Reviving the Rule System

An approach for revitalizing traditional towns in Maghrib*

Besim S Hakim

Albuquerque, NM 87112, USA

The rule system is defined for the purposes of this paper as the underlying system of rules and codes which Islamic culture has established for itself to guide and control societal activities, including decisions and activities related to design and construction.

Within each particular region, the local customs are normally a part of the governing rule system. The author argues for the revival and adaptation of the traditional rule system by maintaining its positive attributes, and incorporating modern technology and changes in the lifestyles of the people in specific localities. He suggests a policy for the governments of the Maghrib countries – Tunisia, Algeria, Morocco – for initiating the process of reviving the rule system and outlines the necessary steps for implementing such a policy. © 2001 Elsevier Science Ltd. All rights reserved.

Background

There is a great deal of literature describing traditional towns, popularly known as "Medina(s)," in the Maghrib region of the Islamic world (Tunisia, Algeria, Morocco, and including the Iberian peninsula from the eighth to the fifteenth century). Those descriptions, and the availability of aerial photos produced by the French colonial authorities during the first half of this century, have provided a clear but incomplete "image" of the patterns which make up the traditional city, known as 'Medina'. Clearly those patterns are radically different from their European counterparts that are based on the gridiron system. The difference, as I have discovered through extensive research since 1975, is due to another system of conception, implementation, and associated processes of growth and change. This is partly due to the role

---

and the responsibilities of the people involved in decisions affecting building activities, and in the manner space is conceived, partitioned, configured for use, and controlled (Fig. 1).

The French colonialists arrived to this milieu with a different 'mind-set' about what constitutes advanced built-form attributes, coupled with an attitude of superiority, and a mission to "civilize" the North African populations. This prompted the French to build "civilized" European towns next to the Medinas, for the purpose of: (1) making it possible to live separately from the colonized people, but close enough to keep a watchful eye, and (2) to demonstrate the spaciousness of their living and working quarters relative to the dense and inward-looking attributes of the Medina. This policy has had unexpected benefits. It preserved and saved the Medina to at least the era of independence, 1956 in Morocco and Tunisia, and 1962 in Algeria.

The outward coexistence of the Medina and the French sectors during the colonial period had bred strong desires, among at least some Arabs who had contact with the French, to imitate patterns of living in those sectors. Those usually were the well-to-do

Figure 1 Aerial photo of the traditional medina of Tunis and part of its modern sector on its east side (lower part of photo), built during the French colonial period, showing the difference in the pattern of urbanization. Photo taken in 1975 – Office de la Topographie et de la Cartographie, Tunis

and the Western schooled segment of Arab society. Some were cultivated by the French in anticipation of independence. The use of the automobile in the colonial sectors created a compelling impression on the Arab population that the "French" town was so much better because the car could easily move around, unlike the Arab Medina that was gradually being perceived by its own inhabitants as deficient and therefore inferior. The construction of buildings by the French using modern materials and technologies also impressed the Arab population. The buildings were higher, seemed to be better constructed, and the use of modern materials such as glass, on windows and store frontages, had their share of creating a shift in the mind-set of the Arab population towards their traditional built environment.

At the time of independence most of the Arab rulers' mind-set was geared towards modernizing various sectors of societal activities. The outward manifestation of French material culture was the easiest to copy. The built environment seemed to most people the logical target for change, particularly for adapting it to the motor car. It should be stressed that in the minds of the Arab rulers and a large segment of their societies the process of change was associated with modernization, and not Westernization. This was an important distinction, because some of the Arab rulers expressed nationalism to their people, and did not want to undertake change that would subsequently

be perceived as copying the French. The mind-set of the rulers and the population seemed to be in concert as far as the traditional built environment was concerned. A silent 'culture of shame' emerged about the Medina, which implied that the traditional built environment represented backwardness and was a reminder of days gone by when Islamic culture was in a state of weakness and dormancy. This perception of shame, as is well known, has been and is still very common in a large number of Arab and Muslim countries. As we shall see below, the opposite reality of the Medina is true, *ie* it embodies high qualities, and it is a result of a sophisticated process that is superior to the ones imported and implemented by the generation of Arab rulers since independence.

Ignorance of the traditional system

The reason for this state of affairs is primarily due to the lack of knowledge and understanding of the traditional system of urbanism that was historically prevalent and active in the Near East and North Africa, and that continued to be so in the Maghrib to at least the early years of French colonial rule in this century. This system has its roots in the pre-Islamic Near East civilizations of Mesopotamia, the Fertile Crescent region, and in the Arabian peninsula. It has a continuous history of approximately 4000 years, and because of its longevity it has achieved a high level

of success and sophistication in certain aspects of its processes, particularly in its later history under Islamic culture.

If we scrutinize housing, being the predominant sector of the built environment, we find that building houses usually occurred in small increments and across a long span of time. The nature of the process, coupled with the predominant use of a compact and clustered morphological system, created certain problems and sometimes conflicts that had to be resolved by the neighbours concerned. Early Muslim jurists recognized these problems and addressed them within the framework of the *Fiqh* (the science of Islamic jurisprudence). This science is divided into two major branches: *Ibadat* that addresses matters related to religious observances, and *Mu'amallat* that addresses matters of concern and/or conflicts arising from the interactions and relationship between people. Thus the issues of minimizing damages and/or maintaining equitability as a result of building activities, particularly in housing, are addressed within the branch of Mu'amallat.

The body of knowledge and experience related to building activity, as in most other branches of the Fiqh, gradually achieved maturity within the first three centuries of Islam. By the early years of the fourth Islamic century (about 900 AD) the foundation and the essential body of knowledge in jurisprudence were attained. A great deal of the precedents and principles are rooted in the city of Medina, Arabia during the decade of 1–10 AH (622–632 AD) when it was governed under the guidance and leadership of the Prophet Mohammed.[1] Of the four Sunni schools of law, the Maliki school – which is attributed to Imam Malik (born 93 AH/712 AD, died 179/795) – is rooted most closely to the *Sunnah* (traditions) of the Prophet, and to the experience and knowledge accumulated in the city of Medina.

Since the arrival of Islam to the Maghrib, Muslims in the region became followers of the Maliki school of law. There were attempts to introduce Shi'ism by the Fatimids during the first quarter of the ninth century AD, and more than six centuries later the Hanafi school was introduced by the Ottoman Turks. Despite these attempts, Maghribis to this day observe the Maliki school. People in other regions who are at present followers of this school of law are in Central Africa, Upper Egypt, the Sudan, and West Africa. Thus the practices of urbanism and building in these regions have direct roots in the city of Medina, Arabia where most of the principles, including acceptable pre-Islamic customs (Urf), were practised at the time when the Prophet was governing the Muslim community there.

The traditional Rule System

As mentioned in the previous section, the roots of the traditional system can be traced back to the ancient Near Eastern civilizations. There is historical evidence to point out two types of rule system: (1) the centralized 'imposed' laws (henceforth referred to as *meta-principles*), such as the laws of Hammurabi, king of Babylon (1792–1750 BC), and (2) the localized community-based customary rules (henceforth referred to as *Urf*). There has also been a long history of central authorities in those distant civilizations respecting local traditions and customs provided those did not conflict with the intent of the meta-principles.

Both types of rule system continued in Islamic cultures and have had their impact on the traditional built environment of Islamic societies. Stipulations from the meta-principles tended to create a unity of *concepts* and *attitudes* towards the built environment in the various regions of the Islamic world, whereas the Urf tended to influence the outcome of construction details and the architectonics of the local built form. These two types of rules operating simultaneously contributed to the phenomenon of the *diversity* of settlements within specific sub-regions of the Islamic world, yet *unified* by the general concepts and attitudes that all regions shared. This resulted essentially in uniqueness at the micro-level and similarities at the macro-level.
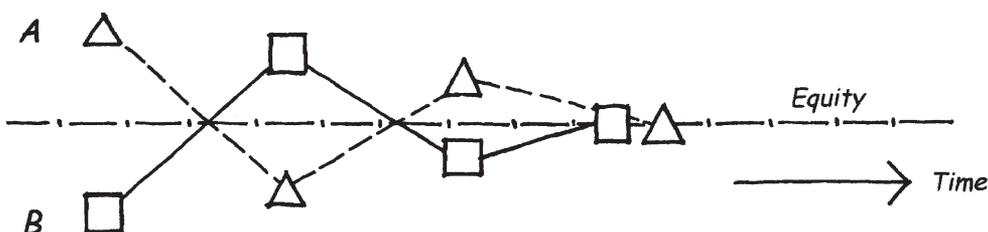
There are certain underlying concepts and principles in Islamic law that governed the rationale of the ongoing process of growth and change. I have chosen seven Fiqh principles (*Qawa'id Fiqhiyah*) because they have had a direct effect on the traditional built environment. They are here woven together to portray their cumulative rationale: (1) The basis for action is the freedom to act, (2) stimulated and judged by the intentions for those actions, (3) which are constrained by the prevention of damages to others, (4) however, it is sometimes necessary to tolerate lesser damages so as to avoid greater ones. (5) Older established facts must be taken into account by adjusting to their presence and conditions. (6) People's customs must be respected and followed, (7) however, time might change those customs and new solutions will be needed (Fig. 2).

When applied to the context of the built environment these principles provided the freedom to act and build, restrained by certain limits. They are thus *proscriptive* in nature, allowing the liberty to generate solutions to specific local problems in response to the site and the conditions around it (they are not prescriptive in specifying preconceived requirements and dimensions for solving problems). An equilibrium is established on the site where the 'best' solution is achieved for a specific micro condition at a specific period in time. Diversity is thus achieved in the built environment, so that every locality and street becomes unique in character and contributes substantially to its

---

[1]Medina is the name of the city located in the western region of the Arabian peninsula, and should not be confused with the Arabic term 'Medina' for city.

قواعد فقهية

١- الاصل في الاشياء الاباحة   ٢- الامور بمقاصدها (انما الاعمال بالنيات)
٣- لاضرر ولاضرار   ٤- الضرر الاشد يزال بالضرر الاخف
٥- القديم يترك على قدمه   ٦- المعروف عرفاً كالمشروط شرطاً
٧- الاعراف قابلة للتغيير عبر الزمن

Figure 2 Underlying concepts and principles (Qawa'id Fiqhiyah) of Islamic law that governed the rationale for the process of growth and change. The original Arabic version of these principles is included for reference. An important goal for these principles is to achieve equity between neighbours when expectations, demands, and needed change would create benefits to one owner to the detriment of his neighbour(s). Two owners (A & B) are illustrated in the diagram. The effect of these principles over time tends to equitably harmonize the competing and sometimes conflicting demands of adjacent owners

identity. This in turn contributes to the richness of the total built environment. People's customs are fully incorporated in the manner they build and they can express their world view in built form. The system also recognizes and adapts to changes in those customs across time.

I have assembled in detail the meta-principles from the various sources of the Maliki school of law including their roots in the Quran and Sunnah.[2] Some of the headings for those meta-principles are:

- Avoid harm to others and oneself.
- Accept the concept of interdependence.
- Respect the privacy of the private domain of others, particularly avoid the creation of direct visual corridors.
- Respect the rights of original or earlier usage.
- Respect the rights of building higher within one's air space.
- Respect the property of others.
- Adjacent neighbours have the rights of preemption.
- Seven cubits is the minimum width for public through streets (to allow two fully loaded camels to pass).
- Avoid locating the sources of unpleasant smells and noisy activities adjacent to or near mosques.

As for the Urf and how its impact affected the traditional built environment at the local level, and in the process contributed to local distinctiveness and identity, this was primarily due to the manner in which the Urf functioned, as in the use of local building materials and construction techniques, and

especially in the design of architectural details and motifs and the use of colours. For a detailed analysis and discussion of the Urf phenomenon supported by illustrative examples, please refer to Hakim (1994). There, I proposed a theoretical concept to explain how the phenomenon of *unity* at the level of most of the Islamic world, and how localized *diversity* at the level of each town or city, was achieved. I quote:

> *Unity* was achieved by the initial concept of urban formation which the Arabs brought with them from Arabia to the various geographic regions whose people embraced Islam. This concept had a very ancient history in the Near East region, and from the sketchy evidence available the same system with some modifications was followed during the Prophet's last ten years in Medina. His sayings regarding a number of issues which related to building activity reflected a process of reinforcing certain pre-Islamic building practices which were accepted as part of the localized Urf in Medina. Because some of those customs were traced directly to the Prophet's sayings and deeds, they became enshrined as part of the Shari'a texts. They were thus legitimized on two levels: (a) they were part of the Sunnah (the Prophet's sayings and deeds), and (b) they were also localized Urf. It is at the level of their legitimacy as part of the Sunnah that they spread across the Islamic world and contributed to the process of unifying the character of Islamic cities.
>
> *Diversity* was achieved due to the recognition by Islamic law of the localized Urf in both its forms: the *linguistic* and *practical*. The Shari'a recognized and protected the local vocabulary developed by those in the building trades. The terms which evolved locally had an influence in sustaining the continuity of spe-

---

[2]See Chapter 1: "Islamic law and neighbourhood building guidelines", pp 15–54, in Hakim (1986).

cific local building practices and their peculiar characteristics. This was because a term from such a vocabulary tended to integrate the form and function of the physical component and its purpose as utilized in that specific locality. This continuity was also sustained by the conservative nature of traditional Islamic society.

As for the practical Urf, Islamic law recognized the local peculiarity and ways of doing things of a group of individuals belonging to a specific trade or profession, as in the building trades. Thus the Urf of that trade in a particular locality was respected by the Shari'a. This occurred through the legitimization of decisions resulting from the Urf in cases of disputes or litigation. This state of affairs tended to perpetuate and guard the distinctiveness of local building practices and by extension the resulting built form.

An important observation can now be stated: that the *nature* of Islamic law when considered with its interface with the Urf and its framework for decisions, show the flexibility of this system of law. It is very sensitive to local conditions. It accords legitimization and protection to a locality's customs and practices and thus contributes substantially to the identity of a place through the individuality of its place-making process and its resulting built form (Hakim, 1994, pp 113–117).

Unfortunately, due to the influence of the colonial period and especially after independence, the traditional system and its associated processes were gradually replaced by a system that is essentially *prescriptive* in nature, *ie* it is based on quantitative stipulations applied at the local level. In addition, imported concepts and techniques were adopted for the use of land and for differentiating space into separate zones at the settlement level. It should also be noted that unlike the traditional system which was controlled locally, the imported Western system is applied uniformly by the central authority, *ie* the government in the capital city, on all localities, reinforced by local municipal authorities. It is in the complete comprehension of differences between the two systems (*ie* the traditional and the imported Western), intellectually and in practicable terms, that hopes for reviving and modernizing the traditional rule system might be possible (Fig. 3).

Suggested steps for reviving the traditional Rule System

Historical developments in this century have affected the Islamic world at large, including the Maghrib region. Those developments may be viewed in three layers:

1. The situation before dominance by the European powers. The built environment then was governed by the system that spread with Islam.
2. The direct impact of Western influence through colonial rule, or indirectly due to contacts with the West, especially by the Ottoman rulers who were infatuated by Western styles and fashions, including ideas for city planning and architecture. Changes began to take place in replacing the traditional system.
3. The post-independence period where changes, in some instances, were forcibly and rapidly brought about by Arab rulers who were convinced that these were necessary as part of the modernization process. A primary victim of those changes was the traditional built environment.

Given the above developments it would seem that the following suggested steps are necessary for reviving and modernizing the traditional rule system.[3]

Step One: A clear *policy* by the government is necessary for initiating the process of revival. This policy needs to initially address at least two objectives:

1. *Education and related research* of the workings of the traditional rule system in a particular region. This needs to be undertaken rapidly in selected villages and large towns across the country. University and college professors and students from various disciplines need to be involved in this endeavour. Suggested disciplines are history, archaeology, anthropology, Islamic law, architecture, city planning, and art history. Expertise from other fields might also be needed.
2. *Evaluation of current laws* that affect town planning, construction and architectural design are necessary, including careful analysis of how those laws affect urban and building activities at the local level. An important issue to address is whether centralized laws are eroding local customs and practices in various regions in the country, especially at the local level of a village, town or large city. It will also be necessary to study various approaches and techniques for revising these centralized laws so as to make them responsive to the local Urf.

Step Two: After the bulk of the work in Step One is completed, probably within a period of two to three years, areas of local jurisdictions should be organized and established. A jurisdiction would include every medium to large town and the villages traditionally associated with it. Those entities will be empowered to study and document their traditional Urf practices, followed by revisions where necessary in response to available modern technologies and to aspects of societal and community lifestyle preferences. This process needs to be undertaken democratically so that as many ideas as possible are gathered, and to provide

---

[3]This approach is based on preserving the lessons and principles of the traditional system. To my knowledge it has not been considered or discussed before. Amos Rapoport confirms this by saying: "…and this is a form of preservation that has not yet really been considered or investigated." See Rapoport (1999).
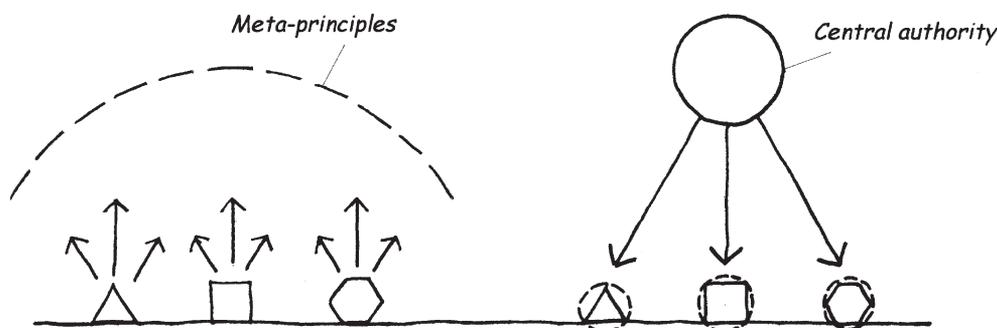
Figure 3 Conceptual representation of the impacts on the local level (three geometric shapes denoting three settlements) by *proscriptive* meta-principles, and by *prescriptive* imposed laws. The diagram on the left represents a settlement's ability to respond freely to local conditions and requirements, but is restrained by an overarching set of meta-principles. This would result in settlements that are diverse in their physical form and exhibit distinct local identity. The diagram on the right represents how prescriptions from a central authority, which is usually far removed from a locality, inhibit creative solutions to local problems. Over time the resulting settlements would tend to be similar to each other

the opportunity to as many interested local citizens to participate. Essentially this process will generate a 'revised' local Urf for the community.

Step Three: Legal jurisdictions need to be re-established to adjudicate problems arising from building activities in response to the revised local Urf. It is preferable that these legal jurisdictions operate within the same boundaries as those established in Step Two above.

It is obvious that the above three steps require the initiative and full backing of the central government, and the complete co-operation of local authorities. It might be helpful for the procedure of reviving and refining the rule system to be viewed in terms of *process* (procedures relating to building activities) and *product* (the nature of the physical organizational system and related built-form attributes). I have elsewhere discussed this distinction and provided examples. That article discusses these concepts and provides extensive links to other references (Hakim, 1991).

The above suggestions should be viewed as open-ended, and are not intended to be final. They are to be considered as ideas and possible steps for action. An analysis of the situation in each Maghrib country will be necessary for proposing specific workable steps for reviving the traditional rule system. However, in every case a strong policy commitment to this venture is required from the highest level of decision-makers within the central government, and by all local authorities.[4] If this commitment is forthcoming and the revival of the traditional rule system is undertaken and implemented, then it will be possible to revitalize all traditional towns in the Maghrib within one generation in a manner which will maintain their integrity, cultural identity, and historical continuity.

References

Hakim, B S (1986) *Arabic–Islamic Cities: Building and Planning Principles*. Kegan Paul International, London and New York.

Hakim, B S (1991) Urban design in traditional Islamic culture: recycling its successes. *Cities* **8**(4), 274–277.

Hakim, B S (1994) The 'Urf' and its role in diversifying the architecture of traditional Islamic cities. *Journal of Architectural and Planning Research* **11**(2), 108–127.

Rapoport, A (1999) A framework for studying vernacular design. *Journal of Architectural and Planning Research* **16**(1), 52–64.

Serageldin I (1997) Our past is our future: investing in our cultural heritage. In *Proceedings of the 4th International Symposium of the World Heritage Cities*, Evora, Portugal, 17–20 September 1997, (pp 116–125).

---

[4]For a discussion of the necessary financial commitments, see Serageldin (1997).