

# **Rights of Power vs. Power of Rights**

## **Synthesis of Muslim built environments**

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## ABSTRACT

This research is about two modes of built environment production that coexist in the contemporary Arab Muslim world. It argues that the contemporary (acquired modern-capitalist) mode is based on the concept of power; however, the traditional Islamic (inherited) mode is based on the concept of rights as derived from *shari'a* (Islamic legal system). Substantial dissensions exist between the two modes, due to differences in their concepts of power and related mechanisms. This research helps to explain many concepts concerning “the structure of power” in contemporary societies and “the structures of rights” in traditional Muslim societies, and their respective impact on the built environment.

This thesis argues that most urban studies dealing with Muslim cities stem from Western concepts delineated by thinkers such as Weber, Marx, and Durkheim. Such concepts shaped the thinking of Orientalists and many Muslim scholars in studying Muslim environments, leading to confused conclusions. They have all ignored the exact meaning of power, its sources and its utilisation as a resource in manipulating the built environment. For example, one of the basic differences between contemporary (acquired) and traditional (inherited) environments is that rights (property and individual rights) in contemporary environments are defined by power holders (the state) in society, i.e. **power creates rights**. On the other hand, in the Muslim built environment, power is limited by rights, or **power is created by rights** which is quite static as it is well defined by the Islamic legal system. This simple difference, (**power of rights or rights of power**) has created two different structures of power gain: one is static (Muslim built environments) and the other is dynamic (contemporary built environments). The static structure (or power of rights) has created diverse environmental solutions, as power can only be utilised when environmental interventions are activated by inhabitants, while the dynamic structure (rights of power), because of its hierarchical nature of domination among parties, has created classes of intervening agents with expandable power and thus subjective solutions. Through comparisons, using case studies (examples), this research examines and comments on the nature of both systems of power to clarify their impact on the built environment.

Accordingly, this thesis argues, the coexistence of the two modes, loaded with such substantial dissensions in one system (contemporary Muslim world), inevitably leads to internal systemic contradictions, and thus to a crisis. Therefore, the crisis that contemporary Muslim built environments are witnessing today is but one aspect of this broader societal and systemic crisis. This thesis investigates the genesis of this crisis in the contemporary built environment by focusing on the imperceptible level of the coexistence of those two modes, and mainly the issue of power: the main components of the crisis.

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<sup>1</sup> The translation is by Abdullah Yusuf Ali, “The meaning of The Holy Qur'an”. Amana corporation, USA.

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## **Chapter One**

**Introduction**

**GENERAL SCOPE OF THE STUDY**

Contemporary societies in the so-called Third World countries live today in a state of contradiction. Advantages of capitalism are seen as paramount; however, the blights of contemporary societies are obvious. Environmental pollution is evident in diseases. Unemployment has become a significant economic indicator. War arising from ethnic origin is spreading over these countries. The gap between the rich and the poor is getting larger. Available resources have become scarce. Land is available; however, it is not affordable. Unutilized yet infrastructured land can be seen everywhere. Housing shortage is on the rise, although unoccupied units are available. Homelessness has become a common phenomenon. Squatter settlements are spreading with unacceptable living conditions. People live in cemetery grounds among the dead in some countries (e.g. Egypt). Why are such phenomena so persistent? This question has preoccupied many scholars. It is the nature of the human intellect to seek progress by constantly challenging the contemporary status quo and philosophy of life. Thus, scholars are changing paradigms searching for solutions, experiencing one paradigm and then moving to another. The search continues. Most of these paradigms emanate from and operate within the framework of the underlying dominant system of capitalism. But are these contradictions a product of capitalism? Is it capitalism as a mode of society-making that should be blamed?

**DILEMMAS****IS THERE  
AN  
ALTERNATIVE?**

If history, as claimed (Fukuyama, 1989, 1992), has an end, and if capitalism is accepted as the only conceivable mode of society-making, the human race is then confined, depriving itself of the chance of progress. We have to search for solutions through liberating ourselves from the confinement of the existing system, whether it is capitalism or otherwise. We have to learn from other modes of society-making, searching for alternatives, or at least to view and criticize capitalism through other societies' and cultures' wisdom.

**AIMS**

This study thus attempts to challenge the status-quo of contemporary societies generally, and of Arab Muslim societies, particularly. Since capitalism today is accepted as the dominant mode of production, urban studies that question the capitalist methods of generating the built environment are quite limited. Most studies (e.g. critical studies) accept capitalism unquestioningly, or aim at

correcting its path, however trivially, but do not suggest a different **systemic alternative**. A fish can never see a tree on a mountain. We need a fresh vision, which is indeed, if not impossible, at least beyond one's life span. However, seeking help from other non-capitalist societies, dogmas, or cultures might generate a different perspective. This study, through analyzing the production process of Muslim built environments, criticizes the modern-capitalist mode of society-making, i.e. the prime mode of understanding and generating environments in the so-called Third World countries.

#### **SPECIFIC SCOPE OF THE STUDY**

Looking at most Arab Muslim cities, such as Damascus, Cairo, or Tunis, one can distinguish two different patterns or structures of the built environment or, put more simply, two different parts of the city: the traditional and the modern parts. It is common in urban studies to divide cities in the Arab Muslim region since the start of colonial period (the nineteenth century) into two groups: the **modern** and the **traditional**. Up to today, this dichotomy continues to provide an analytical framework for many studies, especially in the fields of architecture and urban history. According to Hamadeh in her study of the traditional city in North Africa, the notion of the "traditional city" was a creation of colonialism. That is, in the "colonies", it was through the construction of the centered authority of the so-called "modern city" that the indigenous settlement came to be called the "traditional city" (Hamadeh, 1992, p.241). Today this notion is unquestionably accepted and taken for granted.

THE  
MODERN  
VS.  
THE  
TRADITIONAL

To talk of the traditional city is to suggest a distinct structure of the city. This can only be defined and understood in relation to the "non-traditional city". Unlike the notion of the "old city", which attaches an absolute age value to it, that of the traditional city is a relative concept which only gains legitimacy by reference to something else, and which can only be assigned to a city **from without**. It was, as Hamadeh argues, "but one ideological construct within a broader European image of so-called "Oriental" societies. This image served ... to promote ... the idea of an exotic, static and disorderly people in contrast to advanced and normalized European society" (p.241-2). In other words, the former concept, "old city" (*qadim*), constitutes the city as a product of time, whereas the latter concept, "tradition", constitutes it as a product of ideology.

Similarly, it can be argued that the concept of "tradition, or *turath*"<sup>1</sup>, as used in most contemporary Arabic discourses, is a contemporary invention.

---

<sup>1</sup> "*Turath*" literary denotes heritage, however, it has been translated in contemporary discourses into tradition. Tradition, when used today as an attribute of cities (traditional city, or *al-madina at-taqalidiyya*) denotes that city which was produced according to the traditional customs and conventions (*taqalid*), while tradition as used in the contemporary discourse (*turath*) denotes an ideology.

THE  
CONCEPT  
OF  
“TRADITION”

“Tradition” can be defined according to contemporary discourse as all that is handed down (i.e. inherited) from past generations to the present and holds an unusual value for the group or society which belongs to that tradition (Seligman et.al., 1935, p.62-7; Outhwaite et.al., 1994, p.676), (i.e. practices, beliefs, as well as the epistemical, ideological, cultural, social, religious heritage and the like). Therefore, tradition forms a continuation between past and present, and bridges the gaps between generations (al-Jabiri, 1991, p.23-4). Furthermore, the concept of tradition today, as used in most contemporary Arabic discourses, embodies an ideological and sentimental content. It can function as an ideology in uniting a certain group, which thus constructs an identity centered around it (Seligman et.al., 1935, p.65). Defined in that sense, the word “tradition - or *turath*”<sup>2</sup> has rarely existed in the Arabic literature or Islamic jurisprudence in history before the nineteenth century (al-Jabiri, 1991, p.22), i.e. before the colonial period. However, its grammatical roots (*'irth*, *wirth*, *mirath*) have been used to denote material inheritance.<sup>3</sup> In short, the later (contemporary) concept of “tradition” is a product of ideology, whereas the prior term (old or *qadim*) is a product of time.

CRISIS

Based on this distinction, in the Arab Muslim world today the dichotomy of modern vs. tradition takes another shape. In the colonial period it was an **imposed**<sup>4</sup> dichotomy that reflected a distinction which enhanced the image of the colonizer in contrast to that of the colonized. Today this dichotomy is a result of the invasion of modernity into the Muslim world, which some view as another type of Western hegemony, while others view it as progress and advancement. This dichotomy implies an **optional** process, in which it is possible to choose between one of the two poles. This latter dichotomy reflects a state of perplexity in the search for a stand to be adopted that suits the contemporary Muslim world.<sup>5</sup> It poses questions such as: should Muslims refer to their tradition or should they accept modern conditions and their technical advancements and values? Should Muslim societies look to the past or forward to the future? This can be considered as a **crisis** that dominates most disciplines in the Muslim world. It is viewed by a prominent Arab thinker (al-Jabiri) as a fundamental crisis that touches the Muslim culture at its roots (1991; 1994). It is

<sup>2</sup> According to Ibn Manzur in *Lisan al-Arab*, “*turath*” is a derivative of “*'irth*” (root: *waratha*) which denotes the inheritance.

<sup>3</sup> For example, the English “traditional city” or French “*ville traditionnelle*” has no equivalent in Arabic, and such a concept was usually referred to as the old city - *al-madina al-qadima*.

<sup>4</sup> It is described here as an “imposed” dichotomy because one of its poles, the modern, was imposed by the colonizers.

<sup>5</sup> Tradition, in the latter dichotomy, as used in most contemporary Arabic discourses, is confined to the Islamic tradition. That is, Islamic traditions constitute those traditions that were established by Islam and some of those traditions that were passed to it from other civilizations and cultures and accepted by Islam. Therefore, there is no one single Islamic tradition for all Muslim societies, but there are Islamic traditions that vary regionally.

a crisis of a **sense of retardation** in the contemporary Arab world civilization, in comparison to the civilization of the advanced Western world.

This crisis is quite clear in the fields of architecture, planning and urban studies, starting with the questioning of modernity (e.g. the International Style in architecture) and its impacts on the built environment that dissolved the unique character of cities. It is reflected in questions that, lately, have been widely raised by different scholars: How should Muslim cities be formed in the contemporary age? How should Muslim architecture be today? How can Muslims achieve an Islamic architecture that could fulfil contemporary needs, yet be in the spirit of Islam? How can Muslims today restore their identity? How can traditional cultures be maintained or revived within modern technology? What type of skills should local professionals have compared to Western professionals?

Since the nineteenth century, stemming from the West's sense of "superiority", and as part of its self-mission towards the "Other" less civilized societies, waves of modernization processes were carried out in the Arab Muslim world (al-Jabiri, 1996, p.22). However, as modernity is the product of the West, and as capitalism is also the product of the West, this led to the notion that to modernize or to "capitalize" is to Westernize, i.e. to import Western modes of life with all its values. Therefore, these three interrelated conditions (capitalism, Westernization and modernity), conceived as parts of a one single concept, came to dominate the Arab Muslim world. As a result, changes occurred in all aspects of life: social, political, economic, and above all cultural. These new changes required new ways of representation, which was/is clearly manifested in the built environment. It is a manifestation that embodies a struggle between what is "**acquired**" from the West under the notions of modernization and progress and what is "**inherited**" from the past and constitutes Muslim tradition. As a result of this acquired/inherited dualism, contemporary built environments in the Muslim World became a stage for contradictions; contradictions that dissolve any sense of identity. They live a crisis of contradictory environmental ideologies. Thus, as this thesis argues, Muslims either have to change their faith, or capitalism has to be adjusted if not abandoned; otherwise, contradiction will continue, with dire consequences.

#### THE ACQUIRED AND THE INHERITED

#### IDEOLOGICAL RESPONSES

Different ideological attitudes were adopted as a response to this crisis, resulting in many books and articles on the theme of "Tradition or modernity?" or "Authenticity or contemporaneity?" In answering such questions and aiming at disembarassing the Muslim world from retardation and achieving prosperity and progress in all aspects of life, three main attitudes could be distinguished. The first is the **ancestral** attitude which believes in the authority of tradition to



guide both present and future. Advocates of this attitude retreat from the problematic situation of the present to the past, and ignore that in so doing they are accepting the modern concept of traditionalism. This position by its very nature does not allow for innovation and change, and therefore can only produce traditionalism (al-Hathloul, 1996, p.10). The second attitude is that of the **progressionists**. They neither accept the past's authority nor its authenticity as a source for the present. They regard tradition as a destiny that cannot satisfy challenges of the modern era; thus they advocate progress by intervention from outside, through modernization. This attitude implies that certain cultures are inferior in comparison to others, thus solutions must be sought from the superior cultures' experiences (i.e. from the West) (Laroui, 1976, p.42). This attitude is criticized as being dependent on and a follower of Western ideology and models of progress. Both aforementioned attitudes actually seek to retreat from the present, the former by retreating to the past, the latter by moving elsewhere in place (al-Hathloul, 1996, p.11). The third attitude is **reconciliative**. It takes a moderate position that tries to reconcile the other two (al-Jabiri, 1989, p.16); it believes that the modern era has its specificity and needs which cannot be met by an unquestioning application of traditional solutions. In the same vein, it seeks a non-absolute acceptance of modernity but a partial acceptance that does not contradict Islamic traditions. In other words, it seeks solutions both from within and without the local culture. Its aim is to maintain continuity with tradition so as to re-establish Muslim identity. This attitude is criticized as being selective and subjective in that it selects what it considers as progressive aspects from both modernity and tradition and merges the two to create solutions (al-Jabiri, 1989, p.16).

**PRACTICAL  
RESPONSES  
IN THE  
BUILT  
ENVIRONMENT**

There is today an increasing awareness of this crisis as it applies to Muslim built environments. It is a crisis of identity, sustainability, affordability, satisfaction, etc. Many studies have addressed this crisis and many efforts were directed to solving it. However, for many architects and urban designers, this crisis was **reduced** and confined merely into a crisis of **identity**, where identity is identified in formalistic, stylistic terms. To give an example, adopting a reconciliative position, the Aga Khan Award for Architecture (AKAA) was established as a response, attempting to solve the crisis that Muslim built environments face today, and reducing the hegemony of modern architecture. The AKAA in that respect is quite a pioneering attempt in the Muslim world, however, as a crucible of many local and international intellectuals and scholars, it accommodates the opinions of all its participants. In their first seminar, the problem of architecture in the Islamic world was identified by one scholar: "The major modern urban environments of the Islamic world are suffering from a **crisis** which is most directly reflected in their ugliness and is

in stark contrast with the serenity and beauty of the traditional Islamic city. Islamic architecture has been eclipsed by a conglomeration of often hideous **styles** or at best bland ones, in both cases imitated from foreign models with the pretense of universality and world-wide applicability” (Nasr, 1978, p.1). Put differently by Oleg Grabar<sup>6</sup>, “the immense building activity of many Muslim countries today runs the risk of leading not only to bland neutral architecture, a sort of zero architecture, but may especially lead to a further diminution, eventually almost to a destruction of cultural **identity**” (AKAA, 1978, p.104). Thus, such scholars announced the aim as searching for an **identity** for Islamic architecture that meets contemporary challenges within the spirit of Islam. This method of solving the crisis is considered here as operating on partial levels of the built environment (explained in chapter four). That is, the crisis that the Muslim world faces today is a crisis in which some analysts today see a relative **retardation** in Muslim civilization. Identity constitutes only one axis of the debate about this crisis.

## IDENTITY

The question that arises here is why this preoccupation with the issue of identity today? Searching for identity in the Arab Muslim world today mostly takes the form of adherence to what Castells refers to as a **resistance identity**. It is a resistance to the external threat of Westernization, capitalism, internationalism, and more recently, globalization. In general, resistance identity-building constructs the foundations of collective resistance against oppression and reinforces its boundaries, usually on the basis of identities that were clearly defined by history, geography or the like (Castells, 1997, p.8-9). In the case of the Arab Muslim world, such a resistance identity-building project was/is represented by a return to tradition.<sup>7</sup> It seems that the issue of identity is becoming a central issue in contemporary debates all over the world, especially in the fields of culture and sociology. In terms of contemporary Muslim built environments, as identity is a concept that has emerged and gained its importance as a result of the contradictions and the struggle between the acquired and the inherited (crisis), to answer the above question we have to situate this issue historically, exploring the roots of this crisis.

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<sup>6</sup> Oleg Grabar is a well known scholar in Islamic art.

<sup>7</sup> This return to tradition in the Arab Muslim world, according to al-Jabiri, took a dual stand: First, a return to tradition that took the form of a mechanism of **upholdment** (predication), i.e. as a prop-stand for departure and progress. This stand embodies a departure to the future on the basis of a critical awareness of past and present conditions. Second, a **protective** return to the past as a **reaction** to a present external threats (al-Jabiri, 1991, p.25). It is a **defensive** return that functions as refuge and creates solidarity, and aims at retrenching and sustaining the presence of the ‘Us’ (Arab Muslim world) against the ‘Other’ (the West). Thus, searching for an identity inevitably pulls to the ancestral attitude. In this context we can add a third stand which occurred in some disciplines (e.g. architecture): a return to tradition simply as a **fad**.

Most of those reactions, whether ideological or practical, have conceived the causes of the crisis to be merely the coexistence of the acquired and the inherited modes, thus contemplated a solution as a matter of a selection between the two poles. The crisis that contemporary Muslim countries are facing today is not a crisis of voluntary selection. It is a crisis of **contradictions**, caused by the coexistence of the two modes, each operating on different societal levels. It is a crisis of systemic **destabilization**. Thus, escaping from one pole to another or resorting to tradition or to concepts of identity cannot stand as a solution for this crisis.

## AIMS

This study thus aims at investigating such a contradiction in contemporary Muslim built environments. It examines both the acquired and the inherited modes of built environment production, locating the points of tension between the two modes. Such a study might appear as a comparative study between the Western modern-capitalist system and the traditional Islamic system. It is in fact **not**. This thesis argues that the modern-capitalist system has its roots in the West from which it emerged thus it fits with the Western culture and society. This system constitutes an exotic system to the Muslim world which inherited its system from Islam, thus applying this capitalist system into the contemporary Muslim world leads inevitably to a state of contradiction. Thus, this thesis is about investigating those two modes as exist in contemporary Muslim societies.

COMPARATIVE  
STUDY

## POWER

In analysing the processes of the built environment production, certain questions arise: who controls what element? who dominates which person? and who influences or directs outcomes of decision-making processes? Such questions are in fact questions of “**power**”. Each society has its distinct mechanisms that organise power gain and power exercitation among its members. Of course, each system has its characteristics and advantages. The conception of power is considered in this thesis as a significant determinant in the production of the built environment. It thus receives significant attention. It is the main axis of investigation.

## ARGUMENT

STATIC  
RIGHTS

The central argument of this study is that the differences in the conceptions of power and rights between traditional and contemporary Muslim societies are the main determinant of the contradictory situation in which contemporary Muslim built environments live. Power is the capacity to act. It is derived in Muslim societies from **rights** as bestowed by God through *shari'a* (the Islamic legal system). Thus, **rights create power** (capacity to act). Rights are the source of power in the traditional mode. They are obligatory, **well known** to all members of society. Accordingly, rights in Islam are **static**; they cannot be

**DYNAMIC  
POWER**

manipulated. Traditional Muslim societies are thus rights-based societies. On the contrary, power in contemporary societies has variable sources. It is not pre-determined; it is expandable; thus, it is **dynamic**.<sup>8</sup> This dynamism sets the stage for individuals, groups, organisations and the state, as parties shaping the built environment, to compete to acquire more power. **Power creates rights** of action. Contemporary societies are thus characterised as lusting for power. Such a difference in the conception of power between contemporary and traditional modes has endless ramifications on decision-making processes generally, and on the production of the built environment, particularly.

Other sub-arguments, demonstrated throughout this thesis, sustain this main argument. That is, the nature of the topic of this study necessitated investigating both the traditional and the contemporary modes and their dissensions on an intrinsic level, at their roots. Those sub-arguments appear irrelevant in certain places; however, they are in fact essential if the issue examined is to be grasped comprehensively.

**STRUCTURE OF THE STUDY**

The study first investigates the two modes of environmental production in Arab Muslim societies: the traditional (inherited) and the contemporary (acquired) (chapter 2). Part one of this study reviews the key literature from the field of Islamic urban studies. It is argued in this part (chapters 3, 4) that most studies of the Muslim built environment have neglected the conceptual differences between Muslim and Western built environments. They accepted the modern, or Western concept of power and operated within its framework. Thus, such studies misinterpreted the Muslim built environment, contributing to its misunderstanding and thus to its contemporary crisis.

**POWER**

The roots of the contemporary mode of production, which are entirely modern-capitalist, are delineated in chapter five. The dynamism of contemporary societies, the shifting of paradigms to ameliorate the built environment, the rise of the modern state as the supreme power, its limits, its rights, are explained. From such investigations, the concept of “**power**” emerges as a determining issue. The meanings of power, its limits, its societal implications and its environmental consequences are then investigated in both traditional and contemporary built environments (chapters 6, 8). Comparison of both built environments shows the concept of “**rights**” as a determinant of power in traditional environments (chapter 6), and as a tool for power-holders in contemporary environments (chapters 9,10). This simple difference: power

**RIGHTS**


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<sup>8</sup> Staticness of rights versus dynamism of power is a relative concept. Rights can be described as static when compared to the dynamism of power. This concept will be clarified later in this thesis.

creates rights as in contemporary societies, or power is limited by rights as in traditional societies, has endless ramifications. Power accumulation, as in the contemporary mode, or rights distribution (dimension of power), as in the traditional mode, shows the need of an in-depth understanding of the concept of “power” in contemporary societies, and of “rights” in Islam (chapters 7,8). Both property and individual rights in traditional built environments, with their inevitable morphological synthesis, are investigated and compared with the contemporary power ladder, bundled with its environmental regulations, role of professionals, and physical characteristics. This understanding of the conceptions of rights and power prevailing in traditional and contemporary built environments, respectively, highlights the relationships between actors (such as individuals, institutions, groups, and the state) holding those powers and rights. Accordingly, societal power/rights structure in each mode is elucidated. Different parties’ influences, roles, and scopes of domain in the processes of the production of traditional and contemporary built environments are identified. In short, **points of tension** between the two modes are highlighted.

The shift from the traditional to the contemporary Muslim built environment is investigated in part four. Chapters 9 and 10 scrutinize the process of changing the conception of built environment production due to the emergence of new parties (the state, professionals) responsible for such processes of production, a matter that led to changes in the roles of private parties in such processes. In short, throughout this thesis, the synthesis of traditional and contemporary Muslim built environments, within the scope of this study, are illuminated for observers to generate their own conclusions.

### **METHODOLOGY**

To what extent and how the future of a society can be engineered is quite a controversial issue. This study is aware of arguments developed against historicists and utopians, and does not intend to engineer the future of the built environment by deriving principles from past experiences and employing them for the future. This study is not a kind of nostalgia; neither a historical study that attempts merely to explain past morphologies or synthesis. It is a **comparative** study of two modes: one that prevailed in the past and one existing in the present in the Muslim built environment. It tries to learn from history, compare the past with the present, and then raises questions to help future studies.

This study is a critical study that challenges the status quo, examining and criticizing some of our unquestionably accepted ideologies and presumptions, such as capitalism, the existence of the state, the concept of power,

**WHAT  
TYPE OF  
STUDY?**

ADVANCEMENT  
OF  
KNOWLEDGE

professionalism, and the like. Such criticism is intellectually important. That is, as Popper contends, it is only through criticism that knowledge can advance. “No one can possibly give us more service than by showing us what is wrong with what we think or do, and the bigger the fault, the bigger the improvement made possible by its revelation” (Popper, cited in Magee, 1982, p.39). This study thus does not follow the classical scientific positivist method of **induction** that starts by collecting data through accumulated observation from which a hypothesis is inferred. Scholars following such a classical method are, as Popper describes them, not innovating; they are putting accepted theories to work. Theory, as Einstein states, “cannot be fabricated out of the results of observation, but that it can only be **invented**” (Einstein, cited in Magee, 1982, p.33, emphasis added). For the growth of our knowledge, our attempts to solve or explain defined problems must involve propounding theories which must go beyond our existing knowledge, a matter that requires a leap of the **imagination**. Most of the great revolutions in science have turned on theories of breathtaking audacity (Magee, 1982, p.26).

INVENTIVE  
THEORY

Escaping the limitation of experimental induction, this study starts by suggesting a “bold theory”<sup>9</sup> (or an argument) for a defined problem: that is, the contradictory situation of contemporary Muslim built environments. Afterwards, verification of such a theory begins. Building this theory might sometimes embody the use of conjecture and **intuition** arising from sensing a problem. Thus, this thesis embodies arguments of two kinds: first, those that can be established by evidence either from literature or by examples from real life. Second are those arguments that are difficult to generate empirically testable hypothesis, thus they remain at the level of logic, abstraction and speculation. Such “bold theories”, if proved right, advance knowledge. However, if **falsified**, they liberate later studies from their **imprisoning presumptions and existing knowledge**, and thus push the frontier of our ignorance back. Such theories lead to conceptual advancement.

This study builds on predecessors’ theories, however, in a critical manner. Its starting point is the critical examination of previous accepted studies and theories (whether Islamic urban studies, or other environmental studies), so as to explore their deficiencies in understanding or solving the crises of contemporary Muslim built environments (the problem of investigation).

Investigating the conception of power in either of the two modes of built environment production (traditional and contemporary) necessitated investigating the legal system of each mode. Accordingly, court cases

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<sup>9</sup> Using Popper’s terms.

**SOURCES**

(*nawazil*) and rulings of jurists regarding disputes among acting parties in the traditional built environment are considered in this study as the prime source for comprehending the structures of rights and power enjoyed by different parties in the process of the traditional built environment production. As the process of the traditional built environment production is not commonly known, detailed investigation of the structures of rights is presented.

On the contrary, the contrast between the traditional and the contemporary modes of built environment production, as this study demonstrates, is quite evident. Thus, investigation of the contemporary mode of built environment production is carried out on a substantial level, without going into well-known details, such as of contemporary building regulations. Evidence is sought from a wide spectrum of relevant disciplines such as urban politics, philosophy of politics, urban sociology, cultural studies, urban planning, architecture, philosophy of law, and property law. This study is thus multidisciplinary, seeking knowledge from different disciplines. It relates the built environment to its mode's broader framework, although within the scope of this study (centred on issues of power and rights). This thesis opens doors for questions more than providing answers. Such questions remain suspended for others to find answers, and thus push the frontier of our knowledge further.

## **Chapter Two**

**Prologue**  
**Two modes of production**



**PROLOGUE**  
**Two modes of production**

**INTRODUCTION**

This thesis is about two modes of production of the built environment. One pertains to modernity and capitalism and the other pertains to Islam. These two modes prevailed in the **Muslim world**, one in the past and one in the present. To grasp the mechanisms of each of those two modes, this chapter stands as a prologue to clarify the outline of each mode, thus setting the scene for this thesis.

**2.2 THE BUILT ENVIRONMENT**

The built environment is perceived here as the outcome of an accretion of intervening actions carried out by different actors (**parties**<sup>1</sup>: individuals, groups, organizations, state, etc.), enjoying certain **powers**, through decision-making processes. Therefore, since decision-making processes usually imply power enjoyed by the acting parties, investigating those decision-making processes would uncover certain significant forces underlying the process of the production of the built environment.

Taking any decision and actualizing it into an overt action requires **power** to take and implement this decision. Non-possession of this capacity (power) is a limitation on actions. For example, if an individual does not have the power to make certain modifications to his house because it is not his right or the law does not allow these modifications, then taking such a decision will have no practical effect. Thus, this research takes the **power**, enjoyed by different parties, whether individuals, groups or the state, and revealed through decision-making processes, as the main **axis of investigation**. It considers the built environment as an arena where **exercitation of power** through decision-making processes can be observed.

This research argues that each society or culture (e.g. capitalist, socialist, Islamic) has its own system of power (power structure, distribution, sources, exercitation, etc.)<sup>2</sup> which in turn affects the processes of the production of its built environment, and, to a certain extent, determines its unique character and identity. Thus, to understand the built environment in any society or culture, one needs to inquire into its system of power. In this respect, **power** is used in this research as the tool for investigating either of the two modes' built environments: traditional Muslim built environments (Islamic mode) and contemporary built environments (modern-capitalist mode), considered as reflections of their societal structures.

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<sup>1</sup> In the field of social sciences, "agent" is the common term used as equivalent to "actor" or "party".

<sup>2</sup> Those terms: power sources, power structure, power distribution are explained in chapter eight.

### 2.2.1 Power

In terms of the built environment in general, power is a capacity that enables any party to take a decision which is consequently translated into an action that has an impact on the built environment (altering it). That is, if one defines elements of the built environment as an object or group of objects arranged in a particular order, or a space or group of spaces arranged in a certain manner, then it can be said that party “A” has environmental **power** if it has the **right** to take a decision by which it can change the arrangement of some element(s) in the built environment. Accordingly, power can be defined as the capacity of a given party to make a difference to a pre-existing state of the built environment. It is, according to Giddens, the “can” that mediates between intentions or wants [to which values relate], and the actual realization of the outcomes sought after (Giddens, 1993a, p.118).

### 2.3 TWO MODES OF PRODUCTION

Each system (e.g. capitalism, socialism, Islam) has its own distinct mechanisms that operate within its broader systemic framework. Systems might share few things, but they differ in many others. Each system produces its own built environment as a reflection of its broader systemic mechanisms. To understand the modern-capitalist mode, adopted by most contemporary Arab Muslim countries, and the Islamic mode, the internal mechanisms of each mode have to be scrutinized, mainly their system of power. Decision-making processes of built environment production might vary from one country to another (between UK. and the US.) within the same framework of the modern-capitalist system. However, the focus in this study is on the general mechanisms that operate in such processes, and which are believed to be more or less similar, rather than on the detailed processes (such as planning procedures). Examples of built environment decision-making processes, representing each of the two modes and the exertion of power that operates within these processes are given next. Those examples apply to the decision-making processes operating in most contemporary Arab countries.

#### THE MODERN-CAPITALIST MODE

##### FIRST EXAMPLE: Change of property-use

In a modern-capitalist system, as the case in most Arab Muslim countries today, if party “A” decides to change the function of his house into a hostel for example, this party does not have the **power** to implement its decision. He has to seek **permission** for this change in property-use from the **higher authorities**.<sup>3</sup> In some countries, this permission is multilateral; it has to be sought from different authorities such as those of tourism, trade, municipality, etc. and many of those authorities have different requirements that the applicant has to satisfy to get approval.

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<sup>3</sup> Some systems of planning do not require permission to all actions. In UK, for example, there are a few prescribed permitted development actions in residential areas where the householder does not have to seek permission from local authorities. Nevertheless, the issue this study is trying to highlight is **who decides what for whom**. If decisions are made for parties, then they are subject to other parties' decisions. This is the case in modern systems today. For example, in UK's example above, it is the higher authorities who decides which actions need to have permission and which not, so the higher authorities are on a higher level than the private parties.

In terms of the physical built environment, this permission is given according to certain planning rules and building regulations established by a higher authority under the category of “development control”. For example, the new function of this party’s house has to match the land-use map of its area, established according to a master plan designed and/or approved by the planning authority. Moreover, the new function has to be subject to certain regulations that are again derived from that master plan regarding, for example, building setbacks, heights, built-up area, number of parking lots required, and the like.<sup>4</sup> If the new proposed function matches all these regulations, then the permission is granted to this party; otherwise the proposal will be rejected. In the latter case, either the applicant, party “A”, has to make some changes in his property to match the conditions of approval or, if not possible, he has to accept the **power** of the higher authorities and forget about this change in use. If party “A” ignored the higher authorities’ rejection and implemented his proposal, then his action will be considered by the higher authorities as violation of the law, thus party “A” will be liable to legal sanctions.

#### SECOND EXAMPLE: Building heights

Building-height-control constitutes part of the development control process adopted in most Arab countries today. It is determined according to the land-use and zone in which the building is located. For example, in Amman, Jordan, residential areas are divided into zones A, B, C, D, etc. Each zone has its particular regulations that define the plot area, building percentage, setbacks, building height, and the like. In zone “A”, for example, the maximum height allowed is three floors and a roof; however, in zone “A special”, only two floors are allowed. If a party decides to add a storey to its two storey building that lies in “A special” zone, that is not allowed. Streets might be the spatial separation of zones; thus in some cases one can observe that on one side of the street buildings are of two floors where on the other side they are of four floors. Accordingly, owners on either side of the street have different property rights according to higher authorities’ **prescriptive regulations**. In that respect, Cullingworth states that zoning’s essential role is to protect property values. However, protecting property rights also involves reducing those rights. Zoning at a low density protects property values of owners but at the same time precludes them from maximizing potential development values (Cullingworth, 1997, p.253). In that sense, reducing any party’s rights to develop his property is a “taking” from his **rights** without compensation. “Taking” is not limited only to land expropriation; it also includes takings of rights.

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<sup>4</sup> Planning law in UK., for example, has checks and balances. Individuals can do what they like in their houses, but these rights are constrained by the law. However, major changes (e.g. change of use) require scrutiny and planning consent. The local authority planning committee (elected by the people in the area concerned), operating within the framework of central authority to protect the rights/interests of various parties, would consider the proposal in the light of conflicts between and interests of parties involved and decides accordingly. That decision can be challenged, and then goes to a public enquiry when all parties involved can negotiate and debate the case. Ultimately a judgement is made by the higher authority (planning inspector) (for planning permission procedures in UK. see Thomas, 1997, p.48-50).

## ANALYSIS

Analysing the decision-making process in these cases, one can notice that words such as **power**, higher authorities, permission, regulations, and law have occurred several times throughout those examples. Formulating those words into a statement, it follows that: higher authorities have power to enact laws and regulations according to which they give permission to private parties. Party “A” could not actualize his decision that is related to his own property without the permission of the higher authorities (external party). Therefore, owners have certain restrictions on their actions in their own properties. They are always in direct relationship with the higher authorities. They are subject to its **power**. As higher authorities constitute an external party, remote from the site of development, thus owners-authorities relationship can be described as a relationship between **immediate-remote** parties, where the remote party gives itself the legitimacy to intervene in the immediate party’s properties. In such a process, higher authorities claim to be acting on behalf of the public to protect its interests, i.e. it works for the “public interest” (as claimed). Building policies and regulations are enacted, as it is claimed, according to the **presumed** “public interest.”<sup>5</sup> In the above examples, the higher authority (the state) was acting on behalf of the affected parties in the site (e.g. neighbours), however, its decision was taken by reference to its prescriptive regulations without any reference to the specific interests of those affected parties. They are considered as part of the public thus their interest is, presumably, “**the public interest.**”<sup>6</sup> In short, it can be said that in the decision-making process in the modern-capitalist built environment **mechanisms of power** are dominant.

Those mechanisms of power can be depicted as top-down mechanisms of empowerment from higher level parties (higher authorities) to lower level ones (acting party).<sup>7</sup> It is a mechanism through which the higher level party dominates the lower level party, i.e. it is a mechanism of **domination**<sup>8</sup>, where solutions are reached in a **prescriptive** manner, as this thesis elucidates.

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<sup>5</sup> As explained in chapter five, the state as a representative of the public is the party that defines such a public interest. The concept of “the public interest” is discussed in chapters five and seven below.

<sup>6</sup> As to the public interest, it is impossible to satisfy the interests of all people in one action, so some will “win” and some will “lose”. In the last few years studies of social costs have emerged. For example, a study of Phoenix, Arizona, has shown that most businesses have benefited from Phoenix’s urban growth. However, the evaluation of the net effect of urban growth for ordinary citizens was less favourable (Feagin et.al., 1990, p.31).

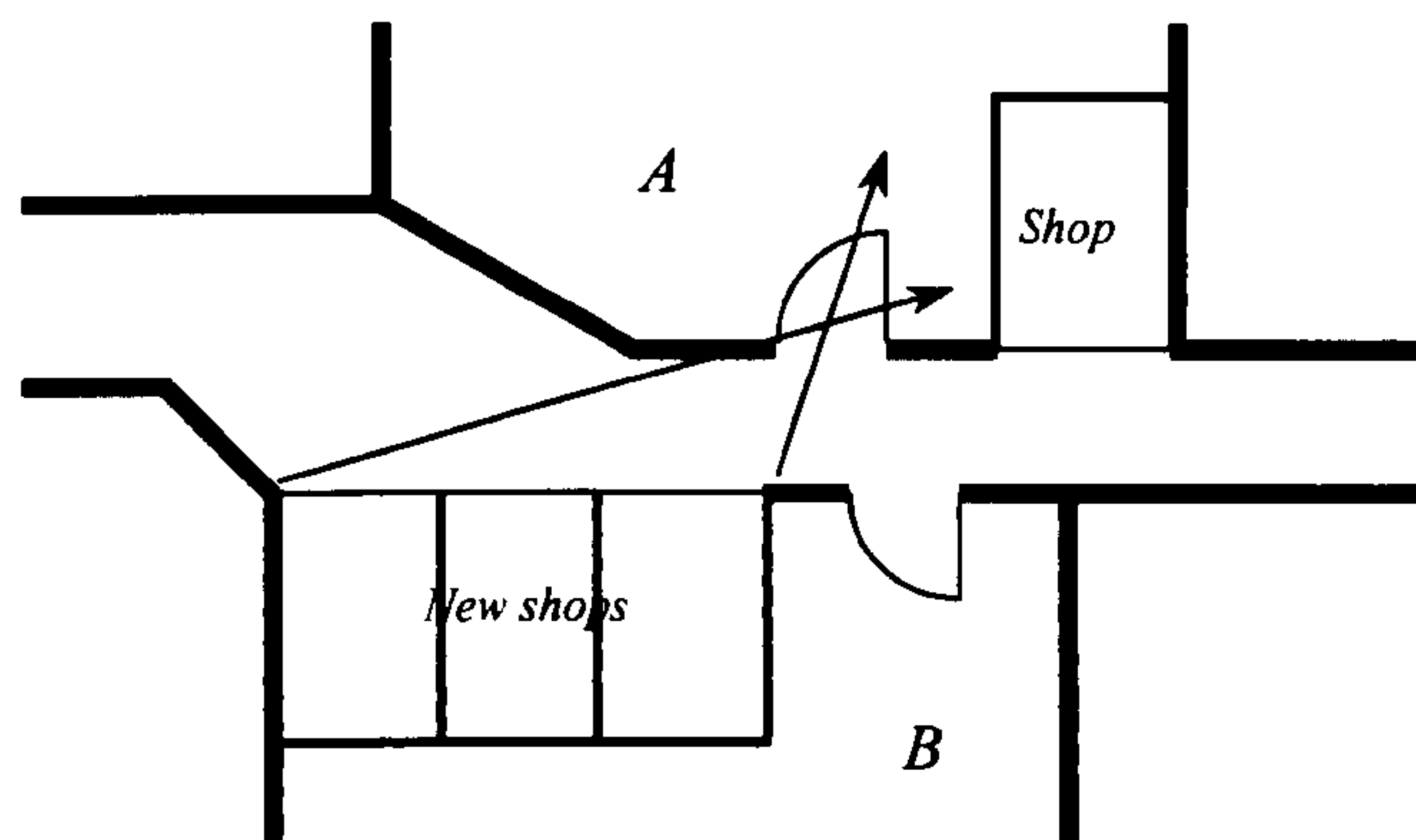
<sup>7</sup> The concepts of “levels between parties” and “domination” are explored in chapters six and seven.

<sup>8</sup> Some might argue that in a democracy the state cannot be perceived as representing a mechanism of domination, but rather as exercising **power and control** based on **consent**. In that sense, the state is deemed to be acting in “**the public interest**”, i.e. to mediate between private interests (as explained in chapter five). Simplifying the matter for the purpose of grasping the differences between the two modes in question (capitalist and Islamic), it is said in this study that this might be true; however, the question here is “consent of whom, and whose interests?” Consent in democratic societies refers to the majority won in elections, and not to all the population, so there are many individuals who do not agree with the state’s exercitation of power (enactment of regulations and policies). Moreover, the consent of the majority is reached over general policies (agenda) announced during the elections and not on detailed issues. Nevertheless, the main point this research is trying to emphasize is not how large is the majority or who wins and who loses, but that, even in democratic societies, there are two groups: one decides (the state) and the other is decided for (the people), as will be explained.

## THE ISLAMIC MODE

### FIRST EXAMPLE: Changes in private property

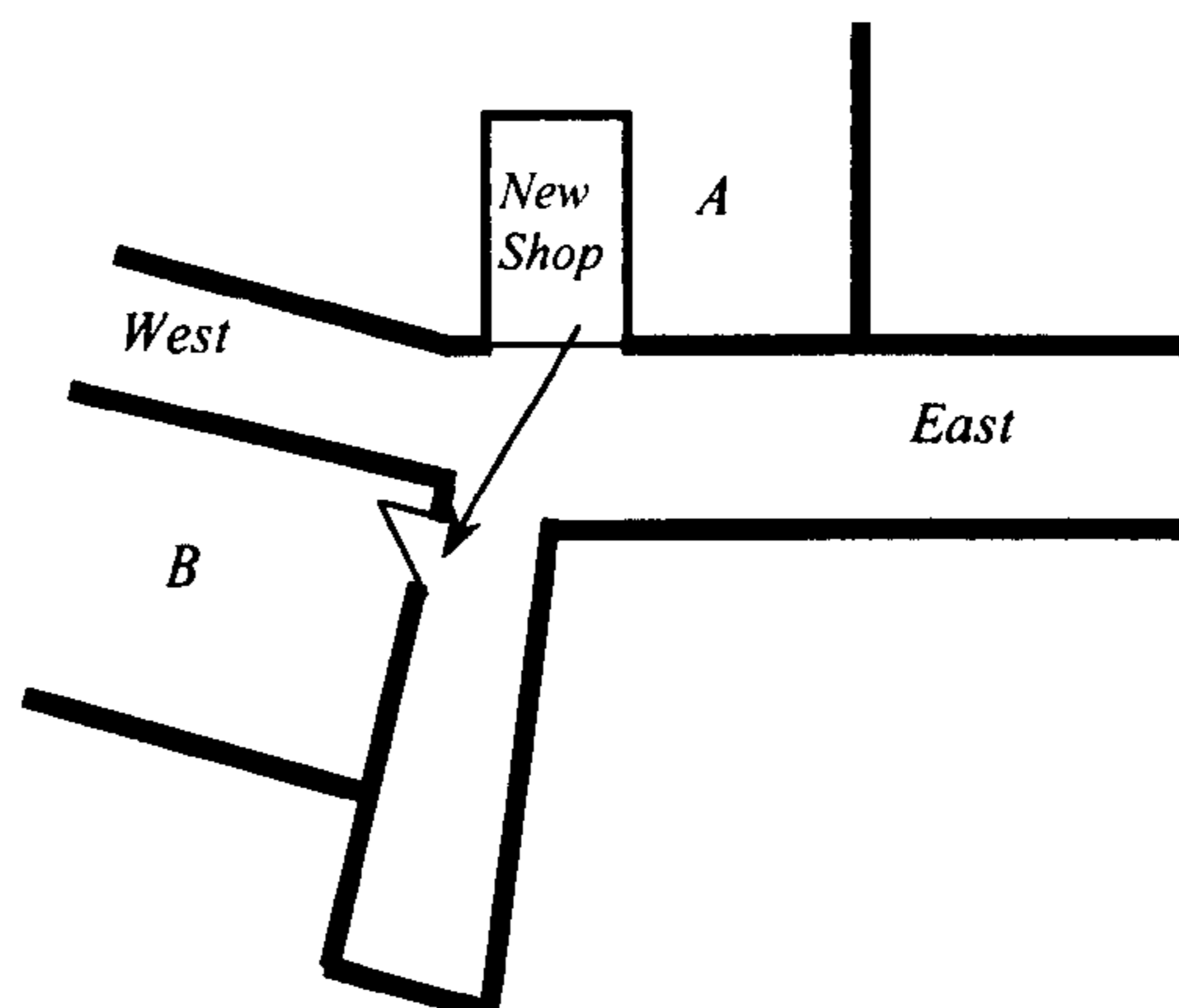
In a case, a judge (al-Qarawi<sup>9</sup>) was asked about a house owner (*A*) who had a shop on the left side of his house (fig.2.1). The owner (*B*) on the opposite side of the road wanted to transform a room in his house on the right side of his door into three shops, claiming that this action is his **right**, as both *A*'s and *B*'s houses are located in a wide through street, intensively used by the public, as it is one of the main streets in the town. However, the owner of the first house (*A*) objected, on the grounds that (as he claimed) what might be allowed in through streets are doors only, and not shops. In the case of a new shop, people sitting or working in these shops will overlook the inner side of his house and this is considered a severe **damage**. On the basis of these claims, the judge asked **building experts** to **assess** the damage caused to the opposite house (*A*) by visiting the site and investigating the case. It was found that the angle of vision of the three shops severely exposed the entrance to *A*'s house. Thus, the new shops were closed ('Ibn ar-Rami, n.d., p.274-5).



(fig.2.1)

In another case that reached judge 'Ibn 'Abd ar-Rafi' (d.734H.), a person (*A*) opened a shop in a through street that goes from east to west (fig.2.2). The shop was positioned in front of a dead-end street that had a door to *B*'s house. (*B*) objected to the shop on grounds that the shop caused **damage** to his privacy. The two persons disputed, taking their case to the judge. A **building expert** investigated the case by **visiting** the site and **assessing** the damage (as claimed) caused by the shop to the house (*B*). He reported to the judge that those who sit in the shop cannot see inside the house, but could only see who is standing within the door. As this was not considered a damage to the house (*B*), the judge ruled for the continuation of the shop ('Ibn ar-Rami, n.d., p.277).

<sup>9</sup> Al-Qarawi is a jurist (*faqih*, pl. *fuqaha*) who lived in North Africa in the 7<sup>th</sup> or 8<sup>th</sup> H.c.



(fig.2.2)

### SECOND EXAMPLE: Change of property-use

In a case raised to a judge (Ahmad bin al-Makwi), a narrow street had three doors for three houses opening into it. Two of the houses were converted into hotels; the third house was only three cubits from them. The owner of the third house did not object to the conversion. As those two hotels were the only hotels in town, gradually the street became so crowded that the third house was no longer fit for a residence, but for other functions. The house owner **protested** to the judge who ruled in the case (al-Wansharisi, n.d., v.9, p.41-2).<sup>10</sup>

### ANALYSIS

Although the dates and sites of these actual cases are different, it can be noted that owners acted in their properties without permission from the higher authorities. They based their actions merely on their **rights**. In the first example, party (A) acted on the basis of his rights; at the same time, party (B) predicated his objection on his right not to be harmed. Both parties were aware of their rights. Similarly, in the second example, based on their rights, the owners of the two houses changed the function of their properties without permission from any higher authorities. That is, in Islam, a party has the **right** to act freely in its property, without permission from external parties (higher authorities), as long as its actions do not affect others negatively. This is evident in the right of any Muslim not to be harmed by the actions of others, stated in the Prophet's tradition (*hadith*) "neither *darar* nor *dirar*"<sup>11</sup>, meaning "there should be neither harming nor reciprocating harm" or "there is no injury nor return of injury."<sup>12</sup>

<sup>10</sup> The rule in this case was that if the damage caused to the third house was as described, and the conversion was done fairly recently, then the damage should be lifted. However, if there had been quite a long time since the other two houses were converted into hotels and the third owner had been silent, then his **right** to object lapsed. Thus the two hotels could continue (al-Wansharisi, n.d., v.9, p.41-2). These mechanisms are explored in chapter seven below.

<sup>11</sup> *Darar* means what an individual benefits from at the expense of damaging others. *Dirar* means the actions which damage others without benefiting the acting party (Akbar, 1988, p.256)

<sup>12</sup> Al-Muwatta' of Imam Malik, (Beirut, 1981) p.529. The first translation is by Ibrahim and Johnson-Davis (1977), An-Nawawi's forty Hadith (an-Nawawi, n.d./b, p.106); the second translation is from al-Muwatta', translated by A. at-Tarjumana and Y. Johnson (1982), (Imam Malik, n.d., p.346).

Avoiding conflicts, parties, in environmental interactions, communicate together about their problems, clarifying their visions, opinions and rights. However, when no agreement could be reached, and a dispute arose between the two parties, then they may **choose** (voluntarily) to refer to the judge. Higher authorities cannot intervene without the related parties' request. When the case reached the judges, they did not use pre-stated rules to decide. Each case of intervention in the built environment has its own circumstances, and while circumstances change temporally and geographically, *shari'a* (the Islamic legal system) does not set up prescripts and regulations to deal with all different cases in a sweeping manner (as the case in the modern-capitalist mode), but with **guidelines** which, when applied, produce diverse solutions that fit the circumstances of each case. Therefore, each case is dealt with independently on its own merits, investigating its conditions, and the validity of disputed parties' claims. Ultimately, in the light of the investigations' findings (of building experts), the judges reached their rulings. Thereby, as evident from the two cases presented in the first example, similar cases might have different rulings, according to the specificity of each case.

It can thus be argued that relationships that prevailed in the production of built environments in the Islamic mode are relationships between immediate affected parties (neighbours in our examples). They are, unlike the case in the modern-capitalist built environments, **immediate-immediate** parties relationships, where each party represents itself in defending its rights without any external **representation** or obligatory intervention by remote parties.

#### 2.4 INFERENCES: THE TWO MODES

The built environment is an outcome of dynamic processes of production in which **power** through decision-making processes operates as the **driving, determinant** force, deciding its characteristics, as shown in the following chapters. Each societal system has its own system of power that operates as an underlying mechanism in the production of its built environment. Accordingly, this study argues that mechanisms of **power** in the modern capitalist mode **subject** the acting individuals to the power of the higher authorities. However, this process in the Islamic mode is based on mechanisms of **rights**, where all individuals refer in their actions to their rights. **Immediate-remote** parties relationships prevail in the modern capitalist mode, whereas **immediate-immediate** parties relationships prevail in the Islamic mode, leading to diverse consequences. This hypothesis is examined throughout this study.

In this context, a few statements have to be asserted. First: mechanisms of rights operating in the Islamic mode differ from those of power operating in the modern-capitalist mode, thus their subsequent built environments are inevitably different. That is, property rights enjoyed by parties in each mode as a result of their respective operating mechanisms are different. Second, differences between the operating mechanism in decision-making process in the two modes might not appear as important as they are. Their effects, as explained throughout this study, are quite substantial. They lead to two different built environments, one produced by professionals

and controlled by higher authorities, and the other produced and controlled by its inhabitants, reflecting their norms and capabilities.

This thesis examines the built environments of each of the two modes (modern-capitalist, and Islamic) through scrutinizing their respective operating mechanisms. Thus, its main focus is on the mechanisms more than on the physical built environments. Investigations of the concept of power and that of rights as related to the modern-capitalist and the Islamic (traditional) built environments, respectively, are established in part three below. To situate this study among other studies in the field, exploration of studies of Muslim built environments, their approaches, influences, and methodologies, are presented in the next part.



**Part One**

**Roots of Islamic Urban Studies**

## Part 1

### ROOTS OF ISLAMIC URBAN STUDIES

#### INTRODUCTION

“Islamic urban studies” generally refers to those studies of Muslim cities (including, sometimes, areas around cities) which (cities) existed in the Islamic world in the period from the rise of Islam to the beginning of the 20<sup>th</sup> century (Haneda and Miura, 1994, p.x). The beginnings of these studies can be identified in the 18<sup>th</sup> century, but it was not until the early 20<sup>th</sup> century that these studies crystallized and took a shape. Islamic urban studies before the 20<sup>th</sup> century were mainly archaeological, focusing on a limited number of sites, usually containing grand buildings. In addition, there were descriptions of cities by European travellers. Most of the early 20<sup>th</sup> century studies were carried out by archaeologists, historians and scholars who were specialized in Oriental languages and studies. Later, a few geographers, sociologists and anthropologists became involved, but it is only relatively recently that architects, art historians and urban planners have joined the field. The majority of those scholars were **Western** (Orientalists) particularly up to the 1970s, after which local scholars (Orientals) began to play a significant role in Islamic urban studies, bringing a new perspective to the field.

This research argues that most contemporary Islamic urban studies were influenced by their Western counter-studies in terms of themes discussed, methodologies adopted, and approaches followed. This part of the research thus attempts to throw light on the **roots** of and **influences** on Islamic urban studies throughout their evolution. This helps to widen this research’s epistemological basis and to define its boundaries by identifying different problems investigated, approaches used and findings of other research, and also gaps in knowledge about Islamic cities. This part of the research thus serves as a background, aiming at situating the current study among other relevant studies in the field.

Different questions could be raised regarding the origins of these studies: When did they start and why at that specific time? Why were Western scholars their leaders? Which cities were studied first and why? How were these studies done? Answers to such questions supply two sorts of fact: first, those which refer to the **roots** of Islamic urban studies, and second, those regarding **influences** on the field.

ISLAMIC  
URBAN  
STUDIES

ARGUMENT  
AND  
AIMS

**ROOTS  
AND  
INFLUENCES**

“**Roots**” here refers to the foundations from which Islamic urban studies sprung and developed. “**Influences**” refers to those factors that affected and coloured the manner of Islamic urban studies. The former is concerned with epistemological issues such as methodologies, themes and approaches, while the latter deals with human values and attitudes. In other words, roots are related to the subject while influences are related to the author and his original environment.

**INFLUENCES**

No production of knowledge in the human sciences can be value-neutral and purely objective, either on the part of the researcher (influences) or on the level of the subject tackled (roots). The influence of the author’s involvement as a human subject in his own circumstances cannot be ignored or disclaimed. Thus, as Islamic urban studies were developed by Orientalists and later by Muslim local scholars, one cannot deny the influence of the main circumstances of the scholar’s actuality as a Western Orientalist or as an Arab Muslim first, and second, as an individual with certain concepts, norms and values.

**External influences**, to differentiate them from other influences, are those that came from outside the field of Islamic urban studies and affected researchers’ attitudes and coloured their studies. On the other hand, **internal influences** are those which are generated within the field itself during its evolution, as earlier studies and theories affect later studies.

**ROOTS**

Accumulating knowledge of Islamic cities is located within the broad realm of **urban studies**, which incorporates several fields such as urban sociology, urban politics, urban geography, and urban planning. As these fields were developed in the West (the base of the Orientalists), the roots of Islamic urban studies are thus mainly Western.

**STRUCTURE**

The Western roots of Islamic urban studies as they existed in Western urban studies are investigated in chapter three. In chapter four the effects of those roots as well as external and internal influences on Islamic urban studies are examined. In the latter chapter, some relevant earlier studies are reviewed critically, highlighting their main roots, influences, arguments and gaps in understanding. Although criticisms are made of others’ work, the undeniable contribution of earlier researchers to the field of Islamic urban studies is acknowledged and it is recognized that without their achievements it would have been difficult to have reached the present level of knowledge in the field. It is only as the field develops and widens that successors become able to look back critically at their forerunners who worked within a relatively limited context.

**Chapter Three**

**Western Roots**

Too much of what classic sociology had to say about Western societies was taken for granted as a valid baseline from which to work out what was different about the non-European world, including the way sociology defined a society in general terms and identified societies with bounded territorial units.

(Gledhill, 1994, p.11)

### 3.1 INTRODUCTION

This chapter is concerned with the roots of Islamic urban studies, **epistemologically**. As the origins of Islamic urban studies were Western, these studies were exposed to and influenced by different fields of knowledge developed in the West. Some relevant Western fields constituted the roots of Islamic urban studies, such as the field of urban studies. Therefore, the emphasis in this chapter is to explore those Western roots as they existed in the West in terms of themes, methodologies and approaches, with particular attention to the field of urban sociology as it was (as will be shown) the most influential field on Islamic urban studies, especially during their beginnings. Such a field can be considered as a crucible, merging studies of urbanism from diverse disciplines: urban geography, urban politics, and urban economics. In other words, most fields concerned with urban studies overlap in the field of urban sociology. However, other fields developed later, such as architecture, urban design, and planning, constituted part of Islamic urban studies' later roots. But since most Orientalists were geographers, historians and sociologists, they were not exposed to those later fields until more recently, when architects and urban planners took their place in the field of Islamic urban studies.

To scrutinize the roots of Islamic urban studies, it is necessary to study in some depth some relevant Western works so as to comprehend the context within which Islamic urban studies emerged. Therefore a few key works that influenced the main schools of thought in urban studies during the end of the 19<sup>th</sup> century and the first half of the 20<sup>th</sup> century are examined in this chapter, including Marx, Weber, Durkheim, Simmel, and the Chicago school. The main theories in the field were produced during that time; later scholars adopted and followed them up to the present time. Those latter studies are not explored here, as they are the effect of the same source of studies.<sup>1</sup> Moreover, as those latter studies emerged at later times (in the late 1960s and early 1970s), they are **not** considered here as part of the Islamic urban studies' Western roots.

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<sup>1</sup> Later studies adopted the same approaches developed in earlier studies, establishing what came to be known as Neo-approaches, for example, Neo-Marxism (e.g. Castells, Harvey), Neo-Weberianism (Rex, Moore, Pahl).

### 3.2 WESTERN URBAN STUDIES

Studies of Islamic cities began at the end of the 19<sup>th</sup> century, at almost the same time as advances in studies of urbanization and cities took place in different disciplines in the West. The then leaders of those urban studies were mainly Western scholars. As Orientalists were affected by dominant debates and ideas in the field, they adopted some of the prevailing theories and themes of research and used them in their studies of Islamic cities.

Many scholars investigated Western capitalistic societies, particularly in urban areas, and treated them as a phenomena to be analyzed and understood according to the discipline (sociology and, later, geography) of their different studies. Different approaches were followed and different methodologies were developed; however, the main and most influential studies were those of the three pioneers in the field of sociology: Marx (1818-1883), Weber (1864-1920), and Durkheim (1858-1917). Despite that all including an analysis of cities as an important component of their overall theories, none developed a comprehensive theory of cities and urbanization. All three (except Weber at certain points) were more concerned with changes in society as urban socio-economic processes than with the city as an urban and spatial entity. They considered the city as a non-spatial container<sup>2</sup> in which such urban processes take place. Nevertheless, their studies and views greatly influenced later scholars in almost every discipline concerned with cities and urbanization; for example we find Marxist urban sociologists, Marxist historians or geographers, Weberian urban sociologists, etc.

Starting with observing social changes and problems in the rapidly expanding industrial capitalistic cities, different questions were posed: What were the causes of those changes? Why did they occur in Western societies specifically? To answer such questions, scholars turned to the roots of these changes in the European Middle Ages when cities began to grow, and compared the early modern city of their times, the 19<sup>th</sup> century, with the city in the Middle Ages. Also, to define the main characteristics of the European medieval cities, which differed from cities before and after them, Weber compared them with non-Western pre-industrial cities (in the Middle Ages and in Antiquity in the Near and Far East) (Weber, 1973, p.90). They argued that the medieval European city had theoretical significance in itself that neither the antique city nor the modern city had (Saunders, 1993, p.49-50). From their comparative studies, the fathers of sociology (Marx, Weber, and Durkheim) deduced that capitalism in its various aspects was the main and essential cause for those problems and social changes: Marx focused on the modes of production and basic class division, Weber focused on the city's institutions and Durkheim on the solidarity of society (Saunders, 1985, p.79).

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<sup>2</sup> Peter Saunders, in his search for contemporary urban theory of the city, differentiated between two types of sociology, according to their concern for spatial issues in the city; non-spatial and aspatial sociology. By non-spatial, he meant that there can be no social theory of the city as an entity in contemporary industrial capitalistic societies. On the other hand, aspatial sociology is a mode of sociological analysis which undertakes no account of space as a potentially inhibiting or facilitating factor in the development of various social processes. A non-spatial sociology need not be aspatial (Saunders, 1985, p.79,81).

They viewed the significance of the city at a specific period in history during the transition from feudalism to capitalism in Western Europe; the city at other periods was not a significant economic, political or social unit of analysis. Within their overall theories, they used the city as a tool for analyzing the transition in society. They viewed the city at that transitional time as an essential condition for the social changes generated within capitalistic societies. In other words, the city was not treated as a cause but as an important historical object that acts as a necessary condition (Saunders, 1993, p.14-15).<sup>3</sup>

**Marx** and Engels, using a “dialectical materialism” methodology<sup>4</sup>, analyzed the phenomenon of urbanism. Both argued that the division between **town and country** had characterized all human societies from antiquity to modern capitalism, and for Marx, it was thus a primordial expression of the social division of labour. Using what some refer to today as **Marxist structuralism**, the town-country division was seen by Marx as the manifest form of the underlying contradiction between two competing modes of production; the capitalistic mode and the feudal mode (Marx and Engels, 1973, p.139). The essence of the relation between city and countryside was different in different periods of human history; therefore the town-country antithesis is a phenomenon which has to be analyzed in any given period of human history. For Marx, it had to be analyzed in the context of class relations inscribed in the underlying modes of production (Saunders, 1993, p.22).

Therefore we can say that Marx brought to the fore the idea of an **antagonism between town and countryside** as a significant phenomenon which concealed behind it other essential relations and causes. Also he highlighted the theme of **class division**, widely adopted by later scholars in different disciplines.

**Durkheim**'s focal area of study was society rather than the physical city. Societies for him were “systems” made up of interrelated social elements (Cuff et. al., 1990, p.29). Durkheim emphasized **consensus** as the basis of social order, where general agreement over values and norms provides the crucial basis of society (Abercrombie et. al., 1994, p.83). His concern was with relationships between society and the individual within it, also with the moral basis of

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<sup>3</sup> According to Saunders, this approach neglected the city as an entity by itself and considered it as a non-spatial dependent condition (Saunders, 1985, p.79, 81). Many contemporary neo-Marxist scholars such as Castells and Harvey, despite their claims of regarding space as a central element in urban analysis, adopted this approach. For Castells, the city is theoretically significant as the physical context within which the process of reproduction of labour is situated. He considers spatial units as related to social units (spatial units of collective consumption) as the real object of analysis. However, Harvey views the city as significant as a spatial configuration which facilitates and expresses the process of capital accumulation. He begins with the question of capitalism and seeks to apply this to the city (Saunders, 1993, p.172-4; Herbert & Thomas, 1990, p.142).

<sup>4</sup> Dialectical Materialism: This term points to two basic principles of Marx's method of analysis. A dialectical method holds that no single aspect of reality can be analyzed independently of the totality of social relations of which it forms a necessary part. Materialism refers to the principle that reality may rarely be directly reflected in consciousness. This means that the world may conceal its essential character. Thus science, according to Marx, has to penetrate the forms of appearance in which reality cloaks itself in order to discover the essential causal relations which lie behind and give rise to such appearances (Saunders, 1993, p.16-18).

society as a source of social cohesion which changes over time, consequent upon the development of a complex division of labour in society. He advanced a “functionalist theory of religion” in which he suggested that religion functions as a unifying belief system, where its essential role is seen as the maintenance of social solidarity (Jary & Jary, 1995, p.252).

Durkheim differentiated between two types of **social solidarity**: mechanical solidarity which exists in traditional societies and is based on their moral bonds of “collective conscience”, and organic solidarity in the industrial urbanized cities (Saunders, 1985, p.79). Accordingly, Durkheim identified two types of society which correspond to his two forms of social solidarity. These are segmental societies, which resemble mechanical solidarity; and advanced societies, which correspond to organic solidarity. By “segmental society”<sup>5</sup>, Durkheim meant that type of society which is made up of small groups linked together in a defined social territory, where they have close proximity to each other in social, economic, and political terms. Religion, through its beliefs and values, is the unifying factor of these segmental groups. On the other hand, advanced society is characterized by its size and diversity of population and a complex division of labour (Morrison, 1995, p.139-40). Durkheim also linked social organization and its reflections in territorial and geographical distribution in cities and other areas (village or city, district, province, etc.). He saw social organization in the Middle Ages as grounded in interdependence fostered by the division of labour, contiguous with the spatial boundaries of the corporate city; that is, territorial boundaries were at the same time social and economic.

As to his methodology, stemming from a **positivist** attitude, Durkheim rejected the Marxist method of theorizing essences, and argued that essences can be directly ascertained through pure observation of appearance. He assumes that reality can be understood by observation, asserting that for social phenomena to be the subject of investigation it should be a “thing” and not an “idea” (Morrison, 1995, p.156). Durkheim asserts that observation is the basis of knowledge, and consequently he denies any *a priori* theorization or conceptualization as a condition of knowledge (Saunders, 1993, p.39).

Another pioneer in the field of sociology, working almost in the same area and using the same **empirical** methodology as Durkheim and contemporary with him, is **Toennies** (1855-1936). Toennies wrote about the differences between what he called *Gemeinschaft* and *Gesellschaft*. He defined *Gemeinschaft* as community, based on traditional rural village life where social relations were based on kinship ties and traditional values. *Gesellschaft* society is one in which everything was based on formal and impersonal relationships.

**Weber**'s work is considered the most relevant in the field of historical urban sociology for this study, particularly his theory of cities. While Marx emphasized totality, the need to relate everything to everything else, and the identification of the essential causes behind social phenomena, Weber argued that only partial and one-sided accounts are possible and he seeks

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<sup>5</sup> Durkheim used the term “segmental society” in a different meaning than used by later scholars, as described under the mosaic theory below (p.34).



reality directly from pure phenomenal forms. His approach was a blend of the **interpretive**<sup>6</sup> and **positivist** approaches; he combined explanation and understanding (*verstehen*) in a unitary methodology (Blaikie, 1993, p.37). He considered understanding (*verstehen*) to be a method of elucidating the motivations for action (Jary & Jary, 1995, p.336). Although all social events are historically unique, Weber pointed out the necessity of generalization in social research in order to arrive at casual explanations of those unique events. Weber wanted sociology to be a **generalizing science** in which abstract concepts are used to represent actual historical events and concrete courses of action (Blaikie, 1993, p.178). In his work, this was done through the construction of **ideal types**. Weber insisted that we sometimes use the concept of ideal types without realizing it; for example, when we refer to “capitalist societies” we are employing an ideal type, for there are many variations between, say, France and the United States which we choose to ignore for the purpose of classification, while emphasizing those aspects they have in common and appear most relevant to our theoretical purpose (Saunders, 1993, p.28, 31).

Ideal types are developed from the real world, on the basis of existing **empirical** knowledge of actual phenomena. They involve the **logical** extension of certain aspects of reality in a “pure” type, against which existing phenomena can be measured and compared. “Ideal”, as Weber argued, signifies “pure” or “abstract” rather than normatively desirable. Ideal types are not models to be tested, although Weber himself often, implicitly, used his ideal type as a testable model. Since each ideal type covers one aspect of the phenomena, it is possible to construct different ideal types of the same phenomena, but they cannot be evaluated against each other. Therefore, as Weber says, ideal types are partial and subjective (Weber, 1949, p.72).

Using his ideal type method in his study of the city, Weber suggested that **cities are defined in terms of economic and political organizations**. Taking these two dimensions together, Weber constructed his ideal type of the city:

To constitute a full urban community a settlement must display a relative predominance of trade-commercial relations with the settlement as a whole displaying the following features: 1) a fortification; 2) a market; 3) a court of its own and at least partially autonomous law; 4) a related form of association, and 5) at least partial autonomy and autocephaly, thus also an administration by authorities, in the election of whom the burghers participated (Weber, 1958, p.80-81).

This ideal type was based on the medieval European city, which Weber saw of significance in the development of Western capitalism. To show why cities in ancient times and those in other parts of the world in the Middle Ages failed to create these five conditions, Weber used the

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<sup>6</sup> Interpretivism had its origins in the tradition of Hermeneutics. Interpretivism means the subordination of explanation and description to interpretation, which cannot be reduced to mere observation (Delanty, 1997, p.40). Interpretivism takes into consideration the meanings and interpretations, the motives and intentions of people in their everyday lives. The major task of Interpretive social science is to discover why people do what they do by uncovering the largely tacit, mutual knowledge, and symbolic meanings, intentions, and rules, which provide the orientations for their actions. While, by the end of the nineteenth century and the beginning of the twentieth century, positivism has been widely adopted in England and France, interpretivism was adopted in Germany. Of its advocates are Weber (1864-1920), Schutz (1899-1959), and Winch (1926-) (Blaikie, 1993, p. 36-7, 176).

same ideal type to compare the European city in the Middle Ages, which he called “the Occidental city” with other cities precedent to it and/or existing elsewhere, which he called “the Oriental city” (Weber, 1958<sup>7</sup>, p.89).

Having developed this ideal type, Weber notes that general approximations to it are found only in the Occident during the medieval period, particularly in Northern European cities. Also, in terms of human association, only in the Western city in the Middle Ages did urban residents come together as individuals; while in other places and other times (such as in the Islamic cities) they formed associations on the basis of kinship. He argued that Christianity helped dissolve clan associations, while other religions, such as Islam, reinforced clan and tribal structure (Weber, 1973, p.96, 98). Thus, the people in the Oriental city remained segregated tribes, and as Cahnman describes them, were dwellers in the city but did not belong to it (Cahnman, 1995, p.216). Having established these criteria for defining his ideal type of the city, Weber eliminates all those cities where authority had rested on a charismatic or traditional rather than a rational basis; all where the law was enforced on a personal rather than a universalistic basis; all those governed by religious groups (such as the Islamic cities) (Mellor, 1977, p.189). Proceeding from there, he considered Asiatic and Oriental cities (of which Islamic cities are part) as **settlements** of an urban economic character only and denies them the title of city (Weber, 1958, p.88).

Underpinning the importance of human associations in the Western medieval city, Weber highlighted the role of the **guilds and communes** in the development of a rational and individualistic economic affairs and of new legal and political forms (Weber, 1958, p.223, 204). For Weber, the Orient simply lacks the positive ingredients of Western rationality. The Oriental society can be defined thus as a system of absences: absent cities, the missing middle class, missing autonomous urban institutions, and the absence of legal rationality (Turner, 1991, p.22).

This summary of classical writings of the “fathers of sociology” in the field of urbanization and cities is of great importance in this part of our study. On the foundation they laid early in this century, many other works were based, influenced by their ideologies and views in general. Different **approaches** to studying the city emerged; two of them are worth mentioning here for their effect on studies of Islamic cities. They are, first, “**the city as a cultural form**”, an approach begun by Simmel (1858-1919) and later developed by Wirth of the Chicago School; second, “**the city as an ecological community**”, the approach of the Chicago School in the interwar period (Saunders, 1985, p.70-71).

By his essay “Metropolis and mental life” (1902-3), Simmel caused a shift in sociological concern which he, and later his successor Wirth, made very clear. Their concern was with the mode of life in capitalistic cities. Simmel focused on the city as an aggregation of individuals more than on the city as a physical entity. He viewed society as a web of interactions between people, and stressed human interactions and conflicts and proposed methods of analyzing them

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<sup>7</sup> Weber’s work “The city” was first published in German as a series of lectures in 1905.

(Abercrombie, 1994, p.378-9). He attempted to define large cities in terms of social associations based on the individual, where social changes are derived from changes in the forms of such associations (Mellor, 1977, p.18). He defined the city by its **size**, a method which Weber rejects for its insignificance (Mellor, 1977, p.65-66).

Thirty years later, in his article “Urbanism as a way of life” (1938), Wirth argued that ways of life in cities were anonymous, superficial and segmental, explaining this as the product of the size, density and heterogeneity of their settlements (Saunders, 1985, p.72; Sennett, 1969, p.149-158). His sociological definition of a city is “a relatively large, dense, and permanent settlement of socially heterogeneous individuals” (Jones, 1966, p.8; Sennett, 1969, p.145-148).

The approaches discussed so far, although relevant to the purpose of this research, are too exclusively sociological, particularly in their disregard of the city as a spatial and physical entity. An attempt to marry both themes, the city as a place and the city as a social order, came from the Chicago School of human ecology in the 1920s, and were first set out in a book called *The City* by R. Park, E. Burgess and R. McKenzie (1925). The Chicago school of sociology was strongly influenced by social Darwinism, which believed in a natural process encapsulated in the phrase of “the survival of the fittest” (Greed, 1996, p.218). Park emphasizes this natural process of existence, which he calls **competition**, as a characteristic of the “ecological community” in contrast to “society”. Competition, for Park and Burgess, is identified as a universal and fundamental form of interaction, whereas the other forms of interaction which belong to the social or moral order are: conflict, accommodation and assimilation (Mellor, 1977, p.206). This approach, with less concern for urban space and land-use zones, dominated much of the urban research between the 1940s and the 1970s; thereafter a new critical approach emerged challenging this “traditional social science” approach (Feagin & Parker, 1990, p.4).

“**Human ecology**”, in this sense, implies a very close relationship between population and environment; and it is constituted as the study of a basic process (competition) and its unintended effects (functional adaptation) (Saunders, 1985, p.70). In other words, as Park and McKenzie argued, the separate communities (ecological communities) of the city were the end product of the process of invasion by which groups established control over a locality. They depicted the city as a natural system, consisting of “**natural areas**” or sub-areas (slums, neighbourhoods, central business district, industrial zones) in dynamic interaction; inhabited by ecological communities. Each had a specific function, but all contributed to the maintenance of the whole community of the city (Press et.al., 1980, p.3). These natural areas are seen to foster the segregation of the urban population in the city and establish moral distances which makes the city “**a mosaic of little worlds**”, which, according to Park, gives the city its diversity, novelty and excitement (Sennett, 1969, p.126).<sup>8</sup>

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<sup>8</sup> By focusing on the competition/adaptation process in communities within cities, this approach can be criticised as being exclusive to this particular process in cities and neglecting other processes, social, political and economic. For example, of the important urban development issues missing from most research adopting this approach are capital investment decisions, power and resource inequality, and

The interest in the spatial delineation of human associations was supported by methodological concerns. It was this concept of adopting natural areas as units of study which dominated the work of Park's students. Natural areas are seen as a "frame of reference" within which sociologists can operate and undertake studies in large cities. Nevertheless, a conceptual reference to the whole city region should be always there, otherwise those studies will run the risk of misinterpreting the local situation (Mellor, 1977, p.215).

Not only are natural areas, in Park's view, the only basis for urban research, but they also "establish a working hypothesis in regard to other areas of the same kind". To quote:

It is assumed...that people living in natural areas of the same general type and subject to the same social conditions, will display, on the whole, the same characteristics (Park, 1955, p.197)

This is precisely the assumption made by all urban sociologists in undertaking local community studies (slums, suburbs, etc.). By assuming this, Park was trying to accumulate a set of hypotheses as to the nature of urban existence generally; case studies of individual areas might be treated as studies of types and be used for comparative studies. That is, Park simplified his task by assuming that all cities were somehow similar, and that the social worlds of the city were in regular relationships (Mellor, 1977, p. 215-6). This construction of a theoretical ideal type of a community or natural area, based on a specific study, embodied a Weberian comparative methodology (see p.26 above). Studies following such a methodology, based on a fallacious presumption of similarity between all cities to achieve generalization, ended up in being misleading. (The same comparative methodology and generalization were employed by Orientalists in their studies of Islamic cities, demonstrated in the next chapter).

After this outline of the main classical studies in the field of urban sociology, it is useful to summarize the main themes and approaches developed throughout these studies. The focus is on those themes that affected later urban studies and in particular Orientalists' studies of Islamic cities. The main definitions of the city developed by scholars in different disciplines (historians, geographers, urban planners, sociologists, etc.) are traced first, in an attempt to distinguish the city, as perceived by those scholars, from other physical entities.

### 3.3 DEFINITIONS OF THE CITY

Many attempts in different disciplines have been made to define the city; however, no universal definition acceptable to everyone has been put forward. For their importance to this study, some of the approaches adopted in defining the city are presented next.

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class and class conflict. Moreover, most social scientists adopting this approach have either neglected the role of government in city development or have assumed a **pluralist** perspective (Feagin et.al., 1990, p.22). Park, for example, centred his thesis upon the motive (competition for survival) of the process and its physical results (natural areas) without analysing the **operative mechanisms** that transformed the motive into physical reality. On the other hand, according to Saunders, as competition is a human motive, thus it is not excluded to people in cities; therefore, Park's theory of human ecology is not specifically urban; it is not considered as a theory of cities, as he claimed (Saunders, 1985, p.71).

**(1) Definition by numbers (size, density)**

Simmel was one of those who defined the city by its size. Others (e.g. Weber) rejected this criterion for defining the city and argued that numbers alone mean very little (Mellor, 1977, p.65-66). Wirth developed Simmel's definition by bringing another criterion into it, that is, population density within a given area.

**(2) Definition by function**

Scholars using this approach tried to define and classify urban functions which should exist hence identify the city. Some of them considered the dominant mode of production as the defining urban characteristic, as Marx pinpointed early in his writings. In broad terms, they perceived the city as the place in which people are not primarily engaged in agriculture (Jones, 1966, p.4-5).

**(3) Institutional definition**

Some studies, mainly carried out by historians, have tended to define the city in terms of one exclusive set of factors (Jones, 1966, p.6). Different institutions: economic, political and administrative, or religious were taken as the focal point of those studies.

Weber was the pioneer in defining the city in terms of **economic and political organizations**. He suggested an ideal type of the city with five main criteria (see p.26 above) based on the existence of certain economic and political aspects.

Later, in his historical study of medieval cities, Pirenne, focusing on the **economic factor**, stated that all the facets of city life in medieval times could be explained in economic terms. He argued that it is the market and community of merchants that give the city its title. Pirenne distinguished sharply between a town and a city by the type of market that exists in each. A city can be considered so only in the case of the presence of a non-local market which serves as a foci for the surrounding areas (Pirenne, 1925; Jones, 1966, p.6). On the other hand, Maitland, influenced by Weber, stressed the importance of **legal institutions** in defining the city and in the distinction between city and village (Jones, 1966, p.7). Simmel and Wirth based their definition of the city on its **social institutions**. They focused on the quality of relationships between people in urban life, but they did not come to any possible method of measuring this quality (Press, 1980, p.49).

**3.4 THEMES AND THEORIES**

Some substantive themes and theories can be extracted from the main approaches presented above. Later scholars (Orientalists among them) adopted and used those themes and theories as bases for their urban studies. These themes were parts of major theories and were used sometimes as tools of clarification, understanding or interpreting other more important (in the scholar's view) aspects of a major theory. In other words, those themes were just auxiliary tools for developing that theory.

These themes are classified here according to their methodological approaches, with subtitles based on their main focus.

### 3.4.1 Dichotomy theories (Dualism)

The idea of dualism means bringing two oppositions together to find the similarities or differences between them. In this theory, scholars sometimes presume the existence of these two oppositions only. For example, in the case of the industrial / pre-industrial cities dichotomy (clarified below), scholars ignored any other city type that might have occurred at any other time or place than that covered by their industrial / pre-industrial distinction.

#### (1) Contrast theory: rural-urban dichotomy

Distinction between traditional (rural) and modern (urban) communities. This **country-town dichotomy** was initiated by the fathers of sociology in different manners. Marx pinpointed this antagonism, claiming that it arose from the private property system and the mode of production, and that it is a feature of a capitalistic regime. Durkheim, Simmel, Toennies and Redfield based their distinctions on the patterns of social relationships.

#### (2) Industrial/ pre-industrial cities

This dualism was unintentionally initiated through the first studies in urban sociology. They investigated the changes which occurred in industrial capitalistic societies by referring to their roots in a pre-industrial era. Afterwards, scholars, such as Sjoberg in his “Pre-industrial city” (1960), concentrated on this dichotomy and based their studies on it.

This dichotomy considered cities as split into two, and only two, types: industrial and pre-industrial. The general labels, industrial and pre-industrial, presume an overriding similarity between all industrial cities and between all pre-industrial cities regardless of their geographical location, their cultural bases and other aspects. The pre-industrial era covers all history from antiquity to the industrial revolution everywhere, so if all of this enormous era and geographical diversity is to be studied under one single label, then the study is falsely circumscribed from the beginning.

#### (3) Oriental/ Occidental cities

Influenced by the modern attitudes of universalism and the superiority of the West, Weber stressed this dichotomy in his study of the city in 1905. He made a clear distinction between the Occidental city, which he saw as the model of cities as it matched his ideal type of the city, and the Oriental city. The Occidental city was the medieval European city, while the Oriental city was any non-Western city that existed at the same time or before. Weber made his generalization about all non-Western cities and considered them to be similar, regardless of their origins, regimes, or evident characteristics.

#### (4) Parasitic/ Generative city theory

This dichotomy distinguishes between the productive (generative) city and the consuming city which lives on the production of surrounding areas (parasitic) (e.g. Weber, 1958; Jefferson, 1939; Hoselitz, 1955). Cahnman (1995) also highlighted this distinction. Influenced by Weber and other Orientalists’ studies, he drew examples of the consuming cities from the Islamic world, arguing that fortress or a court city like Fez in Morocco, religious cities like Mecca and Medina in Arabia, and Kerbela in Iraq, are of this type.

### **3.4.2 Comparative theories**

Comparative theories revolve around constructing or presuming an ideal type or model (the main unit of comparison) with which other phenomena are compared. A major methodological issue is whether this suggested model or type and the indicators chosen for comparison are genuinely comparable and can legitimately be used outside their specific cultural settings. This model or type is constructed by the scholar himself, emphasizing a certain issue for the purpose of his study.

#### **(1) Ideal-type theory**

This theory was established by Weber as a method to study any phenomena through comparing it with hypothetically constructed ideal-types. The application of this ideal-type method to cities stemmed from the assumption that cities are virtually similar, in principle. Therefore, Weber treated cities in general terms, comparing any city, at any time and place, with his subjectively constructed, partial ideal-type.

#### **(2) Territorial similarity**

This theory was suggested by Park of the Chicago School. It looks at the city through its functional and territorial zones (natural areas), and it assumes that each individual territory (slums, central business district) can constitute an ideal type to be used in studying similar territories elsewhere. Again, this comparative theme classifies territories into types, presuming similarities within each type, regardless of their location.

### **3.4.3 Hermeneutic theories**

Literally, hermeneutics means making the obscure plain but is generally translated as “to interpret”. Modern hermeneutics is concerned with understanding how a member of one culture or historical period grasps the experiences of a member of another culture or historical period (Balikie, 1995, p.28-9). In our study, theories of hermeneutics refer to interpretations of cities and societies in order to understand how they operate. These interpretations took different directions, according to the focus of the study, but most were concerned with understanding the social structure within the city rather than the city itself. Hermeneutics is the process of grasping the unknown whole from the fragmented parts and using this whole in order to understand the parts.

The difficulty of hermeneutic analysis lies in how to validate its interpretations. Scholars came to understand the whole of social actions and processes through suggested partial propositions (which might not exist in the first place) and then interpreting the whole setting through those propositions. The interpreter, in investigating territorial settings in certain society, for example, tries to recapture the original perspective within which that society acted and formulated its own territories. However, there is always a gap between interpretation and reality. Interpretations are always subjective, tentative and subject to revision. The following are the main perspectives constructed as tools to interpret the whole social and, sometimes, spatial settings of cities.

**(1) Urban conflict theory**

The question of how social order is established and preserved in any society or social group has been a central issue in sociology. This urban conflict theory perceives the nature of a society as in a constant state of conflict, due to the differences in group interests. Society is held together not because of agreement, but because one group actively oppresses the others. This was clear in Marxist theory, which centers on a perceived clash between the interests of the presumed two basic classes of society, capitalists and workers (proletariat) (Greed, 1996, p.216, 229). Conflict would ultimately transform society. Within Marxism, various types of conflict, such as industrial or political, are always seen as manifestations of, and explained by, a deeper contradiction between capital and labour.

The development of this theory assumed different forms. Simmel believed that conflicts in society had positive functions for social stability. Some other sociologists, mainly functionalists, saw conflicts as pathological rather than the normal state of a healthy social organism (Abercrombie, 1994, p.80-81). Ethnic and minority groups conflicts with the majority, due to inequalities, are part of this theory.

**(2) Consensus theory**

This approach to social order assumes a degree of social consensus in the form of agreement over values and norms. This view was adopted by Durkheim, and has been closely associated with “functionalism” that, later, has been most fully developed in the writings of Talcott Parsons.

**(3) Natural process theory (Social Darwinism: survival of the fittest)**

Competition and adaptation was the theme suggested by Park in his human ecology theory to interpret the urban process of dividing the city into territorial zones. This theme, as Sjoberg (1960) argues, can only be applied to Western industrial cities and not necessarily to cities of other times or places, especially since it is grounded in a market-centered paradigm based on neo-classic economic theory.

**(4) Social stratification theory**

This theory perceives the city as containing a stratified society. It attempts to identify its classes or status groups according to presumed bases of inequality. That is, stratification has different dimensions, based on criteria of hierarchy, which includes wealth, power, age, religion, ethnicity or any other characteristic. Marx based his theory of stratification of the industrial-capitalistic society on economic and power bases. This was the stamp of many other later urban studies (mainly Marxist studies).<sup>9</sup>

As part of their social stratification studies, scholars of the Chicago School were concerned with studying specific classes of small groups, especially **gangs** (Greed, 1996, p.218;

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<sup>9</sup> Other scholars, while using this theme, argued that industrial societies' class-type stratification does not necessarily apply to other non-European societies like the USA, for example (Abercrombie, 1994, p.413). These differences might be attributed to variations in values, ways of life, and cultural origins.



Whyte, 1943). They saw gangs as the product of the urban disorganization of working class communities. That is, men in gang groups were bound together by conflict with the wider community (Thrasher, 1927); this phenomenon was attributed to class conflict.

**(5) Mosaic theory (or plural society)**

Mosaic means a collection of different separated parts put together in one setting; each part does not belong to the whole setting and does not relate to its neighbors except that they all share the same setting. In terms of urban studies, it means the segmentation of the urban society of any given city, i.e. plural society. Despite the fact that people are living in the same city, they do not have any loyalty towards it; they are only dwellers there.

This theory was originally developed in the light of Weber's investigation of Antiquity and non-European medieval societies. Social relationships in these societies were based on tribal and kinship ties, reflected in the territorial distribution of their settlements. Each territory constituted an independent entity with no relationships or communication with other territories. Also, there was no communication between these groups or with the higher authority. This tended to prevent the appearance of any communal association. Therefore the concept of the "community" was differentiated from that of the "state". This, he said, was the cause of the fragmentation and segregation of the city and its urban population (Weber, 1973).

In his investigation of Islamic societies, Weber highlighted the structure of these societies which consisted of a wide mix of ethnic, religious and regional groups, bound together by tribal ties between the population. He attributed the preservation of this mosaic-type society to the Islamic religion itself. He argued that Islam, as indicated through history, never overcame the rural ties of Arabic tribal and clan association. Comparing Islam with Christianity in this respect, he argued that Christianity, through its emphasis on individualism, was the final element destroying the significance of clans in societies that became Christian (Weber, 1973, p.96). Weber's study of Islamic societies was based implicitly on a constructed ideal-type which stemmed from the medieval European society that he saw as centered on the individual and his participation in the urban processes. He looked at non-matching societies as unhealthy societies, and tried to find the causes of this unhealthiness by comparing them with his ideal society. Thus, Islamic societies, based on clan associations and not on the individual, according to Weber, did not match his ideal type, and therefore were depicted by him as having pathological attributes.

Later, the Chicago School elaborated this theory further, and came to believe that the city, through its natural areas, is nothing but "a mosaic of little worlds" (Sennett, 1969, p.126).

**(6) Institutional theory**

Institutional theory looks at and interprets the city through the operation of its different types of institutions. Major complexes of institutions are conventionally identified: economic, political, cultural and social institutions.

**(6.1) Economic and political institution-based theories**

Weber pinpointed to the significance of the city's economic and political institutions represented, in his study of medieval cities, by the market as economic institutions, and by guilds, corporations and autonomous communes as political institutions.

**(6.2) Social (human) associations**

This approach to the city analyses the patterns of relationships between the elements of its society. Departing from modernity's conceptions of individualism and citizenship, Weber referred to human associations in the city in terms of their basic bonds, whether based on **individual** or **group** relationships. He argued that the urban society in any city should be built around the individual citizen. There is no room for kinship and clan ties; if these are exhibited, the structure will not be called a city. He included this idea in his ideal type, which appeared to be a normative image of the urban society.

Many other studies attempted to map the networks of relationships within a community, with the aim of revealing the social structure and patterns of communication. Durkheim emphasized the interrelationships within society which he viewed as based on an agreement (consensus) grounded on shared values and norms. He emphasized the role of religion as an integrative, consolidating system in society that works to generate and maintain social solidarity and equilibrium (stability).

**3.4.4 Descriptive theories**

This is an auxiliary theory for other major theories. It helps the scholar to proceed in developing his theory by clarifying, classifying and organizing, in a descriptive manner, the information gained about certain aspects of a society.

**The city as a pathological milieu**

This approach describes the city by highlighting its social pathological aspects (from the scholar's own view) in comparison with other ideal types of (healthy) social order. Durkheim used the term "health and morbidity" to refer to the two contrasting conditions of a society in terms of its healthiness (Morrison, 1995, p.158). Examples of the latter can be drawn from traditional pre-industrial societies, while the industrial capitalistic societies were regarded as having pathological characteristics.

**3.4.5 Analytical hypothetical theories**

This type of theory has two consequential methods. The first is an analytical one, used as a prerequisite for the second, the hypothetical. The analysis of the structure of the city or the society done in the first stage are used to pave the way for the proposition of an ideal type or model for the central subject.

**Location theory**

This was developed by Burgess of the Chicago School (1927). He located different functions in the city, dividing it into land-use zones according to the function of each zone and to its residents' social class. This theory was based on **empirical observation** of the

growth and evolution of existing cities, such as the city of Chicago. Based on these empirical investigations and on the Chicago School's thoughts, Burgess proposed a concentric zone model of cities, which was later developed in different ways by other urban sociologists and urban planners (Greed, 1996, p.218-220). This process of theorizing the evolution of cities follows an inductive methodology; i.e. forms generalizations based on observations of one or a few cases. For example, Burgess based his universal concentric zone model on observations of the city of Chicago, regardless of its specificity (the same method was adopted in studying Muslim cities, as explained in the next chapter).

### 3.5 CONCLUSIONS

The above Western urban studies constituted the main **roots** of Islamic urban studies, as developed in the West. Theories generated within these Western studies were adopted and reflected in Orientalists' studies of Islamic cities, particularly in terms of methodologies, themes and approaches. The effect of those classical theories of urban sociology was stronger at the beginning of Islamic urban studies than in later stages, when those theories were developed and took different shape. Also in later stages, other scholars from other disciplines, such as architecture and urban planning, participated in the field of Islamic urban studies and influenced the development of the field. New themes and approaches proved more useful in comprehending and illuminating different facets of Islamic cities. The influence of those roots on Islamic urban studies is the subject of the next chapter.

**Chapter Four**

**Islamic Urban Studies**  
INFLUENCES

## 4.2 EXTERNAL INFLUENCES

## 4

## ISLAMIC URBAN STUDIES

## Influences

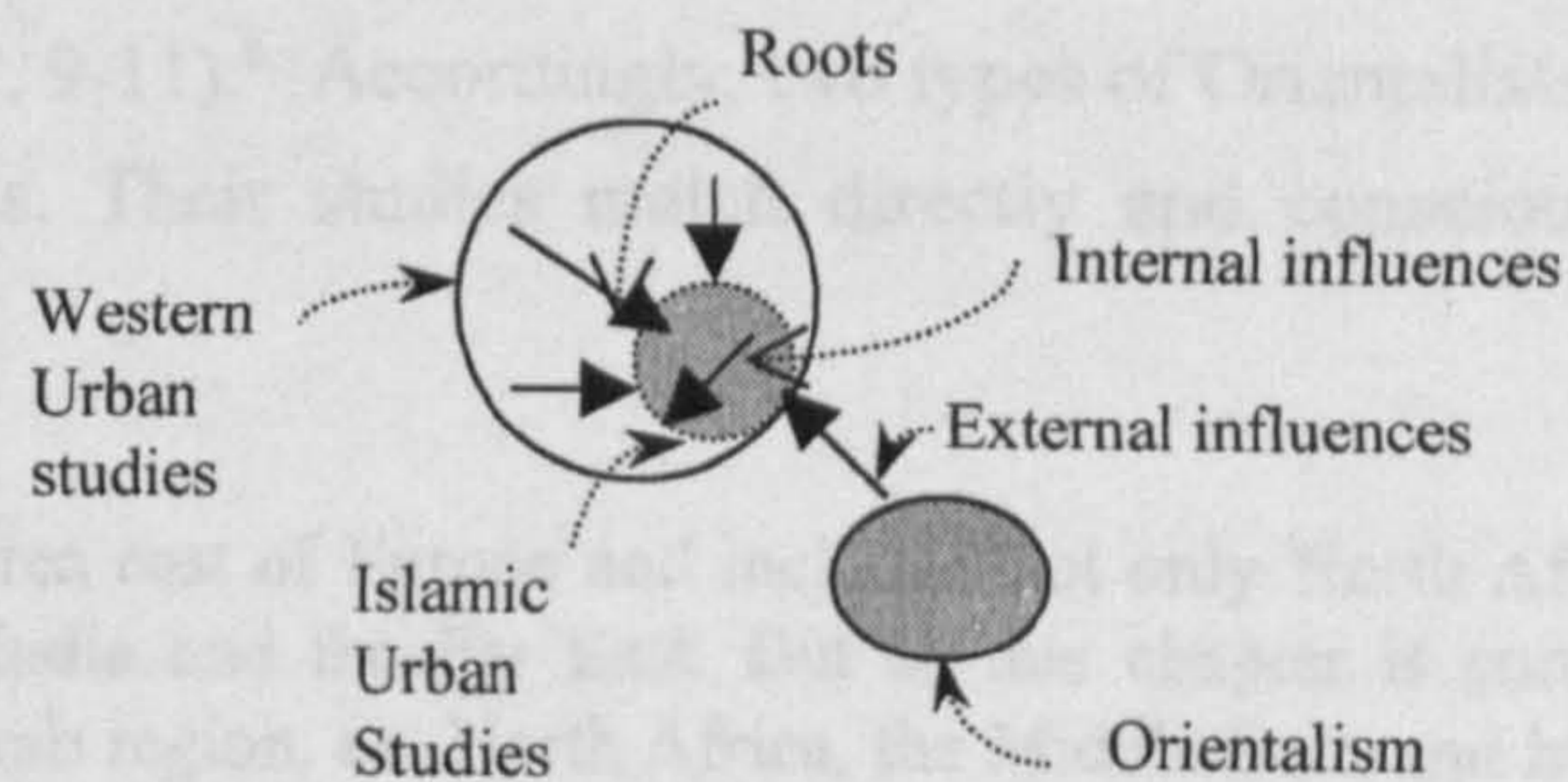
The modernist intellectual [work about non-Western cultures] typically spoke with the confidence of standing at the cutting edge of time and being able to speak for others.

(Huysse, 1992, p.69)

## 4.1 INTRODUCTION

Any field of knowledge is exposed to different **external influences** from its surrounding contexts, and during its evolution, to **internal influences** generated within the field itself and affecting later studies. This chapter is concerned with exploring those influences on Islamic urban studies as well as the effects of Western roots, demonstrated in the previous chapter, on these studies.

While Western roots shaped Islamic urban studies epistemologically, external influences took part in formatting the origins of Islamic urban studies in terms of researchers' attitudes. Internal influences mean the effects of earlier studies on later ones. For example, when a new paradigm is established, this motivates some scholars to circle their thoughts within its orbit, whether defending or attacking it, accepting or rejecting it (Kuhn, 1970). Thus, this new paradigm, generated within a certain context and subject to external influences, acts as an internal influence on the course of later studies. Internal influences conveys the effects of both roots and external influences as well as their own effects. In other words, they are related both to the authors' level as well as the epistemological level of Islamic urban studies.



(Fig.4.1): Roots and influences of Islamic urban studies

This chapter first looks closely at some of the external influences that have affected Islamic urban studies. To explore the internal influences and the effects of Western roots, it traces the main developments in the field of Islamic urban studies; highlighting the main sources, influences and arguments of relevant key studies since their beginnings up to the present time.

## 4.2 EXTERNAL INFLUENCES

Up to the 1970s, Western Orientalists were mostly the leaders in the field of Islamic urban studies. Being Western and coming from a different society from the one they were studying (i.e. Muslim cities), Orientalists had certain *a priori* notions and presumptions about the Muslim world, and as individuals, they had their own values developed within their own contexts. These notions and values defined their attitudes and influenced their studies of Islamic cities. But, what were the most important external influences on Orientalists' studies of Islamic cities? In order to address this question, Orientalism as a Western movement is briefly examined.

### 4.2.1 Orientalism

Orientalism as a movement began in 19<sup>th</sup> century Europe and covered different disciplines. Different debates exist about Orientalism's origins, nature, and its impacts on the Orient.<sup>1</sup> As a movement, Orientalism acted as an external influence on the course of Islamic urban studies (fig.4.1). This chapter will thus explore the impact of Orientalism on Islamic urban studies in terms of its notions and vision of the Orient, its cities and its people.

Orientalism, as it relates to the Arab region, was an adjunct to Western territorial expansion in that region and was funded by the French government (Haneda and Miura, 1994, p.2-3). It began as an introductory process of discovering and understanding the Arab region, a Western target of colonization (Al-Musawi, 1993, p.28-34). In 1904, France organized a mission to undertake a general survey of the cities and tribes of Morocco.<sup>2</sup> The result was a concentrated multi-disciplinary study which covered the administrative structure and the political, religious and economic organizations of a number of cities. This mission was important, as it heralded the beginnings of Islamic urban studies.

Orientalism, generally, started as a politically motivated movement to discover the Orient. Over time, other types of Orientalism emerged, according to their aims. In his controversial book, "Orientalism", Sa'id distinguished between two types of Orientalism: political and academic, and between types of knowledge which each generated: political knowledge and pure knowledge, respectively (Sa'id, 1978, p.2, 9-11).<sup>3</sup> Accordingly, two types of Orientalists can be classified: first, the political Orientalists. Their studies match directly and consciously the

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<sup>1</sup> The term "Orient" referred to the vast area east of Europe and included not only North Africa, the Middle East, and the Levant, but also India and the Far East. But as this chapter is confined to examine studies of Islamic cities in the Arab region, i.e. North Africa, the Middle East, and Iraq only, the term "Orient" will be used referring to this region specifically.

<sup>2</sup> Prior to this survey, Napoleon did a comprehensive survey in his expedition to Egypt (1798). This survey was published in *Description de l' Egypte*. However, from the French colonization of the Maghrib (Morocco, Tunisia, and Algeria) in the 19<sup>th</sup> century, exceedingly systematic field surveys were carried out, in conjunction with the needs of colonial administration (Hanida & Miura, 1994, p.2).

<sup>3</sup> Actually, Sa'id, implicitly, relates these two types of Orientalism, as he considers the two types as two faces of the same coin. They both, ultimately, lead to the same political Orientalism. Also, he found that the two types of knowledge, consciously or unconsciously, served the political aims of Orientalism because of the manner in which the produced material and information was used.

political plans of Orientalism. They produce political knowledge. Second, the individual Orientalists, who are researchers and/or writers dealing with the Orient as an area of their interest. They produce pure knowledge.

Orientalism was based upon certain constructed notions, developed in the West by **modernity**<sup>4</sup>, and which, over time, became part of an indispensable reality that was rarely questioned.<sup>5</sup> Among these notions is the Orient/Occident dichotomy (Sa'id, 1978, p.2); the **us/ other** dichotomy which refers to the European doctrine of “**us**” as superior to all non-European nations and cultures (including Islamic civilizations) which Westerners refer to as “**the other**”; and European political hegemony and presumed superiority of knowledge and power over oriental backwardness. Orientalism, therefore, as defined by Sa'id, is “a certain will or intention to understand, in some cases to control, manipulate, even to incorporate, what is a manifestly different ...world. ... It is a discourse that is...produced and exists in an uneven exchange with various kinds of power” (Sa'id, 1978, p.12). Thus, if one accepts Sa'id's argument, the Orient was not a free subject of thought. A very large mass of Orientalist literature, some of which was about Islamic cities, consciously or unconsciously, was coloured by and circled around such preconceptual notions. Of course, the **positive** aspects of Orientalists studies are numerous. However, the focus in this chapter is on their negative impacts on Islamic urban studies.<sup>6</sup>

Orientalism tended to link Arab regions with Islam as a civilization, religion and culture, and considered any phenomenon arising in the civilization of a Muslim country as totally conditioned by Islam. Thus, Orientalists used the terms “Islamic institutions”, “Islamic social and economic activities”, “Islamic urban space”, “Islamic art and architecture”, “**Islamic cities**” etc. This approach was criticized and rejected by later scholars of Islamic cities, as shown in this chapter.

In brief, external influences represented by Orientalism (through its preconceptual notions, especially the Occident/Orient distinction, and by Orientalists' individual values and notions) affected the manner of Orientalists' studies of Islamic cities. These effects were clear throughout Orientalists' earlier studies (e.g. Sauvaget, 1934); as the scope of the field of Islamic urban studies was relatively limited, undeveloped, and thus internal influences on it were minimum. Over time, as the scope of the field broadened, the effect of Orientalism as an external influence started to decline; many scholars (e.g. Lapidus, 1967; and Raymond, 1994) criticized and attempted to abandon Orientalism's preconceptions and notions. As local scholars contributed to the field at later times, and more disciplines participated in it, other sorts of

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<sup>4</sup> Examples of these modern notions are explored in chapter five below.

<sup>5</sup> Although postmodernity (as shown in chapter five) claims to question such notions, certain ideas such as the superiority and hegemony of the West over the Orient persist.

<sup>6</sup> Sai'd's study of Orientalism is quite controversial. It created a wide debate about Orientalism, its nature, methods, positive and negative impacts, and the like. Although coloured by its presumptions and attitudes, Orientalists, in terms of Islamic urban studies, led to advancement of knowledge in this field. Most of their suggested studies, although criticized in this chapter, opened new horizons for studying the Muslim built environments.

external influence affected Islamic urban studies. For example, local scholars' values and notions as indigenous members in the world investigated (the Orient) (e.g. whether such values are Western-based or locally-based; what position those scholars hold regarding modernization and similar issues), as well as their beliefs as Muslims.

### 4.3 INTERNAL INFLUENCES

To explore internal influences on Islamic urban studies, the main shifts of concern in studies of Islamic cities are traced. The focus is on studies by both Orientalists and local scholars of Islamic cities in the Middle East, Iraq and North Africa. Particular attention is paid to pioneer studies in the field from their beginnings up to the present time, such as Massignon (1920), W. Marcais (1928), Sauvaget (1934), G. Marcais (1940, 1945), Brunschvig (1947), Grunebaum (1955), Cahen (1958), Ashtor (1956), Lapidus (1967), Abu-Lughod (1980, 1987) as Orientalists, and such as Al-Hathloul (1981), Akbar (1984), and Hakim (1986) as local scholars.

#### 4.3.1 Islamic urban studies

The term "Islamic city" dominated Orientalists' work in the field of Islamic urban studies from their beginnings. This could be explained as an attempt to understand all cities in the Islamic world as a whole in a unified and uniform manner. During the 19<sup>th</sup> century, as part of the French mission, the focus was on certain existing pre-modern Arab cities, such as Algiers, Tunisia and Fez, which Orientalists visited in the countries ruled by their governments. At the beginning of the 20<sup>th</sup> century, French scholars continued to conduct more specialized studies of Islamic cities, particularly of those in North Africa. French studies were later extended to cover a few cities in Syria, such as Sauvaget's studies of Damascus and Aleppo (1934, 1951). Conclusions drawn from such particular studies by French and later by other Western scholars were generalized, regardless of their time or location, assuming that any phenomena occurring in any Muslim city at any time was a characteristic of what Orientalists came to call "the Islamic city".

Through these studies, Orientalists tried to define the Islamic city according to their discipline. Most of these definitions represented the Islamic city as an ahistorical (timeless) entity which is **static**, historically or geographically. Their definitions depended on what these Orientalists saw in the pre-modern Islamic cities they visited, and on their own hypothetical, reconstructed images of the Muslim city, based on a few descriptions in Muslim manuscripts. Such images disregarded cities' evolution. They dealt with Muslim manuscripts' descriptions as though the cities were static entities. In that sense Orientalists used modernity's universalism and the positivist method of generalization evident in the "Orient/Occident" dichotomy on their definitions of the Islamic city. Surprisingly, many later scholars considered these early studies as authoritative; they adopted them unquestionably without investigating their validity.

Islamic urban studies went through different shifts and jumps in their centres of focus and approaches. Many recent writers have attempted to trace the different approaches to Islamic urban studies. Different classifications were created. Raymond (1994), Haneda and Miura (1994) classified these studies according to the geographical areas covered, such as the North African school and the Syrian school. Abu-Lughod (1987) described the main works of the



Orientalists chronologically, pinpointing the chain of successive authorities (*'isnad*). While those scholars focused only on the studies produced by Orientalists until the 1960s, Akbar made his classification by highlighting the main paradigms (centers of focus according to his classification) through which Islamic urban studies went, beginning in the twentieth century to the present time. He focused both on works by Orientalists and by local scholars (Akbar, 1994).

Within the context of this study, to explore the effects of the Western roots as well as different influences on Islamic urban studies, categorization of the different **paradigms** of Islamic urban studies is based here on the research **methodologies** adopted by their authors, and on the main **approaches** and **themes** used. Those categories have been **concluded** from analysing relevant key Islamic urban studies.

Methodologies denote the manner of study (e.g. descriptive, comparative, etc.) and its epistemological bases ( e.g. positivist, interpretive, etc.). Themes refer to the main centre of focus (e.g. functional or physical themes); however, approaches refer to the vision of the author towards the city, for example, whether it is static or dynamic. Logically, some studies of Islamic cities are considered authoritative, as they established other conceptions and influenced later works in the field of Islamic studies. Such key studies are grouped here under each category.

The main approaches, methodologies and themes of research in the works of both Orientalists and local scholar are illustrated in fig.4.2.

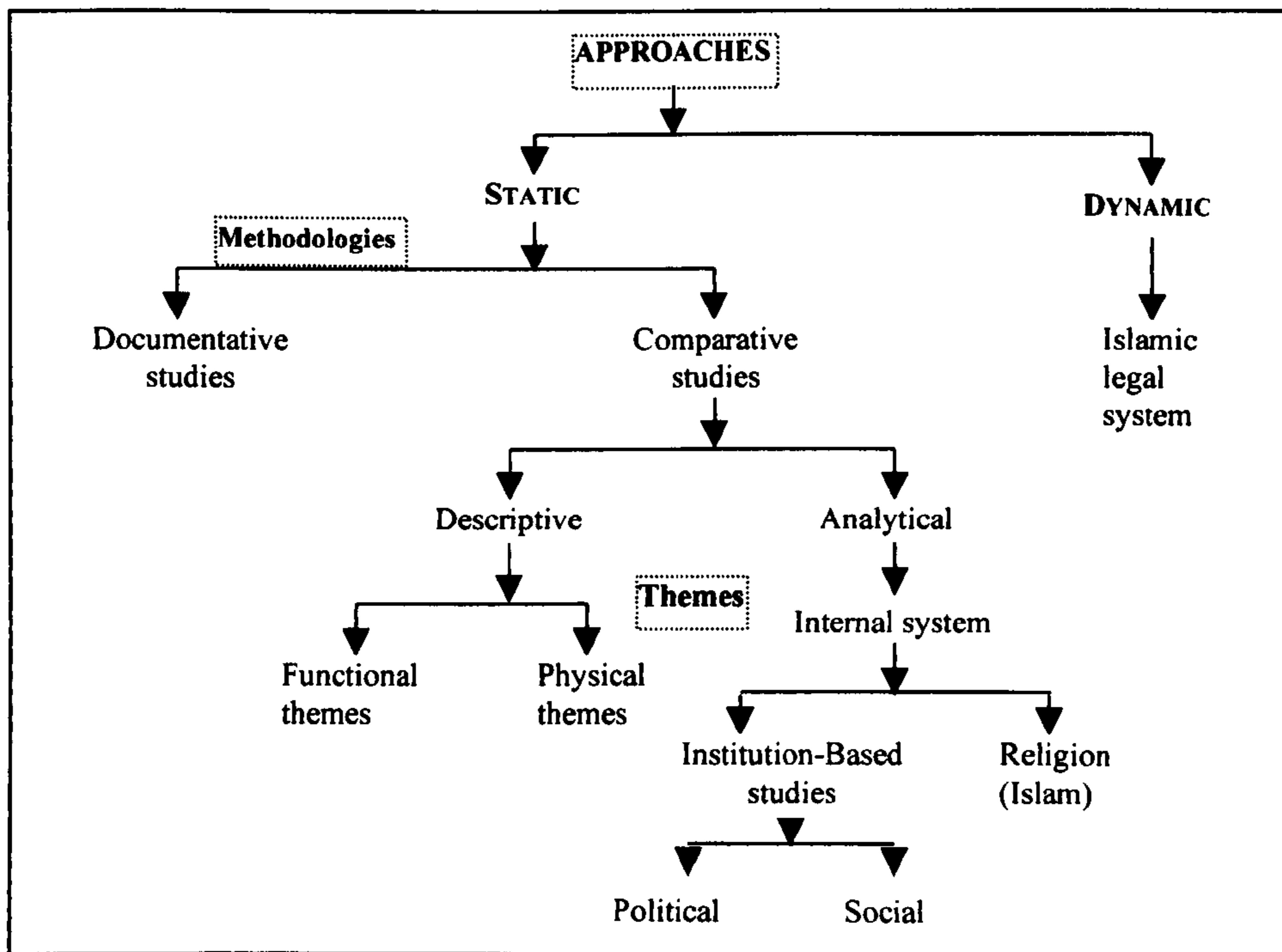


Fig.4.2: Approaches, methodologies, and themes of Islamic urban studies.

However, to understand those studies in relation to our current study, the following argument induced in this research from analysing those studies is presented first. Islamic urban studies presented in this chapter will be investigated in the light of this argument.

## ARGUMENT

One of the main arguments this study develops is that the urban built environment in general consists of three interrelated levels or structures: first, the “**manifested structure**” defined as the physical status quo. This structure is visible and tangible. For example, the prevalence of dead-end streets and courtyard houses in Muslim built environment belongs to this level. Second, the intermediate level or the “**operative structure**”, which is invisible yet perceptible. It is defined here as the tools that relate the visible effects to its perceptible causes, such as the city’s institutions (political, administrative, economic, social, etc.). It is called intermediate, since it functions as an intermediate tool between the other two structures. Such causes are not static but susceptible to change. Thirdly, the “**imperceptible structure**”, defined as the underlying (relatively) static causes that produce the perceptible effects (operative and manifested). Such imperceptible causes are either static, as is the case in Islam, or relatively dynamic (change very slowly), as is the case in capitalism or socialism (as explained in chapter eight). This structure is invisible and latent. It embodies society’s values, principles and mechanisms (generated by ideologies, or derived from religion as in the case of Islam). Therefore, this structure influences the built environment’s two other structures. In a city, the “**manifested structure**” is the expression of the “**imperceptible structure**” implemented through the intermediate “**operative structure**”; also the “**manifested structure**” affects the “**imperceptible structure**” through its effect on the “**operative structure**”. It is an iterative, integrative process of interrelating the three structures together in any built environment. Cities might have similar manifested structures; however, their operative and imperceptible structures, in most cases, are different. Thus, to grasp a built environment, its manifested structure has to be investigated along with its other two structures.

## I. STATIC APPROACH

As inferred from investigating the field of Islamic urban studies, this approach to viewing Islamic cities seems to have dominated most Islamic urban studies since their beginning. It is actually quite difficult to make a clear distinction between this approach and the dynamic approach. Some studies might appear to belong to both approaches according to the angle from which the study is perceived. According to our research, studies viewing cities as always static, i.e. unchangeable entities, whether analysed on the manifested (physical structure) or operative levels (such as through cities’ institutions) are considered as adopting a static approach. Scholars through this ahistorical static (timeless) perspective dealt with the city as an **end product** and neglected the processes which generated it. They focused on outcomes rather than processes. Main methodologies and themes adopting this approach were:

### (1) DOCUMENTATIVE STUDIES

This type of study emerged from Orientalists’ fascination with art and architecture during their visits to Arab cities in North Africa and Syria. According to Orientalists’ tradition, these were labeled “Islamic art” and “Islamic architecture”. More attention was paid to buildings than to urban mechanisms of the city, people and life. In other words, they dealt with the **city as artefact**, focusing only on its **manifested** structure.

Initially, Orientalists, mainly historians and archaeologists, were interested in grand, monumental, formal buildings such as mosques, palaces and schools (*madrasas*) rather than in small more informal buildings.<sup>7</sup> Sectors of cities containing domestic buildings, residential quarters and markets (*suqs*) were studied only at later times. Maps and detailed drawings of real or reconstructed images of urban sectors, streets and buildings were produced. One significant study was that of G. Marcais (1926) which, to the present day, is considered a reliable guide to most Islamic religious buildings in the *Maghreb*, *Andalus* and Sicily up to the 19<sup>th</sup> century. Le Tourneau (1957) did a similar study, exclusive to Fez.

The pilot of such works in the Middle East was Creswell, noted for his significant contribution to the library of Islamic architecture. He produced two comprehensive studies of "Muslim" architecture in Iraq, Syria and Egypt, from the Arab conquest to the Mamluk dynasty: "Early Muslim architecture" (1932-40) and "The Muslim architecture of Egypt" (1952-9). They were richly supplemented with drawings and plans of reconstructed images and of existing buildings and cities. This made them useful aids to later studies.

On the scale of cities as a whole, a few attempts were made to reproduce the urban structure of Islamic historic cities, drawing on historical materials and archaeological field surveys. The leader of such studies was Le Strange; his key work was "Baghdad during the Abbasid Caliphate" (1900). His reconstruction of the round city of Baghdad as it was built (145H./762AD.) by Al-Mansur was widely used by other scholars in the field. Other versions of this reconstructed map were produced later by other scholars, such as Herzfeld (1920) and Creswell (1940).

In general, these documentative studies, either of buildings or cities, from their beginnings to present, were mostly descriptive; nevertheless, they were useful as a base for later analytical studies. Some scholars, such as Creswell, included in their studies some analytical ideas and contributed to the debate about Islamic cities, although insignificantly.

## (2) COMPARATIVE STUDIES

The influence of some Western urban theories was quite clear in shaping the themes of these studies. Apparently, **comparative and duality theories** (described in the previous chapter), more than others, seemed to dominate, affect and colour the studies of Islamic cities following this methodology. Both of these theories, in one way or another, were embodied in Weber's ideal-type urban theory.

That is, Weber's theory of the city was quite influential in shaping Islamic urban studies. In developing their theories, Orientalists either adopted Weber's ideal-type as it was or they developed, following his methodology, their own ideal-type of the Islamic city, limited only to Islamic cities.

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<sup>7</sup> This is true also for documentative studies of Western cities. They were concerned with recording and classifying monumental buildings in the investigated cities.

This does not mean ignoring the effect of **other** Western urban theories in shaping some of the studies of Islamic cities, but Weber's theory was almost the only one widely adopted and used as a complete theory and not as a partial theme forming part of, or used as a tool, in Islamic urban studies.

Several factors favored this wide adoption: first, Weber's theory fits the preconceptions and notions of Orientalism about the Occident and the Orient and the significant distinction between them. Second, it was the only relevant theory at that time (beginning of 20<sup>th</sup> century) to focus, comprehensively, on cities through history in different areas. Cities were treated within Weber's theory as total social systems with many interrelated activities: economic, political, religious and legal, and not, as in Simmel and Wirth's studies, exclusive to one aspect of the city. Third, it produced an **ideal-type** of the city, which became considered as a definition of the city. This ideal-type restricted the label of "city" to places with certain nominated items and components. Other urban theories used the city only as a condition for exploring other social phenomena, and did not consider the city as a physical entity or in relation to social processes taking place within it.

Those who adopted Weber's ideal-type, based on the medieval European city, such as Massignon (1920), Ashtor (1956), and Cahen (1958), used it to test the "validity" of Islamic cities. They were looking for similarities between Islamic cities and the ideal-type city to validate their assumption of the universality of the city as a phenomena, regardless of its time or place. They forgot that even Weber himself made a distinction between the Northern and Southern medieval European cities when constructing his ideal-type, which ultimately he based on Northern European cities of a certain time. In other words, Weber's ideal-type stemmed from a specific and unique case of cities, which could not exist anywhere else at any other time. Nevertheless, it seems that Weber himself considered the city a static phenomena when he used his constructed ideal-type to test other settlements and cities elsewhere to determine whether they truly were cities (Weber, 1958). Some Orientalists, like W. Marcais (1928), Sauvagat (1934), and Grunebaum (1955), used this framework to examine the city in question (to establish whether it was a city or not). Others, like E. Wirth (1982), used the same framework to reach a definition of whether or not the city is Islamic, i.e. to examine the existence of the **Islamic** city. Put differently, the same concept was used, unknowingly, for two distinct purposes; to examine the "**citization**" (i.e. city-worthiness) of a certain settlement, and to examine the **Islamization** of a certain city (assuming that it is a city).

As to the dualism theories, different types of dichotomies dominated Orientalists' studies. Some were used as the backbone of a study, while others were used just as supporting themes. Examples of these dichotomies are: the Orient/the Occident; modern/pre-modern; European/Islamic cities; ancient Roman/Islamic cities; the city/the country (rural/urban); parasitic/generative cities.

These dual, comparative-based theories embodied a certain degree of bias. Springing from their preconceptions, Orientalists tended to favour one of the two poles of the dichotomy, considering it as the model of comparison, and comparing the other pole with the first by enumerating what the other lacked. Sauvaget based his study of Damascus (1934) and later of Aleppo (1951) on a contrast between European [antique (Roman) and medieval] cities and Islamic cities. To prove the superiority of the former over the latter, he constructed an imaginary city ideal-type that does not exist in any single European city at any time. He considered ancient Roman cities as one facet of his ideal-type in terms of urban planning, and medieval European cities as another facet in terms of administration. Using this ideal-type in investigating the Muslim city, Sauvaget stated “The city is no longer considered as an entity, as a being in itself, complex and alive...”. He concluded that the Muslim city is no more than a non-city, and Muslim town planning is not planning at all (quoted in Raymond, 1994, p.7). In his description of a “non-city”, he characterized the city by what it is not. This approach of Sauvaget, and of some other Orientalists who drew similar conclusions supporting the same argument, such as Weulersse (1934) and Grunebaum (1955), does not obviously explain the city as much as criticize it.

Using this methodology, different attempts looked at Islamic cities from different viewpoints. These studies can be broadly categorized according to whether they are descriptive or analytical, and as a sub-categorization, according to the main themes used in investigating Islamic cities. As some overlap existed between these themes, different themes were included in one single study. This is seen in the inclusion of one study in different categories of theme demonstrated below.

## (2.1) COMPARATIVE DESCRIPTIVE STUDIES

Two categories of theme can be discerned in Orientalists’ writings about Islamic urban studies. These are the functional themes and the physical themes.

### (1) Functional themes

Hellenistic and ancient Roman cities were defined and characterized by their main physical elements and political institutions: government, gymnasium, theatre, market, baths, etc. (Grunebaum, 1954, p.75; 1955, p.141). Orientalists developed this idea into a dichotomy between these cities and Islamic cities, both implicitly and explicitly. Some Orientalists presumed the universality of the **method of defining** Greco-Roman cities; thus they adopted the method of defining the Roman city through enumerating the most significant elements, buildings and institutions, which appear in almost all Roman cities, to define the Islamic city. Such a method of definition stems from the observable manifested structure of the city. Orientalists defined the Islamic city by looking at the distinctive physical features which characterized some Islamic cities which they had studied, assuming that they existed in all Islamic cities. W. Marcais (1928), for example, defined the Islamic city by the existence of the Friday mosque (*jami*), the market (*suq*) and the public bath (*hammam*). Abu-Lughod described Marcais’s approach as an “etched idea” of the Islamic city, since

these elements can be found in other religious / cultural contexts and it has no topography (Abu-Lughod, 1987, p.156). Eickelman also criticized this approach, claiming that these features are not exclusive to cities only; they exist also in villages in the Muslim world. He wrote: “this style of approach does not even define the city adequately in the context of the Muslim world” (Eickelman, 1974, p.276). In this criticism, Eickelman focused on the distinction between town and country, an issue that gained wide attention amongst Orientalists, as explained below.

Berque (1958) accepted W. Marçais’s definition, yet transformed it into his own words as he defined the Islamic city in functional terms as a place for witness and for exchange, a somewhat different way of expressing the physical entities of a mosque and a market (Abu-Lughod, 1987, p.159). Similarly, Le Tourneau (1957) found that the main elements of Islamic cities are the mosque, the central market and the citadel of the rulers. Proposing similar elements, Eickelman (1981) defined the Islamic city by the existence of the *qasaba*, mosque, *suq* and quarter as distinctive physical landmarks.

Grunebaum alleged, with no convincing evidence, that as the distinctive elements suggested by W. Marçais were mentioned by medieval Muslim geographers, Muslims considered them as the main elements in defining their cities. He wrote: “So they (Muslims) define the town as a permanent settlement possessing a “cathedral mosque” ... and a daily market. Besides, the public bath is usually mentioned when essential elements of a city are enumerated” (Grunebaum, 1954, p.75). In his later articles, Grunebaum refers to these elements when examining an Islamic city as if their existence was in obedience to a rule (Grunebaum, 1955, p.141, 147), forgetting that he himself and other scholars constructed such rules, and that they were not invented by Muslims.

Gardet (1954), influenced by Pirenne (1925) in defining the city in economic terms (see p.30), pinpointed the *suq* (market) as its distinctive function (Haneda and Miura, 1994, p.41). Wirth (1982) reached the same conclusion, but from a different course of study. Reviewing the distinctive physical features of cities in Western Asia and North Africa during the Islamic regime, he rejected the usefulness or “reality” of the concept of the “Muslim city”, for the reason that every characteristic of cities in the Middle East and North Africa existed in ancient civilizations. None of those characteristics could be directly related to Islam as a religion. He found that only the *suq* is original, but argued that it is not much influenced by Islam. Therefore he suggested “to renounce the term “Islamic city” and to prefer the more general “Oriental city” ... Islam seems to be more the inhabitant or occupant of Middle Eastern urban systems than the architect” (quoted in Raymond, 1994, p.12). Wirth also rejected the designation of “Arab city”, since such characteristics can also be found in non-Arab cities (Haneda and Miura, 1994, p.40). In this sense, while admitting that there are numerous features in common among cities in North Africa and the Middle East, Wirth, implicitly, considered these settlements as cities and he attempted to examine the Islamization of these cities and not their “citization”. Yet he did not tackle those distinctive features of these cities from a dynamic perspective examining the

processes of their production. He focused only on the manifested aspects of Islamic cities, ignoring the operative and imperceptible factors (e.g. values, norms, property rights) that produced them. Following Wirth's method, many cities around the world would thus be classified under the same category as cities, without any attached attribute such as Islamic or Christian. Most cities share the same main physical features such as the market, religious buildings (temples, mosques, churches), streets, and the like. The difference between cities does not lie in their manifested structures (physical end-product) but in the operative and imperceptible mechanisms embodied in the processes of their production.

Since W. Marcais's implicit employment of the **European/Islamic cities dichotomy** in his definition of the Islamic city (1928), some Orientalists have used this dichotomy as well as the **contrast duality** (the contrast between town and country, see p.31) in defining the Islamic city and distinguishing it from the villages in the Islamic world. They were searching for a definition that could be used for testing both the Islamization and citization of cities in the Islamic world.

Basing their definitions on these two dichotomies, some Orientalists, such as Chater, tended to underline the main features distinguishing cities from villages. Chater (1978) noted that while both cities and villages have congregational mosques and public baths, villages contain a type of *suq* different from that in the city. In this sense, Chater considered the congregational mosque as a feature of both city and village (Haneda and Miura, 1994, p. 41). A criticism of Chater's argument as exclusive to later Islamic periods only is implicit in Johansen's work (1981). In early Islam, as Johansen stated, the presence of a Friday mosque presented a clear indicator to differentiate between cities and rural villages, since they were constructed exclusively in cities. But at later times, the Friday mosque was no longer a characteristic which distinguished between the two. Berque (1958) stressed this differentiation between city and rural village by function rather than form, such as the three elements of congregational mosque, *suq* and public bath, as defined by W. Marcais. He claimed that in Islamic cities Islamic law functions, while in villages custom rather than law prevails (Haneda and Miura, 1994, p.29).

In using this contrast theory to explore the functional relationship between the city and the countryside, some Orientalists attempted to make a further distinction between the two by employing another dualism, the **parasitic / generative** dichotomy. As Raymond explained "It is partly to J. Weulersse ... that we owe the concept of the Arab city as a parasitic body" (Raymond, 1994, p.5). To quote Weulersse, who used this concept in his description of cities in the Orient: "In the Orient, the city appears as a foreign body "encysted" in the country like a creation imposed on the countryside it dominates and exploits." He added that the reasons for this phenomena were that the city is "without human roots in the country that supports it and on which it lives ... The city's inhabitants thus [appear] as a drifting population ... Their only link with the countryside being the desire to exploit it to

the hilt ... The economic activities of the cities thus seem essentially parasitic ... The city... consumes but does not produce.”<sup>8</sup> Hourani rejected this parasitic/generative dichotomy which pictures the village as the productive (generative) and the city as the consumptive (parasitic). He stated that the village needed the city as much as the city needed the village. Thence, he considered both the city and the village as two mutually dependent components of one unit, which he called the “agro-city” (Hourani, 1965, p.16).

## (2) Physical themes

Despite W. Marcais’s significant influence on later studies, because of his functional definition of Islamic cities (1928), studies using physical themes are considered more advanced in terms of understanding Islamic cities than those which described and defined Islamic cities by function only.

If one considers the comparative dual approach as a framework under which other sub-frameworks emerged, then it is possible to list three sub-frameworks that helped to shape some of the physical themes in question. These are: first, European/Islamic dichotomy; second, territorial and location theory; and third, physical mosaic theory (territoriality).

### EUROPEAN/ISLAMIC CITIES DICHOTOMY

Employing this contrastive dualism, some scholars described the Islamic city by specifying where and how the Islamic city differed from the European city, which they considered as the ideal city type. Fascinated with antique Roman town planning characterized by its organized and planned tissue and grand monuments, Sauvaget (1934, 1951) tended to define the “Muslim” city<sup>9</sup> by enumerating all those elements it obviously lacked, that is: the regularity and institutions of the antique city and the communes of the medieval town (the latter are described in the institutional themes below). Denying the originality of the monuments of the Muslim city, he added that those monuments give only a depreciated image of those in the antique Roman city: “the souks, the qaisariya, the khan ... are but a degeneration of avenues with colonnades, of the basilica, of the agora”<sup>10</sup> (Raymond, 1994, p.6). Grunebaum, in the same vein, declared, without any evidence, that “It is **certain** that the *qaisariya* (covered market) was developed from the Byzantine basilike” (Grunebaum, 1955, p.146). As to urban tissue, Sauvaget envisaged Muslim urbanism as subversive of the ancient Roman cities that preceded them. In his study of Aleppo (1951), he claimed that the Muslim era “is unaccompanied by any positive contribution ... the only thing we can credit it with is the dislocation of the urban center, its fragmentation into small, distinct and even sometimes anti-nomical cells ... the work of Islam is essentially negative” (cited in Raymond, 1994, p.7).

<sup>8</sup> This quotation has been translated by A. Raymond (1994) from Weulersse, J (1946). *Paysans de Syrie et du proche-Orient*. Paris.

<sup>9</sup> Sauvaget used the term, the “Muslim” city, and not the “Islamic city”.

<sup>10</sup> This quotation has been translated by A. Raymond (1994) from Sauvaget, J (1951). *Alep, essai sur le développement d'une grande ville syrienne*. Paris.



In depicting the Islamic city, Sauvaget, Weulersse, Creswell and other Orientalists, dealt with it as if had a **static** status. Le Tourneau (1957) wrote: “an aerial **photograph** of any Muslim city makes us think of a maze, or a labyrinth” (bold emphasis added). In this way, they characterized the “Muslim” city in physical terms as anarchic, by underlining the irregularity of its streets, not perceiving the imperceptible **mechanisms** which had created this irregularity. In other words, the European/Islamic dualism was applied on the manifested level of Islamic cities only, and not to the imperceptible level.

Grunebaum viewed medieval Latin, Greek and Islamic civilizations as basically related civilizations. For him, the Greek intellectual heritage was the common element between Latin, Byzantine and Islamic civilizations, while some of the differences between the three civilizations were to be understood in their differing **uses** of the classical heritage (Wilson, 1976, p.3). Grunebaum in that sense interpreted those cities on their manifested level only, assuming that similarities on that level mean similarity between cities. Such a method did not consider the underlying mechanisms that are responsible for producing such manifested similarities. This approach, however, influenced many other later scholarly expositions which constitute an effort to trace the Greek cultural element in classical Islamic civilization or the divergences between Byzantine and Islamic civilizations.

Opposing studies refuted such disparaging comparisons between the Islamic city and the city of classical antiquity. Raymond, for example, criticized the ideas of attributing the destruction of the antique city’s regularity to the development of the Muslim city, and of asserting that the Muslim city replaced Greco-Roman order (physically orthogonal) and organization with a structure based on no apparent logical principal. He described this approach as “fundamentally negative” (Raymond, 1994, p.6). Cahen (1958) advised the avoidance of considering pre-Islamic urban history “through traditional images of an impeccable antique city ... The city inherited by Islam is no longer an antique city” (quoted in Raymond, 1994, p.11). This theme was convincingly used again by Kennedy as he noted that before the appearance of Islam, in urban communities of the fifth and sixth centuries in Syria, “there was no classical town plan to affect later growth ... The streets were narrow winding paths, there was no agora, no colonnades, no theatre” (Kennedy, 1985, p.13-14). Based on such arguments, Sauvaget’s theory (the Muslim city as a depreciated image of the antique Greco-Roman city) was challenged and somewhat undermined and refuted.

#### **TERRITORIAL AND LOCATION THEORY**

Other scholars looked at the Islamic city composed of several functional and territorial zones (called “**natural areas**” by Park of the Chicago School, see p.28 above). Assuming a similarity in all Islamic cities, they concluded that there was a typical pattern of functional distribution in Islamic cities. This territorial vision was developed into a model of the Islamic city, based on the location of each function (location theory, p.35 above).

Early studies, such as W. Marcais’s, were concerned with pinpointing the distinctive functional features of the Islamic city, yet they included no morphological analysis. As

Abu-Lughod stated, "It is George Marcais, however, who gives a morphology to the Islamic city" (Abu-Lughod, 1987, p.156). G. Marcais (1940, 1945) described the Islamic city in terms of its physical elements and organization. He remarked on the differences between residential and non-residential quarters and found that residential quarters were often distributed according to ethnicity or specialization. Also, city markets, he suggested, were ordered in a certain hierarchy which is not completely accidental.

G. Marcais (1940), based on his empirical investigations in North Africa, and then Grunebaum (1955), as the latter uncritically quoted and paraphrased the former, described the order of the functional zones' distribution in Islamic cities. The center was occupied by the great mosque and the government office (*dar al-'imara*)<sup>11</sup>; from the center towards the gates in the city wall, a hierarchy of different types of economic commercial activity (*suqs*) was located: *suq* of candles and perfumes, bookstores, *suq* of slippers and leather, *suq* of textiles, the *Qaysariyyah* (cloth market)<sup>12</sup>, *suq* of hats, etc.; other types of market and fairs existed out beyond the gates; and in the open countryside, cemeteries were located. For Grunebaum, markets in all Islamic lands exhibited the **same** general structure. As to the city quarters, Grunebaum argued that the unity of the Muslim town was functional and not civic. He conceived the residential quarter as a self-sufficient zone "complete with its own mosque, bath, and, as a rule, its own market", penetrated by narrow streets with no open spaces, and occupied according to the inhabitants' tribe or ethnic origin. Grunebaum, confusingly, applied the essential elements of the Islamic city as a whole, adopted from W. Marcais (1928), to the scale of the residential quarter. In this description, the residential quarters seemed to be separated, with no direct contacts between them.

These descriptive attempts by G. Marcais and later by Grunebaum were the first steps in the construction of a model of the Muslim city based on the relationship between territory and functions. This model was adopted by many later scholars, such as Le Tourneau (1949, 1961) and Coon (1952) in their studies of Fez (fig 4.3). Nevertheless, it should be mentioned that this first model included some obvious deficiencies. First, adopting a positivist inductive methodology, it was derived from evidence obtained from investigating certain cities in North Africa, and then generalized as a model that applies to all Islamic cities. Second, greater attention was paid in G. Marcais' study to the physical setting than to the social structure of the city, and neither he nor Grunebaum attempted to explore the **imperceptible** structure of this particular physical/functional pattern of Islamic city. Instead, they concentrated their attention on describing physical manifestations.

Other physical models of the Islamic city were constructed. Moneir (Arabic scholar) (1971), influenced by the Islamic city model of G. Marcais and Grunebaum, seemed to

<sup>11</sup> The government office was mentioned only by Grunebaum and not by Marcais.

<sup>12</sup> Qaisariyyah, according to G. Marcais, is a secure place encircled by walls where foreign merchants, mostly Christians, come to display their cloth materials brought from all European countries (Abu-Lughod, 1987, p.157).

have derived his model, as al-Sayyad concluded, from medieval Cairo (fig 4.4) (al-Sayyad, 1991, p.24). Under the same influences, 'Isma'il (1972), incorporating G. Marcais-Grunebaum model, based his study on the medieval cities of Cairo, Damascus and Aleppo, describing land-use patterns and the patterns of later physical growth. He assumed a similarity between Arab Islamic cities in their consequential patterns of urban growth. He suggested four successive patterns of growth, starting with the early medieval Arab cities (the beginning of the 16<sup>th</sup> c. AD.) and ending with their modern and contemporary period (fig. 4.5) ('Isma'il, 1972, p.122). Those two and other similar models can be criticized as embodying the same deficiencies of the initial model.

1. Friday mosque
2. Markets (*Suq*)
3. Public bath (*Hammam*)
4. Residential quarters

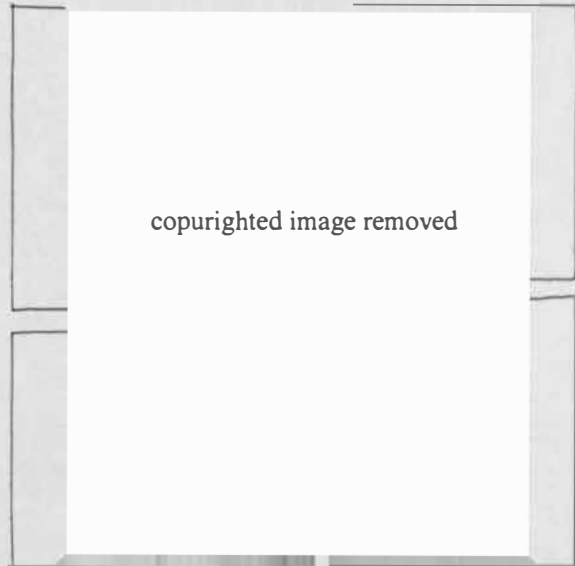


Fig. (4.3) The stereotypical Muslim city of North Africa, based on G. Marcais (1945), and Grunebaum (1955), (after al-Sayyad, 1991).

1. Main mosque
2. Royal quarter
3. Markets (*suq*)
4. Main thoroughfare
5. Residential quarter
6. Walls and gates
7. Citadel

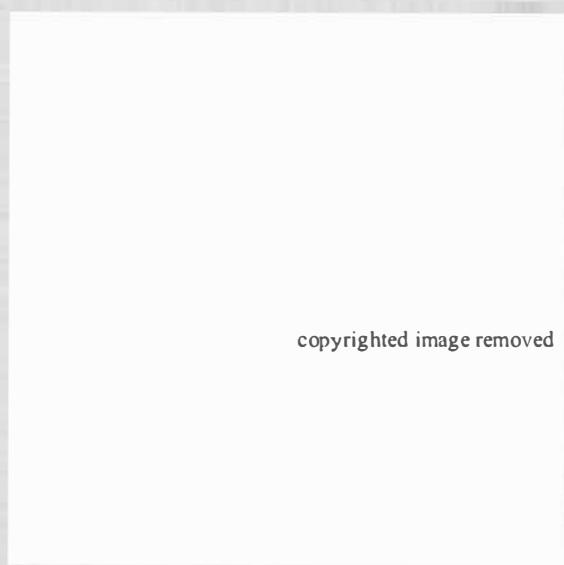


Fig. (4.4) A diagrammatic plan of a typical Muslim city, according to Moneir (1971). (after al-Sayyad, 1991).

1. *Jami'* mosque
2. Specialized markets (*suq*)
3. Square (*Maiydan*)
4. *Suq* of the thoroughfare with *khans* at both ends
5. Residential quarters with their own Mosque, markets, and bath house
6. *Hammam*
7. Citadel with government complex
8. Walls and gates
9. Cemetery
10. Semi-rural districts

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Fig. (4.5) A schematic plan of the early medieval Arab city, according to 'Isma'il (1972). (after al-Sayyad, 1991).

#### PHYSICAL MOSAIC THEORY (TERRITORIALITY)

Two consequential or mutual types of the **Mosaic theory** can be distinguished: the spatial mosaic theory and the social mosaic theory. The former is briefly explained here, while the latter is explored later in this chapter (section 1.1.b, p.59).

Some Orientalists, such as Sauvaget, Grunebaum, and Gibb, pictured the Islamic city as a collection of **segregated aggregates** of quarters without an overall integration, or, in Sauvaget's words (1951), "an inconsistent and inorganic assembly of quarters" (cited in Raymond, 1994, p.7). They described the residential quarters, based on their exegesis of social relationships and social institutions, as isolated introverted spatial entities, characterized by racial, or tribal, or religious homogeneity, with no social contacts but with **conflicts** between the inhabitants of different quarters. In that sense, Grunebaum reported "Not infrequently, the individual quarters are walled<sup>13</sup> and their gates locked during the night to counteract the insecurity of the town which is, after all, due in large measure to the perennial interquarter **animosities**" (Grunebaum, 1955, p.147-8).<sup>14</sup> Thus, as Sauvaget put it: "the Muslim city is no longer considered as a single entity, existing in itself, complex and alive: now, it is just a gathering of individuals with conflicting interests who, each in his own sphere, acts on his own account" (cited in Raymond, 1994, p.7).

<sup>13</sup> In later studies, Akbar showed that this is wrong. Quarters in Muslim cities connect to each other through physical elements such as overpasses, doors between houses, and alike (Akbar, 1988, p.164).

<sup>14</sup> While Grunabaum visualized the gates of quarters as defensive, Akbar pictured them as signs of territories that demarcate zones of responsibilities and thus, breaking down the task of maintaining the city to smaller more responsible groups (Akbar, 1988).

When referring such Orientalists' descriptions of the Muslim city to their overall studies, one can recognize certain contradictions in their descriptions. On the one hand, adopting the **consensus** theory and reflecting the functional theory of religion (advanced by Durkheim, explored in chapter three), Orientalists highlighted Islam as a religion of cities, which unites its believers into one society (*umma*). They also realized the significance of the Islamic law in governing the Islamic city (explained below). On the other hand, affected by the **conflict** theory, when describing the Islamic city as a mosaic city, they focused only on secular relationships between people and their reflections in the spatial distribution of the city, stressing conflicts between people and ignoring what they stated elsewhere in their studies about the unifying Islam. Thus, they confused two antagonistic positions: consensus and conflict. Moreover, in stressing issues such as **social stratification** based on ethnic or tribal grounds (e.g. Grunebaum, 1955), they ignored the fact that inhabitants of different quarters in the Muslim city were mostly Muslims, regardless of their ethnic or tribal origins. Thus Islam performed as a unifying element between those inhabitants and quarters. Orientalists in this regard saw only the physical territorial structure (according to their perception) of the Muslim city, represented mainly by its quarters, and marked by their gates.

Moreover, such a territorial structure was constructed according to Orientalists' perception of the Muslim city. For example, gates were interpreted physically as a sign of quarters' autonomy and thus isolation. However, as explained later in this study, gates are signs of the autonomous status of quarters in terms of control and rights distribution (imperceptible structure) and not of isolation (manifested). Thus, Orientalists interpreted such territoriality as a sign of mosaic-like physical and social relations, unaware of the imperceptible Islamic mechanisms that unite such, manifestly, isolated units. That is, as explained in chapter seven below, Islam set several mechanisms that force inhabitants to unite in the different quarters and in the city as a whole. For example, it motivates Muslims to take care of their neighbors and of each other generally, and established some mechanisms to guarantee this, such as the taxation system of *zaka*, *sadaqa*, etc. If such mechanisms were applied there is no room for social rupture between Muslim inhabitants living in different quarters. This does not necessarily mean that there were no disputes and conflicts between inhabitants in one quarter and between different quarters, but many disputes and conflicts were mostly on individual scale and did not prevent social and spatial interactions.<sup>15</sup> This issue is elaborated further under the social mosaic theory discussed later (p.59).

## (2.2) COMPARATIVE ANALYTICAL STUDIES

Adopting a comparative methodology, some Orientalists employed an analytical approach in their investigations of Muslim cities. The main focus of such studies was the internal operative system of cities, as explained next.

<sup>15</sup> For spatial interactions, see Akbar, 1988, p.136-40.

**(1) The internal system**

Scholars following the functional and physical themes paid particular attention to the morphology of the Islamic cities. They attempted to understand those cities directly through what their eyes could see, i.e. through the “manifested structure”. Other scholars sought to understand Islamic cities, indirectly, through the “operative” or, although rarely, the “imperceptible” structure. They focused on the internal systems of those cities, emphasizing the importance of their institutions (political, social) and illuminating the structure of their Muslim society. As a result, those studies were more analytical and provided more understanding of Islamic cities.

**(1.1) Institution-based studies**

As part of understanding the city’s “operative structure”, special attention was directed towards investigating the operation of the city’s institutions. Unfortunately, once more, using the traditional Orientalist **dual-contrastive** pattern of **Europe versus Islam**, Orientalists attempted to identify a number of institutions in the Islamic city which were equivalent to their counterparts in medieval European cities. Due to their importance in medieval European cities, certain types of institution gained more attention than others and occupied the centre of different debates in the field of Islamic urban studies.

Influenced by Weber’s ideal-type, in proving or disproving that Muslim cities possessed those significant institutions, scholars attempted as an ultimate target to verify the citicization of the Muslim city. Such studies tended to focus on a few institutions with no reference to the overall framework of the city’s operational system. Furthermore, scholars attempted to **amplify** an institution’s importance and role in the city’s machinery in order to make it appear as essential. Those studies ended up being imitative in their comparative approach, and partial and exclusive in their course. The following are some of the significant institution-based studies that were recurrently quoted by other scholars.

**(a) Political and administrative institutions**

According to Weber, the “decisive” prerequisite of his “ideal-type” city is the partially autonomous administration of the city and the existence of an association of urbanites which acts as an administrative unit for the city and unites the city into a corporate (i.e. a commune or, as used by Weber, *Gemeinde*). In that respect, Weber was looking to the city, in terms of administration, “as a corporate *per se*”. Applying it to Islamic cities, Weber did not consider them as cities due, he claimed, to their absence of “urban community” and of the concept of “citizenry”, for “the idea of an association which could unite the city into a corporate was missing” in Islamic cities (Weber, 1958, p.88).

Based on Weber’s theory, a presumption was formulated that Muslim cities lacked the existence of a central authority in their administration. Emanating from such an assumption, and employing the Western **central/plural** duality regarding the system of administration, Orientalists referred to the Western operative system of commune-type **pluralism** that prevailed in medieval European cities as an alternative to the central

authority, in the administration of Muslim cities. They looked in Muslim cities for a commune-like structure that justified their interpretations of the Muslim city. Therefore, a debate concerning commune-type autonomous functions emerged in studies of Islamic cities. This debate took three forms. First, the studies begun by Massignon (1920, 1924) focused on **guilds** (professional corporations) as autonomous communes; second, studies which focused on the autonomous informal **functional units** of Muslim urban society as communes, for example those of Cahen (1958-9) and Ashtor (1956, 1975); and third, studies which totally **denied** the existence of the concept of autonomous communes in the Islamic city, such as the study by Stern (1965). In such studies, Orientalists supposed the similarity between European and Muslim cities in their operative system (commune-based pluralism), ignoring any differences that might exist between the two types of cities on the imperceptible level. The operative and imperceptible structures of Muslim built environments differ substantially, as this thesis argues, from any model (central, plural) suggested or employed by Orientalists. It is based on the rights system as bestowed by *shari'a* (the Islamic legal system) without a need for a central authority (as explained in chapter seven). Such imperceptible differences would most likely produce different operative structures. Using the operative tools of the Western system to understand the Muslim system is considered here as a deficient method that leads to incompatibility and thus fallacious results as shown next.

#### FIRST: GUILDS HIGHLIGHTED

Based on the model of the commune; the self-governing municipality of medieval Europe, Massignon (1920, 1924) asserted that **guilds** provided virtually the same functions in the Muslim city as the European communes. Based on his own field surveys in some Moroccan cities, analyzing the guilds' distribution in those cities, the organization of their members, and their internal system, Massignon recognized the autonomous character of Islamic urban guilds in the medieval period (9-12<sup>th</sup> centuries AD.). Massignon perceived of the guilds as constituting the basic structure of the Muslim city. He emphasized the socially integrative functions of the guilds from below, and also discussed how they operated following, as he claimed, the **regulations** of the *muhtasib* (market inspector), the agent of the state<sup>16</sup> (Haneda and Miura, 1994, p.20, 34). Miura criticized Massignon's work as "defective as historical research", because he depended more on field surveys than on historical documents (Haneda and Miura, 1994, p.88). Similarly, Eickelman proclaimed that Massignon never produced evidence to support his assertion (Eickelman, 1974, p.276). Nevertheless, many studies, such as those of Lewis (1937), and Gibb and Brown (1950-7), emerged which adopted Massignon's theory in investigating guilds in Islamic cities.

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<sup>16</sup> Note in the text the claim of Massignon concerning the **regulations** of the *muhtasib* as an agent of the **state**. Such a claim will be refuted in chapter seven below when exploring the role of the state and of the *muhtasib* in the Muslim built environment. In short, Massignon looked only at the rulings reached by the *muhtasib* regarding cases in the market, thus considered them as regulations. He did not investigate the mechanisms operating in reaching such rulings. The *muhtasib*'s rulings, as described in chapter seven, are not regulations but vary according to the case in question.

Grunebaum's position regarding the autonomy of Islamic cities sways between focus on formal and informal units (i.e. between the first two forms of debate). He (1955) denied that the Muslim town had autonomy in the sense of the European commune, saying it lacked any specified form of citizenship and municipal organization. However, he suggested that this lack of municipal organization in the Muslim town was compensated for by the residential quarters with their *sheikhs* (plural of *sheikh*, head of the quarter) and by guild-like associations with no system of political integration between their people, but with ethnic, religious or occupational integration. He agreed with Massignon, stating that the heads of quarters and the heads of guild-like associations of trades knitted the social organization together as they were intermediate between the townspeople and the state, and in that sense they fulfilled an autonomous function. But, at the same time, Grunebaum asserted that those city guilds and quarters were under the overlay of the **state** as, at certain times, they were controlled by state-designated officials. Thus, eventually, guilds and quarters attained a limited autonomy due to state intervention (Grunebaum, 1955, p.142, 149-51). In their studies, Massignon and Grunebaum highlighted the role of the **state**, as perceived in their Western environments, in regulating Muslim cities. Focusing on the operative structure of the city without investigating its related imperceptible structure, such Orientalists perceived the state in Islam as a regulative device that, through its "designated officials" such as the *muhtasib*, intervenes in the city's residential quarters and trade "guilds". This view of the state reflects the concept of the modern state, prevalent in Orientalists' own environments (explored in chapter five), based on its acquired **power** to intervene and regulate its people's affairs. Non-consideration of the real imperceptible structure that performed as a regulatory device in Muslim built environments led to such misinterpretations of Muslim cities.

#### SECOND: AUTONOMOUS INFORMAL UNITS

Cahen and Ashtor adopted the theme of autonomy in their studies of Islamic cities; however, relying on their analysis of Islamic historical material, they developed a new theory of the autonomous city, asserting that the traditional Muslim city was indeed an active municipal entity. They focused on the autonomy of the **informal structure** of the city, mainly on the autonomous role played by **gangs** in their protection of the quarters and the city, and in maintaining their security.

Ashtor (1956, 1958) focused on autonomous movements of gangs in some Syrian cities during the 11<sup>th</sup> and 12<sup>th</sup> centuries (AD.). He highlighted the integration between *qadi* (judge) and *muhtasib*, as part of the state, and *ra'is* (chairman) and *'ahdath* (juvenile), as part of urban residents, in performing an autonomous role in those cities. Ashtor located these gang movements in a line of continuity with the Hellenistic-Roman tradition of autonomy. In his study (1958-9), affected by the role of guilds in the West, Cahen challenged Massignon's theory of guilds, stressing that such professional corporations were only instruments of **state control**. He analyzed Syrian and Iraqi cities in the 10-12<sup>th</sup> centuries and concluded that urban autonomy was maintained by an organization of the



urban outlaws called *'ahdath* in Syria and *'ayyarun* in Iraq (Haneda and Miura, 1994, p.35, 88). This theory was also adopted by Brett in his study of Tripoli in North Africa (1986).

It seems that Cahen and Ashtor were influenced not only by Weber's theory of communes, but also by the Western urban sociological studies of **social stratification**, particularly of the gangs, such as those conducted by the Chicago School. This type of gang study greatly affected the studies of social structure (e.g. Lapidus' studies, demonstrated below); scholars focused on types of gangs as a significant strata of Muslim urban society. Due to the large number of studies focusing on one strata of the populace or one or another type of gang, Muslim societies were perceived as over-stratified and fragmented into different types of gangs and disputing groups.

Other studies emerged, taking up squarely this theory of autonomy. In his study of Sale' in Morocco, Brown (1976) stressed that the inhabitants of Sale' had a sense of citizenship and an autonomous organization. Cigar (1978), in his study of the **power structure**<sup>17</sup> of Fez between 1660 and 1830, pinpointed the fact that units of the urban populace in Muslim cities developed autonomy as political power weakened during that period. Sauvaget, however, alleged that the Muslim city was not administered overall, as it lacked communal institutions. Reflecting on the **mosaic** theory of cities, he claimed that residential quarters performed the role of self-governing communities; however, they were "mosaic societies", without any sense of integration with the city as a whole (Raymond, 1994, p.7).

### THIRD: COMMUNES DENIED: PLURALISM

It is apparent that studies of urban political and administrative structure conducted up to 1950s discussed Islamic cities in terms of their similarities and differences to European commune cities. From the 1960s, a growing criticism of the commune model emerged.

In his paper "The constitution of the Islamic city", Stern (1965) voiced his objection to Massignon's guild theory. He denied the existence of guilds in Islamic cities. He commented that, despite Massignon's stature as a scholar, his work on urban forms abused evidence and constituted no more than a "tissue of fallacies". Stern asserted that it was meaningless to make comparisons with the European commune cities, and argued that autonomous organizations were extremely immature in Islamic cities. Given the absence of corporate municipal institutions in Islamic cities, Stern recommended a positive consideration of the elements in those cities: popular disorders, the notables, the quarters, and the militias as contributing to the "**loose structure**" of the Islamic city, rather than regarding them merely as the germ of self-government or as an indication of its absence. Put differently, Stern claimed that it is not possible to analyze the pluralistic and **fluid**

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<sup>17</sup> Based on the Western societal model which embodies a power structure (shown in chapters six and eight below), Cigar implicitly assumed the existence of such a power structure in Muslim cities as well. Cigar's study in that respect embodies a tacit assumption that those societies are similar on their imperceptible level. As shown in later chapters of this study, Muslim societies are rights-based societies, thus do not have a power structure classifying its members according to power possessed.

Islamic city in terms of formal systems and structures such as citizenship and self-governing communities. In this sense, he criticized Grunbaum, and Ashtor and Cahen. Similarly, Lapidus (1967) asserted that there could not have been any autonomous Islamic city centering on gangs as they lacked political ability. Thus, he denied the tenability of Muslim city as a model of an autonomous urban commune and, like Stern, turned to study the Islamic city through its “informal and unstructured networks”, as demonstrated in the next section.

In short, all forms of study explained above are centered on the conception of the Western European commune model as a self-governing unit, either positively or negatively. Those affirmative studies (the first two forms of debate) looked at either the guilds or the residential quarters in Muslim cities as resembling the European commune, thus responsible for self-government of the Islamic city. In that regard, these Orientalists added a political character to the guilds or to the residential quarters of Muslim cities, which actually did not exist. That is, the commune in the medieval European city emerged as response to the prevailing political situation. It was a political institution aiming at obtaining political power from the state. In other words, the community’s demand for power led to the mobilization of individuals (explained in chapter eight) into a communal-form which, consequently, became interwoven within the political system of Western cities (Badie, 1992, p.207-8). Thus, as a power-based system, communes operated as powerful units in the European city. Comparing this with the Muslim city, one can argue that the residential quarters in the Muslim city did not have any resemblance to the European commune. They, as Badie contends, operated according to different social components (Badie, 1992, p.207). Orientalists could not in their studies penetrate to the imperceptible structure of Muslim cities, thus could not sense the reflection of such a structure on the operative level. As explained throughout this study, Muslim cities were built around rights-based and not power-based mechanisms as Orientalists’ studies indicate.

**(b) Social structure**

Different Western sociological themes and theories (mentioned in the previous chapter) dominated studies of social aspects of Islamic cities and societies. Among those are urban conflict theory; consensus theory; mosaic theory; stratification; and social association.

Some Orientalists attempted to understand Islamic cities in terms of their social institutions, assuming that such institutions were what gave Islamic cities their order, identity and distinction. Most of those studies were done by sociologists and anthropologists, of which Lapidus was the pioneer. They tended to approach cities as social containers, with no recognition of the city as a physical entity (as did the Western sociologists Simmel and Wirth).

Weber, in his theory of the city (1958), denied the status of Islamic cities as cities, due to the nature of their human associations (based, as he claims, on kinship and tribal associations). Furthermore, he pointed to the segmentation of the Muslim society; he saw

its tribes as segregated, with no relationships between them (Weber, 1958). This latter idea was an introduction to the concept of the mosaic society, elaborated further by the Chicago School (see p.34 above). Such ideas affected later Orientalists' studies of Muslim cities.

Reviewing, critically, the traditional Orientalists' comparative approaches in studying Islamic cities, Lapidus (1967) had, as he claimed, reformulated the classical problem. Rather than concentrating primarily on one feature of town life, the presence or absence of formal institutional structures such as communes, Lapidus shifted his focus to the informal structures, or as he put it to the "total configuration of relationships by which organized urban social life was carried on" (Lapidus, 1967, p.3). Departing from a **pluralist** perspective, Lapidus introduced his "**network**" theory, in which emphasis was upon the informal associations and networks of Muslim society (informal status stratification) in both urban centers and rural villages, as he denied the dichotomy between the urban and the rural. He investigated how the administrative machinery of the state worked effectively. For Lapidus, it was the interaction of the various sub-communities and of the various elites which created the urban community, constituted the government of Muslim cities and achieved a "sufficiently good order" (Lapidus, 1973, p.47). Those sub-communities were the military elites, the *'ulama* (religious leaders), the local notables and merchants, and organizations of urban commoners based in the city's quarters, such as *'ahdath* and *zu'ar* (outlaw gangs). Lapidus paid special attention to **social solidarity**<sup>18</sup> among various social groups, centering on the quarters, and considered their combinations or struggles as ways to **gain urban power**. By developing this perspective, as Turner pointed out, Lapidus refashioned the theory of the **mosaic society** (Turner, 1978, p.40).

In his study of Mamluk<sup>19</sup> cities (1967), Lapidus used his idea of "networks" as a tool to explain Mamluk power and the nature of urban society. He concluded that Mamluks governed by **controlling** all the vital social threads in their hands. In that sense, Lapidus perceived of pluralism in Muslim society as a political tool to **gain power**; thus to diminish this power the central authority, when exists, has to **control** those plural units. Lapidus in this regard, although claiming to abandon the traditional Orientalists' comparative methodology, ended up confined within their tradition, despite his few attempts towards liberation. Employing the Western pluralist approach, Lapidus perceived of quarters as plural units that seek power through their collectivity<sup>20</sup>; therefore, in this process of "lusting for power"<sup>21</sup>, different groups conflict. Lapidus in that sense did not penetrate to the imperceptible level of Muslim cities and societies, thus did not discern their regulative mechanisms. He supposed the resemblance of such mechanisms to those of Western

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<sup>18</sup> This concept of "social solidarity" was used by Durkheim in his studies of social relationships. See (p. 25) in the previous chapter.

<sup>19</sup> The Mamluks are an Islamic dynasty that reigned in Egypt and Syria in 648-922 H./1250-1517AD.

<sup>20</sup> The concept of "collective power" is explained in chapter eight below.

<sup>21</sup> This term "lust for power" is clarified in chapter six below.

society. Pluralism as a political and social concept, used by Lapidus and many other Orientalists, does not exist in Muslim cities and societies. Those issues are explained in part three of this study.

Lapidus' work received many criticisms and comments. Eickelman, favoring Weber's approach to understanding and identifying cities, criticized Lapidus' work because it did not discern a form of association distinct to urban life, as Weber managed to do earlier (Eickelman, 1974, p.277).<sup>22</sup> Miura also described Lapidus' work as one-sided, claiming that "Lapidus has not investigated to any great extent either the individual social groupings he calls "networks", nor their internal structure and binding ties" (Haneda and Miura, 1994, p.340). Nevertheless, Lapidus' theory, whether accepted (Geertz, 1979) or opposed (Brown, 1976; Cigar, 1978), was much discussed and indeed adopted by other scholars in their studies of Muslim societies.

Apparently, Lapidus was greatly influenced by several Western sociological theories, including Weber's and Parsons's theories of human association. While extending Marx's theory of class stratification, he was also influenced by the Weberian categories of **power** and social status and the Marxist conflict theory. Lapidus pictured Muslim society as a **mosaic society** in a constant state of **conflict**, due to differences in the interests and power of different social groups. He highlighted disputes and conflicts between the state and people on the one hand, and between different groups of people on the other (Akbar, 1994, p.12). In relation to this research, these conflicts are seen to be given undue importance. That is, Lapidus compressed all violent events that occurred over a long period of history (1250-1517AD.) in a one piece of work. This, logically, gave priority to the most influential events rather than to other every-day life events which, if taken into consideration, change the picture. Moreover, Lapidus was influenced by gang studies conducted by the Chicago School and adopted by some Orientalists such as Ashtor and Cahen.

Sharing common grounds with Weberian typology, Lapidus developed his "networks" theory into a methodological **model** encompassing the total structure of Muslim societies. He used this model to examine societal structures in other regions of the Muslim world, and to do structural comparisons. In that sense, Lapidus created another ideal-type, comparable to that of Weber, however for societal structure rather than for the city.

Comparing Lapidus and Weber's theories of cities, Eickelman (1974, 1981), rejecting Weber's ideal-type of the commune city as a framework for cross-cultural comparison between Muslim cities and European cities, acknowledged Lapidus' emphasis on the informal social groupings in the Muslim city as displaying the most significant patterns of constancy and order in Middle Eastern cultures, thus constituting a useful analytical concept. However, disagreeing with Lapidus' model for its negligence of the city's

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<sup>22</sup> Eickelman rejecting W. Marçais's model of Islamic city and Massignon's thesis of guilds, he acknowledged the usefulness of Lapidus' "system of relations" as an analytical concept. However, he rejects Lapidus' theory since it compares social structures rather than cities (Eickelman, 1974).

physical aspects, arguing that there are continuities between social and spatial order, Eickelman employed Weber's concept of social relations within cities. He examined the amenability of the residential quarter for uses as a cross-cultural comparable urban feature (1974). That is, as Eickelman argues, there are shared cultural perceptions regarding social relationships which could be manifested in people's spatial perceptions and use of space, particularly residential and domestic space. Clarifying this, based on his research in a small Moroccan town, he drew examples from its residential quarters where the quality of life was defined by the extension in contiguous physical space of the notion of "closeness" (*qaraba*) (Eickelman, 1981, p.269-70).

Affected by the mosaic theory, Gibb and Bowen (1950) and many other Orientalists, such as Grunebaum, Sauvaget, Lapidus and Cahnman, asserted, as they claim, this character of Muslim society.<sup>23</sup> They perceived this mosaic diversity of Muslim society as a weakness and a flaw within the social structure. At the same time, these Orientalists realized that Islam, as a system of belief and values shared by Muslim society, holds this mosaic society together and maintains its order (Turner, 1978, p.39-40). Thus, the mosaic theory has inherent contradictions, since it describes the Muslim social system as both integrated around Islam, and at the same time totally divided in terms of social stratification and association (see the physical theme above). This contradiction, as this thesis argues, is due to failure of such scholars to understand the imperceptible structure of such societies, which makes it look segmented, when it is in fact united.

## (1.2) Religion (Islam)

In this research, religion (Islam) as an internal system does not mean the religious institutions in the city, such as mosques, but means the relevance of Islam to built environment production. In this research, Islam, as principles, norms, and a legal system (*shari'a*), is seen as part of the "imperceptible" structure of Islamic cities.

As this research argues, each system has its distinctive manifested, operative and imperceptible structures. To comprehend Islamic cities and their operation, it is essential to understand Islam and its internal mechanisms (imperceptible). Neglecting or depreciating such an understanding leads to misinterpretation of Islamic cities. As demonstrated, this negligence, epistemologically, is reflected negatively in Orientalists' studies.

In earlier studies of Islamic cities (from the beginning of the 20<sup>th</sup> century up to the late 1970s), there was not much concern among scholars (except for Spies and Brunschvig, as explained later) about the religious dimension of Islamic cities, either on spatial or social levels. Scholars at that time, affected by the modern **positivist** and **interpretive** methodologies, were inclined towards investigating observable aspects only (the

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<sup>23</sup> As explained earlier, those Orientalists argued that Muslim society consisted of many segmentary units (e.g. tribes, trade guilds, villages, and communities). Thus, Muslim society did not take the form of an integrated social unity but was made of a mosaic of isolated, self-supporting "social groups".

manifested and sometimes the operative structures). Orientalists did not deal with Islam as part of the imperceptible structure. They tended to link Islam with the city in title only. Nevertheless, a few studies, started by W. Marcais (1928) and elaborated by G. Marcais (1940, 1945) and later by Grunebaum (1955) and Lapidus (1969), hinted, in a formalistic way, at the relevance of religion, as a general, abstract concept, to life in Islamic cities.

In this respect, W. Marcais (1928) affirmed that Islam was essentially an urban religion and its growth (as a civilization) occurred necessarily in conjunction with the building of cities. He stated that Islam fitted only with urban societies, regulated by Islam as a religion, and not with the nomads and the rural population (Haneda and Miura, 1994, p.33-34). Also, in defining the Islamic city, W. Marcais and G. Marcais pointed out that Islam generated, as a requirement, the significant features of the city: the Friday mosque for prayer and the public bath for ablution.

Grunebaum (1955) agreed with this argument, as he remarked that Islam favored city development, and that the duties of Islam can be fully performed only in a city. He noted that Islam is "a religion of townspeople, at least in the sense that it tends to favor the settler over the nomads" (Grunebaum, 1955, p.142). Supporting his argument, he considered that the Islamic rule was that the "Friday noon service ... may be held only in a fixed settlement with a permanent population". He concluded that Islam "exclude[s] the nomad from full participation in the ritual of his faith". This seems to be fallacious, overvalued and embodies misinterpreted facts. That is, it was only in the early times of Islam that the Friday mosques existed exclusively in urban areas in order to unite people together around Islam. However, in later times, many Friday mosques were built in urban as well as in rural areas (see Johansen's work (1981), p.47 above). Nevertheless, the absence of congregational mosque in the rural and nomadic areas does not mean excluding the inhabitants of those areas from the execution of their prayers. Such people have to perform their Friday prayers according to their possible means. Islam is a religion for all people, urban and non-urban.

While Gibb (1950-7) and Benet (1963) agreed with W. Marcais, G. Marcais, and Grunebaum, Djait challenged them, proclaiming that the city and the nomads had close relationships and that it is a mistake to characterize their relationship as antagonistic and destructive (Djait, 1986, 192-204).

Other scholars, such as Planhol (1957) and Sauvaget (1934), denied Islam the status of a civilization. They viewed it as a destructive religion which caused the loss of preceding civilizations (Greco-Roman). Sauvaget, denying any link between Islam and cities, described the Muslim town as if it was "the negation of urban order" and wrote that its status was subject to no particular provision in Islamic law. He stated that the Muslim era "is unaccompanied by any positive contribution ...[thus,] the work of Islam is essentially negative" (cited in Raymond, 1994, p.7). Sauvaget concluded that Muslim cities were no more than non-cities. Cahen (1958) held that there were no differences between cities of

the Byzantine period and of the Islamic period before the 11<sup>th</sup> century, and that Islam as a religion did not exert a great influence on urban life. Therefore, he felt it was not appropriate to use the term "Islamic city" (Haneda and Miura, 1994, p.9). In this sense, Cahen anticipated post-1970s arguments put forward by Orientalists such as Wirth and others (see p.46 above).

In 1981, following a physical comparative methodology, Wirth, superficially, examined in a slightly different manner the Islamization of the cities in the Islamic world. He proclaimed that as those cities' main physical characteristics existed in other civilizations, therefore they were not genuinely Islamic. Eventually, he denied their Islamic attribute. In this way, Wirth, in the view of this research, looked only at the **manifested** structure of those cities to examine an issue (their Islamization) that belongs more to the operative and imperceptible structures. He could not see the differences between cities of different civilizations on their imperceptible structures.

The above studies demonstrate how Orientalists conceived of Islam as an abstract, general idea (religion or civilization) that has certain influences on the built environment. They dealt with Islam through the manifested structure and did not view it through its imperceptible mechanisms, thus did not consider the role of Islam in shaping Muslim cities. However, some Orientalists referred to Islam as a value system, claiming that it is Islamic values and norms that are responsible for the production of the Muslim built environment in its distinct character. This interpretive perspective is examined next.

#### ISLAM AS A VALUE SYSTEM

Observing the manifested structure of Muslim cities, some Orientalists suggested that those manifested forms are physical expressions of the values and norms of Muslim society and its inhabitants. For example, gates were seen as installed to reflect the value of security; their function was either to protect or to control the neighborhood. Another interpretation was that they were installed as a reflection of juridical segregation and values of quarter loyalty. Dead-end streets, introverted courtyard-houses, indirect entrances, and non-facing opposite house doors were said to reflect the values and norms of visual and physical privacy, respect of others and sex segregation; bare external house walls reflected modesty values; the "unitary" character of houses reflected egalitarian values within Muslim society. The location of incense and perfume shops (*'attarin*) near the Friday mosque reflected the principle of purgation (*taharah*) (Grunebaum, 1955; G. Marcais, 1957<sup>24</sup>; Abu-Lughod, 1980, 1987<sup>25</sup>; Raymond, 1994). More specifically, Sauvaget (1934)<sup>26</sup> and

<sup>24</sup> Quoted in Raymond (1994).

<sup>25</sup> Although Janet Abu-Lughod was trying to interpret the Islamic city through certain Islamic principles, suggested in her 1980 and 1987 articles (see p. 67), she did not demonstrate how these principles could shape the built environment. Thus, ultimately she reversed the argument and translated those principles into a form of Islamic values (such as visual and physical privacy, defence and security) which were reflected in shaping the urban form of the Islamic city.

<sup>26</sup> Quoted in Raymond (1994).

Grunebaum (1955) related changes in the structure of Damascus during the Muslim era from those created by the Byzantines (which, according to Sauvaget, preceded it) to differences of values between Islamic and Byzantium civilization in Damascus. To quote,

What had been the haphazard result of the infiltration of Orientals [Muslims] into the population of the town [Damascus] became now the adequate expression of the mores backed by a definite religious outlook on social relations. The ancient political interest in the community, the classical ideals of city-oneness and the clarity of the architectural (and administrative) design have been replaced by a dominant religious interest, by ideals of quarter or group loyalty, by the desire to shield the family group from dispersal and contamination

(Grunebaum, 1955, p.149)

In short, according to some Orientalists, the manifested structure of the Muslim city was an expressive form of Muslim values and norms.

Values might be **explicit**, serving as a directive criteria for judgement, preference, and choice, i.e. for actions, or **implicit**, performing as grounds for decisions in behavior (Sills, 1968, p.283). In their interpretations, Orientalists referred only to some explicit values (e.g. privacy, sex-segregation, modesty, purgation), neglecting, or unaware of, the implicit values. They referred to Islamic values and norms in a general, abstract manner, without any detailed investigation of those values. They pointed only to the **existence** of an Islamic value-system that they considered responsible for producing such a built environment. However, in her studies of Muslim cities, Janet Abu-Lughod tried to relate certain Islamic values to some physical aspects in the Muslim built environment. Nevertheless, her method was limited and selective, focusing on a few explicit values, not developing a method of generally relating the Islamic value-system to the manifested structure. Therefore, it can be said that for many Orientalists, **explicit Islamic values** were the main **interpretative tool** and **determining** factor of the manifested structure of Muslim cities.

If one accepts the argument of these Orientalists, then one wonders how those values were translated into a manifested built environment. That is, although those Orientalists focused on Islamic values to explain the manifested structures of Muslim cities, they<sup>27</sup> did not consider the **means** through which those values were translated into built forms. Thus, a clear gap seems to exist between their interpretative tool and the interpreted phenomena.

In the light of the Orientalists' interpretations, a question arises: are values the pivotal **determinant** of the production of the built environment? and what about those implicit values which Orientalists did not consider? It is true that values and norms belong to the imperceptible structure, yet they coexist along with other factors within this structure. For example, when comparing the built form of a Muslim house in Damascus with a Christian house in the Christian quarter of Damascus and with a Muslim house in Malaysia (an Islamic country), as all satisfy their inhabitants' values, one can find that although the

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<sup>27</sup> With the exception of Abu-Lughod, as demonstrated later.



values of the Muslim and Christian inhabitants in Damascus differ according to their different religions, and that although Muslims in Malaysia and Muslims in Damascus, relatively speaking, share similar Islamic values, yet a Christian's house in Damascus is far more like a Muslim's house in Damascus than it is to a Muslim's house in Malaysia. In other words, similar values produced relatively different built forms. Relating this to what Al-Hathloul stated, that, because of other factors, implementing one value (privacy in his example) in the built environment could be actualized in different physical forms (1996, p.110-113), then one can argue that although values, working on the imperceptible level of the city structure, are a significant factor in the production process of the Muslim built environment, yet they are not the determinant factor in that process. Values, explicit and implicit, constitute only one among several factors that should be taken into account if one seeks to understand the built environment. There are certain principles or mechanisms in *shari'a* that organize these values and their actualization in the built environment. Such mechanisms are explored later in the following chapters.

Moreover, "values" is a modern concept (Hollinger, 1994, p.59). It did not exist in traditional Arabic discourse. It is considered in this research as a contemporary invention in, or exotic to, the Arabic discourse. In that respect, Orientalists used a modern concept (values) to explain a traditional phenomenon within which such a concept did not exist.

**To recapitulate**, studies up to 1960s were confined to the traditional Orientalists' "European/Islam" comparative methodology. Influenced by their Western roots, different themes and theories were generated by Orientalists in an attempt to examine the concept of "the Islamic city" (e.g., W. Marcais, G. Marcais, Sauvaget, Grunbaum, Massignon, Cahen and Ashtor). In the 1960s, a voice of criticism and rejection of this traditional methodology began to appear. Some of the earlier studies were questioned and refuted (e.g. by Hourani and Stern, 1965). New attempts tried to abandon this traditional methodology in studying Islamic cities and societies (Lapidus was the pioneer). Since the 1970s, particularly in the 1980s, local scholars took part in Islamic urban studies. They developed a new epistemological branch (paradigm) of Islamic urban studies, adopting a new approach and developing a new perspective in the understanding of Islamic cities, as explored next.

## II DYNAMIC APPROACH

In the last few decades, an epistemological progress has occurred in the realm of urban studies generally and in Islamic urban studies specifically. That is, as contemporary planners might argue, the static approach did not provide much useful information that might help solve contemporary environmental problems. The reason given is that those studies considered cities as **end products**; thus, as our contemporary needs and constraints changed, this static (end product) approach is of little value nowadays. Fortunately, a new approach, the "dynamic" approach, is emerging. This approach considers cities in general as products of continuous **processes** in which many ever-changing factors (social, economic, political, religious and others) interact. It argues that the urban forms that evolve in response to these factors are unique to the combination of particular factors at a given time and place. This approach is considered a

response to the developments in epistemology. Positivism as the main modern methodology restricted studies of the built environment to the observable. It did not qualify, or penetrate to what is beyond the surface. However, with the advent of postmodernity, as explained in the next chapter, new methods of investigation came forth, liberating such studies from their previous restraints, thus allowing them to penetrate to the unobservable.

In terms of Islamic urban studies, the static approach seemed to have reached its limit; no new breakthroughs were occurring. Adopting the dynamic approach, a substantial shift took place in viewing and investigating Muslim cities. The dynamic approach is still in its early stages of development and more is expected from it. Studies adopting this approach tend to have a less stereotyped view of the Islamic city. Most such studies focus on the **Islamic legal system** (*shari'a*) as the main criterion in their investigations of Islamic cities.

### ISLAMIC LEGAL SYSTEM

Interestingly enough, in epistemological terms, when relinquishing the traditional comparative methodology (European/Islamic dualism), a shift occurred in investigating Islamic cities. That is, more profound and analytical studies emerged, beginning to understand Islamic cities through their **imperceptible** structure, i.e. such studies tended to understand the perceptible (manifested and operative) through the imperceptible. Thus, it can be argued that the comparative methodology was repressive and limiting in that it confined the manner and themes of those studies adopting it.

Adopting this dynamic approach, scholars attempted to explore the forces and mechanisms that influenced the processes of the production of Islamic cities and societies. The **Islamic legal system** was identified as the factor that might have given Islamic cities and societies their particular pattern and character. The studies of Spies (1927) and Brunschvig (1947) are considered the first to deal with cities in this way.<sup>28</sup> Although they occurred in a relatively early period, these two studies embodied a tacit dynamic approach.

Spies (1927) investigated the city, exclusively, from the viewpoint of one of the four Islamic schools of law (*Shafi'i*). He focused on the application of Islamic law not only in relation to physical environment but also to city life, especially to relations between neighbours (Abu-Lughod, 1987, p.157). Brunschvig (1947), with a broader vision referring to medieval Arabic manuscripts, asserted that it was the Islamic law<sup>29</sup> (imperceptible) applied by *qadis* or judges (operative) in solving physical urban problems that over time yielded the physical structure and urban fabric of Muslim cities (manifested). From this he deduced certain Islamic urban principles used by Muslims in forming and transforming the urban fabric, such as: "provisions are given only in outline (for example, they recommended damages be avoided but did not

<sup>28</sup> Spies and Brunschvig are, to my knowledge, the only two Orientalists that have tackled the study of Muslim cities, focusing on their imperceptible structure.

<sup>29</sup> Abu-Lughod, in her article in 1987, mentioned that Brunschvig focused on customary law, and she did not mention Islamic law, although she referred to the Islamic schools of law, such as Shafi'i and Maliki. In Islam, sometimes, customary law is considered a legal source.

clarify the concept of “damages”)” (Haneda and Miura, 1994, p.42, 88). Thereby, it can be said that Brunschvig managed to reconcile the three levels of structure in Islamic cities.

In his research, Brunschvig based his analysis exclusively on North African jurists, with Fez during the Ottoman period and the French colonial rule as a prime referent for the manifested physical structure. Nevertheless, he generalized his conclusions to the “Islamic city”.

Unfortunately, after those two studies, this methodology did not continue among Orientalists. In the 1970s, another development in this realm occurred, initiated by Al-Hathloul, whose work (1981) might be considered a revival of Brunschvig’s work. Advocating the importance of **conventions** in understanding the built environment, his argument in 1981 centred on the conventions (*‘a’raf*) of space usage. Comparing traditional Arab Muslim cities with contemporary ones and through studying *al-nawazil* (legal urban environmental precedents), he concluded that the discontinuities in the character of the built environment from the past to the present is due to the current focus in contemporary Arab Muslim cities on certain built environment regulatory mechanisms, such as building regulations (centred on the manifested level), without any consideration of society’s values, beliefs and customs. That is, the focus in traditional Muslim cities was on the conventions of use which reflect the values and rules of conduct of the Muslim society as derived from *shari‘a*. The traditional built environment in turn developed its own distinct physical conventions that satisfy its social conventions of use. In other words, the traditional process of producing the built environment embodied a reciprocal relationship between form and use without any preconceived final shape or form for the city, while the contemporary process implies a deterministic approach to the relationship between form and use. By this, Al-Hathloul has indeed managed to reopen an epistemological door that was closed for years. His work has been referred to by many later studies.

In the 1980s, other similar studies emerged, focusing on the influence of Islamic law on the Muslim built environment from different angles, three of which are worth mentioning here: those of Abu-Lughod (1980, 1987); Akbar (1984, 1988, 1992); and finally Hakim (1986).

Throughout her studies (1980, 1987), the American sociologist Janet Abu-Lughod challenged the Orientalists’ traditional approaches and methodologies. She was trying to build a model of the Islamic city on the assumption that it had been based upon certain **Islamic principles**. Although she considered Islam as one among many interacting forces that shaped, but did not determine, the processes whereby Islamic cities were formed and transformed, she did highlight the importance of the legal system of Islam, identifying certain “**Islamic principles**” which, when implemented, create distinctively Islamic cities (Abu-Lughod, 1980, 1987).

In her 1980 article, she suggested four basic Islamic principles<sup>30</sup> which, as she believed, constituted what she referred to as the “deep structure” of the Islamic city. Two of these

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<sup>30</sup> These four Islamic principles are: the residential superblock enclosing semi-public space; the nature of the circulation system in the city; the relationships between neighbours; and the divisibility of property rights. The last two principles are the ones related to the imperceptible structure of Muslim cities.

principles embodied a static approach as they arose from the manifested structure; thus they cannot be considered as Islamic imperceptible principles. The other two principles she suggested were imperceptible-related principles; however they are fragments of a general framework that was not realized. Her method is thus partial and selective. Developing her argument, she identified another three Islamic principles or "elements"<sup>31</sup> in her 1987 article. Those elements, as she claimed, set in motion the processes that give rise to Islamic cities. They would lead to certain environmental solutions (spatial and architectural) to embody them.<sup>32</sup> As she asserted, those solutions are not in themselves considered Islamic, but Islam was one of their origins: "Islamic law was as an adaptive mechanism for helping the society to achieve its goals, rather than as a *deus ex machina* determining them"<sup>33</sup> (Abu-Lughod, 1987, p.164). Islam, as she suggested, is a secondary or contributory factor in shaping cities. It seems that Abu-Lughod, influenced by the modern reductionist concept of religion, viewed Islam as a religion perceived in abstract terms. Abu Lughod, although adopting a dynamic approach and focusing on some Islamic principles, did not explain how those principles operated and were applied in Muslim built environments.

The other study worth mentioning here is that of Hakim (1986). Through an examination of some Muslim historical manuscripts (mainly from the Maliki school of law) combined with a survey of the Islamic city of Tunis, Hakim (1986) tried to reconstruct the concept of the Islamic city. This was done by asserting that urban architecture and composition of Arab-Islamic cities are **systematic**, and result from the implementation of principles and guidelines of Islamic law on the "building process". He pointed out that there is a **systematized** pattern of utilization of urban space through the entire Islamic city, based on functional and physical occupation. Hakim believed that there is a common physical **language** and, consequently, a design **language** in all Islamic cities, characterized by its distinctive physical components, function and form.<sup>34</sup> He

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<sup>31</sup> In her article, Abu-Lughod referred to those Islamic principles as elements or themes or conditions. These principles were: the juridical population classes (distinction between Muslims and non-Muslims); sex segregation; and the legal system relevant to spatial organization. They differ from the first two principles suggested in her 1980 article, while the third Islamic element of the 1987 article (the Islamic legal system) might be considered as the broader framework to which the other two principles of the 1980 article belong.

<sup>32</sup> To clarify her theory, linking the city with the three suggested Islamic principles (see previous note), she proposed three hypotheses based on the residential neighbourhood, which she considered as a key element in the "Arabo-Islamic" city. Neighbourhoods, as she proclaimed, were distributed territorially according to juridical classes, spatially organized according to sex segregation, and functionally, due to the Islamic legal system as they functioned as a defensible spaces and a subset of the state.

<sup>33</sup> For example, as Abu Lughod argues, Islam distinguishes socially between juridical classes and not spatially. Spatial distance was not always a mechanism for maintaining social distance. On occasion, however, particularly during periods of tension, physical segregation was employed to intensify the social boundary markers (Abu-Lughod, 1989, p.165).

<sup>34</sup> He described these components as they existed in the traditional city of Tunis (which goes back to the latter part of the 19th century), mentioning that those components represent the urban elements or building types of a mature and relatively large Arabic-Islamic city, or, as he referred to it, the "*Medina*".

argued that those physical components remained relatively unchanged (relatively constant) across centuries of use within most of the Islamic world (Hakim, 1986, p.56-63). Influenced by “The pattern language” theory of Alexander, Hakim noted that the interaction between the Islamic principles derived from *fiqh* (Islamic jurisprudence) and design language (physical components and building types) and incorporated in a dynamic building process created a certain tradition of **design** and urban form which could be described as “**patterns**” (Hakim, 1986, p.138).

In formulating his theory, Hakim was partially influenced by the Orientalists’ formalistic static approach to Islamic cities. He viewed Islamic cities as having relatively constantly manifested physical components<sup>35</sup> and relatively settled urban patterns. In this sense, those urban patterns are relatively constant or static, and not relatively dynamic, as Hakim claims<sup>36</sup> (Hakim, 1986, p.19,102). If one considers Hakim’s argument that the city passes through a dynamic building process, while at the same time he argues that the Islamic city is basically a set of patterns (relatively static) and that all Islamic cities are similar (p.138-9), there is a contradiction. His theory might be applied only at the micro level of the city but not at the macro level.<sup>37</sup> That is, logically, a dynamic building process, especially on the macro level, could not lead to static patterns of urban forms across the vast Muslim lands and era. Then, the question is: how can Hakim interpret the wide diversity of Islamic cities according to his theory?

The main ambiguity in Hakim’s theory might arise from the fact that although he managed to liberate himself from the Orientalists’ methods of enquiry (comparative) and main themes (exclusively functional and physical), unfortunately, he accepted the Western notion of “**design**” without examining its existence in Muslim societies and its applicability to the Muslim environment. For instance, influenced by the **structuralist** methodology in the manner employed by Alexander in his studies of the built environment, Hakim used concepts such as “design language”, “building types”, “land-use pattern” etc. (Hamik, 1986, p. 55, 63) as defined within Western culture, with a quite different environmental evolution from that of the Muslim world. He thus used Western environmental tools to explain Islamic cities. It should not be understood here that it is unacceptable to adopt any Western theory or method, but those theories and methods should be compatible with the three structures of the Muslim society and its built environment, otherwise they will lead to contradictions, as this research argues. Yet,

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<sup>35</sup> Hakim defined the Islamic city by identifying its urban pre-requisites: *Mesjid al-jami* (congregation mosque); governor or *qadi*; *suq*; and sometimes public bath (*Hammam*) (Hakim, 1986, p.57, p.80).

<sup>36</sup> Hakim stated that urban form should be viewed with reference to the scale of the urban environment. That is, urban form is relatively dynamic when viewed across a time frame of centuries, and relatively static when viewed within a short period (Hakim, 1986, p.102). But, since the urban form consists of certain patterns generated from relatively static physical components which put into effect static Islamic principles, logically, the resultant urban patterns are always relatively static.

<sup>37</sup> Hakim differentiated between two levels of the manifested structure of the city: macro and micro. If any decision is taken regarding either level, then the former will have very obvious and more impact on the city than the latter. To prove his theory of urban patterns, Hakim pointed to some types of urban form on the scale of a commercial centre and housing (micro), at certain times, but not on the scale of a city (macro).

despite these comments, it is undeniable that Hakim's work embodies a significant contribution to the study of Islamic cities.

Among those who accepted the dynamic approach and crystallized it is Akbar (1984)<sup>38</sup>. His work centers on the **concept of responsibility** in the built environment. Akbar's argument is that since the built environment is shaped by individuals holding diverse values and acting under several and sometimes unique constraints, then consideration of the mechanisms that empower individuals or limit their choices through property and individual rights might explain the structure of the built environment. He viewed the built environment as accretions of interventions by individuals who held different values. His contribution is in the model through which he suggested measuring the responsibility of those people intervening in the built environment by observing the physical object's state or condition. He holds the view that there is no universal physical pattern or character in Islamic cities. Rather, each town or even each site has its appropriate morphology, derived from the interaction between the site's constraints (geographical, political, economic, and social) and the mechanisms which stem from property and individual rights embodied in the Islamic legal system (Akbar, 1984; 1988).

Akbar, through his suggested model, linked the three structures of the city. He focused on Islamic principles and values, such as rights and obligations and the feeling of responsibility, included in the imperceptible structure, reflected through certain operative mechanisms (operative structure) such as *waqf* (endowment), revivification (*'ihya'*), etc. on the built environment (manifested structure). In that respect, Akbar interpreted the quality of the Muslim built environment as a tool for decision-making.

#### 4.4 CONCLUSIONS

Stemming from their Western roots, most Orientalists' studies were grounded on a Western perception of the structures of the built environment. Employing such an exotic perception in investigating the Muslim built environment with its unique structures led to **misunderstanding** and misinterpreting those built environments. Furthermore, most Islamic urban studies, despite a few attempts to integrate the imperceptible level of Muslim built environments, generally, were limited in their analysis, focusing only on the manifested and/or the operative structures. They focused on the observable effects without relating those effects to their underlying causes.

The term "paradigm", used by T. Kuhn (1970), denoting an epistemological shift in enquiry, resulting in patterns or modes which are then followed by others, could be adopted here. Using this concept, one might argue that studies of Islamic cities have passed through three paradigms. The first are those studies restricted by **Western perceptions**, particularly in its comparative methodology, which resulted in depreciating conclusions about Islamic cities. Examples are the studies of Marcais, Sauvaget, Grunbaum, Massignon, Cahen and Ashtor. The second paradigm was developed in those studies that **tried to liberate** themselves from Western perceptions of

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<sup>38</sup> Akbar's work was originally a doctoral thesis (1984) "Responsibility and the traditional Muslim built environment", published in English in 1988, and expanded into an Arabic book in 1992.

the environment, yet did not manage to liberate themselves from Western modes of enquiry, such as the study by Lapidus, and to lesser extent, the studies of Abu-Lughod, and Hakim.<sup>39</sup> The third are those that managed to liberate themselves, to some extent, from both Western perceptions and modes of enquiry.<sup>40</sup> For example, the studies of Al-Hathloul and Akbar. Most studies adopting the first and second paradigms are characterized by perceiving the city as a physical manifested entity and/or as an aspatial operative container; while the third paradigm went beyond those two concepts. Put differently, the first and second paradigms revolve around the manifested and operative structures of the built environment, while the third paradigm focuses more on the imperceptible structure. Thus, it is self-evident that the third paradigm is the most promising approach for further research.

The third paradigm is characterized by its ability to have predictive values. For example; what are the consequences of the state's intervention in private properties? what are the social impacts of demolishing gates of residential quarters? what are the economic implications of a government decree changing property laws? Put differently, answers to such questions might help future decision-making by predicting future conditions. This is the stand this thesis adopts throughout its chapters.

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<sup>39</sup> Abu-Lughod and Hamik's studies might be considered as swaying between the second and third paradigms. They have characteristics from both. Although they followed a dynamic approach, as they could not liberate themselves from the Western modes of enquiry, this study considers them as belonging to the second paradigm more than to the third.

<sup>40</sup> The mode of inquiry does not mean here the static or the dynamic approach. Those are general frameworks within which investigations, or inquires, took place. Mode of inquiry in this context denotes the **tools of investigation**, whether they are Western or pertain to Islam. For example, adopting the dynamic approach, Hakim (local scholar), in his study of Muslim cities, used some Western tools of investigation such as the concepts of design, and pattern language. Accordingly, as argued in this research, Hakim adopted a Western mode of inquiry.

**Part Two**

**Setting the Scene**



## Part 2

### SETTING THE SCENE

#### INTRODUCTION

As argued, contemporary Muslim built environments live a state of contradiction (crisis), resulting from the coexistence of two different modes: the acquired and the inherited. To understand such a crisis, the two modes of built environment production have to be grasped comprehensively. That is, understanding the built environment whether in its traditional or contemporary processes requires a comprehensive, integrated analysis on the three levels of the built environment: the manifested, the operative and the imperceptible. Many built environments might be similar in their manifested structures (e.g. pre-Islamic Greek villages share many features with Muslim towns), or may utilize similar operative mechanisms in their production (e.g. decentralized mechanisms); however, each built environment has its own, unique imperceptible structure that, when integrated with the other two structures, produces a unique built environment. Therefore, the imperceptible structure is considered here as the main determining structure that is responsible, through its interaction with the other structures, for the production of the built environment in its particular form. The integration of those three structures together leads usually to a **stable** built environment or, put differently, to a “**state of equilibrium**”, i.e. responsive, sustainable, affordable, revolving around participation, and the like. This thesis argues that this state of equilibrium is reached as a result of the **compatibility** of the internal performing mechanisms of the three structures. Once those internal mechanisms contradict, the three structures disintegrate, and a state of destabilization occurs, which is the case in the acquired built environments. This argument is what the thesis attempts to explore.

#### THREE STRUCTURES

#### ARGUMENT

Traditional Muslim built environments had enjoyed “a state of equilibrium” as a result of the compatibility and integration of its three structures. This integration and state of equilibrium has dissolved today. Muslim countries today, due to their reception of capitalism and its mechanisms, face certain contradictions as a result of the systemic contradictions between capitalism and Islam. That is, each system (e.g. Islam, capitalism, socialism) has its own internal forces and mechanisms that are produced by and perform within it and are reflected in the three structures of its built environment. Thus, investigating or producing a particular built environment using the tools of another system will, most likely, end in failure and inner contradictions. This is clearly evident in contemporary Muslim built environments. That is, Muslim countries today are affected by Western methods and mechanisms

**THE CRISIS**

of producing the built environment which have developed as a result of certain Western experiences that are quite different from those of the Muslim world, and loaded with different systemic machinery. Adopting such methods and mechanisms has led to another level<sup>1</sup> of **disintegration** in contemporary Muslim built environments<sup>2</sup>; a disintegration in the internal mechanisms of its three structures where each structure is working separately with no consideration of the other. This disintegration has caused **destabilization** in contemporary Muslim built environments, leading to the actual “**crisis**” in those built environments.

**ARGUMENT**

In that respect, one may argue that the **persistence** of the crisis that the built environment is witnessing today is partly due to the disintegration either on the theoretical or the practical level of understanding previous processes, analyzing and advising contemporary processes, or predicting future consequences of the production of the built environment. To face such a crisis, both the inherited and the acquired built environments should be studied, genealogically, in terms of their three interrelated structures. To explore the systemic contradictions between the two modes, the focus is on the forces working within their imperceptible structure and mainly the **power** structure (part three). However, to situate the crisis historically, the next chapter (chapter five) investigates the roots of the acquired.

**STRUCTURE****STATIC  
VS.  
DYNAMIC**

Islam as a religion has been consistent in its principles since its emergence, thus it can be seen as a static religion; therefore, Muslim societies in terms of its principles are perceived as **relatively static**. On the other hand, Western societies move from one paradigm of society-making to another (e.g. from modernity to postmodernity), and thus they are perceived as **dynamic**. The concepts of dynamism and staticness are presented here as relative and not absolute concepts. Western societies are described as dynamic in relative to Muslim societies. As perceptions of Western societies and Muslim societies are quite different, everything that pertains to these perceptions in terms of the built environment are perceived differently. Therefore, when the “acquired” and the “inherited” coexist in contemporary Muslim built environments, each conveying a different perception, therefore a different manifestation, tension arises between the two: the dynamic vs. the static, i.e. dynamic cultural mode vs. static societal system. This issue is explored in the next chapter.

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<sup>1</sup> The first level of disintegration in the Muslim built environment appeared on the theoretical level, as shown in part one above, as a misunderstanding in most Orientalists’ studies of Muslim built environments.

<sup>2</sup> Also a disintegration on the societal level (as shown in the next part) which might be considered as the broader framework of which the disintegration of the built environments is a part.

## Chapter Five

**Roots of the *Acquired***  
Shifting paradigms

## **ROOTS OF THE *ACQUIRED*** **Shifting paradigms**

### **5.1 INTRODUCTION**

As asserted, Muslim countries today live an encounter between two modes: the acquired and the inherited. To understand this encounter, the two modes have to be investigated, at their roots. The acquired mode has its roots in the Western model of modernity and capitalism, whereas the inherited mode has its roots in the Islamic legal system. These roots constitute the milieu for each mode, formulating its three structures (manifested, operative, and imperceptible), and thus creating their own distinctive models. Stemming from different roots, the two modes differ substantially; their encounter in contemporary Muslim built environments has led to a state of destabilization, thus to a crisis. To explain this destabilization, the roots of the two modes should be grasped, to locate the points of incompatibility between the two modes. This chapter is thus concerned with investigating the roots of the acquired mode, with some comparisons with the roots of the inherited mode, when necessary.

The acquired mode began in the Arab Muslim countries with the reception of modernity, and shaped by its conditions. However, it is said today that this mode is shifting towards postmodernity, or for some (e.g. Giddens) to late modern conditions, which consequently affect its structures. So what are the modern and postmodern conditions, and how do they affect the acquired mode? Much has been written on this subject. This chapter constitutes a critical review of the conditions of modernity and postmodernity from the perspective of this study.

### **5.2 SHIFTING PARADIGMS: WESTERN PERIODIZATION**

For Marx, history follows a linear pattern of development. It takes the form of a succession of societies from slavery to feudalism to capitalism and ultimately to socialism (Abercrombie et. al., 1994, p.252; Marshall, 1994, p.310). In the same vein, Toffler (1981) conceives of history “as a succession of rolling waves of change”. Following the waves of change unleashed by the agricultural and industrial revolutions respectively, Toffler argues that a “third wave” is now beginning (p.27-8). Many of those concerned with modern sociological and cultural history see societies as moving from an industrial age to a post-industrial age (e.g. D. Bell), or what some refer to as an information age or a network society (e.g. Castells). Similarly, some look at this change as a transition from a modern to a postmodern era (e.g. Baudrillard, Lyotard, Jencks), whereas others (e.g. Jameson, Lash) view it merely as a structural change within the capitalist system, from early or market capitalism to industrial or monopoly capitalism to late or multinational and consumer capitalism (Mandel, 1975; Jameson, 1991, p.35), or from Fordism to flexible accumulation within the capitalist mode of production (Harvey, 1990). Such are

different interpretations of history, however, all convey a sense of **periodization**<sup>1</sup> in perceiving history, whether it is local or general history. It can be argued here that periodization is a Western concept that reflects the **dynamism** of Western societies. It is a result of the chronological development of different transformations and shifts (paradigms)<sup>2</sup> in the systems (or as Marx views it, changes in modes of production, e.g. socialism, capitalism) within which societies operate. Thus, a perception developed that Western societies are **dynamic**; moving progressively in a one-way continuum from one paradigm to another. This character of dynamism is reflected in many aspects of life in Western societies. Recently, it has been applied to internal changes in the one system that is dominant (capitalism), most evidently, in the shift from modernity to postmodernity.

Such concepts stand in contrast to the perception of Muslim societies from which the inherited mode emanates. Muslim societies are perceived as **static**, however, static not in the negative sense that implies anti-progress, but static in its roots from which society's development springs. That is, Muslim societies at any time are subject to the Islamic law (*shari'a*) which is static (as will be seen). In this way, the acquired mode, perceived as dynamic<sup>3</sup>, is discordant with the inherited, static mode.

In comparing Islam with the Western mode, one can argue that in pursuit of fulfilling their aims of increased **human freedom and happiness**, adopted since the Enlightenment, Western societies have been uncertain of the means by which to reach their ends. They move from one trial (means) or **paradigm** to another, hoping that the later will operate as a better means to that end. Capitalism and socialism constitute systemic paradigms; each has its own ideology of achieving the Enlightenment ends. With the demise of socialism, the focus now is on capitalism, as the sole existing system, and on the shifts in its internal means (paradigms) to reach the pre-set ends. However, starting with modernity within which different diversions occurred, and then shifting to postmodernity, the search continues. Those latter means or paradigms, once originated and implemented, constitute **modes of society-making**. Due to these "**paradigm shifts**", most aspects of life (social, cultural, economic, and political) witness perpetual changes, some of which are considered as promising or beneficent while others are threatening or disastrous.<sup>4</sup>

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<sup>1</sup> Periodization signifies dividing the sequence of events of history into periods (Abercrombie, 1994, p.312).

<sup>2</sup> These shifts are referred to here as paradigms, as they involve a reaction against an older model on the basis of a new one, i.e. a new paradigm replaces another.

<sup>3</sup> In comparison to the inherited mode.

<sup>4</sup> To name some, material prosperity as manifested in an increase in the standard of living, however, this is inequitably distributed; development of an international and global economic system is accompanied by a decline of the sovereignty of nation-states and national politics; introduction of political democracy, yet, a proliferation of new political movements, and an increase in the sense of insecurity, as well as dissolution of the unity of society; technological and industrial advancement, yet, an increasing depletion of natural resources, thus accelerating ecological crisis.

In short, **shifting paradigms**, and thus **dynamism**, have characterized the Western mode throughout its development. This chapter is concerned with investigating the impact of such characteristics on the built environment and thus on shaping the acquired mode. Therefore, the focus is on those paradigms that might be considered the rationale for the present conditions of the built environment, i.e. the transition from modernity to postmodernity.<sup>5</sup>

Both modernity and postmodernity are invariably defined largely in relation to Europe and the USA, and not to the world as a whole. They are Western concepts, whether viewed geographically or in terms of the Eurocentric intellectual sources on which they draw and the phenomena they purport to explain (King, 1995, p.110). It follows from here that processes of modernization are **Western models of development** that were/are transmitted to the rest of the world, part of which is the Arab Muslim world. Those processes of modernization had a wide impact on the built environment in the Arab Muslim world. They introduced to these latter environments what is called in this research the “acquired”, viz. Western models (modern) of built environments, thus, much of Muslim built environments, following those models, are/were “modernized”, i.e. **shifting** from their inherited mode to an acquired mode of built environment. To scrutinize such impacts, the modern conditions within which the “acquired” mode was produced in the West are explored briefly in the next section.

The significance of this review lies in its broader framework. That is, many contemporary scholars argue that the transformation from modernity to postmodernity constitutes the solution for the problems in contemporary societies (including the crisis of contemporary built environments). Postmodernity is considered as the defender of the marginalized; the rescuer of the lost identity of the built environment; the liberating force of modernity’s repression. In advocating this, scholars (e.g. in planning theories) seemed not to consider the imperceptible societal structure of both modernity and postmodernity. Therefore, an in-depth, **critical** investigation of the conditions of modernity and postmodernity and their concomitant conceptions and impacts on contemporary societies, and thus on the acquired mode, is required.

### 5.3 THE MODERN CONDITIONS

**Modernity** as a distinctive era was fully conceptualized in the course of the eighteenth century with the advent of what is generally identified as “the Enlightenment” (Smart, 1992, p.145-6). Most of the dogmas and thoughts of the modern age can be perceived as a **radical departure** from premodern dark conditions. Those thoughts were crystallized and brought into practice by the French Revolution (1789). It announced its aims as the attainment of **freedom** and liberation

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<sup>5</sup> Regarding the postmodern paradigm, since this study is related to an issue of a political and cultural nature (the built environment), and since the notion of postmodernity is the most comprehensive of those theories exploring present conditions, attention here is on postmodernity as a representative interpretation of present conditions. Postmodern theory is said to be a theory in which the method of analysis stems from and mirrors the reality it analyzes (Kumar, 1995, p.184). Other theories, such as those of the “information society” or “post-Fordism” are confined to certain realms, mainly the political economy, whereas postmodernity embraces all forms of change: cultural, social, political, and economic. In other words, postmodernity incorporates all those other theories within its scope.

of humanity from its chains under the guidance of **reason**. It had **liberty** as the centre of its project; thus its slogan was “liberty, equality, and fraternity” (Stromberg, 1975, p.207).<sup>6</sup> Modernity thus heralded a new beginning, based on a new method of searching out the truth.

In the Enlightenment era, “**the pursuit of happiness**” represented the major goal (Stromberg, 1975, p.190). The Enlightenment believed in the **rational planning** of ideal social orders. It claimed that only a society that is based on science and universal values is truly free and rational; only its inhabitants can be happy. Nothing can picture this dreamy happy modern society better than Bentham’s Panopticon society. It is an **orderly, totally administered** (Horkheimer and Adorno), **reason-led** society where all its residents are happy. The project of modern politics was thus to define and implement universal goals like freedom, equality, and justice, in an attempt to transform the social structure and thus to intervene into the public sphere (Best et.al., 1997, p.272). Happiness in the Western perception is much related to the **provision** of physical well being that could be generated through **ordering** society. In Islam, happiness is a static concept, defined for people by *shari’a*. Happiness in Islam can be achieved through worship and not through physical provision. For example, Islam views the built environment as a means for living and not as an end (as the case in the acquired built environment), as explained in chapter ten below. Therefore, happiness pertains to individuals; it can be achieved through personal efforts without the intervention of any external party (e.g. the state). This is a major difference between the Western and Islamic vision of life.

Such concepts and the aims of the Enlightenment embody an attitude towards the existence of a **controlling party**. That is, achieving such aims and employing such liberating concepts require the existence of a particular (maybe central) party that performs rationally to **plan for, administer, and order** society, thus generating happiness. This, in fact, correlates with the rise of the **modern** state responsible for fulfilling such tasks.

### 5.3.1 The state in modernity

Since the eighteenth century, it has become conventional to distinguish between society (or “civil society”) and the state (Mann, 1993, p.23; Pierson, 1996, p.64-7). It is a distinction between who rules and who is ruled (citizens). Society cannot exist without the state; the modern state guards individuals’ interests and freedom (Giddens, 1985, p.21). The modern state is based on the concepts of **sovereignty, representation and legitimacy** (Badie, 1992, p.102). That is, what is most characteristic of the modern state is legal authority, and the idea that the state embodies and expresses (represents) the will of its people (Pierson, 1996, p.23). Dependent upon the implicit consent of its subjects, the state acquires its **legitimate** authority, thus its **power**. Based on its legitimacy, the state constitutes the **supreme power** (sovereign); subjects are expected to treat its commands as binding obligations (Hindess, 1996, p.12-3).

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<sup>6</sup> The French revolution is considered the first modern revolution because it changed the **structure of society**, rather than simply replacing the existing ruler or even the political regime. Furthermore, it created new ideologies to explain its course when nothing suitable could be adopted from the past (McLean, 1996).

Defining state legitimacy<sup>7</sup> as the right to exercise its power, the state always tends to reinforce its legitimacy by appropriating the legislative process to its side (Badie, 1992, p.130). Thus, enactment of the law is one of the main characteristics of the modern state. Law in its modern positivist concept is perceived as a human convention or stipulation **enacted by the state** as the legislative body (Scruton, 1996). The state produces law, and is not restricted by law<sup>8</sup> (unlike the case in the Islamic state which is restrained by the Islamic law of *shari'a*, as explained in chapter eight). Thus, as Black describes it, law is the solemn expression of the will of the supreme power of the state (Black, 1991, p.612). The modern state is the state of citizenship, individualism, and the law. Such concepts of **sovereignty, representation, and legitimacy** embodied in the conception of the modern state are Western concepts that do not exist in Islam. Therefore, the conception of the modern state embodied in the acquired mode differs substantially from the state in Islam embodied in the inherited mode. This constitutes one area of incompatibility (or “tension points”) between the two modes.

Different approaches perceive the modern state differently. The **Marxists** (e.g. Miliband) view the state as an instrument of society's ruling class- the capitalists or bourgeoisie. Engles declared that the state is a “**power**, arisen out of society but placing itself above it” (cited in Pierson, 1996, p.75). Thus, for most Marxists, “the state is a concept for the concentrated and organized means of legitimate class **domination**” (Zeitlin, cited in Mann, 1993, p.45). For **Weber**, the state upholds the claim to the **monopoly of legitimate** use of physical force in the enforcement of its order (cited in Pierson, 1996, p.55). Weber emphasized state monopoly and legitimacy in his definition. The modern state, according to Weber, embodies what he referred to as “rational-legal **domination**” (Mann, 1993, p.57). He contends that a fundamental activity of the modern state is the attempt to legitimate the **structure of domination** (McLean, 1996, p.474). Neo-Liberals see the modern state as an increasingly domineering and malign influence, imposing itself upon society (e.g. Hayek). They argue that the modern state has become too large and too **powerful** (Pierson, 1996, p.80). Elitists perceive the modern state as an elitist state where decision-making **power** is concentrated in the hands of a minority (e.g. Mosca, Pareto). Such views of the state denotes that the state **dominates** and **controls** society. Institutional statism emphasizes state autonomy (e.g. Nordlinger, Skocpol). Its advocates contend that state apparatus may pursue its own interests, sometimes in defiance of interests in the wider society. Skocpol declares in that regard that the state is a structure with a logic and interest of its own (cited in Mann, 1993, p.52). Thus, all actors are constrained by existing political institutions.

Reviewing these diverse approaches to the modern state, it can be noted that they all revolve around the **concept of power** as the main feature of the modern state. Marxists emphasized the role of the state as a power holder, exerting domination over its society, while Weber underlined the power of the state to enforce its orders. Neo-liberals, elitists, and statist accentuated the

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<sup>7</sup> Weber defined legitimacy as “the prestige of being considered binding” (cited in Pierson, 1996, p.22).

<sup>8</sup> Sometimes, constitutions limit the state, as in the United States.



power of the state over society. Thus, it can be said that the modern state is **based on the concept of power**. Relationships between the ruler and the ruled are power relationships. They are hierarchical relationships directed from top (supreme power) to bottom (subjects). Accordingly, as explored in chapter six, the modern state differs from the state in Islam. The former is a power-based state while the latter is rights-based state, thus the acquired mode differs from the inherited mode in that respect.

Using its legitimate power, the state gives itself the right to be the decision-maker in most institutions or to intervene in the decision-making processes of its subjects. A very general feature of the state's development in modernity has been its increasing penetration into the society on which it presides. The modern state is an active state, increasingly managing, shaping, even creating its constituent population (Pierson, 1996, p.57). Foucault conceives of the modern state (government) as denoting certain rational exercises of **power over** others (subjects). It refers to the conduct of the conduct<sup>9</sup>, aiming to **regulate** the actions of individuals by working on their conduct, using different rationalities and techniques (Hindess, 1996, p.97). One of those rationalities is the disciplinary method where the government uses discipline as an instrument of control. It disciplines (moulds<sup>10</sup>) the behaviour, personalities and thoughts of its subjects (Hindess, 1996). Such use of discipline by the government is predicated on a claim to knowledge and the public interest. The state engineers (**plans**) society, aiming at bringing it to an ordered state, according to its standards. Such disciplinary or social engineering projects are thus the main block of the modern state. Accordingly, in fulfilling the aims of the Enlightenment, the modern state stands as the supreme power that employs rational **paternalistic** methods in ordering society. In short, in the name of rationality and order, the modern state controls and dominates the society. It is thus an **interventionist state**.

Defining infrastructural power as the institutional capacity of a central state to penetrate its territories and logistically implement decisions (Mann, 1993, p.59), Mann asserts that the infrastructural powers of the modern state are increased.<sup>11</sup> Weber saw this growth of the modern state as part of a "rationalization process", sweeping the entire West. This, as Weber contends, implies **increase in state power over society**. However, this increase in infrastructural power is accompanied by increased bureaucratization. The modern state is thus a bureaucratized state (Mann, 1993, p.57).

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<sup>9</sup> Conduct in the sense used by Foucault denotes leading or controlling a series of actions (Hindess, 1996, p.106).

<sup>10</sup> In the meaning of formulating and reformulating.

<sup>11</sup> Five main theories explain the growth of the modern state, thus the size of its infrastructural power: **first**, modernization theory which contends that modern states grew to coordinate greater social complexity and differentiation. **Second**, public goods theory, that considers the state as a provider of public goods because they are in no one's private interest to pay for, yet are in the general interest. **Third**, the welfare state theory, which holds that in complex societies the state steps in. **Fourth**, political redistribution theory, where the franchise enables the many to take from the few. **Fifth**, as Higgs contends, the state performs all those roles together and more (Mann, 1993, p.359).

Beginning about 1870, the state expanded in size and scope. It extended material and symbolic infrastructures of communication: roads, railways, canals, etc. It also went into direct ownership of material infrastructures and productive industries, and it expanded its welfare programs. Capitalism required state regulation; even laissez-faire advocates had not doubted the need for state regulation. Adam Smith, for example, wanted the state to provide public goods that private actors had no personal interest in funding, such as external defence, internal security, national education, and a road network. Such a role for the state was not seen as **state intervention**, but as **coordination**. By the end of the nineteenth century, the infrastructure power of the modern state began to grow, though mostly perceived as **coordinating** rather than intervening in civil society. Aiming at more power, the state naturalized social life (Mann, 1993, p.480) so that people become self-subjected to it, accepting such state-determined standards as unquestionable. Social questions were seen as legitimate matters for **state intervention**, thus people accepted state **regulations** and **social reform** in that context. The state took responsibility for education, public health, introduction of material infrastructure, city planning, and the like. Gradually the state started to enact regulations and policies for most aspects of life. Legislation was mostly directed at social control. Thus, all social issues became **politicized**. The state became the reference for people to define their rights and duties. Consequently, state civilian scope and **power** infrastructure grew (Mann, 1993, p.481).

To conclude, the modern state is based on the concept of power. Enhancing its legitimate status and acquiring more power, the state acted to increase its power infrastructure, thus its scope and size. Ultimately, the modern state intervened, in the name of order and rationality, in most aspects of life. This conception of the modern state constitutes the roots of the state in the acquired mode. Such conception differs substantially from that of the state in the inherited mode, based on the concept of rights in Islam.

### **FEATURES OF MODERNITY**

Modernity is characterized by its strong belief in absolute truths, progress through science, and in secular **reason** and **rationality** (Smart, 1992, p.149). With this, European thought entered, as Marcuse put it, an “era of **positivism**”. Positivism, grounded on instrumental reason (means-end rationality), established the authority of observation and experience. Values and value-judgements were classed as unscientific. They were not accorded the status of knowledge claims (Held, 1980, p.161-4). Accordingly, modernity’s prevailing grand narrative has been that of increasing **progress towards emancipation or liberation** of humans, more freedom, and thus happiness. It is a narrative of living in a purely rational world of freedom and equality and unlimited progress (Halton, 1995, p.263). Such has been the “project of modernity” from the time of the Enlightenment (Seidman, 1990, p.219; Smart, 1992, p.62).

However, fulfilling this project took a different path. Gradually, value spheres of science and scholarship (truth, knowledge), morality (justice), and art (taste) became differentiated, with each having its own inner logic (Sarup, 1993, p.143). Those spheres were **institutionalized** as matters for **professionals** and experts, where the distance between them and the general public is wide (Habermas, 1992, p.162). That is, aiming at rationalizing society, the **state** directed (i.e.

intervened in) such realms, according to its rational (as alleged) standards. Thus the individual lost control over such realms to professionals and state institutions. This in turn marked the rise of the **extraneous party** as an interventionist party. The **state and professionals** constituted this party, as explained in chapters nine and ten.

Modernity was constituted through its opposition to, or break with, the traditional and the past. It has a sense of superiority (Smart, 1992, p.147). Modernity is committed to the “new”, to the extent that it can have no respect even for its own past. It is thus characterized as **dynamic**. It meant the dissolution of the norms shared by communities, or imposed absolutely upon them, to be replaced on the one hand by **individualism**, conceived as the ground of knowledge and rational truth, and on the other by the **state**, as the very embodiment of the rational, self-knowing **will** of the nation and people. In this respect, in a society characterized by individualism, the state became the **representative** of the public. It defines their “**public interest**” which it performs to fulfil (as explained in chapter seven).

Contrary to modernity, resonating its **statianness**, Muslim society respects tradition and Islamic-based norms and values. It is grounded in Islamic tradition. It avoids innovations in matters related to Islam. The prophet proclaimed in that respect that “He who innovates something in this matter of ours that is not of it will have it rejected”. He also counselled: “... Beware of newly invented matters, for every invented matter is an innovation and every innovation is a going astray and every going astray is in Hell-fire” (an-Nawawi, n.d./b, p.40,94,96).

### **CRITIQUE OF MODERNITY**

The “project of modernity” has never been without its critics. As a reaction to the poor conditions that existed throughout the nineteenth century as a result of capitalism and modernity, notions of the Enlightenment (progress and rationality) began to be questioned by the end of the nineteenth century. That is, increased instrumental rationalization of society did not lead as intended to universal freedom and happiness. On the contrary, due to excessive standardization and employment of pre-stated laws in every aspect of life (by the state), society turned out to be, as Horkheimer and Adorno maintain, totally administered. It led as Weber argues, “to the creation of an “**iron cage**” of bureaucratic rationality from which there is no escape” (Bernstein, 1985, p.5, emphasis added). Horkheimer and Adorno in their “Dialectic of Enlightenment” declare that the Enlightenment project has turned against itself and transformed the quest for human emancipation into a system of universal oppression in the name of human liberation. They argued that the logic that hides behind Enlightenment rationality is a logic of **domination and oppression**. That is, the lust to dominate nature entailed the **domination of human beings** (Bernstein, 1985, p.6). Accordingly, the only way out of this impasse is freedom and liberation from the oppressive power of purely instrumental reason (employed by the state) over culture and personality. Put differently, in the name of human emancipation, the Enlightenment project should be abandoned entirely (Harvey, 1990, p.13).

In short, most of those criticisms focused on the failure of modernity as a means to reach the pre-stated ends. Eventually, since the 1950s, the very notion of modernity as a means involving

a project of human liberation has been thrown into doubt. In that context, Wright Mills suggests that as the increasing rationalisation (modernity) of Western society could no longer “be assumed to make for increased freedom [its aims]”, thus the “modern age” has been succeeded by a “post-modern period” (Mills, cited in Smart, 1992, p.181).

#### 5.4 POSTMODERNITY

The postmodern world [is] a world of eternal presentness, without origin or destination, past or future; ... a world in which all that presents itself are the temporary, shifting and local forms of knowledge and experience. Here are no deep structures, no secret or final causes; all is (or is not) what it appears on the surface.

(Kumar, 1995, p.147)

In the light of such attacks on modernity, postmodernity has emerged as a new means to reach the ends. In other words, the solution lies, as thought, in another **paradigm shift**.

Since its emergence in the 1960s and throughout its evolution, postmodernity has been going through unsettled stages. It has an aim; that is, to fulfil the project which modernity failed to accomplish (freedom, justice, happiness), however, it has no fixed method to reach such ends. Accordingly, different connotations have been accorded to postmodernity, each reflecting different, or sometimes contradicting, positions. Smart explains that postmodernity has been invoked to “distinguish an historical period [Toynbee], an aesthetic style [Ghirardo], and a change in knowledge [Lyotard]; to conceptualize difference [Jencks, Hassan] -a distinctive form beyond the modern- as well as similarity -a variant of the modern [Lyotard], or its limits form [Bell]; and to describe affirmative or reactionary [Jameson] and critical or progressive discourses and movements [Lyotard, Foster]” (Smart, 1992, p.164).<sup>12</sup> One should note here all those contradicting connotations, as if in postmodernity, as many say, **everything goes**.

#### EVOLUTION OF POSTMODERNITY

Postmodernity started in the field of culture, mainly in architecture, after which its effects spread to other fields such as science, philosophy, and literature. Many ideas of postmodernity emerged in the 1960s but did not crystallize till the late 1970s and 1980s.

In the 1960s, postmodern discourse was premature. It swayed between modernism as the previous paradigm and postmodernism as the new promising paradigm. The reference in both directions was to modernism, whether affirming or antagonistic to it. Postmodernism at that time was quite evident in art and architecture. It was conceptualized as a new **fad** or **style**. It celebrated the formalistic, stylistic content of anti-modernity without adopting its broader ideology. It has **no political or social agenda**. It is simply one fad among many, or one fad superseding another. It emphasizes **diversity**, displays a penchant for **pastiche**, and adopts an “inclusivist” philosophy of advocating **eclectic** use of elements from the past in an ironic

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<sup>12</sup> The names between straight arches are examples of analysts who view postmodernity in the sense aforementioned in the quotation.

manner (Ghirardo, 1986; Smart, 1992, p.168). This facet, with its fragmented pluralism, has remained both a fundamental fact and aesthetic of postmodernism ever since.

In the late 1970s and early 1980s, postmodernity was widely accepted and practised in the cultural fields. That is, postmodernity responded to and fitted with the logic of late capitalism; it celebrates mass culture, consumerism and commercialism. It is, as Jameson (1991) perceives it, the cultural logic of late capitalism. However, in other fields such as politics, postmodernity was less effective, as it contradicts the logic of the state power, as explained below.

Postmodernity is not totally anti-modern. Aiming at achieving its ends, as evident in the writings of many postmodernists<sup>13</sup>, it builds on the strengths of both modern and postmodern theories. It is, as Jencks describes it, a “continuation of modernism *and* its transcendence” (Jencks, 1992a, p.12). Moreover, postmodernity does not signify an absolute abandonment of rationality, but rather a “critical interrogation of reason” (Lyotard, 1988, p.280). Postmodernity’s rationality constitutes another form of rationality than that of modernity. It is a critical rationality rather than the modern instrumental rationality which is perceived as part of the rationalizing system of domination (Best et.al., 1991, p.282).

At the centre of postmodernity is its emphasis on **pluralism, diversity and difference**. Postmodernity means the end of a universal worldview and a single explanation. It promotes locality, racial and ethnical relativism. It rejects the unifying, totalizing narratives or grand narratives in explaining the truth (Best et.al., 1997, p.10). In that sense, postmodernism stands for a political agenda that highlights diverse local struggles, difference, identity politics, the “**otherness**”. Instead of grand narratives, postmodernity advocates “little narratives” that emphasize **relativism**; they are forms of “customary” or “local knowledge”. They do not depend on external, objective validation but are internal to the communities within which they occur (Lyotard, 1984, p.xxv).<sup>14</sup> Moreover, postmodernity abandons all deep structures or underlying causes; “all is what appears on the surface”. It is thus characterized as **superficial and depthless** (Kumar, 1995, p.148).

Amidst all those connotations and features of postmodernity, one can argue that postmodernity is but a continuation of the spirit of modernity; its manifestation differs from that of modernity according to the difference in corresponding conditions within the same system of capitalism. Postmodernity is another **means** to fulfil the same Western project (to reach the Enlightenment ends: progress and more freedom, thus human happiness). It is a kind of corrective movement to modernity. In its history, this Western project did not follow a linear progressive line, but something like a **pendular swing** from a desire for control over “disorder” to a value placed on

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<sup>13</sup> Examples of such writers are Lyotard, David Harvey, Richard Rorty, Richard Bernstein, Homi Bhabha, Nancy Fraser, Stuart Hall, Steven Seidman, Charles Jencks, Steven Best, Douglas Kellner, and Barry Smart. Those are considered as moderate postmodernists as compared to extreme postmodernists.

<sup>14</sup> Harvey and Jameson argue that meta-theory cannot be totally dispensed with; postmodernists simply pushed it underground where it still functions as a ‘now unconscious effectivity’ (Harvey, 1990, p.117; Eagleton, 1987).

tolerance for diversity, cultural pluralism, and relativism, and then back to a need for some imposition of order. Put differently, it sways from order to disorder, from rationality to less rationality. The sway from modernity to postmodernity is but one of those sways that this project witnessed in its search for the best means. However, as Marxists maintain, unless there is a **structural change** in the political economy, such sways can not be considered as changes or improvements (Ellin, 1996, p.194). As a corrective movement, postmodernity's effects were more evident in those areas where modernity went wrong (e.g. culture, literature, philosophy, science). In other areas, such as politics and economics, where internal logic stems from that of modernity and capitalism, postmodernity had less, if not marginal, effects.

#### 5.4.1 Postmodernity on politics

In most areas, information technology has speeded up processes begun some time ago; it has aided the implementation of certain strategies of management in organizations; it has changed the nature of work for many workers; it has accelerated certain trends in leisure and consumption. But it has not produced a radical shift in the way industrial societies are organized, or in the direction in which they have been moving. The imperatives of profit, **power** and **control** seem as predominant now as they have been in the history of capitalist industrialism

(Kumar, 1995, p.154; emphasis added)

Different positions and themes of "postmodern" political discourse<sup>15</sup> were developed. Of those is the "**politics of desire**". The overall effect of the politics of desire sustains the autonomy of the choosing agents. Postmodernity, as Bauman argues, considers "**choice**" a central issue in determining the individual's freedom (Bauman, 1992, p.169-170). Opposite to this vision, rather than seeing free choice and freedom as beneficial to the individual, Marcuse argues that freedom and liberty in contemporary western societies are instruments of social control. Individuals are subjected to the creation of false needs which gradually become real needs. However, Marcuse contends, what characterizes contemporary industrial societies is that the individual himself is integrated into the established society; he reproduces and perpetuates the external controls exercised by his society. In this process the "inner" dimension of man, in which opposition to the status quo can take root, is whittled down. Thus contemporary man, in terms of his thinking, is a "one-dimensional man" (Marcuse, 1991, p.2-12).

This postmodern politics of desire is accompanied by uncertainty and suspicion that the agencies promoting desire are oblivious or negligent of the damaging effects of their proposals. This, which Bauman calls the "politics of fear" strengthens the position of **experts** as trusted authorities. Production and distribution of certainty becomes the defining source of power of the experts. This introduces another type of politics: "**politics of certainty**" which is constructed mainly around the production and manipulation of trust (Bauman, 1992, p.196-200). Such

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<sup>15</sup> Most postmodern politics are confined to theory (Best et.al., 1997, p.271), and if translated into practice, they don't introduce radical changes that can lead to systemic transformation. In general, postmodernity in politics is **oppositional**. It aims at changing certain aspects of the status quo, however, not radically or systematically.

politics are considered here as a continuation of modernity's politics of exercising control over agents. It sustains the role of the state and professionals as **extraneous parties** intervening in people's lives, as explained in chapters nine and ten.

**Postmodern** discourse establishes what is known today as "**identity politics**". This may be the most dominant form of politics today (Best et.al. 1997, p.273). In identity politics, individuals define themselves primarily as belonging to a given group, marked as "oppressed" (e.g. blacks, feminism, environmental movement), however, interests of different groups might conflict. These identities revolve around a "subject position", a key identity marker defined by one's gender, race, class, and so on and through which, as Foucault argues, the individual is made subordinate to the dominant culture. Identity politics often embodies simplistic binary oppositions such as Us versus Them, Good vs. Bad (e.g. female against male, black against white), thus a **deterministic** and value-judgmental vision. However, by grouping individuals, identity politics ignores that individual identities are also multiple, and that group identities are socially constructed according to the structure of domination prevailing in society, thus such identities have to be reconstructed in a more emancipatory manner. In short, identity politics does not constitute a radical politics; it does not lead to any systemic transformation. It is another form of modern politics.

Identity politics, while breaking from totalizing narratives, tend to be insular and fragmenting, focusing on the experiences and political issues of a given group, or even of its subgroups (Best et.al., 1997, p.278). As in modernity, some forms of identity politics are separatist and privilege the standpoint and interest of other groups in an exclusivist fashion. Postmodern identity politics, in its focus on voicing the silenced, does not consider the power structure within society. That is, some people and groups are in a better position to speak than others. Such calls for change are vapid when the field of discourse is controlled and monopolized by the dominant political power. Thus, the question that is still open, is how is it possible to adjudicate between the various claims, and how to reach consensus? Whose responsibility is it? Is it the state's, as a representative of the public? If yes, then the state still retains its modern role as a coordinative and regulative device, which thus legitimizes its intervention in the public sphere. In that respect, one can argue that the modern conditions of power structure and real politics persist.

To overcome alienation and oppression, postmodern politics involves a radicalization of the theme of **participatory** democracy. That is, postmodern theory involves a shift toward more multiperspectival theorizing that respects a variety of sometimes conflicting perspectives, rather than, as in modern theory, seeking the one perspective of objective truth or absolute knowledge. However, as Habermas argues, conditions of communication and participation can be distorted from the start due to the existence of domination, thus not everyone can participate on equal terms (see Brand, 1990). Postmodern politics stresses **micro**-structural diversity, difference, plurality, conflict, and respect for the other. However, it is unable to grasp systemic relations and casual nexuses, and mystifies various forms of social inequality (Best et.al., 1997, p.279-280). In other words, in its focus on micro-structures, postmodern theory has problems theorizing **macro**-structures and seeing how totalizing tendencies, like capitalism, state

apparatus or racial oppression, permeate micro-structures and the plurality and differences that the theory celebrates. Most postmodern theory is thus unable to theorize structural causation and the relative weight and significance of casual factors like the state or other institutions and practices. This sort of pluralism is unable, as Althusser proclaims, to specify key sites of domination and oppression (Best et.al. 1997, p.281).

In conclusion, postmodernity might fit with the capitalist logic, but it does not fit with the logic of the state based on power. That is, as Best and Kellner (1997) argue, postmodern politics follow capitalistic and state intervention processes, which tend to politicize every sphere of life. Such state intervention processes' imperceptible aim is to increase the state infrastructural power. Identity politics if fulfilled on a comprehensive scale reduce state power, which contradicts the state's ideal. Therefore, such politics, in the light of the modern state's main pillars (power, legitimacy, representation, and sovereignty), are confined to local spheres and have only a minor chance to produce radical systemic changes. It can thus be argued that the "postmodern" state (if it exists) and politics is but a continuation of modernity. That is, as long as the main blocks of the modern state persist, the same politics of modernity persist, even if following different strategies. The postmodern state is a power-based regulatory state; it uses its power to enact laws and thus to regulate society. It represents its people, defining their public interests (instead of universal interest). It has the right to intervene in people's lives in the name of coordination and regulation. This is quite evident in the endurance of urban planning as a **profession** (representing the state) participating majorily in the production of the built environment, although with different methodologies, as explained below. And against those who argue that the modern state is declining with the dissolution of the nation-state, Pierson argues that the nation-state is only one form of the modern state. The contemporary transnational, late capitalism state is another form (Pierson, 1996, p.193). In that respect, Held maintains that despite the many changes that the nation-state is going through, the bottom line is that "the modern state is still able in principle to determine the most fundamental aspects of people's life chances" (Held, cited in Pierson, 1996, p.193). In short, as long as state acts out of its supreme **power**, it is the dominant actor in society.

Most contemporary writings in political thought are quite distanced from postmodern discourse. As explained above, state theories in the 1980s and 1990s revolve around the concepts of the modern state. They adopt, for example, Marxist (e.g. Poulantzas, Miliband) or Weberian (e.g. Rex, Moore, Pahl) totalizing methodologies and narratives, which postmodernity dismisses. Moreover, as evidence of the persisting existence of the modern state in this "postmodern age", **statist** theories (e.g. Skocpol, 1992) emerged in the 1980s, focusing on one of the main themes of the modern state: state autonomy. In short, much of real politics are distanced from postmodern discourse; in real politics, in contrast with political postmodern discourse, the conception of the modern state based on power persists, however, using different strategies. In other words, postmodernity permeates only to the perceptible levels of the system; it is incompetent to permeate into the imperceptible level within which modern mechanisms persist.



Both modernity and postmodernity almost meet in the same systemic imperceptible level regarding their goals, systemic mechanisms, state existence, and thus power conception.

Such is the milieu from which the acquired mode arises; a milieu shaped by dynamic mechanisms operating to fulfil a prescribed Western project (Enlightenment project). A milieu dominated by the state as the supreme power. But how was this milieu reflected in the built environment from which the acquired built environment emanates?

### 5.5 PRODUCTION OF THE BUILT ENVIRONMENT: SHIFTING PARADIGMS

Aiming at fulfilling the Enlightenment project of achieving a rational well-ordered society, the state acted to **plan** society and its built environment. Planning is thus a **state-directed** mechanism for controlling and guiding society, according to certain standards set by the state, as disclosed by the expertise of planners. Representing its people, the state, through its legitimate status, set itself to speak in “**the public interest**”. The notion of the “public”, reflecting the modern universalism, implies an undifferentiated homogenous group, regardless of any differences that might exist between its members. As such, planning inevitably demands **centralization of control and power** (Flyvbjerg et.al., 1982, p.24). Planning, as defined by Hajer, is “the activity of the state [of] organising the use of space” (Hajer, 1989, p.21), or as defined by Healey, “an activity of governments, and is structured by the characteristics of government activity and its relation to wider societal forces” (Healey et.al., 1982, p.19). Hence, planning perform within the state’s general framework; its policies operate in accordance with the state’s general policies. It is for the liberals<sup>16</sup> (e.g. Hayek) a planning of the future of the whole society, in which the values of one or a few individuals would decide the direction for all the rest of society (Flyvbjerg et.al., 1982, p.25). In short, planning implies a sense of **centralization and power exercitation**.

Constituting part of the project of modernity, the idea of modern planning is centrally linked to concepts of democracy and progress (Healey, 1996, p.236). “The aim of modernist planners was to act as **experts** who could utilize the laws of development to provide **societal guidance**” (Beauregard, 1996a, p.218, emphasis added). Therefore, planners’ purposes were to maximize welfare and solve problems through the use of analytical tools from the social sciences that influence decisions, and through the design of regulations and implementation strategies that will produce desired outcomes (Sandercock, 1998a, p.86). Planning activity is in fact centred on the capacity of the planner, working within the state, to control certain aspects of the public’s lives and built environment. It is, in other words, a legitimate form of **state intervention**. This capacity emanates from the planner’s power as an extension of state power. Thus, planning activity can be described as an activity of **asymmetrical power distribution** where the planner is a power-holder, and thus has a transformative capacity. Using this power, the planner can take decisions that affect the lives of others, such as in allocating resources (life chances according to Weber) according to his definition (or more precisely, state’s definition) of the

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<sup>16</sup> The liberals advocate the laissez-faire conception which starting point is the sovereign individual (Flyvbjerg et.al., 1982, p.25).

“public interest”. Planning is a redistributive mechanism, in which planners influence the distribution of benefits and resources through their decisions (McConnell, 1981, p.157,162). In that sense, planning is a **centralized, planned state intervention**. For example, to control land market so as to be able to control urban development, the state in the post-war period in Britain nationalized the **right** to develop land<sup>17</sup> (Taylor, 1998, p.22). This of course implied affecting the structure of land and property rights and the interests of land and property owners.

Planning took an official form as a profession at the beginning of the twentieth century.<sup>18</sup> However, since the nineteenth century, a project of social reform took place in a form of dispersed legislative Acts, and not totalizing schemes as the case in the twentieth century. Such process began with **legislative reforms** so as to legitimize and thus **expand the power** of the state to intervene in private properties (Greed, 1996, p.82).<sup>19</sup> In that sense, state-planning legislation constitutes methods of exerting **control over** private property and development.

Reflecting the main tools of the modern state within which it performs, modern planning revolved around main concepts of rationality and objectivity. Its knowledge and expertise were grounded in positivist science. That is, faith in the possibility of positivist knowledge enabled planners to claim their expertise transcended specific interests and gave them the ability to determine what was, or was not, in “the public interest”. Accordingly, planners claim that they act in a value-neutral, objective manner. This conception was attacked by later critiques (mainly neo-Marxists and poststructuralists) who claim that planning has never been value-neutral. Gans, for example, points out that planners have generally advocated policies that fit the predispositions of the upper classes but not those of the rest of the population (cited in Fainstein & Fainstein, 1996, p.267). Marxists attacked planning as serving the interests of capital at the expense of the rest of society (Klosterman, 1996, p.161). Flyvbjerg contends in that respect that planners in real times play games of power covered up as technical reasoning, so the politicians and the planners can get what they want (Flyvbjerg, 1996, p.387). For Foucault, planning could be associated with the dominating power of systematic reason, pursued through state

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<sup>17</sup> In that sense, the state legislation embodied a contradiction between private ownership rights in land and property on the one hand and the regulation of land and property market through state’s control of development rights on the other hand (Taylor, 1998, p.22).

<sup>18</sup> In the USA, in 1917 a profession of planning was created (Catanese & Snyder, 1979, p.22). Zoning codes were introduced officially in some American states since 1913. In New York the Zoning ordinance was introduced in 1916, and in Berkeley in 1917. In Britain, the Royal Town Planning Institute was established in 1913. Housing and Town Planning Act was introduced in 1909, the Town and Country Planning Act was first introduced in 1932, modified into the New Town Act in 1946, and the Town and Country Planning Act in 1947. The last two acts were consonant with increased state intervention at that time. They conferred planners with greater power to control development (Taylor, 1998, p.21; Greed, 1996, p.110).

<sup>19</sup> First forms of state intervention in Britain for example were related to the public health in the houses of the working class. Society accepted the state’s Acts as regulatory thus needed. However, such early Acts paved the way for later, wider controls over all classes of housing and types of land use by means of town planning. In Britain in 1875, for example, the state decreed an Act through which the power of local authority was increased, granting it the power to control the development in whole areas, and giving it compulsory purchase powers (which continued till the present day) (Greed, 1996, p.86).

bureaucracies. Thus, planning as a profession can be perceived as a technique for controlling others (Sandercock, 1998a, p.71). In other words, planning is part of the state's power game.

In the 1930s and 1940s, when state-directed planning activities (state intervention) increased in scope, some scholars (liberal economists e.g. Hayek) took a stand in opposition to such intervention and thus opposed planning as an activity in the first place. However, in that period, affected by Mannheim and Keynes' theories, planning was largely conceived as a need to regulate and abolish dysfunctions of capitalism. Its aim was the creation of a good and regulated capitalism through scientific insight and social engineering. Society was seen as an object for conscious, rational, **legitimate manipulation** through planning (Flyvbjerg et.al., 1982, p.25-6). In the 1950s, planning was accepted as a regulating activity, however, questions were raised as to its techniques (Klosterman, 1996, p.150). Planning aims at democratizing society and the planning process. The goal is a better life, characterized by equality, and good quality built environment. However, the question here is who defines the criteria of such good life and built environment. It is the state and its planners as power holders. This reflects the paternalistic attitude which prevailed in the project of modernity.

To conclude, planning is an activity of planned state-intervention. It implies power and domination exerted by the state on private properties. It thus reflects the power game in state and society.

### **PLANNING MODELS**

In the modernist model, planning was a project of state-directed futures. It was a technocratic type of planning concerned with making public decisions more rational. Reflecting modernity's totalizing vision, **comprehensive planning** was considered as most effective in the modernist model of planning to guide state intervention. Its focus was predominantly on advanced decision making; on developing blueprints for the future; on an **instrumental rationality** that closely considered and evaluated options and alternatives; and on **utilitarianism** and **efficiency**. In the modernist model, at least until the late 1960s, planning was held to operate in "the public interest". Planners (mostly architect-planners at that time) believed in **determinism**, i.e. good architecture and planning of the built environment will inevitably have its positive effects on society, transforming it into good (rational, well-ordered) society. Reflecting modernity's differentiation of value-spheres, planning was considered as an **apolitical** activity where urban planners were apoliticized professionals concerned only with planning the built environment and thus society (Sandercock, 1998a, p.204-5).

Within the modernist paradigm, there has been a succession of competing theories over the past fifty years. The **Rational Comprehensive** model dominated the field for two decades after the Second World War. It was accepted that technology and social science could make the world work better, and that planning could be an important tool for social progress. Planning in this model is confident in its capacity to discern and implement the public interest in specific settings (Sandercock, 1998a, p.88). Planning in this period was majorily physical planning that focuses on aesthetic formalism (Taylor, 1998, p.10-4). Land-use zoning or "master plans" were

introduced as regulatory means to bring order to the built environment. They are forms of **state control** over the physical built environment, and thus the property market and society. For example, the 1947 planning system of nationalising the right of development in Britain aimed at controlling and regulating development in the built environment. It acted as a limitation on private property rights. However, according to Hall, this Act had an inegalitarian effect. It contributed to land and property price inflation through containment policy (control of urban sprawl); thus the planning system exacerbated existing inequalities (Taylor, 1998, p.100-1).

Over the past two decades, this model has faced many challenges; nevertheless, it persists today. Operating within the same ideology, alternative models of decision-making were introduced. Based on rational decision-making, a **procedural planning** model emerged (e.g. Faludi), resting on the assumption that planning action is "acontextual". It does not pertain to any particular object or context; it can be applied to any societal context. This model rests upon a consensus view of society in which conflicts over values and interests are absent; thus it is apolitical (Healey et.al., 1982, p.8, 14; Baum, 1996, p.367). Lindblom (1965) developed his "**disjointed incrementalism**", focusing on incremental decision making as a replacement of comprehensive decision making. Developing from this, Etzioni (1967) proposed his model of "**mixed scanning**" by which the decision-maker quickly scans the field of action, identifies the preferred strategy on the basis of incomplete information, then explores that strategy in more detail, occasionally returning to the general level to re-establish the overall direction (Faludi, 1996, p.69). Stemming from the same base, such alternatives were detached from the political nature of planning. They revolve in the technocratic, rational decision-making paradigm which persists today (see Breheny & Hooper, 1989; the writings of Faludi, and E.Alexander).

Starting from the 1960s, affected by the 1960s revolts and the parallel changes in culture (postmodernism), the modernist model of planning was greatly attacked. The legitimacy of planning was questioned; the grand modern models of planning were no longer accepted; faith in technical rationality as the central block of planning was undermined; the fiction of determinism has been compromised; and a request for new more democratic methods of planning that offer a better quality of life was mounting (Flyvbjerg et.al., 1982, p.38). Critiques attempted to shift focus from quantitative to qualitative planning; from place-oriented planning of the rational model, to people-oriented planning, which takes into consideration the people as end-users. Moreover, those critiques emphasized the status of planning as a political activity. However, Blowers proclaims that such critiques did not conceive of planning in its wider sense, that, as Wildavsky contends, "planning assumes power. Planning is politics" (Wildavsky, 1973, p.132). Instead they saw it as an activity operating within a political framework in the sense that its decisions has to be approved by the political process. Blowers contends that planning is necessarily involved in a social context in which **power relationships** have to be recognised and understood. Power involves conflicting interests, values and outcomes (Blowers, 1982, p.142). Similarly, Alexander acknowledged the difficulty of employing rationality in group decisions, due to the conflict of interests among the individuals making up the group. He states that in most groups the choice is strongly affected by the relative status or power of participants,

and the final issue is often effectively decided by the person with the most clout. Accordingly, the political process is not rational (Alexander, 1992, p.46). Adopting an apolitical stand, classic paradigms of planning consider thinking about conflict and power not only unnecessary but also imprudent. Power is thought to be the domain of politicians, whereas rationality is the domain of planners (Flyvbjerg, 1998b, p.210). As a reaction, different democratic planning methods focusing on heterogeneous interests in society, thus on politics in planning, emerged.

Despite contemporary attacks on planning activities, there is today, as Klosterman argues, an underlying consensus about the need for public sector planning to perform vital social functions, such as considering the external effects of individual and group actions; improving the information base for public and private decision making, considering the distributional effects of public and private action (Klosterman, 1996, p.162). As such, new attempts were made, aiming at a more democratized planning processes. However, such attempts or planning models are still **centrally** directed and organized, and while those models may be new, there is **nothing new about the power structure**. That is, as Flyvbjerg maintains, "we may have done away with a pure technical system of planning, but we have not changed the principles of control and power." They still aim at central coordination and planning, however, in a more democratic manner. Such attempts, as Flyvbjerg contends, are not "democratic planning" but they are "planned democracy" (Flyvbjerg et.al., 1982, p.32).

The first serious challenge to the rational comprehensive model was the concept of **advocacy planning** that emerged in the mid-1960s. Paul Davidoff is considered to be the pioneer of this approach. Advocacy planning stresses the role of politics in planning. It questions the existence of a single consensual public interest and instead calls for the promotion of the particular interests of the disadvantaged. In advocacy planning, the "advocate" planners would work as representing the poor in the planning process, without actually giving the poor a voice in that process (Sandercock, 1998a, p.90). It is **professionals** who set the agenda, conceptualize the problem, and define the terms of its solution. In that respect, Goodman (1972) described planning professionals as agents of social control, as "soft cops" of the system. Advocacy planning, as Sandercock maintains, expanded the role of professionals and left the **structure of power intact**, confident in the workings of plural democracy (Sandercock, 1998b, p.172). Advocacy planning is an affirmative **expert-centred** model; it affirms the status quo.

Different directions emerged out of these early critiques of the advocacy experience. Some planners focused on the development of public participation mechanisms which would include the poor and the unrepresented in the planning process (e.g. Gans). Others tried to perfect the advocacy planning approach by turning it into "equity planning" (e.g. Krumholz, Clavel). Others reformulated the role of planners in the light of new ideas of transactive planning, mutual learning, and social learning (Friedmann, 1973). Other group moved toward an empowerment model (Heskin, Leavitt, Friedmann in his later work of 1992).

**Participation** aimed at influencing the policy-making/ administrative process and expanding the existing concept of democracy, to allow a larger role for the citizen in the decision-making

process. Of participation's ingredients are increased democracy, self-fulfilment, and getting things done. This third ingredient concerns needs, power and action. **Power** is, among other things, the capacity to get things done. However, as Cox maintains, those with the greatest needs generally tend to be the powerless (Cox, 1976, p.172). Participation revolves around the attempt to **redraw the rules of the power game** to the advantage of those who have hitherto been losers. Dahl links this to the first aim of participation, stating that "until and unless we reach greater parity in the distribution of political resources, other steps towards democratization are like treating tuberculosis with aspirin" (cited in Cox, 1976, p.173). Scott and Rowies (1977) criticized participation in planning as failing to grasp the real nature of social and political power in society (cited in Kemp, 1982, p.60). Participation in such a sense involves more consultation with the public rather than the public actively participating in decision-making. The authority retains the right to make the final decision. It indicates, as Habraken avers, "a change of procedure within an unchanged balance of power" between the professional and the user. It does not mean a transfer of any responsibility from the professional to the user, but rather the professional domain remains unchanged (Habraken, 1990, p.71). As Arnstein argues, "there is a critical difference between going through the empty ritual of participation and having the real power needed to affect the outcome of the process... the fundamental point [is] that participation without **redistribution of power** is an empty and frustrating process for the powerless... It maintains the status quo" (Arnstein, 1969, p.358, emphasis added).<sup>20</sup>

**The equity planning model** emerged in the 1980s as a democratic socialist-based model (Fainstein & Fainstein, 1996, p.280). Krumholz is considered as its pioneer. Equity planning focuses on issues of "who gets what", where the goal is to increase equality by operating from within the system. The aim is thus equity and not consultation, as in participation (Fainstein & Fainstein, 1996, p.271). This model retains the belief in the planner's expertise and doesn't say much about drawing on local knowledge. Equity planners, as defined by Krumholz, are those who consciously seek to **redistribute power**, resources or participation away from local elites and toward the unrepresented (Sandercock, 1998b, p.173-4). The planner is still the centre of the story, the key actor, however, with a much broader role than in the rational comprehensive model (Sandercock, 1998a, p.93). In this model, the planner continues in his role as a state-official working within state policies, however, he acts as a mediator to defend the interests of

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<sup>20</sup> Arnstein (1969) discerned eight gradations of citizen participation ranging from "manipulation" and "therapy" which are literary "non-participation", but a manipulative **normalizing** process of certain ideologies and policies from the side of the higher authorities masked as citizen participation. "Informing" as a one-way process, and "consultation" refer to the cases in which the users are allowed to hear and to be heard. "Placation" is a higher form of "tokenism". In these last three facets **professionals retain the power of decision-making and control**. However, these three facets of participation are the most applied ones. In "partnership" form, citizens become involved in the process of production through participating in the negotiations and decision-making process. "Delegated power" and "citizen control" are considered the highest forms of citizen participation, where users have control over a large portion of decision-making. This latter facet of participation is quite theoretical and unappreciable as it contradicts substantially with the notion of professionalism as explored in chapter ten below. .

the poor and the unrepresented. As such, equity planning is still engaged in, using Wildavsky's phrase, "speaking truth to power" (handmaid to power) (Wildavsky, 1992), still engaged in a top-down, state-centred planning. However, it is now a consciously politicized practice, where its allegiances are consciously directed to those who have been excluded. It is, as Sandercock describes it, a "top-down inclusionary politics", in which the poor, the marginalized, are still not part of the action, and do not feature as active agents in the narrative of equity planning (Sandercock, 1998a, p.94).

**The communicative planning model**<sup>21</sup> marks a significant departure from the rational comprehensive model. Extending from action-centred theories (implementation), this planning model has moved from the focus on instrumental rationality of the earlier model to communicative rationality. It focuses on communication as an interpersonal activity involving dialogue, debate and negotiation. Drawing on Habermas' theory of communicative action, communicative planners are interested in the problems of action and implementation. They maintain that rationality is socially and discursively constructed rather than imposed; they hope to improve the quality and openness of the debate (Beauregard, 1996b, p.108). In this model, communication is a precondition of real democracy, and hence of any democratic participation in planning (Taylor, 1998, p.123-4). Forester is considered the leader in this respect with his book 'Planning in the face of power' (1989). He emphasizes the very political nature of all planning activity, in which relations of power are always involved and systemic inequalities influence outcomes. Communicative planners focus on what planners actually do, subjecting planners' practices to a micro-analysis of interpersonal interactions. They aim at exploring what skills planners need to maximize their effectiveness in planning for people. In that respect, in his evaluation of planning practice, Forester focuses on listening to storytelling of planning practices, because, as he argues, these stories embody and enact the play of power, the selective focusing of attention (Forester, 1989).

In this model, planing is about talk, argument, shaping attention. Its theorists have moved from the decision focus of applied rationality, from document- oriented and anticipatory mode of planning to a concern with interactive social processes (Sandercock, 1998a, p.95-97). Nevertheless, the primary actor and source of attention is still the formally educated planner working primarily **through the state**. While it is certainly a more inclusive theory of planning than its predecessors, it has serious weaknesses. The insistence of communicative action theorists on studying practice and practitioners means that their theory will always conform to the current practice of planning rather than suggesting alternatives or calling for social transformation. Communicative planners do not challenge the existing system with its structure of power, but rather they accept it and work within its parameters. They attempt at trying to change some of the oppression that might occur in certain cases but do not seek a general or

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<sup>21</sup> Healey, in her book (1997), refers to this model as "Collaborative planning", while Forester referred to it as "Argumentative planning", however, in his latest work (1999) he refers to it as "Deliberative planning".

substantial social and systemic transformation. It brackets, although sometimes superficially acknowledges, the issue of structural inequalities. Through using universal categories, as Sandercock contends, it suppresses the crucial questions of difference and marginality and their relationship to justice (Sandercock, 1998b, p.175). Baum states that although communicative planners acknowledge politics in planning, however, they choose **apolitical** roles. They withdraw from acting politically to identifying themselves as neutral technicians; as interpreters of texts and stories (Baum, 1996, p.373-5). Baum and Taylor maintain that communicative planning theory is essentially procedural. It can be viewed as a further development of the rational process view of planning (Baum, 1996, p.373-5; Taylor, 1998, p.153).

In all those models of planning, the planner is still the **driving force**, working through the state, even if his goal is to achieve some kind of redistribution of resources **on behalf of** the poor (Sandercock, 1998a, p.100). This “**on behalf of**” is the problem in planning activities, which ultimately gives the planner the authority to act as a **decision-maker**.

A growing number of local researchers representing non-governmental organizations (NGO) who had their studies and training in the West are now proposing alternative approaches to solve planning schemes (mainly housing strategies) in Third World countries. Influenced by the work of J. Turner, and through funds from the World Bank, a new wave of proposals of site and services with financial low interest loans are experimented. Proposals of empowering the poor financially so that they can help themselves are now spreading. Such latter attempts embody educating users to be able to survive through the existing capitalist societal structure. However, such attempts constitute weak challenges to the existing economic and political structures. Such attempts embody a transfer of some sort of power from the professional to the user, i.e. certain responsibilities of decision-making which used to be of the professional are now placed on the user. However, such attempts have been, in most Arab countries, institutionalized. Many conservation and empowerment projects have been carried out in the Muslim world, however controlled and directed by state agencies. Examples of such projects are those Aga Khan award winners such as Germeen Bank housing program in Bangladesh, East Wahdat upgrading program in Jordan, Ismailiyyah development project in Egypt, Khuda-Ki-Basti incremental development program in Pakistan, and Kampung Improvement program in Jakarta, Indonesia (Davidson, 1998).<sup>22</sup> Such attempts are limited to few sites and not generating a general policy that is self-applicable. The role of such state agencies or NGOs as initiator and coordinator of such projects reveals the insistence on centralization and external parties' intervention. They still perform within the broader systemic mechanisms.

Attacking those models, **radical planning model** or **empowerment** emerged in the 1990s, marking a dramatic shift in planning paradigms (e.g. Sandercock, Heskin, Leavitt). Its goal is to

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<sup>22</sup> Most of those projects are state-controlled projects. The state is the initiator of such projects, however, following policies of empowerment. Private agencies were involved in some of those projects in planning processes (see S. Serageldin, 1989). In short, such projects retain the role of professionals and state control.



work for structural transformation of systematic inequalities and, in the process, to **empower** those who have been systematically disempowered (Sandercock, 1998b, p.176). Thus, radical planning is viewed in relation to community organization, urban social mobilization, empowerment, rather than to working through the state. Radical planning does not lie on a logical continuum with rational planning for societal guidance. It is primarily about community participation in projects by the state (Sandercock, 1998a, p.99). In Heskin's description of radical planning, it is the community that initiates, and the planner who enables, assists, but never imposes his solutions and only offers advice when asked (Heskin, 1980). Similarly, Leavitt emphasizes the role of the planner as working **with** the community and not **for** the community. In radical planning, the purpose of planning is the **empowerment** of those who have been systematically disempowered by structural inequalities of race, class, and gender, where the role of the planner is seen neither as technical expert nor as mediator or negotiator, but as an enabler of community self-empowerment (Sandercock, 1998a, p.65).

For Heskin and Leavitt, the state is and can only be an adversary. However, for Friedmann, any social advances achieved through a radical planning that by-passes the state "will quickly reach material limits. To go beyond these limits, appropriate actions by the state are essential" (Friedmann, 1987, p.407). In that sense, Friedmann accepts the state and its hegemonic power to approve the actions of the mobilized communities; thus he seeks piecemeal social transformations or changes that do not contradict the state in a major way. On the other hand, Heskin and Leavitt ignore the existence of the state but do nothing to stand in opposition to its major power. Any radical practice ultimately has to be legitimised by the state. "It may well be a contradiction in terms to think of the state engaging in radical planning, it is equally misleading to think that radical planning can do without the state" (Sandercock, 1998a, p.101). This contradiction is perhaps the reason why radical planning as a paradigm did not receive practical acceptance. That is, the internal logic of this model contradicts the logic of planning as a state-directed profession (explained in chapter ten), and, in broader terms, with **state logic based on the concept of power**. Planning as a profession is a legitimate form of state intervention and exertion of power and control over private parties. If planning is to be in the hands of the community, this means that the state is losing its control over its people and their properties, which contradicts its logic.

In the so-called Third World countries, the situation is even worse. Planning in those countries is still centred on the modernist **apolitical** model of comprehensive planning. It does not consider the political and power relations within the processes of the built environment production. It is an apoliticized activity that aim at strengthening the status quo and state power (e.g. replanning the city of Beirut). Thereby, planning in those countries became, under the banner of organization and the public interest, a legitimate tool of manipulation in the hands of the state. In Arab Muslim countries, such planning conception (the acquired mode) conflict substantially with Islamic principles (the inherited mode), as explained in chapter seven.

### THE IMPASSE

Although such models establish a development from the rational model, they assume no fundamental change in planning practice. Such models develop new methods of the planning process; however, the main premises of planning principles persist. They are based on the merits of the same concepts: large/small scale; comprehensive/incremental; objectivity/advocacy; top-down/bottom-up; place-oriented/people-oriented (Campbell & Fainstein, 1996, p.10). Planning today is a continuation of the modern mode: it is a legitimate form of power-based, state-intervention. It does not offer any changes in the existing relations of power. At best, as Friedmann argues, contemporary planning models are answers for small groups out of step with their society; they are quasi-utopians (Friedmann, 1987, p.222). All those models can be perceived as concerned with societal guidance from above. However, planning for societal guidance is very different from planning for structural change and social transformation. Friedmann asserts that the crisis in planning is fundamentally a crisis in the idea of societal guidance by the state. For Friedmann, both access to decision-making and the capacity to influence decisions should be evenly distributed in the relevant population (Friedmann, 1987, p.311, 346). Planning in such models stands as affirmative. That is, as part of the state, planning as a **profession** constitutes part of the existing status quo; it aims at preserving this status quo with its structure of power, as explained in chapter ten.

Throughout those models, planners focused on the operative level of the built environment, ignoring its imperceptible level. They did not incorporate **issues of power** in their theories, the issue that, as Friedmann states, created a problem in planning theories. That is, whenever planners in Western culture write about power, it has been mostly in the sense of enabling the powerless to do things for themselves.<sup>23</sup> This has led to a great deal of conflict (Friedmann, 1997, p.6). With the exception of radical planning<sup>24</sup>, as Flyvbjerg contends, if there is a thinking about conflict and power it is typically of the normative, idealistic kind, which muddles “ought” and “is” and wishes power away by different utopian means. Accordingly, Baum views such models as deceptions that planning theorists use to comfort themselves and others, “as if devotion to [the models] could magically deny everyday reality and substitute something reassuring” (Baum, 1996). What is lacking today in planning theory is an understanding of relations of power, and, according to Flyvbjerg, an understanding of real *politik* and *realrationalitat* (Flyvbjerg, 1998b, p.210). This is what the following chapters are devoted to.

Comparing Islam to the Western mode, one can argue that paradigm-shifts in Western planning are based on a common perception of the built environment as an **end** in itself. Concerns are thus directed to regulate and order the built environment, regardless, sometimes (as the case in modern planning), of its end-users. Producing the appropriate quality of the built environment using modern concepts raises a question of “**how appropriate**”. However, stemming from the

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<sup>23</sup> With the exception of Flyvbjerg who has integrated discourse of power with that of planning theory (see Flyvbjerg, 1998a).

<sup>24</sup> Or community-based planning, as it is sometimes called.

tendency to formally regulate (as in modernity) or from the focus on formal aesthetic issues (as in the postmodern architecture), appropriateness of the built environment might be overstated, thus the question might incline towards defining the limits of such investment in the built environment, i.e. the question changes from “how appropriate” to “**how vast**” the investment should be. On the contrary, in Islam, investment in the built environment is kept to the minimum. Islam considers the built environment as a **means** and not an end in itself. The aim is not to reach a well-organized built environment. In other words, the question of “how appropriate” is the investment in the built environment should be inclined towards “**how little**” such investment should be. Therefore, architectural styles or planning methods did not receive any attention or priority in the production of the inherited built environment. In short, production of the inherited built environments followed different mechanisms from those of the acquired mode. This simple difference in ideology is considered a major difference between the inherited mode and the acquired mode in their respective perceptions of the built environment.

Examining those paradigm-shifts in modes of existence (from modernity to postmodernity) and in models of planning, one can notice that all those paradigms are centred on the acceptance of the system of capitalism. Solutions did not aim at systemic changes but corrective changes within the same system. Some scholars see in this condition a profound “end of ideology” (Bell) or “end of history” (Fukuyama) in the sense that capitalism and Western liberalism have triumphed against all other ideologies and systems, especially after the decline of communism as an alternative system. But isn't there any foreseeable systemic alternative to capitalism?

## 5.6 IS THERE AN ALTERNATIVE?

The “capitalist imperative” has been applied to cultural movements as far apart as the Renaissance and Romanticism, and to intellectual developments from Hobbes to Hegel to Hobhouse. Earlier it was applied to modernism as it now is to post-modernism.

(Kumar, 1995, p.192)

To recapitulate, modernity and postmodernity are seen here as but means to the Western project, whose goals are pre-stated: progress towards human emancipation, justice, freedom and thus happiness. Looking at the deeper logic underlying these paradigm-shifts (in means), it can be argued that they are actually experiments in social reconstruction and political reform; a progressive process of trial and error. However, both modernity and postmodernity have been developed within the context of the capitalist system. Capitalism formulates these means in a way that guarantees and sustains itself. Put differently, as Jameson avers, those shifts correspond to internal changes in the structure of capitalism as a system. Jameson relates modernism to “monopoly” capitalism, while postmodernism is the cultural logic of “late” capitalism (Jameson, 1991). For example, capitalism promotes individuality, consumerism, and liberal democracy, as they are considered principal features that enhance capitalism's aims of capital accumulation and profitability and speed up its turnover. Therefore, those features can be found embodied in late-modernity and in postmodernity as a means. To take another example, Jameson dwells on “the incapacity of our minds, at least at present, to map the great

global multinational and decentered communicational network in which we find ourselves as individual subjects". Thereby, postmodernism works as an introductory tool to the new late capitalism's constituents. It can thus be argued that capitalism performs as the driving force behind those means so as to maintain its perpetuation.

Capitalism does not stand still; it constantly disturbs settled practices and beliefs. It is a **dynamic** system that produces dynamic, progressive, capitalist societies. The new forms of work, the increasing centrality of culture and information, the changing balance between the private and public spheres, all are expressions of this dynamism. This dynamism is reflected in what we referred to above as "paradigm-shifts". That is, capitalism manipulates those paradigms (means) so as to fit with its inner logic, while, simultaneously, directs them to achieve their emancipatory goal. In that context, Kumar states (in the epigraph above) that the "capitalist imperative" has been applied to cultural movements (Romanticism) and to intellectual developments (Hobbes, Hegel) since the Renaissance. It was applied to modernism as it is now applied to post-modernism (Kumar, 1995, p.192).

The collapse of communism<sup>25</sup> meant for some scholars the "end of ideology" (stated earlier by Bell), or "the end of history" (Fukuyama). Fukuyama meant by this that, as a result of the defeat of Marxism and communism, all ideological conflict in the world has been exhausted. There are no more stories of conflict of competing visions of civilization and social order. Communism has been defeated by capitalism, or more precisely, by the Western liberal-democratic forms of market society (Fukuyama, 1989, p.18; 1992). Capitalism is the ideology that triumphed, with **no alternative**.

Similar positions have been adopted since 1989<sup>26</sup>. Bauman states that the "collapse [of communism] ushered us into an as-yet-unexplored world: a world without a collective utopia, without a conscious alternative to itself" (Bauman, 1992, p.xxv). For him, "the current western form of life [capitalist] ... has neither effective enemies inside nor barbarians knocking at the gates ... It has practically (and apparently irrevocably) de-legitimized all alternatives to itself. Having done this, it has rendered it uncannily difficult, nay impossible, to conceive of a different way of life in a form that would resist assimilation and hamper, rather than boost, the logic of its reproduction". Thus, it can be pronounced **universal** (Bauman, 1992, p.183). It is, as Fukuyama proclaims "the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government" (Fukuyama, 1989, p.4).

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<sup>25</sup> Toffler argues that socialism, based upon a centralized form of planning, cannot cope with what he refers to as "the third wave": increasing diversification, an accelerating pace of change, and associated shifts towards flexible, customised decisions. It becomes necessary to decentralise decision-making. But doing so necessarily risks a transformation of the prevailing system of socialism (Toffler, 1981).

<sup>26</sup> 1989 witnessed "systemic" revolutions in Eastern Europe against communism, which led to the break-up of the Soviet Union.

Nevertheless, within capitalism, problems arise and dissatisfaction with present conditions mounts. Based on criticism of the present conditions, different utopian theories emerge.<sup>27</sup> That is, as the Western system of society-making is perceived as dynamic, theorists are always moving in a progressive mode to improve present conditions. Examples of such utopian theories are those of Toffler (1981) and Gortz (1982). In this respect, Kumar argues that Utopia *per se* is a Western concept. It arose in the West as a specific and highly original way of dealing with the novel problems of modern capitalist Western society. It is a critical rehearsal of the dilemmas of capitalist society, and, at the same time, a prescriptive account of the best way of resolving them, i.e. a tool of critical analysis and a constructive vision of future possibilities (Kumar, 1991). Under contemporary capitalism, the search for happiness and contentment through the pursuit of material goods seems inherently elusive<sup>28</sup>, therefore, Utopian alternatives attempt to suggest other means to reach this contentment. However, all these Utopians operate within the present system of capitalism. They are **not systemic alternatives** but rather **partial and incremental** Utopian proposals concerned with particular, local problems. Current Western utopianists' imagination could not go **beyond** capitalism as a system, especially after the demise of its rival, socialism, and the successes that capitalism has achieved during the last two centuries. Thus, there exists no conceivable systemic alternative that claims to represent a different and "higher" level of social organization. There is only fine-tuning of an already well-functioning social machine. In that respect, Marcuse argues that the one-dimensionality in thinking that dominates contemporary capitalist Western societies militates against qualitative change. Ideas<sup>29</sup> that attempt to transcend the established order are either repelled or reduced to terms of this order (Marcuse, 1991, p.12).

This analysis applies to contemporary built environments. Those built environments are parts of and products of the overall system of capitalism; they are subject to the mechanisms of that system. They follow a dynamic mode of production; thus, they are always in a process of paradigm-shifts in terms of the **tools** (models) they use in their production processes. Problems in contemporary built environments are dealt with partially by using tools produced from within the system itself. For example, urban planning models arise as a result of dissatisfaction with certain aspects of the previous model. However, those new models directed at solving particular problems, employ the same language and merits. For example, incrementalism replaced comprehensiveness, politicization replaced apoliticization; people-oriented replaced place-

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<sup>27</sup> By demonstrating that industrial capitalism has precipitated increasing levels of inequality and exploitation, an accelerating deterioration in the quality of life, and a growing ecological crisis, the desirability of an alternative form of life is established, and thus expressed in a form of Utopian theories (Smart, 1992, p.108). The different planning models presented above are examples of such utopian solutions in the built environment.

<sup>28</sup> In that respect, Durkheim states that "to pursue a goal which is by definition unattainable is to condemn oneself to a state of perpetual unhappiness... The more one has, the more one wants, since satisfaction received only stimulate instead of filling needs" (cited in Saunders, 1995, p.81).

<sup>29</sup> Marcuse describes these ideas as embodying "negative thinking" that "negates" existing forms of thought and reality from the perspective of higher possibilities so as to break with the existing world of thought and behaviour (Marcuse, 1991, p.xiv).

oriented planning. It can be said, thus, that problems, tools, and solutions in those built environments are products of capitalism as a system. Examples of such partial solutions are regionalism, populism, and postmodernism in architecture, comprehensive planning, advocacy planning, social-learning planning, participation, empowerment, and recently communicative planning and the New Urbanism.

Transferring such tools of built environment production, loaded with the mechanisms of capitalism, to other societies, such as Arab Muslim societies, implies transmitting those mechanisms to those latter societies. To relate this to what have been mentioned earlier (that Muslim societies are relatively static societies, whereas Western capitalist societies are dynamic), then employing the tools of a dynamic capitalist culture in a static culture (Muslim) is likely to end in contradictions and tensions that **destabilize** this latter culture. This is the case in Arab Muslim societies today: an inherited static socio-cultural mode using the tools of an acquired dynamic culture to produce its built environment. The result is contradictions, disruption between the societal realms, and thus, ultimately a **crisis** in the built environment.

Bell, in assessing contemporary societies, states that societies in general consist of three realms: techno-economic structure, polity, and socio-culture. The techno-economic is the realm of economic life, and polity is the system of societal authority involving the allocation of power in hierarchies that can be exercised authoritatively and even arbitrarily (politics).<sup>30</sup> A wider definition of the socio-cultural realm, different from that proposed by Bell<sup>31</sup>, includes culture, socialization, religion, values, community, kinship and the like. According to Bell, each of the three realms has its own independent logic of development, i.e. axial principle.<sup>32</sup> Each has a certain direction and pattern of change. If those axial principles and patterns of change are not compatible, contradictions and disjunction arise between the realms. This ultimately leads to tension and conflicts in society.<sup>33</sup> Bell refers to these tensions as problems that cannot be resolved unless the three realms **intermesh** (Bell, 1979, p.xxx; Waters, 1996, p.37, 47).

In traditional Muslim societies, where Islam was the dominant system that operated as a way of life in most aspects, those societal realms were integrated and intermeshed; therefore Muslim societies were "**unified**", thus quite stabilized. However, since the introduction of modernity

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<sup>30</sup> This definition of the realm of polity is an elaboration of Bell's definition by Waters (1996).

<sup>31</sup> Bell confines the realm of culture to artistic expressions and religion. He concentrated only on the public realm of social life. On the other hand, adopting a more comprehensive categorization, Parsons referred to culture as part of "latent pattern-maintenance" which includes culture, socialization, religion, values, community, kinship. Althusser referred to these aspects as "ideology" (Waters, 1996, p.46).

<sup>32</sup> In contemporary capitalist societies, Bell argues, the axial principle of the techno-economic realm is functional rationality (efficiency), for polity it is equality (stipulation of legitimate power), while for culture it is self-realization (Bell, 1979, p.xxx). Waters suggests an alternative to Bell's axial principle of polity as monopolization of coercive power, and to that of techno-economic realm as commodification (Waters, 1996, p.47).

<sup>33</sup> Bell proposes that the disjunction of the realms is the central feature of contemporary capitalist society. This is expressed in the ideological terms of alienation, loss of community, depersonalization, and the diremption of authority (Bell, 1979, p.xxx; Waters, 1996, p.37-8).

and capitalism into Muslim societies, contradictions have occurred between and within the societal realms (using Bell's concept). They become "**differentiated**," destabilized societies. That is, the realms of techno-economic and polity in the contemporary Arab Muslim world tend to adopt a capitalist system, however, some internal tensions exist within those realms as a result of the incompatibility between the inherited mode and the more dominant capitalism-oriented acquired mode. In the socio-cultural realm, as values, norms, religion, customs, community and social bases stem from Islam, capitalism as a system loaded with its values and mechanisms could not effectively permeate into this realm. Therefore, the inherited mode dominates. It can thus be said the Muslim individual lives in a duality: he belongs to the inherited mode socially, whereas politically and economically he belongs to the acquired operating mode. Hence, contemporary Muslim built environments that are produced using dynamic capitalist tools (e.g. state-intervention, acquired building regulations, planning methods, centralised power) contradict with their users' values and socio-cultural base. Such environments are the production of "**acquired**" **non-Islamic mechanisms** and a **container of "inherited" Islamic values**. Contemporary built environments are used as end-products or as containers only, and not as an integral part of the users' lives.<sup>34</sup>

This disjunction between the different realms, between the inherited and the acquired modes results in the crisis that contemporary Muslim built environments face. Therefore, accepting what Bell said that this crisis cannot be resolved unless all realms are intermeshed, solutions should be sought accordingly. This chapter has located some of the principal points of tension and contradiction. The **imperceptible** points of incompatibility between the acquired and the inherited modes should be pointed out. This can be achieved (as this thesis claims) by investigating the **concept of power**, the main driving force operating in the decision-making process in the production of the built environment.

## 5.7 CONCLUSIONS

As inferred from this chapter, the acquired mode is rooted in the Western project and its concomitant capitalism and the modern state. Shifting paradigms to accomplish such a project does not change the axial principle of this "narrative": fulfilling such a project through the state is centred on the concept of **power**. All Western concepts of society making (modernity, postmodernity) are based on the existence of the state as a regulating device. The state is thus centralized and interventionist; its logic is based on the concept of power. Thus, any paradigm shifts to fulfil the Western project have accepted and have to accept such logic and thus operate within its framework. Accordingly, the concept of having a society without a central regulating authority is not thought of as an alternative. The next part therefore investigates the concept of power as operating on the imperceptible level of both the inherited and the acquired modes, and consequently its reflection in their respective built environments.

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<sup>34</sup> See al-Hathloul (1996) for examples of people's defence of their inherited values, presented as solutions in their built environments against the employment of the acquired mode in the production of the built environment (building regulations) (1996, p.203-8).

**Part Three**

***The Acquired vs. the Inherited***



## Part 3

### THE ACQUIRED VS. THE INHERITD

What is required is a theoretical framework which relates the concept of planning to the concept of power... Power [should be used] as the central concept in the explanation of planning policies and outcomes.

(Blowers, 1982, p.140)

#### INTRODUCTION

#### ARGUMENT

As this part of study argues, the built environment is an outcome of dynamic processes of production in which **power** through decision-making processes operates as the **determinant** factor. Each societal system has its own system of power that operates on the **imperceptible** level, as an underlying mechanism in the production of its built environment. Changing such power systems has its impact on the built environment. This is, as this thesis argues, the genesis of the crisis of contemporary Muslim built environments. Accordingly, power is considered in this research as the main **axis of investigation** in both the acquired and the inherited modes.

#### CRISIS IN ENVIRONMENTAL STUDIES

As Friedmann contends, contemporary theorists' ambivalence about power issues, in their studies of the built environment, is considered one of the major outstanding **problems** in theorizing the built environment (Friedmann, 1997). That is, affected by modernity's positivism and differentiation of value spheres, environmental theorists (planners) did not consider the underlying processes of city forming, i.e. the imperceptible structure was accepted unquestionably; it was perceived as constraint. As demonstrated in the previous chapter, although some contemporary attempts acknowledge the political role of planning, however, this is in a narrow sense. They perceive of planning as operating **within** the framework of politics, rather than of planning as **part** of the broader political process and power game. They do not conceive of planning in its wider sense as Wildavsky describes it: "planning assumes power. Planning is politics" (Wildavsky, 1973, p.132). Such planning attempts aim at changing the status quo partially, only as related to their focus: how to ameliorate the conditions of the powerless, and not comprehensively bringing about systemic change. They do not look at the whole political and power relations operating within the decision-making process of producing the built environment. These scholars did not incorporate **issues of power** in their theories. This has led to a great deal of

#### PARTIAL POLITICAL CONCERN

STRUCTURAL  
DISJUNCTION

conflict (Friedmann, 1997, p.6). In other words, such studies did not grasp the imperceptible structure of the societal system and built environment inclusively, leading to **disjunction** between the three structures of the built environment and societal realms, thus to a **crisis** in conceptualizing the built environment.

DEEPENING  
THE  
CRISIS

This depthless vision and its corresponding structural disjunction is transferred today to the Arab Muslim world, leading to deepening of the crisis which contemporary Muslim built environments witness. It became a crisis of the incompatible coexistence of the inherited and the acquired modes, in addition to a crisis in grasping such modes. That is, this imported vision was employed, on the one hand, in studying traditional Muslim cities, as shown in part one of this study, and, on the other hand, in the conceptualization of the recent dichotomy of the 'inherited' vs. the 'acquired'. Accordingly, most crisis-solving attempts perceive this crisis incompletely, only on its perceptible (operative and manifested) levels, differentiated from its imperceptible level.

ISSUE  
OF  
POWER

Broadly speaking, power should become an inevitable question for studies of the built environment. In that respect, Friedmann urges urban theorists to build relations of power into their conceptual frameworks (Friedmann, 1997). What is lacking today in studies of production of the built environment, as Flyvbjerg contends, is an understanding of relations of power, and understanding of real *politik* and *realrationalitat* (Flyvbjerg, 1998b, p.210; Flyvbjerg & Richardson, 1998). Accordingly, to grasp the crisis of contemporary Muslim built environments, both the acquired and the inherited modes should be studied focusing on their imperceptible power mechanisms, responsible for producing their respective built environments. This is what this part of the study is devoted to.

## STRUCTURE

Chapter six demonstrates the conceptual differences between the concept of power in the acquired mode and in Islam. It determines that power in Islam is centred on the concept of rights, while in the acquired mode it is based on its modern conceptualization. Chapter seven is devoted to exploring the inherited mode of built environment, as centred on the concept of rights, while chapter eight demonstrates some of the dissensions and thus points of incompatibility between the acquired and the inherited modes with reference to their concepts of power and rights, respectively.

## **Chapter Six**

**Power / Rights**  
a conceptual horizon

**POWER / RIGHTS**  
**a conceptual horizon**

No practical philosophy can be adequate for our time unless it confronts the analysis of power and how it operates in our everyday lives

(Bernstein, cited in Flyvbjerg, 1993, p.11)

### 6.1 INTRODUCTION

Modernity, capitalism and, therefore, the modern state, as the main pillars of contemporary Western societies, are all conceptions that are centred around the concept of **power** in their mechanisms and operation. On the other hand, traditional Muslim societies, as will be seen, are based on the concept of **rights**. Conception of the state in Islam reflects this concept of rights as derived from *shari'a*. Thus, rights constitute the base for Islamic mechanisms operating in all levels in the Muslim society. The coexistence of both systems together in most Arab Muslim countries today has led to an acquired/inherited dualism, or to a power/rights dualism, on the imperceptible level. This dualism, this study argues, is the main reason for the crisis in which contemporary Muslim societies live and is reflected in their built environments.

To grasp the nature of this crisis, both the inherited and the acquired modes should be investigated, genealogically, i.e. at their imperceptible levels. Thus, the modern concept of power and that of rights in Islam are investigated in this chapter, generally and as pertaining to the production of the acquired and the inherited built environments, respectively, in a comparative manner. However, neither of the two concepts should be seen as opposing the other, but rather each concept addresses a characteristically different set of concerns. This comparison does not aim at degrading or overthrowing either of the two concepts, but at exploring them, **critically**. That is, it is acknowledged that each of the two concepts has its own limits. However, as these concepts constitute part of their larger systems, the comparison can be perceived as between two systems: the acquired, based on capitalism, and the inherited, based on Islam. Moreover, as contemporary Muslim societies adopt the modern concept of power as part of the acquired mode, the comparison can be viewed as drawn between two concepts that were (are) applied chronologically (past and present) in Muslim societies and states, rather than between the Western system (roots of the acquired) and the Islamic one.

As procedures of the production of contemporary built environments (i.e. planning system) vary from one country to another (e.g. between UK. and the US.), this research focuses on the general mechanisms that operate within the acquired system and not on its detailed procedures (e.g. planning procedures, regulations). However, the arguments developed throughout this study apply to the capitalist-based acquired mode operating in most Arab countries today.

## 6.2 DEFINITIONS

For their importance to the concepts of power and rights, certain terms used throughout this study have to be defined first.

“**Party**” in the context of the built environment is a **one** party (agent) that exercises its power on a site. A party might be an individual, aggregates of individuals (group), collectivity (e.g. organization), or a state. A “**site**” is a locale in the built environment in which power exercitation takes place. As this research is primarily concerned with the built environment, each party is identified with reference to a certain site or sites in which it has power. In its decision-making process, that party is inclined towards or subjected to one of two general policies: a centralized or a decentralized policy of decision-making. **Centralized** decision-making means most environmental decisions are made by a central party. With respect to sites, it means that the parties in their sites are not in full control; outsiders often intervene in their affairs. On the other hand, **decentralization** means environmental decisions are decentralized and thus each party enjoys more control over its site (*laissez-faire*). Decentralization means, generally, more parties are in control of the built environment, whereas centralization leads to a decrease in the number of parties controlling the built environment and to increase the number of parties in control of a single site (e.g. the state and the owner party, if perceived as two separate parties). In a decentralized system, the controlling party has **more** control over its property than in a centralized decision-making process.

## 6.3 POWER / RIGHTS

The imperatives of profit, **power** and **control** seem as predominant now as they have been in the history of capitalist industrialism

(Kumar, 1995, p.154; emphasis added)

The concept of power has been the centre of many debates among contemporary scholars in different fields, especially in social sciences. These debates focus on the **modern** concept of power, derived from observations of and is applicable to modern, mainly Western, capitalist societies and states. This modern concept of power has been adopted by the acquired mode. Islam as a legal system has its own concept of power which is different from that of the modern age. The main relevant aspects of the modern concept of power of the acquired mode and those of Islamic rights as pertaining to the inherited mode are briefly discussed in this chapter.

Power is an “essentially contested concept” (Lukes, 1974, p.9). Two main perspectives of power can be distinguished here: first, power that is concentrated in one side, i.e. **one party** holds power (as in the case of the power of the state in modern times, for example (Wrong, 1979, p.11)). In this research, this is called the **central power**. Second, the **diffused power**<sup>1</sup> which is diffused throughout a society or organizations (**many parties**) and not concentrated in

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<sup>1</sup> In the fields of social sciences, these two perspectives of power are referred to in different terms. For example, Mann referred to them as “authoritative power” and “diffused power” respectively (Mann, 1993, p.6). They were also called “integral power” and “intercursive power” (Wrong, 1979, p.11; Sa’d, 1986, p.187).

the hands of one party such as the central government, for example.<sup>2</sup> Diffused power relations are characterized by a balance of power and a division of areas of work (scopes)<sup>3</sup> between parties (Wrong, 1979, p.11; Sa'd, 1986, p.187). This balance is reached through a set of normative laws or regulations (imposed by a central power) within which parties compete with one another (Smith, 1991, p.123). In this perspective, diffused power does not resemble the decentralized concept in the sense mentioned earlier. That is, parties have a limited space for exercising power, within which they also have to abide by laws and regulations made by a higher authority (central). Thus, they work within an overall centralized system.

Both perspectives, central power and diffused power, regard power when exercised in **interactions as relational**, i.e. comprising relationships between participating parties. Many schools of thought can be categorized under these two main perspectives on power. Among those arguing for the perspective of the central power are two highly prominent schools: Marxist and Weberian schools. On the other hand, Parsonian and pluralism schools advocate the other perspective of power: the diffused.<sup>4</sup>

Despite disagreements between analysts from the former group of schools (Marxist and Weberian), most of them agree that "power" refers, at a minimum, to the ability of party *A* to make party *B* do what would not otherwise have done. Put differently, *A* has power over *B* if *A* has effects on *B*'s choices and actions and can move them in ways that *A* intends, despite resistance from *B*<sup>5</sup> (McLean, 1996, p.396), whether *A* and *B* are individuals, as Weber sees it, or status group(s), according to the elitists, or social classes (bourgeois, proletariat), in Marxism. Power, according to this perspective, embodies a conflictual nature (**conflict theory**) as a result of **differences of interests** (antagonism) between superior and subordinate parties. In this perspective, society is seen as made up of various groups engaged in continuous struggle, and power is seen as the means by which the dominant group(s) preserves its hegemony, and

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<sup>2</sup> If we look at this classification of power perspectives in terms of politics, it can be read as a distinction between a centralized state and a decentralized or pluralist one. On the other hand, if this classification is viewed from a sociological perspective, it can be read as power serving sectional interests, i.e. **somebody** (elite, e.g. Weber, Mills; social class, e.g. Marx), and power serving **everybody** (e.g. Parsons, Giddens), respectively.

<sup>3</sup> This term "scope" has been introduced by R. Dahl to denote that each party has its own "issue-areas" or institutional activities, such as educational, political, urban planning, business, and the like, within which its power is accepted. Herbert Simon used a similar term, "zone of acceptance", to denote the same meaning (Dahl, 1991, p.22; Wrong, 1979, p.15,17). Wrong, elaborating on Dahl's definition, conceives of "scopes" as the different areas of choice and activity of the power subject (Wrong, 1979, p.15).

<sup>4</sup> Most of the studies from these schools have dealt with power mainly from a political standpoint. They investigated the concept of power in terms of the ruler and the ruled (government (state) and people). However, at certain points, they linked the social concept of power with the political one; Foucault and Giddens's studies of power might be considered sociologically-based studies.

<sup>5</sup> There is a range of definitions of power, of which Weber's is the most widely employed. The Weberian definition used above is the most prominent one. For some Marxists, for example, "power is the capacity of one class or section of a class to realize its objective interests at the expenses of the contradictory classes or group of classes" (Poulantzas, cited in Castells, 1977, p.243).

exploits those subservient to it.<sup>6</sup> Accordingly, power expressed as embodying conflict and antagonism contains the concepts of **domination**<sup>7</sup> and control which mean repression and coercion. Commentators on this type of school attributed it as **negative** in its perspective towards power (Abercrombie, 1994, p.329). These schools are called “**conflict schools**”.

Unlike the above, the other group of schools of thought (Parsonian and pluralism) look at power as an integral and primary aspect of social life (**integration theory**). They viewed power as a collective social attribute that intervenes in all social actions. Their concept of power is based on the notion of **consensus**, arising from the existence of a value-system shared by any society (Parsons) or small collectivity or organization (Arendt; pluralist, e.g. Dahl). Thus, power is a facility to achieve social and societal collective goals and desires (Cassell, 1993, p.214; Outhwaite, 1994, p.504). This type of school is called the “**consensus school**”. This concept of power was heavily criticized as abstract, normative, theoretical and unempirical<sup>8</sup> (Abercrombie, 1994, p. 305, 444); therefore it (especially that of Parsons) was not commonly adopted by social scientists in the debates about power (Lukes, 1974, p.31; Sager, 1994, p.61). Thus, the discussion in this chapter concentrates less on the consensus schools (diffused power) than on the other schools (Marxism and Weberian), yet the theme of diffused power *per se* is explored.

Based on the diffused power theme, Giddens looked at power as, potentially, an aspect of all relationships; power adheres to social systems, as well as to individuals and groups within them. In this respect, Giddens offered a corrective vision to the tendency to concentrate on questions of who holds power and who does not (Hindess, 1996, p.9). In his view, power in its broad sense is a “**transformative capacity**”; it is “the capability to intervene in a given set of events so as in some way to alter them” (Giddens, 1985, p.7). In its narrower sense, power is a relational property that is revealed through interactions. It is in this sense, as Cassell stated, domination over others (Cassell, 1993, p.110, 227).<sup>9</sup>

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<sup>6</sup> Marx viewed the modern world as based on a power struggle between those who hold economic power (bourgeois) and labour (proletariat) (Abercrombie, 1994, p.67; Kirby, 1995, p.118). In the same manner, Weber also viewed the world as in continuous power struggle between **force** from the stronger party and **resistance** from the weaker (Miller, 1991, p.398).

<sup>7</sup> Domination refers to those asymmetrical relationships of power in which the subordinated parties have little room for manoeuvre because their “margin of liberty is extremely limited” by the effects of power (Foucault, cited in Hindess, 1996, p.102). Later in this chapter, domination is defined as the power of one party over another or others.

<sup>8</sup> According to their perspective, certain pattern of a social system based on normative consensus should exist (Giddens, 1984, p.257), within which their concept of power can operate. This pattern of social system does not exist within today’s modern capitalist social system. Therefore their perspective is considered here as theoretical and unempirical. In his study of power, Lukes dismisses this perspective of power as idiosyncratic. He argues that the treatment of power as a function of consent is “out of line with the central meanings of ‘power’ as traditionally understood” (1974, p.31).

<sup>9</sup> According to Giddens’s theory of structuration, each social system exhibits structures of domination as a result of its asymmetrical distribution of resources (Giddens, 1995a, p.50). Within social systems, power can be analyzed as relations between actors in which actors draw upon and reproduce those structural properties of domination. To quote Giddens, “power is generated in and through the reproduction of structures of domination” (Giddens, 1979, p.92; 1984, p.258).

### 6.3.1 Rights in Islam (*al-Haq*)

Power in Islam is not exclusive to a certain class (such as social classes in Marxism) or to a certain type of party (individuals in the Weberian school, or elites in the elitist school), but is integrated into all Muslims' relationships, whether between individuals, groups or states. However, power in Islam has a different conception from the modern one. The main difference between power in Islam and that in the modern concept lies, first, in the **sources** of power, and second, in its nature (static or dynamic).

Power in Islam is the ability to do or act in a certain manner to achieve certain outcomes within the framework of Islamic rights. It is derived from and framed by **rights**, where rights are set and framed by *shari'a* (the Islamic legal system). To state that one has the **power** to undertake certain action in a certain site means he has the **right** to perform that action in that particular site. However, rights, as al-'Abbadi states, do not mean capacity or power *per se*, but power is the effect of rights (Al-'Abbadi, 1977, v.1, p.106). These rights are distributed between different parties, whether individuals, groups or the state, according to certain maps established by *shari'a*. Hence, the limits of the rights of each party are drawn, and **cannot be changed**. These rights-distribution-maps allocate<sup>10</sup> rights to parties in society in relation to the rights of other parties. Thus, in Islam, unlike the modern concept, it is **rights rather than power** that give its party the capacity to act in the built environment.

The other fundamental difference between power and rights lies in the changeability of power (i.e. staticness or dynamicity). Rights of parties, bestowed by *shari'a*, are determined; they are well-known to all members of society, they are not covert. The limits of acting parties are clear. In short, rights in society are **transparent**. However, power as employed in the acquired mode is changeable (variable). It is not determined. The power of a party might increase according to the resources possessed by that party. Power in the acquired mode is **non-transparent**.

Rights or "*huquq*" (sing. *Haq*) in Islam are divided into two categories: first, the individual's rights. These include all the rights that pertain to individuals' interests, where the individual is free to use or to drop any of these rights in any specific case. An example of such rights is the right of ownership.<sup>11</sup> Second, rights of God. These denote rights of God such as worship, and rights of others (individuals, groups or Muslim society) that pertain to "the common interest"<sup>12</sup> (ad-Duraini, 1984, p.23), for example, the rights of Muslim passers-by (group) in a through

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<sup>10</sup> The word "allocate" is used here (and not for example, "give") to denote that rights are allocated in between the rights of other parties, i.e. rights of party *A* are the space between the rights of other parties. This means that rights initially are not absolute but framed by the rights of other parties. (The word "give", for example, means that right gives freedom of action embodied in that right, until it hits the rights of other parties, i.e. initially rights are not framed).

<sup>11</sup> These characteristics of this type of rights (individual rights) are similar in most societies such as the case in human rights, however with slight differences.

<sup>12</sup> "The public interest" as used in the acquired mode has a different conception than that in the inherited mode. To differentiate between the two conceptions, the term "**the public interest**" is used here to refer to the acquired mode and "**the common interest**" to refer to the inherited mode. This issue is clarified in the next chapter.



street to have control over the street; thus they **can** object to any action that narrows the street, such as building in it. This is the right of the public as one party, and not that of the state.<sup>13</sup> However, when those rights relate to relations that involve material value (e.g. physical properties), then they are considered rights of people. Islam granted a substantial importance to the public or the group's interest, and thus associated these rights of people with the name of God. (ash-Shatibi, n.d./1997, v.3, p.101-105; ad-Duraini, 1984, p.70). In that sense, the individual is conceived of in Islam as an autonomous social entity and not as part of the group.

In Islam, in terms of rights, the group is considered as the individual; the state is also considered as the individual. Each has its own rights bestowed by God. Individuals are not subjugated to the state. The state has no authority to grant rights to the individual or to deprive him/her of his/her rights. The state's role in Islam is to maintain the rights of individuals and groups in society, within the framework of the common interest which is well defined by *shari'a*. This enables them to enjoy their rights in a manner that does not cause damage to other individuals, groups, or to society at large (ad-Duraini, 1984, p.73-4).

As a constituent of *shari'a*, employing and actualizing rights should accord with *shari'a*'s purposes and spirit. Actions based on rights, aiming at reaching forbidden ends are considered abrogative (ash-Shatibi, n.d./1997, vol.3, p.23, 120; ad-Duraini, 1984, p.71-2).<sup>14</sup> Rights are an instrument or legitimate capacity bestowed by God to people, whether individuals, groups, or state, to achieve certain interests within the framework of *shari'a*. This legitimate capacity cannot be used deceitfully to achieve what is principally forbidden in *shari'a*.

Rights in Islam are conceived of in two forms; first, rights in their **putative** form, derived from *shari'a*, but not actualized (activated) through interactions. Those putative rights are distributed equally among all parties in society. Second, rights in their **actualized** form, activated through interactions. Putative rights do not generate power unless they are transformed, through interaction, into actualized rights. In other words, only actualized rights generate power or, more precisely, capacity. For example, the right not to be harmed by the actions of others is a putative right that all Muslims enjoy; however, this right cannot generate power except when actualized in real interactions.

To give an example, Sahnun (a jurist from the Maliki school<sup>15</sup>, d. 240H.) was asked about a case of a waterspout owned by party *A* and pointed towards a neighbour's courtyard. The neighbour

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<sup>13</sup> The public might in some cases be represented by the state, as explained in the next chapter.

<sup>14</sup> Abuse of rights is called in *shari'a*: "*ta'assuf*". It refers to activities that are originally permissible according to *shari'a*, but cause injury to others and/or to properties (see ad-Duraini, 1988).

<sup>15</sup> Islam has three main sources of legislation: the Qur'an, the tradition of the prophet, and the teachings of jurists. The first two sources are always referred to in interpreting the law. This developed several schools of law in Islam. The main schools of law (*Sunni*) that existed in Islam were: the Hanafi school after 'Abu Hanifa (d.150/767), the Maliki school of Imam Malik (d.179/795), the Shafi'i school of Imam Shafi'i (d.204/820), and the Hanbali school of 'Ahmad 'Ibn Hanbal (d.241/855). The major differences between these schools are methodological, based on the methods of deduction used by each school such as *qiyas* (analogical reasoning), *ra'y* (opinion), and *'ijma'* (consensus doctorum).

*B* wanted to transform this courtyard into a room in such a way that the waterspout of party *A* would be inside the room. Party *A* was afraid that the neighbour *B* might remove his waterspout, as it would run inside the room. Sahnun answered that party *A* cannot prevent the neighbour *B* from building the room; however, this neighbour *B* had to keep the waterspout of party *A* running inside his room. Party *A* had to bring some witnesses inside the neighbour *B*'s room to affirm the existence of the waterspout in case the neighbour *B* decided one day in the future to remove the water spout (al-Wansharisi, n.d., v.9, p.38-9). In this case, party *A*'s right to protect his owned object (waterspout) is a putative right that was actualized, thus transformed into power. The waterspout was to remain. Also party *B*'s putative right to control his properties is a putative right that was also actualized, giving its party power to continue in his action (build a room). In this case, both rights were actualized thus both parties exercised their power.<sup>16</sup> It can be noted here that solutions were reached without intervention from any external party.

Actualized rights, as framed by *shari'a*, work as **pondering (balancing) mechanisms** to weigh up and thus balance the powers of parties involved in any interaction. For example, 'Ibn 'Abd Rabbuh ruled in a case in which a man (party *A*) transformed his house into a mill, and his neighbour (party *B*) complained about the noise of the mill. Ibn 'Abd Rabbuh ruled that preventing the man (party *A*) from utilizing his property for his living<sup>17</sup> is more harmful than the harm of noise caused by the mill (Al-Wansharisi, n.d., v.9, p.60). In this example, party *A* has the right to act in his own property<sup>18</sup>, whereas party *B* also has the right not to be harmed by the new action of party *A*. Both are actualized rights; however, the damage caused to party *B* (noise of the mill) is less harmful than the damage that might be caused to party *A* if his mill is to be closed. Those rights were weighed against each other according to their consequences (degree of damage caused), thus performing as a pondering mechanism to reach a decision.

As there is no higher regulatory agency in the inherited mode (such as the state in the acquired mode), rights in their putative form operate as an **organizational mechanism** based on the acting party's anticipations, in a certain interaction, of the rights of the involved parties and their reactions to its act. Those mechanisms operate in each case according to its specificity. That is, rights are **well-known** to all parties in Muslim society. If party *A* intends to take an action that might affect party *B*, *A* will picture the scene of interaction (putative interaction) and the actualized rights that might operate within it, after which *A* will take action accordingly. Such mechanisms created **rights-ordered** relationships that were, consequently, reflected in the built environment. This was clearly evident in ordering relationships between vertical neighbours.

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<sup>16</sup> This is indeed a unique case. For contemporary professionals, discharging the water of one party's house through the room of another party is an unacceptable situation. Mechanisms regulating such situations will be explained in the next chapter.

<sup>17</sup> Unless there is a direct damage caused to the neighbour's property such as damaging the walls of his house. Some jurists (Maliki school), for example, considered the damage caused by the vibration of the walls due to the establishment of a new mill, but they did not consider the harm caused by a mill's noise ('Ibn ar-Rami, n.d., p.212-4).

<sup>18</sup> According to the Islamic conception of ownership, control over owned property is a primary right. Ownership rights, according to Islam, are explained in the next chapter.

For example, in one case the rain-water of an upper house (party *A*) drained through the roof of a lower house (party *B*) into a cistern that belongs to the owner of the lower house (*B*). The owner of the upper house (*A*) wanted to change the rain-water drainage, however, the owner of the lower house (*B*) objected on the grounds that this water should, by right, drain into his cistern. The owner of the upper house claimed that this water is of his right, thus he is free to drain it into the direction he chooses ('Ibn ar-Rami, n.d., p.424). In this case, both parties were **aware** of their rights, thus acted accordingly. Based on this type of mechanism, most cases in the inherited built environment were solved within their sites by the immediate parties involved through dialogue, without taking their cases to the judge. This is evident from the limited number of cases documented by judges and building experts.<sup>19</sup>

### 6.3.2 Power sources and power resources

These two terms, sources and resources, are sometimes used alternatively in the writings of Western scholars to refer to the same or different concepts. **Sources** of power are its bases. If we accept the definition of power, in its modern concept, as the capacity to mobilize resources to reach outcomes, then sources of power are the machinery which generates that capacity. Weber identified power sources as political, economic, and cultural (Wrong, 1979, p.255), however, for Mann, power sources are political, economic, military, and ideological (Mann, 1986, p.22-28).<sup>20</sup> On the other hand, **resources**, in the modern concept of power, are the power instruments that a party can bring to a power relationship that enable him (them), when employed, to wield power over others, and/or to reach outcomes (Wrong, 1979, p.124-125). Giddens insists that "power itself is not a resource. Resources are media through which power is exercised" (Giddens, 1984, p.16). Power, in other words, is not to be confused with the means through which it is exercised in any particular case. If a party has no power in the sense of a capacity, it can not employ certain resources.

Dahl suggested that resources include: wealth; prestige; legitimate authority; skills or specialized knowledge; position; and many others (Dahl, 1991, p.35). For example, decision-makers, as part of the higher authorities, are in a powerful position where he/she uses his/her legitimate authority and position as power resources to exercise power in the processes of the production of the built environment. Using this power, they can impose their own perspectives on other parties in society. Power relations, according to Wrong, presuppose that the power subjects lack these resources and that the **inequality** in distribution of and **control over** resources is the basis of the power relation (Wrong, 1979, p.125). Inequality in distribution of knowledge and skills between planners as professional and people gave planners the legitimate authority they enjoy. This **paternalistic** contention is considered as a tool of power exertion over others, i.e. domination (as explained in chapter ten).

<sup>19</sup> Examples of such documentation manuscripts are those of al-Wansharisi, 'Ibn Qudamah, az-Zarkashi, 'Ibn Taymiyyah, al-Kasani, 'Ibn 'Abdin.

<sup>20</sup> According to Marx, while political power is nothing but an instrument of the capitalist (bourgeoisie) class, economic power is the ultimate dominant power. That is, political, military and ideological struggles are reflections of the economic class struggle (Kirby, 1995, p.194).

Sources create power. Once power is created, according to its modern concept, the party who holds that power can **mobilize** and control resources. It is not necessary to own power resources, but to **control** them. Sources might sometimes be in the form of a resource (e.g. wealth), yet if they are the main cause of that power, then they are its source, such as in the case of an economic power generated by having wealth. After generating power, sources might turn to be resources which work together with other resources in exercising power, and seek more power by mobilizing other types of resources. For example, possession of wealth might be a source of economic power that provides its holder with the capacity to mobilize resources for his own benefit. In this process the main source (wealth) acts also as a resource, for example, in using that wealth as a resource to control certain building industries.

According to the modern concept of power, sources of power are variable. They might be political, economic, military, ideological, or cultural. In the same manner, resources do vary from one case of power relationship to another. This means that in the modern concept of power both sources and resources are **variable**.

In Islam, power sources and resources are unitary. There is only one source of power in Islam, that is rights. Those rights also act as resources employed in any power relationship. That is, in any power relationship in the inherited mode there is no distinction between power sources and resources; both are derived from the same source. Rights, as a power source derived from *shari'a*, in their putative form, are **static** (non-changing).<sup>21</sup> Other resources, such as political position, wealth, and properties that a party might own and/or control are not considered resources that generate power in themselves, but as means to which certain rights are attached. Those latter rights are the resources that generate power to its party in certain contexts. For example, political position in Islam is not a source of political power (as the case in the modern concept of power), but the rights attached to that position are the source or resource that generate power in certain contexts. Similarly, ownership of a piece of land is not a resource that generate power by itself, yet the rights attached to that land provide its owner, when exercised (actualized) in certain interactions, with power. For example, in the acquired mode, in the project of re-planning the city of Aalborg, Denmark, the new Chairman of the Chamber of Industry and Commerce in the city (part of the committee responsible for the Aalborg project) reshaped the Chamber's preferences regarding the "Traffic Plan" according to his personal interests. The Chairman owned a large shop adjacent to the existing bus terminal, which was doing well because of the dense use of the terminal (Flyvbjerg, 1998a, p.157). In such a context, *techne* and rationality are subordinated to and used as integral part of politics and power in the decision-making process of producing the acquired built environment. If such a situation existed in the inherited mode, the Chairman would not be able to direct the traffic plan according to his wishes. It is the rights of people that organize the built environment and not the power of politicians (powerful) or so. Political position in Islam does not entitle its holder to rights.

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<sup>21</sup> This point is elucidated more in the next chapter.

## 6.4 RIGHTS IN ITS MODERN CONCEPT

Politics is seen to be about might rather than right.

(Hume, cited in McLean, 1996, p.396)

There are no such things as rights in any abstract sense, and that questions concerning them are reducible to issues of **power**, its distribution and its justification. Thus rights have no independent meaning outside specific socio-political and cultural contexts. Thus, property rights could be treated as recognized relationships (of power, obligation, influence...)

(Harrison, 1987, p.37, emphasis added)

As noted, power in Islam is created by rights; however, most modern writings about power do not discuss the concept of rights as a central issue. The question which arises here is where do rights stand in relation to power, according to modern concepts? Are rights a power source? Is **power or rights** responsible for the production of the built environment, whether the acquired or the inherited? These questions will be answered next by highlighting the modern concept of rights in comparison to that of Islam.

Rights in its modern concept<sup>22</sup> comprises a disputable issue. However, most modern schools<sup>23</sup> (positivism<sup>24</sup> [Hume, Kelsen, Hart], utilitarianism<sup>25</sup> [Bentham, Austin], anti-utilitarianism<sup>26</sup> [Nozick, Dworkin], legal-realism<sup>27</sup> [James, Dewey, Holmes, Llewellyn], Marxism<sup>28</sup> (Davidson, 1993, p.27-38; Curzon, 1995)) share the idea that rights, in its modern perspective, are created only by the law issued by the authority, i.e. the state. That is to say, there are no rights outside

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<sup>22</sup> Rights in its modern concept as described and analyzed in this section is used mainly according to its conception and application in the modern capitalist system.

<sup>23</sup> Except for those who argue from the standpoint of the existence of natural rights, such as Locke, Rousseau, Kant (Davidson, 1993, p.27-28). Natural rights theories, after the appearance of positivist theories, fell into general disrepute during the 19th century (Davidson, 1993, p.29).

<sup>24</sup> Positivism is the approach to the study of law which regards laws as valid only when those laws are "posited", i.e. created and put forward by human beings in positions of power in society, who provide the sole source of the validity and authority of such laws (Cavendish, 1997, p.33).

<sup>25</sup> Utilitarianism is a form of positivism. It is epitomized by a famous slogan coined by Bentham, "the greatest happiness for the greatest number". Bentham and his followers argued that the respective "happineses" of each individual are additive and that the test of the rightness of individual or social action is to maximize the sum of individual utility (Marshall, 1994, p.549).

<sup>26</sup> Anti-utilitarianism counters the utilitarian thrust that individual preferences must always give way to those of the majority. Anti-utilitarians argue that in some circumstances the interests of the individual must take priority over those of society as a whole. In other words, the individual cannot be sacrificed for the benefit of overall social welfare (Davidson, 1993, p.33).

<sup>27</sup> Legal realism's major concern is with explaining the function of law, i.e. to discover what law does rather than what law is. In their investigations, realists followed an empirical approach (Davidson, 1993, p.36).

<sup>28</sup> Marxists don't totally accept the notion of rights in their debates. Rights, according to Marx, are simply bourgeois concepts and a product of bourgeois-capitalist society, designed to maintain and reinforce the pre-eminent position of the ruling class. The concept of rights emerges, as Marx argued, only in the transitional stage from the communist state to the communist society, where rights are regarded as instruments or tools for this transformation. These rights are not individual rights but legal rights which are granted solely by the state (positivistic sense). Once the process of transformation is complete, the need for rights disappears (Davidson, 1993, p.37).

the circle of the state (Curzon, 1995, p.242).<sup>29</sup> As the law is formulated by the authority (political power), consequently, **rights are generated by power**, and not the other way round.

The idea of rights in the acquired mode is associated with the existence of a **claim** (e.g. Ginsberg, see Curzon, 1995, p.235; Krieger, 1993, p.791). That is, rights are, or are embodied in, rules and laws formulated as a result of certain claims (if justified and accepted by the authority), directed towards fulfilling certain interests for certain individuals or groups of people. In that respect, Salmond defines "right" as an **interest** recognized and protected by law (cited in Curzon, 1995, p.236). Those claims emerge as a result of the experience of certain cases of damage or harm occurring in the life of that individual or group (claimant); thus to avoid similar damage in the future, claims for rights arise. Accordingly, one can argue that rights, in its modern concept, arise through a law enacted **after damage has occurred, or could occur**. A right, which arises from a specific case and is formulated into law, is thus generalized and employed in other similar cases.<sup>30</sup> However, it can be contemplated that as rights are laws (or are embodied in laws, according to Dworkin) generated by specific circumstances and cases, they might be expected to be rigid and inflexible when applied to other cases. This is because circumstances are ever-changing; people's habits, preferences and interests are ever-changing; claims, accordingly, always change and, thus laws should always move to accommodate such changes (Denham, 1994, p.2). Therefore, law is always subject to changes. However, until this change occurs, a law is generally applied.

To explain this practically in terms of the built environment, power exertation in any environmental interaction between parties in a site results in one of two situations; either, environmental **solutions** that suit all involved parties<sup>31</sup>, or harm caused to one or more of the parties involved or to their properties, i.e. power relationships result either in solutions or harm. The latter leads to claims arising to acquire rights to protect parties from such harm and thus produce solutions for future similar cases. As those claims for rights (if accepted and rights are bestowed to parties) imply a change in law or its implementation, consequently, this ends in changing power distribution among parties in future environmental interactions. For example, if an unprecedented environmental problem arises, then the party that will solve this problem will be entitled to power, through law, to enable it to solve that problem. This might, eventually, lead to change in power distribution within society. To conclude, we can say that, in this system, the **whole process** of producing and exercising power is always subject to change, as

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<sup>29</sup> Positivists, as most contemporary writings about rights, detached natural rights from their conception of rights, and focused only on the rights created by the law of the state (Davidson, 1993, p.29).

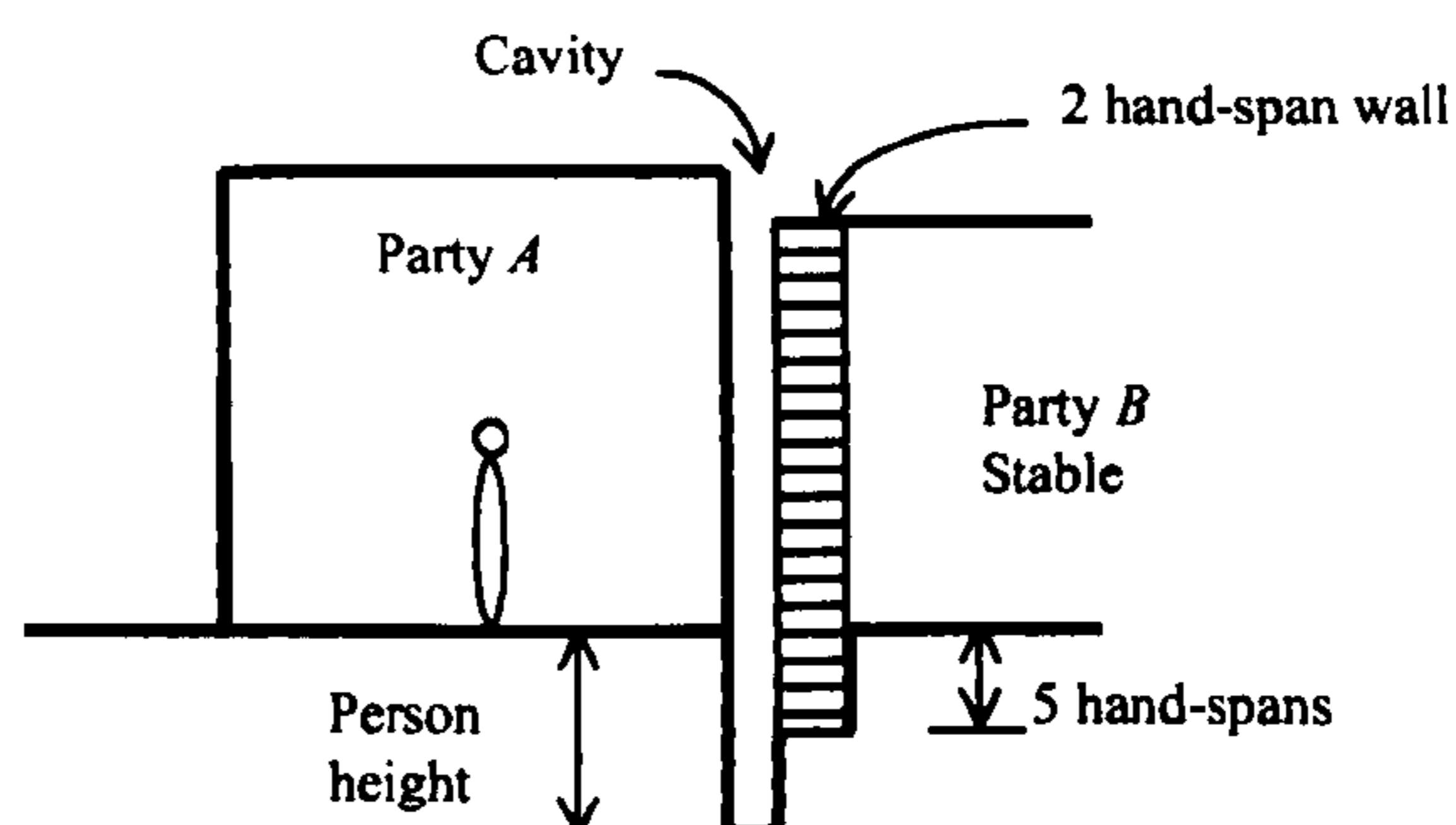
<sup>30</sup> In the USA there are certain broad rights conferred on citizens by the state which cannot be changed by any legislative authority (House of Representative, Senate). Outside the circle of those constitutional rights, any new rights enactment operates as discussed above. In UK, there is no written constitution as in the USA or Europe, thus the discussion above about rights applies to all cases.

<sup>31</sup> In many cases, solutions cannot accomplish the satisfaction of all parties involved, thus most solutions embody compromises. However, as those solutions and compromises are approved and agreed upon by the parties involved (no objection), this situation can be differentiated from that where unacceptable harm occurs and the damaged party(ies) objects.

shown in fig.6.2. In short, law changes periodically, however, this change in law is not rapid, thus, until this change transpires, law is generally applied, i.e. in a **one to all** pattern.

This phenomenon of creating law through responding to claims will produce parties who **seek change in the law** to suit their interest. As changing the law is subject to influencing others' opinion, the arena is set for competition. People supporting different laws regarding the same issue compete in the media to defend their beliefs. Referring to what was explained before (power sources and resources), one can conclude that rights are generated by power. Rights are in constant change following power holders' visions, influences, desires, etc. The re-planning of the city of Aalborg, as analysed by Flyvbjerg (1998a) is a good evidence on this issue.

On the other hand, in the inherited mode, power in any environmental interaction is generated by rights. As rights are set by *shari'a*, thus, they are fixed; i.e. **parties cannot change the law**. However, this does not mean fixed environmental solutions. The exercitation of rights may result in solutions that might embody some harm. If harm occurs then the **exercitation** of power is to be questioned and reviewed with reference to those rights (static, unchangeable) that generated it in relation to the rights of the other related parties. Ultimately, solutions are arrived at which might develop new environmental conventions that in future similar cases help to direct the way of exercising power so as to produce solutions and avoid causing harm. To give an example of this process from the inherited built environment, in one case, a man (*A*) objected to his neighbour's action (*B*) of transforming part of his house into a stable for his small beast. The acting party (*B*) insisted on keeping the stable as his living depended on his beast. The judge (according to the building expert's advice) asked the owner of the stable (*B*) to **build a wall** parallel to the neighbour's party wall, with a foundation of a person's height deep in the ground, two hand-spans<sup>32</sup> thickness, and half a hand-span far from the neighbour's party wall where this cavity should extend five hand-spans below the ground level up to the ceiling, thus creating a cavity wall that works as a separating zone between the stable and the neighbour's party wall (fig. 6.1) ('Ibn ar-Rami, n.d., p.221-2).



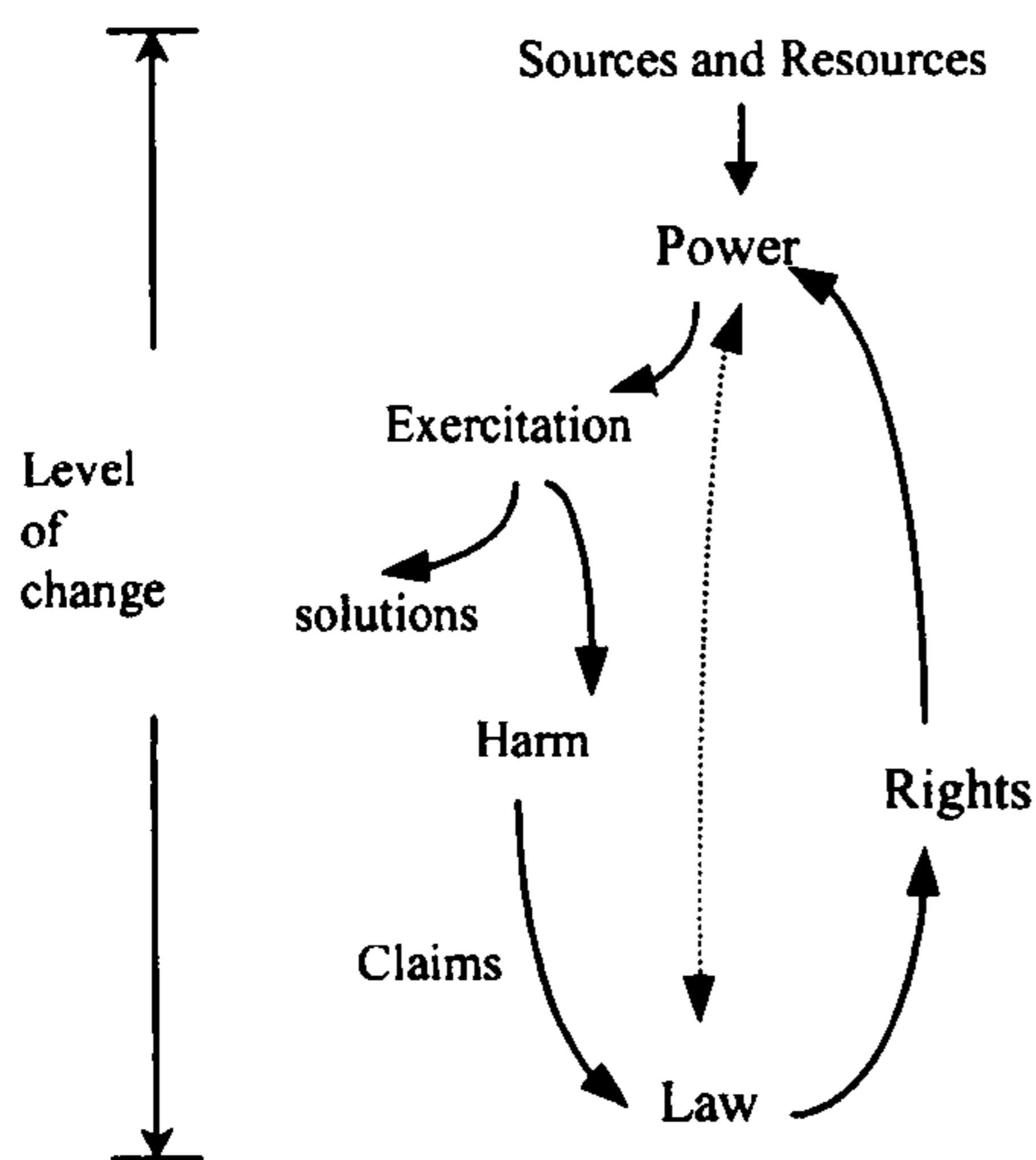
(fig.6.1)

This method of “counteracting the damage” by creating a separating zone to absorb the sound or vibration caused is a method that has been repeated several times in 'Ibn ar-Rami's

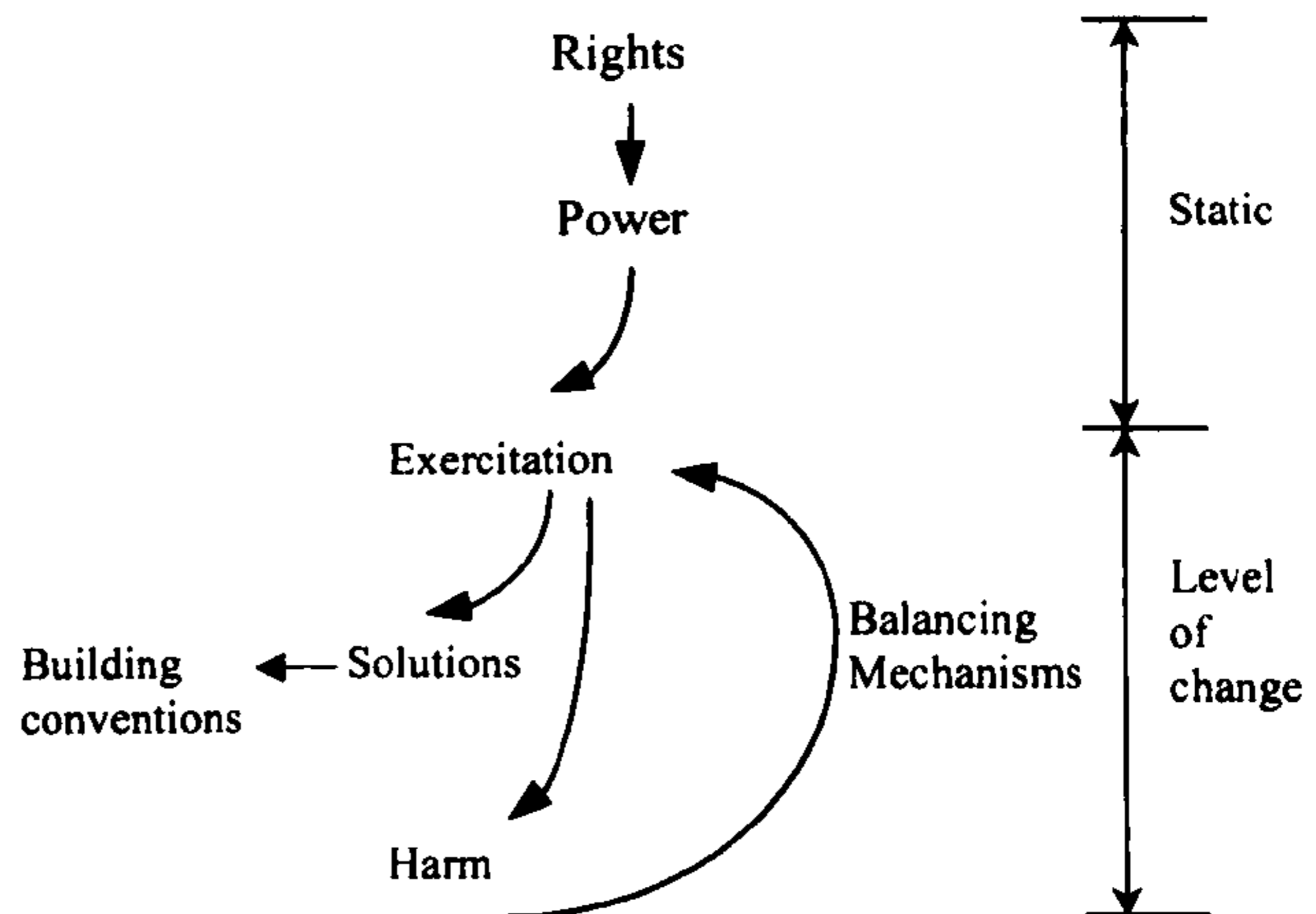
<sup>32</sup> Hand-span (*shibr*) is a common traditional method of measurement. *Shibr* is the distance between the top of the Pollex finger to the top of the Pinkie finger of hand ('Ibn Manzur, n.d.).

documented cases (see 'Ibn ar-Rami, n.d., p.216-224). This means that this solution constituted a convention that was adopted in solving similar cases.<sup>33</sup>

In this process (fig.6.3), in the inherited built environment, the level that is subject to change over time (as shown in the fig.6.3) is related to power exercitation and production of solutions in the site and not to rights and power criterion *per se*.



(Fig. 6.2) Process of producing and exercising power in the acquired mode



(Fig. 6.3) Process of producing and exercising power (rights) in the inherited mode

It can be said that rights, according to its modern concept, are a temporary manifestation of the prevailing values and interests of society at a given time (Miller, 1991, p.446). They are subject to changes of interest, whether from the claimants or from those holding the power of authority (accepting or rejecting the rights claims). As a result, because of their inflexibility and yet the ubiquitous need for change, rights constitute a burden on authority and on others whose decisions they constrain (Miller, 1991, p.444). Rights set limits to the comprehensiveness and the intensity of power (Wrong, 1979, p.16).<sup>34</sup> That is, due to rights, certain scopes are

<sup>33</sup> This was a well-known convention. As a building expert, 'Ibn ar-Rami was asked about the distance that should be left between the newly established mill and the adjacent neighbour's walls. 'Ibn ar-Rami recommended that the distance left had to be occupied by a building, for example, a room or a store or at least a passageways, so that this building works as a separating zone between the mill and the walls of the neighbour ('Ibn ar-Rami, n.d., p.218).

<sup>34</sup> "Comprehensiveness" and "intensity" are two attributes distinguished (along with a third one, "extensiveness") to describe power relationships quantitatively, i.e. comparing the relative powers of parties involved. "Comprehensiveness" of power refers to the number of scopes in which the power holder(s) control the activities of the power subject(s). "Intensity" of power relations refers to the range of effective options open to the power holder within each and every scope of the power subject's conduct over which he wields power, i.e. intensity relates to the limits to the actions which the power holder can influence the power subject to perform within certain scopes (Wrong, 1979, p.16-17). Mann defined this attribute in reference to high commitment of power subject(s) (Mann, 1993, p.6). For example, decision-makers, although they have power over certain scopes within which they can make decisions; have limited space for changing the pre-stated laws that constrain their decisions, e.g. the court may possess the power to impose punishments on lawbreakers, but not "cruel



specifically excluded from control by power holders, such as freedom of speech, religious worship, travel, and so on. Furthermore, rights curtail the range of options available to the power holder within those scopes where he does have control. Ultimately, authority has, at least at certain times, to ignore those rights and not to guarantee them, as explained next.

### RIGHTS ENFORCEMENT MECHANISMS

Will [the State] allow any rival forms of association to exist in society that usurp State power. Clearly, the answer is no... Mediating institutions will be sanctioned only if they work to reduce the costs of the State by absorbing and privatizing functions, and *not* if they assume for themselves the right of decision making and the steering functions of society.

(Gottdiener, 1987, p.285, emphasis in original text)

Are rights defeasible<sup>35</sup>? Upon whom lies the obligation to “prove” or “disprove” the existence of rights? Can their theoretical existence be proved in practice?

Assertions that party *A* has a legal right<sup>36</sup> to *B* are tested by whether the law does in fact recognize *A*'s right to *B* (McLean, 1996, p.434). We can infer from this that the state (the political power that enacted the law and consequently bestowed the rights) is the party that grants, proves and disproves the rights. But, if the law (i.e. the state) entitles party *A* to the right of a certain activity or benefit, can we consider *A*, in practice, as having and enjoying power? The answer is likely to be no. That is, according to the modern concept, rights do not necessarily have the required **enforcement mechanisms** to actualize them.

Rights lack, **first**, the mechanisms that guarantee their continuation and indefeasibility. Rights are bestowed, recognized, and protected by the state; they can be cancelled by legislation (Curzon, 1995, p.242). Accordingly, rights are **defeasible**. They are subject to be disproved and waived at any time by a higher power. This is applicable when a certain right contradicts the interests of the power-holders; or, when a private right conflicts with a public interest (represented by the state). For example, in many cases in the acquired built environment, the state, represented by its planners, despite owners' protest, expropriates private properties (eminent domain) for the sake of widening an existing street or establishing a new one (public interest as alleged). Thus, the rights of ownership of those private parties were violated and defeated for the benefit of the powerful party (the state). In this case the interests of the private parties and that of the state are in conflict; the state, as the decision-maker in such cases,

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and unusual punishments”, i.e. there are limits within which authority is accepted (Wrong, 1979, p.16-17). “Extensiveness” of a power relation refers to the demographical and geographical spread of subjects over whom it is exercised. It means the ability to produce at least minimal compliance over a large population and a large territory (Mann, 1993, p.6). It may be narrow or broad. Wrong, besides focusing on the number of subjects, emphasized the importance of the number of power holders (Wrong, 1979, p.15).

<sup>35</sup> “Defeasible”, as used in contemporary writings on rights, denotes the ability to be defeated or annulled.

<sup>36</sup> The term “legal right” is used here to distinguish it from what the natural school calls “the natural right” that denotes the moral right, which is not the subject of discussion in this study.

decides which right is to be upheld and which to be overridden. So it is the rights of individual owners in this case which were taken, not just their properties. Most capital cities in the Muslim world (in the acquired mode) have gone through re-planning processes in which environmental decisions of the state, in the name of the public interest, were imposed on city's people and built environments. New streets were created in the traditional fabric, depriving residents in those areas of their rights.

To clarify this issue more, if we consider what is called "human rights", we can find that (1) they are connected to the **protection** of individuals **from** the exercise of state or governmental authority in certain areas of their lives, and (2) also directed towards the creation of societal conditions **by** the state, so that individuals may develop to their fullest potential (Davidson, 1993, p.24). This means that human rights are formulated **by the state and against the state**. This sounds illogical. Thus one can infer that those laws, which are rights or embody rights, that the state issues against itself, most likely, do not in reality come into effect, or else that they might be of marginal effect to its central policies. The state, in cases where rights comprise constraints upon it, does not provide the right-holder with the appropriate enforcement mechanisms to guarantee his rights, i.e. rights cannot come into effect. Put simply, in practice, in most modern-capitalist societies, political power (authority) can overturn rights. In such a context, rights in its modern concept can be described as deficient, and unsubstantial, or, as "illusions" and "myths", as Tushnet describes it (cited in Ward, 1998, p.157).

In clear contrast with the modern state, as rights in the inherited mode are derived from *shari'a*, the state in Islam has no role in bestowing, or approving or disapproving the rights of its people. In one case, 'Umar 'Ibn al-Khattab, the second caliphate (d.13H/634AD) could not expropriate a private house to expand the prophet's mosque in Medina without the approval of its owner (al-Wansharisi, n.d., v.1, p.244). Each party in the Muslim society, including the state, performs, according to rights-distribution-maps, within a limited circle of rights, thus, no one party can violate the rights of others (explained in the next chapter). For example, in Islam the right of revivification (*'ihya'*)<sup>37</sup> (which ultimately leads to property ownership) is the right to revivify an unclaimed land without the approval of the state. In that sense, the state has abated the right to intervene in approving or disapproving such rights, thus its authority was limited. In short, environmental rights in Islam are **static and indefeasible**, however, rights in its modern concept, as founded on the changing political power, are **variable and defeasible**.

Some might argue that during the history of Islamic dynasties, some rulers manipulated rights to suit their interests. That might be true in some cases; however, such were illegal acts, according to Islam.<sup>38</sup> Nevertheless, those rulers did not have a free hand to gain power and manipulate rights as they wished. They managed to exercise power over very limited scopes related to their administration, such as building new military cities (e.g. Samarra'). However,

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<sup>37</sup> The concept of revivification (*'ihya'*) is explained in the next chapter.

<sup>38</sup> During time, some Muslim rulers did not abide with Islam in their rulings. They tried to violate the Islamic law in terms of rights, so as to acquire more rights thus more power.

due to the absence of environment-related professionalism (as a form of power acquisition), they could not extend their acquisition of power to other environmental matters. They could not deprive people of their rights or manipulate property rights, as based on *shari'a*. Today, due to the rise of professionalism, the case is different, as explained in chapter ten below.

**Second**, rights lack the mechanisms that guarantee their actualization and translation into reality. There is a distinction between a **formal right** of party *A* to action *X*, and the **substantive capacity** to *X*. For example, *A* has a legal right to *X*, in a case where that means “*A* is not to be forbidden to do *X*”, does not guarantee that the action *X* is available to *A*, since its performance may require **access to resources** which *A* lacks (McLean, 1996, p.434). For example, consider the right of private ownership in a capitalist society. There are no enforcement mechanisms to actualize this right. The distribution of wealth does not support it; land is of high value, as it is either owned privately or by the state, thus those who do not have the financial resources cannot enjoy this right, although formally entitled to it. This in turn leads to a structure where equality of rights does not mean equality in actual conditions (McLean, 1996, p.434).

As a result, answering the above question, rights are not considered as power, but as temporary laws **created by power**. It follows from this that rights (as embodied in laws) are subject to the vertical structure of modern society. They are determined from the top towards the bottom, i.e. they are a form of power exertation.

To conclude, we can say that, according to its modern concept, power **antecedes** rights; power **creates** rights; and finally power **controls** rights. In Islam, power **succeeds** rights; power is **generated by** rights; and finally power is **framed** by rights. Therefore, answering the first question in this section (Is it power or rights?), we can say that power rather than rights plays a major role in the production process of the acquired built environment, whereas it is rights rather than power that play the major role in that process in the inherited built environments.

## 6.5 POWER VS. RIGHTS<sup>39</sup>

### POWER AND HUMAN NATURE

When everyone is equal there is no politics, for politics involves subordinates and superior

(Gerth and Mills, cited in Wrong, 1979, p.10)

History is an ‘endlessly repeated play of domination’

(Nietzsche, cited in Hindess, 1996, p.103)

Democratic contrivances are quarantine measures against the ancient plague, the lust for power: as such, they are very necessary and very boring

(Nietzsche, cited in Flyvbjerg, 1998a, p.225)

Power, in its modern concept, is broadly understood as “man’s present means to obtain some future apparent good” (Hobbes, 1651, cited in Hindess, 1996, p.14), or the capability to achieve desired ends or goals (Weber, cited in Giddens, 1995, p.49), or the capacity to “produce

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<sup>39</sup> Power here refers to the acquired mode, whereas rights refer to the inherited mode.

intended effects” (Russell, 1938, cited in Wrong, 1979, p.219). Given this, obviously, as Hobbes and Weber pictured it, all mankind is running after power; they are in a continuous struggle for power, they have a restless desire to acquire power after power (Wrong, 1979, p.218), so as to acquire the means and capacities to bring about their own good and satisfy their needs and wants. This concept looks at power as a **scarce resource**, and not just as a facility. Therefore it is not difficult to see why conflict is such an important feature of social processes. In this scenario, the law of the sovereign or state is to organize these struggles and to keep this human desire for power under control (Miller, 1991, p.398). In that sense, the state becomes a **necessary device** in modern-capitalist societies.

Control over more and diverse resources denotes more and diverse types of power. That is, diverse and more resources, when employed, might increase the means through which more parties can be subjected to that power, i.e. increasing its extensiveness, and more scopes are open to its holder, i.e. increasing its comprehensiveness and intensity (see p.116 above). This phenomenon might be depicted here as **inflation of resources**. In this view, power-seeking or a **“lust for power”** is human nature (endowment) (Wrong, 1979, p.219), although shaped, acquired and developed by and through social interactions and institutions within the social system in every-day life.

On the other hand, in Islam, as rights are distributed and framed by *shari'a* in a static manner, this basic human tendency, the “lust for power”, is eliminated (as explained in the next chapter). In principle, there is no struggle after power, and no domination of others for the sake of acquiring more power. Power is already decided upon and framed by *shari'a*, the same is true for its distribution within any interaction. No party can gain more than the power allocated to it (in a form of given rights), i.e. there is no inflation of resources. That is, in Islam rights-derived mechanisms operate to limit the growth (inflation) of a party's power if it is detrimental to other parties, without suppressing that party. Such mechanisms lead to a more egalitarian<sup>40</sup> society. For example, revivification (*'ihya'*) is a right that leads to more possession of land with no substantial purchase-value, thus wider distribution of resources and no concentration of wealth in the hands of the few. This in turn makes land an available resource, thus eliminating what is known today as “land speculation” and its associated notion of considering land as a “scarce resource”. But what about population growth in cities? Land, as contemporary writings reveal, must have a purchase value. This contemporary vision is based on the perception of centralization. That is, as infrastructure and other public facilities are centrally provided by the state, thus the state tends to concentrate population in certain areas and avoid urban sprawl. This in turn increases the price of land within urban populated areas. On the contrary, following rights-based decentralized mechanisms in the production of the built environment, revivification in Islam, as explained in the next chapter, encourages people to spread on earth, to utilize available utilizable lands. Thus, due to the wide availability of land, urban lands within populated areas has minimal or no purchase value.

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<sup>40</sup> Egalitarianism in Islam has a distinct meaning than that of the west.

### 6.5.1 Power to / Power over

The aim of power relationships is to seek and secure compliance<sup>41</sup> ... power relations involve one actor or group of actors [party] in overcoming the resistance of another actor, or group [party], and securing compliance thereby

(Evans et. al., 1992, p.263, 264)

Power is the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance

(Weber, 1978, p.53)

Power is the capacity to produce, or contribute to, outcomes by significantly affecting another or others

(Outhwaite, 1994, p.504)

Two main forms of power can be inferred from the above quoted different concepts of power. These are: **power to** and **power over**. "Power to" is the power conceived as a **facility** to achieve outcomes (the third quotation above), while "power over" is the capability of a certain party to achieve its desires and goals, where the means to fulfil this aim include **dominating**, controlling and subordinating other parties, i.e. "power over others" is an instrument for the achievement of a wide range of goals (the first two quotations above). In either form, power refers to capacities.

Giddens, in his theory of power, distinguished between two "senses" (forms) of power. In its broad sense, power is a transformative capacity, i.e. it takes the form of "power to" mobilize resources to achieve outcomes, while in its narrower sense, it is a relational property which presents itself as a "power over" (Cassell, 1993, p.110).

As the "power to" form of power includes utilization of resources to achieve outcomes, it is called in this research **utilitative power**, while the "power over" form is called **subordinative power** or **domination**. Consensus schools (e.g. Parsons; Arendt; and the pluralists) argue for the utilitative form of power<sup>42</sup>, whereas conflict schools (e.g. Weber, Marx, and Mills) are examples of those whose concepts of power imply the subordinative form (domination).

While the concept of domination<sup>43</sup> (power of party *A* over party *B*) seems to dominate modern writings on power, with less attention paid to "power to", power in Islam is analogous to the

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<sup>41</sup> Compliance behaviour may consist of doing something different or it may consist of continuing with a behaviour pattern that an actor really wishes to drop (Evans et. al., 1992, p.264).

<sup>42</sup> Although his main focus is on the form of "power to", Parsons's definition of power embodies the form of "power over". That is, "power to" attain collective goals requires that some men exercise "power over" others in order to maintain organization of the collectivity or of the society (Wrong, 1979, p.245). Parsons in this respect "ignores, quite consciously and deliberately, the necessarily hierarchical character of power, and the divisions of interests which are frequently consequent upon it" (Cassell, 1993, p.220). The same argument applies to the pluralists' perspective of power. That is, inside each organization there is a hierarchical order of power where power is exercised over the members of the organization (discussed in chapter eight).

<sup>43</sup> Domination is the ability of party *A* to make party *B*, through *A*'s actions, adjust his relevant actions accordingly; actions by party *B* do not necessarily make party *A* adjust his relevant actions (Habracken, 1988, p.17).

form of “power to” to fulfil interests, yet it has its own conception.<sup>44</sup> Modern power is seen as **might** rather than as a right, whereas in Islam the focus is on power as a **right**, i.e. not as might over others but power as a legal capacity (power to). Thus, in the acquired mode based on the modern concept of power, **might is seen as creating right**, whereas in the inherited mode based on Islam, **might is created by rights**.

As it is evident from documented environmental cases in inherited built environments, forcing others to adjust their interventions (i.e. power of one party over another) happens only when rights are actualized in certain interactions, i.e. after power is generated by actualized rights. Moreover, such power or might is conditioned; it can be gained only if proved (through several rights-based mechanisms, such as assessment of damage caused to that party, as explained in the next chapter). In the acquired mode, on the other hand, higher authorities are in control of the environmental production processes. For example, the political power enjoyed by the Mayor of Aalborg, as described by Flyvbjerg, gave him the right to continue with the Aalborg plan despite public criticism (1998a, p.96).<sup>45</sup> This power of the Mayor was translated into a right to control the built environment. Moreover, the state’s power over others can be sensed in the state’s control over building permissions, connection to electricity and other essential utilities.<sup>46</sup>

Power defined as “power over” reflects a social system organized hierarchically. That is, as Habermas pictured it, existing (modern) political and social orders (capitalist or socialist) are founded on domination (Wrong, 1979, p.247). In this system, relationships between parties are organized vertically; power descends gradually from the higher level party, i.e. dominant party or power-holder (starting from the central authority) to the lower level party, i.e. subjected party or powerless (such as the masses) (fig.6.4). Accordingly, any power relationship has always two poles: power-holder and powerless. This concept views power as a substance or resource that parties (whether states or individuals) can **possess**. It focuses attention on competition for power and domination. On the other hand, the concept of “power to” stresses the potential of cooperation, consensus and equality in achieving goals (Johnson, 1995, p.210-1). In that sense, the concept of “power over” is considered **negative** while that of “power to” is **positive**.

Planners, as representatives of the central or local authority, claim that they work as neutral agents to fulfil the public interest. They use their legitimate power entitled to them as part of the state **to take decisions on behalf of the public to achieve outcomes in the public interest**. In that sense, planners’ activities seem to be characterised by the use of “power to” achieve outcomes. Planning is a kind of activity that has been described, mainly by neo-Marxists (e.g. Castells, Lefebvre, Harvey, Poulantzas), as an instrument of the capitalist state to accomplish the

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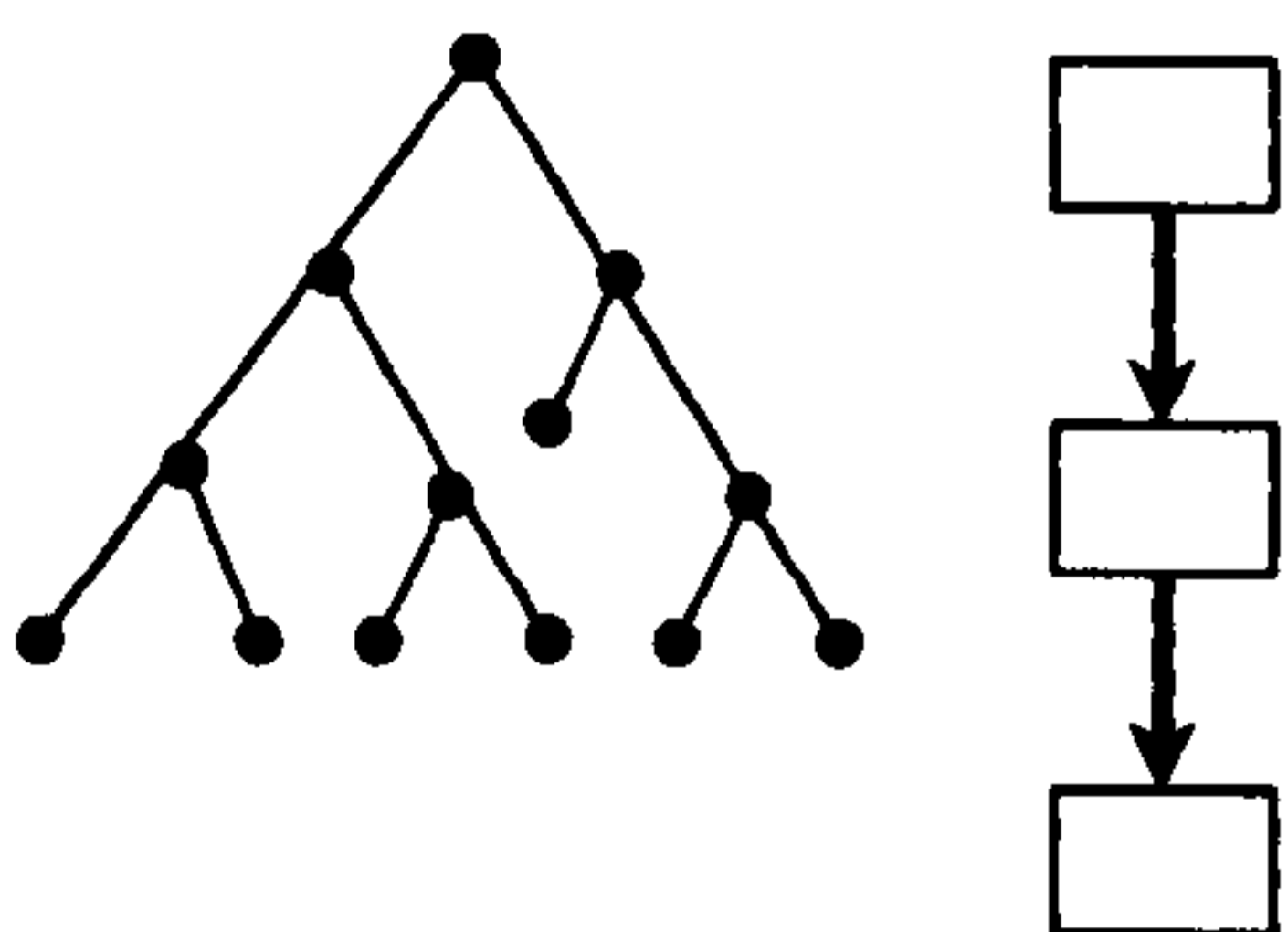
<sup>44</sup> Power in Islam is closer to the modern conception of “power to” than to “power over”, however not the same.

<sup>45</sup> The mayor stated in that respect “No one should interfere” (Flyvbjerg, 1998a, p.96).

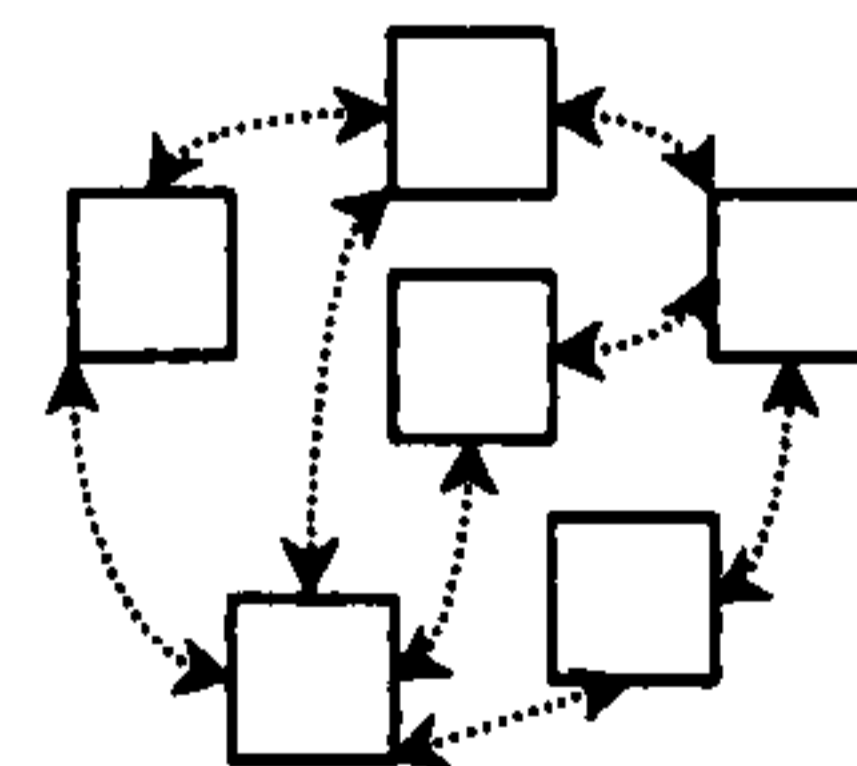
<sup>46</sup> In most Arab countries, the state, through its control over such utilities, guarantees that people abide by its environmental laws and regulation. Any violation of such regulations might end in depriving the private party from connecting his property to such essential utilities (Akbar, 1992, p.342).

interests of the few; it is, as Lefebvre put it, a tool of social control<sup>47</sup> (Lefebvre, 1991). Planning thus could be seen as an **activity of subjection**; it subjects the public to its own vision of interest, to its policies, regulations and plans. It is a top-down activity. However, this negative subjection is masked by a positive perception of the concept of “power to”. Thus, “power to”, as used by planners, with its positive perception, is a tool of manipulation to mask the use of “power over” others, i.e. “power to” is a positive mask for the negative face of their actual use of power in a subordinative form. Flyvbjerg, in his analysis of the re-planning of the downtown of Allborg in Denmark, proclaimed that power in such planning activities defines its own truth and works to accomplish it. Planners as power holders define, explicitly or implicitly their vision of truth and public interest, **rationalize** it, and then work to achieve it (Flyvbjerg, 1998a). However, this process of subjugation of the public has been transformed into a self-subjugation process. That is, planning activity is a reflection of the logic of the modern hierarchical societal structure, thus, the public accepts this top-down paternalistic process and legitimizes it as its prime movers are **professionals** with specialized knowledge, thus they know more about the public interest than the public themselves (explained in chapter ten). Ultimately, the public subjects itself, willingly or unconsciously, to the “power over” of the planners (professionals).

As rights in Islam are distributed among all parties in society, thus the predominant relationships among different parties in society are not vertical. There are no hierarchical levels between parties, i.e. in principal, there is no domination of one party over others. In that sense, as the term “power” denotes **powerful** and **powerless** parties, thus it does not apply to the inherited mode where such conceptions do not exist (fig.6.5). In the inherited built environment, the rights of all parties involved in each interaction become **actualized**. Those actualized rights are then weighed up (pondered) against each other with reference to *shari'a* to achieve a balanced situation on that **specific site**. Power or actualized rights denote capacity only for specific right-based actions occurring in the specific site. Outside that site of interaction this power or right expires. In other words, power does not inflate outside its site. Thus, it can be said that in the inherited mode, power relationships between parties in any environmental interaction are **balancious and locational**, and not **dominative**.



(Fig.6.4) Hierarchical relationships between parties in the acquired mode.



(Fig.6.5) Balanced relationships between parties in the inherited mode.

<sup>47</sup> The state for Lefebvre is a hierarchical form possessing the concrete abstraction of power in a domination-subordination relationship, which is then utilized by bureaucrats to control society (Lefebvre, 1991).

### POWER REFLECTION IN THE BUILT ENVIRONMENT

As any built environment is part of an overall system, the built environment in its production processes reflects the larger societal power relationships. In the acquired mode, as law enactment embodies and reflects the hierarchical order of society, thereby this law, as a reference in any interaction in the built environment, **enhances and maintains domination** between parties in their environmental power relationships. For example, as a result of zoning and land use policies, land tenure in the acquired built environments, and its associated notion of land speculation, constitutes a territorial reflection of the societal hierarchical power structure. In Amman, Jordan, for example, residential areas are classified into zones A,B,C, and D leading to classifying people according to the area of residence.

Moreover, with reference to the site, law is enacted by a remote party (a higher authority) and is generalized and applied to diverse sites in the built environment. In many Arab countries today, building regulations for each zone are applied in all cases, such as building heights, percentage of built up area, set backs, building materials, etc. (see p.14). In that sense, parties are subject to higher authorities' development control policies, thus subject to higher level power. This can be described as a **top-down** mechanism of organizing the built environment. This implies that power of the involved parties does not emanate from the site. Therefore, it can be said that power relationships between parties in such acquired built environments are **non-locational**.

While power in its modern concept is usually based on the concept of domination, and works **vertically** from top to bottom, it works (in the form of rights) according to the Islamic concept, as a **pondering mechanism** (not vertical and not necessarily horizontal<sup>48</sup>) between parties of Muslim society and state. Pondering mechanisms, in any interaction in the inherited built environment, operate to bring the actualized rights of properties and parties at any given moment into a balanced state, i.e. an agreed state where all parties involved (immediate parties) accord with the solution reached, contentedly and not compulsorily. This balanced state is reached in most cases through dialogue between involved parties in a disputed specific case, resulting in environmental solutions. If the dispute persists, the judge's ruling (constituting an environmental solution) is then binding to all parties. In other words, environmental solutions are then dominant over the conflicting parties. In that sense, dominant agreements or rulings balance horizontal relationships (or restless horizontal relationships, as Habraken calls them) and bring them to a state of stability. Such relationships might then be attributed as vertical; however, this verticality is between the involved parties. Both disputing parties jointly (neighbours, for example) compose the dominant party.<sup>49</sup> Any intervention in the built environment creates a case of interaction, which alters this balanced state. Pondering mechanisms then operate to bring the new situation into a new balanced state by weighing the

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<sup>48</sup> In most cases, relationships between parties are horizontal. According to Habraken (1998), such relationships are restless. However, such relationships are treated (ordered and relaxed) in the inherited built environments by certain mechanisms, as explained in the next chapter.

<sup>49</sup> This issue is explained more in the next chapter.



new actualized rights emerging from the intervening actions in that specific context. Such relationships in the inherited built environment can thus be attributed as **locational**.

As disputes in the inherited built environment are solved following a decentralized, locational mechanism of decision-making based on rights network<sup>50</sup>, thus the parties involved in any interaction are of the same level and obviously less in number than in the case of centralized, non-locational decision-making process (the acquired). Consequently, balancing such a situation, or resolving conflicts through environmental solutions, is much easier and less bureaucratic in the inherited mode of production than in the acquired.

## 6.6 CONCLUSIONS

As this chapter demonstrated, there are substantial conceptual differences between the modern concept of power adopted by the acquired mode and that of Islamic rights employed in the inherited mode of production. Thus, the mechanisms operating in the decision-making processes of the production of the acquired and the inherited built environments are inevitably different. Some of the differences between the modern (acquired) concept of power and rights in Islam (inherited) are summarized in the following table (table 6.1).

Modern concept of power (the acquired mode)	Rights in the inherited mode
relational	relational
Exclusive to certain parties	Not exclusive
conflictual	Balancing (ponderal)/organizational
<u>Power sources and resources:</u> Two different concepts Power sources variable Power resources variable	Unitary (imply the same concept)  Power sources and resources are static (rights)
'Lust for power'	'Lust for power' is eliminated
Inflation of resources	No inflation of resources
Power is relatively dynamic	Rights <i>per se</i> (putative) is static
Rights are generated by power Power controls rights	Power is generated by rights Power is framed by rights
'Power over' or domination	'Power to' or 'utilitative power'
Power is seen as might rather than right Might creates rights	Power as a right Rights create might
Power relationships are non-locational	Power relationships are ponderal and locational
Power works vertically from top to bottom	Rights work as a balancing (pondering) mechanism

<sup>50</sup> Rights in Islam are **relational**. Rights of any party are always perceived in relation to the rights of others, thus, constitute a network of rights, as explained in the next chapter.

**Chapter seven**

**Structures of Rights**  
*the inherited*

## STRUCTURES OF RIGHTS

### *The inherited*

'Ibn Sina<sup>1</sup> [Avicenna] states that human-derived authority is “authority/power” whereas the authority from God is “authority/rights” where the first is a necessity-based authority while the latter is a legitimate authority.

(Badie, 1992, p.100, translated by the candidate)

### 7.1 INTRODUCTION

As a rights-based, the inherited mode is quite distinct from the acquired mode characterised as a capitalist-, modern-oriented, power-based model. Today, we live the acquired model, witness its built environment, and read about its processes. It is a daily observable and lived phenomena that has been widely explored and studied. Accordingly, the structure of the acquired built environment has become well recognized by us. If there is a lack of knowledge then it is in the inherited built environment. This chapter is thus concerned with exploring the inherited built environment, its mechanisms, structure, and processes, founded on the concept of rights in Islam. In such an investigation, a comparative methodology is adopted, where the inherited mode is compared to the acquired. In this context, the acquired built environment, as a living structure, will not be scrutinized unless necessary.

As this research is concerned with the production process of the built environment, it focuses on the acting parties responsible of such a process. As this process in the acquired mode is controlled and directed by the state, represented by its planners and decision-makers, the focus in investigating the acquired mode is on the general mechanisms that operate on that level. However, as such process in the inherited built environment is centred around the inhabitants as immediate parties in the site without the intervention of external parties, the focus in exploring such a process is on the small scale actions (incremental) of the involved parties.

### 7.2 RIGHT OF OWNERSHIP

Ownership is a well-defined right in Islam. It is an appertainance to a thing (object, *'ayn*) that enables its holder (owner) to **use** and **control** this thing exclusively, unless there is any preclusive (al-'Abadi, v.1, p.150). Two main principles determine ownership in Islam: **need** and **control**. Regarding the first principle, al-Qarafi<sup>2</sup> (d.684H.) relates that the sole rationalization for ownership is need (*al-hajah*) (al-Qarafi, n.d., v.4, p.16). Everything that is needed and useful for survival is subject to ownership, and conversely, what is not needed or

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<sup>1</sup> 'Ibn Sina (d. 428H.) is an authoritative Muslim scholar.

<sup>2</sup> Al-Qarafi is a jurist from the Maliki School of Islamic law.

useful cannot be owned. As to the second principle, as a right, ownership entitles its holder **power** to control the owned thing and its usufruct. Thus, **power** is an effect of this right. The essence or the purpose of ownership is the capacity or the **enablement to control**, thus what is uncontrollable cannot be owned. Control is an imperative to affirm ownership, unless there is an impediment<sup>3</sup> (al-'Abbadi, 1977, v.1, p.142, 229). This principle was used implicitly by Muslim jurists to determine what may or may not be owned; things that are not controllable may not be owned such as the unpossessibles like sunshine, air, or fish in the sea (al-'Abbadi, 1977, v.1, p.169). Reflecting this principle, Muslim scholars, in their definitions of ownership, emphasized the authority of control bestowed to the owner over the owned object or property. 'Ibn Taymiyah (From the Hanbali School, d.728H./1328AD) defined ownership as the legitimate capacity of **controlling** the object. Similarly, Al-Karabisi (Hanafi, d.570H.) defined it as an authorization over all kinds of **control** over the object; al-Marouthi (Shafi'I, d.462H.) defined it as an appertenance that entails benefit and **control** (cited in al-'Abbadi, 1977, v.1, p.132). From those and other definitions, it can be inferred that *shari'a* invests the right to control the owned object in the owner and not in any other external party. Thus, the decision-making process in the inherited built environment is, in most cases, confined to the circle of immediate owners without the intervention of any external party(ies). Granted immense control by *shari'a*, owners have a full freedom to act in their properties, provided that they respect the principles of *shari'a*, such as not causing harm to other parties. This is quite evident in the cases documented by Muslim scholars in the inherited built environment, such as those of 'Ibn ar-Rami and at-Tutayli. For example, there was no limit to building height in the inherited built environment as long as neighbours were not damaged.

Al-Qarafi distinguished between ownership and control, stating that one might be found without the other, as in the case of the trustee who controls but does not own, or the madman who owns but is not allowed to control (al-Qarafi, n.d., v.3, p.208). For example, *miri* lands<sup>4</sup> during the Ottoman era were controlled and used by the peasants who cultivated, but did not own them, as the state owned those lands.<sup>5</sup> In that respect, two types of ownership existed in the inherited mode. First is "**full ownership**" (*mulk tam*) where rights both of control and ownership are found united. This form of ownership was the prevailing form in the inherited built environment. It confers on its holder rights of **use** and **control** over the owned property. Regarding full ownership, 'Ibn Hammam (Hanafi, d. 861H.) stated that the perfection of ownership is to have full control (from al-'Abbadi, 1977, v.1, p.232). Similarly, 'Ibn 'Abdin

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<sup>3</sup> Such as in the case of the minor or the madman.

<sup>4</sup> Miri land is defined as state land that is held by individuals who have the right of usufruct. The user controls this land under the state's regulations (Akbar, 1992).

<sup>5</sup> The Ottoman State had its own land law enacted in 1858 and 1869, which did not strictly follow *shari'a* (see Akbar, 1992, p.113-117). This form of ownership where land is owned by the state does not relate to *shari'a* concept of ownership.

(Hanafi, d.1252H.) defined full ownership (or “absolute ownership” (*mulk mutlaq*)<sup>6</sup>) as ownership where the thing is owned substantially (*mulk raqabah*)<sup>7</sup> and controlled (’Ibn ‘Abdin, n.d., v.3, p.263). Az-Zarkashi (Shafi’I, d. 794H.) stated in that respect that ownership is of two kinds, full and weak or imperfect (*tam* and *da’if*); the full denotes full control, whereas the weak does not (from al-’Abbadi, 1977, v.1, p.234). Full ownership or the joint of ownership and control constitutes the **original** form of ownership in Islam (al-Ba’li, 1985, p.113; al-Khafif, 1990, p.84), as reflected in most Muslim jurists’ definitions of ownership. They considered **control** and **use** as rights attached to full ownership. They perceived of control in such cases as an effect of ownership<sup>8</sup>; it is a privilege of or a legitimate capacity yielded by ownership.

Second is the “**imperfect ownership**”, where the owner has partial or no control over his property. It is imperfect as compared to the original form of ownership.<sup>9</sup> This ownership form was rare in the inherited built environment, and when it existed, in most cases<sup>10</sup>, it was on temporary terms where the property ultimately restores its original state of full ownership, such as in the case of leasing. Ownership of a leased property in the inherited built environment signifies ownership of its substance without its usufruct; the latter is owned by the tenant.

In general, control and ownership are both significant rights in the production of the built environment. The owner cannot act freely in his property if he does not control it. For example, if a property is owned by a party and controlled by another, the controlling party might prohibit the owner from conducting changes to the property. The state, for instance, as the ultimate controlling party in the acquired mode, prohibits owners, through its planning regulations and by-laws, from exceeding certain building heights or built-up area, or from using their properties for particular functions. It is thus obvious that decision-making process in the production of the built environment in general is shaped by controlling parties more than by owners, if different.<sup>11</sup>

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<sup>6</sup> Some Muslim jurists call the full ownership or *mulk tam* as absolute ownership (*mulk mutlaq*) such as ’Ibn ‘Abdin (al-’Abbadi, 1977, v.1, p.233), however, the common term is the *mulk tam*, translated in this study as full ownership.

<sup>7</sup> Islam differentiated between the ownership of the thing (substance) and its usufruct. Ownership of the thing *per se* is called *mulk raqabah*, whereas the ownership of the usufruct is called *mulk manfa’ah* (al-’Abbadi, 1977, v.1, p.230-243; Schacht, 1964, p.134).

<sup>8</sup> Az-Zarkashi avers that control is the product and effect of ownership (al-’Abbadi, 1977, v.1, p.143).

<sup>9</sup> Some contemporary scholars defined “full ownership” as the ownership of both the thing and its usufruct. Likewise, they related “imperfect ownership” to the case where the thing is owned without its usufruct or the usufruct owned without the thing (al-’Abbadi, 1977, v.1, p.231; Ibrahim, 1936, p.10-11). However, those types of imperfect ownership constitute only some examples of imperfect ownership. Imperfect ownership, as inferred from Muslim jurists’ definitions, is a relation between ownership and control and not between ownership of the thing and its usufruct.

<sup>10</sup> Some might argue that the *waqf* (endowment) might be considered as belonging to this form of ownership. However, it is a permanent imperfect ownership. In fact, the *waqf* is a special type of ownership. The ownership of the substance is withheld. It becomes, as some argue, the right of God. Ownership of the usufruct pertains to the beneficiaries; however, the *waqf*’s caretaker controls such a property. See p.131 below.

<sup>11</sup> In his study of “change” in the built environment, Habraken focused on **control** as the determinant of change in the built environment. To quote him, “control thus defines the central operational relationship between humans and all matter that is the stuff of built environment. As dynamic patterns

However, to best benefit from the property and to avoid disputes, ownership and control should be united in one party. Islam conferred special importance on the right of ownership, thus granted owners immense control over their properties. To best effectuate the purpose of the right of ownership, *shari'a* strongly associated ownership and control over properties. It unified control in owners. In that respect, Akbar contends that most properties in the inherited built environments were in what he termed the “Unified Form of Submission”<sup>12</sup>, characterized by unifying the rights of ownership, control, and use in one party (Akbar, 1988; 1992).

In that sense, owners in most cases in the inherited built environment were the controllers of their properties; thus no external party, such as the higher authorities, has the right to intervene, as it has no right of control over private properties. Enjoying such rights, owners in the inherited built environment were **enabled** with such capacities. No one party is subjected to the control of another, except in particular cases.

When ownership is separated from control, a state of dispute between the controlling party and the owner is likely to arise. The controlling party tends in such a situation to regulate the actions of owners. Such a situation is characterized by subordination to rules on the part of non-controlling parties (owners). It is a **command-obedience** relationship between related parties. This is the case in the acquired built environment, where higher authorities are the ultimate controlling party in terms of individual properties. Owners are subject to the rules of this party, which decides for them for their “public interest”, as alleged. Higher authorities (planning authorities as part of the state) set rules for land uses, built up area, building heights, building material, set backs, and the like. This domination of the higher authorities in the acquired mode reduces owners’ controlling capacity, bestowed to them as owners.

To conclude, it can be said that, according to *shari'a*, full ownership characterized the inherited built environment, whereas imperfect ownership characterized the acquired built environments.

### 7.2.1 Access to resources

Poverty is seen by at least some social scientists,... as inequalities in the command of resources, and especially those inequalities that derive from the dynamic and evolving life-style, **rights and opportunities** available to the average members of society.

(Rein, cited in Badcock, 1984, p.30, emphasis added)

According to Pahl (1975), allocation of resources in the capitalist (acquired) mode is much directed by the state, local and central (Saunders, 1993, p.122-139). Such allocation of urban scarce resources resonates and thus sustains the prevailing societal structure.<sup>13</sup> Pahl contends in

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of change echo throughout a built environment, they reveal the structure of control” (Habracken, 1988, 1998, p.8).

<sup>12</sup> Akbar identified five forms of submission according to the distribution of the rights of control, ownership, and use of the one object between parties. Any property in the built environment belongs to one of those forms (Akbar, 1988; 1992).

<sup>13</sup> See studies of Rex and Moore (1967) about allocation of housing as a scarce urban resource.

that respect that access to scarce urban resources is constrained by the **distribution of power** within society.<sup>14</sup> In their investigation of unemployment in Atlanta, Bederman and Adam found that “structural” effects were very closely associated with tract unemployment rates (Badcock, 1984, p.39). Particular classes are denied access to resources. Such state control of access to resources and inequalities in their command, as illustrated in the above quotation, would most likely result in poverty; the rich gets richer and the poor gets poorer. In that context, many scholars believe that urban poverty and disadvantage can be alleviated by improving the distribution of resources (e.g. opportunities). However, such suggestion is rooted in the capitalist mode. It focuses attention on improvement of resource distribution by a controlling party, which is most likely to be the state. Thus it preserves the status quo, with little amelioration. Isn't there a radical alternative? What could happen if resources were open to all? How can society open the door for all individuals? What kind of societal tools are needed?

Enablement, in contemporary writings, is considered a necessary condition for society to prosper. It is considered as a significant requirement to accomplish social justice. In that respect, *shari'a* has set particular mechanisms in the inherited mode, that promote enablement and social justice. For example, Islam has legitimized private ownership. That is, ownership constitutes, through the capacities bestowed to its holder, an enabling right socially and economically. The purpose of ownership in Islam is not in making wealth *per se*, but the enablement of inhabitants, realised through ownership. Thus, to procure an enabled society, Islam does not only avow the right of ownership, but it encourages individuals, through many mechanisms, to create ownership, thus increasing the percentage of owners in society.

To achieve such aims, Islam set other mechanisms of enablement. Examples are social solidarity; redistributing existing wealth through, for example, inheritance (*'irth*), poor-due (*sadaqah*), obligatory giving or tax known as *zakah*, grants (*'ataya*); and **open access to resources**. In that sense, enablement keeps the door open for people to work and invest. *Shari'a* did not consider ownership as exclusive to a particular group or class, but accessible to everyone. It granted individuals the freedom of action within the framework of *shari'a*, with little or even no intervention from higher authorities.

Previous statements may be perceived as conclusions that can only be reached by understanding types of properties in the inherited built environment. Five types of land and properties can be distinguished according to *shari'a*:

- 1- Privately owned properties: Those properties are characterized by “full ownership”. That is, as described above, to best benefit from such properties, *shari'a* united the rights of control and ownership in the hands of the owner (see p.127 above). Private properties, as explained below, constituted the higher ratio among properties in the inherited built environment. Thus, most properties in the inherited built environment were controlled by

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<sup>14</sup> Advocating this position, Castells perceives of the state as the real manager of everyday life. He contends that inequality in terms of income, inherent in capitalism, seems to be expressed in new social cleavages related to accessibility and use of certain collective resources (Badcock, 1984, p.50).

their owners without the intervention of any external party. Production of the inherited built environment was thus determined by its inhabitants.

- 2- Unutilized or left-over properties (*'aradi matrukah*): Examples of such properties are thoroughfares, riverside, seaside, lands around villages and urban areas left for pasture and the like, public buildings such as mosques, and any other land from which all individuals benefit (al-Muslih, 1988, p.105; al-'Abbadi, 1977, v.1, p.245-257). Those are in public ownership, i.e. owned and **controlled** by all society members collectively. The higher authorities have no right of control over them. They are properties to which the benefit of all individuals is attached, and cannot be owned privately as this might result in excluding other parties from their benefits, thus harming them. Al-Sabki (Shafi'I, d.756H.)<sup>15</sup> gives riversides as an example of public ownership, saying that all humans share this kind of property which cannot be revived (utilized and thus owned), sold, or allotted. Furthermore, the ruler (representing the state) does not have the right to act upon, manipulate, or control over such properties. The ruler and all other users are the same in that respect (cited in al-'Abbadi, 1977, v.1, p.262-3). This is evident in a case raised to 'Ibn Taymiyyah (d.728H./1328AD.) where a man built a house on a few yards appropriated from the side of the street, bought from the vicegerent of *beit al-mal* (the public treasury). 'Ibn Taymiyyah answered that no one has the right to sell any part of Muslims' through streets, whether the street is wide or narrow. *Beit al-mal* (the public treasury) does not have such a right unless it is proven that the land is owned by the public treasury, such as, for example, if it was owned by a person who transferred its ownership to the treasury. 'Ibn Taymiyyah maintained that those who testified that the street belonged to *beit al-mal* should be subject to punishment, and the ruler should not acknowledge the validity of this purchase ('Ibn Taymiyyah, n.d./a, v.15, p.313-4). Any Muslim can benefit from those properties in a manner that does not cause harm to others. Ownership of through streets, as an example of those properties, is explored later in this chapter.
- 3- *Waqf* properties (endowments): these are originally privately owned properties that their owners chose to endow. Benefits of such properties are endowed either for specific relatives (known as *waqf tharri* or *ahli*) or as a benevolence for the benefit of some or all Muslims (known as benevolent endowment or *waqf khayri*) such as mosques, schools, libraries, caravansaries. Such properties are controlled by their caretakers (*nazir*)<sup>16</sup>. In the benevolent waqf, endowed properties become public properties which are controlled by all Muslims collectively, and the caretaker acts for their common interest (al-'Abbadi, 1977, v.1, p.253; Khalil, 1993, p.30-1). In both types of *waqf*, the substance of the waqf property (*mulk raqaba*) is held;<sup>17</sup> it cannot be sold, donated, or inherited, however, its usufruct is

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<sup>15</sup> From the Shafi'i school.

<sup>16</sup> *Nazir al-waqf* controls the waqf property within the conditions set by the grantor of the waqf (Ibrahim, 1936, p.335, 339).

<sup>17</sup> For most Muslim jurists, the ownership of the waqf property is held, it is not any more related to the grantor (az-Zuhaili, 1987, p.154-5; Abu Zahra, 1971, p.99-104).



endowed to the beneficiaries of the waqf.<sup>18</sup> In essence, the *waqf* in its two types constitutes a mechanism for enabling Muslim individuals. In case of *waqf ahli*, it enables relatives; in the case of *waqf khayri*, it enables all Muslims who benefit from it, such as passers-by in the case of public water fountains (*sabil ma'*). *Waqf* property becomes an available resource for its beneficiaries, especially if endowed to all Muslims.

- 4- Properties owned by the public treasury (*Beit al-mal*): those properties are state properties which sources are defined according to *shari'a*.<sup>19</sup> State property is actually public property, the ruler being only its caretaker.<sup>20</sup> That is, the state acts in these properties on behalf of its people (*ummah*). It is the duty of the state to disburse it in the interest of the public (Islahi, 1988, p.117; al-Kholi, 1978, p.102-4).<sup>21</sup> This distinction between *beit al-mal* and state-owned properties limits the state's rights to intervene in public properties thus eliminates any domination that might be exerted by the state over the inhabitants. Moreover, it disciplines and diminishes the human tendency of lusting for power.

However, in advocating the prevailing position of the acquired mode, that the state is the ultimate regulatory device, some contemporary scholars consider all *beit al-mal* property as public property (e.g. al-Kholi). Those scholars contend that public properties are state properties, owned and controlled by the state, represented by its ruler. The ruler has control over such properties, for example, in selling, or allotting any of them. However, his acts are restricted within the framework of the common interest (al-'Abbadi, 1977, v.1, p.258-9). These writers claim that only a portion of the properties owned by *beit al-mal* can be considered public properties, where the ruler acts as their supervisor. The rest are state property in which the state enjoys the right of ownership and thus all subsequent capacities, within the framework of *shari'a*, provided it performs in the common interest. State lands that are endowed (*waqf*) or selected (*sawafi*)<sup>22</sup> for the benefit of all Muslims constitute an example of the public properties in *beit al-mal* (al-'Abbadi, 1977, v.1, p.252). Such a contemporary position legitimizes and **expands** state intervention in and thus control over public properties. This contradicts substantially the logic of the mechanisms operating in the production of the inherited built environment, as explained below.

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<sup>18</sup> The beneficiaries in the *waqf* have the "right to benefit" (*haq 'intifa'*), i.e. have a permission to benefit but do not own the usufruct of the property. This concept is explored later in this chapter.

<sup>19</sup> The main sources of state property are booty and spoils of war, lost property whose owner cannot be found, property with no heir, and finally *zakat* (tax, usually 2.5% of capital). Also trusts, gifts and fines may be included as sources of *beit al-mal* property (Islahi, 1988, p.117). For the sources of *Beit al-mal* property, see al-'Abbadi, 1977, v.1, p.258-260, or al-Muslih, 1988, p.114-120.

<sup>20</sup> As the ruler does not own the properties of *beit al-mal* but he is only a caretaker, thus many Muslim jurists denied him the capacity of endowing such priorities. That is, one of the conditions of endowment is that the property endowed should be owned by its grantor (Abu Zahra, 1971, p.121-2).

<sup>21</sup> Umar (the second caliph, d.13H./634AD.) states that he is as a caliph only a guardian, a distributor of the money in *beit al-mal* according to its determined channels (cited in al-Kholi, 1978, p.92).

<sup>22</sup> *Sawafi* or selected lands are those lands which the ruler selects for *beit al-mal* from the booty and spoils of war. They become collective public property owned by all Muslims collectively but the ruler has control over them. Thus he cannot sell such properties, but can decide how best to benefit from them. They are considered as *waqf* lands for the benefit of all Muslims (al-'Abbadi, 1977, v.1, p.252).

- 5- Dead lands (*mawat*): unclaimed lands or *mawat* are lands owned by all Muslims collectively. Dead lands constitute an available resource to which all individuals have the right of access. Any individual can turn dead land into privately owned land through the mechanisms of revivification or allotment, as explained next.

### REVIVIFICATION ('*IHYA*')

The Prophet's saying "Whoever revives a dead land, then it is his"<sup>23</sup> sets out the right of all individuals to revivify dead lands and thus own them. *Mawat* or dead lands, as defined by most jurists, are unclaimed and unused lands that have no trace of cultivation or building, and are not associated with the benefit of the neighboring locality; i.e. as "unutilized lands, *matroukah*", whether adjacent to or far from urban areas.<sup>24</sup> Facilitating the process of revivification, most Muslim jurists agree that, as inferred from the Prophet's saying, such a process does not need permission from the ruler.<sup>25</sup> Whoever revivifies a dead land becomes its owner. However, to regulate this mechanism of enablement and to protect other Muslims' rights, *shari'a* set clear conditions for revivification. Before exploring those controlling measures, the mechanism of allotment is explained next.

### ALLOTMENT ('*IQTA*')

'*Iqta*' literally means the act by the ruler of bestowing or allotting a piece of land to individuals. Allotment can be conceived of as another form of revivification of lands; however, it is conditioned by the ruler's permission. Allotment is possible from the state lands or from dead lands. Revivification and allotment were the two main mechanisms for establishing ownership in most cases in urban areas. Such mechanisms lead to the mobilization of resources from an unutilized to a utilized state, and thus from collective ownership (owned by all Muslims, or the state representing all Muslims) to individual properties (as explained in the next chapter).

Two types of allotment existed in the inherited built environment: the first is '*iqta*' *tamilk* or allotment leading to full ownership. This type implies allotting fiefs to be owned through revivification. The allottee ultimately enjoys all subsequent rights, such as control and use of the land, as a result of his right of ownership. The second type is that of allotting land with the right of utilization but not of ownership. This type is called '*iqta*' *istighlal* or allotment of usufruct. In this type, the user has the right of manipulating the land only; ownership is retained by the state, as representing all Muslims. In both types the ruler may give allotments to

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<sup>23</sup> Cited in al-Mawardi, n.d., p.252.

<sup>24</sup> All schools of law except for some jurists from the Hanafi School consider unused lands adjacent to urban areas as dead lands, thus available for revivification. Ash-Shafi'i defines dead land as "any land which is not cultivated nor constitutes a *harim* reserve ["unutilized land, *matrukah*" for the benefit of the urban area] of cultivated land- even if it is adjacent to a cultivated land". However, Abu Yusuf (d.182H./798AD.), for example, from the Hanafi school, defines *mawat* as "that land which, when someone stands on its point which is nearest to a cultivated land [urban area] and cries out at the top of his voice, he cannot be heard by anyone standing at the nearest point in the cultivated land" (al-Mawardi, n.d., p.252).

<sup>25</sup> Abu Hanifa is the only jurist who conditions revivification to the permission of the ruler (*imam*) (al-Mawardi, n.d. p.252).

individuals from dead lands or from state lands (al-'Abbadi, 1977, v.1, p.325-327; Akbar, 1988, p.28). However, *'iqta'* *'istighlal* was more common in state lands, as most of those lands were owned by all Muslims. The ruler has no right to transfer their ownership to the allottee. The ruler can allot the usufruct of those lands, provided he acts for the common interest.<sup>26</sup>

Allotting lands was a very well known practice for establishing ownership, mainly in cases of new towns. Many cases have been documented in history books, for example, in *Futuh al-Buldan* of al-Baladhuri (d.279H.). The Prophet and the caliphs, as 'Abu Yusuf stated, used to allot land to those whom they felt would benefit from it positively, and to those whom they thought were of benefit to Islam and would fight against the enemy ('Abu Yusuf, n.d., p.61-2). That is, if the individual becomes an owner, he becomes an enabled person and is thus settled, so that he concentrates on his other duties towards Islam. 'Abu Yusuf contends that no land should be left unutilized; rulers should allot dead lands, as this improves the conditions of towns (*'a 'mar lil bilad*) and reflects positively on the economic situation, due to the *kharaj* tax levied.

To enhance the mechanism of revivification and to protect the rights of revivification of other individuals, and to warrant the utilisation of allotted resources, and thus maintain the common interest, certain measures were developed. One of those controlling measures is *'ihtijar*. The revivification process starts with demarcating (*'ihtijar*) the land chosen for revivification.<sup>27</sup> During this period, the demarcator (*muhtajir*) works in his land to revivify it. However, if he can not revivify it within a certain time limit<sup>28</sup> (three years according to most jurists<sup>29</sup>, or decided according to conventions), his right will lapse and, in the case of revivification, any other person has the right then to revivify it and thus become its owner; or, in the case of allotment, the ruler can get the allotted land back (al-Muthaffar, 1998, p.287). During *'ihtijar*

<sup>26</sup> Most Muslim jurists did not differentiate between dead lands and urban lands in considering allotment, provided it serves the public interest. The Prophet, although in limited cases, gave allotments in urban areas. However, allotment from dead lands was the prevailing type (al-Muthaffar, 1998, p.282-3).

<sup>27</sup> For allotment, demarcation is not a necessary process to affirm the right of appertenance as explained below. Allotment in that respect, as an act by the ruler, stands as *'ihtijar* in terms of its principles and rights bestowed (al-Muthaffar, 1998, p.286-7).

<sup>28</sup> The nature of revivification is determined by custom, with regard to the purpose of the revival. For example, if someone wishes to revivify a dead land for a residence, then revivification is obtained by constructing and roofing a building on it, as this presents the minimum necessary for residence. If someone wants to revivify a land for cultivation, then this land has to be marked, and then it should be irrigated if dry, or water should be stopped from reaching it if it is marshy. And then preparing the land for cultivation or planting. When these steps are fulfilled then the revivification is complete and ownership is transferred to the revivifier (al-Mawardi, n.d., p.252-3).

<sup>29</sup> Three years as a time limit has been stated in the Prophet's tradition and also in his successors' sayings. It has been reported that the Prophet said: "the common (unowned) land belongs to God and his Prophet, then it is yours. He who revived a dead land owns it; and the demarcator has no right after three years". It is also reported that 'Umar (the second caliph) said that "he who revives a dead land owns it, but the demarcator has no right after three years." 'Abu Yusuf explained that the reason of 'Umar's proclamation is that people begun to occupy dead lands without utilizing them ('Abu Yusuf, n.d., p.65). 'Umar added, "if he (the demarcator) did not revive the land within three years, he is then on an equal footing with everyone else" ('Abu Yusuf, n.d., p.101-2; see also 'Ibn Qudamah, n.d., p.154).

period, a demarcator has the right of appertenance<sup>30</sup> (*'ikhtisas*, taking precedence over others) but not ownership of this land (al-'Abbadī, 1977, v.1, p.161-2). This right prohibits others from revivifying the demarcated land during the limited time of demarcation. That is, demarcating land without utilizing and thus revivifying it is considered by *shari'a* as a malfunction of resources and an impediment to others to invest such resources and to be enabled. 'Ibn Qudamah (d.620H.) reports in that respect that if the demarcator did not revivify a land within the time limit of demarcation then “the Sultan should order him either to revivify or leave [the land] so others could do it. Since he is usurping from the people their common right, [the allottee] should be treated as if he was standing in [the middle of] a narrow road, ... he is not benefiting himself, meanwhile he is not allowing others to benefit” ('Ibn Qudamah, n.d., v.8, p.153).<sup>31</sup> Only after the land is revivified does its revivifier become its owner and enjoys all the capacities attached to ownership; i.e. use and control. 'Abu Ya'la (d.458H.) reports that “if the demarcator wishes to sell the demarcated land prior to revivification, he cannot, as it is unlawful” (Al-Farra', n.d., p.211). This controlling measure protects land from attitudes of greed and monopoly, and preserves land from turning into a scarce resource, as is the case in the acquired mode. Through such controlling measures, *shari'a* protects resources from negligence, and thus from wastage.

Moreover, lands were allotted in accordance with the need and capability of the allottees. If the allottee could not revivify the allotted land, it goes back to its previous state before being allotted (either a dead land or a state land) (al-Muthaffar, 1998, p.190, 290-2; as-Samih, 1983, p.119, 138). That is, *shari'a*'s aim in the mechanisms of allotment and revivification is the utilization of resources and thus the public benefit, and not only the ownership bestowed to the revivifier *per se* (al-Kholi, 1978, p.83). In one case 'Umar, when became a caliph, took away the unrevivified part of the land that the Prophet allotted to Bilal al-Harith, as the latter could not revivify all of it, stating that “you were allotted this land not to demarcate it from people but to work”, so 'Umar took it away and divided it among other Muslims (al-Qurashi, n.d., p.93; Abu 'Ubeid, n.d., p.302). 'Ibn Qudamah stated in that respect that: “The ruler should not allot a dead land except what the allottee can revivify, that is, allotting more than this would limit the chances for other people in what is a shared right, with no benefit for any of them” ('Ibn Qudamah, n.d., v.8, p.165). Thus, apart from being a controlling measure of revivification, ownership in accordance with revivifier's need can be considered as a one measure of maintaining a just distribution of resources among individuals by asserting that resources are available to others to invest and utilize. Such mechanisms asserted one of justice's basic requirements, that is, everyone should have an equal opportunity to be productive and, thus, to

<sup>30</sup> Appertenance is the right of taking precedence over others (*'ikhtisas*).

<sup>31</sup> Al-Kāsānī in *Badā'i' ās-Sanā'i'* contends that “if the ruler allots a dead land to a person who left it without revivifying it, the ruler leaves the allottee up to three years without intervening. However, if the three years passed, then the land turns again to be a dead land and the ruler has the right to allot it to any other person... That is, holding a land for three years without utilizing it denotes that the allottee does not want to utilize it but to allow it to stagnate. Thus his right lapses and the land turns back to its original state as a dead land” (al-Kāsānī, n.d., v.8, p.305).

have access to resources, and that no one should be allowed to create a monopoly and so deny others the right to produce or invest. This consequently led to a distribution of wealth based on efforts exerted in the inherited built environment.

The question that arises here is: if revivification is possible without the ruler's permission, then what is the need for allotment? Allotment was mostly accomplished with state properties to which individuals do not have access without the ruler's permission. Allotment as a mechanism of establishing ownership was thus not as common as revivification. Therefore, revivification without ruler's permission is considered the prime mechanism for mobilizing resources from collective unutilized state to utilized, privately owned property. This consequently limits the state's possible avenues for dominance over private parties.

It can be inferred from this demonstration that most properties in the inherited built environment are either privately owned, or owned by all Muslims collectively. In that sense, Muslims are either owners as individuals thus enabled, or have the opportunity to become owners. Most properties in the inherited built environment are controlled by individuals with little or no intervention from the higher authorities. The only type of property where the state has the right of control is state property. These are actually limited and they are even considered by many scholars as public property, of which the state is only a guardian. Through such a structure of ownership, *shari'a*, first, made resources available to all individuals. Second, through enacting particular mechanisms, such as revivification and allotment, *shari'a* gave individuals the right of access to those resources for investment, leading in most cases to ownership. *Shari'a* intends by this to increase the opportunity of enabling individuals, thus, ultimately, to achieve an enabled society.<sup>32</sup>

It can be seen from this that most lands in the inherited built environment have no purchasing value. Land cannot be sold by the state as it does not own it; it is a collective property for all Muslims. Land can be taken at no cost by any individual who puts in effort to utilize it. This in turn provokes parties' **initiatives** to act and be productive, to be owners and thus enabled individuals in society. *Shari'a* aims at utilizing resources. It sets many incentives to direct the efforts of individuals toward fulfilling this aim. It makes resources available, facilitates their utilization by eliminating all impediments, for example, allows action **without** the permission of higher authorities, encourages individuals to work and be productive by promising every revivifier rewards from God in return for his revivification, according to the Prophet's tradition:

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<sup>32</sup> *Shari'a* bestowed the right of access to resources to all individuals in un-owned lands (unutilized (*matrukah*) or dead). *Beit al-mal* (public treasury) properties also constitute an available resource for all Muslims, however, conditioned with the permission of the ruler. For example, the ruler can allot a piece of land for any individual to exploit it. *Kharaji* lands are also owned by *beit al-mal* but their users benefit from them and pay in return a tax allocated on them. Thus, *beit al-mal* properties are also available resources for all individuals, however, with controlled accessibility.

*Kharaji* lands are basically those lands owned by all Muslims collectively, represented by the state, but left in the possession of its owners (originally non-Muslims), provided they pay a tax called *kharaj* to *beit al-mal*. For more about *kharaji* lands, see al-'Abadi, 1977, v.1, p.313-8.

“He who revives dead land will be rewarded by God.”<sup>33</sup> Moreover, *shari‘a* protected the rights of those who want to work; it protected the right of the demarcator during demarcation period, simultaneously, it protected the right of access to resources by others by allowing them to revivify a demarcated land if its demarcator fails to. Those mechanisms result in transforming members of society into owners, thus into enabled individuals. Therefore society in the inherited mode develops into an enabled society, settled, and willing to prosper.

### 7.3 MECHANISMS OF ENVIRONMENTAL CONTROL

Processes of enablement and production of the built environment are not without some control. The legal system has introduced some rights-based mechanisms of environmental or development control to regulate such processes. Those mechanisms are self-regulating principles derived from rights as bestowed by *shari‘a*. Accordingly, as rights constitute the main axis in the production process of the inherited built environment, they are subject to certain **restrictions** in their exercitation. Owners do not enjoy an absolute freedom over their properties but **restricted freedom** that respects the rights of others when these overlap. Examples of such restrictive mechanisms are explained next.

#### 7.3.1 Neither harm nor reciprocal harm

In principle, rights in Islam are enacted to fulfil *shari‘a*’s purposes of bringing the good and avoiding harm (Muwafi, 1997, p.419). Rights thus are purposeful; they attempt to accomplish people’s interests. Most Muslim jurists defined people’s **interest** as “the bringing of the good and the avoidance of the evil” (Muwafi, 1997, p.421-2). *Shari‘a* in that sense accorded harm a great importance, thus protecting people’s rights.

“Neither harm nor reciprocal harm” (*La darar wa la dirar*)<sup>34</sup>, is a Prophet’s saying that performs as a mechanism of environmental control in the production of the inherited built environment. It is the basic regulating principle in the exercitation of rights bestowed on individuals, groups, and the state. It determines that one can act freely as he wishes provided he does not cause harm to others. This tradition suggests complete freedom of action, if others are not harmed. Parties can act without any permission. This implies that external parties (e.g. neighbours or higher authorities) have no right to intervene in the actions of any party **within** its property if not affecting others, such as by knocking or hammering on a neighbour’s wall, or intruding on a neighbour’s privacy by, for example, opening a new window that overlooks the neighbour’s house. The Islamic concept of harm provides the main **regulating mechanism** in the exercitation of rights in the inherited built environment, affecting its production processes. These restrictions are referred to by parties involved in the site and also by judges when resolving disputes between parties.

<sup>33</sup> This tradition is reported by ‘Ibn Hanbal and narrated by an-Nisā’i.

<sup>34</sup> This saying (*hadith* or tradition) is related by ‘Ibn Māja, Mālik and many others (an-Nawawi, 1977, p.106). It is translated in al-Muwatta of Imam Mālik as “There is no injury nor return of injury” (Imam Mālik, 1982, p.346). According to ‘Abu Dāwud (d.275H./887AD.), this is one of five principal traditions on which jurisprudence (*fiqh*) is based.

However, *shari'a* did not consider all types of harm as harms that should be avoided or lifted. Muslim jurists agreed on certain criteria when judging harm to be damaging and thus disallowed; however, jurists varied in the degree of applying such criteria. Damage should **first** be unequivocal and not dubious, i.e. it has occurred or will certainly occur as a consequence of the action.<sup>35</sup> **Second**, harm is major and not minor. Most jurists agreed and defined major harm as that action which leads to the destruction or weakening of others' property, or totally not-benefiting from the property, such as by totally blocking light or air from reaching it.<sup>36</sup> They perceived major harm as that which disaccords with society's habits and **conventions**. Shafi'i and Hanafi jurists applied this definition to harm caused to private properties;<sup>37</sup> however, for public property they considered any harm that curtails the benefit of that property, whether partially or totally, as major harm. For example, establishing a mill in a residential neighborhood is disallowed because of the harm caused to neighboring properties due to the vibration generated. This harm is considered as certain to occur and major, thus disallowed. Moreover, building in a through street (public property, owned by all Muslims collectively) is considered a major harm if it leads to curtailing the main use of the street, which is to pass through it comfortably. If such an action narrows the street uncomfortably for passers-by, then this resultant harm is considered as major that should be ended (Muwafi, 1997, p.721-743).

**Third**, harm resulting from non-rightful acts, i.e. acts of infringement, abuse, or neglect. "Infringement" or "intrusion" (*ta'addi*) here means illegitimate or non-rightful acts according to *shari'a*, however "abuse" (*ta'asuf*) denotes abuse of rights, i.e. acting in a manner that contradicts the main purpose of rights: to bring good and avoid harm. Using one's right to bring harm to others, whether this harm is intended or not, is considered abuse of rights bestowed on the acting party by *shari'a*. For example, building in a through streets (public property) in a manner that causes major harm to its users is considered an infringement, as it is not based on the rights of the acting party according to *shari'a*. The acting party in this case acted on others' properties. The resultant harm was disallowed. Likewise, transforming one's house (party *A*) into a mill or a public bath is considered, if causing major harm to the neighbor, an abuse of party (*A*)'s rights as party *A* is, most probably, aware of the harm that is to be caused to the neighboring properties due to his action. Such harm is prohibited (Muwafi, 1997, p.803-7). This latter example signifies that if the actions of a party extended beyond its property's boundaries to affect others' properties in a major way, it is considered infringement or intrusion on others.<sup>38</sup>

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<sup>35</sup> Jurists from the Maliki and Hanbali schools considered harm that is most probably to occur as a result of an action as disallowed harm, provided the other criteria of disallowed harm is met.

<sup>36</sup> In that respect, blocking sun or air from reaching a building partially, by, for example, raising the adjacent building, is not considered by most jurists as disallowed harm (Muwafi, 1997, p.744). Ibn ar-Rami states that many cases occurred in Tunis where the owner was allowed to raise his building although blocking sun and air from reaching the neighbour's property (Ibn ar-Rami, n.d., p.248).

<sup>37</sup> Ash-Shafi'i applied this definition of major harm to harm caused to the property and not to the owner (Muwafi, 1997, p.758-9).

<sup>38</sup> In addition to these measures of infringement, ash-Shafi'i considers infringement actions as those which disaccord with society's habits and conventions (Muwafi, 1997, p.818-9).

Abuse might also include the use of one's rights to damage others deliberately. For example, in one case ad-Dahhak bin Khalifa (party *A*) watered his irrigation ditch from a large source of water. He wanted to have it pass through the land of Mohammad bin Maslama (party *B*); however the latter party refused, although this would benefit his land (*B*'s) and would not cause him any harm. Party *A* raised his case to the Caliphate 'Umar bin al-Khattab (d.23H.) who talked with party *B*, but the latter insisted on his refusal, then 'Umar obliged him to allow its passage (Imam Malik, 1982, p.346). Here the intention to cause harm to party *A* by preventing him from his action is clear; party *B* was not benefiting himself from his refusal, although he has the right to refuse, thus such harm was disallowed.

However, if the action leads to benefiting the acting party and, at the same time, causing harm to another party, with no harmful intention, then, the benefit and harm are weighed against each other. If the harm is clearly greater than the benefit, then avoiding or lifting the harm is prioritized; if the benefit is major in comparison to the resultant harm, then the benefiting action continues. If resultant harm and benefit are equal, then the decision is reached according to the case in question.<sup>39</sup> In one example, Samra bin Jundub (party *A*) had a group of palm trees on land owned by another party (*B*). Party *A* used to walk through the land to get to his trees which caused harm to party *B*, as he and his family lived on that land. Party *B* asked party *A* to sell him the trees, but party *A* refused. The owner of the land (party *B*) raised his case to the Prophet Muhammad who then asked party *A* to sell party *B* the trees but he refused. Then the Prophet asked him to exchange the trees for a piece of land from the owner *B* but he also refused this. Then the Prophet asked party *A* to grant his trees to the owner and he would get instead several rewards from God, but party *A* insisted on his refusal. Then, and after listing many options to solve the case, the Prophet described party *A* as being "harmful (*mudar*)", i.e. have the intention of harming the other party without benefiting himself from his actions. The Prophet ultimately ordered party *B* to remove the palm trees of party *A* from his land (cited in ad-Duraini, 1988, p.149; see Muwafi, 1998, p.843). In this case, the harm caused to party *B* was much greater than the benefit gained by party *A* from having his palms on party *B*'s land, or put differently, the harm caused to party *A* as a result of removing his palms was less than the harm caused to party *B* as a result of having the palms on his land. Thus, the harm caused to party *B* was ruled to be lifted on the account of a relatively minor benefit to party *A*.

**Fourth**, the harmed interest is originally legitimate and merited for the harmed party, i.e. based on its right according to *shari'a* (Muwafi, 1997, p.720).<sup>40</sup> For example, in one case, an owner

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<sup>39</sup> Jurists differed in such situations. Ash-Shafi'i and Abu Hanifa prioritized the right of owners to have full control over their properties, thus they promote the continuation of the benefiting action, provided that resultant harm is not considered as disallowed harm according to the criteria described above. Malik and 'Ibn Hanbal tend to restrict such actions where benefit is equal to harm caused, basing their opinions on the principle "avoiding harm is prioritized over bringing benefit", or "if two damages are concurrent, then the lesser (or less severe) should lapse for the greater" (ad-Duraini, 1988; Muwafi, 1997).

<sup>40</sup> Most jurists agreed on this criterion, however they differ in deciding whether the interest violated in a particular case is deserved to the harmed party or not (Muwafi, 1997, p.888).



(party *A*) of a yard that was adjacent to a building wanted to build his yard and raise the building, thus blocking the sun and air from the neighbor's building (party *B*). Party *B* in this case could not stop party *A* from his action on the bases that he is benefiting from the sun and air of the yard. That is, party *B* was benefiting from party *A*'s property. Thus, if this property was built and such benefit was blocked, then no destruction would be caused to party *B*'s property, nor any **benefit**. It is like a man benefiting from the shadow of another man's tree. If the owner wanted to cut that tree, no one can stop him from acting in his property by claiming that he was benefiting from it ('Ibn Hammam (d.861H.), cited in Muwafi, 1997, p.884). In this case, the claim of party *B* was not based on a legitimate right, thus the benefit alleged to be damaged is an undeserved benefit for party *B*. The harm that is, allegedly, caused to party *B* is not considered as disallowed harm.

It can be inferred from these criteria that **two circles** are responsible for organizing the production of the inherited built environment: first, the **control circle**, resulting from full ownership, i.e. the right of the owner to control his property, i.e. to act within his property; and second, the **harm circle**, derived from the Prophet's tradition "neither harm nor reciprocal harm." This latter circle performs as a restriction on the former one. Thereby, disallowed harm criteria balance these two circles. Such a balancing process allows parties to act in their properties as they wish, as long as their actions do not infringe on other parties' properties. It can be said that such criteria tend to expand the circle of control that owners enjoy over private properties, especially if acting parties managed to eliminate the effects of the damaging act by counteracting the damage *per se* and not the action (see p.115). On the other hand, these criteria expand the circle of harm as a regulating mechanism where public properties are considered. Jurists vary in applying either of these two opposing circles. Maliki and Hanbali schools expanded the circle of harm, whereas Shafi'i and Hanafi schools expanded that of owners' control. Nevertheless, identification of these regulating mechanisms was left to the habits and conventions prevailing in the local society, and to the opinions of jurists in each region.

Rights are self-regulating mechanisms in the sense that they are exercised without any intervention from external parties or higher authorities, the same applies to the restrictions on those rights and thus the freedom bestowed to parties. Rights restrictions are self-defined, within the framework of *shari'a*. That is, principles of restriction in the inherited mode are not developed into laws and regulations imposed on the built environment as in the acquired built environment. Principles of restrictions in the inherited built environment are self-referential, defined by the immediate parties on the site, i.e. harm is recognized by the acting parties themselves. Each case in a site is treated differently, according to its specificities. Although criteria of disallowed harm are agreed upon, they are quite general to the extent that they do not specify disallowed harm in any detail. Islam did not specify types of harm that are disallowed, as is the case in the acquired built environment. Jurists for example, differed in their recognition of major harm or deserved interest, and thus in their rulings and solutions, if the conflicting parties sought external parties' judgement.

Harm in the inherited built environment, when it occurs, is interpreted differently by the involved parties. The acting party might not acknowledge the damage that is caused to others, and a dispute might arise. Dialogue among parties will intensify, and opinions of jurists or building experts might be sought. Accordingly, interpretation of harm might differ, according to the situation of the case and the parties involved. Solutions in the inherited built environment thus differ from one case to another, according to the interpretation of harm (Akbar, 1988, p.94). To give an example, a **pre-existing** window is not considered as a cause of harm for adjacent neighbour, even if causing damage to that neighbour, such as intruding on his privacy. The damaged party has to adjust by raising, for example, the parapet of its building. The judge 'Ibn al-Qasim was asked in that regard about pre-existing doors and windows between two dwellings (neighbours), "Does such an opening have to be sealed or relocated?" 'Ibn al-Qasim answered, "The owner should not be compelled to seal or relocate them, since he did not cause such an opening and it is a pre-existing one." 'Ibn ar-Rami adds that the custom in Tunis is not to seal such openings ('Ibn ar-Rami, n.d., p.231-2). For new openings that damage neighbours, if the damaged party objects, some jurists advocate sealing those openings, but this decision is determined according to the degree of damage caused to the neighbour, which is open to interpretation and necessities dialogue among parties involved. 'Ibn al-Qasim was asked about a house owner who opened a window or a door in his wall which intruded upon his neighbour's privacy and harmed his neighbour. 'Ibn al-Qasim answered, on the authority of Malik, that "such a person should be prevented from harming his neighbour, and he should seal such an opening, even if it was within his property" (Malik, n.d., v.4, p.395). In a similar case, 'Ibn Nāfi' was asked about a person who opened a high window to let in light in his own wall on the neighbour's side. This window could not be reached except by a ladder, but the neighbour opposed his action. 'Ibn Nāfi' answered that if there was no damage to the neighbour, then the action should be approved, as this window will benefit the actor without damaging the neighbour. However if it causes damage, then it should be sealed ('Ibn ar-Rami, n.d., p.241). In the first case (pre-existing opening), the right of the acting party continued while in the cases of the new opening, the right of the overlooked (harmed) party was recognized.

Many cases exemplify the diverse perceptions of damage held by various parties. A needed change made by one party may be perceived by another party as a damaging act. These different perceptions lead to dialogue between parties involved and eventually to agreements. However, if dispute arises and persists, the case may be taken to the judge who makes his ruling according to *shari'a*. Ultimately, in either situation (agreements or rulings), solutions reached will dominate both parties. In that sense, the built environment can be seen as an accumulation of physical solutions that all parties have to respect. That is, rights in the inherited built environment can be perceived as gained through properties. Rights of parties resonate with the rights attached to physical configurations (solutions) in specific sites. In that sense, rights relationships between parties are translated into relationships between environmental solutions. Thus domination between parties is minimized, if not eliminated. In short, the method of gaining rights in the built environment does not generate power or domination between parties.

It can be inferred from this that in the inherited built environment changes were made with the consent of the affected parties and not through the higher authority's pre-stated rules as the case in the acquired built environment. This means that any decision affecting the neighbourhood was the responsibility of and under the control of the affected neighbours. To conclude, it can be argued that the principle of damage in the inherited built environment relates the rights of the involved parties to each other and regulates them through their related properties. This in turn leads to the elimination of both external domination exerted by external parties, and internal domination between parties of different properties. Although solutions reached (through agreements or rulings) between conflicting parties bind (dominate) those parties, those solutions are the product of parties involved on the site and not of outsiders.<sup>41</sup> In short, all avenues for the creation of power in the hands of the higher authority are closed.

### 7.3.2 General principles (*al-qawa'id al-kuliyyah*)

A few principles were derived from the Prophet's tradition and from early jurists' opinions and rulings (an-Nadwi, 1986). Those principles were adopted as mechanisms of environmental control in assessing the damage and consequently reaching rulings or solutions in relevant cases. Examples of such principles are "damage should be lifted"; "private damage should be borne to avoid a public damage"; "preventing blight is prioritized over bringing good"; "damage should be prevented as much as possible"; "necessity warrants the verboten". At first glance, one might think that these derived principles would be tools to create power in the hand of the higher authority. In fact this is not the case. For example, the derived principle: "If two damages are concurrent, then the lesser (or less severe) should lapse for the greater" means, as explained by 'Ashhab (d.150H.), that "the greater damage means preventing a person from doing something that would greatly benefit him in his property, while lesser damage means the objection of the neighbour as a result of not-too-severe damage caused by that action" ('Ibn ar-Rami, p.201). In one case, for example, a person (party A) established a flourmill in one room in his house; his neighbour (party B) objected because of the noise generated. The ruling based on this principle of harm allowed the milling to continue, since the damage of noise was not considered severe when compared to the damage that might be caused to party A if prevented from having the mill in his house as the mill was his livelihood (al-Wansharisi, n.d., v.9, p.60).

Most of those derived principles are not laws. They are also not considered methods of jurisprudence for deriving rulings.<sup>42</sup> However, Muslim jurists were aware of those principles

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<sup>41</sup> If no agreement is reached the judge will rule. This ruling although made by an external party, does not resemble contemporary regulations.

<sup>42</sup> The institution of Islam is based on two main sources: the *Qur'an*, the tradition of the Prophet (*sunnah*). However, with the development of the different schools of law, different methodologies were adopted for deducing rules from the main sources. The main methodologies followed are: the teachings of the jurists; *qiyas* (analogical reasoning); *ra'y* (opinion); and *ijma'* (consensus of opinion); *istihsan* (juristic preference); *masaleh mursaleh* (having regard for the public interest), *'urf* (custom). (see Kamali, 1991).

and referred to them in justifying their rulings (al-Burno, 1994, p.31-2; an-Nadwi, 1986, p.296-9). Over time, and mainly after the fifth century (H.), those principles became more evident in reaching rulings. Many new principles were derived, some basic and some secondary. Many books of law documented and classified those principles and their use by jurists (an-Nadwi, 1986). In short, the general Islamic principles are **rights-based mechanisms** that perform as guidelines for reaching rulings and solutions in the everyday life in the inherited mode.

### 7.3.3 Right of precedence (*Haq al-'Asbaqiyyah*)

Damage in the inherited built environment is of two kinds: new, and old. For new damage, the principle of harm performs as a mechanism of environmental control to regulate new harming actions; for old damage, **rights of precedence** perform to regulate such situations. In one case from the inherited built environment, a house abutting a dead-end street but without access to it had a small, covered, long disused septic tank within the dead-end street (collective property). The owner of the septic tank wanted to use it again; however, the owners of the dead-end street disallowed this as it was in their territory. The judge ruled that the owners of the dead-end street could not prevent the owner of the septic tank from reusing it again as the septic tank was long in its position (al-Wanshrisi, n.d., v.9, p.32). In this case the septic tank had the **right of precedence** over the dead-end street, even though it might cause damage to the dead-end street, and so it had the right to continue. It was said in such cases that the septic tank **possessed the damage** (*yahouz ad-darar*), i.e. it has the right to damage other properties, within limits (not severe), because its existence preceded theirs (Akbar, 1988, p.101). In another case, 'Ibn al-Qasim was asked whether the owner of a house which had an old window or door that was harmful to the neighbour could be compelled to close it. 'Ibn al-Qasim ruled that he couldn't be compelled, as the window's existence preceded that of the neighbour's house (individual property), and it was not a new action. 'Ibn ar-Rami adds that this ruling was applied in all similar cases, and no jurist ruled differently; in such cases the neighbour has to adjust his building accordingly ('Ibn ar-Rami, n.d., p.231-2, 243). From such cases it can be inferred that right of precedence holds, regardless of whether the property is **individually** or **collectively** owned (Akbar, 1988b, p.109).

As to old harm that **severely** damages other properties, such as that caused by bad odours generated from iron workshops for example, jurists' opinions differed. Jurists varied in stopping such damage or not, according to the damage caused, specificities of the case, and to conventions of the town. Thus damage was ruled to be lifted in some cases, whereas it continued in others. In one case, for example, a jurist was asked about shops for pounding kernels in a market, above which some houses existed. The pounding shops had been in the market for about ten years. The jurist ruled that since the shops caused damage to the inhabitants, they should be removed to a place where they did not harm people. Another jurist

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Some principles if extracted from the *Qura'n* or the Prophet tradition such as the principle of "neither harm nor reciprocal harm" are considered as legitimate sources (explicit text or *nass*) for reaching rulings according to *shari'a* (see al-Burno, 1994, p.33-4).

added in this case that the duration of the existence of such damage does not give the pounders the right to continue. People in the affected houses had to object and lift the damage (al-Wansharisi, n.d., v.8, p.457). In this case, as damage caused to the inhabitants of nearby houses was severe, it was ruled to stop it, although not a new damage.

The right of precedence or possessing damage is a right that **pertains to properties** and not to parties. If the owner of a property changes, the right continues attached to the property and is thus enjoyed by the new owner. Furthermore, as can be inferred from documented cases, the right of precedence pertains to the **preceding action** and not to the preceding property. For example, an old window would have the right of precedence and not the house in which it was opened. This concept is important in regulating the incremental growth of the inherited built environment. In that sense, as Akbar declares, the built environment can be perceived as a process of accretion of decisions resulting from considering preceding actions as constraint on later actions. Each succeeding party has to deal with all the decisions made by its predecessors, and thus adjust its actions accordingly. These constraints are actually created by parties themselves and not by an external authority (Akbar, 1988a, p.80; 1992, p.174, 226). This mechanism (right of precedence) performed as a mechanism of environmental control, regulating relationships between parties in the inherited built environment through their properties, thus ultimately regulating the built environment. Like other mechanisms of environmental control, this is a rights-based, **self-regulating** mechanism that needs no external parties (e.g. the state) to implement, except in exceptional cases. This in turn eliminates the need for the state as a regulative party as is the case in the acquired mode, and distributes the task of controlling development in the built environment between all members in society.

Jurists differed in their opinions regarding the time needed to gain the right of precedence. Some jurists set a certain time limit, such as ten or twenty years, others resolved each case independently according to the type of damage, action, and other case specificities.<sup>43</sup> However, as 'Ibn 'Asim (jurist, d.208H.) declared, if a person saw his neighbour initiating an action that would damage him or his property and did not protest in time<sup>44</sup>, without excuse, then this person has no right to object to his neighbour's action, and his reticence is considered in most cases as consent, depending on the circumstances of the case (cited in 'Ibn ar-Rami, n.d., p.321-323). Most jurists seem to agree that in some cases, such as latrines or tanneries, where the noxiousness of the damage increases over time, there is no right of precedence, regardless of time ('Ibn ar-Rami, n.d., p.322-3; al-Wansharisi, n.d., v.9, p.46-7). In one case, 'Ibn Zarb was asked about a person who created a window that overlooked his neighbour, but the neighbour

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<sup>43</sup> Malik, for example, resolved each case independently and did not necessarily use ten years as a required period. 'Ibn al-Qasim considered nine or eight years as a sufficient period to gain the right of precedence ('Ibn ar-Rami, n.d., , p.319).

<sup>44</sup> Al-Wansharisi reported the opinion of many jurists in saying that if a party did not protest against the damage caused by other parties for ten years, with no excuses, its right of protestation would lapse, and the acting party gain the right of precedence (al-Wansharisi, v.9, p.42). See also 'Ibn ar-Rami, n.d., p.318-328.

did not protest because, as he claims, he was busy, yet he informed witnesses that he did not accept that action. Ten years later he protested. 'Ibn Zarb answered that if it was proven that the neighbour did not accept such new damage during this period, then the damage had to be lifted (al-Wansharis, n.d., v.9, p.56-7).<sup>45</sup> In another case, a person created an opening looking towards his sister's house; twenty years later the sister protested, claiming that she tolerated the action because of the relationship. Her protest was not accepted on the ground that twenty years is a long period and her brother had acquired the right of precedence (al-Wansharisi, v.9, p.21-2).

To eliminate any chance of abusing such a right, certain measures are applied. For example, a person reopened an old sealed window that overlooked the roof terrace of some houses on a dead-end street. The damaged residents protested. The acting party presented witnesses saying that the window was pre-existing, thus he has the right to reopen it. His claim was supported by the existence of traces of the frame and the lintel of the pre-existing window. It was thus ruled that the window could be reopened ('Ibn ar-Rami, n.d., p.251). Traces of old actions such as sealed openings might perform as latent rights that give their holder power when activated in future interactions. Avoiding such unrightful tactics, jurists emphasized the need to eliminate any traces of damaging openings that were ruled to be sealed. The threshold and the frame should all be destroyed and all other traces eliminated by filling in the opening and using the same building material to hinder future use of these elements as evidence ('Ibn ar-Rami, n.d., p.250). The same is true for other damages, such as changing the function of a property. For example when a person made a stable in a room of his house and the damage of vibration was counteracted by building a secondary wall, witnesses were brought in and were informed that the stable owner did not have the right to use the house as a stable, so he could not claim the right of such a function in the future and could not demolish the secondary wall or transform all the house into a stable (al-Wansharisi, n.d., v.9, p.8).

Such mechanisms make all property owners aware of their rights, so that if they see a person initiating an action that might be harmful to them or to their properties, they react accordingly. The possibility of creating a right of precedence performs as an **incentive** to react quickly for parties who believe that their rights have been violated.<sup>46</sup> In that respect, people themselves perform as development controllers in the built environment. They safeguard the built environment from actions that are harmful. It is a right-based mechanism that operates from **within** the site without external parties' intervention (e.g. the state). But, above all, awareness of parties of their rights eliminates the opportunity for external parties to manipulate local people and impose rules. One of the characteristics of the acquired built environment, is the

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<sup>45</sup> As reported by al-Wansharisi, the opinion of another jurist regarding this case was that the protesting party could have appointed an agent to protest, but he did not, thus the action will continue as it gained the right of precedence (al-Wansharis, v.9, p.56-7).

<sup>46</sup> For example, in one case, a person wanted to open a new door opposite to his neighbour's door in a narrow through street. 'Ibn ar-Rami answered that if the street is narrow then that person has to relocate his door so that the damage to the opposite neighbour is stopped. He added that if this door continues in its position, then it will possess the damage in the future and no one then can stop that damage ('Ibn ar-Rami, n.d., p.270).

ignorance of the masses of people of their rights, which makes them susceptible to external rules. This leads in turn to the development of central power. All principles derived from the concept of damage in the inherited built environment are conducted as if they were developed to eliminate the creation of external power.

#### 7.3.4 Conventions as a mechanism of environmental control

As many documented cases reveal, **conventions** in the inherited built environment often performed as a mechanism of environmental control. They were the reference for many jurists and building experts in resolving disputes between parties, therefore, solutions differed from one region to another, according to the conventions prevailing in each region. For example, high rise buildings are common in San'a, Yemen, whereas they are not in Damascus or al-Madina. Overpasses (*sabat*) are accepted as building conventions in traditional Riyadh, resulting from its climatic and cultural needs; thus projecting an overpass is not considered as an unrightful or harmful action there.

Conventions are subject to *shari'a* and its sphere of rights. They are rights-based mechanisms, formulated according to people's needs and solutions. That is, as rights are not organized in a form of pre-stated laws and regulations, they are robust mechanisms that tolerate people's needs and thus lead to environmental solutions, i.e. people develop their own conventions, within the sphere of rights. Emphasizing their significance, some jurists consider conventions as a source of legislation in Islam.<sup>47</sup> Moreover, many jurists accepted and adopted the general principle "*al-'adah muhakkamah*"<sup>48</sup> (custom is a reference) in their rulings. For example, in resolving disputes, jurists referred to conventions in determining the degree of harm, the duration of a contract in a leased property if not stated in the contract, in determining what is attached to a sold property if not mentioned in the sale deal, the legitimate range of right enjoyment (after which it might be considered an abuse of rights). In one case, 'Ibn ar-Rami stated that rulings in disputes regarding opening new doors in wide through streets differed between jurists; judges ruled according to the local custom ('Ibn ar-Rami, n.d., p.267). Certain sentences and words in the documentation of the cases, such as, "this was the common practice", "this is prominent,"<sup>49</sup> signify that custom was the reference in many cases, performing as a guiding principle in the inherited built environment.

Conventions develop throughout time; they are **dynamic** and not static. However, such developments emanate from people themselves, with no external pressure. New successful solutions invented by some inhabitants, if convincing, replace older ones, thus new conventions evolve (Akbar, 1992, p.372-385). This is the opposite of the case in the acquired built environment. As Habraken contends, when custom is challenged, achieving consensus about

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<sup>47</sup> Provided not contradicting with the Qura'n and the Prophet's tradition (az-Zarqa, 1968, v.2, p.857).

<sup>48</sup> This principle is considered one of the five basic principles in the Islamic jurisprudence (an-Nadwi, 1994, p.351).

<sup>49</sup> See for example 'Ibn ar-Rami, n.d., p.267, 283.

new solutions may require regulations and bylaws (Habraken, 1998, p.229).<sup>50</sup> It can thus be said that while conventions in the inherited built environment evolve from within, they are, in most cases, in the acquired built environment imposed by an external party (the state or professionals) through legal **obligation**. As conventions are the product of the masses of people, they reflect their needs and capabilities. “Conventions” are an environmental mechanism that eliminates outsiders’ intervention and thus the opportunities of generating central power.

#### 7.4 MAPS OF RIGHTS (RIGHTS STRUCTURES)

As noted in previous chapters, modern societies are organized according to their power structure, which in turn is reflected in their built environments. This power structure in modern societies pertains to individuals in society. Such a concept does not exist in Muslim societies; but rather one can speak of rights-structures (not one structure as in modern societies) or what we will refer to in this study as “**maps of rights**”. To establish this, two statements, based on the concept of rights in Islam, have to be asserted first. In the inherited built environments 1) each property is unique in its specificities, thus in its rights; 2) each individual is unique in terms of his/her rights in the built environment. This is quite different from the acquired built environments, based on the modern concept of power. In those latter environments, law as the regulatory mechanism tends to standardize sites and thus parties, and classifies them into a few categories, in which case, different sites (e.g. in one zone or land use in modern planning) are treated similarly, employing general sets of laws. Also different people are viewed as being constituted into one standard category, such as when talking about the public interest, or when categorizing groups of people into black, white, ethnic minorities, women, and alike.

In the inherited built environment, several maps of rights can be discerned; some pertain to the sites while others to parties.<sup>51</sup> Obviously, many of those maps may overlap in the built environment. Examining those maps of rights clarify to a great extent the mechanisms which gave shape to the inherited built environment. Those maps are not geographical maps but are structures of rights distribution. To grasp such maps, they are presented in this study in an abstract map-like form related to abstract physical settings and territories in the inherited built environment. Some of those maps are explored next.

##### 7.4.1 General rights distribution map

Rights, as derived from *shari'a*, are distributed between parties (individuals, groups, or the state) according to a certain map. It includes all rights derived from *shari'a*, whether pertaining to properties or to parties. It is thus a map of static abstract rights of parties and properties.

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<sup>50</sup> In some cases challenging the custom by introducing new solutions might, over time, be accepted and widespread. Thus the “aberration” becomes the norm, superseding the old (Habraken, 1998, p.229).

<sup>51</sup> Other maps of rights structure might be discerned in the inherited built environment such as rights of rainwater discharge, cleaning streets. Those are environmental **issues-oriented** structures of rights. They are primarily derived from the rights of **properties** related to the physical settings within which they exist, therefore, many of those rights maps do not change by changing the identity of the property owner. Those maps vary from one site to another according to the specific rights distribution in each site.



Examples of such rights are: revivification rights, easement rights, pre-emption rights, rights of ownership, height rights, the right not to be harmed by others, and the like. This map, although static, is quite comprehensive and broad, so that all other maps of rights (outlined below) emanate from it. To explain the distribution of rights within this map, rights of individuals, groups and the state, as bestowed by *shari'a*, are explored next.

### RIGHTS OF INDIVIDUALS AND GROUPS

Rights in Islam are distributed between the state, groups and individuals in a manner that defines the duties and obligations of those parties while protecting their freedom. There exist in the inherited built environment many properties that are owned by particular groups, such as dead-end streets, or owned publicly (i.e. owned by all Muslims collectively) such as through streets. Islam granted such groups rights and set out the mechanisms which protect those rights. *Shari'a* regards a group as a censor on the actions of individuals, so that its rights are not violated. It set out certain methods for groups to guard their rights, depending on the size and type of the group. Examples of those methods are explained in discussing maps of situational rights.

Most societies grant the **public interest** a distinct importance, to the extent that it leads to the generation of central power (higher authorities) representing and protecting such an interest. In Islam, public interest is, in principle, prioritized over individual interest. The “**public**” as a party in the inherited built environment is composed of the individuals of the Muslim community, i.e. of all Muslims collectively. The public in the inherited mode represents itself and is not represented by the state<sup>52</sup> as is the case in the **acquired** built environment. In this context, one should distinguish between the public interest as defined by the state and the public interest as defined by the public itself. As the term “**public interest**”, as used in the acquired built environment, denotes control by the central authority in contemporary environments, it is used in this study to refer to the acquired built environment, while the term “**common interest**” is used in the inherited built environment.

Avoiding any possible abuse of such a principle by rulers to gain more rights, thus power over the public, *shari'a*, through maps of rights, regulated the common interest in two ways. **First**, whereas preserving the public interest in the acquired built environment is the responsibility of the state, it is in the inherited built environment a duty of individuals as well as of the state. Individuals in the inherited built environment, based on their rights, are capable of challenging the state if it is superimposing its own definition of the common interest. *Shari'a* attached regard for the common interest as a duty in every individual's rights; thus public rights are self-guarded rights among individuals and groups. This in turn limits the state's role to **participating** in protecting the common interest, and not establishing this interest in the first place. **Second**, if the logic in the acquired mode is that the public interest often prevails over private interests, leading to the possibility of enacting regulations to protect such interests, this consequently empowers the higher authorities, as representatives of the public.

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<sup>52</sup> Except in limited cases where the state represents the public, as explained below.

In the inherited mode, although the common interest, **in principle**, prevails over individuals', as some documented cases reveal, this is not an absolute principle. Rulings were reached in the light of maps of rights in each case independently, according to the specificities of the case in question. That is, causing harm to the public is considered severe in comparison to causing it the individual. However, if the harm caused to the individual as a result of stopping its action is severe and cannot be **made up for** (*la yanjabir*), then the individual's interest is prioritized (ash-Shatibi, n.d., v.3, p.57-8). Many documented cases showed private (individual in many cases) interest prevailing over the common interest. The two contradicting interests in such cases are weighed up in terms of their rights against each other, according to the specific conditions of the case, and thus a ruling is reached. For example, in one case Sahnun was asked about a person who built a mosque resting on its neighbour's wall, where the neighbour's privacy could be violated from the roof of the mosque. The neighbour objected. Sahnun ruled that the owner of the mosque, who built it, is obliged to block the view from the roof, and people are not allowed to pray in the mosque unless the privacy of the neighbour is guaranteed ('Ibn ar-Rami, n.d., p.262). In another case, 'Ibn Taymiyyah (d.728H.) was asked about a mosque adjacent to a ruined property. Part of its walls had collapsed into the mosque's door and yard, and it was feared that the rest of the walls might fall on the praying people. 'Ibn Taymiyya answered that if such fears exist, then the part that is most critical, in the sense that if it falls it would cause damage to the mosque and its people, should be treated. If there is no way except demolition, then this part should be demolished ('Ibn Taymiyyah, n.d./a, v.16, p.143). In these cases a private interest was in contradiction with a common interest. In the first case, the private interest prevailed, as violating privacy is considered, according to many jurists, as severe damage. Sahnun in that case prioritized maintaining the neighbour's privacy over the common interest of praying in the mosque. In the second example, 'Ibn Taymiyyah was reluctant to rule against the individual, unless it was proved that his ruined property is a source of harm to the public. He suggested demolishing the harmful part as the last solution.

It can be inferred from these cases that the common interest in Islam is **not an absolute** dominating interest, performing against private interests;<sup>53</sup> it is restricted by *shari'a's* framework. Private parties' rights cannot be transgressed in the name of the common interest (al-Kilani, 1987, p.57). Decisions related to the common interest in the inherited built environment do not pertain to predated rules and regulations, but are reached according to the specificity of each case. This is considered as another rights-based mechanism for eliminating the possibility of producing central power, or inflating power in the hands of the state. The best example of this issue is the prohibition of property expropriation in the inherited mode (eminent domain). This issue is examined below, after explaining the rights of the state according to the general rights-distribution map.

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<sup>53</sup> Many contemporary scholars, based on the relevant Islamic principle (if two interests contradict, the private lapses for the benefit of the public), hold that the public interest is an absolute interest that should always prevail over private interests (e.g. ad-Duraini; al-Fayez; al-Kahfif; Khalil). This contemporary perception of the concept of the public interest is explained in chapter nine.

## RIGHTS OF THE STATE

In the general rights distribution map, the group is considered as the individual; the state is also considered as the individual; each has its own rights. As all rights are bestowed by God; the state has no authority to grant the individual rights or to deprive him/her of rights. Individuals are not subjugated to the state (ad-Duraini, 1984, p.73-4). The main role of the state in Islam is executive and judicial. It has a minor legislative role in matters that are open to jurist' personal reasoning (*'ijtihad*)<sup>54</sup>; however this is performed within the framework of *shari'a* in a way that does not contradict with *shari'a*'s principles (al-Jalili, 1988, p.553-6). The state has to guard and execute Islam, protect and defend the territory of Islam, maintain justice, resolve disputes when they arise, and fulfil some other administrative responsibilities (al-Mawardi, n.d., p.27-9). It performs as a supporter in the processes of enabling people to achieve an enabled, settled society<sup>55</sup> (al-Kholi, 1978, p.68). To actualise such aims, the state has to keep opportunities open for people to act, assure access to resources, and maintain the rights of individuals and groups in society, within the framework of the common interest.

As part of its duties, the state is responsible for providing and maintaining public properties. Expenditure on such tasks is covered by the public treasury or *beit al-mal* (al-'Abbadi, 1977, v.1, p.102; al-Jalili, 1988, p.462-3)<sup>56</sup>. However, if the *beit al-mal* is insolvent, it is the duty of the rich to perform such tasks, if they can afford it, without any obligation.<sup>57</sup> In one case, there was a main road surrounded by many farms outside the town. When it rains, this road becomes quite muddy, so that no one can use it. 'Ibn ar-Rami reported this to the judge, asking him to order the people of the town who live close to that street to pave five hand-spans of the road to allow people passage in winter. The judge answered that people cannot be compelled. The judge then called the owner of the farms surrounding the road, and he preached and encouraged him to do the good deed and to repair the road ('Ibn ar-Rami, n.d., p.577). Maintaining the public properties such as through streets is not an obligatory duty for people in the inherited built environment; it is, as 'Ibn ar-Rami states, to be maintained from *beit al-mal* ('Ibn ar-Rami, n.d.,

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<sup>54</sup> *'Ijtihad* (personal reasoning) is the effort a jurist makes in order to deduce the law, which is not self-evident, from its sources (Kamali, 1991). It is used for establishing solutions for new problems. In Islam *'ijtihad* has its own methodologies. Opinions reached by *'ijtihad* should not contradict with any text from *Qur'an* or the Prophet's tradition. Methods of *'ijtihad* vary between schools of law. In general, they are *qiyas* (legal reasoning), *ijma'* (consensus), *istihsan* (preference), *masaleh mursaleh* (regard for the common interest).

<sup>55</sup> The state in Islam does not act as an enabler because rights are bestowed to it as they are bestowed to private parties by God. Thus the state' role is limited to supporting the process of enablement of private parties through maintaining their rights.

<sup>56</sup> 'Umar (the second caliphate) stated in that respect that "if a sumpter in the Euphrates area falls, then I might be responsible for that, as I did not level the road for it" (cited in al-'Abbadi, 1977, v.1, p.102).

<sup>57</sup> Such tasks are considered as "*fard kifayah*" (al-Jalili, 1988, p.261), (collective duty, the performance of which is obligatory for the Muslim community as a whole. However, if a sufficient number fulfil the duty, the rest are relieved of it. If the duty is not performed, all the community is liable for punishment by God (Akbar, 1988, p.256)). In most cases, seeking rewards from God, Muslims used to endow some of their wealth to the benefit of specific public properties, such as mosques, schools, caravans, hospitals, and the like. Thus, those public properties were built and maintained from the revenue of their *waqfs*.

p.577). The ruler cannot force any person from the public to do such a duty. It can be deduced that the state's power is limited in its intervention in private parties' rights. Each has its own rights, thus the state cannot compel its people to do what is not of their duties, or to deprive them of their rights. Simply, it has no right to do so. The boundaries of the rights of people and those of the state are defined, so that no one party infringes on other parties' circles of rights. This minimizes, if not eliminates, the possibility of creating central power. But how did the people manage such a need for public amenities such as paved roads? This is clarified later.

In the inherited built environment, the state's circle of rights is almost limited to its own properties (of the public treasury or *beit al-mal*, see p.132). As those properties are owned by all Muslims collectively, the state does not enjoy all rights granted to owners as a result of full ownership. The state in that respect acts as a caretaker with limited rights of control. It does not have the right to transfer their ownership through selling or allotment, for example. Outside the realm of state properties, the state has no right to intervene in people's properties as long as they act according to their rights, within the framework of *shari'a* (al-Jalili, 1988, p.565). However, if private parties violate Islamic law, the state intervenes as a **corrector**, based on its executive authority, to redirect those parties to abide by the law and not to restrict their freedom and rights in their properties (al-'Abbadi, 1977, v.2, p.268; al-Jalili, 1988, p.366). This intervention is accepted in temporary, exceptional cases only and is never considered the norm in the inherited built environment. Restricting state intervention to executive matters reduces the circle of state rights of intervention in private properties, and grants private parties **autonomy** over their properties. That is, of the state's role is supporting parties' enablement through protecting their rights of property ownership and their other consequent rights of control. If the state intervenes in private properties, this depreciates from concerned parties' rights and thus contradicts with the pre-stated role of the state as a guardian of *shari'a*. State intervention outside its realm transforms the nature of its intervention from being a corrective task to a power exertation role not based on rights, which in turn creates a central power against *shari'a*'s objectives. The role of the state has to be clearly limited, otherwise, rulers might, under the claim of the public interest, lust for more power on the expense of end users.

Sustaining the performance of the state, Islam introduced several mechanisms that operate under the authority of the state, such as those of *Hisbah* (market inspection) and the judiciary system. Those operate to assure positioning parties within their circles of rights and within the framework of the Islamic law of *shari'a*, thus, ultimately, maintaining a state of freedom (with restrictions), enjoyment of ownership rights with no intervention or violation, full control over properties, and thus an atmosphere of enablement for individuals in society.

Yet, in emergency situations, the state might intervene to resolve urgent cases. For example, if a city is under threat from the enemy and its walls need to be reconstructed to protect it, and its *beit al-mal* (state treasury) is insolvent and cannot offer any financial support, and there is no *waqf* properties endowed to the benefit of the city walls, then the ruler can compel the rich people in the city to reconstruct the city wall (see al-Wansharisi, v.5, p.351; ad-Duraini, 1984, p.76; al-Khafif, 1990, p.106-7). Emergency situations are considered as necessities, according

to the principle “necessities warrant the forbidden.”<sup>58</sup> However, this warrant is temporary and limited to a degree that eliminates this situation according to the Islamic principle “necessity is judged according to its value.”<sup>59</sup> In other words, state intervention in private properties is not the norm in the inherited built environment.

It can be inferred that the state has **limited rights**, thus **limited power**, in the inherited built environment. Private parties (individuals and groups) have great **autonomy** and freedom over their properties, restricted only by *shari'a* framework, and not by any rules or regulations set by the state as is the case in the acquired built environment. Thus, rights and not authority's power is responsible for the production of the inherited built environment. Put differently, the state in Islam is the **state of rights** and not the **state of power** as the case in the acquired mode.

#### EXPROPRIATION OF PRIVATE PROPERTIES (EMINENT DOMAIN)

Private parties in the inherited built environment enjoy the right of control over their owned properties. *Shari'a* limited, if not eliminated, the right of intervention of outsiders, whether individuals or the state, into one's property. It regulated actions of parties that interfere in others' properties through mechanisms such as that of harm. But what about expropriating private properties under the claim of the common interest? Can private ownership rights be violated for the common interest? Does the state as a representative of the public, in certain cases, have the right to intervene in private properties on behalf of the common interest?

*Shari'a* granted private properties a sanctity that protects properties from being deforced or expropriated by other parties. The Prophet states in this regard that “taking the property of a Muslim person is not lawful without his conciliative consent (*teib nafs*)” (ash-Shawkani, n.d., v.3, p.684; 'Ibn ar-Rami, n.d., p.185). No one is obliged to sell his property without his consent. Two situations can be distinguished in discussing the expropriation of private properties. **First**, expropriation by other private parties, i.e. it is a transaction between private parties. **Second**, expropriation by the state for the common interest, i.e. the eminent domain, thus it is a relationship between the state and private parties where the state stands as a representative of the common interest.

In the inherited built environment, rightful actions causing harm to others are stopped, so, undoubtedly, **non-rightful** actions, known as **encroachment** (*ta'addi*) or **usurpation** (*ghasb*), causing harm to others are disallowed and, if happened, abolished. **Usurpation** in Islam is considered an oppressive, unlawful act whose actor is an usurper that should be punished. The Prophet stated in that regard that “Whoever usurps the land of somebody unjustly, his neck will be encircled with it down the seven earths (on the day of Resurrection)” (al-Bukhari, n.d., v.3, p.379).<sup>60</sup> Building on others' properties without their consent is considered usurpation upon

<sup>58</sup> *Ad-darurat tubeih al-mahthurat.*

<sup>59</sup> *Ad-darura tuqaddar bi qadariha.*

<sup>60</sup> This tradition is narrated by Sa'id bin Zaid. From Al-Bukhari, Hadith no. 632, chapter 14, p.379, v.3. Also, Abu Salamah narrated that there was a dispute between him and some people (about a piece of land). When he told 'A'isha (the Prophet's wife) about it, she said “... avoid taking the land unjustly,

others' properties. Similarly, constructing on publicly owned "left-over lands, *matroukah*" (see p.131 above), such as along riversides or in "unutilized lands" around urban or rural areas is considered as encroachment upon public properties. If any building is erected on such lands then it has to be demolished even if it was a mosque (al-Fayiz, 1997, p.237). This reflects the high status that Islam granted to Muslims' collective rights. This is one of the essential differences between the acquired and the inherited built environments. In the acquired mode, publicly owned properties are manipulated by rulers or by their representatives under the claim of the public interest. In the inherited mode, as rights are pre-stated, the state is quite restricted. For further clarification, let us examine different situations.

A dramatic case was reported from the inherited built environment demonstrating the degree of sanctity that private properties are granted: a person (party *A*) has built a huge expensive three storey building with its external wall inclined towards the property of his neighbour (party *B*), without noticing this inclination. Years later the neighbour *B* wanted to raise his own building. He began, to discover that his neighbour's building inclined towards his property. He asked party *A* to correct his building. Party *A* replied that it was so difficult to correct the building after it is completed. Party *B* took his case to the judge who ruled that party *A* should be compelled to demolish the encroaching parts. The judge added that whatever encroaches upon others' properties should be demolished. 'Ibn ar-Rami states that such cases often happened in Tunis ('Ibn ar-Rami, n.d., p.463-4). Encroachment upon others' properties is considered in Islam as an illegal act even if done undeliberately. This case and the ruling reached shows how strict *shari'a* is in protecting properties regardless of the involved parties' positions. For example, the caliph Yazid (d.64H.) decided to enlarge the stream that leads to his land through peasants' lands, but the peasants did not allow him. An agreement was reached that the caliph pays their land tax for three years to come ('Ibn 'Asakir, n.d., v.1, p.245). In this case, the private party (peasants) was faced by the caliph himself, but the caliph as an individual has no rights, thus power, more than any other private party.

Encroachment in the inherited built environment is not exclusive to buildings but to any element that encroaches upon the air of others' properties such as the branches of a tree or the like. Most jurists<sup>61</sup> agree that if the branches of a person's tree (*A*) encroaches into the air of the neighbour's property (*B*), then this latter party (*B*) has the right to ask his neighbour (*A*) to remove his tree, if he did not respond, then party *B* has the right to change the path of those branches away from his property. However, if he could not do so, then he has the right to cut those branches without any permission of the judge (Bin Faiy', 1995, p.124-5, see 'Ibn Qudamah, n.d., v.7, p.18-9, al-Wansharisi, v.9, p.23, 47-8). Similarly, most jurists agreed that no one has the right to extend any element, such as a projecting cantilever (*rawshan* or *janah*), into neighbour's air without approval (Bin Faiy', 1995, p.128). This prohibition of usurpation of

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for the Prophet (peace be upon him) said, "Whoever usurps even one span of the land of somebody, his neck will be encircled with it down the seven earths" (al-Bukhari, n.d., Hadith no. 633, p.379, v.3).

<sup>61</sup> From the four authoritative schools of law (Bin Faiy', 1995, p.125).

other parties' properties protects property rights and defines their boundaries, thus extends the circle of autonomy and control of parties over their owned properties.

Eminent domain or expropriation of private property by the state is a sign of authority's dominance over private ownership (Akbar, 1988, p.105). Expropriation of property is an obliged transfer of ownership without the owner's consent. Most Muslim jurists agree that properties cannot be expropriated unless causing severe damage to the public, as in the case of a weak, collapsible building, for example (al-Hathloul, 1996, p.116-8). But what about expropriating private property for the common interest, such as constructing or extending a public building or widening or establishing a new street?

It is related by many jurists that the Prophet said in this regard that "Taking the property of a Muslim person is not lawful without his conciliative consent" (ash-Shawkani, n.d., v.3, p.684; 'Ibn ar-Rami, n.d., p.185). To clarify the stand of Islam regarding this issue, the following instance is given. As the population of al-Medina increased, the mosque of the Prophet became too small for the prayers. The caliph 'Umar decided to enlarge the mosque (17H./638AD.). He bought the surrounding houses except for that of al-'Abbas who refused to sell. 'Umar gave al-'Abbas three choices: to sell the house at any price he desired, which would be paid out of the public treasury; to be given a parcel to build on from the public treasury on any site in Medina; or to give the house as a charitable donation. Al-'Abbas refused all choices, thus he and the caliph arbitrated under 'Ubay bin Ka'ab. 'Ubay favoured al-'Abbas's position because he invoked the Prophet's story in which God prohibited the Prophet David from usurping another person's land to build the house God ordered him to build in Jerusalem. 'Umar then told al-'Abbas that he would not force him to sell his house. As al-'Abbas heard this, he gave his house as a charity to the Muslim community (cited in Akbar, 1992, p.229). From this case, it can be inferred that the caliph 'Umar (representing the state) did not have the right, thus the power, of eminent domain, even for extending the great mosque of the Prophet. The common interest here did not manage to overpower the private interest.

The state or the ruler in the inherited mode, fundamentally, has no right of eminent domain. 'Abu Yusuf states in that regard that "the ruler cannot take anything from the hands of others without a well known, definite right" ('Abu Yusuf, n.d., p.65-6, see 'Ibn 'Abdin, n.d., v.6, p.296-8). Similarly, al-Muzni and others asserted that "people have control over their properties (money), and no one has the right to take it, or to take part of it, without its owner's consent..." (cited in al-'Abbadi, 1977, v.2, p.279).

Some later jurists, mainly from the Maliki school, approved, **reluctantly**, expropriation of private properties in limited circumstances, under the condition of **desperate public necessity**. They, however, did not agree upon defining this desperate common interest or necessity. Malik and all his followers referred to the above story of caliph 'Umar and al-'Abbas, and prohibited property expropriation. However, if an owner refused to sell his property needed for a desperate common interest, some Maliki jurists allowed compelling that owner to sell, in limited cases, on condition of just compensation. For example, they allowed expropriation of privately owned

property for the desperate need<sup>62</sup> of expanding Muslims' congregation mosques (and not non-congregation ones). Even in such cases, 'Ibn 'Abdin (d.1252H.) asserted that this is allowed only when there is no other mosque in the city, as in the case of the congregation mosque in Mecca. Moreover, some jurists limited this to the approval of the judge, even in cases of expanding the mosque into wide streets or on the account of a *waqf* property that is endowed for the benefit of the mosque itself ('Ibn 'Abdin, n.d., v.6, p.576-7; see al-Fayez, 1997, p.650-2). The role of the judge here performs as a guarding mechanism for protecting private properties or as a higher authority over that of the state to limit state's right of intervention, and to guarantee a just decision regarding expropriation. Also, some jurists allowed expropriating houses adjacent to the city wall in cases of emergency security danger, however, with **just compensation**. One jurist stated that farms adjacent to the city wall could be expropriated in emergency cases if it was proved that they cause **severe** damage to the wall, thus he did not even allow such expropriation absolutely, but conditioned it to proving that it causes **severe** damage (al-Wansharisi, n.d., v.9, p.22). Subjecting expropriation of private properties to many conditions indicates the reluctance jurists had towards this critical issue. Such conditions actually limit the rights of state intervention in, thus power over private properties.

Other than cases of congregation mosque and emergency exceptions, expropriation of privately owned properties is prohibited by most jurists. Even in widening intensively used streets, most jurists<sup>63</sup> agreed that adjacent owners could not be compelled to sell their properties, even if the street was totally destroyed and **not passable** any more.<sup>64</sup> Thus, if it was not allowed to re-establish streets that have been totally destroyed on the account of private properties, then, inevitably, widening narrow, yet passable, streets or building new streets by expropriating privately owned property is disallowed in Islam. Many similar cases are documented in which jurists disallowed establishing public benefit properties, such as an ablution place in a mosque, by expropriating privately owned properties.<sup>65</sup>

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<sup>62</sup> Most jurists assert that Muslims in such cases can build another mosque or in case of congregation mosque, they can transfer their mosque to another location. Ahmad bin Hanbal was asked about expanding a mosque into the street, he said that prayers would not be allowed in it then (see Akbar, 1992, p.230).

<sup>63</sup> Sahnun approved that the ruler can compel the owner to sell his property for establishing a new street in case that Muslims' street was totally damaged and unpassable, but he conditioned this to cases where there is no other option at all. The majority of jurists (Mutraf, 'Ibn al-Majshun, Asbagh, 'Ibn 'Abd ar-Rafi') prohibited compelling owners to sell their properties for the sake of establishing new street instead of the destroyed one, without the consent of its owner, even if this was the only access for people and no other choices were available. They allowed the owner in such cases to stop such an action of violating his rights (see 'Ibn ar-Rami, n.d., p.574-8).

<sup>64</sup> See the cases documented in 'Ibn ar-Rami, n.d., p.575-7.

<sup>65</sup> 'Ibn Wahab was told of a man who transformed part of his house into a mosque. Could he extend that mosque into the public street? The answer was no (at-Tutayli, n.d., p.261). Most probably in this case expanding the mosque was narrowing the street and thus causing damage to the passers by, otherwise, according to the rights of through streets (as explained below), it is allowed. Moreover, a jurist was asked about compelling a man to sell his property to establish a place for ablution (*mayda'a*) for a mosque. The answer was no, as ablution can be done in houses (al-Wansharisi, n.d., v.6, p.69-70).



Many statements can be inferred from cases and opinions of jurists regarding disputes. First, they demonstrate that the common interest does not absolutely dominate over private interests, and that every case has its own specificities and thus map of rights (explained below). Second, they assert the limitation of state power over private properties, even if acting for the common interest, i.e. no restrictions or intervention from the state on private properties. As explained in the concept of harm in Islam, all privately owned properties are subject to self-regulating restrictions derived from the framework of *shari'a* only. This ultimately confirms the sacrosanct and autonomy privately owned properties receive in the inherited built environment as a manifestation of the concept of full ownership in Islam.

Some **contemporary** scholars and Muslim jurists (e.g. ad-Duraini, al-Fayez, Khalil, az-Zarqa), advocate the principles of *al-masaleh mursaleh* or the regard for interests and that of *'istihsan* or preference as methods of legislation. They misinterpret the classical Muslim jurists' opinions concerning expropriation of private properties by the state for the public benefit. They argue that the state in Islam has the right to intervene in privately owned properties for the public interest, i.e. it has the right of eminent domain. This position of contemporary Muslim scholars gives modern states in the Muslim world the right to expropriate private properties under the claim of the public interest. This position thus resonates with the Western concept of the state, which perceives the state as a central authority that guards the public interest, and is responsible for regulating and planning the built environment in a manner that matches best with the presumed public interest. This stand contradicts the basic principle of ownership in Islam that grants owners immense control, within the framework of *shari'a*, over their properties, with limited restrictions by the state in exceptional situations. It tends to transform the status of the state from an executive and judicial authority as set by Islam to a legislative authority as in the acquired mode, thus transforming its role from being based on rights to being based on the power to intervene. This in turn changes the map of rights as bestowed by *shari'a*. It expands the circle of what those contemporary scholars and jurists refer to as rights of the state, justifying those rights as operating for the public interest, and at the same time depreciates owners' rights. This issue and its consequences is examined more in the following chapters.

#### THE *HISBAH* SYSTEM

The *hisbah* system in Islam is a method in which a post called *muhtasib* was created by the legal system. The duty of the *muhtasib* or market inspector (as translated by many Orientalists) is "commanding what is good when it is being neglected and to forbidding what is bad if it is being practised" (al-Mawardi, n.d., p.337). Thus it is considered as a religion-based mechanism rather than a political mechanism; its role is confined to organizational, executive matters and does not comprise legislative functions.

As a state appointed obligation, few questions might be raised here as to the *hisbah*: does *hisbah* in Islam constitute a legitimate form of state intervention in private properties? Does it have a significant role in the production of the built environment? Is it another form of what we refer to today as "planning" in the acquired built environment? Was it responsible for shaping the inherited built environment in its distinct form, as some Orientalists claimed?

As the state and any other party in Islam, *hisbah*, and thus its *muhtasib*, has a definite circle of rights bestowed by *shari'a*, within which it performs. Those rights reflect the nature of *hisbah* as a supervising trust on the Islamic law. The *muhtasib* duty is perceived in Islam as a collective duty or "*fard kifayah*", the performance of which is obligatory for the community. If a sufficient number of people fulfil this duty, the rest are relieved of it. Accordingly while the state has to fulfil this right officially, every Muslim has the right to be a volunteer *muhtasib*. In that sense, an appointed *muhtasib* enjoys almost<sup>66</sup> similar rights to those of any other person from the Muslim community performing such a task. The *muhtasib* is responsible for enforcing the Islamic law, morals and behaviours in the Muslim community such as urging people to pray, inspecting markets and industries, stopping people from peering into their neighbors' houses. The *muhtasib*'s role in that respect is to make sure that rights are accomplished according to *shari'a*, and to help fulfil them (al-Mawardi, n.d., p.339). His rights, thus authority, in this regard are quite limited, according to the general structure of rights in Islam.

*Hisbah* activity may be concerned with matters of individual rights, such as transactions between neighbouring properties, as well as with matters of common interest as in market places and public streets. Several limitations are placed on the *muhtasib* in performing his duty. **First**, the *muhtasib* has to watch for the **manifest** incidents of evil (such as gambling or littering the street), so that he denounces them, and to investigate those acts of good behaviour which have been abandoned (such as not praying), so that he may command that they be renewed. The *muhtasib* has no right to **detect** evil if it is not manifest. This limits the *muhtasib*'s rights of intervention to manifest acts only. **Second**, the *muhtasib* does not have the right to intervene between disputing parties on his own. His intervention applies only if one of the disputing parties **litigates**. Those two postulates accord with the Islamic concept of ownership and its ensuing rights. They restrict the *muhtasib*'s circle of rights regarding intervention in privately owned properties, while protecting and sustaining private parties' rights of control over their owned properties, thus maintaining the autonomous status private parties enjoy over their properties. **Third**, even in those latter cases, the *muhtasib* is limited to dealing only with rights and claims that have been **acknowledged**. In such cases, the *muhtasib* should end the infringement and may impose a punishment in accordance with circumstances. If, however, denials and disputes have arisen between the two parties, he may not investigate such cases. It is the responsibility of the judge (al-Mawardi, n.d., 337-340). For example, if the branches of a tree intrude on the neighbor's house, the latter should **seek** the *muhtasib*'s help to remove these branches. In this case, distribution of rights is quite well known and clear for both parties, i.e. acknowledged with no dispute, thus the *muhtasib*'s role is to help the damaged party to fulfil its relevant rights. **Fourth**, the *muhtasib* may use his *ijthad* (personal reasoning) judgement

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<sup>66</sup> Al-Mawardi, in his *al-'Ahkam as-Sultaniyyah*, listed nine differences between the volunteer *muhtasib* and the official *muhtasib*. The main differences that concern us in this research are that the official *muhtasib* has to respond to people's complaints while the volunteer does not. The official *muhtasib* may use customary *'ijthad* while the volunteer cannot (al-Mawardi, n.d., p.337-8).

concerning matters regarding customary practice, but not matters of the *shari'a*,<sup>67</sup> such as locations of merchants in open markets (*maka'id al-'aswaq*), and setting up projecting cantilevers (*'ajnihah*) or overarching passages (*sabat*); thus he affirms or rejects such matters in accordance with the results of his customary *ijtihad* (al-Mawardi, n.d., p.338).

As to matters of common interest, the *muhtasib* supervises individuals' actions in public places such as streets and markets, preventing and removing harm caused to the public such as from sewage water spilling into the street. His role focuses on individuals' behavior more than on intervening in building actions. Performing such tasks, it is up to the *muhtasib* to make *ijtihad* as to what constitutes harm or not, basing his judgments on customary practice, rather than legal precedent (al-Mawardi, n.d., p.361). Manuals of *hisba* are full of detailed descriptions of tasks such as supervising the cleanness of the public places and prohibiting people from throwing dirt into streets or over-wetting them (see 'Ibn Taymiyyah, n.d./1983; al-Mawardi, n.d.; Ziyadah, 1962). The *muhtasib* also has the right, as does any other individual from the Muslim community, to prevent people from causing harm to the public, such as adding or changing elements in the street, for example, installing a water-spout that would drop water on passers-by, thus harming them, or building a bench that would narrow the public street. The *muhtasib* also must oversee the organization in the market, and allow peddlers to enjoy the positions they claimed in the market, as long as no harm is being done to passers-by.<sup>68</sup>

Moreover, controlling the quality of building materials and construction techniques is considered among the main responsibilities of the *muhtasib*. It aims at protecting customers from deceitful behavior of builders and manufacturers (Ziyadah, 1962, p.133-5). However, the *muhtasib* has no right to intervene in buildings' designs and organization of spaces in the site (i.e. planning the site), as this is purely an individual right. The *muhtasib* has control over the technical quality of the built environment but not over the morphology or on the spatial quality of the built environment. In short, the *muhtasib*'s main duty in public places is to protect the common interest, however, within the limits of his bounded rights and authorities.

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<sup>67</sup> The difference between legal *ijtihad* and customary *ijtihad* is that the ruling in the legal *ijtihad* is based on legal principles, whereas *ijtihad* of customary practice is that which ruling is based on what people habitually do in the circumstances (al-Mawardi, n.d., p.361).

<sup>68</sup> It was found only in ash-Shizari manuals of *hisbah* that the *mutasib* may organize industries in the city in a manner such that each industry has its own market or section in the market, separating those industries which need heat such as bakers and ironsmiths from perfumes and fabric markets (ash-Shizari, n.d., p.11). As no other manual of *hisbah*, especially the earlier ones as those of al-Mawardi and al-Gazali (both jurists are from ash-Shafi'i school of law as ash-Shirazi), mentioned such an organizational task, most probably it was not common among the practices of the *muhtasib*. 'Ibn 'Abdun mentioned in his manuals that wood and coal selling should have certain locations, so that sellers do not wander in the city, causing damage to passers-by. Customers should go to them. Also he mentioned that middens should be located outside the city (Ziyadah, 1962, p.136). Such matters fall into the realm of protecting the public from any harm that might be caused to them as a result of such services. However, as might be inferred from 'Ibn 'Abdun's writings, it is not part of the duties or rights of the *muhtasib* to specify the locations of such services. They are, most likely, left to service providers (immediate parties) themselves to decide.

In conclusion, considering the role of the *muhtasib* in the inherited built environment, one can refute the claim of Orientalists and some Muslim scholars (influenced by Western modes of thinking) that the distribution of functions in the Muslim city was an effect of its *muhtasib*'s role. As shown in chapter four, focusing on the manifested structure of the city, and emanating from a Western perception that dictates the need for planning in the built environment, Orientalists conceived of the *muhtasib*, in one of its duties, as resembling the planner in the Western environment to a certain extent. They established a hypothetical role for the *muhtasib*, as functional organiser in the city. This hypothesis gradually went unnoticed, to be accepted by most scholars. Refuting such a hypothesis, this study argues that the *muhtasib*'s role is basically confined to those places where the *muhtasib* can represent owners. Thus, as the *muhtasib* is considered a member in the Muslim community so his rights include supervising others' actions in public places such as through streets. His circle of rights ends where other parties' circle of rights begins. The *muhtasib*'s rights do not extend to privately owned places such as dead-end streets, unless he is asked to intervene by one of its members.

Moreover, as a religion-based administrative post, *hisbah*'s duties can only be performed in **existing** cities, helping people to fulfil their rights, and not in establishing (planning in contemporary language) new cities. Accordingly, and as *hisbah* had a very limited role in the decision-making process of the built environment, even in existing cities, thus, *hisbah* cannot be considered by any means as a form of state planning agency. As people fundamentally control their properties autonomously with no intervention from the state or its agencies, one can argue that planning activity in its current meaning in the acquired built environment is not recognized in the inherited built environment.

#### 7.4.2 Situational rights map

According to the principles set by *shari'a* in the form of rights regarding ownership and control, Muslim cities can be viewed as composed of different **physical settings** (sites, e.g. streets, *waqf* properties (pl. *awqaf*), dead-end streets, market places). As part of the general rights map, there exists in the inherited built environment 'a' map that demonstrates the rights of the different **categories of sites** (physical settings). This map is called in this research as "**situational rights map**" as it pertains to sites in the built environment. The most common physical settings in the inherited built environment are: through street (publicly owned), dead-end street (group owned), and *finā'* (individually owned). Rights of these settings are explored below.

This map might resemble what the acquired built environment has, but, in fact, it is not the same. Physical settings in the acquired built environments, based on a centralized process of decision-making (central authority), if classified according to their situational rights (in the meaning used in this research), have only two categories: private settings controlled by private owners, and public settings under the control of the authority (central or local)<sup>69</sup>. Or this might even be

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<sup>69</sup> There might also be settings such as housing compounds that are owned and controlled by particular companies. Streets inside such compounds are controlled by its owners thus do not fall under either categories of private or public. However, even in such settings, the two above mentioned categories

reduced to one category, as private properties are also controlled by the higher authorities, so there is no fully controlled private property in the sense in which they exist in the inherited built environment. All physical settings in the acquired built environment are subject to laws that are derived from or work in harmony with the law of the central authority, thus power relationships in the acquired built environment reflect the vertical hierarchy of power distribution embodied in that latter law (explained in the next chapter). Therefore, whereas rights of each site in the inherited built environment are different from each other, even if categorised under the same type of setting; in the acquired built environment it is quite the opposite; rights are very similar. That is, as properties are controlled and organized by the law which is relatively static (at least for a certain period of time) and general (as explained in the following chapter) power distribution in those settings is **relatively static**.

### THROUGH STREETS

In most current urban studies of the acquired built environment, the term “public street” is used. This same term (public) is used by many scholars in describing streets of Muslim cities. The term “public” in the acquired mode denotes that government agencies are in control. This is not the case in the inherited built environments. Therefore, the term “through street” is used, which is a morphological description that is not loaded with any political meaning. The terms “common” is used to denote public in the inherited built environment, when necessary.

Through streets vary in their type according to their size and density of use, thus, the more passers-by are the more common the street is, accordingly, main through streets (*tariq al-'amah*), as defined by 'Ibn 'Abdin (d.1252 / 1836), are those streets that their passers-by are countless ('Ibn 'Abdin, n.d., v.10, p.257). Through streets comprise a significant category of physical settings in the inherited built environment that has its own distinct rights. Those rights vary according to the type of the street (width and density of use). As to the right of **ownership**, through streets, as all other common spaces like yards, are collective properties, owned by all passers-by collectively, and **not by the state** (see lands ownership above, p.131). Therefore, the state has a very limited right to intervene in such spaces, only through the *muhtasib*, safeguarding the common interest, as explained above. As a shared property, no one has the right to sell such spaces or part of them, neither the state nor any member of the Muslim community. This is evident in 'Ibn Taymiyyah's assertion in one case raised to him that *beit al-mal* (the public treasury) has no right to sell any part of the through street (see the case presented above, p.131).

Passers-by, as owners of through streets, have the right to use such spaces in a manner that does not cause harm to others, such as passing by in the street, sitting in it, displaying their goods temporarily. But how can such a large owner-party control its property? The right of control is actually regulated by *shari'a* in a manner that protects the rights of such streets without any bureaucratic or financial burden on society. **Every passer-by**, as a member of the owning-party,

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can still be applied as: first, those parties which decide for themselves, and second, those parties whose decisions are made for them.

has the right to perform as a censor on through streets, i.e. has the right of **control over** such spaces. If any individual acts and changes elements in the street, such as building a bench or a projected cantilever (*rawshan* or *janah*) or an overpass (*sabat*), without causing damage to the passers-by **and no one objects**, then his action may continue, without permission from the higher authorities. However, if the action causes damage to the passers-by then it is disallowed, according to all jurists. As-Sanami (d.734H.) states in that sense that **every** Muslim has the right to stop the building action or to demolish it if already built in a public street (cited in Akbar, 1992, p.488). Absence of objection implies tacit approval of the new action, however, objection of even **one** individual from the passers-by to any new action in through streets would lead in most cases to the prohibition of the action, depending on the damage caused and on the type of the street. The objection of any one individual means in that respect the objection of the controlling party as a whole (Akbar, 1988, p.115; 1992, p.256). 'Ibn 'Abdin relates that even a *dhummi* (Christian or Jew) has the right to object to an action made by any individual on a through street ('Ibn 'Abdin, n.d., v.10, p.257-8). According to some jurists<sup>70</sup>, if the new action does not cause harm to others and is directed for the common interest, i.e. embodies benefit and no harm, such as digging a well or building a cistern for the public use in a through street, then objection of one individual from the passers-by might not be considered ('Ibn Qudamah, n.d., v.7, p.32). Similarly, 'Ibn Taymiyyah states that enlarging a mosque by taking from the street without damaging passers-by is approved even without the authorities' permission ('Ibn Taymiyyah, n.d./a, v.15, p.525).

Objections of passers-by and also judges' rulings regarding actions in through streets varied from one case to another according to the intensity of usage of the street and the damage caused. An action might be allowed in a narrow, less dense, street, while it might be disallowed in a main wide through street, as the potential number of objecting individuals is higher.<sup>71</sup> Documented cases from various Muslim cities such as Cairo, and Tunis reveal that building in through streets was a common practice in the inherited built environments (see al-Wansharisi, n.d.; 'Ibn ar-Rami, n.d.). For example, 'Ibn ar-Rami reported that some people transformed rooms in their houses which abutted the street into shops. They erected columns on the street and roofed the new space. In another case he reported that shopowners tried to build a wall to connect the columns and their shops, thus narrowing the street ('Ibn ar-Rami, n.d., p.292-3). In short, through streets' physical morphology in the inherited built environments is mainly determined by the interaction of the rights of parties on both sides of the street as well as of passers-by as controllers of such streets, without state intervention. It is thus a **rights-based** process of producing those built environments.

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<sup>70</sup> According to jurists from the Hanbali rite such as 'Ibn Qudamah and 'Ibn Taymiyyah, such actions are allowed for the common interest and not if fulfilling a private interest.

<sup>71</sup> 'Ibn ar-Rami relates that if the street is more than seven cubits, it would be considered wide. Some jurists adopted this method, as derived from the Prophet's tradition, and thus did not stop building actions in public streets if they met this width and no one objects. 'Ibn ar-Rami adds that roads used by cattle should not be less than twenty cubits ('Ibn ar-Rami, n.d., p.571-3).

Building actions in streets can be classified into two types: first, actions **within** the street *per se* (*batin at-tariq*), such as digging a well in one of the street's corners or building a bench, and second, actions **around** the street but **affect** the street (*thahir at-tariq*), such as opening a door or a window in one of the houses on either side of the street or building an overpass above the street (Akbar, 1992, p.281). As to the first, objection of any individual from the passers-by to a building action is accepted, however, for building actions that do not harm the main function of the street (passing through), but affect its morphology, the **principle of harm** according to *shari'a* is the reference. According to *shari'a*, the air above a property retains the same principles applied to the property itself, thus the air of a communal property is communal, the air of the *waqf* is *waqf*, the air of dead lands is dead, and the air above a private property is private (al-Qarafi, n.d., v.4, p.40), therefore, the air of the through street is owned by Muslims collectively. Most jurists<sup>72</sup> allow building in the air of the street (such as overpasses) regardless of objections raised by others, provided that such actions do not damage passers-by by darkening the street for example (see an-Nawawi, n.d./a, v.13, p.77; 'Ibn ar-Rami, n.d., p.449). That is, as any individual has the right to use the street without harming others, thus has the right to use its air (see an-Nawawi, n.d./a, v.13, p.77; 'Ibn Qudamah, n.d., v.7, p.31). In one case, for example, Sahnun was asked about a man who owned two opposite houses on both sides of the street and he wanted to build a room (overpass) over the street that connects the two houses. Sahnun allowed the action, stating that such actions are allowed, but what is disallowed is what causes harm to passers-by or to the street by narrowing it ('Ibn ar-Rami, n.d., p.451). He added that this is the situation of overpasses, people are **used** to build it and to shade the streets beneath it, thus it should not be stopped if not causing harm to others. This principle was applied, according to Malik, to both wide and narrow streets (*zuqaq*) (at-Tutayli, n.d., p.148-9). However, building in the air of the street gives the owner of the overpass a right of appertenance (*ikhtisas*) only based on his antecedency in using the space<sup>73</sup>, and not full-ownership, as it is built in a common air, thus, as jurists agree, if someone demolishes his overpass then the air goes back to its original state as shared space. If the neighbour built in the same space his own overpass then the former owner has no right to object as he lost his right of appertenance (*ikhtisas*) the minute the overpass was demolished (see an-Nawawi, n.d./a, v.13). The owner of the overpass has to maintain that it does not cause harm to passers-by even in the future. For example, if in future times, the clearance of the overpass diminishes as the ground level rises, then the owner of the overpass has to lift the damage caused to passers-by, either by lifting or demolishing his overpass, or by lowering the road surface ('Ibn ar-Rami, n.d., p.450; al-Wansharisi, n.d., v.8, p.431). Such principles gave the acting party more freedom of action on the upper level of the street than on the street level. Thus, overpasses were common features in

<sup>72</sup> As-Shafi'i and Malik and many other jurists allowed this ('Ibn ar-Rami, n.d., p.449; 'Ibn Taymiyyah, n.d./a, v.15, p.316).

<sup>73</sup> 'Ibn ar-Rami states that if the neighbours on both sides of the street disputed, each wants to build an overpass above the street, then the space should be divided equally between them. 'Ibn ar-Rami adds that the height of such an overpass should be the height of the largest loaded camel with sufficient space on top of the rider's head ('Ibn ar-Rami, n.d., p.449; see also an-Nawawi, n.d./a, v.13, p.80).

the inherited built environment, constituting building conventions that prevailed in many Muslim cities, giving them their distinct character. Both passers-by and acting parties were used to such practices, therefore, acting parties tend to act in accordance with conventions so as not to be objected or their new buildings demolished.

To conclude, it can be said that such **incremental** actions from the inhabitants themselves, without permission from the higher authorities, were responsible to a certain extent of shaping through streets. It is a **bottom-up** mechanism of producing the built environment, where rights perform as the **regulating mechanism**. Through streets are the product of principles based on rights that are predetermined and thus static temporally and geographically. Accordingly, no party can create rules so as to possess power. Consequently, avenues for central authority to gain power are eliminated in the inherited built environment. This will be more evident when explaining the rights of other physical settings in the inherited built environment, next.

### DEAD-END STREETS

Dead-end streets constitute a common phenomenon in the inherited built environment. It is regulated by its situational well-defined rights. A dead-end street, as all jurists agree, is owned by its residents collectively as a one party (owners of properties abutting the street and have **access** to it, i.e. properties which have doors opening to the dead-end street). It is a privately owned collective property where no external party has the right of intervention, such as the *muhtasib*. Residents of the dead-end street enjoy **full ownership** of the dead-end street; they share the ownership of its substance as well as its usufruct, consequently, they have the right of control over their collective property.

Unlike through streets, no changes are allowed to be made in a dead-end street, such as opening a new door or projecting a cantilever or overpass, without the consent of **all** its party members, regardless of the damage that might be caused as a result of that action. 'Abu Yusuf (d.182H./798AD.) states that the principle of damage does not apply in dead-end streets but the permission of all partners (cited in Akbar, 1992, p.279). 'Ibn Qudamah relates that building a shop or a projected cantilever or an overpass in a dead-end street (*darb*)<sup>74</sup> is disallowed unless its people [owners of the dead-end street] permit. That is, as rights of the street pertain to them, actions are allowed if they all permit as a one owner-party ('Ibn Qudamah, n.d., v.7, p.33). In one case a man whose house is at the end of a dead-end street (*ra'ighah*) extended a wooden box (*tabut*) and a three hand-spans toilet (*mirhad*) to the street next to his neighbour's house. The neighbour objected and raised the case to the judge. The judge ruled that since the principle in dead-end streets is that its benefits are shared by all its residents, no one of them has the right to appropriate any of its benefits for his own without the consent of all the residents. He added that if this is done then it should be eliminated (al-Wansharisi, n.d., v.8, p.499). This principle of **collective control** sustains the right of each of the owner-party members to voice their opinions regarding their shared property. Dead-end street in that sense resembles, as 'Ibn

<sup>74</sup> Different names were used to refer to dead-end streets in the inherited built environment such as *darb*, *zuqaq*, *za'ighah*, *ra'ighah*, *zanqa*, *sikkah*, or *tariq*.



'Abdin and others pictured it (see 'Ibn 'Abdin, n.d., v.10, p.259), a shared house where all partners have the right to benefit from. However, no one of the partners is able to make changes in the house without the approval of **all** partners, as this partner is acting in a property to which rights of other persons (partners) pertain. As collective control is based on agreement between the residing parties and never on intervention by an outsider party, thus it is expected to lead to intensive **dialogue** between the members of the controlling party in cases of disputes. This principle, in turn, **eliminates any domination** that might exist between parties in such a shared property. In one case a man who owned all but one of the houses on a dead-end street built a gate on the mouth of the dead-end street. The owner of the one house objected. The judge ruled that the gate should be demolished (al-Wansharisi, n.d., v.9, p.7; 'Ibn ar-Rami, n.d., p.307).

In short, through dead-end streets rights-based mechanisms *shari'a* aims to create a shared space of needed circulation without the need for any intervention of central authorities. To the contrary, the common accepted logic in contemporary urban design (the acquired mode) is that spaces of circulation between private properties in any settlement have to be managed by a group to which the power of control is conferred. In most cases this group is an outsider (municipality, local community, etc.); a situation which will most likely lead to the **rise** of external power dominating private properties (explained in chapter nine). In the inherited built environment, such management is shouldered on the owners of the place themselves, thus eliminating the possibility of creating an external dominating power. To clarify this let us examine the situational rights of the dead-end street in more detail.

For actions that **abut** a dead-end street and **affect** it (*thahir at-tariq*), such as opening a new door or window to a dead-end street, rulings differed according to the harm caused and specificities of the case; they were not all based on the principle of collective control. In some cases the principle of damage was applied, and if damage occurred, the voice of the damaged party was given more weight in the ruling than that of other parties. But if no damage is caused and residents of the dead-end street objected, then their objection might not be considered. For example, in one case a man (party *A*) owned all houses abutting a dead-end street except for a yard at the back end of the street (owned by party *B*). At the threshold of the dead-end street there was an old overpass that the owner of the houses (party *A*) wanted to extend to cover the entire dead-end street (fig.7.1). The judge (al-'Umrani) ruled that this action was permitted if no damage is caused to the dead-end street or to the owner of the yard (party *B*), and in such case the neighbour (*B*) has no right to stop him. However, if any damage is caused (such as the overpass has low clearance, or it darkens the way) then, due to the rights of the neighbour if objected, the action is prohibited (al-Wansharisi, n.d., v.9, p.5-6).<sup>75</sup> In this case, the concept of damage was applied and not the permission of all residents, as the action in question does not hinder the main benefit of the dead-end street and does not cause any damage either to the neighbour or to the shared property.

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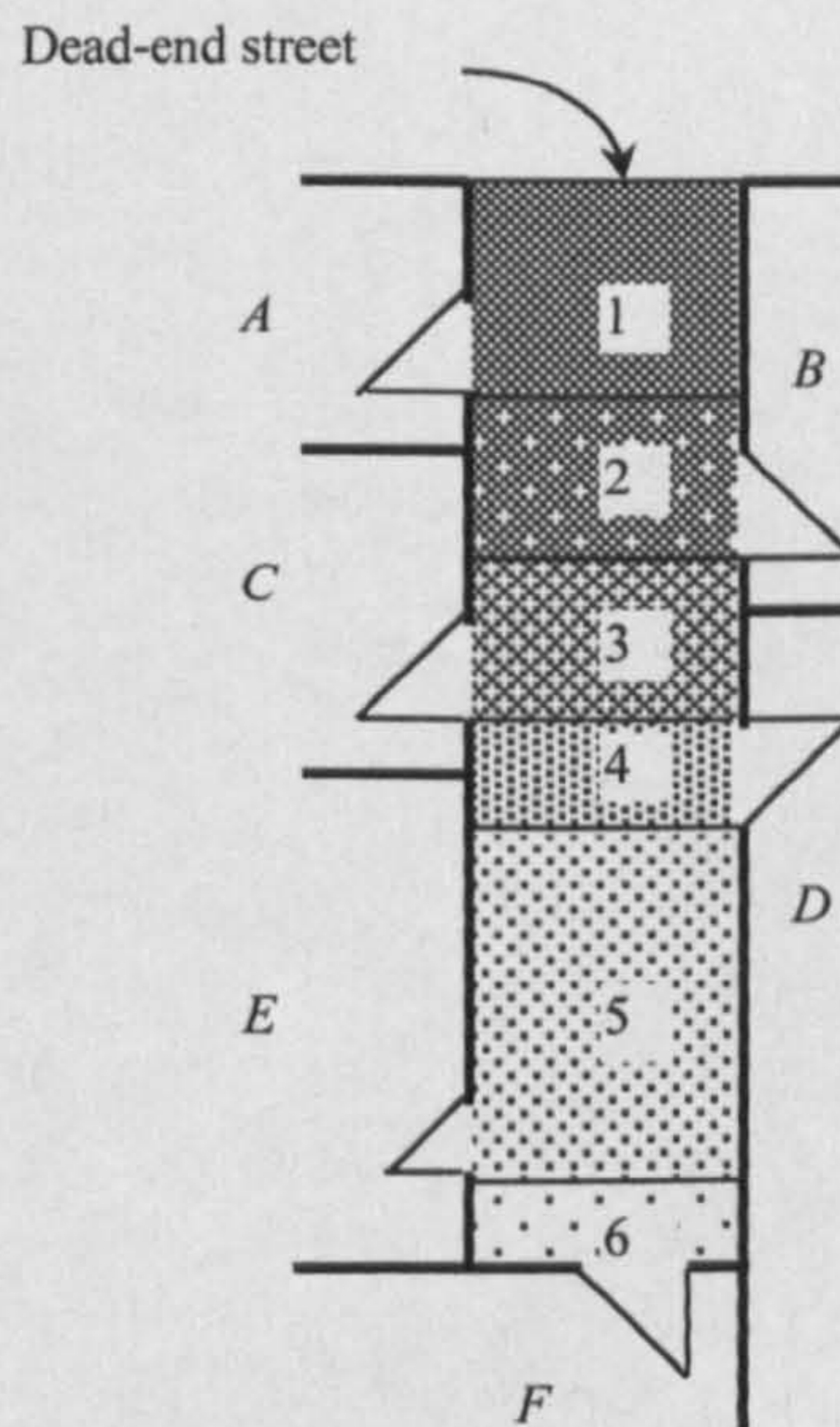
<sup>75</sup> The concept of harm prevailed in the Maliki school in reaching rulings in similar cases. However, some jurists from the same school, such as Sahnun and Yusuf bin Yahya disagreed with this principle, favouring the principle of collective control (al-Wansharisi, n.d., v.9, p.5-6; v.8, p.42-3).



(fig.7.1) (Existing condition of the dead-end street)

(The dead-end street after extending the overpass)

Most jurists from different schools of law employed the right of *istitraq* in reaching their rulings regarding disputes among owners of the dead-end streets such as repositioning existing door. The right of *istitraq* is the right of each resident in the dead-end street to **benefit** from a certain area in it, defined from the entrance of the dead-end street to his house door, i.e. the area in which he walks from the entrance of the dead-end street until he reaches his house door. Accordingly, the right of *istitraq* of the closest house door to the entrance of the dead-end street is the least, while the house at the end of the dead-end street enjoys the maximum right of *istitraq*. Thus it shares all the area of the dead-end street with the other houses (Bin 'Abd as-Salam, n.d., v.2, p.118). For example, as demonstrated in fig.7.2, the right of *istitraq* of resident *A* is applied to area 1, the right of *B* is in areas 1 and 2, the right of *C* is in areas 1, 2, and 3, and so on, thus resident *A* shares area 1 with all the other partners in the dead-end street, however, resident *F* has the right of *istitraq* exclusively in area 6.

(fig.7.2) *Istitraq* rights in a dead-end street.

Repositioning existing doors in dead-end streets (open a new door and sealing the older one) is allowed if the door is to be relocated in a position closer to the entrance of the dead-end street. In such a case the owner is giving up part of his *istitraq* right voluntarily, provided that affected parties who share the right of *istitraq* with him agree, regardless of the objection of non-affected parties (who don't share the right of *istitraq* with the acting party, i.e. who live nearer to the

entrance of the dead-end street than the acting individual). If the owner is relocating his door deeper into the end of the dead-end street, then this allows him to penetrate deeper into the dead-end street without a right to do so, as if he is taking from the right of *istitraq* of the adjacent neighbors which is not allowed unless all affected parties agree. 'Ibn Qudamah states in that regard that the owner of a house in a dead-end street can only relocate his door closer to the entrance of the dead-end street as he has the right of *istitraq* from his door to the entrance of the dead-end street. Thus relocating the door closer to the entrance would reduce his right of *istitraq*. However, whenever he wants to relocate the door to its old position, deeper into the dead-end street, then he has the right to, as his right does not lapse ('Ibn Qudamah, v.7, p.50).<sup>76</sup>

Materializing the autonomy of dead-end streets, **gates** were established at their entrances, demarcating the boundaries of the area controlled (scope of exercitation, as explained below) by the street's owners. Gates of dead-end streets are built and controlled by the owners of dead-end street as a one party, i.e. with the consent of all partners. They mark the areas beyond which higher authorities (the state), or any other external party, have no right to intervene. Gates were so common in the inherited built environment that historians did not document them in detail unless they were unusual. Beyond those gates, as privately owned properties, cleaning and maintenance of dead-end streets are the responsibility of its residents. The prevalence of dead-end streets in the inherited built environments reduced the ratio of public space. Consequently, the burden of keeping-up such spaces needed for circulation in the city is much reduced, lowering the cost of maintenance on the city at large.

To conclude, dead-end streets are physical settings with a well-defined structure of rights that perform in regulating their production processes in the inherited built environment. The incapacity (unrightfulness) of the state to intervene in such widespread private spaces led to the restriction of the state's circle of rights territorially in the inherited built environment, and thus to the intensification of the role of the individual and private group parties in the production of their built environments, based on their rights. This process **releases** the capacities of private parties to act in their built environment without higher restrictions.

### ***AL-FINA'***

*Fina'* is defined as the space, mostly on the street<sup>77</sup>, abutting a property, used basically by the residents of that abutting property, regardless of the function of that property (Akbar, 1988,

<sup>76</sup> Most jurists from the four schools of law agreed on this opinion, however, few jurists from the Maliki school based their rulings on the principle of collective control (see 'Ibn ar-Rami, n.d., p.279-287). For the Shafi'i school see an-Nawawi, v.13, p.93; for the Maliki school see al-Wansharisi, v.9, p.21 (the opinion of Asbagh), and 'Ibn ar-Rami, v.1, p.280 (the opinion of Bin 'Abd al-Bar); for the Hanafi school see 'Ibn 'Abdin, v.8, p.151-2, and ath-Thaqafi, p.160.

<sup>77</sup> For 'Ibn Manzur's, the *fina'* is the space in front of the property's door, or the spaces abutting the property from its sides ('Ibn Manzur, n.d., v.2, p.1138). Accordingly, *fina'* space is not necessarily the space on the street, however, the most common cases of the *fina'* were spaces on the street. For example, in one case narrated by al-Wansharisi, the *fina'* of a house was ruled to be in the yard of the neighbour's house, i.e. inside the neighbour's property (al-Wansharisi, n.d., v.5, p.183-4). Although this was a rare case in the inherited built environment, yet it indicates that the *fina'*, even in such circumstances, was a respected physical setting in the built environment that has well-defined situational

p.107; 1992, p.240). People differed in their treatments of their *fina'*: some allowed others to build on them thus creating an attached tissue, others preferred to protect their *fina'* from all sides thus resulting in a tissue with free-standing buildings. This was actually decided according to the **conventions** prevailing in each region. Thus, one can observe dense inherited built environments with attached properties as in Damascus, Tunis, and Cairo, whereas it is in Turkish or Malaysian villages less dense with detached properties.

As to the rights of the *fina'*, the caliph 'Umar ruled that the *fina'* belongs to the house owner which the *fina'* abuts ('Ibn ar-Rami, n.d., p.299). Most jurists<sup>78</sup> decided that it is **owned** by the owner of the property abutting it, thus no one can revivify someone else's *fina'*. However, as part of that property's inseparable supplements (*marafiq*)<sup>79</sup>, all jurists agreed that the *fina'* cannot be sold separate from its abutting property ('Ibn Taymiyyah, n.d./a, v.15, p.527). Consequently, the owner of the *fina'* has the right of **use and control over the *fina'***, thus he can **use the *fina'*** as he wishes in activities related to domestic life as well as for communal activities such as selling and producing goods, exhibiting goods for sitting in, or storing possessions, provided this does not cause harm to passers-by, i.e. restricted by the concept of harm according to *shari'a*. Malik stated in that respect that "for small *fina'* where the least thing posed would hinder the circulation in the street, then it is not allowed to benefit from this *fina'* as such, but for those wide *fina'* that its people can use it in a manner that does not narrow the street for Muslims, then this is allowed" ('Ibn ar-Rami, n.d., p.305).

Emanating from his right of **control**, the owner has the right to lease the *fina'* provided that the new function does not contradict with the rights of the street such as causing harm to the passers-by. Part of the owner's rights is to prevent others from misusing his *fina'* and causing him damage. However, as part of the street, he cannot prevent people, who did not ask for his permission, from short-term usage of the *fina'* such as sitting in its shaded area. He has the right, however, to forbid passers-by from permanent usage. Moreover, the owner has the right,

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rights. A possible reason for the *fina'* to be within others' properties is that: party (A) revived a dead land and enjoyed his *fina'* from all sides. Another party (B) revived the area abutting A's property while respecting the *fina'* of party A. Years later, party B tried to deny the right of party A in his *fina'*. The case was disputed.

<sup>78</sup> Most jurists, such as Malik, ash-Shafi'i, and some jurists from the Hanbali school such as 'Ibn Qudamah, agreed that the *fina'* is owned by the owner of the property abutting it. Abu Hanifa and some Hanbali jurists consider the *fina'* as the street, to be owned by all Muslims collectively (ath-Thaqafi, n.d., p.173), however, the owner of the property that abuts it has the right of appertenance of the *fina'* (*ikhtisas*) (Akbar, 1992, p.244), i.e. has the right of its usufruct and control over it but not the ownership of its substance (*raqaba*). This *ikhtisas* right gives priority for its holder to use the property exclusively, thus it is in a way ownership of the property without its substance, i.e. the owner enjoys most of the rights attached to ownership except the transfer of ownership (see al-'Abbadi, 1977, v.1, p.160-5). In short, one can state that all jurists agreed at least that the right of usufruct ownership (*mulk manfa'a*) of the *fina'* belongs to the owner of the abutting property.

<sup>79</sup> Each property has its own zone that is prohibited for others (*harim*), without which the property cannot function, such as its road, pathway, rain water discharge (*masil al-ma'*). The *harim* of a dwelling is defined as "what is added to the property as its rights and servitudes" such as its *fina'* (al-Hanbali (d.458H), n.d., p.212). Those supplements are inseparable rights of the property, thus they are transferred with ownership transfer of the property *per se* (see Akbar, 1988, p.76).

according to most jurists, to build in or to add elements to his *fina'*, without the permission of the state, in a way that does not cause harm to the owners of the street (all Muslims) as long as no complaints arise.<sup>80</sup> The jurist 'Asbagh (d.225H.) said that “[building actions in the *fina'* are] disallowed unless they did not narrow the road or hinder the circulation of passers-by or damaged the Muslims”. Thus, if a person builds in his *fina'* and incorporates this building to his property, then he is allowed to if the *fina'* is on a wide street ('Ibn ar-Rami, n.d., p.299).<sup>81</sup>

Approving actions in the *fina'* differed according to jurists opinions about rights of the street, for example whether it is a wide or a narrow street, and the specificities of the case raised. For example, in some cases, if a building action took place in a *fina'* without causing harm to others, then the action is allowed even if one person from the passers-by objected, as his objection is not based on a reasonable cause.

The concept of the *fina'* is important in the inherited built environment in providing a clear definition of each party's responsibility for accomplishing the communal tasks in collective spaces such as cleaning and maintenance of streets. Each property owner is responsible for cleaning his *fina'*. Furthermore, being a privately owned property (or at least usufruct privately owned), authorities have no right of intervention in such private spaces except when the rights of the *fina'* overlap with those of the passers-by in the street. In such an overlap, if disallowed actions or harm occurred, the *muhtasib* might intervene to protect the common interest. This territorial division according to situational rights in the inherited built environment led to minimizing the areas where the state has the right of intervention.

In short, the *fina'* in the inherited built environment is a **rights-based** community-managed space which formation is left to its people, regulated by its rights, with no intervention from the state. It is subject to what can be discerned from the Prophet's tradition concerning advising people not to sit in streets, but if they made their sitting places there then the **rights of the street** have to be respected (al-Bukhari, n.d., v.3, p.385). That is, as the *fina'* constitutes part of the street physically<sup>82</sup>, thus it is perceived as a place where its rights and those of the street (explained above) overlap, therefore, the rights of both have to be respected.

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<sup>80</sup> Some jurists (e.g. Mutrif, 'Ashhab, 'Ibn al-Mashjun from the Maliki school) prohibited building in the *fina'* or in Muslims' street, however, as induced from some documented cases, roofing the *fina'* was a common practice in the inherited built environment. For example, 'Ibn ar-Rami reported a case where stores had roofed their *fina'* by a cantilever and two columns in front of the store ('Ibn ar-Rami, n.d., p.292). He also reported a case about some stores that have a shaded roofed area in their *fina'* and wanted to extend this area from the street ('Ibn ar-Rami, n.d., p.293). Also, the number of questions and cases reported reveal that this practice was a sort of convention in Muslim cities (e.g. Tunis from where those cases were reported).

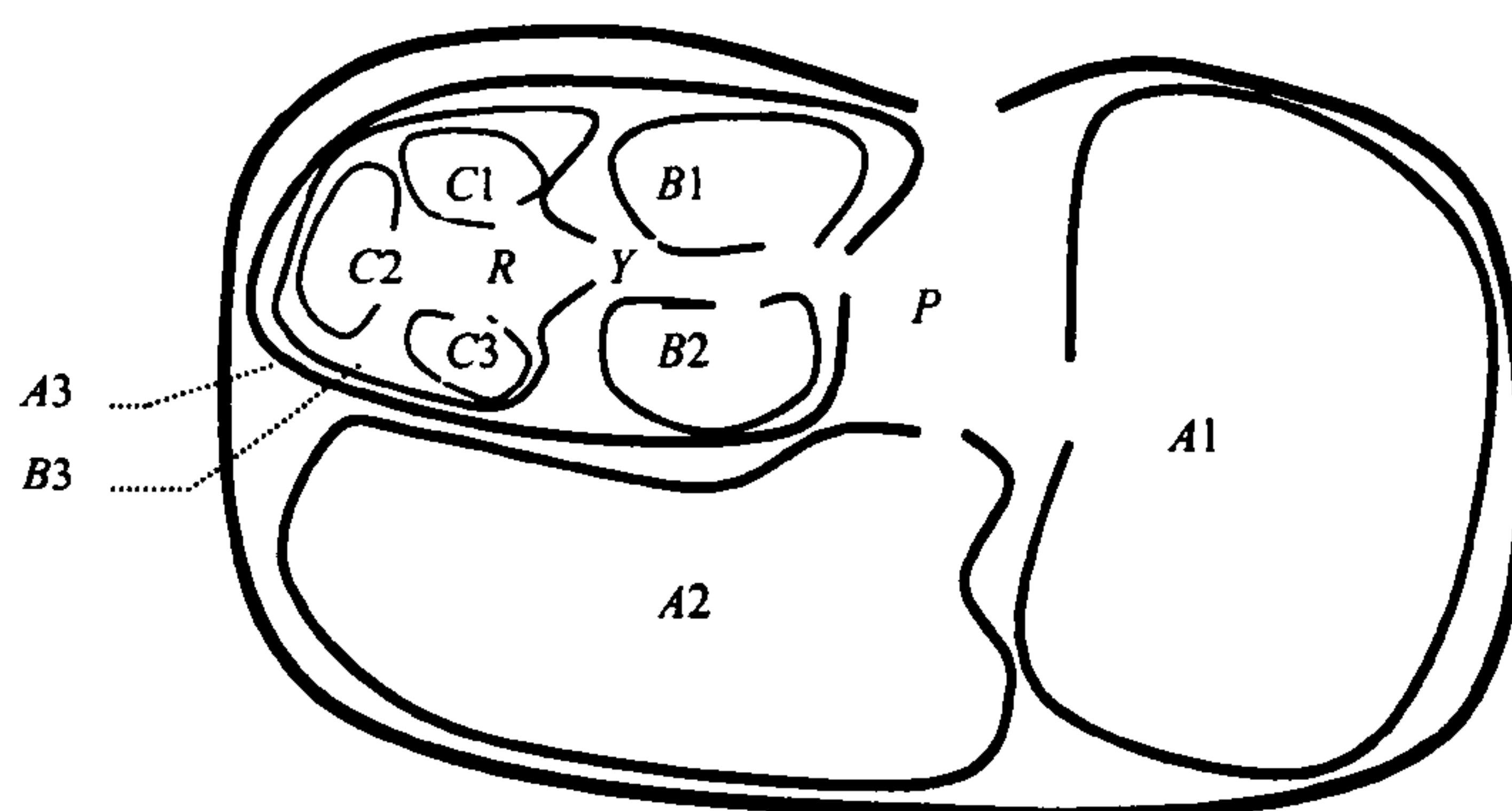
<sup>81</sup> However, Asbagh and Malik disliked building in the *fina'* in the first place but if the person did such an action, then he should not be stopped ('Ibn ar-Rami, n.d., p.299).

<sup>82</sup> In some cases, the street might be the *fina'* itself, as in case of narrow streets to which two opposite houses open, thus each house might consider half the width of the street as its *fina'*. In this case, the street is composed of the *fina'* of the two houses. However, owners of those houses cannot use their *fina'* so that they block or hinder the circulation in the street (see fig.21, al-Hathloul, 1996, p.96).

### 7.4.3 Scopes of exercitation

With reference to Dahl's "scopes" of parties<sup>83</sup>, and to Simon's "zones of acceptance" (see p.106 above), "areas of acceptance" in the acquired built environment, as used in this study, can be seen as denoting the **territorial scopes** of parties according to their power. Each territory area accepts the decisions taken by its party based on its power. The term "acceptance", as used in the acquired mode, implies a dominance relationship between parties. However, in the inherited built environment, as rights are distributed by *shari'a* to all society members, with no domination of central power, thus the term "acceptance" does not seem to fit such a context. Therefore, the term "scope of exercitation" will be used, defining the areas over which a particular party has control. Those maps of scopes of exercitation can be seen as outlining the **territorial structure** of the built environment according to the parties in control of them. Each party **exercises** its rights of control, through its actions, within this area.

To explain, fig. (7.3) demonstrates an abstract configuration of such a map. The physical layout presented here is comprised of three physical settings (*A1*, *A2*, *A3*) and a plaza (*P*) in between them. Each setting of the *As* is comprised of three physical settings (*B1*, *B2*, *B3*) and a small yard (*Y*), and each setting of *B* is comprised of three properties (*C1*, *C2*, *C3*) opening to a dead-end street (*R*). Party *C1* controls its property, the same for parties *C2* and *C3*. Party *B3*, constituted of the parties *C1*, *C2* and *C3* collectively, controls the dead-end street (*R*), whereas party *A3* (constituted of *B1*, *B2*, and *B3*) controls the yard (*Y*). Likewise, the party comprised of *A1*, *A2*, and *A3* controls the plaza (*P*). In this illustration, the scopes of exercitation of party *C1*, for example, is its own property exclusively, and, as a member of larger parties, in spaces *R* and *P*.



(Fig.7.3) Hierarchy of scopes of exercitation in the inherited built environments.

To relate this to rights structure, let us consider the case of a dead-end street. In such a case, a resident (if having the right of control, e.g. the owner) in a dead-end street controls his property which opens to that street. Moreover, he is a member of the owning-party of the dead-end street,

<sup>83</sup> "Scopes" are defined according to Dahl as the "issue-areas" or institutional activities (educational, urban planning, political, and the like) within which a party's power is **accepted** (Dahl, 1991).

constituted by all its residents thus he shares with this party all decisions concerning the process of the production of the dead-end street, determining its shape and quality, for example. Outside the dead-end street, this resident is a member in the larger party of passers-by in the next through street and so on. Each individual in the community has his own scope of exercitation.

“Scope of exercitation” maps emanate from the conjunction of parties’ general rights map and the situational rights maps where each site from the latter map is related to its controlling party. To draw such a map, the party in control of each area in the built environment has to be identified. As the party in control of an area in the built environment change throughout time, therefore scope of exercitation maps are always subject to change. For example, if the owner of a particular property in a dead-end street changes, then the scope of exercitation of this new owner change; his new scope of exercitation would include the new property he owns in the dead-end street, plus the dead-end street, as a new member in its owning-party. Accordingly, scope of exercitation maps can be attributed as **dynamic** rights structure maps.

Boundaries of scopes of exercitation are quite well defined in the inherited built environment, thus a **party** can do whatever he wishes inside his boundaries. However, if his acts trespass to other party’s scope, then rights perform as regulating mechanisms. For example, each resident in a through street is a party controlling its property; he can act as he wishes within his property. If this party establishes a ironwork shop in his house where the smoke generated reaches the passers-by, then he is touching the scope of exercitation of the passers-by in the street, then they are considered as an **affected** party whose rights, if objected, have to be respected.

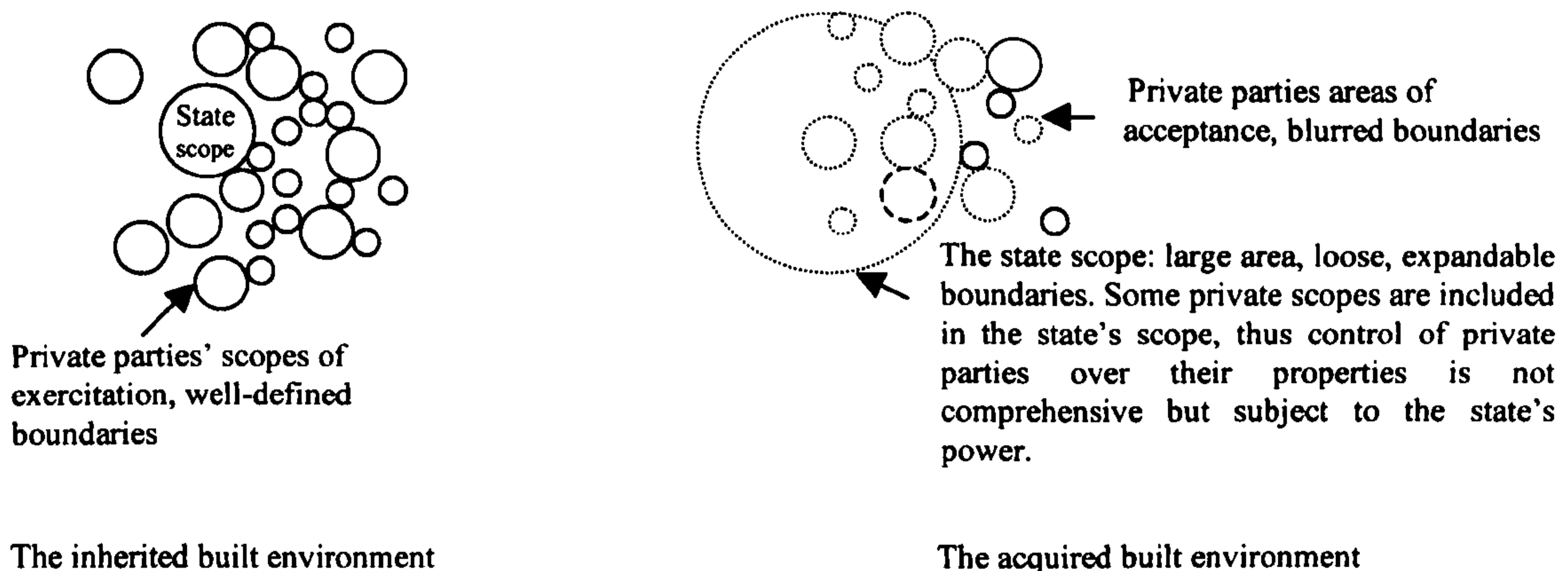
It can be noticed from documented cases that parties in the inherited built environment were aware of their scopes of exercitation, thus of their rights. Each party realised its responsibilities and the limits of rights of other parties. In one case a man (party *A*) owned an un-fenced farm in which there is a pathway owned by another person (party *B*) to reach his property at the back of the farm. The owner of the farm (*A*) wanted to fence his farm, thus disallowing party *B* to use his pathway whenever he wishes. Imam Malik ruled that this action is disallowed except with the consent of the owner of the pathway (’Ibn ar-Rami, n.d., p.598). In this case, the pathway is included in party *B*’s scope of exercitation, although exists within party *A*’s territory, thus party *A* cannot intervene in this scope without a permit from its controller. This mechanism eliminated the potential domination that might occur from party *A* over party *B* due to the location of his territory, as explained below.

Accordingly, no one party can extend its scope of exercitation without a right, i.e. no one can, unrightfully, appropriate rights on new territories, otherwise it will be an infringement act which is unlawful in Islam. In other words, there is no **inflation** of scopes in the inherited built environment, unrightfully. In that sense, the state cannot intervene in areas which are not within its scope such as private parties’ scopes of exercitation. That is, if intervening in what is not in its scope, then it will be power-based intervention and not rights-based, which is irrelevant in the inherited built environment according to *shari’a*. This in turn eliminates any potential domination that might occur between parties in the built environment.

As common spaces in the inherited built environment are controlled by passers-by, those spaces fall within the boundaries of private parties' scopes of exercitation and not of the state except in limited cases. Conversely, representing the public, the state in the acquired built environment **gives** itself the right to control public spaces, thus containing them within its area of acceptance (explained in chapter nine). However, as public spaces in the acquired built environments constitute a high ratio of spaces compared to private spaces<sup>84</sup>, the state's scopes of exercitation in the acquired mode are quite large in comparison to private parties' areas of acceptance. This is the opposite in the inherited built environment where private parties have larger scopes of exercitation in terms of the built environment than that of the state, which in turn limits the intervention of the state in the built environment in general. It can thus be said that the state in the acquired mode plays a major role in the production of the built environment whereas it is the private parties that are most significant in the production of the inherited built environments.

Moreover, as the acquired mode is based on the concept of power, as shown in the previous chapters, the state's areas of acceptance are undefined. It can through its power appropriate more territories, thus expanding its areas of acceptance, and **limiting** private parties' scopes. In short, whereas boundaries of scopes of exercitation in the inherited built environments are well-defined and cannot be changed unless through rightful acts<sup>85</sup>, it is in the acquired built environment **blurred** boundaries where the powerful (the state) can expand its scope through its exercitation of power. Thus, scopes in the acquired built environment are **inflationary** whereas they are **predetermined** in the inherited built environments (fig.7.4).

(Fig. 7.4)



<sup>84</sup> Comparing traditional built environments (ad-Dira district in Riyadh) with the contemporary planned ones (al-Malaz district in Riyadh) in some areas in Saudi Arabia, al-Hathloul (1996) reached the following conclusions: population density has dropped to the fifth in contemporary areas compared to traditional areas (60.38p/h in Malaz, 306.25p/h in ad-Dira). The area assigned for public streets has increased three times in the contemporary built environment than in the traditional built environment (area of public spaces: 45% in Malaz, 18% in ad-Dira). Private areas in traditional built environments occupied 77% of the total area, whereas it is 53% in the contemporary built environment (p.164-6).

<sup>85</sup> Such as through selling and buying properties.



#### 7.4.4 Actual power distribution maps

Analysing any case from the inherited built environment, one can deduce the power distribution structure that occurred in that case. For example, al-Wansharisi reports a case in which a man (party *A*) sold part of his house on which roof runs a gully for the other part of the house, and this was the only possible access for that gully. Later on, the new owner (party *B*) stopped the flow of water in the gully. The two parties disputed to the judge who ruled that if there is no other access for the gully except through the new owner's roof, and if the new owner knew about this gully when purchased the house, then he does not have a say about it and thus has to allow the water to flow through the gully on his roof. However, if party *B* did not know about such a gully when the house was bought, then he can cancel the sale as this is considered as a hidden defect in the house (al-Wansharisi, n.d., v.9, p.53-4). In this case, party *A* has the right to run his water on the roof of party *B* as it was there before selling that part of the house. Thus party *A* acquired power generated from this right. Therefore, if party *B* knew about the existence of such a gully, then this power prevails against the right of party *B* of controlling his property and thus stopping the water from flowing on his roof. However, if party *B* did not know about the gully when the house was bought, then the case turns to be between the new owner and the old one, then party *B* can choose either to cancel the deal of purchasing the house, in which case the right of party *B* to buy non-defected house gives him power that enables him to cancel the deal, even after he used the house for some time. The other choice for him is to keep the house and allow the water to flow on his roof. In this case the new owner (party *B*) voluntarily waived his right of cancelling the deal, and thus he has then to accept the house with the neighbour's gully on his roof, in which case the power of party *A* prevails.

Power distribution maps are power maps and not rights structures. Those maps refer to specific real interactions between immediate parties where relevant rights become actualized, thus generating power to its parties. In those maps both parties' rights and situational rights come together inseparably. Those maps and the scope of exercitation maps refer to real life, however, the former are power distribution maps while the latter is a rights structure map. Moreover, whereas scopes of exercitation map as well as situational rights map explore the structure of rights as related to a one party or to a one category of sites, power distribution maps focus on **relationships** between immediate parties involved (minimum two) in a site; they are an outline of power relationships between parties in real cases.

As the actualized rights of involved parties in any case are static, thus each actual power map as related to a one case (at a specific time and site) is static. Moreover, as each of those maps relates to a specific case in the built environment, thus each map is unique, i.e. different than the others as sites are different and thus power relationships between parties. As a result, the inherited built environment is constituted of a huge number of such maps which emerge daily, and which *shari'a* deals with in a **robust** manner, applying a **proscriptive one-to-one rights-derived mechanisms** that deal with the specificities of each case without any generalization or tendency of applying pre-stated laws, as the case in the acquired built environments. Therefore, as can be inferred from documented cases, similar cases in the inherited built environment

might have different rulings or solutions, i.e. have different power distribution maps. One can say in that respect that solutions in the inherited built environment emanate from the site and its parties, thus are **responsive** to the specificities of each case in question.

### 7.5 LEVELS BETWEEN PARTIES/PROPERTIES

In general, any built environment is a reflection of its societal and systemic structures. Societies in the acquired mode are power-based stratified societies, structured hierarchically according to the societal distribution of power, thus, the resultant acquired built environment is most likely to be a reflection of this systemic structure. It is a vertically structured built environment that is characterized by **dominance/dependence** relationships between physical properties and parties. Affirming such a hierarchical character of the built environment, Habraken (1988, 1998) states that particular “forms of dominance”<sup>86</sup> exist between elements in the built environment all through their form and territorial relationships. This domination suggests ordering the elements of the built environment into **levels**. Three forms of dominance might exist in the built environment, **first**, dominance due to **enclosure** relationships. For example, in a network of street with houses abutting them, the houses can change without any reorganization of the street network. However, the reverse is not the case. Realignment of the street network requires serious adjustment in the distribution of houses.<sup>87</sup> This relationship between the street and the buildings is an enclosure relationship where the street **encloses** the houses, territorially.<sup>88</sup> In such a situation, the enclosed physical elements can change independently within the space enclosed, but transformations of the form that encloses will require adjustment of whatever is enclosed. This physical relationship, as Habraken claims, is reflected consequently on the **parties** in control of the related elements or territories, translated into relationships of **dominance/dependence** between parties. Thus, physical elements and territories in the built environment, operating at different **levels**, are always **ordered vertically** as a direct result of their physical attributes. Parties in control of buildings are dominated by the parties of the street network (1998, p.32-33), or, put differently, the street network is on a **higher level** than the buildings abutting it. Vertical relations of parties are pre-determined by the orders of their physical properties. The party in control of the enclosure predictably dominates whatever lies within.<sup>89</sup> Thus, as Habraken declares, there is in the built environment “a **hierarchy of powers** [i.e. parties] connected through relations of form” (Habraken, 1988, p.23, 56, emphasis added).

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<sup>86</sup> Or “form imperatives”, as Habraken called them in his recent book (1998, p.98).

<sup>87</sup> For example, changing the size or level of the roads in particular neighborhood will most likely affect the enclosed houses in that neighborhood, by for example, expropriating from its setbacks, or some of houses will have to add few steps to reach the new road level, if raised or lowered.

<sup>88</sup> Similar relationships exist between the furniture and the partition walls in a room. The furniture is enclosed by the partition walls, thus the walls are of higher level than the furniture. Thus, parties in control of the walls dominate that in control of the furniture.

<sup>89</sup> “Territorial control”, as Habraken defines it, is the ability to exclude, to shut the door, selectively admitting only who and what we desire (1998, p.136).

**Second**, dominance due to **gravity**. For example, the columns and the roof in any building operate at two different levels due to the gravity of the building. As the columns carry the roof, any adjustment in the position of the columns affects the roof but the reverse is not true. The columns are said to be at a higher level than the roof. Consequently, the party controlling the lower level is dominant over that controlling the upper level (Habraken, 1998, p.96-8).

**Third**, dominance as a result of **supply** relationships. For example, the house owner must adjust his sewage distribution to the position of the main, but the reverse is not the case. Thus, in this case the party in control of the main sewage line is dominant over the party in control of the line inside the house due to its position, therefore, the two parties in control of the main line and the house operate on two different levels. The party controlling the main line (e.g. the municipality) is dominant over that controlling the house. Supply forms often assume the shape of branching structures. Water is distributed from one place to many in a **tree-like shape**. The sewage system also collects from a multitude of points to a single main, also in a tree-like shape. The tree-shape is a prime example of a dominance hierarchy. In this shape, the party in control of the trunk dominates the one in control of the branch (Habraken, 1988, p.21-2; 1998, 114).

Those forms of dominance, as Habraken avers, drive the built environment into a state of **stability**. Vertical relationships, thus, domination are a **necessary** condition for equilibrium in the site. For example, in the case of two adjacent houses controlled by two different parties, sharing a party wall between their properties, the two houses are said to be at the same level, i.e. they relate horizontally to each other. This horizontal relationship is a restless one, as Habraken describes it (1988, p.35-6). The two neighbors are connected only through the party wall, thus any unilateral actions by one side will most probably lead to a situation of **conflict** between the two parties. To relax this restless horizontal situation and push the site to a state of stability, domination is inevitable. The party wall is considered as an element by itself that is controlled by a third party consisting of the two neighboring parties as a one party, and thus operates on a higher level than the two adjacent properties. In this case, the party wall operates as a mediator between the two properties where it is related in a vertical relationship to each of the properties whereas the two properties have no relationship with each other. In other instances, the law might intervene to regulate such relationships. In this case a third external party (the state) exists on a higher level, as a mediator, thus imposing its dominance on both related parties. Seeking stability, the site avoids open and direct horizontal relations between physical settings, however, where the situation allows for horizontal relationships, forms of dominance occur to maintain stability, i.e. domination substitutes horizontal relationships (Habraken, 1988, p.37, 67; 1998, p.34). In short, potential domination that might exist between parties is capitalized in the acquired built environment through the prevalence of vertical relations of properties. Thus relationships between parties in the acquired built environment are characterized as power (dominance/dependence) relationships.

Describing horizontal relationships as restless is true in the acquired mode where the norm is domination and power hierarchy. In such a mode, horizontal relations are abnormal, thus avoided. This avoidance of horizontal relations, as Habraken asserts, constitutes the single most

important principle in the generation of the built environment, thus, it is hard to find examples of horizontal relations (with no dominance) in the acquired built environment. In short, the principle of dominance in the acquired built environment is inevitable (Habraken, 1998, p.34; 1988, p.17, 22, 65).

This phenomena of dominance orders the elements in the acquired built environment in a **hierarchical structure** where each property and thus party is related to others vertically. Parties of street network dominates those of houses, infrastructure institutions dominate house owners, parties of road network dominates agencies of the infrastructure, housing compounds agencies dominate houses occupiers, and so on. As explained, this phenomenon is a reflection of the broader societal and systemic structures that prevail in the acquired mode, however, once the built environment is produced and such hierarchical conception is accepted and solidified by its inhabitants, such process becomes reciprocal. The hierarchical structure of the built environment reinforces and sustains the broader hierarchical societal structure. It is a one whole process that is based on the concept of power, whether on its societal level or on its environmental level. This subject as related to the acquired built environment is examined more in chapter nine. But how does such a structure apply to the inherited built environment?

### IS IT DOMINATION?

Muslim societies are structured according to the rights bestowed to their individuals, groups and state by *shari'a*. Those rights are the source of power in Islam, thus no one can acquire more power than what his rights generate. Therefore, rights and thus power are **predetermined** in Islam. In that sense, no one party is absolutely more powerful than the other (except in certain interactions); no one party is on a higher level than the other. Rights organize relationships between parties, thus it is **righteous** relationships and **not power-based**. As the physical organization of the built environment invites (as Habraken explains) domination between parties, this potential domination is maximized in the acquired built environments through a centralized mode of providing services (water and sewage for example) and through rules and regulations to name a few (will be further explained in chapter nine). However, in the inherited mode, the potential dominance is minimized, if not eliminated in some cases, through rights-based mechanisms.

Vertical relationships, as Habraken declares exist between properties operating on different levels, each controlled by a **different** party, thus a relationship of domination exist between their parties, however if the two properties (e.g. enclosed and enclosing) are controlled by the same party, the potential dominance is eliminated. In the inherited built environment, as noticed from maps of rights above, most properties are controlled by the inhabitants themselves. Dead-end streets are owned and controlled by its inhabitants; through streets are also controlled by inhabitants; infrastructure (sewage canals, rainwater discharge, gullies) is created and controlled by its parties (no central authority). Thus, in a house/dead-end street relationship in the inherited built environment, the relationship between the parties controlling the house and the dead-end street minimizes the potential dominance. That is, as a member in the owning-party of the dead-end street, the individual has the right to voice his opinion, objecting to what might damage

him. Moreover, each party has its scope of exercitation where no external party can intervene in other's scope of exercitation, even the state, without a right to, thus the potential domination is much reduced if not eliminated as will be seen. In short, structures of rights (situal rights, scopes of exercitation, general rights structure) in the inherited built environment operate as a regulative mechanism to minimize, if not eliminate, potential domination between parties.

Such relationships between parties, although incline to be horizontal<sup>90</sup>, are based on dialogue between immediate parties to reach agreements regarding related properties. Those agreements, in fact, dominate the parties who established them. The built environment, in this respect, can be perceived as composed of adjacent properties of similar level in which agreements (physical solutions) composed by the involved parties dominate those parties. Self-regulating mechanisms based on rights structures operate in such situations, without any external parties' intervention as the case in the acquired built environment. Therefore, although horizontal relations prevail in the inherited built environment, dialogue between parties leads to a state of stability.

Relationships of enclosure, gravity and supply do exist between properties that are controlled by different parties in the inherited built environment. For example, in case of two houses, one enclosing the other, the party of the inner house will be, in principle, dominated. Using the tools of the acquired built environment, as Orientalists did, one might claim that such properties operate on different levels thus their parties have relationships of dominance between them. This might be true on the manifested level of the built environment, but once one investigates the imperceptible structure of the built environment that is responsible for the production of such relationships, then this concept dissolves. Levels between elements in the inherited built environment are restricted to the manifested structure and do not penetrate to the imperceptible structure to define relationships between parties. Certain imperceptible mechanisms eliminate such level differences between related parties (as will be explained). Structures of rights and other rights-based mechanisms (e.g. easement rights) set by *shari'a* reduce potential domination that might appear to exist on the manifested level in the inherited built environment.

### 7.5.1 Mechanisms of minimizing domination

#### EASEMENT RIGHTS (*HAQ AL-'IRTIFAQ*)

Due to mechanisms of revivification, a property that is revived later may block the path of other properties with the blocked property owners' consent. Moreover, due to the rights of inheritance, properties might be divided in a manner that one share might block the access of others. Thus, properties might overlap in the inherited built environment, leading to relationships of enclosure, or supply between them. In such situations, the parties of the enclosed properties have to pass through the enclosing properties, or a property might have its rainwater discharge on the adjacent property's roof or passing through its courtyard. Such relationships, **manifestly**, classify properties or physical elements in the built environment into

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<sup>90</sup> We don not actually prefer to use the term "horizontal" in describing relationships between parties in the inherited built environment, as this term has been developed to describe restless relationships in the acquired mode, however, it is used here just to clarify the concept of dominance.

different levels, thus some properties operate on higher levels than others. However, in the inherited built environment **easement rights** operate to regulate such relationships, reducing domination between parties and consequently the need for outsiders intervention that might create an authoritative power. For example, in one case two brothers subdivided a piece of land they inherited from their father in a manner such that one share (*A*) had access to the main road and the other (*B*) did not, except through the other part (fig.7.5). Later, the owner of the external part (*A*) denied his brother the right of way through his part. The judge ruled that since the external owner (*A*) did not stipulate the denial of the right of way in the subdivision deal, the internal owner (*B*) has the **right** of way through his brother's (*A*) part (al-Wansharisi, n.d., v.5, p.143). Thus, the internal **property** (*B*) has an easement right (right of way in this case) in the external **property** (*A*). According to this right the external party cannot deny the internal party the access to his property, as it is his **right**.



(fig.7.5) Before subdivision

After subdivision

Easement right, as defined by Muslim jurists, is “a **determined** benefit for one property (immovable) over another owned by a different party, such as water discharge for lands, pathways and building rising” (az-Zarqa, 1968, v.3, p.34-5).<sup>91</sup> Because the party of the servient property might become dominant merely due to its property's territorial position, thus *shari'a* determined easement right for the interest of the party of the served property. It is, as perceived by many jurists, an ownership of benefit, owned by the party of the served **property**. However, as ownership of property changes overtime, *shari'a* ties rights of servitude to properties, therefore, easement right pertains to a shared benefit between the two related properties, regardless of their owners. Thus, if either of the two parties changes, easement right continues as it is a right for the property and not for the related parties. Az-Zarqa perceives of easement right as a deducted benefit from the servient property to the advantage of the served property, thus it is a permanent right, unless it was relinquished by its owner legally, such as through conventional transaction (az-Zarqa, 1968, v.3, p.34-5).

<sup>91</sup> Abu Zahrah defined it as “the right of the defined benefit of one property over the other, regardless of the owner”. Al-Qarafi defined it as “it is the private right of personal benefit and servitude, and it is not a complete manipulation...such as the passage of a house, the gully of water, and the path of road... and he (the user) may not sell this right or give it as a gift to others” (cited in Akbar, 1988, p.208).

Easement rights perform as rights-based organizing mechanisms in the inherited built environment, where required. For example, al-Wansharisi (d. 914H.) reports a case in which a man sold part of his house on which roof the only access of his water gully runs. The new buyer stopped the flow of water in that gully. The jurist ruled that the buyer either had to allow the flow of water or cancel the sale if he did not know about the gully when purchasing the house. In this case the owner of the gully enjoys easement right as the new buyer's roof was its only access, and has been in this position before the sale, thus has also the right of precedence (al-Wansharisi, n.d., v.9, p.53-4).

In most cases, physical elements subject to easement rights such as pathways or water canals, are owned and controlled by the serving party, however, both parties share its benefit. Neither of the two parties can make any changes that affect the benefit of such elements without the consent of the other. Such elements in that sense constitute a shared property in terms of benefit only. In one case, 'Ibn al-Qasim (d. 191H.) was asked about two houses, one inside the other, in which the internal house residents have the right to pass through the external one to reach the street. The owners of the external house decided to relocate the door, and the owners of the internal house objected. 'Ibn al-Qasim answered that if the relocation is a simple one and will not harm the internal owners, they should not be restrained; but if the relocation is radical such as shifting the door to the other side of the house, then that can be prevented if the internal owners object. Moreover, the residents of the external house cannot narrow the door of the pathway if the internal party objects (Malik, n.d., v.5, p.516).<sup>92</sup> In another case, 'Asbagh (d. 225H.) was asked about a man (party *A*) who owned a property inside other people's property (party *B*). The owner of the internal land (*A*) does not pass from a specific land; he passes from different areas depending on the section which has been sowed. The owner of the internal land (*A*) decided to construct a building, however, the owners of the external lands prevented him claiming that this would harm their crops and lands. 'Asbagh answered that they cannot stop him from building in his land. Moreover, if the owners of the external lands want to wall their lands, they have to agree and develop a passageway to be used by the internal owner ('Ibn ar-Rami, n.d., p.594-5).

Eliminating any domination that might be exerted from the serving party, or from the served party as a possessor of this right, Islam has limited the easement rights to the benefit (called here the eased or served benefit) in the overlapped part to which easement right pertains (e.g. passing-by in a path or discharging rainwater in a water gully). The owner of this overlapped part has limited control over that part in terms of its eased benefit only and not absolutely, thus only actions that might hinder the eased benefit are disallowed except with the consent of the benefited party. Therefore, in the first case above, the external party could not change the location of the pathway without the consent of the benefited internal party; however, relocating the pathway in a simple manner should not be prevented, as the eased benefit is not affected

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<sup>92</sup> See also the cases reported by 'Ibn ar-Rami, n.d., p.579-580.

majorily.<sup>93</sup> This in turn gives the owner of the overlapped part some freedom of action in his property that is restricted by maintaining the eased benefit. On the other hand, the served party cannot abuse its easement right by, for example, objecting to every action of the serving party. Its easement right is framed only by the benefit eased. Accordingly, the served party cannot use the overlapped part for other purposes than the agreed upon according to his easement right (al-Fayez, 1997, p.548). For example, a man whose rain water canal passes through his neighbor's house wanted to enlarge that canal. The judge ruled that he is not allowed without the consent of the neighbor ('Ibn ar-Rami, n.d., p.411). Moreover, the serving party has no right to intervene in the served party's matters that do not relate to the eased benefit. Thus, in the second example above, the external party could not stop the internal party from constructing a building, as this action is out of the circle of the easement right, the subject of their relationship. In that sense, neither the serving party can exercise domination as a result of his property position, nor the benefited party can abuse its easement rights bestowed by *shari'a*.

Moreover, benefiting from the overlapped element (the subject of easement) is restricted to the purpose of the easement right, for example, as a passageway, or as a rainwater-discharge, and alike. For example, two houses, one's passageway is through the other. The owners of the internal house subdivided their property and wanted to create another door that opens to the passageway. The judge ruled that the external party has the right to stop them, however, they cannot stop the subdivision ('Ibn ar-Rami, n.d., p.554-5). That is, opening new doors to serve the new subdivided part that opens onto the passageway means creating new easement rights for new parties which is not allowed without the consent of the owner of the passageway. Thus, easement rights are confined to their defined purposes and cannot be extended without the consent of affected parties.

Establishing new easement rights require the approval of the owner of the servient property. To facilitate the production process of the built environment, physical elements attached to such new easement rights, as all jurists agree, can be granted, sold, or leased. The owner of a property can sell part of his property to his neighbour to be used as a passage; or a person can rent a place from his neighbour through which his water canal runs. An-Nawawi states, for example that "no one can run his water duct on his neighbour's house without the latter's approval; however, if they agreed to compensate him (the neighbour), then it is allowed, provided that the roof on which the duct will run is defined". He added, "if a man agreed with another to buy the position of a water canal that passes through the latter's land, then the position and dimensions of the water canal should be specified and **agreed** upon as this is a deal for selling part of the land." The owner also can lease that piece of land, but they have then to specify the lease duration (an-Nawawi, n.d./a, v.13, p. 84-5). The easement right, thus, is primarily an **binding agreement** between the two related parties, and which operates on a higher level than the two related properties (served and servient).

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<sup>93</sup> A few jurists disallowed relocating the pathway even if for a yard, except with the approval of the served party (see 'Ibn ar-Rami, n.d., p.579-584).



In short, relationships between properties and parties in the inherited built environment, even if horizontal, were stabilised through mechanisms of easement rights. Easement rights possessed by one party (the served) **balance** the hegemony that the other party (the serving) might enjoy due to his property's position. Easement rights in that respect drive related parties to dialogue to reach agreement regarding their related properties. In conclusion, unlike the case in the acquired mode that allow for capitalization of potential domination in the built environment, rights-based mechanisms (e.g. easement rights) in the inherited built environment decrease, if not eliminate, any potential domination that might exist between parties as a result of their properties relationships. In other words, stability in the inherited built environment is sought through mechanisms based on **rights** (of parties and properties) and not on domination and exercitation of power between parties of different properties as the case in the acquired built environment.

## 7.6 CONCLUSION

As this chapter ascertained, rights are distributed in the inherited built environment according to well defined, determined, structures, whether in terms of physical settings or in terms of parties. Such structures of rights perform as the main driving mechanisms in the production of the inherited built environment. Each party in the Muslim society acts within its circle of rights while respecting other parties' circles of rights. Any infringement on others' circles is considered as unlawful, thus controlled by different self-referential, rights-based mechanisms.

This definition of structures of rights sustains the idea, introduced above, that there is no inflation of resources in the inherited mode, thus **no lust for power**. Power in the inherited mode is **confined** to those determined structures of rights, when actualized, thus there is no possibility to gain more power than what *shari'a* has determined.

Reflecting such structures of rights, unlike in the acquired mode, the state's role in the inherited built environment is confined to its circle of rights, thus, quite limited. It cannot intervene in territories or properties that are not included in its scopes of exercitation, thus its role in the production process of the inherited built environment is restrained. On the contrary, the state in the acquired mode, based on its power, gives itself the right to intervene in most properties in the built environment, thus has some degree of control over them (as explained in chapter nine). Two dissented conceptions of the state, thus two different effects on the production of their respective built environments. This and other related **dissensions** are discussed in the next chapter.

## **Chapter Eight**

**Power vs. Rights**  
dissensions

## 8.1 INTRODUCTION

Different in their bases, several **dissensions** exist between the acquired and the inherited modes and, consequently, their built environments. Those dissensions range from conceptual dissensions to practical dissensions in terms of mechanisms of operation. Such dissensions denote incompatibility between the two modes. Accordingly, the coexistence between the two modes in the contemporary Arab Muslim world, loaded with such substantial systemic dissensions, leads (is leading) to internal systemic contradiction that is reflected, in turn, on the built environment. This chapter shows some of those dissensions, or points of tension between the power-based acquired mode and the rights-based inherited mode.

## 8.2 QUANTITATIVITY OF POWER

Power in its modern concept is quantitative. Three concepts of the quantitativity of power can be deduced from modern writings about power: first, power is quantitatively fixed; second, it is aggregative and cumulative; and third, power is quantitatively comparable. The first two concepts are discussed next while the third is discussed in section (8.2.2).

First, power is quantitatively fixed.

Power is “a facility for getting what one group, the holder of power, wants by preventing another group from getting what it wants”  
(Parsons rephrasing Mills, cited in Open University, 1975, p.59)

Power is often characterized as following what Parsons, in his criticism<sup>1</sup> of the “traditional” visions of power, called a “zero-sum” model. This model (as opposed to a “variable sum” model) signifies that when some win others lose (Giddens, 1995b, p.199). Put differently, according to this model, power is something that *A* has over *B*, such that if *A* gains power, *B* correspondingly loses (Marshall, 1994, p.413).<sup>2</sup>

$$PA + PB = n$$

(*PA*, *PB*: power of *A*, *B* respectively)

(*n* is a fixed quantity)

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<sup>1</sup> In his criticism of Mills' theory in “The power elite”.

<sup>2</sup> Arguing with a “variable-sum” model of power, Parsons does not reject the quantitativity of power. In his model, he made an analogy between power and money, that is, as money  $X + Y$  might come to be more than their pure sum because of interest, so with power. Both models of power (zero-sum and variable-sum) are quantitative. The difference is in how to measure power.

Parsons, in criticizing the “zero-sum” model, departed from the “variable-sum” or “non-constant sum” model which he argued with. This latter model is quantitative; it stands for power that has an expandable value which increases and, in certain cases, decreases.<sup>3</sup> That is,

$$PA + PB \neq n \quad (n \text{ is a fixed quantity})$$

Second, power is aggregative and cumulative.<sup>4</sup>

“in unity there is strength”

(An old maxim, cited in Wrong, 1979, p.243)

Put symbolically, the power of *A* and *B* together is greater than the power of *A* and/or that of *B* separately:

$$P(A+B) > PA \text{ or } PB \quad (PA, PB: \text{ power of } A, B \text{ respectively})$$

or 
$$P(A+B) \text{ (collectively)} > PA+PB \quad (\text{when } PA \text{ and } PB \text{ are separate})$$

Arguing with this concept of **collective power**, Hobbes declares that if diverse particular powers are combined, they form a power greater than any one of them. For him, the power of the sovereign is greater than the power of any single subject or group of subjects, since it combines the powers of all of them (Hindess, 1996, p.14-15). Likewise, the pluralists hold that the collective power of **organized** and **solidary**<sup>5</sup> groups controlling the aggregated resources of individuals is capable of achieving goals far beyond the capacities of individuals. It is more enduring and superior to the power of **unorganized** aggregates of people as well as to that of the most powerful individuals (Wrong, 1979, p.243).

### 8.2.1 Mobilization of power

Two types of resources can be distinguished in the processes of generating collective power. First, **human** resources, and second, **material** resources.

#### 8.2.1.1 MOBILIZATION OF HUMAN RESOURCES (collective power)

Power is never the property of an individual; it belongs to a group and remains in exercise only as long as the group keeps together.

(Arendt, cited in Wrong, 1979, p.144)

In the modern concept of power, collective **human** resources are seen as more significant than individual resources. Wrong described this as “sociological commonplaces” (1979, p.144). Collective power is produced by a process of human **mobilization** of individuals and their

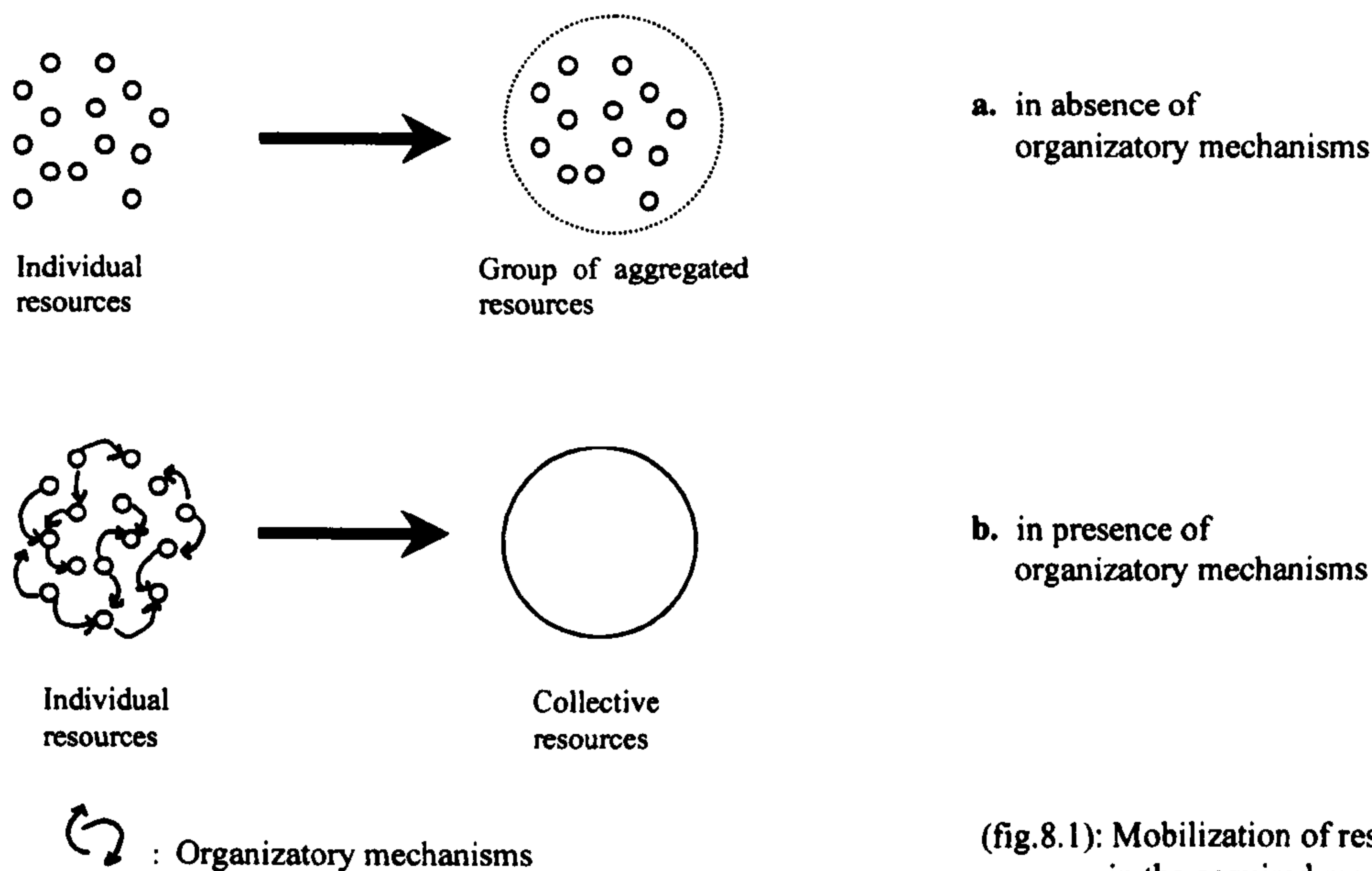
<sup>3</sup> In his “variable-sum” model, Parsons asserted that collective power (power of society) is, in most cases, greater than that of its aggregates (in unity there is strength). Stressing the expandable character of power, he marginalized, even in the analogy he drew with money, the situations in which collective power is less than that of the individuals who make up the collectivity.

<sup>4</sup> Aggregative denotes having the tendency to collect aggregates into wholes or particles into masses. Cumulative means increasing in quantity and effect by additions.

<sup>5</sup> “Solidarity”, as Dahl defined it, is “the capacity of a member of one segment of society to evoke support from others who identify him as like themselves because of similarities in occupation, social standing, religion, ethnic origin, or racial stock” (Dahl, cited in Wrong, 1979, p.133).

resources. The creation and maintenance of collective resources is a central concern of sociological and political studies, where the question of “who get **mobilized**?” is a crucial one.

In this process, individuals sharing common interests or values are mobilized, and their resources, consequently, are aggregated.<sup>6</sup> In this sense, as Wrong proclaims, the **size** of the group in terms of the number of its members might become an important collective resource. That is, mobilization of more resources possessed by members of the group means inflation of collective resources, thus more collective power. However, mobilization of aggregated resources provides the group with no more than a potentiality for having power (Wrong, 1979, p.130-142). Producing and maintaining collective power require pertinacious and redintegrative (according to changes in circumstances) **mechanisms of organization** that operate within the process of mobilization. Those mechanisms, directed towards coordinating the activities of the group’s members and their resources, make possible the mobilization of the aggregated resources into collective resources which in turn generate collective power. In other words, the old maxim “in unity there is strength” works only in the presence of organizatory mechanisms that bring this unity into effect (fig.8.1). Part of this organization task is to keep the group united around particular interests and not facing internal divisions. In that respect, “unity is very, very important, collective action is absolutely decisive”<sup>7</sup> (cited in Flyvbjerg, 1998a, p.63).



(fig.8.1): Mobilization of resources in the acquired mode.

<sup>6</sup> In recent literature, one can distinguish three types of theories of mobilization: first, that of pluralists who assume that mobilization is a cost free process. Second, rational choice theory which focuses on the barriers to mobilization, and third, the radical literature perspective centred on the less advantaged groups or collectivities. As Henig (one of its theorists) argue, the unlikeliness of political success forces the marginalized and the powerless people to resign themselves to the status quo rather than to mobiliz (Gottdiener, 1987, p.262-3).

<sup>7</sup> This is a saying of the Chairman of the Chamber of Industry and Commerce’s City Centre Committee in the planing project of Aalborg, Denmark (cited in Flyvbjerg, 1998a, p.63).

According to modern concepts of power, this organizatory mechanism does not exist on the level of society at large, or on the level of groups and organizations. Each group has to establish its own organizatory mechanisms in order to produce power, while between groups, the law, in some cases, organizes relationships. For example, if an environmental problem or need occurs, such as creating a new street, then an organization<sup>8</sup> is to be established to construct that street. As this case lies within the area of acceptance of the higher authorities (government), thus to facilitate the mission of this organization, certain internal **rules** will be enacted which will in turn provide this organization with the needed power to be exercised over (domination) other parties. This organization will be, within its scopes, more superior than some other parties. In such situations, the process of establishing and maintaining such organizatory mechanisms is highly costly for society; it **depletes** some of the society's resources (time, efforts, financial resources, etc.). It might, as Weber implied, end up in bureaucratic structures that do not advance the group's common goals (Weber, 1978).

Accordingly, in the acquired mode, two kinds of power can be distinguished in terms of the scopes of their exercitation: **external** power and **internal** power. Organized groups are perceived of as exercising **power over** non-members in a process of exercising **power to** achieve their collective goals. This type of power is called here external power, as it is exercised over external (non-member) parties. However, in the process of the internal organization (systematization), the group itself develops an internal power structure, directing the activities of its own members. Internal organization comprises a presence of leadership, vertical hierarchy or power structure, and rules governing interactions between members and between members and outsiders (non-members). In other words, power is exercised internally over members of group in a form of **domination**. This type of power is called here internal power. This might be seen as leaders of the group exercising their legitimate authority, based on consensus, over subordinate members, i.e. consensual form of power (as in the Parsonian school). However, as Wrong stated, the notion of "collective goal" need not carry the implication that such a goal is necessarily established by consensus among the members of the group organized to achieve it. Some groups are held together by fear or material incentives, i.e. by coercive or inducement. Consequently, organized groups are themselves arenas in which individuals and subgroups engage in conflicts, just as the groups themselves contend for power in the larger society (Wrong, 1979, p.139). Accordingly, we can say that the acquired mode, whether perceived as centralized or plural, is based on exercitation of power (internal and external power) that embodies the notion of **domination**.

Collectivity in the acquired mode, based on the zero-sum model, implies more power than that of the aggregates and of some other parties, thus **asymmetrical distribution of resources**. This

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<sup>8</sup> Organization here does not necessarily signify an identified entity in the sense of an institution such as municipalities, but it is a group of individuals forming one party that has certain collective goal(s) and working to achieve that goal. In the example above, this is a government-based organization which might comprise members from different institutions (e.g. it might comprise employees from the municipality and others as private contractors).

in turn implies **domination** over other parties; achievements for some parties (the collectivity) on the account of others, which might be, in certain cases, destructive to those other parties. In that sense, collectivities operate in many cases as pressure groups that tend to affect decision-making processes according to their own interests. For example, in planning activities many collectivities use their power to affect the decision-making process, however, decision-makers cannot respond to all parties' conflicting interests, thus, in most cases, the interests of the more powerful groups or the more pressing or effective (e.g. more effective politically, for example in the next political elections of city council or so) are respected. Stone has noticed this fact in his analysis of an urban renewal project in the city of Atlanta. He found that local government was biased against the poor and in favour of organized interests from the business community (cited in Gottdiener, 1987, p.144).<sup>9</sup> The same conclusion was made by Flyvbjerg in his analysis of re-planning the city centre of Aalborg<sup>10</sup> (Flyvbjerg, 1998a).

Demonstrating the effect of collectivities as pressure groups in the planning decision making process, Flyvbjerg explains that in later stages of the project of Aalborg, when it was decided to involve the public in the project,<sup>11</sup> many collective groups took part in the planning process such as Danish Cyclist Federation, Neighbourhood Associations, Aalborg Chamber of Industry and Commerce (representing local shops, industrial enterprises, banks, and other businesses). Some individual citizens (aggregates, mainly shopkeepers) participated in the project, however, their objections and ideas were not considered seriously (Flyvbjerg, 1998a, p.54-57) as such **aggregates** are of **less power** compared to other pressure or influential (organized) groups in the project. Moreover, in this project, the Chamber of Industry and Commerce representing influential parties (politically and economically) had more pressure and power on the decision-making process throughout the project than other private collectivities such as Neighbourhood Associations whose demands were in most cases ignored (1998a, p.61). However, this Chamber worked for the interest of the business community as a whole, i.e. to a public interest and not to its members' specific interest, individually. In other words, within the collectivity, individual interests lapse. For example, one shopkeeper objected that executing the Aalborg proposal would cause damage to his newly renovated shop because of the vibration of the increased number of buses in the city centre. The main issue the Chamber was fighting for was not this buss issue but other issues (the lifting of restrictions and the permission of private cars into the

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<sup>9</sup> In that respect, Stone states that this outcome is caused by the operation of city bureaucracy and not as a result of some alleged concordance of interests between local officials and business (Gottdiener, 1987, p.144).

<sup>10</sup> The Aalborg project is an award-winning project, recommended by the Organization for Economic Cooperation and Development as a model for international adoption, on how to integrate environmental and social concerns into city politics and planning, including how to deal with the car in the city. In 1995, triumphing over 300 nominees, this project has been awarded the "European Planning Prize" by the European Union in Brussels. It was awarded this prize for developing what the jury viewed as an innovative, democratic urban policy and planning with particular emphasis on the involvement of citizens and interests groups (Flyvbjerg, 1998a, p.9, p.237).

<sup>11</sup> In the earlier stages of the Aalborg project, public participation was not even thought of. In later stages, the public were involved in a very limited informative manner (Flyvbjerg, 1998a, p.54-7).

centre) that, as the Chamber **assumed**, would benefit the public interest. Put differently, the Chamber (as a collectivity) assumed a public interest and performed to fulfil it, regardless of its members' interests.<sup>12</sup> Hence, each collectivity, or power, in the acquired mode has its own rationality but in the end the more powerful formulates its rationality as being the truth and works to accomplish it. In that sense, planning activities imply domination of some interests over others, thus asymmetrical distribution of benefits.

Acknowledging the human nature of "lusting for power", and as collectivities are more powerful than their aggregates, thus this notion of collectivities has become widely advocated and employed in capitalist societies leading to **pluralist** societies. Eventually, this attitude transforms society into a segmented **mosaic society** where individuals find themselves weak if not belonging to particular collectivity(ies) that, when necessary, perform as pressure groups.

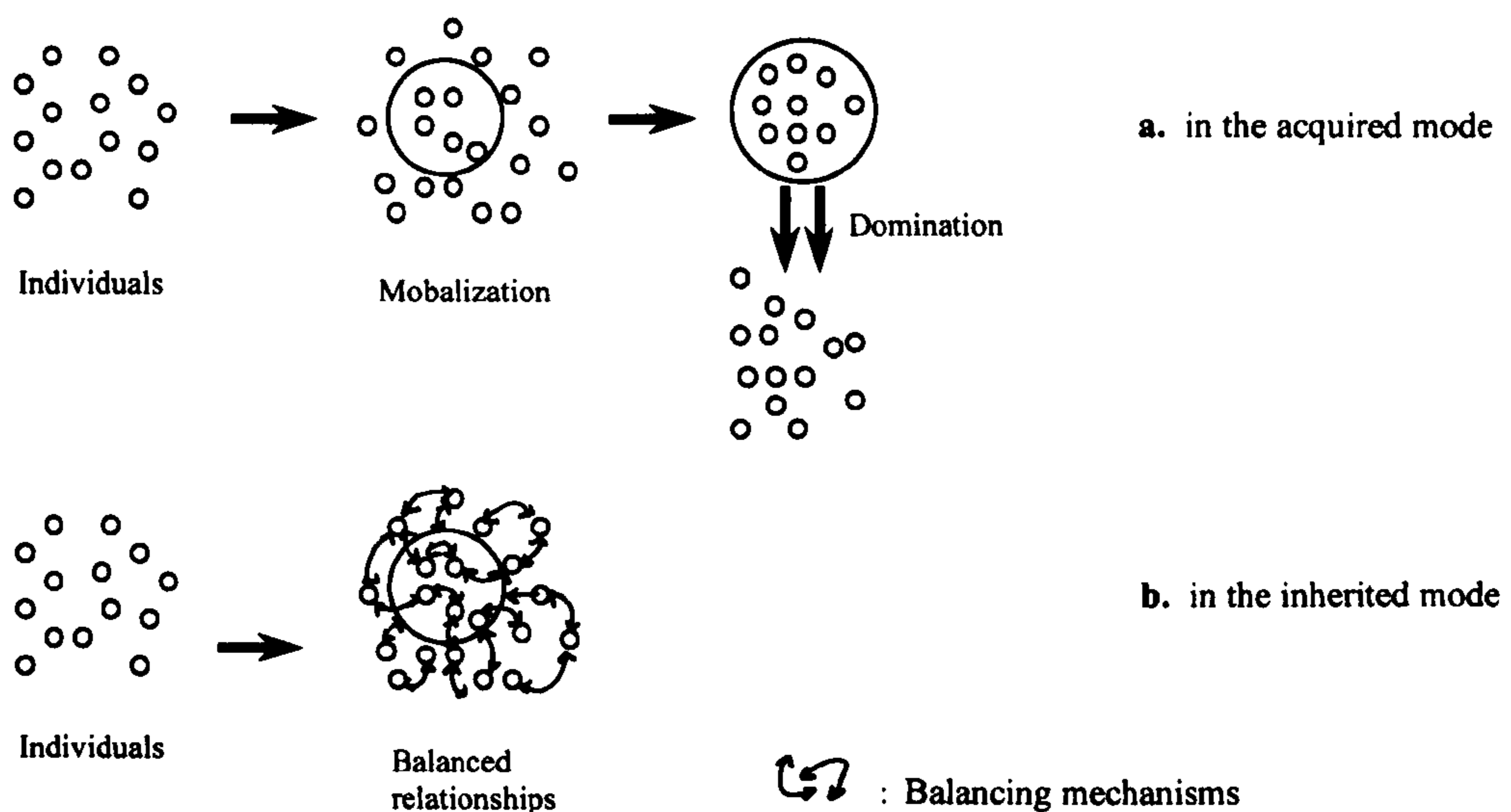
Although in the inherited mode, the concept of collective power ("in unity there is strength") to achieve outcomes **does exist**, yet, this notion in Muslim societies is not influential as it is in the acquired mode. The reason is that, in principle, the size of the party in the inherited mode, whether comprised of an individual or group (institution), **does not affect** the legitimacy and strength of its power (as shown in previous chapters). Rights structures are the **determinant** of power distribution in any interaction, regardless of the size or nature of the parties involved (i.e. whether individual or collectivity). That is, as power in Islam is derived from rights, thus as long as the actualized rights of a party, in any specific case where it is exercised (actualized), is legitimate according to the Islamic legal system (*shari'a*), then it is **indefeasible**, even if it is opposed by another party (that might be reputed, in modern concepts, as a greater power (e.g. state or sovereign)) which controls more effective resources. For example, in one case the caliph Yazid (d.64H/683AD) wanted to widen a stream which reaches his land through peasants' lands (known as Yazid river). However, the peasants did not allow him to do so. Caliph Yazid could not force his action on them using his position as a resource of power. Power in such cases is definite. Agreement was reached as a result of the two parties' dialogue in which the caliph pays the peasants' lands tax for a year in return of widening the stream in their lands ('Ibn 'Asaker, 1979, v.1, p.245-6). In this case, the power (according to the acquired mode) of the caliph did not give him the legitimacy to complete his action. This power is not based on a right, thus it is not a legitimate power according to *shari'a*. That is, the caliph's action exceeded his scope and trespassed into the scope of exercitation of the peasants.

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<sup>12</sup> In this case of Aalborg project, the Chamber objected to the municipality planning proposal and worked to present a counterplan. The Chamber Committee responsible for this alternative plan set its goals according to its **assumed** business community interests, where these assumed interests were opposing the municipality's proposal. In a later stage of their work on the counterplan, the Chamber Committee discovered that most of the business community were with the municipality's plan as it nourishes the business in the city centre. Thus, in this stage, the Committee discovered that its assumed public interest contradicts with the real public interests. This in turn led to internal divisions in the Chamber Committee. The Steering Committee as the upper hand in the Committee decided to ignore these divisions and majority opinions and interests and to show the outside a united front, thus its vision of the project dominated, i.e. tactics were prioritized over consensus. In short, as Flyvbjerg put it, the "rationalization" of the powerful dominates (Flyvbjerg, 1998a, p.61-67).



In the inherited mode, legitimate resources that, when employed (exercised), generate power are rights. In such cases, legitimate rights are considered the greater power; thus all other powers (even that of the state) opposing it are considered, relatively, of less strength. Therefore, collectivities in the inherited built environment do not mean more power. Collectivities imply larger scope of exercitation for the collectivity, however, such large scope does not necessarily denote greater power. As rights distribution in the inherited mode is determined according to rights structures, thus if it infringes on other small party's (individual) scope of exercitation, then such action has to be stopped. In that sense, collectivities in the inherited mode are treated on equal bases according to the structures of rights. In short, in the inherited mode there is no superiority for collective power (i.e. party comprised of group, to use the term of the acquired mode) over the power of an individual as a party in any interaction, even for the common interest (as explained in the previous chapter). The determinant factor in relationships between parties in the inherited mode is the rights-based pondering (balancing) mechanisms and not the superior power as the case in the acquired mode (fig.8.2).

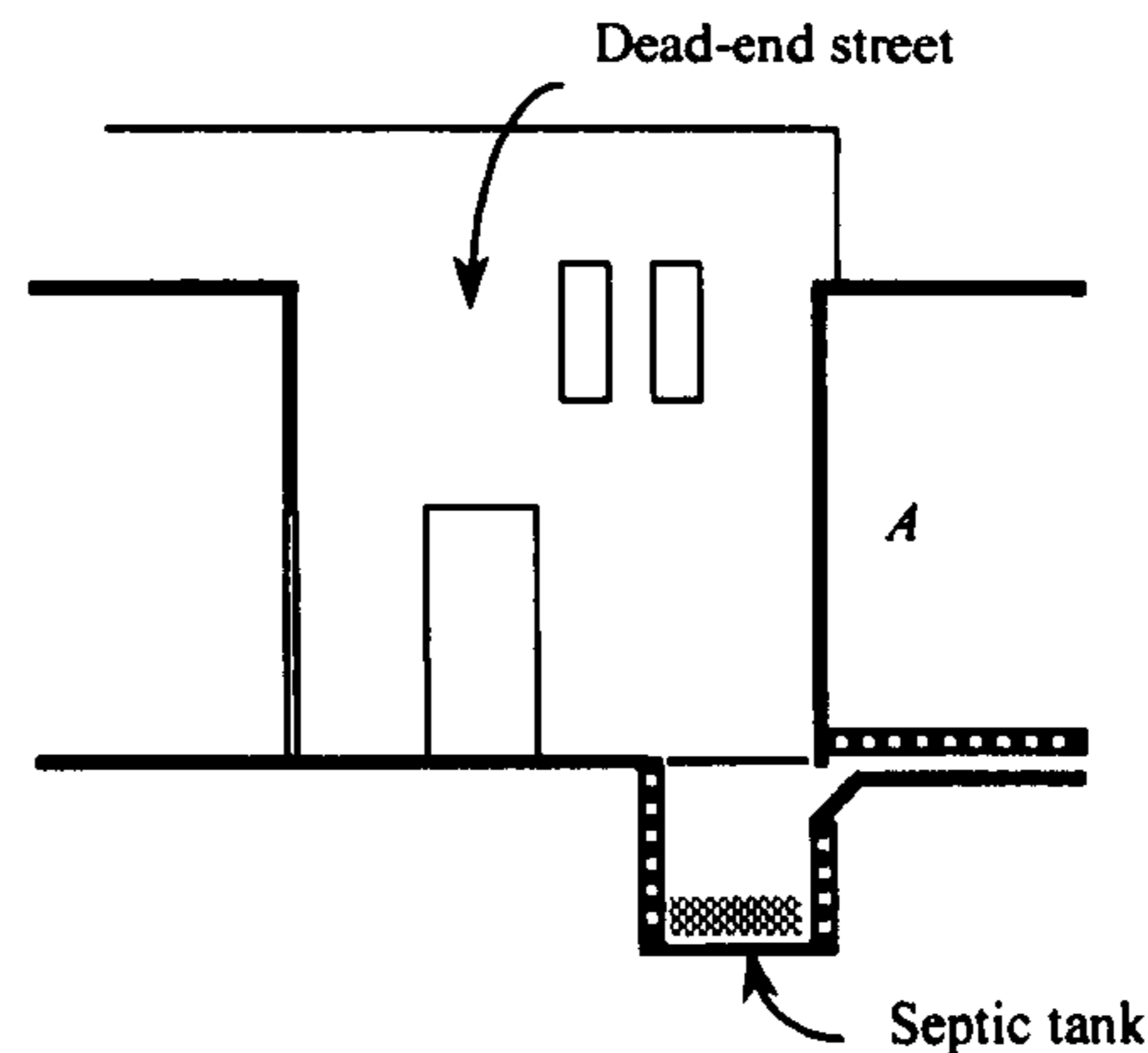


(fig.8.2): Mobilization of resources

As power resources in Islam are rights, thus mobilization in the inherited built environment does not mean mobilization of such resources. Each party in Islam has its own distinct rights according to structures of rights. Rights of the collectivity are not equal to the sum of the rights of its members. The mobilized group becomes a party that has its own rights, distinct from the sum of the rights of its members. For example, the dead-end street party is not perceived in the inherited built environment as a collective party which rights are derived from the sum of the rights of its members but as a party that enjoys the situational rights of its dead-end street. The group in the inherited mode is dealt with as a party and not as aggregates of parties, all pooling their resources (rights) in the larger group. In short, mobilization processes and collectivities in the inherited mode do not follow a quantitative method as the case in the acquired mode.

Rights in the inherited built environment operate as **self-organizational mechanisms**. Those are ubiquitous mechanisms that always exist even in unprecedented situations. They operate in mobilizing the aggregated **actions** of parties into collective coordinated actions. That is, as resources denote rights according to Islam, thus mobilization in the inherited mode is for **actions** and not resources. It is a **utilization** of human resources to achieve outcomes without any intermediate (higher) party (e.g. the state), as in the case of fulfilling collective environmental tasks (as explained below). The existence and operation of collectivities in Islam is framed and directed by *shari'a* towards beneficial gains without harming others. It is mobilization for beneficial purposes and cannot in any case be destructive. Otherwise those (supposedly) destructed parties, through their rights, oppose such a collectivity. For example, there exist in Muslim societies group parties in the form of collectivities such as parties controlling dead-end streets, thus keeping-up those streets, such as cleaning and maintaining them, is the responsibility of its controlling party (inhabitants). In that sense, human resources were utilized to accomplish the built environment's main tasks. Minimizing burden on society, such tasks were distributed between residents in the inherited built environments. In short, collectivities in their modern sense are not legally forbidden in the inherited mode (if not contradicting *shari'a*) but are not common as their logic, according to the acquired mode (lust for power), does not resonate with the logic of the inherited mode and its built environment.

Today, Neighbourhood Associations in the acquired mode might seem to resemble these dead-end street collectivities. Dead-end street collectivities were the decision-makers in their areas, whereas Neighbourhood Associations today are no more than pressure groups that, through mobilization into collectivities, obtain more power than if aggregated. Thus they are not the decision-makers in their areas. Moreover, such collectivities in the inherited mode are legitimate collectivities that have certain rights according to *shari'a*, however, collectivities in the acquired mode seek legitimation from the higher authorities, which might not even have any value at certain times. Moreover, the **size** of the collective party (or the number of individuals composing a party) in the dead-end street (as an example of such collectivities in the inherited mode) does not affect the power of such a collectivity. Its rights are determined by *shari'a* according to the rights distribution maps, where enlargement of the collectivity size does not lead to **inflation** of resources, and thus to more power. For example, in one case from the inherited built environment, one house owned by a neighbour (*A*) was abutting a dead end street but had no access to it (fig.8.3). This neighbour (*A*) had a small, covered, long unused septic tank within the dead-end street, and he wanted to use it again. The owners of the dead-end street objected. However, they could not prevent him from his action as it was of his rights to use the septic tank, as it possessed the right of precedence (al-Wansharisi, v.9, p.32). In this case, the collective party, as a result of its nature as a collectivity, could not enjoy more power than the opposing individual party. In any case, each party, regardless of its size and nature (i.e. collectivity or individual party), has its own rights that generate power when actualized, thus, in general, collectivities in the inherited mode are considered as a one party regardless of its size. In short, unlike its counterpart in the acquired mode, power (actualized rights), according to its conception in the inherited mode, is not a quantitative notion.



(fig 8.3)

Such collective parties in the inherited mode operate according to their rights. However, outside the realm of the collectivity, each member within the collective party, such as the dead-end street residents, constitutes a party in itself that has its own rights and thus scope of exercitation. However, as documented cases reveal, there are no posited, imposed, hierarchical, organizational relationships between inner (aggregated) parties within such collectivities, i.e. no **internal power** but rights-based self-organizatory mechanisms, thus, no domination of one individual party over another.<sup>13</sup> For example, in one case a man (party *A*) owned all the houses on a dead-end street except for a one house owned by another person (party *B*). The owner of the houses (*A*) built a gate on the mouth of the dead-end street. Party *B* objected. The judge ruled that the gate should be demolished (al-Wansharisi, n.d., v.9, p.7). In this case, the collective party controlling the dead-end street consisted of two residents, where party *A* controls more properties than party *B*. Nevertheless, party *A* does not have more power than party *B* in that specific case, as the control of the dead-end street is shared by the two parties (*A* and *B*) as a one collective party (*C*). Thereby, internal organization of the collective party of the dead-end street was based on rights between parties. In that respect, based on the structures of rights, domination is absent within collectivities in the inherited built environment.

Moreover, Islam tends to reduce the environmental tasks that need collective efforts to the minimum, fulfilling these tasks through parties contributions and **cooperation** (not agglomeration), employing self-organizing mechanisms derived from rights, without a need to establish institutions (e.g. state organizations, municipalities) for such tasks as the case in the acquired mode. Certain principles were developed throughout time regarding the shared responsibilities towards public objects in the city that are of benefit to the entire community

<sup>13</sup> Although the form of 'power-over' is not the general common form of power in Muslim societies, nevertheless, it might be found in **internal power** relationships within groups. For example, it might be found in power relationships between employers and their employees, or between a tenant and the owner or controller of the property. In that latter case, the tenant is subject to instructions and rules set up by the party who controls that tenancy. However, these power-over relationships are not unrestricted. They are framed by the general Islamic legal system (*shari'a*), and directed towards achieving certain outcomes. This type of power relationship is often based on consensus (e.g. leasing) or material incentives (e.g. job contracts) between parties.

(Akbar, 1992, p.402-5; 1988, p.173-7). In cases of **cruciality**<sup>14</sup> (e.g. external threat on the city where its walls are weak), preserving major public elements is the responsibility of all city inhabitants. In 792H./1390AD. the inhabitants of Aleppo reconstructed their city wall (Lapidus, 1967, p.64).<sup>15</sup> However, in cases of non-crucial but **needed** tasks that are of common interest, provided they are distributable tasks, such as lighting the city and fire protection, such tasks were distributed among concerned parties. In 383H./993AD., shopkeepers in Cairo were ordered to have ready a water bucket as a precaution against fire. Making such tasks obligatory were usually part of the *muhtasib* role (Ziyadah, 1962, p.135-6). Moreover, as documented cases reveal, it was a common practice for shop owners to clean and water the spaces in front of their shops (al-Wansharisi, n.d., v.6, p.420).<sup>16</sup> In general, each party in the inherited built environment is responsible for its actions' consequences. In one case in Qairawan, Tunisia, washing water was discharged from some houses to the street through small holes under the doors. When informed about it, the judge of Qairawan announced that whoever did not stop the flow of water would be punished ('Ibn ar-Rami, n.d., p.439).

Those mechanisms can actually be applied to the acquired built environment today. However they need a decentralised mechanisms to sustain them, i.e. without the intervention of the state as the provider of most main utilities (e.g. electricity, water). For example, one can think of lightning each street by its street residents. Each property owner is responsible of the area abutting his property. Thus, this task is distributed on the residents and not outsider controlling authority. But what about non-inhabited streets such as external highways, or streets adjacent to owned but not utilized lands, and who decides what type of lighting each street should have? Those issues will be clarified in chapter nine below.

Similarly, in the acquired mode, the task of discharging rainwater is the responsibility of certain institutions (whether private and/or public) that are entitled some power to fulfil such a task. In the inherited mode, such problems are distributed, through self-organizational mechanisms, between parties without the intervention of the higher authority as a mediator in coordinating actions of parties. Accordingly, and as most properties in the inherited built environments are privately owned, thus most of the environmental tasks are the responsibility of the inhabitants to accomplish. In that sense, if we look at the built environment as territorially divided according to the rights of each physical territory, i.e. in terms of territorial rights structures (map of rights

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<sup>14</sup> In Islam purposes of actions are divided into three categories, according to the degree of their need: crucial, needed and improvement (ash-Shatibi, v.2, p.17-23).

<sup>15</sup> Al-'Abdousi was asked about the cost of reconstructing the city wall in Fez, he answered that it should take priority over other tasks from the *waqfs* of the city. Al-Barzali from Tunis (d.844), ruled that, in case there is no *waqfs* for the city wall, citizens should participate by paying for the renovation of the city wall in proportion to their property values (al-Wansharisi, v.5, p.351).

<sup>16</sup> Al-Lakhmi (d.478/1085) was asked about the mud near waste water, he answered that each **group of people** should remove the mud in front of their spaces (al-Wansharisi, n.d., v.6, p.420-1). Note here that al-Lakhmi put the responsibility of such a task on parties concerned in the site and not on any external parties such as higher authorities as the case in the acquired mode.

of every physical setting)<sup>17</sup>, then those territorial rights structures can be translated into a map of responsibility distribution in the built environment. As state properties are quite limited in the inherited built environment (see p.132 above), the state in this map has a very limited scope. Thereby, the state's role in the production process of the inherited built environment is very limited.<sup>18</sup> In this territorial map, each party is responsible for his property and its *fina'*, however, for those areas and tasks that are not included within parties' direct responsibilities, such as maintaining the city walls, the residents cooperate to fulfil them. For example, discharging rainwater is distributed into smaller manageable problems placed in the hands of residents through the right of *masil al-ma'* or rain-water **easement rights**.<sup>19</sup> Each property is responsible for discharging its rainwater through others' properties through small channels on roof terraces of others, depending on its rights acquired by precedent or through agreements reached through dialogue between related parties. Some of those channels may join to form larger ones if the residents agree. The size of those larger channels does not exceed the limit of the relevant parties' manageable capacity. Thus, rainwater is discharged into thousands of gullies and waterspouts (rather than into large channels or drains as in the acquired built environments). A large environmental problem, which constitutes a burden that requires efforts and capital to solve, is prevented in the first place by transforming it into smaller and smaller manageable problems. Each resident in a quarter has to respect the easement rights of others.

Many documented cases have revealed such relationships between adjacent parties founded on relationships between properties. In one case, party *A* has a waterspout that throws its water into an adjacent neighbour *B*'s courtyard. The neighbour *B* wanted to create a tunnel on party *A*'s wall so as to reduce the damage caused to his courtyard due to the waterspout. Party *A* did not allow him as this tunnel will cause harm to his walls. Moreover, if party *B* wants to build in his courtyard, causing changes to that waterspout, then party *B* has to seek permission from the owner of the spout. That is, party *A* has an easement right in his neighbour *B*'s property, thus any changes in this waterspout has to be approved by its owner *A* (al-Tutayli, n.d., p.153-4; Ibn ar-Rami, n.d., p.417). Such rights created an **overlap** between properties. Consequently, techniques were invented to solve such overlaps. Such kinds of solutions, evolved through trial and error over time, have become conventions, forestalling problems and avoiding disputes in the first place. Eventually, through easement rights and other similar rights-based mechanisms major tasks (e.g. cleaning streets, sewage) are accomplished with minimum burden on society. This, ultimately, leads to a built environment with minimized problems.

To conclude, collective power in the inherited mode is based on **cooperation and not agglomeration** (in its modern sense), thus causes **no depletion** of society's resources. In

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<sup>17</sup> This map is an elaboration of situational rights map explained in the previous chapter. However, this map does not refer to categories of physical settings such as dead-end streets and through streets, but to all settings in the built environment as related to their controlling parties.

<sup>18</sup> For example, the *muhtasib* as an administrative state official, has a limited role in the production of the built environment.

<sup>19</sup> Such rights operate as mechanisms that help in reducing problems to the minimum size possible.

contrary to the acquired mode, institutions for fulfilling environmental tasks (e.g. water and sewage institutions) do not exist in the inherited built environment; it is a self-growing, self-maintained built environment. This justifies what Weber stated as to the absence of guilds-like associations in Muslim societies and defies and falsifies some Orientalists' claims (e.g. Massignon, Grunebaum) about the existence of guilds in those societies. Guilds as collectivities embody domination, thus are destructive to some parties, therefore they were absent in Muslim societies. Those claims reflect a deficient comprehension of Muslim cities as they were based on investigations on the manifested and/or the operative levels only and were not linked to the rights structures that belong to the imperceptible level.

In general, in the acquired mode, collective power directed toward achieving certain goals implies that the collectivity controls the collective resources of its aggregates to generate the collective power and the individuals cease to control their resources. In contrast, individuals in the inherited mode maintain their control over their resources and enjoy the rights attached to these resources. In that sense, collectivities in the inherited mode operate to fulfil the interests of the group without disrespecting the individual interests of its aggregated parties, thus no asymmetrical distribution of costs and benefits as the case in the acquired built environments.

To summarize, in the inherited mode, as the mechanisms that unite and coordinate the aggregated actions into collective ones exist as self-organizational mechanisms; and as the rights of each party are predetermined according to the rights distribution maps, i.e. no lust for power; and as decision-making process is in the hands of the immediate parties involved with no intervention from external parties, thus there is no need for pressure groups to affect decision-making. Therefore, mobilizing human resources does not constitute a crucial issue in the inherited mode as it is in the acquired mode.

#### 8.2.1.2 MOBILIZATION OF MATERIAL RESOURCES

As to mobilization<sup>20</sup> of material resources, pooling material resources constitutes part of the mobilization process of human resources into collective power, described above. What concerns us in this research is the opposite process: the mobilization of collective resources into individual resources. For example, in the inherited mode, dead lands (*mawat*) are collective properties, owned by all Muslims collectively and not by the state (p.133). Revivification of any dead land, leading to its ownership by its revivifier means mobilizing that collective resource into an individual one. Unlike the acquired mode where the focus is more on mobilization into collective power, this type of mobilization of material resources was important in the inherited built environments as it facilitated **access to resources** to all society members.

Rights in the inherited built environment are **locational**, i.e. actualized only if related to sites or elements in the built environment; thus mobilizing material resources (assets) implies mobilizing the rights attached to those assets. In the previous example, mobilizing a piece of dead land from being collectively owned asset into an individual property implies that all rights

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<sup>20</sup> Mobilization is used here in the meaning of transference and shift.

attached to that land and constitute its inseparable supplements (*marafiq*)<sup>21</sup>, such as its *fina*’, rights of passage, rights of rain-water discharge, rights of servitude and the like, are also mobilized (retained by the revivifier). Those mobilized rights act as a resource to the party controlling the property to which they are attached. Mobilization of resources does not, as the case in acquired mode, imply a potential power; but it increases the party’s scope of exercitation, i.e. its territorial scope. Mobilized rights, if actualized in any interaction with other rights, provide its party with facilitating “power to” achieve outcomes (not “power over”). Thus, mobilization of material resources in the inherited built environment increases the potentiality of actualizing, thus, utilizing rights attached to these resources.

In most cases, collective property implies large party (in size) owning or controlling it, thus, in principle, responsibility towards this property would most likely be scattered between its members. Such parties, therefore, would not advance their goals effectively (Akbar, 1992, p.148). To counteract this problem, in many cases in the acquired mode, large parties delegate some of their authorities to smaller sub-parties or even to individuals (as the relationship between central and local governments), yet maintain their control over those sub-parties and individuals, i.e. not losing power. This creates a **vertical** hierarchical order among involved parties. It is a tree-like order, thus, a sense of domination. In other words, within this process of mobilization, collective resources and thus power do not get mobilized into individual resources; the large party (central power) dominates. For example, in the Aalborg planning project in Denmark (as it is the case in most governmental planning projects), the main governmental institutions responsible for the project formed a Committee to be responsible for that project which in turn established a working group responsible for the planning process.<sup>22</sup> However, the higher levels of this hierarchical order, maintaining their control over the project, retain the privilege of making or approving the final decisions. In many housing projects (compounds), for example, the company owning the project is a large party that delegates some of its responsibilities in the project to other sub-parties that work under the control of the owning-party (e.g. parties responsible for management, cleaning, maintenance, landscape, etc.). Residents are also subject to this owning-party’s power; they do not enjoy full control over their properties in the housing project. Moreover, as all unclaimed land in the acquired mode (in the Arab countries) is the property of the state (as explained in the next chapter), thus, when mobilizing any of those lands into private properties through planning processes, the state maintains its power over those lands by retaining its ownership over the public spaces and the infrastructure. Thus, the new private owners of those lands are always subject to the power of the state as service-provider. This issue is explained more in the next chapter.

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<sup>21</sup> See previous chapter, p.133.

<sup>22</sup> In the Aalborg project, four governmental institutions were responsible for the project: the Office of the City Engineer, the Planning Office, the Office of the City Architect, and the Aalborg Bus Company. Together, they established an Executive Committee to be in charge of the project. Subordinate to this Committee, a working team called the Task Force was established to design the project (Flyvbjerg, 1998a, p.10).

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In conclusion, it can be said that in the acquired mode, the problem of large parties is solved by **distributing** responsibilities among sub-parties under the control of the higher level party, i.e. the higher party does not lose power. It is a mechanism of **distributing responsibilities** and, simultaneously, **concentrating power** in the hands of the powerful (higher level parties).

Islam, on the other hand, has a totally different conception regarding this dilemma. It tends to reduce the size of large parties, thus **reformulating** the maps of rights. In the inherited mode one can speak of reformulating rights maps, and not of redistributing rights. That is, as rights are not quantitative, they cannot be divided (redistributed) as the case of power in the acquired mode. Mobilizing material resources in the inherited mode does not imply redistributing power as the case in the acquired mode, but it denotes redistributing ownership rights. In other words, the sum of mobilized rights (attached to mobilized material resources) is not equal, neither quantitatively nor qualitatively, to rights of material resources before mobilization. Smaller parties to which resources have been mobilized acquire **new** rights qualitatively, due to their ownership over the mobilized resources. For example, a revivifier (party *A*) of a dead land gains, for example, the rights of precedence for his passage way, rain water discharge, openings, and the like. Such rights are **created** as a result of this party's right of ownership on the revived land. Those rights have changed party *A*'s scope of exercitation and the situational rights map of that piece of land (from being classified as dead-land, collectively owned, to a private property). Thus, the tendency in the inherited mode is to reduce the size of the larger parties<sup>23</sup>, yet, **concentrate responsibility** through investing rights within parties in the site.

This process seems to work in a similar manner as that of the acquired mode in the sense that it tends to reduce the size of the party, however, unlike the case in the acquired mode, those smaller parties **acquire rights** (power) and **control** over, thus a sense of responsibility towards, their new properties, i.e. power is not retained in the hands of the few (the large party). For example, the revived land (of party *A* above) becomes an **autonomous** private property which owner (party *A*) enjoys independence over its property. He is not subject to any external parties. Therefore, mobilization of material resources is considered an important process in Muslim society as it reformulates right structures for the benefit of the maximum possible number of parties in society. This process is thus not a process of delegation of power as in the acquired mode, but a process of reshaping rights structures in the built environment and society. In other words, it works as a mechanism of **enablement**<sup>24</sup> in the Muslim society. It enables individuals to have access to resources.<sup>25</sup> Mechanisms such as revivification (*'ihya'*), allotment (*'iqta'*), the

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<sup>23</sup> In the inherited mode, this tendency of reducing the size of the party does not mean reducing the size to the minimum possible, but it reduces the size into the largest possible size with which its party can be efficient and responsible towards its property (Akbar, 1992, p.150; 1988, p.65).

<sup>24</sup> "Enablement" in the inherited mode is different than that of the acquired mode. Enablement in the Western contemporary sense means the enablement or empowerment of the less advantaged parties under the control of the higher, powerful party, as explained in chapter five above.

<sup>25</sup> It should not be understood from this that *shari'a* tends to partition properties or parties. For more about this issue, see Akbar, 1988; 1992.

inheritance system (*'irith*) in the inherited mode facilitate this process of mobilizing material resources from collective ownership into smaller parties.

In short, the tendency in the inherited mode is to **bestow more rights** to parties so as to enable them, and simultaneously, **concentrate** responsibility in parties. In this respect, this mobilization does not mean, as common in the modern power concept, that the collective party (larger party from which those resources were mobilized) loses power. Rights in Islam do not constitute a zero-sum model, as explained above. Moreover, rights attached to those collective resources do not generate power unless they are actualized, thus, if putative (as in the case of dead lands) there is no power to be lost. If collective resources are not utilized or utilized relatively ineffectively, then mobilizing those resources from being collective into individual property imply mobilizing the rights attached to them from putative (not actualized) to actualized (e.g. through revivification).

### 8.2.2 Measurability of power

Power is simply no more, but the excess of the power of one above that of another

(Hobbes, cited in Hindess, 1996, p.24)

The third quantitative attribute of power, according to its modern concept, is that power is quantitatively measurable and thus comparable.

Among others, Hobbes, Marx, Weber, Dahl and Mann argue that whoever has **more** power is dominant, i.e. if the desires of two parties conflict, the desires of those with more power are likely to prevail over the desires of those who have less (Hindess, 1996, p.8, 26). Accordingly, power can be perceived as measurable and, consequently, comparable.<sup>26</sup> This means that the **amount**<sup>27</sup> of power that party *A* has in a certain context *X*<sup>28</sup> can be measured. Likewise, parties can be **ranked** relatively, according to the **relative amount** of power they hold in that **specific** context. Finally, it can be said that “*A* has more power than *B* in context *X*” and/or “*A* has more power than everybody else in context *X*” (McLean, 1996, p.397; Dahl, 1957, p.206-209).

Logically, based on the above, power, in comparable situations, is transitive:

if	$PA > PB$	( <i>PA</i> is the power of party <i>A</i> )
and	$PB > PC$	( <i>PB</i> is the power of party <i>B</i> )

<sup>26</sup> Comparable situations refer to those situations when, according to Dahl, if *PA*, *PB* and *PC* are “power comparable” (Dahl, 1957, p.208).

<sup>27</sup> The amount of power, according to Dahl, can be represented by a probability statement, e.g. the chances are 9 out of 10 that the power holder will achieve his goals (Dahl, 1957, p.203).

<sup>28</sup> Powers can be measured and compared **only** in a specific context, where (1) the participating parties and (2) their means to achieve (3) their goals are known. In such cases, this situation is said to be “power comparable” (see Dahl, 1957, p.205-6). Dahl used this notion of “power comparable situations” only in his empirical studies of measuring power that has been exercised in previous relationships (see his study in Dahl, 1957). This notion was not taken into consideration in measuring (predicting) power in future relationships as empirical power community studies showed.

then  $PA > PC$  (PC is the power of party C)  
(Dahl, 1957, p.208)

Based on this quantitative conception of power, many issues come to the fore, some of which are explored in the following sections.

### 8.2.2.1 ASPECTS OF POWER

Departing from Giddens's statement: "Power does not come into being only when being 'exercised', even if ultimately there is no other criterion whereby one can demonstrate what power actors **possess**" (Giddens, 1993a, p.118, emphasis added); it is important here to make a distinction between different aspects of power: **potential** power, **latent** power and **episodic** power. **Potential** power refers to the possibility of producing power through resources that are not presently employed to wield power, but could and might be so employed at some time if their possessor chooses to do so. Those resources are not known to anybody except their possessor, thus they do not connote a realized power but a potential for power (Wrong, 1979, p.127). For example, the support of a famous politician to a pressure group in any planning project, if not known to the opposing parties, is considered as a potential power resource that might be employed when necessary as a pressure power to accomplish the groups' interests. **Latent** power denotes the unmanifest actual realized power that is possessed and known to its holder and to others, especially its subjects, but its holder chose not to exercise at a certain time(s), i.e. having power. For example, government might sometimes take no action against parties who violate building regulations, but at any time it can decide to exercise its power over them. **Episodic** power refers to the actual power that is in exercitation (Wrong, 1979, p.6-8), for example, the control of the local state (e.g. City Council, Municipality) over city streets.

Another distinction is to be made between **covert** power and **overt** power. Both are exercised powers, but the former is non-observable or not directly observable, i.e. exercised covertly; while the latter is directly observable, i.e. exercised overtly (Miller, 1991, p.398). For instance, party *A* might exercise power covertly by controlling the agenda, thereby limiting discussion and decision-making to "safe" issues which would not threaten *A*'s interests.<sup>29</sup> For example, citizen participation in many planning projects in the acquired mode is directed according to the wishes of the planning authority. In the planning of the Aalborg City, for example, a bus terminal was to be constructed, thus, the Bus Company (powerful party backed by the Mayor himself) chose Nytorv square as the location of the bus terminal. The project's working team accepted and adopted this selection. Evaluation of other alternative locations was carried out under pressure from other institutions, however, such evaluation was quite superficial and

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<sup>29</sup> These issues were the centre of wide debates in the field of community power studies. In their empirical studies of power, pluralists (pioneered by Dahl) advocated what is called a "decisional" approach within which, as Lukes proclaimed, they focused on one face of power: its overt face. On the other hand, elitists (e.g. Hunter and Mills) advocated the "reputational" approach, or what Bachrach and Baratz called "non-decision-making" approach, for studying power. This reputational approach focused on both, the overt and covert faces of power exercitation (Lukes, 1974; Bachrach and Baratz, 1963).

“more ritual than real” (Flyvbjerg, 1998a, p.15). It was very biased towards the location the Bus Company preferred.<sup>30</sup> These evaluations become mere rationalization of a political decision made in advance (Flyvbjerg, 1998a, 12-15, 19-20). The working team directed the process of choosing the location of the bus terminal to serve their interests, regardless of other interests, thus keeping the decision “on track”. In that sense, they exercised their power **covertly** in this matter. Moreover, the powerful Chamber of Industry and Commerce, using the media, directed the debate about the project between the public and the working team according to its own interests (Flyvbjerg, 1998a). In that sense, the Chamber exercised its power **covertly**. On the other hand, urban planning activities such as identifying zoning, land uses and, consequently, building regulations is considered an overt exertion of power by authority (or its representatives) over parties in society.

Linking this to the modern concept of power measurability, a question arises: how do we know at any one time what power a party has? To compare the power of two parties, power should be observed while exercised by those parties overtly. We can say that the **episodic overt power** is the only power that can be measured. Thus, the idea of power as a measurable concept is considered here partial and flawed; it cannot be applied to all aspects of power.

#### **IS POWER A PROPERTY OR A RELATION?**

The above discussion evokes such a question: is power a **property** or a **relation**? As power in its modern concept can be found in a latent or potential (unactualized) state, thus it can be said that power is a **possessible property** that, using Giddens’s words, can be “**stored up**” for future occasions of use (Giddens, 1993, p.118). In Islam, **power** is not a property that can be possessed, neither its sources. It exists as a **relational** concept; i.e. manifests in and comprises relationships between parties. There is no potential or latent power (not realized, or not exercised) as a general concept. Power in Islam is always related to actualized rights that are manifest **only** at a certain time and space through interactions between parties. Those rights outside that interaction may not generate power to its holder.

However, as to **rights** in the inherited built environment, one can speak of **latent property rights** but not of potential rights. That is, as there is no unexercised power in Islam, and as rights (sources and resources of power) are known to all parties (transparent), thus potential rights are not recognized in the inherited mode. However, latent rights can be discerned in the inherited built environment, but as pertaining to properties rather than to parties.

Manifest physical solutions, reached through agreements between immediate parties in any interaction or through judge’s rulings, acquire rights that become attached to the property. Such rights are **possessed** by the physical property but enjoyed by its party only through interactions,

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<sup>30</sup> The criteria set for the selection of the terminal site were designed to point only toward Nytorv. Moreover, in the evaluation process, Nytorv option was discussed in terms of the advantages of a bus terminal on this site, while for the remaining alternative locations emphasis was placed on their disadvantages. This method was also accentuated in the official final report on the bus terminal presented to the City Council and to the public (Flyvbjerg, 1998a, p.22).

i.e. they are **relational** as pertain to parties. Those possessed rights perform as constraints on future actions of other parties, i.e. they act as resources (rights) that might generate power to its party when actualized in future interactions. For example, existing house doors or openings perform as constraints if a person wants, for example, to open a new door in his house opposite to the neighbour's existing door. Some of those rights such as **rights of precedence** (see p.143 above) perform as **latent rights** that can be perceived as ever-actualized rights, however, their party might choose not to exercise it at any specific time. For example, in the previously mentioned case (fig.8.3, p.189)<sup>31</sup>, the septic tank that existed in a dead-end street possessed the right of precedence. Thus, this physical solution (septic tank) has a latent right (of the property) that its owner is free to use whenever he wishes. Nevertheless, unlike the case of latent power in the acquired mode, latent rights in the inherited built environment generate power to its party only in relation to that specific physical element (manifest solution), i.e. it is not a general right, but a very limited right. For example, in the case of the septic tank above, the right of precedent provides its party with power only in interactions in which the septic tank is a variable.

Rights-based mechanisms in the inherited built environment perform to eliminate abuse of such latent property rights. For example, if a party *A* opens a door to a dead end street and the judge ruled that the door to be closed as a result of other parties' objection, then all the traces of that door should be erased completely so that these traces will not possess the right of precedence and thus form a latent right that might generate power for party *A* in the future, for example in reopening the door as an old property<sup>32</sup> (see al-Wansharisi, n.d., v.9, p.14; 'Ibn ar-Rami, n.d., p.250-1).<sup>33</sup> Other examples of such mechanisms are those related to the rights of "possessing damage" (*hiyazat ad-darar*).<sup>34</sup> If a party *A* saw his neighbour (party *B*) initiating an action that would damage him or his property and did not protest at that time, his reticence is considered consent. In other words, party *A*'s right to object does not perform as latent right that can be used in future interaction. In a case documented by al-Wansharisi, the owner of one house

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<sup>31</sup> In one case, one house owned by a neighbour (*A*) was abutting a dead end street but had no access to it (fig.8.3). This neighbour (*A*) had a small, covered, long unused septic tank within the dead-end street, and he wanted to use it again. The owners of the street objected. However, they could not prevent him from his action as it was of his rights to use the septic tank, as it **possessed the right of precedence** (al-Wansharisi, n.d., v.9, p.32).

<sup>32</sup> One might argue that such cases demonstrated above exist as well in the acquired mode. For example, if a judge ruled that a store for example to be closed, then in this case the reference is the law, and the acting party did not base his action on any right, in the first place. However, he does not have to eliminate the traces of that store, because even if after a considerable time, he wants to open the store again, then those traces will not affect the decision, as the reference is always to the law. It is the law that enacts rights and not as the case in the inherited, where rights are generated (actualized) according to *shari'a* in the site itself.

<sup>33</sup> 'Ibn Zarb states in this regard that closing the damaging door cannot be only done by removing the door and building brick in the opening but by eliminating all its traces, frames and lintel. If traces of that door exist, such as the frame or the lintel, then, this will cause future damage to the other party (whose objection led to the closing of the door) as these traces will act as a future plea to reopening the door (al-Wansharisi, n.d., v.9, p.56).

<sup>34</sup> Right of precedence, is the right enjoyed by a property to continue the damage caused to other properties because its party preceded other parties in action (Akbar, 1988, p.101-2).

(party *B*) in a dead end street that has fifteen houses opened a door that is not opposite to any other doors of the other houses, and no neighbour was absent while opening that door, however, after eight years one of the neighbours (party *A*) objected to this action. The jurist ruled that the neighbour's reticence all this time abolish his right to object (al-Wansharisi, n.d., v.9, p.63). In this case, the right of party *A* to object to party *B*'s action has lapsed, due to the long duration of time since the action was completed. In other words, the right of party *A* did not operate as a latent right which its party can use (or abuse to exert power over) at any time he wishes. Such mechanisms eliminate potential domination that might occur between parties in such contexts.

As power in its modern concepts is a property possessed by its holder; it can be argued that it pertains to individuals (or groups) as parties. For example, power can be possessed by planners, pressure groups, state officials<sup>35</sup> (e.g. the Mayor in the Aalborg project), where those power holders can exercise their power in different locations or settings in the built environment. In the inherited built environment, however, power pertains to locations or settings within which relations or interactions take place. To summarize, while **power** in its modern concept is mainly a possessed property<sup>36</sup>, it is in Islam relational. **Rights** in the inherited mode are possessed as pertain to properties, however, they are relational as pertain to parties. Moreover, while **power** in its modern concept is **partious** (attached to parties), it is in the inherited mode **locational**.

#### 8.2.2.2 POWER STRUCTURE / POWER DISTRIBUTION

Within ... societies, there is a tendency for their members to be organized into a hierarchy differentiated by access to scarce and valued resources.

(Open University, 1975, p.89)

In investigating who holds power, two concepts have to be clarified: power structure and power distribution. Societies in the acquired mode are stratified societies (e.g. class-based societies)<sup>37</sup> in the sense that they are ranked hierarchically according to certain dimension of inequality (let us call it strata)<sup>38</sup> (Open University, 1975, p.89). Stratification is a "social process through

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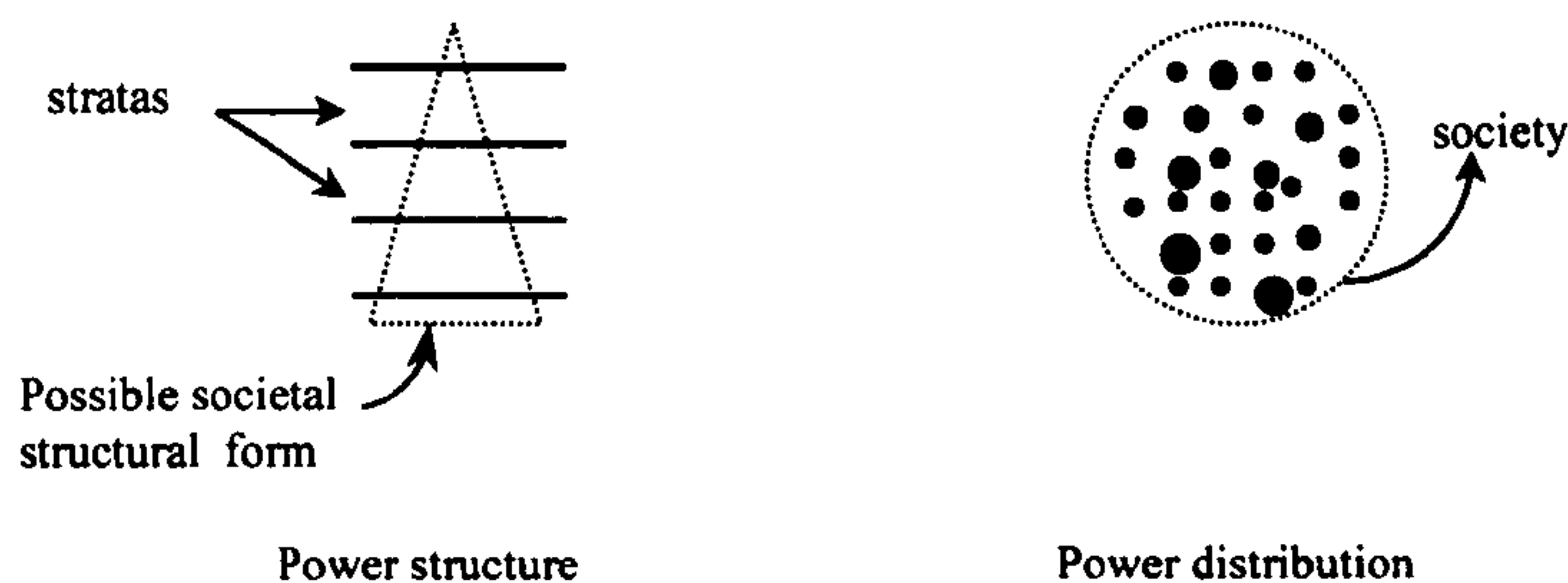
<sup>35</sup> This holds true, in the acquired mode, even in the case of political power, as it is more related to positions than to individuals, yet, these positions are resources that certain parties attained. One can, therefore, talk of the political power possessed by persons *A* or *B*.

<sup>36</sup> Some scholars such as Foucault argue that power, in its modern concept, is relational as it is exercised in relationship. This is true but these relationships are based on the concept of power as a property that can be possessed and stored up for future uses.

<sup>37</sup> Some contemporary scholars argue that the concept of social classes is no longer relevant to an understanding of modern societies. The view that class is unimportant is disputed. Studies of social mobility have shown low rates of mobility, especially in "relative rates" of mobility, that is the relative chances of access to different class destinations for individuals of differing class origins. In that sense, as Abercrombie (et.al.) states, class is still an influential factor in life-chances in industrial societies. In Britain, attitude surveys show that people perceive class to be important in terms of social differences and social justice (Abercrombie et.al., 1994, p.63, 388).

<sup>38</sup> Weber defined classes according to economic differences based on market capacity that gave rise to different "life-chances" (e.g. capital, skill, education). **Deferential power** was the point of origin for Weber's analysis of class. He considered class as only one of three phenomena of the **distribution of power** (inequality) within a community. Those are: class, **power** or party, and status group or prestige (Mann, 1983, p.47). That is, as status and class represented for Weber the capacity to mobilize and

which rewards and resources such as wealth, power, and prestige are distributed systematically and unequally within or among societies” (Johnson, 1995, p.283). Power structure refers to the ranking of those stratas according to the power they hold (fig.8.4) (Johnson, 1995, p.211), while power distribution is the measurement of power between parties in society (Dahl, 1975, p.33). Power distribution might be seen as having a role in determining the power structure in the first place, and then determined by that power structure.



(fig.8.4)

Stratification system might be affected by the distribution of scarce resources and power among society. However, once established, it becomes, as most modern writings about power presume, an important determinant of the distribution of scarce and valued resources, and consequently of the distribution, form and use of power (Open University, 1975, p.89-90). Stratification is thus, first an outcome, and then a determinant.<sup>39</sup> In the acquired mode, according to Pahl (1975), scarce resource distribution is controlled by the state (through its bureaucrats, or urban managers, e.g. planners), thus life chances of residents are determined by the state (Saunders, 1993, p.119). In that respect, Pahl contends that in the urban system, bureaucrats' decisions (urban managers) determine degrees of access of different sections of the population to different types of crucial urban resources. Accordingly, conflict over resources is inevitable in such societies. In other words, the state controls environmental power distribution. It reinforces and amplifies the existing status quo of uneven inequalities between people (Gottdiener, 1987, p.60).

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enjoy certain resources such as wealth and honour, these dimensions of stratification had to be regarded as simply manifestations of power (Turner, 1988, p.65). Social status, according to Weber, is founded upon relationships of consumption rather than production (Abercrombie et.al., 1994, p.57-8; Giddens et.al., 1982, p.10). On the other hand, Marx stratified capitalist societies into classes in economic terms according to ownership of capital and the means of production: capitalist class and proletariat. However, class stratification today is explicitly based on the Weberian approach of life-chances. Thus, modern societies today have different stratification models (differences) according to the criteria of status stratification, whether it is wealth, income, occupation, power, prestige, education, age, ethnicity, or some other characteristic.

<sup>39</sup> This reciprocal idea can be noted in Johnson's definition of stratification and class. He defined stratification as the social process through which rewards and resources are distributed among societies (Johnson, 1995, p.283). On the other hand, he defined social class as a social distinction and division resulting from the unequal distribution of rewards and resources (p.256). From the first definition, stratification seems to be a determinant of power distribution within society, however, in the latter definition, it is a result of that distribution.

Most modern schools of thought (mentioned earlier, except the Giddensian one<sup>40</sup>), share the idea that power has a certain fixed (stable, according to Weber, 1978, p.933) structure among society. They proclaim that power serves the interests of certain parties (individual(s), social class, status group) over that of others. For Marx, power is in the hands of the bourgeois. For Weber, “classes, status groups and parties are all phenomena of the power distribution in a community” (Weber, 1978, p.927). The elitists see it as in the hands of the elites, however, for the pluralists, it is held by organizations.<sup>41</sup> No form of power structure, Parsons proclaims, changes unless a society witnesses a social change as a result of changing its binding values and norms (Giddens, 1995, p.209), i.e. no change is possible in societal power structure unless the societal system changes. In the same vein, Marx argues that changes in societal systems (replacement of one mode of production by another which is then reflected in changes in stratification dimensions), as history proved, requires revolutions (Abercrombie et.al., 1994, p.359). In that sense, societal power structure can be perceived as **relatively static**. As power in the acquired mode, as explained above, varies according to its sources and resources, thus it is dynamic. However, as societal power distribution changes quite slowly, thus it is considered as **relatively variable**.<sup>42</sup>

In terms of the acquired built environment, power structure is considered **relatively constant**. It is defined in relation to the **parties** participating in the production of the built environment. Those parties are stratified into hierarchical levels according to their power. The central state is on a higher level than the local state. Citizens are lower level parties, subjected to the rules and regulation of the higher level parties. However, power distribution between parties might vary from one interaction to another according to the resources mobilized by parties involved. Such changes do not affect, in most cases, the general power structure in the built environment. General power distribution is determined by that relatively static power structure. Therefore, in most interactions in the acquired built environments, parties involved are ordered hierarchically, thus power relationships are, in most cases, established and thus well-known. Thus, as long as

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<sup>40</sup> Giddens viewed power distribution as in frequent flux. He stated that “there are normally continually shifting balances of resources, altering the overall distribution of power” (cited in Cassell, 1993, p.243). It can be inferred from Giddens’s stand that, as power exertation reproduces the structural properties (rules and resources) of the social system, thus always moving it from one structure to another; this, consequently, leads to ever-changing power structures within changing societal systems.

<sup>41</sup> For Parsons (Functionalist), social inequality results from the functional differentiation of roles and social positions in a complex society (open University, 1975, p.119). In that sense, functionalists (e.g. Davis and Moore) argue that stratification is a functional prerequisite for all societies (Jary & Jary, 1995, p.623).

<sup>42</sup> The concept of power distribution *per se* in the sense defined by Dahl: “the measuring of relative amount of power of different actors in a system” (Dahl, 1975, p.33) embodies a static concept, i.e. power value for each party is considered relatively constant in that system; it can be measured and ranked generally. This theoretical concept sounds contradictory to the practical aspects of power distribution. Members of society tend to mobilize more resources to gain more power or what we referred to as “lust for power”, thus power distribution is **relatively variable** in the sense that there are continuous changes in the amount and type of power held by parties within a social strata



this environmental power structure persists, the mechanisms of the production of the acquired built environment persist.

On the other hand, as Muslim societies are based on definite rights bestowed by *shari'a* and not on the notion of power as in the acquired mode, they are conceived as non-stratified societies.<sup>43</sup> This can be inferred from the homogeneity of the manifested structure (building sizes, types, building material) in traditional Muslim cities. Muslim societies are organized according to **structures of rights** that determine the spheres of rights for each individual in society and for each physical setting. Most structures of rights that pertain to parties in the inherited built environment such as scopes of exercitation are dynamic, thus there is no absolute rights that always generate power to its holder. Rights actualized in each case, most likely, differ from those actualized in other cases or in other times. Accordingly, the concept of power structure in the sense used by modern schools is not recognized in the inherited mode, as explained next.

### **ABSOLUTE POWER OR CONTEXTUAL RIGHTS**

Power, as explained, can only be measured in its episodic overt aspects. However, even within certain scopes, observing power in exercitation does not give an accurate idea about the "value"<sup>44</sup> (relative amount) of power held by that party, enabling a generalization regarding that party's power value to be made, as Dahl implies. Power within a certain scope changes according to the conditions encompassing each case within which it operates. It increases and decreases through time and space, according to the power relations' **variables**. For example, if powerful pressure groups were involved in a planning project, this might affect the power enjoyed by the planners in the project, i.e. according to the zero-sum model, decreases their power in that specific project. This is what happened, for example, in Aalborg project when the business community represented by the Chamber of Industry and Commerce took part in the project, thus, in a way, directed the project to fulfil their interests (see Flyvbjerg, 1998a).

Every power relation has its own variables. They might include: the parties participating in the power relationship (the actors and the acted upon); scope or areas of acceptance of the parties involved; time; space; sources of power (in modern concepts: political, economic, ideological); and resources employed (in modern concepts: wealth, military force, occupation, skills, prestige, etc.). Those variables cannot be enumerated generally and applied to all cases of power relationship. Each case manifests its own set of variables **arranged** in a certain manner. Thereby, power can be analyzed in relation to what a party does (or is expected to do) in a certain context only. It is **contextual** and cannot, in any case, be considered **absolute**. Its value

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<sup>43</sup> One might argue that during the Islamic era, some sort of classes occurred such as the class of the rulers and their men, the class of soldiers, and the public. However, what seems as classes today was actually no more than functional roles, where actors of those roles enjoyed definite rights to fulfil their roles within the framework of *shari'a*. Thus, maps of rights derived from *shari'a* organized all relationships among members in society. It is a rights-based society and not a power-based society as in the acquired mode today.

<sup>44</sup> While knowing that it denotes a quantitative measurable attribute, the term "value" is used here just for clarification in refuting the concept of power measurability.

cannot be described generally as static (as can be inferred from Dahl's definition of power distribution). This might be true in certain environmental cases only when the levels of the parties involved are indistinct, such as in some planning projects when different powerful parties are involved (with different sources and resources). However, as power structure is relatively constant, and thus the general environmental power distribution, thus power relationships are, in most cases, delineated. For example, private parties are always subject to the state's laws and regulations (as a higher level party). In such relationships, private parties are in lower level than the state.

As each case of interaction in the built environment has its specific circumstances (and, theoretically, specific environmental power distribution<sup>45</sup>), there are an endless number of cases. It is impossible to encompass all these cases and deal with each case according to its specificity. Therefore, each of the inherited and the acquired modes corresponded to this issue according to its perception of power and power distribution. Islam introduced certain rights-derived mechanisms that are robust enough to solve this labyrinthic complexity. They are based on a **proscriptive**<sup>46</sup> method with a **one-to-one** tendency in dealing with cases. The Islamic legal system provides rights-derived mechanisms, and not environmental solutions. Such mechanisms are "robust" in the sense that they can deal with unprecedented environmental cases. Environmental solutions can be found through rights in operation. For example, in cases of opening a new shop that is opposite to the neighbour's house door, different rulings were reached.<sup>47</sup> In some cases the shop was ruled to continue if not causing damage to the neighbour, however, in other cases the shop had to be closed, as it causes severe damage. Such cases in the inherited built environments act as precedent for future possible similar cases. For example, respecting the rights of others, most house doors in the inherited built environments do not meet in opposite locations. Thus, over time, such precedent cases formulate environmental **conventions** and not regulations.

On the other hand, to solve such a complexity in the acquired built environments, a **prescriptive** law with a **one-to-all** tendency in dealing with different cases was adopted. Therefore, to embrace all possible cases, a method of standardizing those cases was adopted through which the built environment is regarded as comprised of different physical zones. Each zones has its own relatively static power structure that works in the light of the central or local law and reflects the general power structure embodied in that law. Accordingly, the vast number of cases with different (theoretically) situational power structures in the built environment is reduced to the extent that it became controllable by the higher authorities and the law. Neither of those

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<sup>45</sup> I say here theoretically, because such vast number of power distributions is eliminated in the acquired built environment due to the domination of the state over the built environment. Thus, most environmental relationships are defined as relationships between the state (or its representatives) and private parties.

<sup>46</sup> Prescriptive law specifies what to do, whereas proscriptive law refers to what not to do. The former is more limiting and restricting than the latter.

<sup>47</sup> See the examples presented in chapter two of this study, p.16-17.

power structures changes unless the rules and regulations applied in its zone change, i.e. through the authority. In such an approach of one-to-all tendency and standardization, unprecedented cases that the law does not cover might lead to changes in the law or to impose some rules on that case which might not be quite appropriate. In such a situation, the law can be described as rigid and inflexible in the sense that it does not consider the specific variables of each case. It defines power relationships between parties in any environmental interaction. Thus, power in the acquired built environment can be described as **non-contextual**, i.e. **absolute**.

In the inherited mode, although rights, as the source of power, are fixed, yet rights distribution within Muslim society is ever changing. That is, putative rights as derived from *shari'a* are static, however, actualized rights as represented in scopes of execration and power distribution maps are dynamic.<sup>48</sup> For example, 'Ibn Qudamah (d.620 H.) states that for a house that its back is facing a street, if this street was a through street, then opening a new door to this street is allowed, however, if this street was a dead-end street, then creating a new door to be used to pass into that dead-end street is not permitted. Here 'Ibn Qudamah distinguished between these two cases according to their variables (type of street), thus the acting party in each case enjoys different rights, thus different power. In a through street, the acting party has the right, thus the power, to open the door, whereas in a dead-end street, it does not have that right ('Ibn Qudamah, v.4, p.570-1). These two cases are discussed here with the assumption that the other variables are the same. However, if other variables take place in determining the ruling, then these variables have to be taken in consideration along with the type of the street mentioned above. For example, if a house owner opened a door into a through street that caused damage to other parties, then this door has to be considered in the light of this damage. Likewise, if the owners of a dead-end street approved the act of opening a new door into their street, then the acting party can then open the door.<sup>49</sup>

In that sense, **power** in the inherited built environment, as pertains to parties is **dynamic**, according to its generative dynamic rights, so as its distribution as represented in actual power distribution maps. Therefore, unlike the acquired mode, although rights in Islam are known, however, power distribution is **unknown** on the scale of Muslim society at large. Power in Islam, as mentioned earlier, is not a possessed property. It can thus be said that the concept of power distribution as used in the acquired mode does not exist in the inherited mode.

It can be noted in most of the documented cases from the inherited built environment (e.g. those of 'Ibn ar-Rami, al-Tutayli, and al-Wansharisi) that the variables of the cases (e.g. parties involved; nature of intervening action; description of the site of interaction such as width and type of street; damage occurred; etc.) were emphasized as the main determinants for pondering the relevant rights (of parties and properties) actualized in each case. For example, al-Kasani (Hanafi, d.587H.) asserts that building a projected chamber (*janah*) or a water-spout into a street is one of two sorts: if the street is through, then if this action causes any damage to the passers,

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<sup>48</sup> As explained when investigating rights structures in the previous chapter.

<sup>49</sup> See situational rights maps discussed in the previous chapter, p.159.

the action is prohibited, whereas, if this action does not cause any damage to the passers, then this action is permitted unless any passer has objected. However, if the street is a dead-end street, then it depends if the actor has the right to that action or not; if not, then the matter is left to the inhabitants of the dead-end street to decide, as the owning-party of the street (Al-Kasani, n.d., v.8, p.512-5). Here al-Kasani associated the ruling with the variables of the case: type of street, consequence of action, rights on which the action is based, existence of objection or not. This method of ruling may suggest a resemblance with regulations in the acquired mode. In fact it is not. Rulings are applied on one-to-one bases, thus they are **circumstantial** and **not absolute**. That is, as noted from the al-Kasani's opinion, the distinction in each case is not merely morphological (through or dead-end street) but depends (as shown in the previous chapter) on the circumstances of the case such as the degree of damage caused (assessed according to the principle of damage), objection of others, rights actualized, and the like, which are all interacting variables that ultimately generate diverse rulings and thus physical solutions.

For example, in al-Medina (in 1268H./1852AD.), party *A* built in a through street in a manner that closed this street and transformed it into two separate dead-end streets (fig.8.5). Some people in the city (party *B*) objected, but party *A* proved that the street was originally closed in the past as was told when he bought his house, thus now he reactualized what was an old right for his property (right of precedence). The street was decided to continue closed (al-Hathloul, 1996, p.90). In another similar case, 'Ibn Rushd (d.520H.) ruled to demolish a building that closed a very narrow through street (*zanqa*) and transformed it into two separate dead-end streets. This ruling was taken on the bases that the building is recent action while the street before this building was passable although narrow (al-Wansharisi, n.d., v.9, p.15-6).

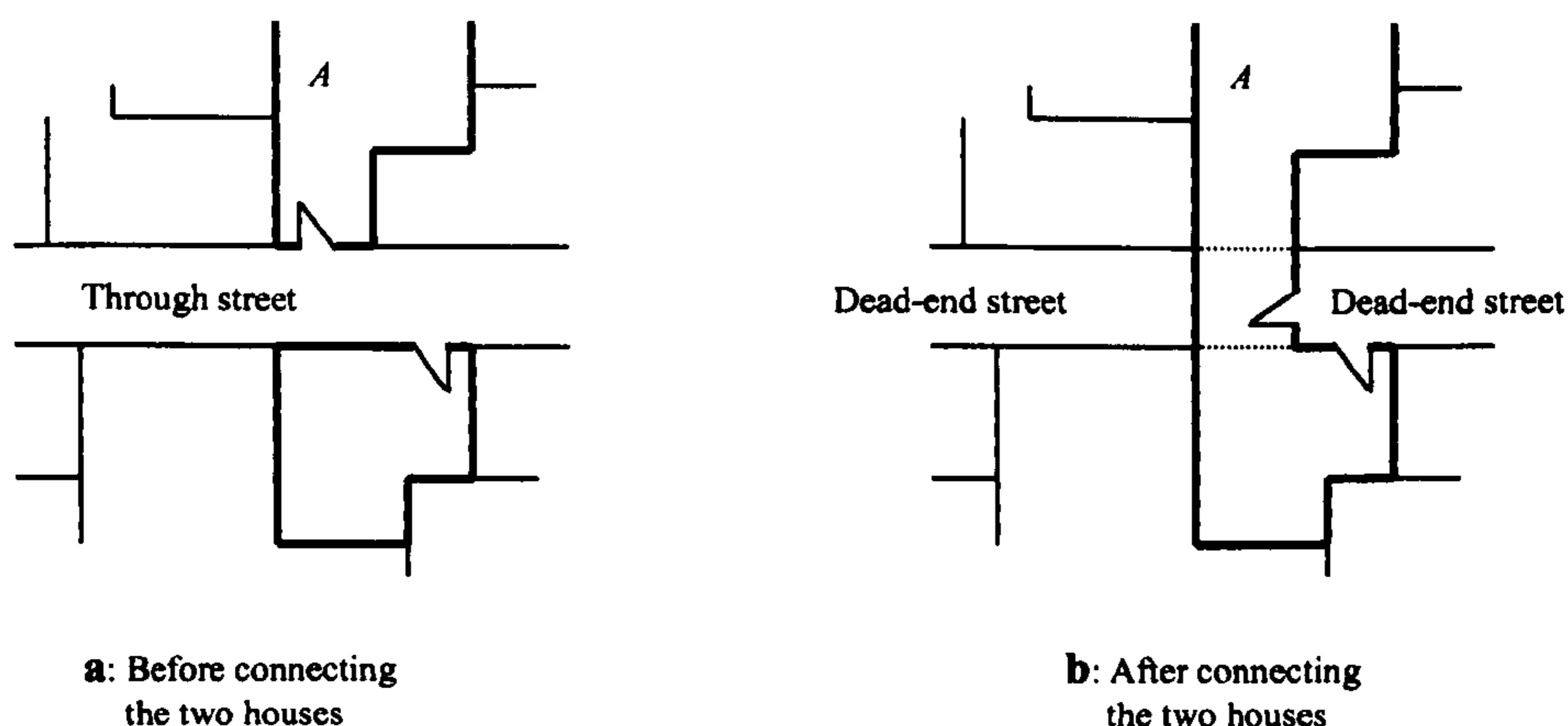


Fig.8.5: Transforming a through street into two dead-end streets.

These last two examples represented two similar cases with different rulings according to the difference in the variables of each case. Here, regardless of the people's need for a movement, the nature of the rights (actualized) on which the action was based performed as the determinant factor in the ruling reached. In the first case, the acting party had the right of precedence to that

action, whereas in the second case the action was recent, thus not based on a right, as the street is a public ownership. It can be noted that changing one variable in the case led to changes in the rights actualized, thus in power distribution, and thus in the ruling. In sum, in the inherited mode, it is rights that are **contextual** rather than power. Power in the inherited mode is contingent, whereas rights (actualized) are the determinant.

To conclude, whereas the acquired built environment has a relatively **absolute** environmental power structure in which the state is always the supreme power that exercise its control over its people and the built environment; one can talk in the inherited mode about **contextual** rights in which each case demonstrates its specific rights, thus power, distribution. According to such a concept, power in the inherited mode is not always attached to certain parties and detached from others, i.e. there is no categorization of dominant or subjected party. Everybody has his chance to have power in certain contexts. Rights structures are the ultimate determinant of who gets power. In other words, the concept of **power structure** (in its modern sense), with respect to parties, **does not exist in the inherited built environment**.

However, a question arises here with respect to the notion of quantitativity of power: In both concepts of power/rights, in the acquired and the inherited modes, can power/rights make us predict outcomes of interactions?

### 8.2.2.3 PREDICTABILITY OF POWER RELATIONSHIPS

To predict a power relation outcome is to asses the powers held by the involved parties, and then, by using certain criteria, weighing those powers in relation to each other and to the context, and at last predict outcomes. This process requires, necessarily, information about the power relation variables. As those variables are dynamic, they have to be known for each specific case. If this information is available, predictability could be reached.

However, if power structure, according to its modern concept, is relatively static, and has (at a certain time) a particular power distribution, then power relations outcomes should be predictable. This means that, in any future relationship of power, the powerful parties and the subjected ones can be specified **before** the relationship takes place. The same applies for power relationship variables, as they might be predictable by analogy with precedent relationships (reputation).<sup>50</sup> If power relations are predictable, then conflicts between parties should be predictable, thus, if possible, avoidable. This is the logic, but according to modern writings of power, this is not the case. That is, if parties involved in any interaction are of different levels (in the environmental power structure), then power relationship can be defined and its outcomes are predictable such as in private parties-state relationships. However, if parties involved belong to the same level of power structure, then the relationship outcome depends on the power distribution in that specific case. Although many attempts have been made, writers about

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<sup>50</sup> As power is a property, holding power in the acquired mode gives a reputation to a party as powerful. Some scholars (e.g. Mills and Hunter) used this as a method to study societal power distribution. This approach is called "reputational approach" (Sa'd, 1986, p.201-262; Hindess, 1996, p.3).

modern power did not succeed in measuring power, due to lack of information about power relation variables. Accordingly, a paradox can be conjectured: power structure is relatively static, yet power is unpredictable. Decision-makers in the acquired built environment depend actually on this predictability in their planning schemes, and in their subsequent environmental laws and regulations. However, as those laws prove to be inefficient due to deficiency in the predictions, re-evaluation of such plans and laws take place. This was the case when the Egyptian government after 1952, adopting the acquired mode, performed to control rent rates and agricultural land ownership (Akbar, 1988). Laws were enacted which, when put into action, proved inefficient according to the deficiency in its premise predictions.

In the inherited mode, power is non-quantitative, it cannot be measured. It is dynamic, changing according to its determinant actualized rights, yet it is predictable. To explain this paradox, it has to be related to the main difference between the two concepts of power/rights: power **sources** and power **resources**, according to the acquired and the inherited modes.

In the modern concept of power, sources and resources of power are variable<sup>51</sup>, thus **unknown** for a particular interaction, therefore predictability is unachievable. For example, a pressure group which was involved in a weak manner in one interaction of a planning project might mobilize other resources of power in another interaction such as the support of politicians, the media, etc. That is, by reducing the variables (by fixing some of them) in any power relation, and developing a mechanism for assessing (not measuring) the relative power of parties, predictability can be attainable, however, modern power concept lacks those criteria. The number of (unknown) variables is quite large especially in terms of resources employed (inflation of resources); and there is no mechanism for obtaining information, thus of assessing the relative strength (power) of parties involved in any particular context, accordingly, power relationships are **unpredictable**.

On the other hand, in the inherited mode, sources and resources are the same, they are rights which are **fixed** thus known in any interaction (transparent). There is no inflation of power resources in the inherited mode. Those rights work also as the framework or criteria (**pondering mechanism**) by which any case of interaction is assessed and judged. Accordingly, predictability in the inherited built environments is, in most cases, **attainable**, thus many disputes are avoidable. Rights in the inherited mode perform as organizatory mechanisms that bring order to the built environment, and avoid, as much as possible, disputes between parties. As a result, and because of inhabitants' awareness of their rights, the manifested structure of the inherited built environment reflected such mechanisms. Through picturing the scene of any interaction (i.e. predicting its possible outcome), and thus avoiding conflict with neighbours, most house doors were not opposite. Tanneries and iron workshops were located, in most cases, outside residential areas, due to their generated bad odour. In other words, such organizatory mechanisms ordered the territorial structure of the inherited built environment through ordering

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<sup>51</sup> This variability, as mentioned earlier, is mainly due to the variety of sources and resources types and, moreover, to the inflation of resources employed.

parties and properties' relationships. Such relationship between rights operating on the imperceptible structure and the manifested territorial structure of the built environment, and resulting in similar, but not typical, Muslim built environments, is what the Orientalists could not comprehend. They used the functional distribution of Muslim cities, assumed as constituting a prototype, as the main criteria for defining the Muslim city. Some Orientalists referred such territorial structure to role of the *muhtasib*. Accordingly, unaware of the imperceptible structure responsible for such functional distribution, Orientalists misinterpreted the inherited built environment, as explained in chapter four above. In short, societies in the inherited mode had **the practical consciousness** that is derived from such organizatory mechanism: the know-how of reducing the rise of problems and disputes in their built environments to the minimum.

Moreover, in its modern concepts, power can be generated in many different paths. It can be generated by possessing any power source, also it can be generated by mobilizing diverse resources, part of which might be sources of power, therefore the path of generating power in the acquired mode is variable and, thus, unpredictable (fig.8.6). In the inherited mode, as rights, when actualized, are the only source and resource to generate power, thus this path is clear and predictable (fig.8.7). This justifies the paradox mentioned above about modern concept of power: relatively static in its societal structure and structure, yet unpredictable.

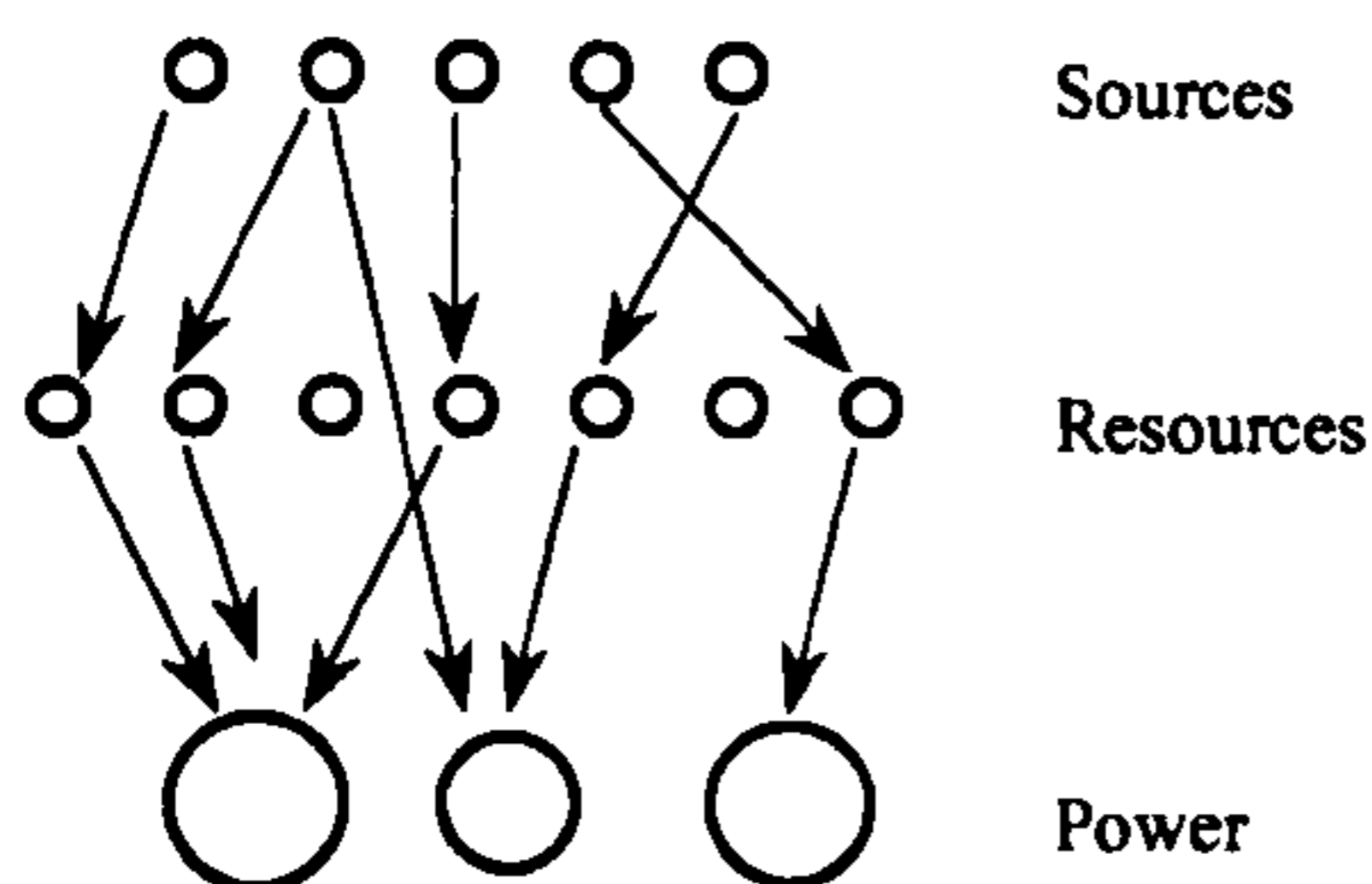


Fig 8.6: The path of creating power in the acquired mode is unpredictable.

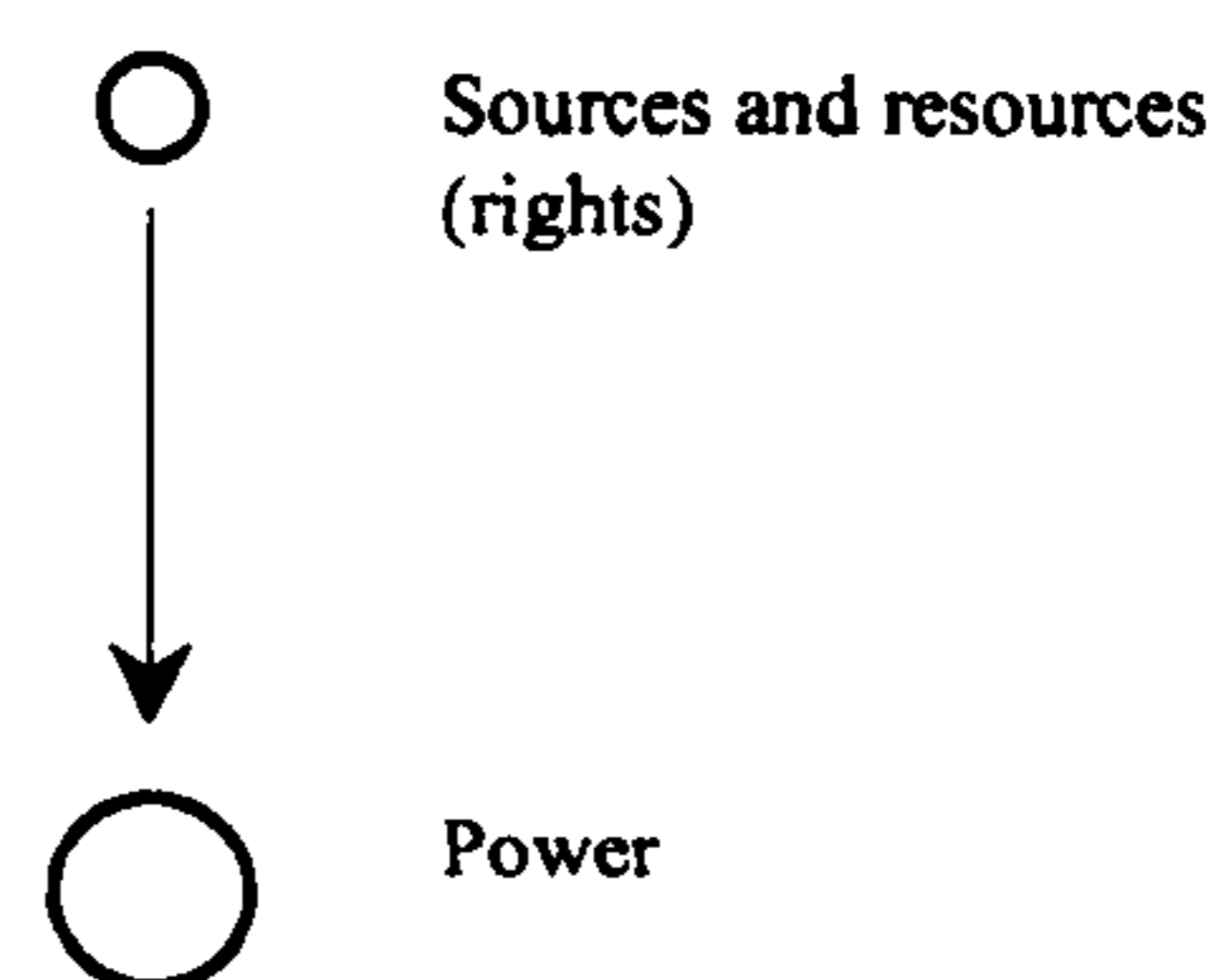


Fig 8.7: The path of creating power in the inherited mode is predictable.

As a conclusion, emanating from the investigations demonstrated in this chapter, it is important to emphasize here that power in either concepts (acquired and inherited) **cannot be measured quantitatively**. It is not absolutely quantitative. It can be **assessed** only through power relationships and not in general. This means that predictability of power is limited. Power cannot be predicted in general, i.e. predicting future events. But, if a power exertation in a certain interaction is about to happen, then it can be assessed, and its outcomes predicted. Rights in the inherited mode, as organizatory mechanisms, provide Muslim societies with this predictability of their interactions (power relationships) within the every-day life.

### 8.3 FREEDOM OF CHOICE (MOVABILITY OF PARTIES)

In the acquired built environment, the law is enacted to perform as a controlling, regulatory mechanism aiming at achieving a state of stability and order. Accordingly, justified by order

and organization, **state control**, or state intervention as commonly known, penetrated into most aspects of the daily life of the built environment. The law becomes an instrument of such state control. It constitutes the reference for parties in their actions. All environmental developments are subject to the law, whether privately or publicly owned. Building regulations restrict choices of people to what the law inquires: building height, building material, built-up area, plot area, set backs, parking areas, etc. The state controls access to scarce resources, property rights, and thus people's life chances (as Weber proclaims). Resonating with such a function, the law in the acquired mode is **prescriptive**, dictating what should be done. It restricts people's actions and thus freedom to its circle (fig. 8.8). The law, thus, performs as a **restrictive** regulatory mechanism on people's freedom. In that sense, Foucault perceives of the law in the acquired mode as a confinement that is a central propellant of the social order. Foucault called such a culture as the "culture of confinement" (Wuthnow, et. al., 1984, p.166). In short, the law (state control) plays a major role in the production process of the acquired built environment. It **dictates** that process.

Although rights in the inherited mode perform as a regulatory mechanism, however, they operate as a **framing**, and not restrictive, mechanism of parties' freedom. That is, *shari'a* (the Islamic law), as explained in previous chapters, provides the opportunity for all who have **relevant rights** to exercise them. It is a **proscriptive** law that explains what should not be done. It has no boundaries thus it is liberating; it unleashes people's freedom to act (fig.8.9). Each party in the inherited mode has its own scope of exercitation (circle of rights), framed by the scopes of other parties, thus, within its scope, each party can act freely as it wishes as long as it does not infringe onto the scopes of other parties. In some cases, the party, through dialogue and agreement with other parties, can penetrate their scopes thus gaining more freedom. For example, a party can reach an agreement with his neighbour to use (through leasing, selling or granting) part of his property as a pathway or to run his water gully, i.e. to establish a new easement right. In short, as the reference in the acquired mode is always to the law; relationships can be characterized as **singular** (individualistic) between the party and the law, however, it is in the inherited mode plural (social), based on interactions between parties and framed by their scopes of rights exercitation.

As Bauman argues, "**choice**" in contemporary societies has become a central issue. It is viewed as the foremost criterion of good life and personal success, and the essential systemic requisite. In that context, human happiness has been redefined to be centred on freedom of choice (Bauman, 1992, p.169,170; Featherstone, 1991, p.112).<sup>52</sup> Such **freedom** of the individual is measured by the **range** of realistic choices available to that individual as well as by what can be

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<sup>52</sup> That is, as Bauman argues, the focus today in politics is not on the material redistribution of wealth, income and other consumable values by society at large, but rather on the agency's freedom of choice as the main dimension of social division (Bauman, 1992).



chosen and what is chosen.<sup>53</sup> In turn, the degree of freedom becomes the main dimension of inequality. In other words, “choice” has become a determinate criterion in achieving the aims of freedom and thus happiness.

However, such aims are insubstantial. As a provider of the main services (streets, infrastructure), the state in the acquired mode controls what is available for parties, i.e. it **controls people’s choices**. Through the confinement of, and subjection to, the law, and through controlling life chances (access to scarce resources such as lands and housing) the state reduces choices available to the public, i.e. it confines people’s choices to what it provides or allows. For example, in terms of infrastructure systems, parties find themselves confined, with no choice other than linking their properties to that infrastructure provided, or approved and controlled<sup>54</sup>, by the government. Some might argue that through privatization, choices for inhabitants are decentralized, thus wider. This might be true, but of course such choices are not as decentralized and wide as when decided by the inhabitants themselves in their sites which might be achieved if rights structures are applied as the case in the inherited mode (see Akbar, forthcoming).

Building regulations operate as a means to restrict parties’ freedom of choice. Such regulations, for example, oblige parties to use certain building materials, to use their properties for pre-determined functions, to have certain plot area, and the like (fig.8.8). In that respect, Marcuse argues that the available freedom of choice and liberty in contemporary Western societies (acquired) are not beneficial to the individual, but are restrictions of their freedom. They are but **instruments of social control**. It is a manipulated freedom. Accordingly, as Marcuse contends, what characterizes those societies is that the individual himself has become integrated into the established society; he reproduces and perpetuates such **external controls**. In this process the “inner” dimension of man, in which opposition to the status quo can take root is whittled down. Thus contemporary man, in terms of his thinking, is a “one-dimensional man” (Marcuse, 1991, p.2-12). He became self-subjected to such controlling mechanisms.

On the other hand, private parties in the inherited built environment have the full freedom (with respecting other parties’ rights) to determine their **choices** and **alternatives** open to them, without any intervention from external parties (e.g. higher authorities) (fig.8.9). They have freedom of access to resources; a matter that made built environment-related resources available resources and not scarce as the case in the acquired mode. People can choose whatever environmental solutions they find proper for their properties (e.g. rainwater discharge, pathways, streets). Such choices are restricted by particular organizatory rights-mechanisms. Moreover, previously manifested physical solutions act as constraints on future choices or actions, thus any acting party has to respect the existing built environment as constrains.

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<sup>53</sup> For Marcuse, free choice among a variety of choices does not signify freedom if these choices sustain social control over life. For example, free election of masters does not abolish the masters or the slaves (Marcuse, 1991, p.7).

<sup>54</sup> If private, as the case in many Western countries. However, privatization is still not widespread in most Arab countries, thus inhabitants have no choice other than connecting their houses with what the state provides, at the prices it dictates.

To sum, the state and the law in the acquired mode act as controlling mechanisms, restricting parties' freedom, i.e. decision-making process of the production of the acquired built environment is controlled and restricted from above. However, restrictions on parties' action in the inherited built environment are self-organizational based on particular robust rights-mechanisms, i.e. the production of the inherited built environment is determined by the inhabitants themselves without any intervention from higher authorities. Therefore, parties in the inherited built environments have more freedom of action (choice) than in the acquired mode.

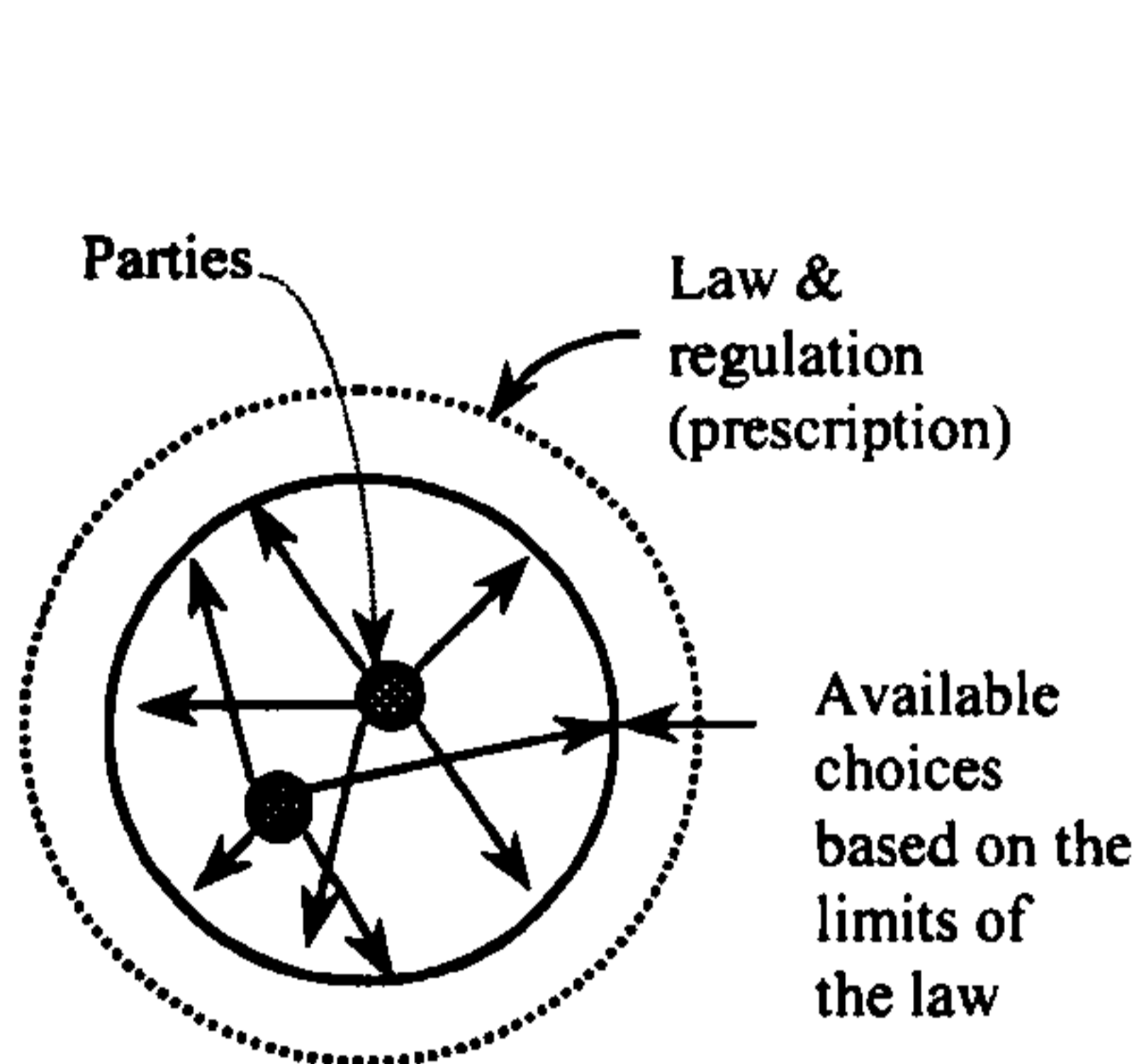


Fig.8.8: limited freedom of action in the acquired built environments.

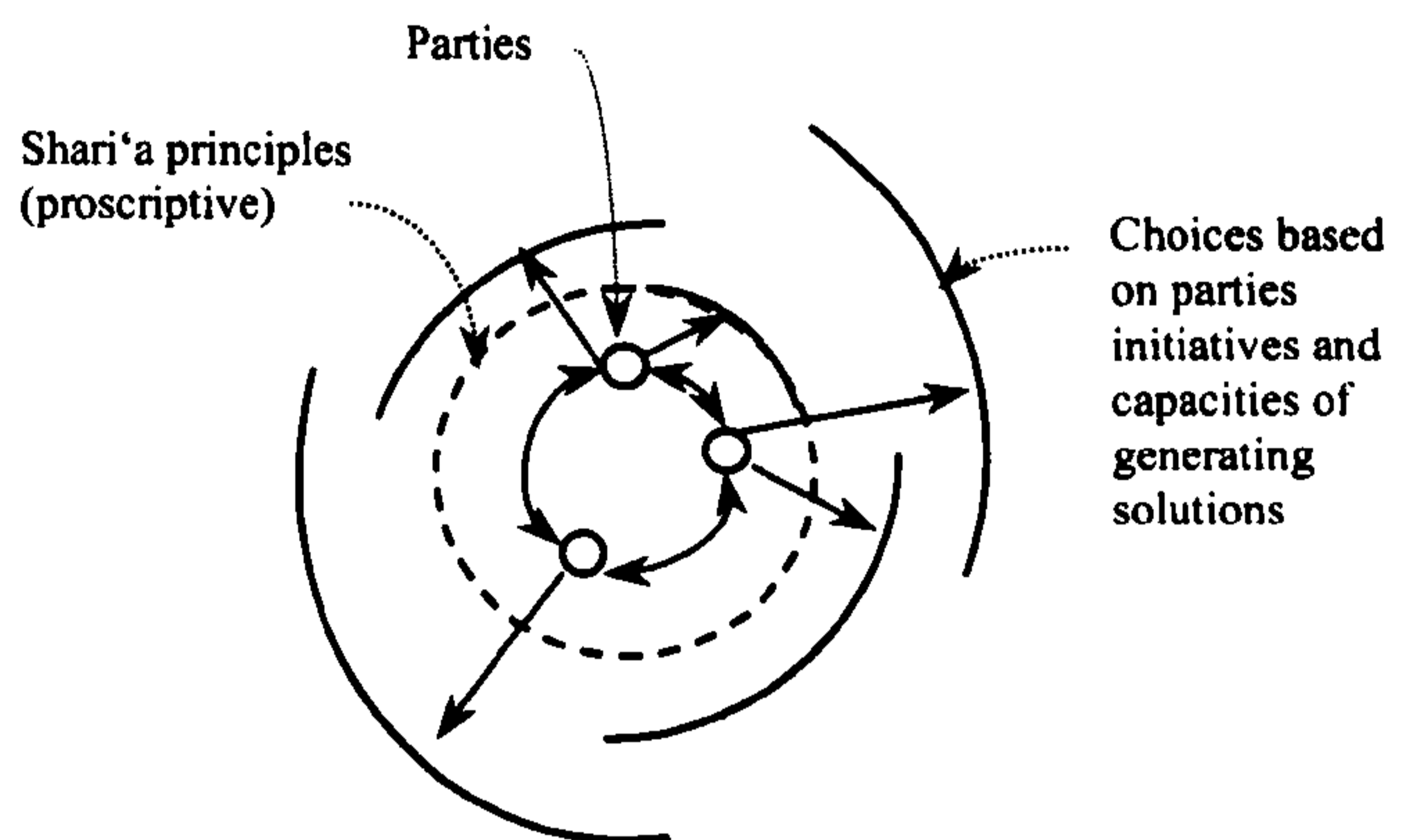


fig.8.9: unlimited freedom of action in the inherited built environments

Relating “**freedom of choice and action**” to internal and external power structures in modern concepts of power (explained above, p.184); freedom of action can be considered as a sign of whether a party is acting within an internal system (organization) or an external one. If a party is part of an organization, then it is subject to its internal rules and vertical system of relationships, while in external relationships, such as in relationships between two parties, a party has freedom in determining its actions. In this respect, in the acquired built environments, the whole societal system can be perceived as a one internal system (organization), where its rules are applied to all its members. Relating this to the concept of mobilization of resources discussed earlier, there is a tendency in the acquired mode to produce collective resources and thus collective power (organizations and institutions), i.e. increase the number of internal systems, thus decreasing choices or freedom of end-parties. This implies that the acquired built environment in modern societies is commanded thus constrained. It is dominated by professionals-based institutions, such as those of electricity, water, telecommunications, etc, that have to abide with the government's permissions and regulations which the government claims that they are directed at protecting the rights of the end-party (consumer). This hierarchy ends up in bureaucratized processes that restrict freedom and creativity and confine the potentialities of smaller (individual) parties.

In the inherited mode, the tendency is towards increasing the number of parties in control of their properties; to enable people and society at large. This tendency leads to a reduction in internal power relationships to the minimum (minimum domination between parties) and an

increase in the external ones with respect to the built environment at large, i.e. relationships are between immediate parties with no external interventions.<sup>55</sup> This leads to an increase in the number of **autonomous parties** controlling their properties, thus autonomous sites. Thereby, in the inherited mode, internal organizations are minimal, thus **movability** of parties (freedom of action) is maximum, and freedom of action and choice for parties is quite extended. Such a situation (wide options of choice open to autonomous parties and their sites) creates minimum points of contacts and overlaps between parties and sites; ultimately, minimizes disputes and conflicts (fig.8.10). However, sites in the acquired built environments have a vertical tree-like dominative pattern of relationships which implies a lack of autonomy, dependence on higher level parties or authorities, a determined path of power hierarchy, more points of contact with other (higher) parties, and thus more spots of potential conflictual interfaces (fig.8.11). In conclusion, the acquired built environment is viewed as a one large system within which movability of parties is limited, whereas the inherited built environment is an endless system with limitless movability of parties.

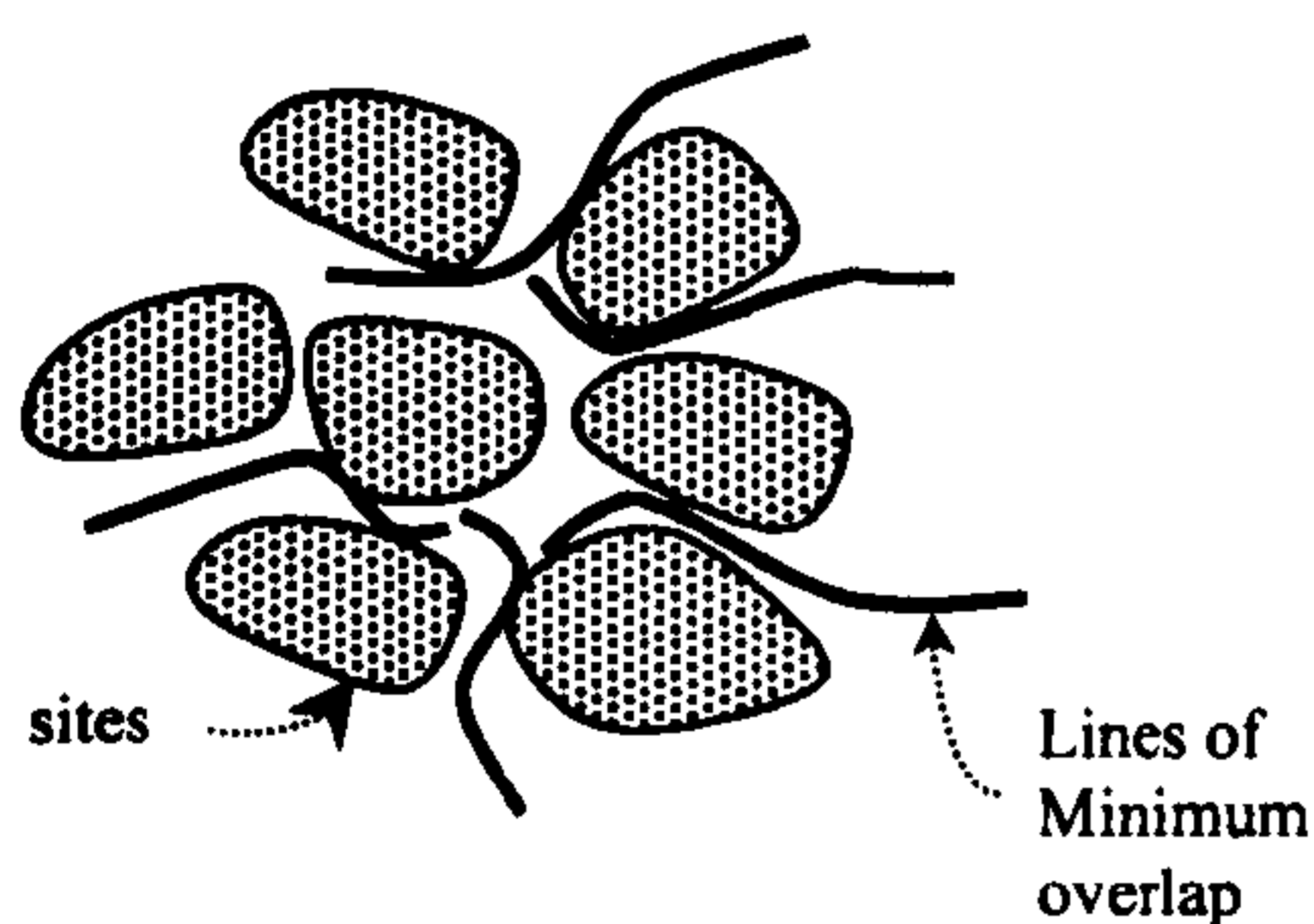


Fig.8.10: Sites in the inherited built environment relate to each other with minimum overlap.

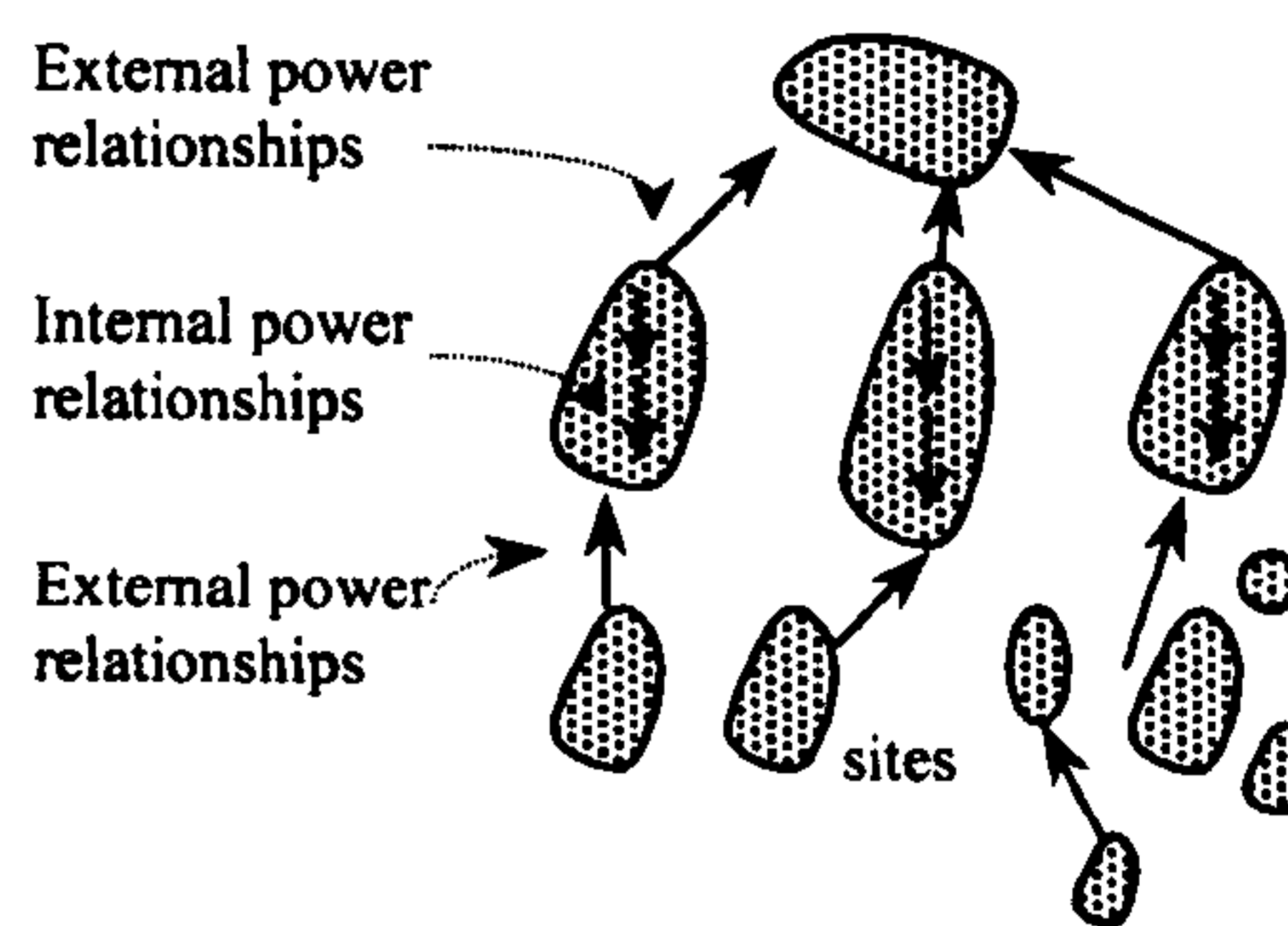


Fig.8.11: Relationships between sites in the acquired built environment reflect relationships between parties in the societal system. They relate to each other with more points of overlap.

#### 8.4 POWER/RIGHTS AND STATE OF STABILITY

Political **stability** has...been associated with the idea of ingrained respect for the authority of the law itself.

(Denham, 1994, p.9, emphasis added)

In the short run the law can be a **stabilizing** and unifying influence in a temporarily divided society.

(Atiyah, 1995, p.217, emphasis added)

**Human nature** motivates people to take certain decisions and actions. People tend to possess and control things; they seek to improve their environments; and more often than not desire to

<sup>55</sup> "External power relationships" is used here in the meaning of the acquired mode. It means power relationships between non-members organisations. "External party" as used previously in the inherited mode in this thesis means not immediate party in terms of the site, e.g. remote party such as the higher authorities.

expand their properties or territories if they have the chance. They also try to avoid and even may hinder the interventions of outsiders (Habraken, 1988). Those attitudes are considered as **basic human tendencies** that are of significance in producing the built environment. They are thought to be basic for all human beings and societies, despite of their intra-cultural differences<sup>56</sup> and subjective and personal differences.

In the acquired mode (modern societies), law constitutes the means for the orderly settlement of disputes (Denham, 1994, p.2). Rules, regulations and laws are all concepts to reduce and eliminate conflicts between acting parties.<sup>57</sup> They are developed to **control** those basic human tendencies, and ultimately aiming at organising the society, including its built environment. In that respect, as Pound contends, law in the acquired mode performs as a “social engineering” instrument (Harris, 1997, p.253), or as Foucault put it, to conduct the conduct. However, in the inherited mode, abstractly, rights are the substitute for regulations and pre-stated rules in modern societies in the sense that they function as societal regulatory mechanisms.

Generally speaking, societal systems (e.g. Islam, capitalism, socialism) reach their states of stability through interactions between their regulations and laws on one hand, and the basic human tendencies of their societies and individuals, on the other hand (figs.8.12). Each societal system has its own state of stability as a result of these interacting forces. In capitalist societies, due to their liberal-democratic attitudes; forces of human tendencies are greater than in socialist societies where the collective interests of society at large take precedence over the interests of its individuals. However, both systems reach their states of stability through the employment of laws and regulations. The true aim of law is thus, as Jhering asserts, “the realisation of an equilibrium of individual and social principles and purposes” (Jhering, cited in Curzon, 1995, p.151).

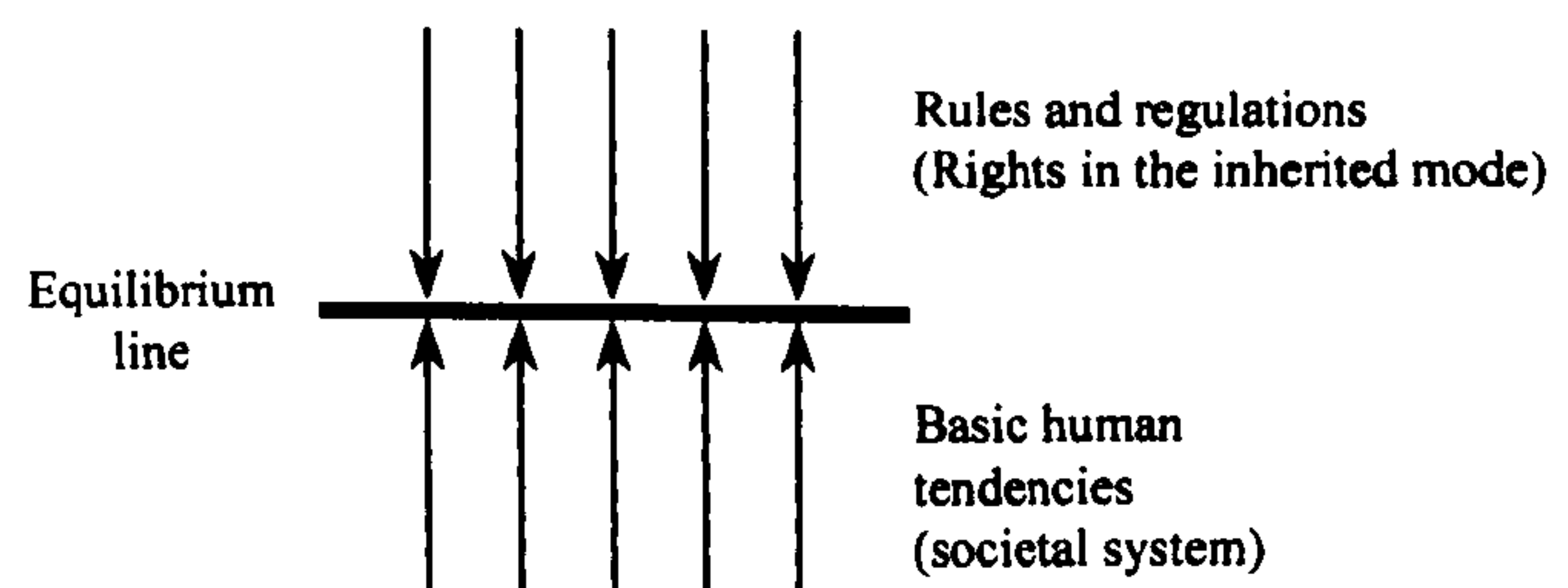


fig.8.12: Societal state of stability

The Law is by no means a static, rigid structure.<sup>58</sup> As laws and regulations are generally a codification of values held in society, thus, from time to time the law must embrace freshly defined values, attitudes, and codes of behaviour resulting from changes in the societal system

<sup>56</sup> Intra-cultural differences result from societies' ideologies, value-system, education, discipline, etc.

<sup>57</sup> This view characterised the thinking of almost all sociological jurisprudence scholars, such as Jhering, Weber, Durkheim, Pound. This view of “the law as a form of social control” is also considered as a basic assumption in socio-legal studies (Cavendish, 1997, p.125, 130).

<sup>58</sup> Bentham (Utilitarian and positivist) asserted that laws were human creations made by humans, for humans, thus can be made and unmade at man's mere pleasure (Atiyah, 1995, p.150).

(Denham, 1994, p.2). Atiyah stated in that respect that “change in society’s value system ... is and has been for centuries a cause of legal change which is both widespread and deep” (Atiyah, 1995, p.173). Also, the law, at any given moment, can be used in an instrumental way, i.e. it is possible to change and adapt the law in order to attain a given objective.<sup>59</sup> The law is an immensely complex social machine. It is continually in need of patching, repairing, and from time to time overhauling in this or that area (Atiyah, 1995, 122, 177). On the other hand, changes in the laws and regulations affect the societal system as well, including the values and norms (human tendencies) held by its people (Atiyah, 1995, p.88-9).<sup>60</sup> Thus, societal systems are **not steady** in their general shape, accordingly, their ideal state of stability is unknown and unpredictable<sup>61</sup>, and subject to “**periodical shifting**” according to changes in the law. The same can be said as to laws and regulations; they are not static, but subject to “periodical shifting” reflecting shifting in the societal system (fig.8.13). It is a reciprocal process, where changes in either force affect the other and thus the resulting state of stability. In conclusion, state of stability in the acquired mode is dynamic. It is subject to continuous changes in both of its forces: the law and in the societal system. Each historical period establishes its own state of stability; i.e. there is no absolute ideal state of stability.

In the acquired built environment, regulations and laws are generally superimposed on the built environment throughout the processes of their production. Those laws and regulations, at a one state of stability, usually deal with diverse resources and situations of different cases in the built environment in a static manner (one-to all), thus producing a steady built environment. Nevertheless, “periodical shifting” in laws and regulations, and/or in societal system, leads to drastic changes expressed as continuous leaps or “paradigmatic shifts” in terms of the built environment’s end-products and/or processes of production. The built environment, accordingly, shifts from subjection to one set of regulations to another. Paradigm shifts in laws and societal systems are congruous, i.e. mutual; respond to each other’s changes, as the one produces the other. Such changes need some time to be reflected on the built environment. Accordingly, paradigm shifts in the built environment are always behind those in law and societal system. They cannot cope with the pace of changes in societal system. This is because

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<sup>59</sup> This means in political areas that whenever there is a change of goals among those in charge of the country (a new government with new goals or different ideologies, for example), a change of laws is likely to be inevitable (Atiyah, 1995, p.172).

<sup>60</sup> An example of the effects of the law on social conditions is drawn by comparing the modern English and French farming conditions: English farms tend to be larger than those in France, where land ownership is much more fragmented. The reasons for this lie largely in the result of several centuries of different inheritance laws. In England, primogeniture and freedom of testation tended to preserve landed estates; in France, the rights of succession of children to a share of the parental lands tended to break up landed estates. So present-day economic and social conditions in these respects are the consequences of differing laws (Atiyah, 1995, p.122).

<sup>61</sup> According to historicists, there are fixed laws of historical developments, deduced from history, which can be used to predict the future. They argue that society will necessarily change but along a predetermined path that cannot change. Thus, those laws determine the society’s movements. On the other hand, Popper argues, against historicists, that social phenomena are ever-changing, thus, social laws are changing accordingly, and they are unpredictable (Popper, 1957, p.51).

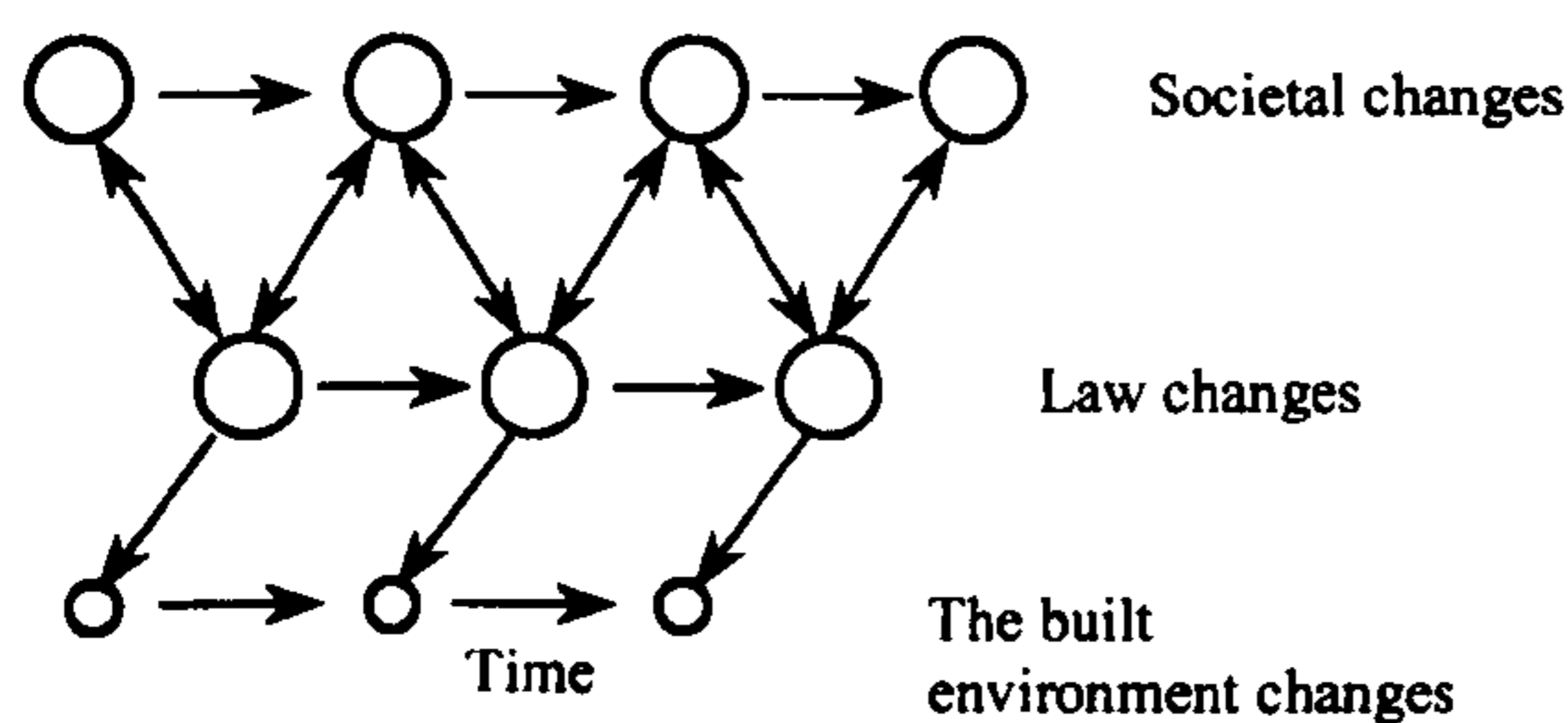
the built environment is produced by external parties other than the end-user himself (explained in chapters nine and ten), thus decision-makers need some time to grasp societal or law changes and then to reflect them on their decisions. In other words, there is always a **gap** between societal system and the existing paradigm of built environment (fig.8.13).

An example of such “paradigmatic shifts” in the built environment is the zoning model in planning and its concomitant **zoning law** (in New York in 1916), which consequently led to changes in the regulations and in the societal system regarding the production of the built environment (see Warner, 1972; Berry, 1973). It led, for example, to spatial segregation that reflects societal stratification; uneven distribution of scarce resources (e.g. services); and thus unequal distribution of life chances. In that respect, Lefebvre proclaims that capitalism with the support of the state (including its planners) through its laws and regulations (e.g. of planning), aiming at maintaining capitalism, produces “abstract spaces” (in contrast to “social spaces” which prevailed in traditional built environments) loaded with capitalist values, thus directing the society to maintain capitalism and to accomplish its interests (Lefebvre, 1984). In that sense, planning activities perform as a state instrument of social and systemic control. In short, society changes through changes in the law.

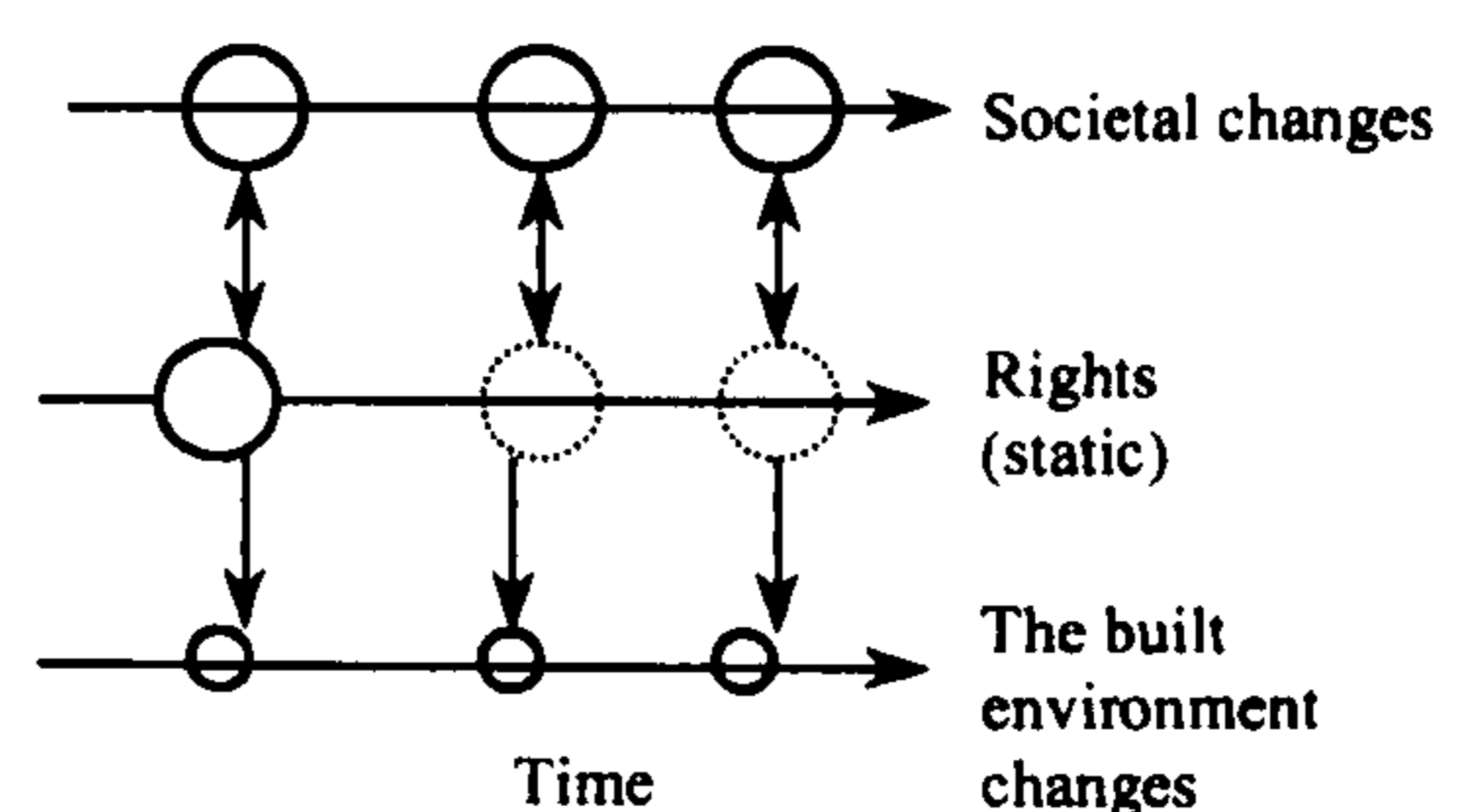
In Saudi Arabia in the 1950s and 1960s, the application of roads and buildings statute, introduced in 1941, with its emphasis on minimum plot area, set backs, grid pattern of streets, led to changes in societal values and norms. The villa type became dominant; apartment buildings became common. As al-Hathloul noted, these building changes, following the new regulations, led to societal changes. Today, unlike in the inherited mode, the acting party, for example, acts in his property regardless of his neighbour’s rights, even if he causes damage to his neighbour (e.g. invading his privacy). Moreover, whereas in the inherited built environment, the acting party, if causing damage to other parties, is responsible to lift the damage, in the acquired mode the damaged party who has to act so as to protect himself or damaged property. For example, if party (*A*)’s privacy was invaded by a new window opened by the neighbour (*B*), then the damaged party (*A*) has to find a solution to cover his window from the sight of the damaging party (*B*) such as fixing wooden screens on his boundary wall. Such a solution is now very common in Saudi Arabia as such practices became current. Moreover, unlike the inherited mode where territories used to accommodate people regardless of their economic situation, territories or land zoning in the acquired mode in Saudi Arabia (as in all the Arab countries), following the minimum plot area regulation, led to a sense of spatial segregation (discrimination) based on people’s income. Zones with higher plot areas have a higher value, thus affordable by the higher income class. This in turn led to stratifying land zones and thus society on economic terms (al-Hathloul, 1996, p.197-218).

In the inherited mode, the scene is different. The interaction between rights and basic human tendencies have come into a **state of stability**. That is, first, rights as derived from *shari’a* are static. Second, the mechanisms that perform to regulate and discipline human basic tendencies in the inherited mode are rights-based mechanisms, i.e. they are static mechanisms. Accordingly, there is a perpetual state of stability between rights and basic human tendencies.

Thereby, and as rights are robust in the sense that they are able to absorb unprecedented cases without changing the rights *per se*; the state of stability in the ideal Islamic society is supposed to be **steady**. Each **site** has its state of stability.<sup>62</sup> In that sense, one might argue that in the inherited mode, **static** rights-derived-mechanisms deal with the changing resources and other variables in a **dynamic** manner according to the specificity of each case. The ultimate outcome (the built environment) is therefore a **dynamic** one (fig.8.14). Nevertheless, due to rights robustness, inherited built environments are characterized by similarities and not conformity. This is because decisions of shaping built environments are not dictated by external parties (higher authorities), but evolve from within the site with reference to conventions shared by those residing the site. This can be depicted as “**diversity within unity**”: the diversity of the inherited built environment within the **unity of its rights**. As the inherited built environment is produced by its people; such environments are always in pace with changes in the societal system and any newly emerging needs or technical solutions. In other words, unlike the acquired built environments, there is **no gap** between changes in societal system and the inherited built environment. They are all the production of the same parties (fig.8.14).



(fig.8.13): 'Periodical shifting' in capitalist societal systems, thus 'periodical shifting' in laws and regulations. This leads to continuous **leaps** in the production of the acquired built environments, however with time gap.



(fig.8.14): In the inherited mode, static, robust rights and societal system are reflected on the built environments, with no time gap. There are thus **no jumps** in the changes of the inherited built environment.

## 8.5 CONCLUSIONS

As this chapter demonstrated, substantial dissensions exist between the modern concept of power adopted in the acquired mode and that of rights employed in the inherited mode. Accordingly, the mechanisms operating in the decision-making processes of the production of

<sup>62</sup> Some Muslim rulers intervened in the production of the traditional built environment, such as in shaping the main through streets of capital cities such as Cairo, or in creating new capital cities such as Baghdad and Samarra (see al-Lahham, 1994). Such actions were actually limited to certain sites and not extending to all built environment. Thus, the condition of stability (state of stability) of such sites (subject to state-intervention) does not follow the ideal condition of stability as determined by structures of rights set by *shari'a*. That is, such actions of the ruler exceed the state's scope of exercitation, as explained in the previous chapter.

the acquired and the inherited built environments are inevitably different. Thereby, the coexistence of these two modes loaded with such substantial dissensions in a one system (contemporary Muslim world) will inevitably lead to internal contradictions in the system, thus a crisis. The genesis of such coexistence is explored in the following chapters.

Some of the differences between the modern concept of power (acquired) and rights in the inherited mode can be summarized in the following table (table 8.1).

Modern concept of power (the acquired mode)	Rights in the inherited mode
Law is prescriptive One-to-all attitude	Rights are proscriptive One-to-one attitude
Power is quantitative and measurable	Rights are not quantitative, thus non-measurable
Collective power	Cooperation not agglomeration
Latent power, potential power	Neither latent power nor potential power are recognized. Latent rights exist
Episodic power	Episodic power: putative or actualized rights
Power is partious	Rights are locational
Power structure is static and absolute	No power structure but rights structures (maps of rights)
Power is dynamic Power structure is absolute	No absolute power distribution Rights distribution (actualized) in society is dynamic Power (actualized rights) distribution is static
Power is a property that can be possessed, stored for future occasions of use	Power is not a property but relational
Environmental Power distribution is non-contextual	Rights are contextual
Power relationship is unpredictable	Power is predictable in interactions
Power distribution in physical settings (standardized) is relatively static	Rights distribution in physical settings is dynamic (ever changing)
Increases internal power	Decreases internal power
Movability of parties is limited	Movability of parties is maximum



**Part Four**

**From the *Inherited* to the *Acquired*  
the deviation**

## Part 4

### FROM THE *INHERITED* TO THE *ACQUIRED*

#### The deviation

##### INTRODUCTION

The means adopted to apply the project of modernity (with its notions of rationality, supremacy of science, efficiency, progress, and more freedom) to the Arab Muslim world were inevitably accompanied by a **shift in the systemic power structure**. That is, modernization as a societal reformative project necessitates some sort of regulative (subordinative) power in the hands of a central party. Thus, there emerged what might be called in this study the **extraneous party(ies)** that performs in a paternalistic, centralized manner, controlling and directing other parties, so as to accomplish modernity's goals. This centralization of power was accomplished by a **shift of power** from people (the public) to the hands of this new party. The emergence of this modern extraneous party with its concomitant shift of power, this thesis argues, is considered the **genesis** of the acquired mode and its built environment.

##### THE EXTRANEOUS PARTY

This was effectuated through, **first**, the rise of the modern state with its notion of centralization, and, **second**, the rise of **professionalism**. The state as a centralized, supreme power was the ultimate decision-maker that penetrated, by means of its laws, into most aspects of its people's lives (chapter nine). That is, the state, through its people's consent, **acquired the power that gave it the right** to intervene in, and engineer people's lives so as to accomplish an ordered, regulated society and built environment. It controlled and directed, through its bureaucrats (e.g. planners), the processes of the production of the built environment. The modern state, thus, constitutes an extraneous party controlling people's lives. On the other hand, based on their knowledge and expertise, and backed by state support, professionals **acquired power that entitled them the right** to take decisions for others. Gradually, they became an indispensable part in modern societies, performing as extraneous parties in people's lives (chapter ten). In short, it is **the rights of power and not the power of rights** that gave those extraneouses their legitimate status.

##### THE MODERN STATE

##### PROFESSIONAL -ISM

Modernization process of the Arab Muslim World was necessarily predicated on a **superimposition** of the modern concept of power. This, gradually, led to a **deviation** from the inherited concept of power based on rights as derived from *shari'a*. Modernization, thus, meant a **shift** in the societal mode from a rights-based to a power-based mode. It is a shift from the inherited to the acquired

##### MODERNIZAT- ION

**CHANGING  
MECHANISMS**

mode. The emergence of the extraneous party (the state, professionals) led accordingly to **changing the mechanisms** of the built environment production. This shift, as this thesis argues, is the main element responsible for the crisis of contemporary Muslim built environments. That is, the shift from the inherited mode to the acquired mode was **not comprehensive** at all societal levels (polity, economic, socio-cultural, see p.100 above), but rather prevailed in those levels into which the extraneous party had managed to penetrate (mainly techno-economic and polity). Accordingly, the **coexistence** of both substantially dissensious modes (acquired and inherited) in contemporary Arab Muslim societies, each performing on a particular societal level (or in certain aspects of that level), will inevitably lead to internal systemic contradictions and structural disjunction. Such disjunction is reflected, consequently, on the process of the production of contemporary Muslim built environments. For example, many inherited Muslim values persist today, thus using acquired power-based mechanisms loaded with acquired values in the production of the built environment will lead to incompatibility in such environments. They are a production of “**acquired**” **alien mechanisms** and a **container of “inherited” local values**.

**COEXISTENCE**

Part four of this study is devoted to explore the genesis of the shift from the inherited to the acquired built environments. It attempts to investigate the impact of the emergence of the extraneous party on the decision-making process of the production of contemporary Muslim built environments. Chapter nine is concerned with scrutinizing the role of the modern state, using its power as an extraneous party, in the production of the built environment. It focuses on the shift of mechanisms of such production processes from rights-based to power-based mechanisms. Chapter ten investigates the rise of the built environment-related professionalism and its impact on changing the conception of the production of the built environment from inhabitants-centred in the inherited mode to professionals-centred in the acquired mode.

**STRUCTURE**

## **Chapter Nine**

**Changing Mechanisms**  
from rights-based to power-based

## CHANGING MECHANISMS from rights-based to power-based

The growth of the state in the Western world is accomplished by the state's appropriation of the legislative process. It is a monopolization of that process.

(Badie, 1992, p.130, translated by the candidate)

### 9.1 INTRODUCTION

Concomitant with the process of modernization in the Arab Muslim world, the modern state emerged as an extraneous party with legitimate power to control and engineer the society and its built environment in the names of order, progress, and freedom. In its Western concept, the power of the modern state emanates from its legitimate status as a representative of its people.<sup>1</sup> As such, the status and role of the modern state dissent substantially from that of the state in Islam. It is a power-based state, where power is defined according to its modern concept, and not rights-based as the case of the state in the inherited mode. Accordingly, new exotic notions were superimposed on the Muslim society such as representation, legitimacy, supreme power, and sovereignty. The state thus became the main axis in the operation of the underlying system, representing its people, and controlling its legislative process.

The emergence of the modern state in Muslim societies induced a substantial shift in the conception of the system of society-making. This led to changing the mechanisms of society maintenance and of the production of the built environment. It is a shift from **rights-based mechanisms to power-based mechanisms**. This chapter attempts to scrutinize the transformation in societal modes, as related to the production of the built environment. It investigates the mechanisms through which the modern state acquired the power that bestowed it rights to intervene in its people's built environments.

### 9.2 THE EMERGENCE OF THE MODERN STATE

#### TOWARDS CENTRALIZATION

As noted from previous chapters, decentralized decision-making process prevailed in the inherited built environments. *Shari'a* (the Islamic law) was set in a form of proscriptive principles that are applied to cases in a one-to-one manner, i.e. it did not set general laws that can be applied to all cases, regardless of their specificity. However, affected by the Western

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<sup>1</sup> Explained in chapter five above.

modern system and its civic laws and aiming at modernising the Islamic empire<sup>2</sup> (Badie, 1992, p.74-5), the late Ottoman State<sup>3</sup> **codified** the opinions and rulings of the Hanafi school in a law-like form.<sup>4</sup> In 1869(AD.), the first written authorised Islamic law was published in al-Majalla.<sup>5</sup> Accordingly, al-Majalla became the formal state law, to which all people were subject. Although the state in this stage was still performing according to its role in Islam in the sense that it was not legislative, this step towards codification of *shari'a* is considered the first step towards centralization in decision-making process. The ruler in this matter gave himself the right to impose al-Majalla on his people. In other words, the rights of the ruler in this regard **extended his scope of rights exercitation**, as determined by *shari'a*, to infringe into other parties' scopes, i.e. to intervene in other parties' circles.

Moreover, aiming at **regulating** land properties and ameliorating the built environment, the Ottoman State in 1858 enacted a land law<sup>6</sup>, based on *shari'a*. According to this law, dead lands, unutilized lands (*matrukah*), and those owned by the public treasury (*beit al-mal*), which are collective properties according to Islam (see chapter seven, p.131-133), became state properties (*miri lands*) on which the ruler had full control over, provided he performed in the common interest (az-Zarqa, 1968, v.3, p.152). Increasing the state's properties denotes a remarkable expansion in the state's scope of rights exercitation, accomplished through a decrease in private (individual or collective) parties' scopes. This is a sign of a new attitude towards state centralization and intervention. Revivification of dead lands became a **state-controlled mechanism**, conditioned by the ruler's permission, with a particular tax levied on land in return.<sup>7</sup> To regulate the relationship between state properties and other parties, a series of laws were promulgated, following the European model (Ziadeh, 1979, p.8). The state, as the owner of those lands, **subjected** private parties to its laws. In this respect, a deviation in the conception of property ownership from that prevailing in the inherited built environment began to emerge. *Shari'a*, through its concept of property ownership, opened access to resources and thus

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<sup>2</sup> Attempts of modernization at that time did not aim at replacing the Islamic culture but only to modernise it, at least in technical and political terms, i.e. the model of the modern state was not thought of yet (Badie, 1992, p.76).

<sup>3</sup> The Ottoman administration system affected most Middle Eastern countries, as those countries, excluding Egypt, were under the rule of the Ottoman Empire until the First World War.

<sup>4</sup> The Hanafi school is one of the four main schools of the Islamic law. The Hanafi school was the official school followed by the Ottoman state.

<sup>5</sup> In this Ottoman period, *ijtihad* was assigned to the ruler, thus he started to work according to *al-Masaleh al-Mursaleh* or regard for the common interest (as explained below, p.225). In this period the codification of the Islamic jurisprudence started (az-Zarqa, 1968, v.1, p.194).

<sup>6</sup> In the nineteenth century, the Ottoman State enacted a series of land laws aiming at regulating the relationship between the state, owning most lands, and the workers on those lands (az-Zarqa, 1968, v.3, p.157).

<sup>7</sup> According to the Ottoman land law, the taxation system on land operates according to Islam, however, with some manipulation. For example, tax on *miri* lands is a *kharaji* tax which is much higher than the *'ushri* tax levied on privately owned lands. Accordingly, all revived dead lands (became *miri* lands according to this law) are subject to *kharaji* tax and not to *'ushri* tax (Akbar, 1992, p.117).

increased opportunities for ownership and thus enablement of individuals and society. Transforming collective properties into state properties denotes imposing certain constraints (e.g. ruler's permission) on and limiting the chances of utilizing and owning<sup>8</sup> available resources and accordingly enabling the society.

Municipalities were established in the Ottoman Empire. They were first responsible for the public areas such as market affairs and street lighting, i.e. performing the role of the *muhtasib*. However, later on, municipalities' responsibilities were expanded, accorded more rights to intervene in private parties' domains. In 1879 a decree gave the municipality the right to confiscate private properties (Akbar, 1989, p.6). Thus, municipalities acted as extraneous parties intervening in the production of the built environment in the name of organisation. In that sense, a hierarchical structure of higher authorities started to emerge. New rules agglomerated, increasing state intervention in the built environment (Ziadeh, 1979; Akbar, 1992, p.340-1). Such rules were based on extended rights acquired by the ruler to fulfil administrative tasks. That is, in this stage of the late Ottoman Empire, a disharmony existed between the tendency of rulers, affected by modernity, to **lust for more power** on the one hand, and the pre-determined role of the state and the ruler as set by *shari'a*, on the other hand. Thus, the political (administrative) sphere, over which the ruler has full control, was distinguished from the sphere of the Islamic law. This political sphere was justified as pertaining to administrative necessities (*daroura*), operating to fulfil the common interest. The two spheres were compatible, i.e. the political sphere was conditioned by the Islamic legal sphere; it operated in accordance with its principles. Hence, the ruler acquired new rights (power) to enact laws and regulations that pertain to this new political sphere, but in a manner that does not contradict with *shari'a* so as to gain legitimacy (Badie, 1992, p.104-5). In the inherited built environments, the ruler has the right to intervene under the name of administration only in emergency cases and in a temporarily manner. Thus, rules enacted in such situations were by no means permanent. However, in the Ottoman Empire, such exceptional rights of intervention were expanded to take a permanent, official shape. Intervention became legitimate, according to the state's political sphere. The law, enacted by the ruler, was thus an expression of the power of the ruler, and an instrument to perpetuate this power. This marked the beginning of the emergence of a **power-based state**, yet still in a blurred shape. It is the beginning of the monopolization of the legislative process by the state, however in this stage such monopolization was masked by *shari'a* so as to obtain legitimacy.

### CENTRALIZATION

Until the First World War, most Middle East countries followed the Ottoman system of administration (e.g. land codes and Majalla). Later, as a result of colonialism and modernization movements and under the name of reform, scopes of political sphere widened on the account of

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<sup>8</sup> Revivification of dead lands does not, according to the 1858 land law, lead to full ownership as was the case in the inherited built environments, but rather to imperfect ownership where the revivifier owns the usufruct of the land and the state owns its substance.

the Islamic legal sphere. Accordingly, **power spheres expanded over rights spheres**. This led gradually, in most Arab Muslim countries, to relinquishing *shari'a* principles in most aspects of life, replaced by the model of the modern state and Western civil laws<sup>9</sup> (based mainly on the French law<sup>10</sup>), i.e. posited laws replaced *shari'a* law. In other words, an acquired power-based mode replaced the inherited rights-based mode of society-making and built environment.

### 9.3 LUSTING FOR POWER

The state intervenes more when it acquires strong power resources.

(Badie, 1992, p.139, translated by the candidate)

According to its modern model, the state constitutes the **supreme power**, which power is acquired through its legitimate status. Defining state legitimacy as the **right of the state to exercise its power** (see p.77-8 above), the state always tends to reinforce its legitimacy, thus **lusting for more power**. Accordingly, different strategies were followed by the state to acquire more resources so as to acquire more power. Some of those strategies are explained below.

#### 9.3.1 Appropriation of the legislative process

Lusting for power, the most significant strategy adopted by the state to maintain its status and to perpetuate its legitimacy is its **appropriation and monopolization of the legislative process** (Badie, 1992, p.130). That is, perceiving of the law as a state instrument, monopolization of the legislative process means the ability of the state to achieve its interests and to exert domination over, and thus subjection of, the public. In that respect, in contrast to the inherited mode where the state acts as an executive device framed by and subjected to the Islamic law, the state in the acquired mode performs as the legislative authority to which people are subject; it is the producer of the law. In that sense, the law in the acquired mode is, as Black describes it, the solemn expression of the will of the supreme power of the state (Black, 1991, p.612). Thus, instead of being **controlled** by the law (in the inherited mode), the state in the acquired mode **controls** the law. It emanates in its performance from its power base that determines its rights. In brief, the state in the acquired mode performs out of its **rights of power** instead of its **power of rights** as was the case in the inherited mode.

As some Arab countries' property laws (e.g. Jordan) are based on the Ottoman Majallah, which is basically an Islamic-based law, one might argue that such laws might be perceived as a continuation of the Islamic law. This is not true. Such continuation might be true on the manifested level only, however, on the imperceptible level, the two types of law (acquired and inherited) are quite different according to the difference in mechanisms of producing and operating the law and consequently the built environment. The law in the acquired mode, in the

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<sup>9</sup> In 1930, the French commissioner in Syria and Lebanon established the Property Law, abolishing all Ottoman land codes (az-Zarqa, 1968, v.3., p.157).

<sup>10</sup> The Egyptian civil code was drafted along the lines of the French civil code by Dr. as-Sanhuri, assisted by the French jurist E. Lambert. The Egyptian civil code became the model on which as-Sanhuri depended in preparing the Syrian, Iraqi, and Libyan civil codes, and on which the Jordanian authorities depended in formulating their civil code (Ziadeh, 1979, p.14).



name of order and regulation, constitutes an instrument of social control, of legitimising state-intervention in private parties' properties, and thus of legitimising centralization in decision-making process of the production of the built environment. Thus, through the law, the state increased its power infrastructure, penetrating into most aspects of life, legitimately.

### 9.3.2 Conceptual changes

As part of the state apparatus of maintaining its status and lusting for power, perceptions of some significant notions had to be changed, such as conceptions of property ownership, the public interest, and the rights of the group inherent in private ownership. Gradually, through power-based processes of "normalisation"<sup>11</sup>, to use Foucault's expression, those new acquired conceptions became accepted notions in society, thus employed unquestionably.

#### 9.3.2.1 PROPERTY OWNERSHIP

Most civil codes in the Middle East do not define private property ownership but rather codify its limitations and the rights it entails (al-'Abbadi, 1977, v.1, p.152). An owner can act as he wishes as long as his actions are **within the framework of the law**.<sup>12</sup> In that sense, in contrast to the inherited built environment where an owner party acts according to its rights, regulated by **structures of rights** according to *shari'a*, and thus by dialogue between immediate parties without any intervention from external parties, the owner in the acquired mode is subject to the higher authority and its laws. The state in the acquired mode gave itself the right to intervene in its people' private properties. The law became the reference in any environmental interaction. Accordingly, hierarchical relationships between related parties and the state replaced property relationships between immediate parties in the inherited mode.

Accordingly, rights of control and use bestowed to the owner as a result of his right of ownership are **decreased** in the acquired mode. The owner does not have full control over his properties but subject to the higher authorities' control (e.g. building regulations). Therefore, ownership in the acquired mode is characterized as **imperfect ownership** in contrast to **full ownership** enjoyed by the owner in the inherited mode (see p.127-8). Such a change had its impact on social relationships in the Muslim society, as will be explained below.

#### SOCIAL FUNCTION OF PRIVATE PROPERTY OWNERSHIP

Islam, as explained in chapter seven, granted the rights of the group a substantial importance. It associated such rights with every private property ownership through structures of rights. Thus, property ownership in the inherited built environment is composed of two components, the primary private ownership right and the group right. The former gives the owning party freedom of action restrained by the circle of the latter component. That is, exercitation of rights of private ownership is restrained by the Islamic concept of harm (as a regulatory mechanism).

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<sup>11</sup> "Normalization", according to Foucault, means inculcation of certain truths or ideologies into the subjected people.

<sup>12</sup> To protect the subjection of people to its laws, most clauses of the law include the phrase "within the limits of the law". People are always subject to the law in their actions in the built environment.

In that sense, the circle of ownership rights is much wider than that of other parties' (group) rights performing as constrains (see p.140).

Today, in the acquired built environment, such a conception (rights of the group inherent in private properties) is changing. Aiming at expanding the circle of the public interest represented by the state, property ownership is conceived in the acquired mode as a private **right with a social function**, thus enjoying such a right should be consonant with the public interest. For example, clause no.32 in the Egyptian constitution of 1971 states that "the law organizes the operation of the social function of private ownership, into the benefit of the national economy, and within the framework of the development national plan, ... and such function should not contradict in its performance with the public interest" (cited in al-'Abbadi, 1977, v.1, p.424, translated by the candidate). Hence, the state as a representative of the public is responsible for directing private property ownership rights in a manner that accords with the public interest (al-'Abbadi, 1977, v.1, p.420-). The state's rules and regulations in that respect act as constraints, conducting private parties' actions to comply with the public interest. Such a change in the conception of private property from a private right, self-regulated by structures of rights in the inherited mode, into a private right with social function directed by the higher authorities had its consequences on power relationships in the built environment. It gave the state a free hand in constraining private parties' actions under the banner of the public interest. This accordingly led to legitimising state intervention as an extraneous party in the production of the built environment, thus increasing its areas of acceptance in the built environment. This shift sustains the change in ownership conception from a full ownership in the inherited mode into an imperfect ownership in the acquired mode subjected to state power. Such a conceptual shift was concomitant to a shift in the conception of the public interest *per se*, as explained next.

### 9.3.2.2 THE PUBLIC INTEREST

As explained in chapter seven (p.148), the common interest in the inherited built environment is not an absolute dominating interest that is absolutely prioritized over the individual's interest, if in conflict. Most schools of law (Maliki, Hanafi<sup>13</sup>, Hanbali) considered the regard for the common interest, or *al-masaleh al-mursaleh*, as a method for reaching rulings. Avoiding abusing this method by rulers to gain more rights thus power over the public, the concept of the common interest, as defined by Muslim jurists, was confined to matters related to *shari'a*'s main purposes, with consideration to the ranking of the necessity of such matters (necessities, needs, or improvements) (az-Zarqa, 1988, p.41). Jurists employed this method in reaching rulings in a very cautious manner. What those jurists feared happened in the acquired mode.

The method of "regard for the common interest" or "*al-masaleh al-mursalah*" has been expanded in the acquired built environment. Some contemporary Muslim scholars (e.g. ad-Duraini, az-Zarqa, al-Fayez) consider the public interest as an absolute priority over

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<sup>13</sup> The Hanafi school considers preference (*istihsan*) as a source for reaching rulings. However, according to az-Zarqa, preference is one form of "*al-masaleh al-mursaleh*" or regard for the common interest (az-Zarqa, 1988, p.64).

individuals' interests. This stand turned the public interest into a **state power resource**. The public interest is used in the acquired mode as an instrument for legitimizing state actions.

In contrast to the inherited built environment where the common interest is defined and fulfilled by the inhabitants themselves, the public interest in the acquired built environment is **defined and fulfilled by the state**. It is a centralized process. For example, state interventions such as in planning certain districts, creating new streets, limiting building height, and enacting zoning regulations, are all justified as performing in the public interest, as defined by the state. As a result of such an extension in the concept of the public interest, the state **gained more rights**, enabling it to penetrate into most areas in the built environment. In other words, the scopes of state power increased to include many areas which it could not include in the inherited built environment due to its limited rights predetermined by *shari'a*. One of the most significant **rights** that the modern state acquired through its recourse to the expanded notion of the public interest is the right of expropriation of private properties, or **eminent domain**.

#### **EXPROPRIATION OF PRIVATE PROPERTIES (EMINENT DOMAIN)**

Unlike the situation in the inherited built environment, where private properties were granted a high degree of sanctity against infringement or expropriation from other private parties or higher authorities, properties in the acquired mode lost such sanctity. The state, using its power resources, gave itself the right to expropriate private properties<sup>14</sup> in the name of the public interest, conditioned by just compensation.<sup>15</sup> Expropriation of private properties was accepted, with reluctance, in very limited cases (desperate necessities, see p.154) by some jurists in the inherited built environment; many contemporary scholars used such an acceptance as justification and thus allowed expropriation of private properties for the public interest (defined by the state).<sup>16</sup> The Egyptian law of 1990 identified the public interest for which expropriation of private properties is allowed as creating or widening streets, planning new neighbourhoods, creating bridges or tunnels, urban planning projects and amelioration of public facilities, and any other works that are considered for the public interest. Moreover, this list could be extended through government decisions (Khalil, 1993, p.38-9). Thus, the state has the right to determine the public interest according to its own perspective. This in turn opened more avenues for the state to **acquire power over private properties**, expanding the state's legitimacy as an extraneous party in its intervention in the production of the built environment. For example, in

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<sup>14</sup> The modern state's role as a representative of the public interest applies to the communist system. That is, communism is another form of modernity. It has a different ideology. It is a totally centralized system. However, as our study is about the capitalist-based acquired system, thus such notions as expropriation are explained as related to the capitalist system and not to communism.

<sup>15</sup> The Egyptian Law no.10, enacted in 1990 regarding the expropriation of private properties for the public benefit, did not insist on compensating the owner before taking his land for the public benefit (Khalil, 1993, p.8). Many contemporary scholars objected to such an act. However, their objection focused on the necessity of compensation and not on the concept of expropriation *per se*. They advocate expropriating private properties for the public benefit, conditioned with just compensation.

<sup>16</sup> The right of eminent domain was used to its extremes in some Arab countries (e.g. Egypt) in the processes of nationalisation of private properties (*ta'mim*).

the process of superimposing zoning regulations in Riyadh, Saudi Arabia, the municipalities were granted the authority to use eminent domain in non-conforming cases, i.e. not matching with the zoning regulation whether in terms of plot sizes or land-use (al-Hathloul, 1996, p.227-8).<sup>17</sup> Eminent domain became a tool of power in the hands of the state to achieve its interests, masked by the public interest.

### 9.3.3 Controlling the built environment

In the inherited built environment, the state's scope of rights exercitation is small, confined to its properties (of the public treasury or *beit al-mal*) which were quite limited. Thus, the state had very **limited rights** to intervene in the production process of the inherited built environment. State property in the inherited mode was conceived as a public property that is owned by all Muslim collectively and controlled by the state as a caretaker, thus the owner-party has the right to object to the state's actions if not performed in the common interest (see p.132).

In contrast, the state in the acquired mode, as the supreme regulatory device, had to **acquire power** to control and thus direct (intervene in) the production of the built environment through expanding the state's areas of acceptance. This in turn means increasing state properties, and changing the conception of state ownership from that prevailing in the inherited mode. This consequently leads to changing the **territorial structure** of the built environment.

#### POWER AS A "ZERO-SUM" MODEL

Power in the acquired mode, follows a zero-sum model in the sense that to gain more power, some has to lose. This concept is quite evident in the state's attitude to increase its power in the built environment. That is, to increase state power through **expanding its areas of acceptance**, the areas of acceptance of private parties had to decrease correspondingly. Put differently, to attain more control over the built environment, private domain has to be reduced. Hence, the state, through its laws, **appropriated public properties** that used to be owned in the inherited built environment by all Muslims collectively, such as roads, dead-end streets, yards, and dead lands, and transformed them into state properties, owned and controlled by the state and used by the public. Such processes, as Habraken states, flattened the territorial structure of the built

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<sup>17</sup> The public interest became a powerful tool for justifying the state's action. For example, the case of *Berman vs. Parker* (1954), decided by the US. Supreme Court, involved a property in the District of Columbia that was taken by the Congress through eminent domain for the purpose of slum clearance and then given to a private firm for development. The plaintiff challenged the constitutionality of the District of Columbia Redevelopment Act of 1945 as it applied to the taking of his property. The owner argued that giving the property to a private firm amounted to taking it from one businessman to give it to another. The court when reviewing the case stated that, "Once the object is within the authority of the Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end (that is, making the Nation's capital beautiful as well as sanitary)... the means by which it (the object) will be attained is also for the Congress to determine.., once the public purpose has been established. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project rests in the discretion of the legislative branch". Ultimately, the court decided that the expropriation is constitutional, and thus the owner's interest was violated for what was decided as the public interest by the District of Columbia (Haar, 1976, p.636-639).

environment, i.e. decreased its territorial depth<sup>18</sup> (Habraken, 1998, p.220-1). That is, due to the existence of several territories controlled by different private parties such as dead-end streets and through streets, the territorial depth in the inherited built environments is quite high. By transforming those different territories which party *A*, for example, has to pass to reach his house from being private territories controlled by different parties into a one territory owned and controlled by the state, the territorial depth of the built environment is reduced (fig. 9.1). This increased the central control of the state over the built environment. That is, the shallower the territorial structure is, the more the top-down domination.



Fig.9.1 High territorial depth in the inherited built environments

Shallow territorial depth in the acquired built environments

Moreover, to sustain its power over such properties, the state considered its ownership over its properties as **full ownership**, characterized by full control over the owned property. Accordingly, what used to be self-controlled inherited built environment turned in the acquired mode to be **extraneously-controlled** built environment. Private parties' rights of control over through streets are diminished. The concept of the *fina'* was abolished. Dead-end streets that were privately-owned property became a public property owned by the state in which every person has the right to use (pass-by).<sup>19</sup> Gates on the mouths of dead-end streets that used to signify the autonomous status of dead-end streets were demolished. As a result, the percentage of controlling parties in the acquired built environment, as Akbar proclaims, became far less than in the inherited ones (Akbar, 1988, p.59).

Such processes led to the deterioration of the territorial structure of the inherited built environment, enfeebling the social relationships in the acquired mode. That is, the territorial structure in the inherited built environment affected, and was affected by, the social structure (Akbar, 1992, p.386-8). The neighbourhood centred on the dead-end street disappeared in the

<sup>18</sup> Territorial depth is measured by the number of boundary crossings needed to move from the outer space to the innermost territory (Habraken, 1998, p.137).

<sup>19</sup> According to the Ottoman codes of al-Majalla, the dead-end street was recognised as a private property that belongs to its residents collectively. However, through state codes, the owner-party's rights over its collective property were reduced. Al-Majallah gave the passers-by in main roads the right to enter private streets in cases of crowding. The owners of the dead-end street did not have the right to sell it, even if they agree to do so among themselves, nor could they divide it. Moreover, the owners could not block its mouth by, for example, building a gate (articles 906 & 1223) (Akbar, 1988, p.51).

acquired built environment. In that respect, some contemporary planning themes, such as the “New Urbanism”<sup>20</sup>, attempt to revive the spirit of the community through reviving the neighbourhood. As such attempts operate within **capitalist power-based imperceptible mechanisms**, thus such solutions are confined to the manifested level and cannot accordingly revive the spirit of the community as existed in the inherited built environment.

Accordingly, situational rights maps as existed in the inherited built environments changed. That is, instead of having **several categories** of physical settings in the inherited built environment, according to their rights (e.g. through streets, *finas*, dead-end streets, private properties), categories of physical settings in the acquired built environment are **reduced** to only two: state properties that are owned and controlled by the state, and private properties that are owned and controlled by private parties but the state has the right of control over them. Thus, in contrast to the situational map in the inherited mode where private properties were characterized by full ownership and state properties by imperfect ownership, state properties in the acquired built environment enjoy full ownership whereas private properties enjoy imperfect ownership. This, is in fact a reflection of the societal power structure and the mechanisms (power-based or rights-based) operating in each mode. Thus, the territorial structure of the built environment in the acquired mode became the reversal of that of the inherited mode. Areas of acceptance of the state expanded, while those of private parties contracted.

#### **CONTROL OF ACCESS TO RESOURCES**

Part of the state apparatus to acquire control over the built environment is to control private parties' access to resources. In that respect, **revivification was abolished**<sup>21</sup> as a mechanism of mobilizing resources and initiating ownership. All dead lands and left-over lands (*matrukah*) became state properties that cannot be utilized without the state's permission. In that sense, land as an available resource in the inherited mode became a scarce resource which access is controlled by the higher authorities. Hence, lands of no purchase value in the inherited mode became a valuable resource, a matter that led, consequently, to the emergence of the phenomena of land speculation in the acquired built environment. In other words, land has been transformed from an available resource of decent life in the inherited mode into a capitalist resource of investment in the acquired mode. This in turn restricted the chances of the individual, and thus the Muslim society, to be enabled and self-dependent. Lands are available, but unpossessible (whether unaffordable, or unreachable (if state owned)). Consequently, the cost of development

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<sup>20</sup> The new Urbanism is a movement that addresses many of the ills of our current sprawl development pattern. It contends that the costs of urban sprawl are visible in the creeping deterioration of the once proud neighbourhoods, the increasing alienation of large segments of society, a constantly rising crime rate and widespread environmental degradation (Katz, 1994, p.ix-x). The New Urbanism believes in producing the built environment by extraneous parties, a modern-capitalist method, and not by the inhabitants themselves. Thus, New Urbanism is but another model revolving in the orbit of the modern-capitalist paradigm.

<sup>21</sup> With respect to revivification, the Syrian civil code considered dead land a state domain. The same process took place in Iraq in 1938. In Egypt, nullification of revivification was gradual, however ended up in 1964 in considering all dead lands as the state's exclusive property and thus revivification was abolished altogether (Akbar, 1988, p.53).

is far too high for most inhabitants. Problems of housing shortages are thus mounting in most Arab countries. Almost seventy percent of the housing demand is for the poor (Hasan, 1995, p.25). House-building loan programs for low-income groups emerged. However, the problem in most cases is in the acquisition of land, and not in building houses. People, if obtaining a land, can incrementally build their own shelter, to minimum quality standards. However, with state-control over access to resources (lands) such a process has become a dream for many inhabitants. This situation led consequently to the emergence of informal squatter settlements with unacceptable living conditions, which are again fought by the state and professionals.

### **TERRITORIAL DOMINANCE**

Dominant top-down control inevitably implies increased proportion of public space.

(Habraken, 1998, p.212)

In an attempt to regulate the relationships between private parties, and to sustain its control over the built environment, the state in the acquired mode tends to avoid any direct (or horizontal) relationships between parties (such as those prevailing in the inherited built environment), and thus any potential domination or conflict. To achieve this, two mechanisms were adopted. **First**, through laws and regulations. The law in the acquired mode acted as a **mediator** between parties and their properties. It performed as a **regulatory mechanism** to which parties refer. Any dispute between neighbours, for example, is resolved by reference to the state's law. Replacing direct relationships between neighbours with state-private parties relationships through the law led to the elimination of dialogue between neighbours. This had its impact in weakening the social bonds in the built environment. Moreover, building conventions in the inherited built environment are developed by inhabitants themselves and transmitted among society by means of dialogue (explained in the next chapter). Elimination of dialogue between parties means the stagnation of the conventional building knowledge. This, consequently, leads to the decline of self-created, responsive, creative solutions in the built environment. The law (the state) in the acquired mode determines such solutions and thus replaces other methods of knowledge transmission. In short, dialogue is replaced by imperatives.

**Second**, to minimize such relationships between private properties, the state increased what can be called "**safe areas**" as areas that separate private properties. These are public areas, such as streets and plazas, owned and controlled by the state, and which perform as higher level areas through which any potential friction, due to **horizontal** property relationships, between any two adjacent properties dissolves. Private houses, for example, open into public streets directly. No direct relationships between private houses through for example easement rights. Creation of new easement rights by the inhabitants is nullified (Akbar, 1992, p.337). In that sense, areas of contact or friction between neighbours are reduced, if not eliminated, and, as Habraken states, higher level areas function to organize lower level ones. They are what lower level forms have in common (Habraken, 1998, p.84). Each property has a direct relationship with the state, through the safe areas (state properties), and indirect relationship with other properties through the law. This avoidance of horizontal relationships between properties, Habraken contends,

constitutes the single most important principle in the generation of the acquired built environment (Habraken, 1998, p.34).

Where rights-based mechanisms in the inherited built environment connected properties and thus parties together, power-based mechanisms (the law) in the acquired built environment separated such properties and thus parties, leading to eliminating any overlap that might occur between properties. The state (the law) performs as an intermediate extraneous party, controlling private properties. In that sense, state domination replaced horizontal (restless, according to Habraken) relationships between parties.

Accordingly, the ratio of public spaces to private properties increased dramatically in the acquired built environment compared to the inherited built environments. For example, according to al-Hathloul's study of change in ad-Dira district in Riyadh, Saudi Arabia, the area of streets had increased from 18% in the inherited built environment to 45% in the acquired built environment (three times), whereas the area of private properties had decreased from 77% in the inherited mode to 53% in the acquired mode (al-Hathloul, 1996, p.166). As state properties, the organization and maintenance of such large areas of public spaces became the responsibility of the state instead of the responsibility of all inhabitants, as was the case in the inherited mode, i.e. transformed from being de-centrally fulfilled to centrally fulfilled. This consequently had led to the depletion of society's resources in ordering and maintaining those spaces. The poor financial situations of states in most Arab countries has led to deterioration of quality in such spaces. For example, unserviced areas are increasing in Cairo at twice the rate of urban growth. Existing infrastructure is operating at levels two to four times above their designed capacities. Facing such problems, ten billion U.S.\$ are needed to bring Cairo's services up to an acceptable standards (Serageldin, 1989, p.264). The problem does not lie in the lack of state development programs, but in their inefficiency. Such programs cannot solve those urban problems unless the roots of the problem are challenged; that is the domination of the extraneous party in the production process of the built environment.

This process of eliminating potential domination between related parties through creating safe areas led in turn to the creation of another sort of hierarchical relationships between properties, but with the state as a one component in such relationships. Private properties in the acquired built environment relate **territorially** to higher level public spaces (whether, as called in contemporary terms, public, semi-public, or semi-private spaces), which are state-owned and controlled. Such relationships are produced and organized through **power-based mechanisms** which are directed by the state, as the supreme regulatory device, and its laws. The state, thus, exercised its **power** over the built environment: it appropriated public spaces; owned them; imposed its control over them; intervened in the production of the built environment; changed the territorial structure; subjected private parties to its laws and regulations; and thus gained **territorial dominance** in the built environment. In other words, the societal hierarchical power structure in the acquired mode **capitalized** potential dominance/dependence property and thus parties' relationships in the built environment.



As noted, the physical organization of the built environment invites territorial domination between parties (as Habraken asserts, 1998). This potential domination is maximised in the acquired built environment through a centralized mode of providing services (e.g. water piping, sewage, electricity). That is, as part of the welfare state, provision of the essential infrastructure (e.g. road networks, sewage, water, electricity, communication system) became its responsibility. Thus, instead of being privately owned properties in the inherited built environment, produced through parties' incremental decisions, and distributed and regulated by means of rights-based mechanisms, such infrastructure in the acquired built environment is owned or controlled<sup>22</sup> by the state. To maintain its control over such services, their distribution followed the territorial structure of state properties. Water and sewage lines, for example, were placed along public streets to reach private properties.<sup>23</sup> They do not penetrate, in most cases, into non-state-owned properties. This in turn enhanced state's territorial dominance in the acquired built environment. That is, the state (as the dominant party) in such a structure has the power of the territorial imperatives of enclosure and supply (see p.173-4 above). The state in many Arab countries uses such services as a tool of power to oblige private parties to abide by its building rules and regulations. If such rules are violated, the resident will be debarred from connecting his property with those state-owned essential services. In short, the state, through its territorial position which it **created**, dominates private parties.

In the inherited built environment, territorial structure is regulated (and partially determined) by structures of rights. A private property could extend onto a through street (in its *finca*), however, respecting the situational rights of the street (i.e. if not causing harm to passers-by and no one objects). Thus, private territories' changes (lower level properties) in the inherited built environment affect higher level properties (public streets). Expropriation of private properties for the benefit of widening a street (higher level property), for example, is prohibited. Accordingly, lower level properties in the inherited built environment could change on the account of higher level properties, but not the opposite. In contrast, regulated by power-based mechanisms, higher level properties in the acquired built environment, such as public streets, might extend over lower level ones (e.g. widening a public street), and not the other way round. Changes of lower level properties (private residences, for example) are constrained within their boundaries. This reflects the imperceptible power structure in the acquired mode. The state (the owner of public spaces) is more powerful than private properties, thus, through its acquired rights of eminent domain, imposes its control over private properties. In short, whereas rights structures shaped the territorial structure in the inherited built environment, it is power relationships that shape the territorial structure in the acquired built environment.

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<sup>22</sup> In case of privatization, the state retains its control over the privatized infrastructure.

<sup>23</sup> However, with the privatization movement, the same territorial structure was followed for such infrastructure; although privately owned.

#### 9.4 CONCLUSION

The emergence of the modern state as extraneous party **acquiring** power to intervene in the production process of the built environment is considered as a one determinant in the shift from the inherited to the acquired mode. This shift is accompanied by **changing mechanisms** of the production of the built environment from rights-based, self-directed (by the inhabitants themselves) mechanisms in the inherited mode to power-based, extraneously-controlled mechanisms in the acquired mode. Accordingly, the conception of the production of the built environment and other related conceptions changed.

Emanating from the modern concept of power with its notions of lusting for power and inflation of resources, the state in the acquired mode abandoned its inherited status as a party with limited rights (scope of exercitation) in the production of the built environment, determined according to **structures of rights** set by *shari'a*. Fulfilling its apparatus of lusting for power, the state acquired **territorial dominance** in the built environment, thus subjecting other parties and properties to its control. State power in the production of the built environment increased while private parties' power (rights) decreased. Such changes led consequently to changes in the territorial structure of the built environment and thus in the social structure of the acquired mode. State areas of acceptance increased, while those of private parties decreased. Conceptions of state and private property ownership changed. The percentage of controlling parties decreased than the case in the inherited built environment. Access to resources is controlled. Chances of enabling the individual and society are abated. In short, due to the emergence of the modern state as an extraneous party in the acquired mode, **acquired power structure replaced the inherited rights structures** of parties and properties in the built environment.

## **Chapter Ten**

### **Shifting Power**

**from the intraneous to the extraneous**

## SHIFTING POWER from the intraneous to the extraneous

### 10.1 INTRODUCTION

Professionals and the modern state constitute the two extraneous parties that are considered, as this thesis argues, the genesis of the acquired mode. They perform in a mutual manner where the role of each sustains the other. The two parties together, the state through its supreme power, and professionals through their power of knowledge and expertise, led the shift in contemporary Arab Muslim societies from the inherited to the acquired mode. They controlled and directed decision-making processes of societal engineering and the production of contemporary Muslim built environments. They changed the conception of the production of the built environment from that of the inherited (based on intraneous parties) to that of the acquired (based on extraneous parties). The previous chapter explored the impact of the modern state on changing mechanisms of the production of the built environment. This chapter is devoted to examining the rise of professionalism and its impact on the built environment.

Professionalism occurred in most areas of life; it penetrated into all societal levels. However, what concerns us in this study is the built environment-related professionalism (e.g. planning, architecture). Accordingly, the focus in this chapter is on the shift in the conception of production of the built environment, concomitant to the reception of the acquired mode and its notion of professionalism. Although professionalism arose in the West (as explained), it is considered a universal phenomenon. Thus, the discussion in this chapter, although based on writings of Western scholars, applies to the Arab Muslim world as much as to other cultures.

### 10.2 CONVENTIONAL/ INVENTIONAL KNOWLEDGE

Two types of knowledge can be distinguished here: conventional and inventional knowledge. “**Conventional/ experiential knowledge**” is the type of knowledge that dominated in the past until the rise of modernity, when it was replaced by “**inventional/ processed knowledge**”. In terms of the built environment, “conventional knowledge”, or what Habraken (1997) refers to as “thematic knowledge”, is predicated upon a “**knowledge-base**” shared by its community and established by accumulation of **experiences** in shaping the built environment. A shared vocabulary is a sign of the existence of this knowledge-base.<sup>1</sup> Thus, conventional knowledge is characterised by its knowledge-base and shared vocabulary, performing as a unifying

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<sup>1</sup> Knowledge-base as used above is a broadened definition of Habraken's. Habraken defines “knowledge-base” with reference to profession as “the domain of expertise claimed by a profession” (Habraken, 1997, p.267).

knowledge in society (Habraken, 1997, p.267-9). This is, as Schön<sup>2</sup> defines it, a knowledge-by-doing (experiential) developed out of everyday experiences; out of trial and error methods in the production of the built environment. Those experiences and methods are manifested as new solutions in the built environment, where society evaluates and judges such manifestations. Starting as inventions, accepted manifestations perceived as successful are widely shared and employed, thus become conventions that are inheritable from one generation to another. In that manner, through inventions turning to conventions, knowledge evolves and reintegrates according to the emerging conditions. Produced and adopted by the people sharing it, conventional knowledge incarnates a sense of integration of the three structures of the built environment (the manifested, the operative, and the imperceptible). In traditional built environments, those three structures were unconsciously intermeshed and taken for granted in people's daily experiences, thus, end forms produced by this knowledge represent the integration of those structures together. Conventional knowledge, thus, is experiential, contextual, and intuitive. It is, as Habraken defines it, "the knowledge of the built form ... [that] reflects the agreements, tacit or otherwise, honoured by those who act on it." It is "the knowledge of what is not to be different" (Habraken, 1997, p.284).<sup>3</sup>

This type of knowledge resembles the knowledge employed in the production of the inherited built environment. Inhabitants of Muslim cities shared a conventional built-environment knowledge that embodied covert societal agreements. Such knowledge is reflected in many manifestations in the built environment such as rainwater discharge methods where water spouts run over properties' roofs, solutions of counteracting the damage, and the like. However, the most evident example of such knowledge is the existence of a common typology of form and a common pattern of the built environment fabric in general. That is, although decentralization prevailed as a mechanism of decision-making in the inherited built environment where each party makes its own decisions, however, similar typologies and patterns were produced such as similar house plans and facade treatments, similar dead-end street layouts, and similar territorial structure. Habraken refers to these shared typologies and patterns of form produced as a result of such a conventional knowledge as "forms of understanding" (Habraken, 1997, p.285; 1998, p.230). These typologies and patterns, produced by people's shared knowledge, reflect the integration of the three structures of the built environment: the manifested in the sense that it respected the common conventional types, the operative in the sense that it was based on dialogue and agreements between people through their shared knowledge, and the imperceptible in the sense that it is stemmed from the everyday life of its people, applying their rights derived from *shari'a*.

In the inherited built environments, social bonds and relationships between people are manifested in relationships between their properties, regulated by the structures of rights. The

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<sup>2</sup> "Knowledge-by-doing" or "knowing-in-action" is a concept used by D. Schön in his reflective practitioner theory (1991).

<sup>3</sup> This definition refers to what Habraken calls "thematic knowledge". Conventional knowledge, as used in this study, denotes thematic knowledge.

inherited built environment can thus be perceived as composed of a network of property relationships where each property has a relationship with adjacent ones, according to rights maps. In that scene, **knowledge** is transmitted within Muslim society through such a network of properties, through dialogue and experience. Properties of one block relate to each other through certain elements (previously reached agreements or solutions) or rights such as waterspouts, party walls, passage ways, and easement rights. Similarly, blocks relate to others through doors or overpasses with the right of precedence. Interfaces between these properties are points of conflict where solutions, through dialogue and agreement between related parties, are invented. For example, a party wall between two neighbours' properties is an element controlled and used by the two neighbours jointly (as a one party). Party walls, generally, force the adjoining neighbours to communicate (Akbar, 1988, p.148-150). For example, if the co-owner of a party wall wants to build an overpass in his property where the load of one side of this overpass rests on the party wall, he has to seek the approval of his neighbour as a partner in that wall. This makes the two neighbours communicate to reach an agreement on this matter where a particular solution is agreed upon. This solution, if successful (i.e. accepted by society), is then transmitted through properties network from one neighbour to another until it is transmitted to the whole society. Such method of knowledge transmission sustains and contributes to the unifying knowledge-base of society.

This unifying conventional knowledge and its method of transmission were swept away by the effects of modern **rationality** and its resultant professionalism.

### **MODERNITY AND INVENTIONAL KNOWLEDGE**

Aristotle distinguished between three types of reason or knowledge: episteme (theoretical knowledge), *techne* (technical applications of theory) and **phronesis** (practical wisdom).<sup>4</sup> Phronesis is a type of prudence that allows a significant role for intuition, imagination, and emotion (Hollinger, 1994, p.58). Whereas episteme and *techne* relate to scientific and instrumental rationality, phronesis relates to value rationality and *praxis* (Flyvbjerg, 1993, p.13). For Aristotle, these types of reason and knowledge are all practices that are not reducible to one another. Plato, on the other hand, rejected the elements of phronesis knowledge as irrational, and stressed only those of episteme and *techne*. With the rationalist turn of modernity, and its differentiation between facts and values, episteme, *techne* and **instrumental rationality** have been emphasised, however, phronesis and value rationality have become marginalized. Subject to the domination of the scientific movement and the industrial revolution, and proceeding with the Platonic philosophy of knowledge, modernity conceived of science as the highest form of knowledge where other types of knowledge are dispensable or replaced by science. Positivism had become the dominant philosophy of knowledge (Sandercock, 1998a, p.59).

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<sup>4</sup> As Flyvbjerg pointed, the terms episteme and *techne* are still found in current language, for instance in the words epistemology and epistemic, technology and technical, whereas phronesis has no direct modern counterpart (Flyvbjerg, 1993, p.12).

Removed from everyday life and its daily experiences and focusing on a singular (rational) way of knowing, this conception of scientific knowledge can be described as a **static** conception that does not include thinking in terms of “knowing”, which is the process of becoming, but as a thing already “precipitated” (Sayer, 1984, p.16). It is a knowledge that is produced intentionally in laboratories and research centres, away from people’s intuition and daily lives, thus conceived of as a **product** or a thing that exists outside lay people. It is an **institutionalised** knowledge, established and transmitted through institutions (universities), thus, it can be called as a **processed knowledge**. This is the knowledge of professionalism.

On another level, modernity as an “**antitraditional** tradition”<sup>5</sup> was a rebellion against normative standards, and a constitution of the “new” (Smart, 1992, p.148). In the name of progress, modernity was committed to the “new”, and obsessed with **novelty** and **creativity** (Berman, 1983), thus replacing convention with inventions. It is the tradition of the new and the different, thus, the knowledge it advocates is the **knowledge of invention** and creativity.

Modernity and its **inventional knowledge** situated the world in a maelstrom of change in which the experiences of today might contradict the experiences of yesterday. In that sense, in terms of the built environment, previously honoured concepts such as “accumulation of experiences” and “knowledge-base” became nonsensical. Predicated on modern notions of **heroism** and **individualism**, inventive knowledge invalidates the unifying knowledge-base that used to exist within the community of a particular activity or even within society at large. These modernist avant-gardist attitudes of heroism do not allow for the cultivation of a body of knowledge. That is, as Habraken states, “to the avant-garde ideology the common ground [knowledge] is an obstacle to success” (Habraken, 1997, p.272). These attitudes explain the great variety and continuous shifts of styles in contemporary architecture, each expressing the creative artistic talent of its architect to produce a different piece of art. Modern built environments (the acquired) lack the sense of typology and patterns, “forms of understanding”, that used to unify traditional built environments (the inherited). It is a built environment that accentuates difference and not similarities. In that sense, in the acquired mode, the process of the production of the built environment ceased to be an integrative process which incorporates its three levels together (manifested, operative, and imperceptible). In the inherited built environments, architecture used to be a process of producing spaces and buildings to accommodate, thus it was a **daily experience** that adds to the knowledge-base of its community. Differentiating its three structures, modern architecture conceived of itself as an aesthetic exercise on the manifested level only, where the good architect is a good artist who produces original, unprecedented work. This constitutes one component in the changing process of the conception of the built environment production in Muslim societies (from the inherited to the acquired).

To explore the process of the production and transmission of this type of knowledge it is necessary to explain the context of its emergence and domain: professionalism.

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<sup>5</sup> A term used by de Onis, cited in Smart, 1992, p.51. See chapter five above.

### 10.3 THE RISE OF PROFESSIONALISM

[A new class would try to create] “the reign of scientific intelligence, the most aristocratic, despotic, arrogant and elitist of all regimes. There will be a new class, a new hierarchy of real and counterfeit scientists and scholars, and the world will be divided into a minority ruling in the name of knowledge, and an immense ignorant majority”

(M. Bakunin, cited in Derber et.al. 1990, p.5)

control over knowledge serves to establish structures of hierarchy and domination that are quite inconsistent with democratic ideals.

(Chomsky, back cover comment on: Derber et.al., 1990)

Professionalization is a form of a “**lust for power**” which maintains and is maintained by capitalism. After the rise of the free market and industrial capitalism (beginning of the 19<sup>th</sup> c.), the process of professionalization began in the Western world. Certain groups of people (producers of special services), lusting for power, sought to make use of those opportunities open in the emerging conditions. Aiming at **controlling** the market of their expertise, they started organizing themselves by negotiating the boundaries of their areas in the social division of labour. In that sense, professionalization movements are a kind of counteract movements directed against the market, and attempting to subtract certain areas of social life from the naked operations of market forces (Larson, 1977, p.xii). They are thus understood, as Larson proclaims, as: first, defining and controlling a protected market for professional services, which must be distinguished from competing services; and second, attaching social status and concrete economic and social privileges to the fact of membership in the corporate professional category (Larson, 1977, p.xii). Thus, from the side of professionals, professionalism today might be seen as a “power struggle” on a societal level. It is an **ideological** battle for recognition where professionals are striving for privileged social status. Based on this, “professionalizationism” can be perceived as aiming at a **power gain through mobilization and possession of power resources**: controlled market, economic privileges, and social status.

Professionalization appropriates knowledge from society to professionals, thus transforming knowledge from being available and open to everybody to being exclusive to somebody. In that sense, professionalization can be perceived as an attempt to **pre-empt, possess, monopolize, and control** knowledge and skills (mobilization of resources) so as to become a **scarce resource** exclusive to certain group of people, and then to translate this scarce resource into an order of economic and social rewards (market control and social mobility).<sup>6</sup> It is a process of

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<sup>6</sup> The idea of knowledge monopolization is not new to the Western culture. In the nineteenth century, craft knowledge monopolization has been exercised. That is, as the power and privilege of craft workers depended on the preservation of unskilled class, thus socializing craft knowledge would have meant allowing everyone the opportunity to become artisan, which craftsmen assiduously sought to **prevent**. Thus, through **guilds** and other fraternal organizations (established as early as the eleventh century), craftsmen had **control** over their knowledge and created a **monopoly** that denied this craft knowledge to outsiders. In this way, craft knowledge was, for centuries, kept “all in the family”. Guilds, as exclusive clubs, were the true owners of craft knowledge, thus, abiding rules of



**privatizing** knowledge and transforming it into a **property**. As ordinary knowledge is considered as a threat to the professionals' monopolization of truth, thus, professionalization had to go parallel with a process of **discrediting**, disqualifying and limiting the conventional (ordinary) knowledge and regulating its boundaries. In that sense, Illich denounces the professional discrediting of ordinary knowledge as the great cultural revolution of modern times (cited in Derber, 1990, p.62). This process led consequently to the concentration of power in the hands of professionals. That is, monopolization and control of knowledge as a power resource led consequently to what we called earlier as "inflation of resources", i.e. more resources are mobilized to this group as a result, such as economic privileges and elevated social status. Professionalization in that sense redistributed resources in an unequal manner, creating power relationships between two groups: professionals as knowledge-based service providers, and lay people as recipients of these services. One can say thus that "**monopolized knowledge is power**". As an ideological struggle for power and recognition, professionalism divides society into two parties, professionals and non-professionals, or what is called in this study, extraneous parties (professionals) and intraneous parties (the general public). In that sense, professionalism asserts the notions of class divisions and social status and thus societal power structure in capitalist societies. In brief, the concept of professionalism is centred on the modern concept of power. It is a form of "**power to**" achieve outcomes. It is a power game.

In the acquired built environment, this apparatus of knowledge monopolization (professionalization) embodied an implicit contingent process of relatively "**ignorancing**" society by disqualifying thus "**passivizing**" their knowledge-base. What started as a result of modernity and its Enlightenment goals ended up contradicting such goals. Instead of enlightening society, professionalization produced unenlightened, dispossessed, dependent majority, compared to the society in the inherited mode. That is, power relationships necessitate inequality in resource distribution, thus, society's inherited conventional knowledge-base had to be disqualified and "passivated", and then discarded and replaced by the professions' knowledge-base (acquired) where each profession's knowledge-base (if exists at all) is defined and modified from within the circle of its profession. This new knowledge-base of professionals became the "**active**" knowledge-base in comparison to the inherited "**passive**" knowledge-base of the people, however, confined to its professionals.

Building on their faith in rationality, professionals eschewed nonrational ways of knowing such as intuition or faith (religion), thus dismissing much of conventional knowledge as irrational. Accordingly, professionals in contemporary Muslim built environments dismissed the inherited mechanisms of the built environment production, based on the concept of rights as derived from *shari'a*, as irrational and replaced them with more rational (according to their acquired standards) methods (imported). Stemming from this base, and understanding that they cannot totally discredit and diminish the inherited ordinary knowledge, professionals sought to limit

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membership kept knowledge within the club (Derber et.al., 1990, p.80). Craft guilds were devices for establishing social credit.

lay people's confidence in ordinary knowledge and in their ability to act in their own best interest. Acceptance of this ideology created a demand for professional knowledge and expertise, thus acceptance of **professional hegemony**. This gave professionals an **authoritarian, elitist** position over non-professional people.<sup>7</sup> Moreover, in the inherited built environment, building knowledge was transmitted through conventions, i.e. it reached everybody. However, in the acquired mode, due to professionalism and its knowledge monopolization, knowledge became a scarce resource that is not available for everybody. The method of transmitting knowledge in the acquired built environment does not guarantee its reception by everybody, but rather it sustains the exclusion of knowledge to a certain group (professionals). In other words, professionalism dissolved the knowledge-base of society. Whoever needs knowledge has to search for it. Such a method, hinders the development and redintegration of ordinary knowledge, a matter that contributes to the process of "ignorancing" non-professional people.

Through passivizing people's knowledge, professionalism transformed members of society from being active, acquainted to dependent, unacquainted people, labelled as "**uncredentialed**"<sup>8</sup> in comparison to the **credentialed** professional "**knower**". This created a gap between the elite professional and lay people, characterised mainly by the loss of a common language between the two groups, i.e. by the loss of a knowledge-base shared by society members. In that sense, professionalization, **appropriating power** from the hands of people, led to the elevation of the few and the subjugation of the many (Derber, et.al., 1990, p.110). It is a "power to" form of power that aims at achieving outcomes, however, this might not be possible except through exercising power over others, i.e. domination.

Professionalism advanced the emergence of the **extraneous** parties (professionals) for the previously independent **intraneous** people's party. That is, as explained in chapter seven, the production process of the inherited built environments is based on intraneous parties (inhabitants) as decision-makers, each performing in its site, according to structures of rights.<sup>9</sup>

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<sup>7</sup> One might argue that this is not always true in Western societies as, for example, any person can build his own house by himself. That might be true in limited cases. Procedures for obtaining permission from higher authorities for any building action is quite sophisticated and thus require an expert to fulfil its requirements. For example, in most Arab countries, development projects have to be presented to the higher authorities through a licensed office, in professional-form drawings. Thus, such a requirement sustains the role of professionals in the production of the built environment. Moreover, self-built houses might be suitable to small scale projects such as residential houses, but not to a larger scale projects, such as in the re-planning of cities or certain neighbourhoods. In such latter cases, the expertise and knowledge of professionals is necessarily needed.

<sup>8</sup> "Credential society" is how Randall Collins refers to modern society, based on the power of knowledge. In such a society, professionals are credentialed; the general public are uncredentialed (Derber, et.al., 1990, p.3-4).

<sup>9</sup> To compare this with traditional Western societies, in the eighteenth century-America, producers and consumers were virtually identical. Practically all the family's needs were supplied by its members. Nineteenth century industrialists and retailers sought to break family and neighbourly self-reliance in the service of profit. By World War I, American capitalism had largely undermined the family as a producer (Derber et.al., 1990, p.141).

However, in the acquired mode today, with their knowledge appropriated and monopolized, thus transformed into ignorants, intraneous parties have to refer to extraneous parties to solve their problems. This new order subordinates the intraneous majority to those powerful extraneous minorities. This can be depicted as a legitimized process of **intervention** in previously intraneous parties' affairs. Such a change in the conception of the production of Muslim built environments constitutes a determining component in the shift from the inherited to the acquired built environment. But what gives such a process and a party its legitimacy?

### **MODERNITY, RATIONALITY, AND PROFESSIONALISM**

Most studies, as Larson states, implicitly or explicitly present professionalization as an instance of the process of "modernization". Professionalization pertains to the general dimensions of "modernization": the advance of science and cognitive rationality and the progressive differentiation and rationalization of the division of labour in industrial societies (Larson, 1977, p.xvi). Thus, professions are typical products of the modern-capitalist society.

Enlightenment philosophers were hoping that art and science would promote not only the control of the forces of nature but also the understanding of self and world (truth), moral progress, justice in social institutions, and also human happiness (Habermas, 1992, p.162). What happened was in marked contrast to these hopes. Gradually each domain of what Weber calls value spheres has been **institutionalized**; science, morality and art have become autonomous domains separated from the life-world (Sarup, 1993, p.143), and their knowledge-base removed from life experiences. That is, as Weber proclaims<sup>10</sup>, such differentiation of the value spheres of science and scholarship (truth, knowledge), morality (justice), and art (aesthetics and taste), each has its inner logic, is what characterises the rationalization of cultural modernity. Those spheres were institutionalised as matters for professionals and experts, their knowledge was **processed** inside those institutions, thus the distance between them and the general public had increased. Such institutionalisation contributed to the unequal distribution of competence and rewards, thus, unequal distribution of power. Differentiation, institutionalisation and thus professionalization of value spheres led to the differentiation and thus fragmentation of the previously unifying knowledge into several spheres. Thus, instead of performing as a unifying base, knowledge, through professionalism, contributed to the differentiation and disintegration of the various realms of modern-capitalist societies, each has its internal principles: techno-economic, polity, and socio-cultural (see p.100 above).

The "community of profession" was both an agent and a product of **rationalization** (Larson, 1977, p.56). The most general and abstract dimension modern professionalism incorporated is its appeal to science, or, broadly speaking, to **rational and systematized knowledge**. Affected by market forces, it also incorporated the notion of **rational efficiency**. This led to the transformation of professionalism into a sort for organization of producing services. Subject to capitalism and its market forces, professional work has been transformed into a **commodity** in

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<sup>10</sup> This value-spheres distinction was made by Kant and reiterated by Weber (Cooke, 1990, p.337).

the market, where the professional is a knowledge-based service provider. Attempts to measure and increase efficiency in the production of services have led to the emergence of professional occupations such as managers and bureaucrats. Those attempts embodied an extension of the role of the “expert”. They led to more differentiation in disciplines and more specialization, or to be more precise, professions were more narrowed down and more over-specialized. One previous type of work has produced several types of profession. This gave rise to new professionalizing occupations. It was also reflected in the division of the built environment into separate disciplines (architecture, urban design, planning, landscape, behavioural studies, etc.), each concerned with particular aspects, and thus with a particular structure, or part of a structure, of the built environment. The architecture profession, for example, seemed to become merely design-oriented, where structural engineering, surveying, and urban planning were developed into separate professions (Crimson & Lubbock, 1994, p.43; Larson, 1977, p.143). As a result, the previously unified and unifying built environment knowledge became fragmented between those various professions. This consequently led to further the **disjunction** of the three structures of the built environment, and even to the segmentation of each of those structures. As a result studies of the built environment became specialized, thus partial.

However, the question now is: how did such professions acquire **legitimation**? In the process of professionalization, the concept of social closure was employed as a central block to protect professionalism. That is, as Weber argues, status groups or classes in society attempt always to maintain their social privileges by a mechanism of “**social closure**” to protect and expand existing monopolies of privilege against outsiders, thus restricting these resources to their members and closing access to outsiders (Turner, 1988, p.8; Jary & Jary, 1995, p.81). Processes of social closure work through a dual mechanism of **inclusion** and **exclusion**; they involve marginalization (exclusion) and incorporation (inclusion). They are based on the **power** of one group to deny access to reward, or positive life-chances, to another group (Marshall, 1994, p.60).<sup>11</sup> This process eventually leads to maintaining the power structure within society.

Accordingly, in the professionalization process, to establish and protect the market for professions and to maintain privatization of knowledge, i.e. to maintain social closure, legal locks of inclusion and exclusion had to be introduced (e.g. licensing, patent and copyrights, credentials systems). **Licensing** is a means to back up the professional’s knowledge claims with the force of the state by legally restricting who can practice (Derber et.al., 1990, p.110). Professional entrepreneurs, thus, solicit state protection and state-enforced penalties to implement exclusion methods against unlicensed competitors. For example, in the field of built environment-making, the titles of “architect”, “engineer”, “surveyor”, “builder”, and the like, were not protected and often used synonymously. To protect these titles there was a need for

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<sup>11</sup> Later exponents of this view saw closure as the basic of all inequality, be it that of material rewards, status honour, etc. (Marshall, 1994, p.60). Parkin considered this concept of “social closure” as an aspect of the distribution of power within classes (Abercrombie, 1994, p.383). Pierre Bourdieu (1984) has developed his idea of status distinction through cultural exclusiveness in the field of cultural sociology.

state support. That is, due to the nature of the products and the state of their markets, it was only **the state**, as the supreme legitimizing and enforcing institution, that could sanction the modern profession's **monopolistic** claims of superiority for their "commodities" (Larson, 1977, p.14-15). The state, using its power, entitled professionals to **power that gave them the right** to intervene, legitimately, as extraneous parties in people's lives, i.e. **power creates rights**. In that sense, legitimate intervention in the production process of the built environment was extended. **It is the right of power** of both the state and the professionals as extraneous parties.

Using the mechanisms of social closure, to control professionalism, professionals sought to protect their professional status and boundary by **excluding** those without the relevant credentials from their circle. In such a process, modern rationality was incorporated. That is, to identify the "commodities" professionals produce, these have to be **standardized**. For this, a cognitive bases was crucial: what kind of knowledge each profession could claim as distinctively its own. This led, under the effect of rationalization, to the **standardization and unification of professional knowledge**. Formal education and credentialism are the means to accomplish this task. As a result, formal institutions of training as centres for the **production of knowledge** were established. In other words, the role of the modern university was to produce professional producers and the production of professionally relevant knowledge (Larson, 1977, p.50). Professionals used schools to promote and protect knowledge monopolies. In that sense, professionals have helped turn schooling, officially a means of diffusing knowledge, into a tool of **confining** it as well (Derber et.al., 1990, p.82). It became a tool of **knowledge monopolisation**. Thereby, educational institutions performed a significant role in changing the conception of the production of Muslim built environments from that which prevailed in the inherited mode to that of the acquired. They contributed to the shift of power in the production of the built environment, from the hands of people to the hands of professionals. Knowledge was processed in these institutions away from daily experiences; it can be said that the rationalization of professionalism had the effect that the "**theoretical/processed**" (**acquired**) **and the "experiential" (inherited) knowledge became distinct**.

To take Britain as an example for the rise of architectural professionalism, the RIBA was founded in 1834 to become the focus to define the practice of architects as distinct from other workers in the building industry. However, to perform its role properly, the RIBA had to have some **control and influence** on architectural training (Crimson & Lubbock, 1994, p.41). That is, a system of registration was introduced by RIBA to control the profession.<sup>12</sup> This began as voluntary system in 1863 and then turned to be a compulsory system of registration in 1905. This led to Registration Acts (1931, 1938) enacted by the government to support the **control** of the market and the profession. It can be said that registration was the culmination of the process of professionalization in architecture inaugurated by the formation of the RIBA in 1834. Registration meant that "only those who had qualified as architects through professional

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<sup>12</sup> In 1897 in the USA, the state of Illinois introduced the first registration law for the practice of architecture in the United States (Larson, 1983, p.50).

examinations should have the **right** to use the title ‘architect’ in their professional practice” (Crinson & Lubbock, 1994, p.61). In other words, registration performs as a social closure mechanism of inclusion/exclusion. It is an instrument of exercising “**power over**” others; of control and **domination**. Examinations were set by the RIBA, modelled partially after those of the Ecole des Beaux-Arts. Thus, subjected to RIBA’s domination, architectural schools in universities had to modify their educational approaches and curriculum, so as to enable their students to pass those examinations and become credentialed. In other words, the RIBA had **standardized** the architectural educational approach in schools of architecture in Britain, especially after its introduction of the system of “recognition” to inspect and evaluate the standard of schools of architecture, so the students of those schools which fulfil certain conditions could gain exemption from one or more of the RIBA examinations. In this way the RIBA gained significant **power over** (control) architectural education, arguing that to gain entry into its ranks it had to oversee the form and standards of training (Crinson & Lubbock, 1994, p.60, 80). The RIBA in that sense enhances the institutionalization and thus processing of knowledge. It sustains the process of professionalization and, thus, authenticates the role of the professional as an extraneous party in the production of the built environment.<sup>13</sup>

In that respect, RIBA is only one example, it resembles most engineering associations or architectural associations in Arab countries. For example, the Architectural Department in the Association of Jordanian Engineers has its own system of registration, through which architects can get their license to practice architecture in Jordan. Such a procedure acts as a mechanism of exclusion to confine the circle of the architectural profession to those who have licence.

This goal of the professional project of regulating and controlling access to the professional market on the supply side can be seen, according to Larson, as contradicting the democratization potential inherent in the idea behind the capitalist competitive market (Larson, 1977, p.51). However, from a different angle, it can be perceived as reflecting and maintaining the **hierarchical** power structure built into the modern-capitalist system as an ideology of “**control for order**”. The RIBA, as claimed, uses its power gained through its legitimate status to control and thus organize the profession. The RIBA thus constitutes a **superior extraneous party** for architecture professionals, whereas the latter constitute a superior extraneous party for the public. It is a hierarchy of extraneous parties that reflects and sustains the hierarchical nature of modern-capitalist societies (the acquired), within which the professional performs, accepting the hierarchies above him, and exerting his control over those beneath him.

#### **PROFESSIONALIZING THE BUILT ENVIRONMENT**

In the field of architecture, until the 1870s, there was little that could distinguish the architect’s designs from those of builders. In the past, whether in the Islamic or Western world, the vast majority of buildings were erected by builders with no pretensions to being designers.

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<sup>13</sup> Even some schools outside UK were seeking the RIBA recognition as a prestigious status for decision-makers. For example, King Faisal University in Saudi Arabia sought such recognition. Such attempts did not continue.

Architects, so-called (e.g. Mimar Sinan in the Ottoman period, Michelangelo), were only responsible for designing major monuments such as palaces, mosques, churches, and since there were no professions as such, they were trained in many different fields.

Due to the strong competition in the market between different specialists, the architect, protecting his social status, had to concentrate on architectural functionalism (design) and on the aesthetic control of the market, as the aesthetic dimension of buildings was not claimed by other expert rivals (Larson, 1983, p.70-2).<sup>14</sup> Thereby, the architect's role was more or less defined as formalistic, focusing on the manifested aspects of the built environment, leaving the other related issues to other professions such as the newly emerged profession of urban planning.

As a result of rationality and market forces, each profession claimed **autonomy** in its field, discourse, and role in the production of the built environment. Moreover, instead of mutually beneficial relationship, specialized fields, in most cases, regard one another with contempt, animosity, and resentment (Larson, 1993, p.8).<sup>15</sup> Architects and planners, for example, rather than grew in productive collaborations, assumed a dismissive or even antagonistic relationship with little interaction between them (Ellin, 1996, p.224).<sup>16</sup> Thus, instead of having one party (intraaneous) controlling its properties as in the inherited built environment, many extraneous parties were involved in the production of the acquired built environment (architects, planners), each performing according to its standards and values. This accordingly increased the number of **extraneous parties** intervening, thus controlling the production of the built environment, and thus limiting the rights of intraaneous parties over their properties.

This process of the differentiation of the built-environment-related disciplines led to the differentiation and even segmentation of the structures of the built environment thus to disjunction between the structures of the built environment, and even, sometimes, to inconsistency in the one structure. Architecture, in limiting its focus to design and aesthetic issues, became specialized in the manifested structure only. Urban planning concentrates on the operative structure through issues such as development control, resources distribution, and the like. The imperceptible structure is the speciality of other extraneous (for the professions) parties: the higher authorities and lawmakers (the state), thus, this structure is imposed on

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<sup>14</sup> By the nineteenth century, many specialists such as builders, surveyors, and engineers were competing in the market of the building industry. In this competition, the architect, disdaining his/her rivals' designs and middle-class taste and protecting his social status, had to stick to the traditional role of the architect (as artist), defined by the Ecole des Beaux-Arts as artist. As the nineteenth century advanced, the market expanded into new areas of life. New building typologies emerged, such as railway stations and factories. No single role could possibly contain all these challenges. The profession of architecture could not claim possession of technical competence, thus concentrated on the aesthetic and functional aspects of the built environment.

<sup>15</sup> This resentment might also extend inside the one specialized field. In architecture, this can be perceived between the different architectural schools as a result of their different orientations and conceptions of what makes good architecture.

<sup>16</sup> Each of the two professions developed its own organizations, journals, and schools, so as to protect their respective intellectual and professional turfs from incursion by the other.

architecture profession as **unquestionable constraint**. This fragmentation of, and in many cases contradictions between, the structures/disciplines of the built environment leads to incompatibility in the process of the production of the built environment.

#### 10.4 PROFESSIONALISM AS AN IDEOLOGY

Nowadays, the persistence of professionalism as a category of social practice suggests that the model of professionalism constituted by modernity has become an “**ideology**”. This ideology began to dominate by the beginning of the twentieth century (Larson, 1977, p.xviii). Professionalism started as a project of power gain on the part of professionals. Over time, it became a mechanism of state control as well. In other words, professionalism started as a form of “power to”, and then expanded to be a form of “**power over**” others, as well. Professionalism is part of what Althusser calls Ideological State Apparatuses (Althusser, 1970). It is a part and a product of the modern-capitalist system in that it sustains, applies, and works within its mechanisms, i.e. it is a product of capitalism and a tool of its reproduction.

For professionals, professionalism is a **resource of power** that maintains social and economic privileges for them. Professionals seek to perpetuate professionalism by turning it into an ideology. Therefore, although faced by many crises in confidence, they always strive to legitimize their positions by recourse to their claims of superior knowledge and, above all, through state support.

Professionalism is an ideological state apparatus<sup>17</sup> that maintains state control by reproducing a submission to the ruling ideology. Schools and universities in this respect, as Althusser proclaimed, perform as institutions for the reproduction of submission to the **established order** (Althusser, 1970, p.104), whereas professionals perform as agents of this apparatus. Althusser states that “it is by an apprenticeship in a variety of know-how wrapped up in the massive inculcation of the ideology of the ruling class that the relations of production in a capitalist social formation are largely reproduced” (Althusser, 1970, p.119). Thus, backed by state support, professionalism gradually became an undeniable ideology in people’s lives. Professions have become essential to the very functioning of society in the acquired mode. We look to professionals for the definition and solution of our problems, and it is through them that we strive for social progress. In all these functions we honour the profession’s claim to **extraordinary knowledge** in matters of great social importance, and in return we grant professionals extraordinary rights and privileges. Today, for example, one cannot imagine the process of city production without urban planners and urban managers, one cannot imagine the environment without architects who, as inculcated in people, know better how to produce good

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<sup>17</sup> For Althusser, the ideological state apparatus, installed in the dominant position in mature capitalist social formations is the educational ideological apparatus. The mechanisms which produce vital results for the capitalist regime are naturally covered up and concealed by a universally reigning ideology of the school. In schools, the educational state apparatus is inculcated into students, where the teachings of the know-how are wrapped in the ruling ideology (Althusser, 1970, p.118-9).



built environments. In short, professionalism in the acquired mode became an indispensable part of people's lives and of their culture, it became an **ideology**.

As a state apparatus, professions (including urban planning and architecture) represent different forms and techniques for controlling others (e.g. "extraneous" parties control "intraaneous" parties). Professionalism for Foucault is a disciplinary and oppressive apparatus that created the possibility of new forms of domination. In that respect, Foucault proclaims that modern societies **control** and **discipline** their populations by sanctioning the knowledge claims and practices of sciences. Foucault's analysis of such a project takes us behind the facade of neutrality and objectivity to reveal the operation of modern techniques of domination. In this context, Foucault draws attention to the connection between power and knowledge, where power exercised in modernity, argues Foucault, is wrapped in the mantle of scientific knowledge. Power for Foucault is disciplinary, where discourse<sup>18</sup>/knowledge is the vehicle for its establishment and maintenance<sup>19</sup> (Surber, 1998, p.214). Its goal is "**normalization**"<sup>20</sup> and "**subjectification**" in order to reproduce docile and useful bodies.

Professions create their own definitions of **truth** (professions' knowledge). Specialists always work together to establish their field and its dominant ideas, thus their knowledge (Fillingham, 1993, p.6). Professions using their authorities, through institutions of knowledge (e.g. schools, universities, hospitals), operate to "normalize" their truths/knowledge by inculcating such knowledge to their clients (e.g. students, patients), discipline them, thus transforming their truths to "**normal**", accepted ideologies to which clients become self-subjugated. Professionals are agents of this distinctively modern form of normalizing/disciplinary power (Sandercock, 1998a, p.71). Professionalism as an ideology was, thus, inculcated to the public through this process of "normalization". It was infused into society that people, based on their ordinary knowledge, may not be able to understand their own best interest and that professionals, based on their expertise and knowledge, work for "**the public interest**". Through their self-defined knowledge, professionals identified themselves as "knower" in comparison to lay people whom they attribute as "less-knower" or "laymen" (ignorant). Normalization of these identities and their acceptance by lay-people led to a process of "self-subjection" where people, in tying themselves to their imposed identities, became participants in their own subjectification (Simons, 1995, p.2). Such a process, Foucault contends, produces a "**subject**" who is both

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<sup>18</sup> Discourse is central in Foucault's studies. Discourse for him means writings in an area of technical knowledge; that is, areas in which there are specialists, specialized or technical knowledge, and specialized or technical vocabulary. Each era will define its own discourses, and these definitions may vary radically over time (Fillingham, 1993, p.101).

<sup>19</sup> For Foucault, scientific knowledge functions as a major social power. Through the state, the family, the hospital, and therapeutic institutions, the scientific disciplines shape our dominant cultural ideas about who we are, what is permissible and unacceptable, what can be said, by whom, when, and in what form. It is this power/knowledge configuration that is the critical object of genealogy (Seidman, 1994, p.216).

<sup>20</sup> "Normalization" denotes inculcation of certain truths or ideologies (such as professionalism) into the subjected people.

“subject to someone else by control and dependence [to professionals], and tied to his own identity [as ignorant] by a conscience or self-knowing” (Foucault, 1983, p.212).<sup>21</sup>

Emphasizing the importance of knowledge in shaping society, Francis Bacon, and later Foucault state that “**knowledge is power**”. This statement might be best rephrased as “**monopolized knowledge is power**”. This power gave professionals an **authoritarian** position to control others, thus legitimates their domination, i.e. such **power creates the right** to dominate.

## 10.5 CONSEQUENCES OF BUILT ENVIRONMENT PROFESSIONALISM

Most significantly, professionalism had changed the conception of the production of the built environment. It enunciated the **shift of power** from diffusion between people in traditional environments to concentration in the hands of extraneous parties. For Muslim built environments, the emergence of professionalism, based in its imperceptible facet on modern conceptions of power, marks the shift in mechanisms of producing the built environment from those based on rights as derived from *shari'a* to those based on modern concepts of power; from those centred on intraneous parties to those centred on extraneous parties. It marked the shift from the inherited to the acquired mode.

The following sections explore some of the consequences of the contemporary prevalence of professionalism in the production of the built environment. Chapter five explored the impact of the profession of planning (as a process) and its shifting paradigms on the built environment. The following sections focus more on the profession of architecture (as an end product).

### 10.5.1 Profession's discourse: imprisonment

We do not wish to be concerned with planning social systems because that is a political problem to be solved by politicians. What we ask for is a **framework**, defined by politics, within which we can work.

(Huet (activist), cited in Braid, 1995, p.275, emphasis added)<sup>22</sup>

The position that only formal elements matter in architecture bespeaks a monumental refusal to confront serious problems; it avoids a critique of the existing **power structure**, of the ways power is used, and of the identity of those whose interests power serves.

(Ghirardo, 1996, p. 390, emphasis added)

What started as an avant-garde political project of social engineering fulfilled through designing the built environment (determinism<sup>23</sup>), ended up as a de-politicized project. That is, in the 1930s, the project of modernity in architecture gave up its social and political agenda.

<sup>21</sup> Foucault refers to the examination of this process as “genealogy”.

<sup>22</sup> Extracted from a conversation with Martin Pawely and Bernard Tschumi in 1971.

<sup>23</sup> Environmental determinism refers to the idea that social change can be achieved through the replanning of the built environment. This embodies the notion of social engineering by means of environmental determinism, that is seeking to control people's behaviour through the nature of the layout (the built environment) (Greed, 1993, p.214).

Architecture was narrowed down to merely functional, stylistic and aesthetic exercise.<sup>24</sup> This intensified the fragmentation of the built environment between different professions, each **imprisoned** within its boundaries.

Architectural discourse is laid down from within the profession and is based on a simple exclusionary principle that excludes lay people from participating in its production; it is remote from people's daily lives and experiences. This discourse constitutes the ideological syllogism of architecture: "Only architects produce architecture. Architecture is an art. Architects are necessary to produce art" (Larson, 1993, p.5). Architecture, thus, became **differentiated** and autonomous from the other value-spheres, from other professions, and from daily life. This method is in marked contrast to that of producing and transferring knowledge in the inherited built environment. That is, whereas knowledge in the inherited built environment is **unified** in the intraneous party (the producer of the built environment), it is in the acquired mode **dispersed** among several extraneous parties. Thus, instead of being part of society's experiences and a reflection of its values and needs in which all structures of built environment are integrated (as in the inherited mode), architecture today (in the acquired mode) has become an individual exercise (of the architect and not of society), based on the professional's knowledge, and confined to the manifested structure of the built environment.

However, after about thirty years of the apolitical interlude of modernity (since the 1930s) a second phase of apparent politicization began in the 1960s, coming to its own crisis in 1968 (Braid, 1995, p.241-2). Different from modern attitudes, some architects and planners attempted to broaden the scope of their professional discourse and connect their discipline to social and economic questions. For example, some attempts emerged to broaden the social role of architecture and planning professions and to include the previously excluded groups, thus to **politicize** the professional and change his role. Translating these ideas into practice ran into trouble. Such attempts contradicted with the **logic** of the power game prevailing in modern-capitalist societies (of the state).<sup>25</sup> As a result, shifting paradigms arose in planning profession, hoping to reach the incompatible goal: more equality in resource distribution, i.e. bestowing power to the powerless, under the umbrella of the existing modern power game (in which the state constitutes the supreme power) part of which is professionalism. Such radical attempts in architecture (postmodernism) ultimately turned again to its autonomous, depoliticized sphere, focusing on mere opposition to the dominant aesthetic of modernism (Crawford, 1991, p.39). In that respect, Wojciech Lesnikowski contends, "Instead of speaking of an ideology or group approaches, architects started discussing their works in terms of their own attitudes and indulged in extreme **individualism**" (cited in Ellin, 1996, p.154).

It seems that both modernity and postmodernity in architecture started as radical corrective movements with broad aims that include social, economic, and political issues. Faced by

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<sup>24</sup> In the 1930s, as the Depression deepened, architects' hopes of social reconstruction was weakened, then architects once again subconsciously focused on architectural aesthetics (Larson, 1993, p.34).

<sup>25</sup> For more clarification of this point, see chapter five above (p.89-95).

stronger systemic forces, they ended by relinquishing these aims.<sup>26</sup> Nevertheless, the shifts in architectural discourse from modernity to postmodernity and its concomitant stylistic changes can be perceived as symptoms of changes in architects' conceptions of their professional role. However, both movements seem to have incorporated the logic of modern-capitalism, and thus of professionalism. They produced **elitist** discourse and **elite** designers. Therefore, architecture remains **depoliticized**, and **autonomous** from the range of ideological, political, social, and economic roles that it was designed to fulfil (Crawford, 1991, p.39).

### CHANGING THE ROLE OF THE PROFESSIONAL

Architecture today is in a time of crisis; while public debate rages over architectural styles, architects themselves are uncertain of their status in society, their role within the building industry, and their professional goals.

(Cover comment, in Saint, 1983)

Postmodernism offered no new pedagogy or new system of architectural training. Postmodernism did not seek to change the relation between the architect to the rest of the building team, nor to change the way architecture is produced, and certainly not to change the relationships between the architect and the society at large. Postmodern plurality allowed everything except a deep institutional critique.

(Crinson & Lubbock, 1994, p.172)

Professionalism in general, and the built environment professions in particular, witnesses today what many writers call a "**crisis of confidence**". A crisis that is generated from within the professions through the professionals themselves and from without through their clients. This crisis seems to be rooted in a growing scepticism about professional effectiveness in the larger sense, a sceptical reassessment of the professions' actual contribution to society's well-being through the delivery of competent services based on special knowledge (Schön, 1991, p.13).

In the light of these crises, and as a counter movement to that of modernism, different attempts have emerged since the 1960s holding different positions. Some of those attempts were directed at reviewing the system of educating the architect and the other related professions (urban planning), while other attempts aimed at a reconsideration of the role of architects and planners as professionals, and their image.

Today, for many scholars, attention is driven towards a different kind of training for architects.<sup>27</sup> Some attempts suggest, inspired by the model of the **builder** in the past, that a

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<sup>26</sup> In that respect, many postmodernists (e.g. Venturi) see urban and architectural space as something independent and autonomous, to be shaped according to aesthetic aims and principles which have nothing to do with any overarching social objective.

<sup>27</sup> The Prince of Wales is one of the non-professionals who advocate such a position. He stated in that respect that "the tendency for architectural education [is becoming] ever more narrowly specialized and remote from the concerns of the public at large, from the other building disciplines and from the process of making buildings, as architecture became a profession in its own right. Excessive specialization is not unique to this field. But this is no justification for doing nothing to rectify the situation" (Prince Charles, cited in Crinson & Lubbock, 1994, the Forward).

multidisciplinary, “holistic” approach is the appropriate method for architectural education, so as to enrich and broaden the architect’s vision.<sup>28</sup> However, such aims cannot be fulfilled provided they are operating within the existing systemic power structure. That is, to revive the traditional conception of the built environment production means to abolish the role of the architect as extraneous party *per se*. Thus, such attempts are superficial, aiming at a manifested holistic role of the architect in the sense that the architect would have a holistic knowledge of building (e.g. crafts, construction, and technical skills). These attempts seek to improve the education of the professional but without questioning the notion of professionalism *per se*. This same process of searching for identity, or of being dissatisfied by the professionals’ production is currently a subject of continuous debate in the Arab Muslim world (see Ozkan, 1995).<sup>29</sup>

Attempts aiming at changing the role of the professional in architecture and planning took two forms: either to design **for** people or to design **with** people<sup>30</sup>. The first reaction led to the emergence of new approaches of design such as regionalism (Frampton, and Shu’ibi in Saudi Arabia), contextualism (Venturi, Rowe, and A. Ibrahim in Egypt), historical eclecticism (Krier, Badran in Jordan, and al-Wakil in Saudi Arabia). This led to no changes in the elitist, authoritarian role of the architect. The architect as a designer was the ultimate arbiter in his designs for people. Thus, the role of the architect persists. The second reaction (discussed in chapter five), although insisting on the architect or the planner as the final arbiter, it led to some changes in the role the architect and the planner perform. However, both reactions insist on the concept of **design** in the built environment. That is, designing the built environment constitutes the basic service produced by those professions. It is the essence of the built environment professions as formulated by modernity. For those professionals (architects, planners), relinquishing “design” means abolishing their professions.<sup>31</sup>

Such attempts actually questioned the role of the professional, however, in an apolitical manner. They did not challenge the **systemic power relations**, but modified the role of the professional in a manner that fits within that systemic status quo. That is, what matters in changing the professional’s role is the balance of responsibilities between the professional and the recipient

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<sup>28</sup> Such attempts appeared at the beginning of the century, especially under the strong effect of the Arts and Crafts movements. Gropius, for example, incorporated such an approach in the education method in the early years of the Bauhaus. However, such early attempts were squeezed out afterwards by the drive for uniformity. Today, such a model is applied in Prince of Wales Institute of Architecture. Aiming at a holistic perspective of built environment production, education in this institute focuses on arts and crafts in the education of the architect. (See the issues of the last decade of Journal of architectural education).

<sup>29</sup> For such debates, see the publications of the Aga Khan, for example.

<sup>30</sup> Such attempts ranges from citizen participation to professional participation (Habraken, 1990), from advocacy planning (Davidoff) to transactive planning (Friedmann), from equity planning (Krumholz) to the lately communicative or collaborative planning (Forester, Healey). See planning models discussed above (p. 89-95).

<sup>31</sup> Within these reactions, several studies were directed at re-evaluating the scope of architecture, aiming at broadening its tight boundaries. Different new areas and concerns have emerged since the 1960s, such as the environmental and behavioural studies, community architecture, psychological studies, and alike. Of the main pioneers in that sense are Alexander, Rapoport, and Lynch.

of his services; i.e. the power structure within which this role is practised. If no changes occur in such a structure, then the same role persists. However, challenging the systemic status quo means challenging the conditions and components of professionalism *per se*, a matter that professionals aim to perpetuate. Accordingly, professionalism has a little margin for modification, within which the role of the professional can change.

Efforts of the 1920s and the 1960s to politicize the architectural discourse and to restructure the professional role have failed to achieve their purposes. They have been defeated by the **power game**. Constrained by the imperceptible systemic power structure of their societies and by its law, architects have no great control over the built environment. "Architecture", as Gutman stated, "cannot directly produce changes in [the] underlying conditions" (Gutman, 1990). Architects, working within the framework of the political and economic spheres, are involved only in the design level of some social problems in the built environment. The other levels of those problems are seen to be the province of the economist, politician, the corporate capitalist structure, but not of the architect. In other words, they are left to the power holders (decision-makers) who shape the imperceptible thus participate in shaping the power game in society. In that respect, it can be said that, as long as architecture as a profession is **subjectively imprisoned** within its boundaries, designs of the built environment cannot have great impact in solving such problems as homelessness. Professionals (architects and planners) cannot have a role in changing society or solve societal problems unless they understand and get involved in the **imperceptible** driving forces behind these problems, i.e. in the larger systemic power game, so as to alter it. In that sense, Jameson believes that architecture today cannot be political without "total revolutionary and systematic transformation" of the political economy (Jameson, 1985, p.68). However, as professionalism is a part and parcel; a product and a tool, of the larger system of modern capitalism and its power game, thus changing the latter will inevitably affect professionalism's status quo, if not enfeebling its bases. Therefore, protecting their privileging status and the existing status quo, professionals seek to maintain and perpetuate the existing power structure (imperceptible structure) and its overall systemic impelling force of capitalism.

### **"BUILDING" AND "ARCHITECTURE"**

Reflecting its autonomy, architecture discourse distinguishes between what is architecture and what is not (building). Non-architects designed buildings, or what Habraken (1997) refers to as "**ordinary architecture**", are excluded from the definition of architecture. In that sense, architecture excludes more than it includes. This canon of defining what is architecture is established **from within the profession**. In dismissing the non-architect architecture, architects are enhancing and preserving their professional and cultural status, their self-identity, and their role by claiming that their work is of higher worth because of its artistic qualities thus protecting the profession from other competing non-credentialed skills. It is a mechanism of social closure. That is, exclusive control of professional territory depends on the **monopoly** of its service provision. For Ghirardo, this type of architectural criticism is actually not engaged in the act of criticism, but rather acting to preserve a particular status quo (Ghirardo, 1991, p.10).

This distinction between “architecture” and “building” led to discontinuity between the two. Although postmodernity, allegedly, calls for diminishing the boundaries between elite and pop architecture as apparent in Venturi’s writings in “Learning from Las Vegas”, however, selecting particular elements from the pop culture and pasting it on the facades of the designed “architecture” does not make the latter a pop architecture or eliminate its title as “elitist”, therefore, does not re-establish the continuity between architecture and non architects-architecture. In postmodernity, pop culture or “ordinary architecture” constitutes no more than a new source of inspiration for a new style of “architecture”. The Arab World is witnessing today a stylistic revival of Islamic architecture. However, such a revival is exclusive to the manifested structure. Architects recourse to Islamic architecture to copy physical forms and patterns, without understanding the imperceptible mechanisms responsible for producing such forms, i.e. they refer to the end product and not the process. They are thus **freezing** and reducing the Islamic architecture into static solutions. The works of Badran (international architect, Jordan) and al-Wakil (Saudi Arabia) are a prime example.

In contrast, production of the inherited built environment was centred upon intraneous parties, thus, using the contemporary terminology, the end product is attributed as “building” (ordinary architecture) rather than “architecture”. However, continuity existed between the (extraordinary) “architecture” and the “ordinary architecture” (building). The extra-ordinary used to grow out of the ordinary, out of the everyday life. This relationship had ceased to exist in the acquired built environments. Departing from the conception of professionalism and its domain monopolization, what extraneous parties produce (professionals) is inevitably architecture rather than building. Accordingly, “architecture” in the acquired mode is thus separated from “the ordinary”, whether in modernity or postmodernity. That is, in modernity, as architecture is **authoritarian** and **elitist**, “the ordinary” is excluded from any consideration, however, in postmodernity “the ordinary” is considered merely as a source of inspiration.<sup>32</sup> The ordinary in the acquired mode is a reduction of the extra-ordinary. In that sense, as Habraken states, the ordinary had been abased and rendered as powerless (Habraken, 1997, p.278), thus excluded from architecture’s boundaries.

### 10.5.2 The built environment: end or means?

[T]he important thing about housing is not what it *is*, but what it *does* in people’s lives, in other words, that dweller satisfaction is not necessarily related to the imposition of standards.

(Colin Ward, in the preface to Turner, 1976, p.5-6)

Is the built environment *per se* an end in itself or a means to a satisfactory life<sup>33</sup>? Two conceptions can be distinguished in this regard.

<sup>32</sup> The work of A. Ibrahim is a good example of such an attitude.

<sup>33</sup> Demands of satisfactory life vary from a household to another according to various factors. They might be very basic demands as Turner (in his “Housing by people”) showed in what he called the “supportive shack”, or they might be of higher standards.

First, the built environment as a means. In such a conception, the built environment is perceived as a context that accommodates its inhabitants lives; as a container of life, thus it should correlate to and support its inhabitants' conditions and expectations. J.F. Turner's position can be classified as belonging to this category. He states that "the physical quality of the shelter is secondary and almost anything will do", whereas the important thing is the fulfilment of the inhabitants' life demands such as a healthy and secure environment (Turner, 1976, p.56). This approach, nowadays, applies more to what we referred to earlier as "building" or "ordinary architecture" than to "architecture". That is, "architecture" is a **profession-based** designed environment which capitalism constitutes its main driving mechanism. However, such a contemporary position is still ineffective. Solutions still revolve within the circle of capitalism. That is, instead of transforming the process of the built environment production into a self-managed process through opening resources to inhabitants themselves so that they can decide for themselves, the process is still revolving around state fund and support (e.g. empowerment attempts in Third World countries). In short, the conception of the built environment as a means, as will be shown shortly, contradicts with the forces of capitalism and its market, therefore, such a conception receives very little advocacy and application in contemporary times in comparison to the other conception which views the built environment as an end.

This perception (the built environment as a means) applies to the inherited the built environment. *Shari'a* is concerned with developing the Muslim society more than the built environment. Its environmental principles are mainly directed at **enabling** individuals in society, aiming at, to name some, improving their **productivity**, eliminating oppression, expelling inequality in access to resources. *Shari'a* regards society as a priority over the built environment, thus, it invests in the built environment in a manner that facilitates its main target. In that regard, ownership conception in *shari'a* aims at enabling individuals and thus society. *'Ihya'* (revivification), for example, as a mechanism to initiate ownership, is a mechanism of enablement as well. It considers land as an available resource, open to everyone, with no exchange value (see chapter eight). This is the exact opposite of the situation in the acquired mode which considers land as a scarce resource with exchange value, thus enhance its speculation. However, one might say that such principles as *'ihya'*, most likely, produces irregular, disorganized built environments with tortuous streets and overlapping properties. That might be true if departing from the contemporary perception of organized built environments. That is, organization of the built environment today means straight streets and regular layouts so as to respond to the existence of vehicles, however, in the inherited built environments, with the absence of modern vehicles, the conception of organization was quite different. It revolved around the concept of settled environments where inhabitants in their sites control their properties, according to the structures of rights. Accordingly, *shari'a* aims at "settled" environments, or what Akbar refers to as "ordered environments", more than at organized environments in the contemporary sense (Akbar, 1992, p.349-366).

As the built environment is not the main issue of concern in the inherited mode, its organization and maintenance were left to intraneous parties to deal with according to their capabilities and



needs, with reference to *shari'a*, and not to any **extraneous** authoritarian organisations. This mechanism avoided the emergence of that bureaucratic class (e.g. professionals) which characterises the acquired mode, and is responsible of organising the built environment and defining and maintaining its quality. Thus, the inherited mode produced a built environment with no depletion of society's resources, and with minimum cost as compared to the acquired mode. The wealth of society is kept to its members. This should not mean that the inherited built environment was disorganised. All environmental problems and needs at all levels, from street layouts to cooling the house were solved by reference to conventions (Akbar, 1992, p.367).

Many of the radical attempts of the 1960s that aimed at changing the role of the built-environment professional did not stress this conception which elevates building over architecture. Its advocates insisted on the **authoritarian** (although to lesser extent than in the modern project) role of the professional to bring order and develop the built environment. This tendency reflects a well rooted, power-seeking-based, modern ideology of **environmental determinism** which aims at developing the society through developing the built environment. Arguing against this, Schumacher (economist), in his book "Small is beautiful", points out that development does not start with material factors such as natural resources, capital, or infrastructure, but it starts with people and their education, organisation and discipline.<sup>34</sup> Improving people will improve the built environment. Without these, all resources remain latent, untapped, potential (Schumacher, 1973, p.168). Thus Schumacher, relinquishing the modern tradition of environmental determinism, asserts that raising the quality of the built environment by investing in its structure, such as building highways and efficient infrastructure, will not develop the society or lessen its poverty. The built environment in that sense is seen as a means and not as an end.

In the Muslim world, concomitant to the shift from the inherited to the acquired mode was the shift in the conception of the built environment from being a means to being an end in its own right. Affected by what many calls "late capitalism" or "post-industrialism" or "postmodernism", built environment production has been widely seen as part of these prevalent forces. Architecture's autonomy and depoliticization, as explained above, were results of these forces. Such effects and forces, however, led to another shift in architecture; that is to its **commodification and commercialization**. These latter shifts stem from the modern conception of the built environment as an end in itself.

### COMMODIFICATION OF THE BUILT ENVIRONMENT

Professionalism emerged as a result of the forces of the capitalist market, thus to perpetuate its status this market has to be maintained. Therefore, professionalism turned to be the **server of and served by that market**. For architects, as professionals, to compete in the market and to gain a privileged status, architecture had to be part of this market. Advocating consumption,

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<sup>34</sup> Schumacher's study focused on the Third World, however, his theory is applicable to all countries.

architecture became, especially in its postmodern era with its focus on aesthetics, a project to promote and draw attention to the market's goods. On another level, architecture *per se* became a **commodity** to be consumed. As a result, it can be said that architecture became a **profit making profession**. Architecture, thus, entered a new stage of representation: architecture as a **commercialized commodity**. **Images** have themselves become commodities. Such an attitude depletes society's resources. For example, as part of the building regulations in Amman is the use of stone masonry in building facades. The cost of constructing one square meter of stone façade is quite high if compared to the individual's average monthly income in Jordan. The insistence of professionals and the higher authorities on such an aesthetic matter (image) is taxing the society and depleting its resources that can be better utilized in health or education (according to Schumacher, 1973).

In this context, the differentiation between "architecture" and "building" becomes quite important. "Architecture" is a **commodified, commercialized** product, produced by **profit seeking** professionals who view architecture as an end in its own right, however, "building" is a product that is produced by its people (owners and/or users), who view their building as a means, or context for living. Today, the former conception represents the acquired mode of production of the built environment whereas the latter resonates with the inherited mode.

### **ORDER, CONTROL, AND CENTRALIZATION**

A visitor to any traditional quarter in Damascus or Cairo, for example, will inevitably realize the difference in organization and quality between such inherited built environments and those produced according to the acquired mode. Quality (as perceived in the acquired mode) of such physical built environments is low as compared to the acquired ones: its streets are narrow and tortuous; its buildings are attached with no setbacks and a high density. Today, these characters are assessed by the observer with reference to acquired criteria of evaluating the quality of the built environment, based on totally different grounds than those which were involved in the production of such inherited qualities. They are based on the conception that the quality of the built environment is **determined** by extraneous parties and not produced from within its sites and by its intraneous people. This latter conception acknowledges the centralization of the state in providing order and control over the built environment; it is a conception that accepts the subjection to the power of the higher authorities in the name of order and organization, or on a broader level, in the name of welfare. Such conceptions are mainly a result of an ideological belief that views the built environment as an end. These ideologies and conceptions have today, in the acquired mode, become **normalized** thus, absolutely, accepted.

Stemming from such conceptions, and based on its systemic power structure, the acquired built environment received a great attention in terms of its production. Organizing the built environment and raising its quality became a target, and the state, as the supreme authority, is the agent of shaping and fulfilling this target. However, order, organization and quality are concepts that imply centralization: what standards of quality, who determines its criteria, how to organize, who implements, who decides, all these are related questions that embody a sense of centralization, thus of control. In that sense, people turned from being **controllers** of their built

environments (in the inherited mode) to being **controlled** by extraneous parties (in the acquired mode). In such processes, central authorities claimed to be working for the public interest. Whole districts were demolished, properties were expropriated to build a new street in the area; all this was in the name of the public interest. Concepts such as beautification of the built environment, urban renewal, conservation emerged accordingly, all view the built environment as an end that is prioritized over its people's health or education. The reconstruction of central Beirut in Lebanon is a prime example. After the civil war, the new government expropriated properties of most owners in central Beirut and transformed a fabric composed of hundreds of small property owners into a single property owned by a supreme owner (the state). A massive urban design scheme that commodified the site to attract capital is in progress.

This expansion of the role of the state in the built environment led some professions, such as planning, to perform as "public service" professions linked to state policies and programmes. Planning as a profession was thus, as described by many writers (e.g. Castells), directed to serve the higher authorities. It is a capitalist tool that serves the dominant systemic power.<sup>35</sup>

In short, what differentiates the concepts of "architecture/planning" and "building" in terms of the production of the built environment is their producers: **extraneous** or **intraaneous** parties, which is in turn associated with the conceptions of the built environment as an end or as a means respectively. When decisions-making process of the production of the built environment is controlled by its immediate intraaneous parties, each performing in his own interest, the resultant built environment will respond to those parties' needs and values. Such a built environment is conceived as a means. Even if certain individuals act as if their built environment is an end and paid much attention to its formal aspects, however, the sum of the produced built environments are still looked at as a means. This represents the process of "building" prevailed in the inherited built environments. On the contrary, profession-based designed, centrally and extraneously controlled, built environments imply the conception of the built environment as an end in its own right. In such a process, professionals (e.g. planners) perform, as claimed, in the public interest, assuming the public, or a faction of the public, as a one group, thus ignoring the diverse needs and interests of the members of such a group.<sup>36</sup> However, those planners and central authorities are remote extraneous parties that might have no direct intimate relationship with the built environment they control, thus they lack the motive to consider the built environment as a means that supports their lives. It can thus be argued that their designs and plans, although sometimes claimed otherwise (as in radical planning),

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<sup>35</sup> See chapter five above.

<sup>36</sup> As explained in chapter five above, the concept of the public interest has been recently challenged and attacked. Many scholars are calling today to the consideration of the diverse interests of the previously marginalized groups such as ethnic minorities, feminists, and alike. However, such calls changed the idea of the "public interest" into "the group interest" where the public as a one group has been partitioned into several groups each has its own interests. In that sense, the exact needs of the members of such groups are still marginalized.

conceive of the built environment as an end.<sup>37</sup> In such a process, extraneously designed built environment is an end for the higher authorities, for their professionals, and an imposed end for its direct users to whom it is a deficient environment that does not satisfy their exact needs and support their lives. It is a meretricious environment that claims to serve the public, but in fact it is the server of the systemic established order.

### 10.5.3 Design as a capitalist tool

Spatial **design** is a political instrument of social control which the state uses to further its own administrative interests... Spatial organization, therefore, represents the hierarchy of **power**.

(Lefebvre, in Gottdiener, 1994, p.126, emphasis added)

Based on the above, in the acquired built environments, this deficiency in fulfilling inhabitants' needs in their extraneously designed built environments is seen by many as a problem that can be solved by placing the social needs on the agenda of design process. Themes as designing for people<sup>38</sup> and designing by people were adopted accordingly. However, all those themes departed from the concept of "**design**" as the main tool of built environment production.

Concomitant to professionalism of the built environment was the introduction of the concept of "**design**" as an extraneously performed decision-making process. This led to the dominance of the concept "architecture/planning" instead of that of "building" which dominated in the inherited built environment. "Design" became the central activity of built environment professionals. It is an activity of producing spaces to others, thus, of taking decisions for others. In other words, it is an activity of exercising power (backed by the state) over others.

Design is the activity of materializing the capitalist relations in space. It infuses the logic of capitalism in space (e.g. individualism, commercialization, capital accumulation, profit seeking, hedonism, etc.). Thus, the primary modern function of design is conceived as a mechanism in the material world of capital production and accumulation. This tendency can be described as a capitalist hegemony over people first and over space, second. Professionals are subjected to capitalism's systemic power, and they in turn participate in subjecting the public to those powers. Also, as Lefebvre argues, space has been captured by capital and subordinated to its logic. In that sense, space has become instrumental: it is a product of capitalism and a tool of its consolidation (Saunders, 1993, p.157-161).

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<sup>37</sup> Some might argue that this is not true in the case of the empowerment model of planning. Actually, what empowerment advocates aim at is to organise the built environments of certain poor groups. They aim, for example, at providing housing to such people. However, this attitude is still centred on the concept of prioritising the built environment over other people's needs. It embodies a deterministic attitude that good environment produces good society. Such attempts are still controlled by planners and other agencies, and are not transformed into self-managed processes. They did not provide access to resources; they did not diminish poverty. All what those attempts did is that they provided a fraction of the society with good (according to professionals) environments to live in.

<sup>38</sup> Example of designing for people is the work of Oscar Newman in "Defensible space" (1973).

Based on this, the function of maintaining such a reproduction of capitalism through space, argues Lefebvre, invokes the need for interventionist state in capitalist societies. Intervening in the production and organization of the built environment, the state has used space as a political instrument that serves its interests and ensures its control of places (Gottdiener, 1994, p.125, 145). Planning as a state-based profession is a form of state intervention directed at fulfilling its interests. Spatial organization, thus, represents the systemic hierarchy of power.

Relating this to what we described earlier as internal contradiction in capitalist societies<sup>39</sup> (see p.100 above), it can be argued that professionalism, thus design (production of space) and space *per se* intensify such disjunction and contradictions. Design as a capitalist instrument produces what Lefebvre refers to as “**abstract space**” that enhances the capitalist relations and consolidates its logic. In modern societies, according to Lefebvre, “abstract space” has come to dominate “**social space**”, or the integrated space of social communion, and the very productive potential the latter has itself been attenuated (Gottdiener, 1994, p.127). Abstract space is loaded with capitalist relations and abstract from any traditional social relations, values, daily life experiences, interests and needs. It is abstract but from the capitalist logic. Its design is based on capitalist concepts such as functionalism and efficiency (Akbar, 1995, p.17-8). The state, masked by the ideology of planning, is considered the agent of producing such abstract spaces. As a tool of capitalism and the state, abstract spaces witness contradictions between capital logic and social needs; between profit for capitalists and professionals and needs of users and the public; between exchange value and use value. This in turn intensifies the contradictions between societal realms; it deepens the disjunction between the economic and polity realms and the socio-culture realm. As space is the milieu that merges these three contradictory realms together, thus, capitalist space today witness a **crisis** due to such contradictions.

This crisis is evident in the acquired built environment. As the acquired process of space production does not in most cases consider inherited mechanisms and values, thus the resultant professionally-produced spaces contradict with users’ (Muslims) needs. Such spaces reflect professionals’ logic and not those of the users. Many attempts, such as citizen participation and even “communicative planning”, have tried to solve such a contradiction by involving the user in the process of space production, however, as such efforts are based on professionals as the centre of the process and on “**design**” as the main mechanism of producing space; it cannot escape the circle of professionalism and thus the logic of capitalism. Such attempts, unquestionably, accept capitalism as a system and work in its service. Captured by its logic, it became almost impossible to think of any other logic of space that challenges the dominant capitalist one. In that sense, these attempts are considered merely as “**patching solutions**” of the same dominant system.

This space crisis is a manifestation of the contradiction between the acquired mode adopted by professionals in the built environment and the persisting inherited mode of reproducing the

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<sup>39</sup> Contemporary capitalist societies, as Bell argues, witness disjunction and contradiction between their different societal realms (techno-economic, polity, socio-culture, see p.100).

socio-cultural realm. That is, as Lefebvre argues, every society produces its own space. New social relations call for a new space. However, any “social existence” failing to produce its own space would be a strange entity, thereby losing its identity (Lefebvre, 1984, 1991). In the past, Muslims society, performing according to the inherited mode, had its own space. As inherited social relations persist in contemporary Muslim societies, thus, according to Lefebvre’s argument, Muslim society today should have its distinct space (not Western, not imitation of the past) that is responsive to its contemporary needs, however, produced by its societal relations regulated through structures of rights. That is, past solutions do not fit the newly emerged needs and technologies such as the use of vehicles, and new building techniques. Therefore, if rights structures, set by *shari’a* (explained in chapter seven), are employed today, they will produce new solutions that fit with the contemporary era. However, subjected to the capitalist systemic power, contemporary Muslim society is conquered by a new acquired space loaded with new extraneous (capitalist) social relations. Such space is in conflict with the inherited mechanisms and social relations. This in turn causes an antagonistic relationship between the acquired built environment and the inherited social relations, which consequently perplexed the process of space production, and led to the loss of its social and spatial identity.

#### **10.5.4 Professionals and the public**

Part cause and part result of the crisis in the architectural profession, as Huxtable contends, is the gap between architects and non-architects with regard to the production of the built environment. Different aspects of this gap can be discerned from what has been explored in this chapter, however, all these aspects are due to the notion of professionalism. For example, the gap in knowledge-base between professionals and lay-people; the gap due to an absence of a common language, of shared experiences and knowledge; the gap in logic between the needs of professional identity and users’ needs; the gap due to social distance; the gap due to the distinction between “architecture” and “building”; the gap due to the centralization of the process of built environment production; and so on.

Now there is a tendency among professionals to celebrate and preserve this gap despite the dangers it poses. This desire can be attributed to the profession’s instinct for self-preservation through distinction, so preserving its legitimacy (Huxtable, 1992, p.29). Like any other profession, architectural profession cultivates its distinctiveness in order to preserve its legitimacy. Design schools have contributed to preserving rather than bridging this gap (Ellin, 1996, p.219). According to Alexander and Chermayeff, these schools “try to perpetuate the traditional image of professional integrity and unique skills personified by the ‘architect’ guiding the ‘cultured’ and unique ‘client’ [and to] transform average students into universal men of the highest order” (Chermayeff & Alexander, 1963, p.106). In education and practice, total design was conceived as a device of control as much as of service, thus, in this process, neither the user nor the passer-by has a place, except by accident. The wider community thus loses its involvement with the process of building (Saint, 1983, p.160). Such designs are, in most cases, utopian solutions, that are individualistic in the sense that they are different from one designer to another. They have no systematic ground, thus are in a constant change. This in

turn widens the gap between professionals and lay people as the latter cannot comprehend such utopian solutions, first, and cannot cope with the speed of their change, second.

Those were the consequences of professionalism in the built environment; together they complete the picture of changing the conception of the production of Muslim built environments from that prevailed in the inherited mode based on intraneous parties to that of the acquired mode based on professionals as extraneous parties.

### 10.6 SHOULD THE PRACTICE OF PROFESSIONALISM BE ALTERED?

This research is not against specialized knowledge, or expertise in special areas; these in the end lead to the development and progress of society. One can never deny the contribution of environmental knowledge. It is against professionalism in its modern form as an exclusive dominant service provider. It is against its autonomy and authoritarianism. It is in disagreement with the role professionals of the built environment are performing in the acquired mode (as extraneous party). That is, professionalism in the manner practiced in the acquired built environment, as this chapter argued, constitutes, along with the modern state, the genesis of the crisis those environments witness today. The problem thus lies in the modern formulation of professionalism; in the logic within which professionalism is practiced, and not in the concept of professionalism *per se* as a source of expert knowledge. Thus, is there an alternative that performs the role of professionalism, however, escapes its logic? The answer might reside in the inherited mechanisms of built environment production.

Professionalism in its current conception led to the creation and/or intensification of the points of tension between the acquired and the inherited modes in contemporary Muslim built environments. It changed the conception of the production of the built environment. Professionalism is predicated on a different imperceptible structure (power-based) than that of the production process of the inherited built environment (rights-based). This in turn constitutes one of the main points of tension between the two modes: the acquired and the inherited. Many contemporary attempts, as explained above, aimed at changing the role of the professional so as to solve the crisis contemporary Muslim built environments live, however, such attempts were not successful. They did not grasp the roots of the crisis. Operating within the present systemic conditions, adjustment of professionalism has marginal chances, i.e. changing professionalism requires changing the underlying systemic structure, or more precisely, the imperceptible systemic power structure.

The main logic of professionalism that contradicts with the inherited built environment is the acquired legitimate power of professionals an extraneous party intervening in the production of the built environment. **Legitimacy** and **imperative status quo** of professionals are actually acquired through state support. They are considered the main elements within professionalism that are responsible for contemporary Muslim built environment crisis. To solve this crisis a systemic structural change is required. However, to isolate the problem of professionalism, theoretically, from the other components of such a crisis, an alternative might be suggested. Acknowledging the importance and the need to specialized knowledge and expertise in this

increasingly complex age, this study argues that this state of imperativeness of professionals as extraneous party should be eliminated. Scarcity and monopolization of knowledge should be eradicated, and knowledge should become again an available resource, reachable to everybody. To accomplish this, the ties between professionalism and the state should be abolished, i.e. the state support of professionalism should be lifted. In that sense, professionalism converts into “**experientialism**”.

In experientialism, the production of the built environment is conceived, as Habraken depicted it, as a shared live process (1990, p.74). It is an every-day experience in which many actors participate, each according to his position, thus to his rights, in the built environment (e.g. user, owner, expert service provider, etc.). It is a “building” process and not an “architecture/planning” process. In this perception the imperativeness of the extraneous party as the ultimate arbiter in the production of the built environment is dismissed; professionals perform as expert actors whose services are sought volitional and not obligatory. In that sense, intraneous parties exercise effective roles and enjoy more **freedom** in the production of their built environments. They are the final arbiters in decision-making each in his built environment. This, ultimately, looked at from a narrow angle, resonates with the inherited mode of the built environment production. However, for a comprehensive solution of the contemporary crisis of Muslim built environment, a systemic structural change is required. The three societal levels and the three environmental structures have to intermesh, otherwise the contradiction, and thus the crisis persists with dire consequences

## 10.7 CONCLUSIONS

The emergence of the extraneous party, represented by the modern state and professionalism, is perceived in this study as responsible for the actualization of the shift in contemporary Muslim societies from the inherited to the acquired mode. Professionalism constitutes a power game within the broader modern-capitalist system. It operates within its logic. Professionalism accordingly, contributed largely to changing the conception of the production of the built environment. It led the shift from the conception prevailed in the inherited built environment based on intraneous parties as decision-makers, each in its site, to that of the acquired mode based on the extraneous party as the ultimate arbiter and decision-maker in such a process. It **shifted power from the intraneous to the extraneous**. This acquired conception became, as a result of professionalism, an ideology to which people are self-subjected. Accordingly, this shift and ideology, contradicting with other inherited societal realms, contributed to the crisis contemporary Muslim built environments witness.

In conclusion, **power**, legitimizing professionalism and state centralization (intervention), and **bestowing them the right** to control and intervene in people’s built environments as extraneous parties, is considered, as this thesis demonstrated, the main determinant of such a crisis. In short, it is **the rights of power replacing the power of rights** that is the main imperceptible factor responsible for the crisis of contemporary Muslim built environments.



**Finally**

**CRISIS  
OF  
COEXISTENCE**

The Arab Muslim world lives today what this thesis described as a *crisis of the coexistence* of two dissensious modes: the inherited mode rooted in Islam and the acquired mode rooted in modern-capitalism. Each of those two modes has its distinct roots, characteristics, principles, and mechanisms, which, as this study demonstrated, contradict with each other. The main dissension between the two modes lies in the imperceptible level. It is a dissension in the conception of **power** of each mode. The acquired mode is power-based, where power refers to its modern concept, whereas the inherited mode is a rights-based mode, where rights are defined according to *shari'a*. Thus, the coexistence of these two dissensious modes, each operating in a particular societal realm, created a crisis of internal systemic disjunction. Societal realms in the acquired mode are no longer intermeshed as they were in the inherited mode. They embody different dissensious conceptions and ideologies. Thus, as long as this systemic disjunction exists, the crisis persists.

**DISSENSIOUS  
MODES**

**MUSLIM  
BUILT  
ENVIRONMENTS**

Reflected on the built environment, this coexistence led consequently to a crisis in contemporary built environments; a crisis of disintegration and incompatibility in the structures of the built environment. Thus, to understand this crisis in terms of the built environment, this thesis studied it genealogically, relating it to the wider systemic crisis.

**ON  
A WIDER  
SCOPE**

Moreover, as contemporary built environments in general witness today what some refer to as a crisis, this study also attempted to bring the attention of the environmental community (architects, planners and, urban designers) to the intellectual rupture that their professions are living. On the theoretical level, built environment professionals are moving from one paradigm to another (e.g. planning model: comprehensive, participation, equity, communicative) searching for the best model for producing the built environment through which their utopias can be accomplished, their social status preserved, and the interests of the masses of people can be served. However, as this study demonstrated, such moves are constantly challenged by contemporary modern-capitalist societies' inner logic. The aims are contradicted with the actual means. Dreams dissolve in front of reality. This is the crisis of contemporary built environments. It is the crisis of thinking from within the lived system (i.e. capitalism). It is the crisis of the perception that capitalism is the only

**CRISIS IN  
CAPITALIST  
ENVIRONMENTS**

perceivable mode. It is thus the crisis of living without any conceivable alternative. Thus, this study shed light on a possible systemic alternative, at least in terms of the production of the built environment.

#### IMPASSE

The debate over this crisis of contemporary Muslim built environments is intensifying, however, revolving in an impasse. Two main interrelated factors, as tackled in this study, are responsible for the current situation in debates. **First**, the epistemology of reading and theorizing the built environment. **Second**, the ignorance of questions of power (i.e. power game and the societal power structure). This led to misunderstanding the crisis of contemporary built environments and thus to failure in attempts of solving it, thus to the persistence of the dualism of environmental ideology.

#### THREE STRUCTURES OF THE BUILT ENVIRONMENT

As argued in this study, the built environment is composed of three complementary structures or levels: the **manifested**, the **operative** and the **imperceptible**. Each system or mode of society-making (e.g. Islam, capitalism, socialism) produces its distinct built environment according to the integration of its three structures. Different built environments might share some characteristics on the manifested or the operative level, however, in most cases, each built environment has its distinct imperceptible level. Thus, to comprehend the production process of the built environment, it should be studied comprehensively, on its three structures.

#### EPISTEMOLOGY OF READING THE BUILT ENVIRONMENT

Most Islamic urban studies investigated Muslim built environments partially, focusing on the manifested and/or operative levels only, dismissing the imperceptible structure as universal (chapters 3, 4). That is, unaware of the peculiarity of the imperceptible structure of Muslim built environments, and influenced by Western concepts of society making, Orientalists as well as some Muslim scholars accepted the Western modes of environmental production as the only conceivable possible mode. They employed Western professional and **epistemological** concepts in studying Muslim built environments. Employing such exotic perceptions in investigating the Muslim built environment with its unique imperceptible structure led to disintegration and incompatibility, on the theoretical level, between the three structures of the Muslim built environment, a matter that led to misinterpreting those built environments. Unfortunately, those studies became authoritative in the field of Islamic urban studies, thus widely adopted and accepted. This led consequently to deepening the **misunderstanding** of Muslim built environments and their production.

Few of those scholars have gone beyond the operative level to focus on the imperceptible level, however, very few have paid attention to questions of **power** in the production of the built environment. Who controls what element

**IGNORANCE  
OF POWER**

on which space? What are the legitimate sources of such control? Who decides the limits of ones' power? How power relates to rights? All are questions that are fundamental in the production process of the built environment and can never be understood without a comprehensive understanding of principles related to power. Accordingly, this thesis considered power as the main determinant in the decision-making process of the production of the built environment. Power thus constituted the main axis of investigation in this thesis. It is used as the **tool of investigating** both the acquired and the inherited modes and their coexistence. Accordingly, this thesis located some of the **points of tension** between the two modes, which consequently led to destabilizing the contemporary system through the shift from the inherited to the acquired mode.

**POWER AS  
THE TOOL OF  
INVESTIGATION**

**THE  
INHERITED  
BUILT  
ENVIRONMENT**

Production of the inherited built environment is centered on the concept of **rights** as bestowed by *shari'a*. Rights generate power when activated in actual interactions. Rights are the only source and resource of power in the inherited mode. Rights create power. Power thus cannot be stored up; it is not possessable. Rights in the inherited mode are determined by *shari'a* according to **structures of rights** (rights distribution maps), accordingly, power is determined. One cannot acquire more power than what his rights generate, i.e. there is no lust for more power in the inherited mode. Structures of rights define rights of each party and property in the inherited built environment. Each party whether the individual, group or the state has determined rights, thus determined **scope of exercitation** (changeable) within which it performs. The state is a party like all other parties. The state in the inherited mode has a limited scope of exercitation thus limited role in the production of the built environment. The inherited built environment is the product of the accumulations of private parties' actions based on their **power of rights**, regulated by certain **rights-based mechanisms, without the intervention of external parties**. Therefore, parties had freedom of action, however restricted by certain rights-based mechanisms such as the concept of harm. They are not subject in their action to the higher authorities. Accordingly, rights-based mechanism regulate relationships between parties and properties in the inherited built environment in a manner that **minimizes, if not eliminates, potential domination**.

**DETERMINED  
RIGHTS**

**THE  
ACQUIRED  
BUILT  
ENVIRONMENT**

On the other hand, the acquired mode is centered in its operation and maintenance on the modern concept of power. Thus its mechanisms of producing the built environment reflect such an attitude. They are power-based mechanisms. Reflecting such a centrality of power, human life in the acquired mode can be perceived as in a continuous **lust for power**. That is, power

**POWER  
IS  
DYNAMIC**

sources and resources in its modern concept are variable, thus power is dynamic. It can be acquired and possessed. Mobilization of human and material resources leads to **inflation of resources** and thus to more power. In such a context property ownership became a resource of power. Accordingly, to maintain its status, the state uses its power to acquire more power so as to enhance its legitimacy and control over its subjects and their built environments. It is lusting for power. Following a zero-sum model, if some gain power, others lose. Thus, the state as the supreme power wins power whereas the people lose. This expanded the state's **area of acceptance**, and reduced private parties' areas of acceptance. Thereby, the built environment is seen as an arena for competition among parties to acquire more power.

Exercitation of power and lusting for more power embodies, in most cases in the acquired mode, domination over others. Power exercitation is characterized by **dominance/subjection** relationships. It is an exercitation of **power over** others. Such relationships are mostly evident in state-private parties' relationships. Employing its acquired power, the modern state gave itself the right (**power creates rights**) to intervene in the production of the built environment, under the names of order and organization, and the public interest. Acting out of its **rights of power**, the state designated itself as a rightful **extraneous party** responsible for directing and controlling the production of the built environment. It used laws and regulations as a tool of control. It is a legitimized method of **state intervention**. Thus, the built environment became directed and produced according to the societal **power game**. Such power-based mechanisms, in contrast to the inherited mode, capitalize potential **domination** between properties and parties in the acquired built environment.

Societal hierarchical power structure is reflected in the production process of the acquired built environment. Diversities among parties are mounting. The powerless, with no access to resources is left without shelter. Land values are signs of spatial segregation. Scarcity of resources, evident in land speculation, is an effect of state control of what used to be available resources. Power is shifted from the hands of people (as in the inherited mode) to the hands of the state. Locational rights-based relationships between private parties are replaced by relationships between parties and the state. Dialogue between parties, thus, declined to be replaced by dominance/dependence relationships, regulated by state's **prescriptive** laws and regulations. Built environment conventions diminished. Inhabitants' self-inventive environmental solutions are replaced by top-down imposed solutions. In that sense, the modern state that calls for democracy in theory has created, through its intervention, an environmental

milieu of subjection and domination. Contemporary scholars are looking into the past, nostalgically, longing for reviving the special qualities which they admire in such inherited built environment and are lost in contemporary environments. Local architects (e.g. Badran, al-Wakil) refer nostalgically to physical past forms; planners (e.g. New Urbanism) refer to the spirit of the community and the physical characters of the neighborhood; sociologists long for the social relations of the *Gemeinschaft* community in comparison to the *Gesellschaft* (see p.25). They are longing for the “quality without a name” that characterized the inherited built environment such as its sustainability, responsiveness, affordability, harmony with its inhabitants’ values, coherency, and the like. Such qualities are in fact the manifestation of rights-based imperceptible mechanisms, thus to revive such qualities, those mechanisms have to be revived.

**PROFESSIONALISM**

Concomitant to the power-based logic of the acquired mode, professionalism in the built environment arose. Professionals became state-backed extraneous parties, intervening legitimately in the production of the built environment, a matter that contributed to the shift of power in the production of the built environment from the hands of immediate parties to the hands of professionals. Accordingly, the emergence of the modern state and professionals together, as extraneous parties, changed the conception of built environment production. Created by extraneous parties, acquired built environments do not necessarily respond to the needs of its end-users. Aiming at ameliorating such built environment, professionals (e.g. planners) are in continuous search for better models of built environment production. They are shifting paradigms, searching for better alternatives. Each built environment is a production of its system’s distribution of rights. Thus, what those professionals are actually seeking in their shifting paradigms is to reach the distribution of rights that can best generate the required utopian built environment (according to their standards). However, as such rights-distribution maps are produced under the umbrella of the capitalist system (through professionalism, which is a production of modern-capitalism), thus they are indulged in its logic centered on the concept of power. Thus, such maps will be ultimately no more than another formula of capitalist power-distribution maps. Thus, such models or solutions are partial, challenging the manifested status quo, but not the imperceptible level. Accordingly, the existence of the extraneous party as a manifestation of the inner logic of the acquired mode sustains the persistence of such a mode, and thus its conception of built environment production. Unless such solutions liberate themselves from the systemic logic of modern-capitalism, they remain as Utopias.

**PERSISTENT  
CAPITALIST  
LOGIC**

**CAN THE  
TWO MODES  
COEXIST?**

Apparently, each of the two modes produces its environmental ideology. But can the two ideologies meet? Unfortunately, this question was not raised and dealt with properly by scholars and professionals. The coexistence of such substantially dissensious ideologies has reached an impasse. The Islamic mode is active in certain societal realms whereas the acquired mode is employed in other realms. Islamic teachings and law are continuously shaping every day life. Islam, operating on the imperceptible level, produces individuals' Islamic customs and values. In the inherited mode, such values were integrated in the manifested physical built environment through rights-based mechanisms (imperceptible), thus producing a compatible built environment which three structures are intermeshed. It is a built environment with a "quality without a name", as Alexander describes it.<sup>1</sup> However, replacing such mechanisms by power-centered ones, the resultant built environment contradicts with its inhabitants' inherited values and customs. It is thus a contradictory built environment. Thus, to solve such a crisis and to **intermesh** the structures of the built environment together, either Muslims have to change their ideology or modify the acquired modern-capitalist mode of built environment production, otherwise the crisis persists.

**INTER-  
MESHING  
THE REALMS**

What the Arab Muslim world needs is a serious attempt to understand the impact of power on built environments. Its contemporary needs are different than those of the Western world; thus does it have to adjust the inherited rights structures? If so how? What are the possible cultural changes if the power-based acquired mode is adopted? Does it have to be adjusted rather than accepted as it is?

**STATICNESS  
OF RIGHTS  
VS.  
DYNAMISM  
OF POWER**

To conclude, **staticness of rights** vs. the **dynamism of power** is the main dissension between the inherited and the acquired modes, respectively. If rights are distributed in any society in a static, determined manner so that the rights of each party are episodic and well known to others, i.e. rights structures are transparent, then avenues of rights manipulation and thus **domination is eliminated**. However, if rights/power is dynamic, undetermined, possessible and can be found in latent as well as episodic forms, then it allows for **manipulation of power**, lust for power and thus

<sup>1</sup> According to Alexander, the system is characterized by quality without a name when it is a true system that is true to its "inner nature". It is characterized by its oneness. It is free of inner contradictions (Alexander, 1979, p.28).

capitalizes potential **domination over others**. This latter position allows for inequality, injustice, confinement, and repression.

**STRUCTURES  
OF RIGHTS  
IS THE  
SOLUTION**

However, one might argue that such a structure of rights cannot be applied in contemporary built environments due to the complexity of contemporary needs such as infrastructure, road networks, health and education services. Such needs require centralization and expert knowledge to be accomplished, thus, they are revolving around the concept of power. In other words, centrality of power in its acquired mode is inevitable to accomplish contemporary needs. One might argue that this is in fact not always true. Structures of rights as existed in the inherited mode can be employed for contemporary needs. However, such structures did not have the chance yet to prove its suitability to contemporary times. If such rights structures are accepted and applied in providing the infrastructure, for example, then residents (private parties) will own and control such infrastructure. Conventions will be developed for providing and keeping-up of the sewerage. Properties might have, for example, their independent systems for processing sewage in site.<sup>2</sup> New types of industries and technologies will emerge to fit with such a synthesis. Industries respond to people's needs and not the other way round. Private parties might dig wells in their properties to get water. Innovative solutions will occur, conventions will develop, and industries will advance accordingly. People will coordinate to provide their infrastructure. Accordingly, if such a structure of rights is applied, the phenomena of infrastructured unutilized lands, of land speculation, of squatter settlements, of homelessness, and of scarcity of resources will dissolve.

**CAPITALISM  
IS NOT THE  
END OF  
HISTORY**

However, if the above argument is not convincing, then this study might be considered as an attempt to bring the attention of the academic and professional community to the impact of the issues of power structure on the production of the built environment. Built environment production using modern concepts could indeed advance if extraneous parties expose themselves to criticism from other cultures. Solutions for contemporary problems might lie in the **environmental wisdom** of other cultures. Capitalism is not the end of history. There is much room for ideological criticism and improvement that could be best seen from other cultures. This is the nature of human development. In this regard, the hope is that this study achieved its objectives.

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<sup>2</sup> There is today a machine called "digester" that can process sewage at homes. Such a machine can be used in the inherited-like built environments.



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**Glossary**

## Glossary of Arabic Terms

***bei al-mal*** : lit. the house of wealth. Public treasury.

***bid'a*** : innovation.

***darar*** : what an individual benefits from at the expense of damaging others.

***dhummi*** : a non Muslim living under Muslims rule (Christians and Jews).

***dirar*** : actions which damage others without benefiting the acting party.

***faqih*** (pl. *fuqaha'*) : jurist

***fard kifayah*** : collective duty, the performance of which is obligatory for the community as a whole; if a sufficient number fulfil the duty, the rest are relieved of it; if the duty is not performed all the community is liable for punishment.

***fatwa*** : legal opinion.

***fina'*** : the space abutting a property and used by the residents of that property.

***fiqh*** : Islamic jurisprudence.

***ghasb*** : usurpation.

***hadith*** : tradition or reported speech of the Prophet.

***hammam*** : public bath.

***haq al-'asbaqiyyah*** : right of precedence.

***haq al-'irtifaq*** : right of servitude.

***hiyazat ad-darar*** : lit. possessing damage, the right enjoyed by a property to damage other's property; right of precedence.

***harim*** : the protected area which may not be revived by others. it is what the revived land cannot function with out as its road and pathway.

***hisbah*** : commonly used in reference to what is known as "promotion of the good and prevention of the evil".

***'ihtijar*** : demarcating a piece of land with stones or the like to revive it with out necessarily having the ruler's permission.

***'ihya'*** : lit. life-giving, utilization of dead-land by building or planting it (revivification) and not necessarily through the rulers permission.

***'ijtihad*** : lit. to struggle, to exercise personal reasoning.

***'ikhtisas*** : right of appertainance. The right of an individual to benefit from the property without leasing it such as sitting in a mosque and it is not compensatable or salable.

***'imam*** : leader of a school of law; prayer leader; caliph.

***'iqta'*** : the act of the ruler bestowing or allotting a piece of land to individuals to be utilized.

***'iqta' 'istighlal*** : concession of right to exploit a property.

***'iqta' tamlik*** : concession of full ownership.

**'irth** : inheritance.

**'isnad** : the chain of successive authority.

**'istihasn** : juristic preference.

**'istitraq** : right of passage.

**jami'** : Friday mosque.

**janah** (pl. **'ajnihah**) : cantilevers.

**kharaj, kharaji** (adj): tax levied on land owned by the state but left in the possession of individuals. (tribute imposed upon the land whose inhabitants have been left free to exercise their own religions).

**madrasah** : school.

**marafiq al-'aswaq** : the ample servitutive spaces in the market in which the preceding person has the right to benefit from the place.

**masil al-ma'** : rainwater discharge.

**masalahah** (pl. **masalah**): interest.

**masaleh mursaleh** : regard for the common interest.

**matrukah** : lit. left over, unutilized land reserved for public use.

**mawat** : lit. dead, unowned and unutilized land.

**miri** : state land that is held by individuals who have the right of usufruct.

**muhtajir** : demarcator.

**muhtasib** : market inspector.

**mulk 'intifa'** : the ownership of benefiting; the permission to a person to benefit by himself only from the property, such as residing in schools and *rabats* in which the benefiting person is not allowed to compensate or sell the place to others.

**mulk manfa'ah** : the ownership of usufruct like the peasants who own the right to use the land.

**mulk naqis** : imperfect ownership

**mulk raqabah** : the ownership of the substance of the property.

**mulk tamm** : full ownership.

**nawazil** (sing. **nazilah**): legal urban environmental precedents.

**nazir** : guardian of *waqf*.

**qadi** : judge.

**qiyas** : legal reasoning by analogy.

**qaysariyyah** : covered market.

**ra'y** : opinion.

**rawshan** (pl. **rawashin**): projecting cantilevers often having openings with wooden screens.

**sabat** : overpass.

**sadaqah** : a charity that is owned by the donee.

***shari'a*** : the societal modality of Muslims based on the *Qur'an* and the tradition of the Prophet (*hadith*); or the Islamic legal system.

***shuf'a*** : pre-emption.

***suq*** : market.

***t'addi*** : infringement or encroachment.

***t'assuf*** : abuse of rights exercitation.

***'urf*** (pl. *'a'raf*): conventions.

***'ushr*** : tenth, tax levied on lands held in absolute ownership.

***waqf*** (pl. *'awqaf*): a pious foundation in which the property held in perpetuity with the income devoted for charitable purposes.

***zakah*** : annual obligatory Islamic legal alms.