from industries in several factors, including:

- Smoke and noxious gases:

Emissions from industrial activities can negatively impact health and the environment. The jurists recognized this early on and forbade establishing workshops in the midst of residential dwellings to avoid the pollutants they produce—such as the smoke emitted by a furnace used for smelting metal, or by a public bath. In their view, such facilities were forbidden if situated among homes where they would harm the inhabitants.( )

- Offensive odors:

Muslim scholars since ancient times paid attention to environmental factors like bad smells. The philosopher-physician al-Kindī even authored a book titled "The Curative Treatments for Offensive Odors." Many Mālikī jurists—such as Ibn al-Mājishūn (d. 212 AH), Mutarrif (d. 220 AH), and Aṣbagh (d. 225 AH)—held that if a tanner was harming his neighbors with the smell and stench of his tanning pits, he is to be prevented from continuing.( )

- Disturbing noise:

Mālikī fiqh also forbade setting up industries that produce disturbing noises in the midst of residential areas. For example, someone who places a grinding wheel in his house that causes a loud rumbling sound which harms his neighbor would be stopped from doing so. ( )

- Causing structural damage: Imām Ibn al-Qāsim prohibited establishing millstones near residential houses, attached to them, if they would damage the walls of those houses by causing them to crack. ( )

In line with these potential harms, the jurists also ruled that a renter of a shop may not turn it into a site for such industries. It is stated in al-Mudawwanah al-Kubrā: "If a man rents a shop from another without specifying what he will use it for, and then he practices blacksmithing or cloth-fulling or milling in it… Ibn al-Qāsim said: If that causes harm to the building or ruins the shop, then he has no right to do it." ( )

On the basis of these anticipated harms, they made it obligatory to distance such industries from residential areas, and they decided to designate specific zones for them while taking into account the type of industry. Thus, certain quarters in old cities came to be known by names derived from the craft conducted there, such as the Tanners' quarter, the Perfumers' quarter, the Dyers' quarter, the Lime-burners' quarter (al-jayyārīn), the Blacksmiths' quarter, the Carpenters' quarter, and so on.

Some jurists made an exception among ovens for the cooking oven, permitting it to be located amid residences, since people's wellbeing depends on it. Indeed, some jurists considered the depopulation and flight of people from a neighborhood in which an oven is located to be a jāʾiḥah (calamity) for its renter, requiring that the rent be reduced proportionately as a remedy. ( )

Respecting Courtyard Plants

Afniyāʾ (courtyards; singular finā') are the portions of land left beside a wide thoroughfare beyond what is needed for passage.( ) People often planted some trees and greenery in these spaces, forming a small green area that added a touch of beauty to their homes. The fiqh forbade infringing upon these plants. It was asked of Ibn Rushd about someone who planted roses in another man's courtyard and made use of them, then the owner of the courtyard came demanding the removal of the roses and the value of what had been enjoyed. Ibn Rushd answered that the courtyard owner has no claim against the rose-planter for the period that has passed, because courtyards are not subject to private ownership; rather, the owner of the adjoining house only has precedence in benefiting from the courtyard if he has need, and he has no right to prevent his neighbor if he himself has no need of it. ( )

Imām Ibn ʿArafah al-Wargamī of Tunis (d. 748 AH) went so far as to say: "If someone complains about a tree in his neighbor's property on the grounds that it somehow inconveniences him, he has no right to cut it down – unlike any branches of it that have extended into his own property."

Avoiding Structures That Harm Gardens

Some Mālikī jurists forbade establishing an andar (threshing floor) around gardens, because it harms them with the chaff blown about during winnowing, just as building a bathhouse or oven [in that vicinity] would harm them. ( )

Preserving Green Spaces

Ibn Ḥabīb al-Mālikī said: "As for the shiʿārā (mixed woodland) adjacent to villages and lying between them, the ruler is not to cut any of it, for it is not like the fallow land that belongs to the general body of Muslims. Rather, it is a right of those villagers—like a yard for their houses… because assigning it [to someone] would harm them by cutting off the benefits from it that were exclusive to them due to their proximity."( ) (The term shiʿārā refers to a stand of intermingled trees, or a land covered with trees.)( )

They also took care to maintain the cleanliness of riverbanks and to keep them free of any construction, stating "No one is allowed to build on the riverbank for housing or anything else, except for bridges that are needed."( )

Fifth Section: Ancient Urban Planning and Respect for Privacy and the Sanctity of Residential Homes

The fiqh of old urban planning paid attention to privacy, determining that every building has a ḥarīm (sanctuary zone) that must be respected. In the jurisprudence of construction, ḥarīm refers to the spatial area surrounding a building or road or city which is left as a reserve for expansion when needed. Accordingly, the jurists discussed many types of ḥarīm. One of the Mālikī jurists said: "The ḥarīm of a well is the area around it — it varies according to the size of the well and whether the ground is hard or soft. The ḥarīm of a house is its entrance and exit and places for securing things and the like. The ḥarīm of a field is its edges and its pathways in and out. And the ḥarīm of a village is the area where its firewood is gathered and its livestock graze." ( )

There are legal rulings for these ḥarīm areas, mostly revolving around guidelines for their use in a manner that does not harm the public interest. The jurists regarded ḥarīm areas as involving a public benefit even if they are under private ownership (house courtyards, for example). In this framework, they considered the ḥarīm of a city off-limits for private exploitation except by permission of the state after it evaluates the public interest in that use — even if that ḥarīm is not owned by anyone. It is stated in al-Qawānīn al-Fiqhiyyah: "Whoever revives a dead (unused) land, it becomes his. Dead land is that which has no construction on it and is owned by no one. Reviving it is by building, planting, farming, plowing, directing water to it, and so on. If it is near an inhabited area, then reviving it requires the permission of the ruler — unlike if it is far from habitation." ( )

In terms of respecting privacy, the jurists focused on honoring mosques as the houses of God which must be cared for and whose sanctity must be preserved. Likewise, consistent with the injunctions of the Sharīʿah, Islamic fiqh emphasized the inviolability of residential homes, out of fear of disclosing people's private affairs and personal secrets. As a result, homes were designed in a special manner that prevents the violation of privacy and personal sanctities. Below we will touch on some of the rulings laid down in this regard:

Respecting the Sanctity of Mosques

The mosque, being the place designated for the worship of God and the performance of the

obligatory prayers, held a great status in the planning of historic cities. This is evidenced by the broad courtyards of mosques in earlier times and their centrality in the city – indeed, some cities were given names reflecting this, such as "al-Masjid al-Aʿẓam (the Great Mosque)" or "al-Masjid al-Kabīr (the Grand Mosque)." Mosques occupied honored locations in the midst of urban centers, representing their religious and spiritual symbol. This is what the Al-Qarawiyyin Mosque ( ), the Koutoubia Mosque( ) and others represented throughout history.

The jurists prohibited building residences above them, explaining that this was to preserve their religious sanctity and spiritual rank. For example, Imām Mālik was asked "about a mosque that a man builds and then he builds a house above it to live in," and he said: "I do not approve of that, because it will end up being used as a residence where one has intercourse and eats." ( ) They also consider the space above the mosque to be its protected ḥarīm ( ) that must not be violated. Al-Qarāfī noted: "They allowed making the upper story a mosque and living in the lower level, but did not allow the reverse – because whatever is above the mosque shares in the mosque's sanctity. For ʿUmar ibn ʿAbd al-ʿAzīz, may God be pleased with him, when he slept on the roof of a mosque, would not go near his wife there."( )

On the other hand, Mālikī fiqh permitted the establishment of "hanging mosques." Mālik said: "It is permissible for there to be a building (house) beneath a mosque, and the building beneath the mosque is inherited (as property), but the mosque is not inherited if its owner has opened it to the people (i.e. dedicated it as a public mosque)." ( )

Preserving the Sanctity of Residential Homes

Historic cities came as a manifestation of juristic principles in many of their designs, especially those principles related to safeguarding privacy and respecting personal life. The fiqh was extremely strict in forbidding any violation of this principle. This is evidenced by what is stated in the al-Mudawwanah: "It is forbidden to open a window through which one can overlook the neighbor. ʿUmar, may God be pleased with him, wrote that a man should stand on a bed; if he can thereby see what is in his neighbor's house, he must be prevented (from opening it) to eliminate the harm, otherwise not, since it is an act within his own property." ( )

Such prohibitions are precisely what explain why windows in old cities were small and high, and why traditional houses were open to the inside but closed off toward the outside.

Conclusion

In this study, I have attempted to uncover the relationship that existed between Islamic fiqh and the way historic cities were constructed. From some of the material I presented, it became evident that the urban planning of the great Islamic cities was in large part subject to fiqh rulings from several angles, which we summarized in five aspects:

1. Adherence to the major fiqh maxims centered on repelling harms and bringing about benefits.

2. Focus on rulings related to building safety and the width of roads.

3. Observance of health requirements in construction.

4. Measures serving to preserve the city's environmental aspect.

5. Insistence on the need to respect privacy and sanctities in the design of residential buildings.

From the discussion above, one can conclude that the relationship between the juristic heritage and the urban heritage remains a fresh field for study and research. Without deep investigation to reveal many of its aspects, the secrets of historic urban planning will remain hidden, along with the benefits that could be gained from them. What has been presented in this article is only a little of the much that comprises the Islamic juristic theorization of urbanism. The topic requires further research in order to utilize its findings in developing the urban heritage tourism sector and guiding it on a scientific basis that draws on the fiqh heritage as the legal-cultural system underpinning that architecture. This would move beyond the methods currently employed in tourist guidance, many of which are not based on the requisite scholarly expertise.

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