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**Land Development as a Response to
Basic Human Needs
The Case of Islamic City**

Thesis Submitted for the Degree of Doctor of
Philosophy in Architecture

By

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**REFERENCE
ONLY**

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Abstract

This thesis is an attempt to understand the driving forces in the formation of Islamic cities. Similarity between Islamic cities especially in their organic morphology was a result of several systems that worked coherently to produce the physical product in their built environment.

In general, the thesis aims to explore and understand the systems that were behind the formation and transformation of the traditional Islamic city. In order to achieve this goal the research in particular will aim to understand *Sharia* as the general law that controlled people's life in the traditional city, explore the theory of the basic human needs in *Sharia*, study the concept of individuality in Muslims life and its reflections on the built environment, analyse the individual role verses the state role in the traditional city and establish a relationship between both parties that preserve the values of the traditional city and may be applicable within the contemporary city.

Sharia, the general law that controlled people's life in the traditional city formed an umbrella for all systems within the society including those related to land development. The main objectives of *Sharia* are to fulfil basic human necessities. These necessities are religion, life, property, intellect and posterity. *Sharia* preserved these necessities in three levels of interest. This preservation was accomplished from two sides, the State and the individual. The State is obliged to fulfil needs for all individuals according to levels of priority and according to its ability. Individuals fulfil their personal needs driven by internal motivation and by the obligations of *Sharia*.

The thesis raises the declining role of the individual in land development and the problem of exchanging roles between the state and the individual in land development which leads to more obligations on the state and prevents the individual from preserving his basic needs that are related to land development.

The individual represented the module of the society; and hence, the module of the built environment. This individuality appeared very clearly in the land ownership pattern of the traditional city. In the land development process individuals always enjoyed a direct access to land, which worked as a great incentive for them to develop it in order to fulfil their basic needs. On the contrary, the State controls all undeveloped land in the contemporary city and it is no longer readily accessible to any more individuals.

The author invests the great effort made by Ash Shatibi (1320-1388) who developed the theory of Magasid Ash *Sharia* (*Sahria* objectives) in order to create a model that relates the human basic needs to the role of the individual and the role of the state.

The model explains the balanced relationship between the State's role and the individual's role in land development in the traditional city which can be adapted in the contemporary city.

This model assumes that the two parties, state and individual, share responsibility in preserving the human basic needs, particularly in land development. But each party has a different role. The model is built on a basic needs theory driven from *Sharia* that classifies the needs in three categories; primary, secondary and tertiary. These needs are expressed as interests in the theory. These interests protect the five fundamental necessities that are religion, life, property, intellect and posterity.

The model suggests that the state is to exert its abilities to the utmost to provide primary needs to all individuals, lesser of secondary needs and least of tertiary needs. The state is also responsible to create the appropriate environment that enables individuals and private corporations to interact positively in order to achieve the basic needs in any of the three levels of needs. On the other hand the individuals will carry out the mission of preserving their needs driven by their own motivation. Individual's primary needs are of great importance but less in quantity, secondary needs may be higher in quantity but less important and tertiary needs are least of importance but have no ceiling quantity wise.

The thesis consists of three sections and an introduction. The first section, **Individuality in traditional and contemporary city**, consists of two chapters: 1) Individuality and 2) The author's experience "loss of the individual role". The second section, **Land development as a response to human basic needs**, consists of three chapters: 1) Basic human needs, 2) Land development in the traditional city and 3) Role of the state verses role of the individual. The third section, **Results**, consists of two chapters: 1) The model and 2) Conclusion.

To....

My dear mother.

My brothers and sisters.

My beloved wife Munirah.

My children:

Khadijah, Sarah, Mohammad, Omar, Azzahra' and Arwa

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Preface

During my years of study there were always discussions amongst our professors and architecture students in regard to the building development controls applied in Saudi Arabia, particularly those related to houses. During the early sixties the grid subdivision system was applied, and the villa type houses were imposed on the new housing areas, which forced setbacks of all villas from all neighbours and subsequently allowed, or in fact legalized, residents overlooking their neighbour's property. Most discussions criticized the lack of privacy in this system where, by law, a resident can overlook his neighbour's property when his building is two meters setback from his boundary.¹

Although setback was mandatory and; hence, overlooking was legal, residents found their own solution to comply with the regulation and keep their own privacy at the same time. The most popular solution was to extend the walls height with light weight materials such as asbestos or metal sheets up to 6 meters. Contradictory to the traditional city, which still existed in Riyadh in those days, a new developer had no obligation to follow the standards of precedent developers as long as he was adhering to building development controls. At the same time, according to the judicature applied in the country, overlooking was illegal. People had to live with contradictions, and courts may be confused when dealing with such cases.²

Criticism of building development controls continued during my years of study; however, many of our precedent colleagues were moving into decision making positions, which made me optimistic that an effort would be made to bring development controls into compliance with society needs. To my disappointment nothing really happened and development continued on the same trend. When I graduated, I worked in an office belonging to the High Commission for the Development of Arriyadh. The mission of this

¹ Unfortunately, by time, the villa model house was considered the high-class housing model. When a new suburb *Orija* was planned west of Riyadh the capital in the early nineties on a detached and semi-detached system for the low incomes, they complained and asked for the set back system. They thought they were disrespected because they were low incomes and fought to be treated like *other* citizens. Finally they won the battle and were *equally treated* and recovered their setbacks.

² Shleh Al Hathlol recorded the case when a ten stories building named Zahrat Arriyadh was built in the sixties without considering protecting its neighbors from overlooking. After several complaints to the municipality, the case ended in the court. The parties agreed on reconciliation through which the developer was to compensate any harmed owner of the overlooked house (most of them were small mud houses) by buying it according to the market rate (Al Hathlol, 1996, p. 206). Although that may look fair, the building that overlooked tens of houses formed a precedent that introduced new values to the building customs.

office³ was to redevelop the historical city centre. I felt that I was closer to the decision making circles and hoped to play a role in changing development controls for a better housing environment.

In Saudi Arabia, redevelopment of old areas depended totally on government action. Most redevelopment plans were based on governmental acquisition of land and then development. Most efforts were directed towards constructing new streets in the old areas to allow car accessibility, creating open spaces or building public facilities or government buildings. Until the late seventies, the government did not develop commercial areas nor did it ally itself with private sector investors in redevelopment.

Plans prepared for the redevelopment of the Justice Palace Area that represented the historical centre were based on an ultimate role of the government. Very little thought was given to the original owners or private sector companies, but there were always other paths⁴ through which people implemented their own plans if they felt that government plans worked against their interest.

Two major problems faced redevelopment: lack of accessibility due to the narrow streets and the small size of the land ownerships. Plans were prepared for new streets and land assembly to create developable plot sizes. In the mid eighties, I witnessed a meeting with one of the major real estate investors who suggested that the government should make plans that determine the alignments of new streets and new building controls, such as land use and building height, and leave the rest to us, by which he meant major investors in the area. His idea was that once the new plan became clear, investors could find a way to amalgamate lands to the right size for redevelopment according to authorities' guide lines. Officials felt that this was not a practical solution and wondered how an individual, no matter how rich he was, would succeed in what the government faced difficulties with.

The experience of redeveloping the city centre made me realise that it was not a matter of development control procedures or land subdivision modules that made contemporary

³ "Maktab Tatwir Mantagat Kasr Al Hokm": Office of Redevelopment of Justice Palace District.

⁴ "The Other Path" is the title of a book by Hernando De Soto which covers the informal practice by individuals in Peru and Latin America and other countries. He argued that individuals find their own path to make things happen if faced by difficulties through the official procedures.

Riyadh different from the traditional city, but it was the rupture of an integrated network of systems and mechanisms that worked together for ages to create the traditional city.

The traditional city was not just a physical product. It is a product that combines land, people, buildings, markets, activities, economics, social relationships, a system of law and all mechanisms that make these factors interact with each other.

Our redevelopment plans were enthusiastic to make things happen in short periods without paying enough attention as to how things happen! Our admiration of our traditional cities was always a great incentive to create contemporary architecture that reflects our heritage. Yet, we concentrated more on the physical product of our traditional cities without paying enough attention to the social framework at the root of the physical product.

The areas redeveloped with government interference, whether government-owned or owned by private companies, became static. Some areas were interesting in their urban and architectural design. Their forms, colours and scales made them a natural continuation of the architectural heritage, and they represented successful contemporary architecture; nevertheless, they were static. I could not understand why, but gradually it was clear that the series of interactions between the owners that gave the dynamic description to the traditional city were discontinued because of the major change made in the land ownership pattern.

I came to the conclusion that the traditional city was built on a simple arrangement of rights and duties between two main parties, the State and individuals, who determined each other's role. This relationship was destroyed once these roles were exchanged. I considered that if the proper roles were reinstated, using lessons from the traditional city, a more sustainable built environment can be created in the contemporary city.

Values are timeless. Concentrating on extracting values from traditions will enable us to benefit from the past cumulative experiences and invest them in building our own future.

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PART ONE:
INDIVIDUALITY IN TRADITIONAL AND
CONTEMPORARY CITY

Chapter Two: Individuality
Chapter Three: The Author's Experience;
Loss of the Individual Role

PART TWO:
LAND DEVELOPMENT AS A RESPONSE TO
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Chapter Six: Role of the State Verses
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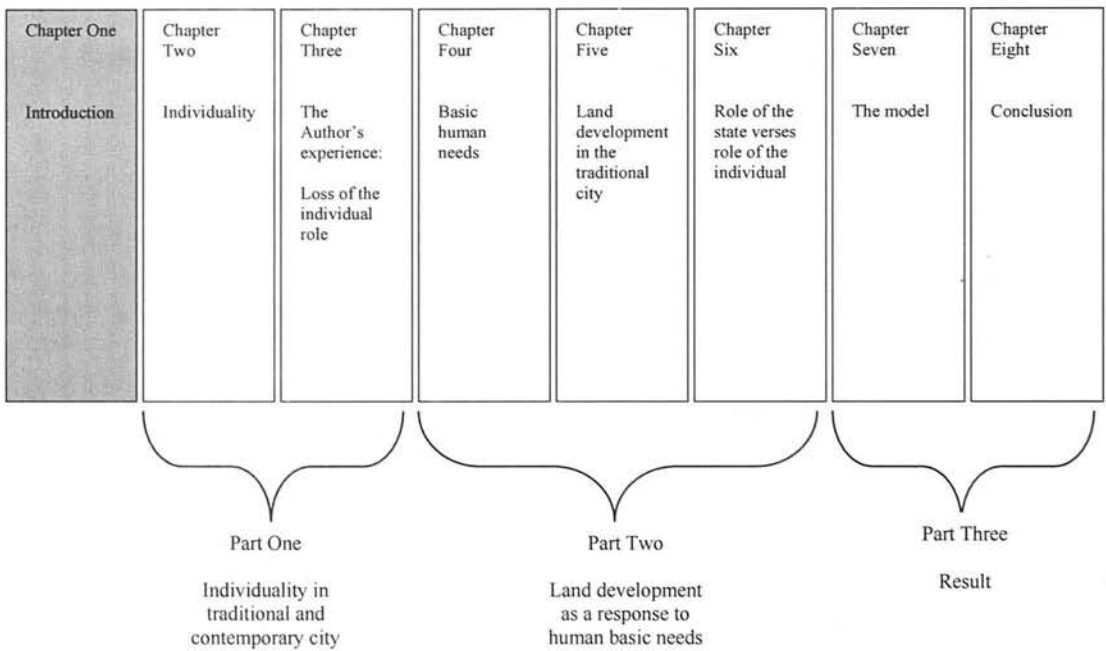
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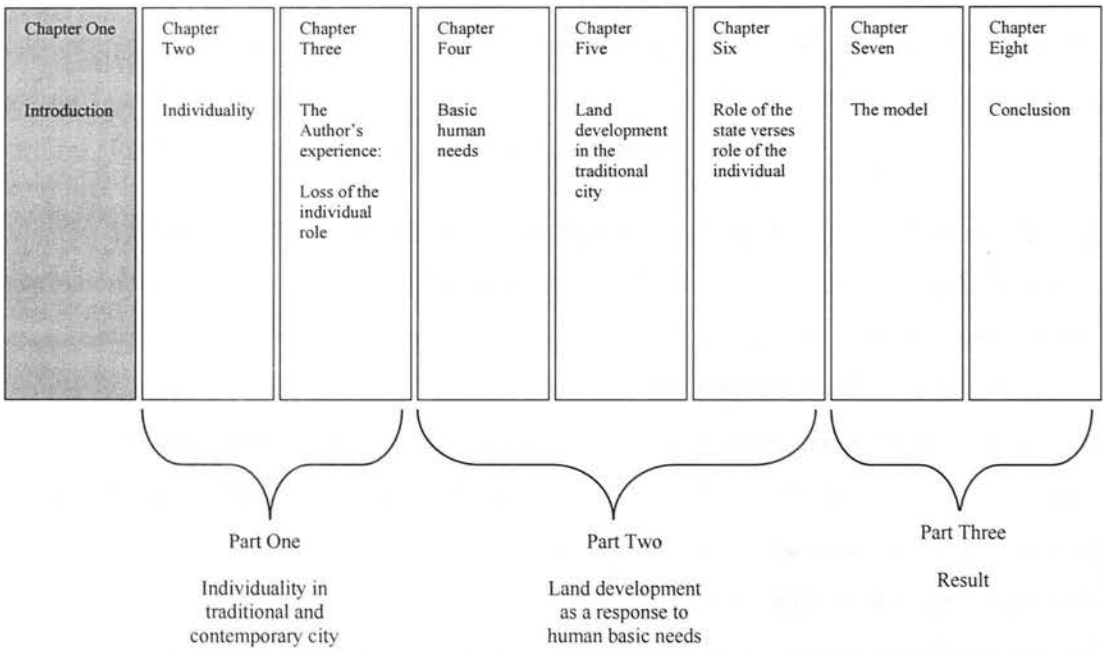
Chapter One

Introduction



Chapter One

Introduction



Chapter One

1 Introduction:

1.1 Background:

For many years, traditional Islamic cities have been of interest to scholars worldwide. Some studies focused on the urban and architectural form of these cities. Others focused on various building types such as mosques, houses, markets, and castles. Still others examined architectural elements such as domes, arches and courtyards. Little attempt has been made to understand the mechanisms within the traditional city that led to its final form. These mechanisms consisted of many systems and rules that governed the traditional society such as the judicial system, means of land possession, rights and obligations of individuals towards each other, system of inheritance, classification of land ownership and many others that worked as driving forces to shape the traditional city.

The urban fabric is a common factor among traditional Islamic cities with differing environmental, natural and climatic characteristics. The organic morphology of the Islamic cities, particularly in land subdivision shape, street alignment and the relationship between the houses and open spaces, may be the most obvious similarity between these cities. These organic morphologies were not designed by city planners, yet they were not the result of spontaneous whim; in fact they were inevitable results of several systems and mechanisms that influenced all of these cities.

Muslim builders developed unique solutions for specific values and objectives, reflecting the experience and personality of the individual builder or group of builders in a certain area. Simple examples are the various solutions for the privacy of internal spaces of the house. Building the house around a courtyard was the solution used in most cities. In others, windows were opened to the outside with full protection using *Roshan* screens, as in Jeddah and Makkah. Although the solution is the same in these two cities, the reasons behind it could be different. Cross ventilation is vital in the hot, humid climate of Jeddah, which can not be achieved by building the house around a court. Although Makkah enjoys dry climate where opening the house into a court is beneficial, but the hilly, rocky and valuable land of Makkah dictated a compact house solution and hence the use of *Roshan* screens for achieving privacy.



Figure 1-1 Al Madinah Al Monawarah during middle ages.

Source: Al Hathloul



Figure 1-2 Tunis, the old city.

Source: Akbar



Figure 1-3 Map of Cairo recorded around 1800 highlighting the boundaries of the former Fatimid city.

Source: Bianca



Figure 1-4 Sale city (Morocco)

Source: Akbar

The above figures are for four traditional cities built in different ages and different climates. Similarities can be observed among the four cities in the urban form and urban fabric that is reflected in street alignments, proportions of solid and void, and shape of land lots.

Many systems and rules were coherently working together to produce and control the physical product in the built environment. Land possession, the main parameters of the city as determined by the authorities, location of key elements such as the main mosque, emirate palace, markets etc. are some of the major factors that influenced the built form. The built form was never final, and it continued to transform according to the needs of the inhabitants. Other rules existed to control and guide this transformation such as individual rights, the neighbours' rights, the inheritance system, the system, *Shofaa* and others⁵.

These systems and rules were working coherently to form a holistic environment for the Islamic city. This coherence existed because all systems and rules were taken from one source, the Islamic Law or *Sharia*, the basis of religion, legislation and values. The Islamic cities lost their identity and a great deal of their characteristics when they lost this holistic umbrella. *Sharia* directed all activities in a coherent manner. It was also a main source of inspiration to the Muslim jurists, judges, builders, artists, and craftsmen who participated in creating the built environment of the Islamic cities. In his book *Arab Cities in the Ottoman Period*, Andre Raymond noted, “*It is therefore not surprising to hear Islam naturally referred to regarding the institutions, the organization of political life, the social and economic activities and even the physical structure of the city that, in these conditions, one can only describe as ‘Muslim’.*” (Raymond, 2002, p.4)

The contemporary Islamic city experienced several crises that led to a lack of identity. The author believes that one of the major factors that caused such crises is the loss of the holistic approach enjoyed by the traditional city. The contemporary city is controlled by laws and systems that are not coherent and may be contradictory in many occasions.

1.2 The Main Concern:

The main concern of this dissertation is to explore and understand the systems that were behind the formation and transformation of the traditional Islamic city. It is also concerned with the role of the individual in the formation of its organic shapes. Such issues arose from observation of contemporary redevelopment projects in inner cities that still contain many original Islamic characteristics. In many cases, the traditional

⁵ All these expressions shall be discussed in detail in chapter five.

fabric that still exists divulges the values of the traditional city and clearly reflects the individual's role in those days. Figures 1-5 to 1-8 reflect various solutions provided privacy for the Muslim house.

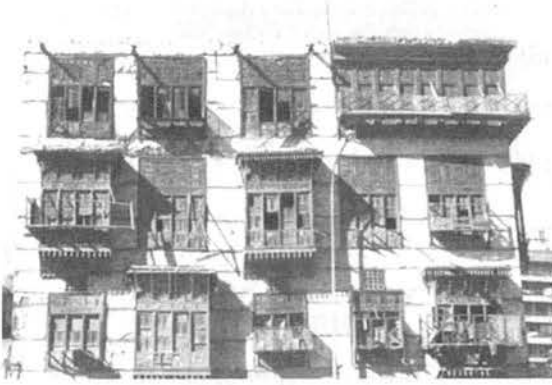


Figure 1-5 Roshan or Mashrabiah
Covering the whole façade of a house in Jeddah, Saudi Arabia
Source: Turath & Institute de monde arab

Figure 1-6 A house in Yanbu, Saudi Arabia
Source: Turath & Institute de monde arab

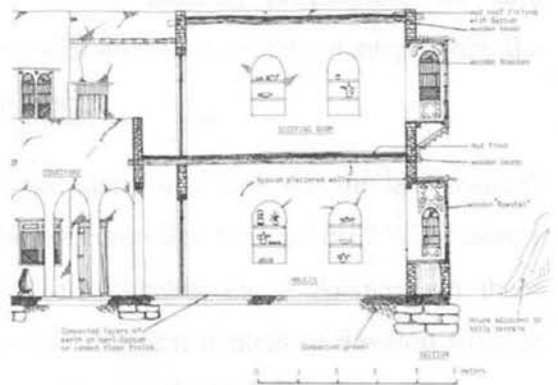
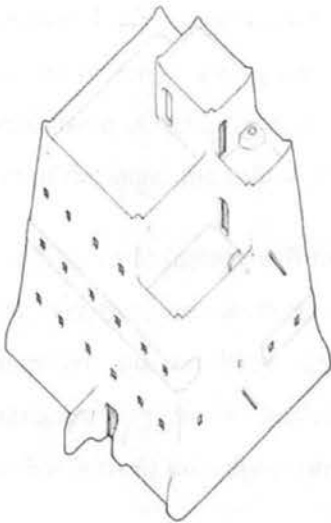


Figure 1-7 A house in Asir, Saudi Arabia
A cold hilly area. Houses are built of stone and mud. Privacy is achieved by high small windows
Source: Talib

Figure 1-8 A court house in Makkah
A solution suitable for hot dry climate. Another solution used in Makkah in addition to a similar of Jeddah.
Source: Talib

In their ambitious desire to redevelop these areas, responsible authorities tend to neglect important factors. One of these factors is the role of the individual land owners. Sometimes individuals are totally excluded either by expropriating their land or by forcing them to exchange their land for shares in a shareholding company. This exclusion of individual owners, whether made consciously or unconsciously, leads to a greatly diminished physical output of these redevelopment plans, the greatest loss being the elimination of the original traditional fabric. In many cases, while great effort has been made to recreate the original fabric and to imitate its forms, the whole system behind the fabric is destroyed.

1.3 Related Issues:

There are many issues that are very much related to the main argument and are important to form the wide perspective through which the subject can be thoroughly studied and understood.

1.3.1 Understanding the Traditional Islamic City:

To understand the existing city centres of Islamic cities, it's essential to understand the traditional city. Several factors contributed to influence the physical urban product of the traditional city: the general law (*Sharia*), land possession procedures, the land subdivision system, the land ownership and transfer system, the rights of neighbours, the role of the state, the role of the individual, and others.

Studying such factors will help to answer several questions. How was the land owned? How was the land subdivision made? What factors controlled the land use? What factors controlled the building regulations (i.e. set back, height, etc.)? Answers to these questions may enable contemporary planners and decision makers to develop suitable mechanisms to help the contemporary city to benefit from the traditional city values.

1.3.2 The Islamic Law (*Sharia*):

Sharia constituted the general law that controlled people's life in the traditional Islamic cities. All other regulations were derived from *Sharia*. *The basic principles and guidelines of the building process and its framework were derived from the essence and spirit of Islam* (Hakim, 1988, p. 15). Therefore it is essential to understand some major

issues about *Sharia* in order to understand the Islamic city. These issues are the origin and source of *Sharia*, the levels of legislation, the concept of land ownership, mechanisms of land possession and rules that influence changes in land ownership.

1.3.3 Basic Human Needs:

A theory of basic human needs in *Sharia*⁶ has evolved through the years and reached its mature form by the hand of Ash Shatibi (1320-1388), a scholar who lived in Alandalus (the name given by Arabs to the area south Spain). The author will explain this theory and use it as a basis for his argument. The theory categorises human interests in three levels: primary, secondary and tertiary.⁷ The fundamental needs or basic needs are determined in *Sharia* to be five: religion, life, property, intellect and posterity. These five needs are preserved by the *Sharia* legislation, and an individual is obliged to fulfil these needs for himself and his dependents. The five needs are to be satisfied at each of the three levels of interest mentioned above. All of *Sharia's* provisions are aimed at the preservation, protection and fulfilment of these five needs.

The author believes that land development is a direct response to man's needs; therefore, it was treated in *Sharia* accordingly. Studying the subject of land development from the aspect of human needs may unveil many implicit systems in the traditional city.

1.3.4 The Individual as the Unit of the Society:

The traditional Islamic city developed its nature and special attractiveness through the role of individuals. The individual is given wide range of freedom in *Sharia* to express his own personality and uniqueness; however, this individuality can not be allowed to work against the well-being of the whole society. It in fact forms the unit of the society. It creates diversity within unity, which can be seen as one of the major characteristics of the Islamic city. Individuality can be seen in other aspects in Islam such as personal responsibility. Every man and woman is solely responsible for his or her acts in this life and the Hereafter.

⁶ This subject is known in *Sharia* as The science of *Magasid Ash Sharia* (*Sharia Objectives Science*).

⁷ Known as *Daroriat*, *Hajiyat* and *Tahsiniat*, which can be translated as The Absolute Necessities, The Necessities, and The Perfections.

1.3.5 Land Ownership:

Land ownership is a cornerstone in any redevelopment plan. It is the land ownership pattern⁸ that determines, to a great extent, the scope and shape of actions by the redevelopment authorities. In redeveloping London after the great fire in the seventeenth century, for example, at least six plans were produced, but ultimately the city was rebuilt with few modifications along the lines of the old streets and pattern of ownership.

In contrast in the late 1800's, a system (*Lex Adickes*)⁹ to change the land ownership pattern by re-parcelling or redistributing the property rights was developed in Frankfurt. This system was later adopted in many other cities worldwide.

Unfortunately, many redevelopment plans in modern Muslim cities followed the example of the European cities in revising the original ownership pattern. In most redevelopment plans, major changes were introduced to the existing land ownership patterns. It is the author's belief that very little attempt was made to understand how this pattern was formed, the values behind it and the actions that may be discontinued or some times destroyed by the changes introduced to the land ownership pattern.

1.3.6 Objectives of the Thesis:

This research explores the morphology of the traditional Islamic city and the rich heritage of the Islamic civilisation that influenced the formation of many impressive cities. In particular, the research focuses on the role of individuals in forming the Islamic city, and suggests that this role is embedded in the overall philosophy derived from Islamic *Sharia*.

Being the most vital factor in development, land will be examined from a wide perspective. Is land a resource or a commodity? What is the concept of ownership in the traditional society and hence, what is the concept of land ownership in the traditional city? How is land possessed, occupied and maintained? What is the classification of land ownership types and what are the sequences of such classification?

⁸ The Author defines this term as the land pattern that reflects the types and sizes of land ownership of the subject area.

⁹ This system will be detailed in chapter 3.

The main objective is to build a model that explains the relationship between the role of the individuals and the role of the state in giving form to the traditional Islamic city. When applied to the contemporary redevelopment plan of Islamic inner cities, such a model, the author believes, will be very beneficial in preserving the authenticity and rich network of systems embedded within the traditional fabric.

In particular, the following objectives were determined:

- To analyze trends of inner city redevelopment (particularly in Saudi Arabia) and compare them with systems which existed in the same areas before redevelopment.
- To study the concept of individuality in Muslim life and the reflection of it in the built environment.
- To understand the driving forces, systems and values which were behind the formation of the traditional urban fabric.
- To understand *Sharia* as one of the major driving forces in the traditional city and its reflection in the built environment.
- To study the rules that governed land development in the traditional city.
- To explore *Magasid Ash Sharia* (*Sharia Objectives*) and basic human needs as defined by *Sharia* in relation to the built environment.
- To analyze the individual role in the traditional city verses the state role.
- To establish a relationship between the role of the individual and the role of the state that may help in redeveloping traditional cities without losing their values or compromising the systems that are still working, and if possible, improve on them.

1.3.7 Methodology:

The thesis is prompted by recent central area redevelopment of several Islamic cities that has been undertaken without giving enough attention to the role of the individual. This has occurred either by expropriation of land for the sake of the redevelopment plans or by concentrating on redevelopment through private sector institutions and neglecting the individuals.

The research hypothesizes that a redevelopment process that neglects the individuals' role and rights sacrifices the characteristic and attractive authenticities of the traditional city. Accordingly, it seeks to demonstrate how the Islamic concept of the individual's role in various aspects of life gives him or her more opportunity for work, innovation, and creativity within an integrated environment. Omission and suspension of the individuals' role in practising their right in land development has resulted in gradually erasing the entity of the integrated Islamic city.

The methodology this thesis adopts is to analyse the major influences that shaped the traditional Islamic city and seek to understand the mechanism of integration between these factors. There are four major factors that played a role in shaping the traditional city and in guiding the land development in general: *Sharia*, land, the state and individuals.

Sharia, as the main source of law in the traditional city, was the chief reason for the holistic approach evident in the form of the Islamic city. It is the source of religion, ethics and values and determines the relationship between these three factors. It dictates the rights and obligations of the individual and determines how the state authorities should serve individuals.

The individual develops the land to build a house to protect himself and his dependants. He does this as a natural response to fulfil his needs and as a response to *Sharia* that obligates him to provide for his needs and those of his family. The state authorities are obligated by *Sharia* to preserve, sustain and protect people's needs: their religion, life, property, intellect and posterity. In land development, the state is to facilitate land possession by the individuals and avoid any restrictions that may prevent individuals from accessing the land.

It appears to the author that *Sharia* has set a balance between the role of the individual and the role of the state in protecting the basic five needs listed above. In the land development of the traditional city, balance was also kept between the role of the individual and that of the state in order to allow both parties to take responsibility in land development. In fact, the state's role was more towards facilitating the infrastructure and those systems that serve the overall society while the individual role was towards serving his needs in particular.

What about the natural environment? Is it not an important factor in shaping the city? Yes it is, but it is a variable factor from one city to the other. The four major factors apply as they are in all cities, and that is why similarities were noticed in traditional cities even though they were set in different environments. Builders respected the environment and invented local solutions that gave every city or area its genuine characteristics.

1.4 Thesis Structure:

Part Number	Part Name	Chapter	
		1.	Introduction
1	Individuality in traditional and contemporary city	2.	Individuality
		3.	The Author's experience; loss of the individual role
2	Land development as a response to basic human needs	4.	Basic human needs
		5.	Land development in the traditional city
		6.	Role of the state verses role of the individual
3	Results	7.	The model
		8.	Conclusion

The thesis is structured to serve the logic of the methodology. The thesis consists of this introduction followed by three parts containing seven chapters.

Part One: Individuality in Traditional and Contemporary City:

The first part introduces the concept of individuality in *Sharia* and then contrasts this with the lack of an individual role in the contemporary city. It consists of two chapters:

Chapter Two: Individuality:

This chapter explains the Islamic concept of man and his relation to God and the universe. It also explains the *Shaira* concept of individual responsibility in this life and in the Hereafter and explores some examples in Muslim life. The author then discusses the reflection of such individuality in the built environment.

Chapter Three: The Author's Experience:

This chapter details the author's experience in redeveloping the inner city of Riyadh and other cities in Saudi Arabia. It also examines similar international experiences.

Part Two: Land Development as a Response to Basic Human Needs:

The second part explains how land development was treated as a response to human basic needs in *Sharia*. It explores the legal basics that define the roles of both the state and individuals. It explains how *Sharia* viewed human basic needs as fundamental pillars on which *Sharia* details were constructed. The model of Ash Shatibi is used to explain this theory. Part two consists of three chapters:

Chapter Four: Basic Human Needs:

The main objective of this chapter is to introduce the theory of basic human needs in *Sharia*. It begins by explaining the meaning of *Sharia* and levels of Islamic jurisprudence. The chapter then discusses the three levels of interest in *Sharia* through which the five basic necessities are preserved and sheds light on various motivation theories.

Chapter Five: Land in the Traditional City:

This chapter delves into the major aspects related to land in the traditional city. It covers the concept of ownership in general and then specifically land ownership and types of properties. Land possession procedures and land classification in regard to financial liability are also explained. The chapter concludes with a discussion of the development of land policy from the time of the Prophet Mohammad to the Othman Empire era.

Chapter Six: The Role of the State Verses the Role of the Individual:

The chapter opens with a discussion of the main factors affecting land development i.e., belief, land and man. The role of the state and the individual is traced through the formation of the major traditional Islamic cities; and hence, in the formation of the ownership pattern. The chapter concludes by expressing the need for a model based on the philosophy of *Sharia* to explain the relationship between the two roles.

Part Three: Results

In part three the author uses the research findings to build a model through which the relationship between the state's role and the individual's role can be understood and applied as it was in the traditional city. Finally, Chapter 8 proposes that such a relationship can be used to create development plans that have sustainability in contemporary life. Part three consists of two chapters:

Chapter Seven: The Model:

In this chapter the author uses the theory of basic human needs developed by *Ash Shatibi* and the literature in other chapters to build the model that stands on four major elements: legislation, man, state and land.

Chapter Eight: Conclusion:

The conclusion proposes that the traditional relationship between the role of the state and that of the individual, established in the preceding model, can be used to create effective development plans in the contemporary environment.

1.5 Note to the Reader:

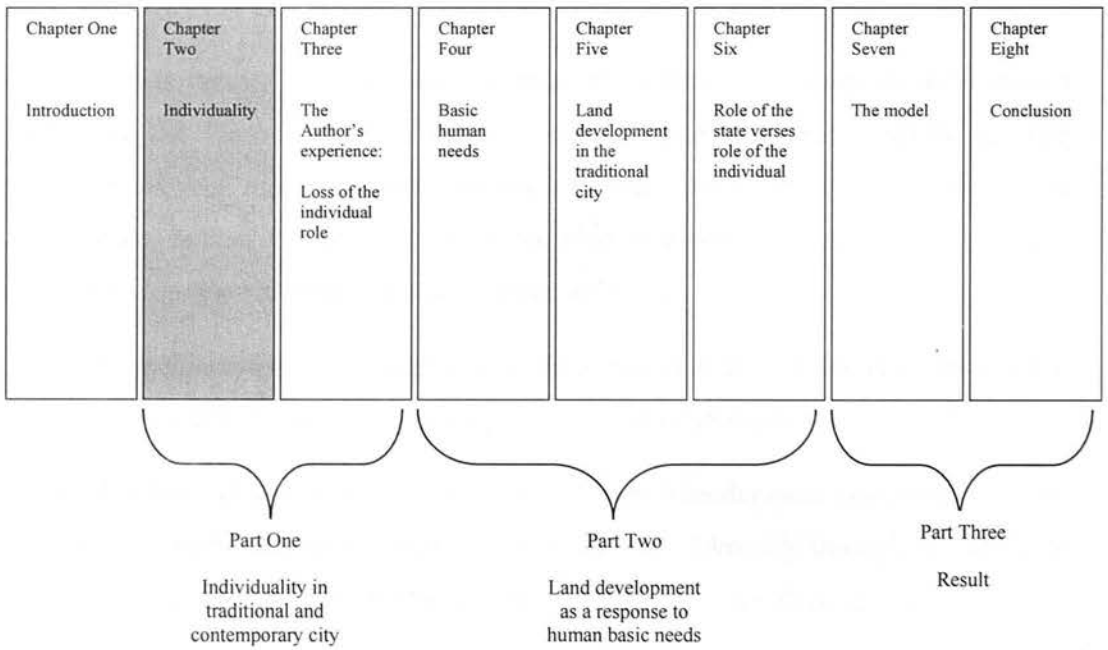
Many of the references in this thesis are traditional Arabic books. Since these books were published recently, their printing date does not represent the authors' periods. In order not to confuse the reader when reference is made to these books, the reference date shall be the date of printing, but the dates of birth and death are added between brackets before the traditional scholars' names.

PART ONE

Individuality in Traditional and Contemporary City

Chapter Two

Individuality



Chapter Two

2 Individuality:

2.1 Introduction:

Man is a unique creature. Not only is mankind unique among all other creatures, but also every individual man and woman is unique among other men and women. To explore Sharia philosophy towards man, one needs to examine the major facts of life first and then look at man amongst them.

Every social system and every civilization is a result of a certain connotation to the world existence. This connotation would normally determine the meaning and objective of man's existence on this Earth. It would also define the relationship between man and the universe (Al Mobarak, 1973, p. 35).

There are three major facts that determine the overall concept of Islam. These three facts are God, man, and universe. God (Allah) is One and distinct from His creation. He is the Ingenious Creator of everything. There are no barriers between Allah and man, neither is there a need for intercessors between them.

The universe is created by Allah and submissive to Him; it is made to serve man's existence on the Earth. The earth and the sky are made for man's utilisation. The relationship between man and nature around him is a friendly relationship. Man is not against nature, neither nature is against man. Nature is actually created to serve him. This relationship was expressed in many verses in Qur'an:

{And He has subjected to you whatever is in the heavens and whatever is on the Earth – all from Him. Indeed in that are signs for people who give thought}¹⁰

{And it is He who subjected the sea for you to eat from it tender meat and to extract from it ornaments which you wear. And you see the ship blowing through it, and [He subjected it] that you may seek of His bounty; and perhaps you will be grateful.}¹¹

¹⁰ Sura Al Jathiyah, verse 13

¹¹ Sura An Nahl, verse 14

Man is created for a very clear reason. He is here on this Earth to worship¹² Allah. He is here to inhabit the Earth and use it to fulfil his mission. Man is a respectable and honourable creature.

{And We have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference}¹³

{And [mention, O Muhammad], when your Lord said to the angels, "I will create a human being out of clay from an altered black mud. And when I have proportioned him and breathed into him of My [created] soul, then fall down to him in prostration"}¹⁴

Qur'an creates a positive connection between Allah, man and the universe. As the Prophet Muhammad once said during a journey, when his companions were crying out loud for Allah, "O men! Be easy on yourselves and do not distress yourselves by raising your voices; verily, you do not call a deaf or an absent, but who the hearing and the seeing; and He to whom you pray is nearer to you than the neck of your camel!" (Ibn Hajr [1372-1449], 1985, v. 7, p. 470).

Qur'an at the same time creates a positive integration between man and all of creation by stating that everything in the universe is worshipping Allah.

{The seven heavens and the Earth and whatever is in them exalt Him. And there is not a thing except that it exalts [Allah] by His praise, but you do not understand their [way of] exalting}¹⁵

2.2 Status of Man:

Allah has given man a distinct status among all creation, including angels.

{And [mention, O Muhammad], when your Lord said to the angels, "Indeed, I will make upon the Earth a successive authority." They said, "Will You place upon it one who causes corruption therein and sheds blood, while we declare Your praise and sanctify You?" He [Allah] said, "Indeed, I know that which you do not know."}¹⁶

¹² Worship is an inclusive title for all what Allah likes and satisfied with from all kind of ulterior or exterior sayings and acts (Al Mawsoa Al Fiqhiyah, v. 29, p. 256)

¹³ Surah AlIsra', verse 70

¹⁴ Surah Al Hjr, verses 28,29

¹⁵ Surah Al Isra', verse 44

¹⁶ Surah Al Baqarah, verse 30

Man is given a successive authority on this Earth. Abo Al Ala Al Moudodi argues that since man was made a successor, he should not abandon this position that he was raised to, and he should deal with the universe accordingly. This status is not given to a specific individual, but indeed it is granted to everyone (Al Moudodi, 1980, p.22)¹⁷.

2.3 Individual Responsibility before Allah:

Qur'an makes it very clear that every individual, man or woman, is solely responsible for his or her gains whether good or bad:

{Allah does not charge a soul except [with that within] its capacity. It will have [the consequence of] what [good] it has gained, and it will bear [the consequence of] what [evil] it has earned}¹⁸

{And whoever earns [i.e., commits] a sin only earns it against himself. And Allah is Ever Knowing and Wise}¹⁹

{Every person, for what he earned, is retained}²⁰

{Every soul, for what it has earned, will be retained}²¹

This concept of man's responsibility for whatever he gains has its effect on the behaviour of the individual Muslim. There is no "saviour" in the Islamic concept. The Prophet Muhammad ﷺ said to his relatives, "O Fatima, the daughter of Muhammad, ask me from my money whatever you want; I avail you nothing from Allah" (Al Bukhari, No.4771).²²

This concept of personal responsibility is deeply rooted in a Muslim's personality and is reflected in his way of thinking or responding to what takes place in his vicinity.

2.4 Individual Responsibility in This Life:

The Prophet ﷺ said, "All of you are caretakers and will be asked about your subjects. The Imam²³ is a caretaker and will be asked about his subjects. The man is a caretaker

¹⁷ Al Hardharah Al Islamiyah.

¹⁸ Surah Al Baqarah verse 286

¹⁹ Sura An Nisa' verse 111

²⁰ Sura At Tur verse 21

²¹ Sura Al Muddaththir verse 38

²² www.dorar.net/htmls/mhadith.asp

²³ The ruler.

and will be asked about his subjects. The housewife is a caretaker in her husband's house and his property and will be asked about her subjects. So all of you are caretakers and will be asked about your subjects" (Ibn Hajr [1372-1449], 1985, v. 5, p. 376). This kind of responsibility makes the individual a proactive member in the society rather than reactive. Once each individual boy or girl reaches maturity, he or she is held responsible for his or her acts.

2.5 Individual Independence:

At the same time, Qur'an disparages imitation of others, even those who are one's superiors without enough refinement. The following verses explain this:

{And when it is said to them, "Come to what Allah has revealed and to the Messenger," they say, "Sufficient for us is that upon which we found our fathers." Even though their fathers knew nothing, nor were they guided?}²⁴

{And they will say, "Our Lord, indeed we obeyed our masters and our dignitaries, and they led us astray from the [right] way.}"²⁵

The Prophet Muhammad said, "Do not be flunky saying, If people do well we will do well, and if people abuse we will abuse, but accommodate yourselves if people do well that you do the same, and if they impair, you don't" (Sakhr CD, Encyclopedia of Islamic Juresprudence)²⁶. This independence of the individual was also a feature of the Islamic social and economic system.

2.6 Aspects of Individuality:

There are many aspects of the Islamic traditions that exemplify the uniqueness of the individual within the society. The author will discuss some of the social systems that stress the individuality concept and support it. These systems are inheritance, *Amr Bilma'roof wa Nahi an Almonkar*, land revivification (known as *Ihya'*) and the concept of *Ijtihad*.

²⁴ Surah Al Ma'idah, verse 104

²⁵ Surah Al Ahzab, verse 67

²⁶ Altermithy. Kitab Albir wa As silah.

2.6.1 The inheritance System:

The major concept of the inheritance system in Islam is to distribute the wealth, not to concentrate it in a few hands. {So that it will not be a perpetual distribution among the rich from among you}²⁷ When a man or a woman dies his or her estate will be shared by the heirs in a very precise manner. Every individual legatee whether son, daughter, wife, father, mother, etc. will have a share despite the wish of the legator who can freely dispose of only one third of his estate.

In some cases, the estate may not be easily divided, for example a house. In such a case, an expert opinion is sought. In his book, *Al e'elam bi Ahkam Al bunyan*, Ibn Ar Rami discussed the subject of dividing inherited real estate. He mentioned that Imam Malik's opinion was to portion the real estate, whether large or small, such as a bath, *Majil*²⁸, land, house or small shop (Ibn Ar Rami [?-1334], 1995, v.2, p.458). Indeed, one can see houses that have been inherited over several generations and sometimes resolved by giving one room to each inheritor.

The concept that the author wants to express here is the right of the individual inheritor to act independently. This does not exclude the possibility of inheritors sharing their property commonly without the need of physical determination of who owns what, but practice in Muslim societies has shown a tendency towards independence which was influential in shaping the traditional city. When a house is divided into two or more sections, each belonging to a separate inheritor, each inheritor would have the right to enjoy accessibility to his part, which may not be possible except through others' ownership. Such cases helped to develop what was known later as *Haq Al Ertifaq* (right of easement).

2.6.2 Amr-bel-Marroof wa Nahi-an-Almunkar (Advocating Good Action and Inhibiting Bad Action):

More often than they realize, people are engaged in persuading others or are being persuaded by others about big and small things in life. Khalid Baig argued that is why marketers yearn for word of mouth publicity and powerful media machines long to become the talk of the town (www.albalagh.net).

²⁷ Surah Al Hashr, verse 8

²⁸ Majil is water within a valley or at the bottom of a mountain. (Fairozabadi, 1987,p. 1365)

Concerned with good as it is, this concept in Islam is given a tremendous social force. It must be used for promoting good, truth and justice and checking evil and injustice. That is the essence of *Amr-bil-marooif wa Annhi-an-almunkar*.

This concept is expressed in Qur'an as a feature of the Muslim community (*Ummah*):

{You are the best *Umman* (community) that has been raised for mankind. You enjoin good and forbid evil and you believe in Allah}²⁹

That direction is for the community as a whole and for every individual of the community. This is clearly explained by the Prophet Muhammad, "Whoever amongst you sees an evil should change it with his hand. If he is unable to do that, then he should change it with his tongue. If he is not able to do that, then with his heart, and that is the weakest level of belief" (Al Albani, 1979, v. 5, p. 292).

This mechanism works at two levels. At one level, it is the responsibility of every member of the society to correct mistakes and corruption in the society and at a higher level there should be a qualified group to always monitor the direction of the society and fight deviations at a collective level (Khalid Baig, www.albalgh.net). The author argues here that this concept places heavy responsibility on every individual and sequentially contributes in forming the attitude of active individuality in a positive sense within the Muslim society. Although Islam places great emphasis on each person's individual responsibility to choose right over wrong, it does not recognize individualism in a sociological sense to be a good thing (Ingrid Mattson, <http://info.med.yale.edu/intmed/yjhm/index.html>).³⁰ This point will be clarified when discussing the concept of *Ummah* later in this chapter.

2.6.3 Concept of *Ihya*:

One way to own land in the traditional Islamic city was to practice *Ihya*. In summary, *Ihya* is a response to the Prophet Muhammad's directions to develop barren land when he said, "If anyone makes a barren land productive, it belongs to him." (Al Albani, 1979, v.5, p. 231). This concept will be discussed in detail in Chapter Five, but here the author is concerned about the role of the individual in this process.

²⁹ Suarah Al-Imaran, verse 110

³⁰ The Yale Journal for Humanities in Medicine web site.

The Prophet gave full freedom to every individual to develop a barren land. Not only that, but if the individual makes this land productive in any manner he will own it. These opportunities made possible to the individuals invite them to act and work on their own. Individuals, indeed, took this opportunity as described in the other *Hadith* of the Prophet, "Who proceeds to what (land) he was not preceded to, then it is his". The narrator said people left (the mosque) striving to demarcate³¹ (lands). (Sakhr CD, Encyclopedia of Islamic Juresprudence)³² Individuals took these opportunities to act on their own and at the same time were able to work as a group to form a homogenous society.

2.6.4 Ijtihad:

Ijtihad (individual research) is to do one's best in approaching the goal. The Prophet Mohammad ﷺ encouraged all Muslims to practice *Ijtihad* saying: "He who practices *Ijtihad* and finds the truth, he will get a double reward, and who practices *Ijtihad* and reaches a wrong conclusion, he will get one reward" (Ash Shawkani, 1973, v.9, p.164). *Ijtihad* is classified as absolute and limited depending on the ability of the jurist. An individual can also practice *Ijtihad* in his daily life, such as determining *Quiblah* (the direction of Makkah) when he is away from home by doing his best (through use of knowledge, instruments, etc.) (Al Mowsoa Al Fiqhiyah³³, 1993, v.1, p.316).

This concept motivated individuals to learn, discuss and express themselves without fear. The creative period of Islamic jurisprudence ended when the "door of *Ijtihad*" was closed (Bianca, 2000, p. 26).

2.7 Individuality in Art:

"Given the dominant symbolic and "non-iconic" orientation of Islamic art, it is clear that it never really cared about imitation of physical reality in the sense of post-Renaissance European art which, for centuries, was preoccupied with the development of illusionary representation techniques" (Bianca, 2000, p.42). Calligraphy, geometrical

³¹ Demarcation is the first step of *Ihya*'.

³² Ash Shawkani, *Nail Al Awtar* no, 2399.

³³ Al Mawsoa Al Fiqhiyah: "Fiqh encyclopaedia" prepared and published by the Ministry of Awqaf and Islamic Affairs in Kuwait. It was arranged alphabetically for all Fiqh subjects and was issued in succession starting form 1980. 41 volumes have been published until 2004. Will be referred to as Al Mowsoa.

patterns and arabesque³⁴ represent tools of artistic expression in the Islamic civilization. Calligraphy developed to a high level of delicacy, but never changed into a geometrical art and continued to carry the touch of the individual calligrapher.

One can notice that even in the repetitive decoration items a personal touch is always there.

2.8 The Individual within the Social Order:

Mahmoud Abu-Saud writes, “*From an Islamic perspective, to use a metaphor, man is the nucleus, the family is his plasma, and the society is his organismic tissue. These three elements are inseparable and interdependent. They co-exist best when they function together in proper balance and harmony; therefore, according to Islam, there is no contradiction between the interests of the individual, the welfare of the family and the interest of the society*” (Abu-Saud, 1983, p.117). In fact, the main objective of the Islamic social order is to strike this proper balance without which the individual cannot achieve self-identification. Exploring this idea leads to the concept of *Ummah*.

2.9 The Concept of *Ummah*:

All Muslims around the world are to be united in one body called the *Ummah*. *Ummah* means nation, community, path, religion and a period of time (Arrazi, 1981, p. 26). The term not only pertains to humans; a community of ants may also be referred to as an *Ummah*.

Ummat Ad Da'wah is an expression that indicates all nations existing from the period of the Prophet ﷺ until the end of this world and means that all such nations are subject to the *Da'wah* (call) of Islam. *Ummat Al Ijabah* is an expression indicating those who have accepted this call (i.e. Muslims).

Muslims are committed to be an *Ummah* and the Qu'ran stresses this fact: {Indeed your Ummah is one ummah, and I am your Lord, so worship Me}³⁵.

³⁴ Art developed on the basis of the vine leaf scroll.

³⁵ Surah Al Anbia', verse 92.

The *Ummah* is not limited to the Muslim state. During the early days of Islam, the hierarchy was *Ummah*, nation, state, tribe or group, sub-tribe or sub-group, family and finally the individual. This concept is reflected in the main rituals of Islam. The *Haj* (pilgrimage) gathers all Muslims in one place once in their life. All Muslims are to pray at certain periods five times a day facing the same direction of Mecca.

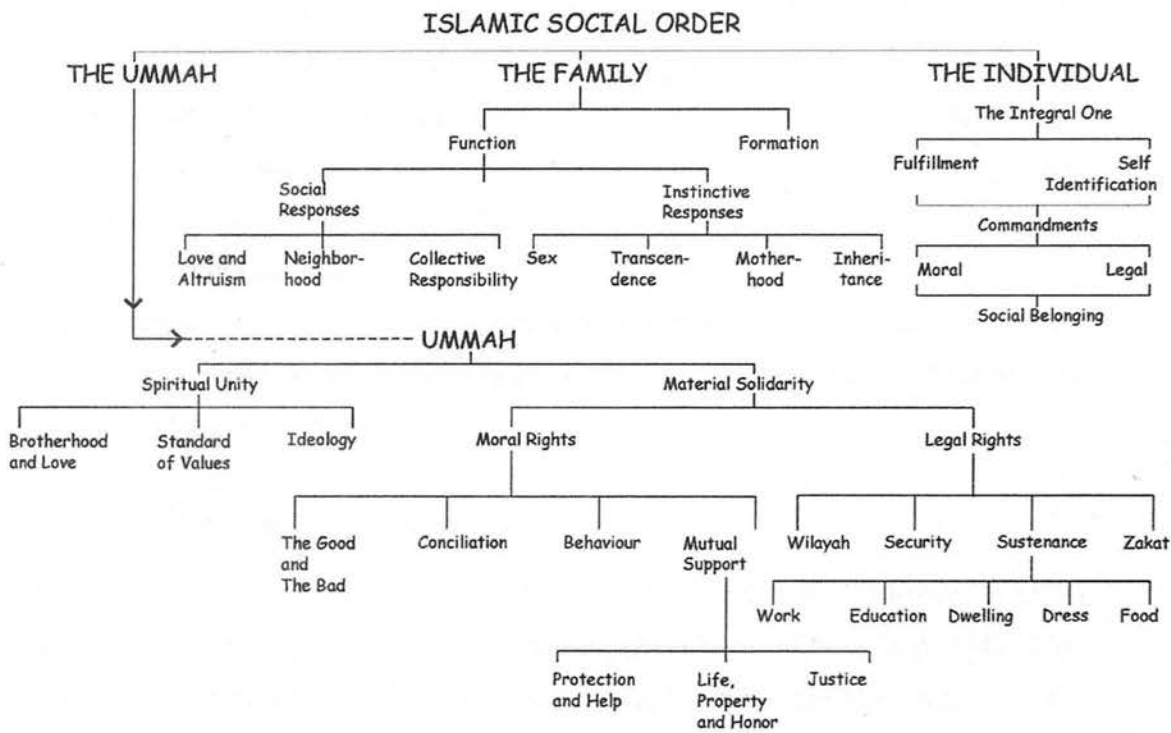


Figure 2-1 Islamic social order

Source: Abu-Saud, 1983, p.22

2.10 Individual Rights:³⁶

In this environment of dignity and freedom, it is expected that individuals will enjoy a great deal of rights. According to Abdulkarim Zaidan, these rights can be divided into two main categories: equity and freedom (Zaidan, 1985, p. 64). In Islam people are equal in their origin and equal in front of the law. Freedom of the individual takes several aspects as follows:

³⁶ Taken from the thoughts of Abo Al Aa'la Al Moudodi, Human Rights in Islam, www.witness-pioneer.org

2.10.1 Personal Liberty:

Personal liberty means freedom of the individual to act, move, leave the country and return to it without being subject to arrest or punishment except according to the law.³⁷

Personal liberty, in this meaning, is furnished by *Sharia* to all citizens including non-Muslims. When the son of Amr bin Al, the governor of Egypt during the period of Omar bin Al Khattab,³⁸ abused a Coptic man, the father of the abused Coptic traveled all the way from Egypt to Madinah to complain to Omar. Omar sent for Amr and his son, punished his son and said the famous words, "Amr, when did we enslave the people who were born free?" Mohammad Qotob argued that it is not the justice of Omar that one may wonder at; it is the act of the Coptic father who travelled all the way because his son was abused. Why would the dignity of his son matter now after spending many years under the heavy-handed rule of the Romans? Sayed argued that it's the spirit of freedom that was initiated by Islam, which did not touch Muslims only but all citizens of the Muslim community (Qotob M, 1986,p.69).

2.10.2 The Right of Ownership:

Ownership is highly respected under *Sharia*. The Prophet ﷺ said: "Whoever is killed while protecting his property then he is a martyr" (Al Albani, 1979, v. 5, p. 334). This principle gives great value to the individual ownership and at the same time puts the initiative in the hands of the individuals to act in protecting their ownership.

2.10.3 The Sanctity and Security of Private Life:

Islam recognizes that there should be no undue interference or encroachment on the privacy of any individual in the Islamic State. The Holy Qur'an has laid down the injunction: {Do not spy on one another}³⁹ {Do not enter any houses except your own homes unless you are sure of their occupants' consent}⁴⁰. The Prophet has gone to the extent of instructing his followers that a man should not enter even his own house suddenly or surreptitiously. He should somehow or other inform or indicate to the dwellers of the house that he is entering so that he may not see his mother, sister or

³⁷ Abdullah, Eiz Ad Deen. Al Ganoon Al Dawli Al Khass Al Masri 1/287

³⁸ The second Caliph

³⁹ Surah Al Hojorat, verse 12

⁴⁰ Surah An Nor, verse 27

daughter in a condition in which they would not like to be seen, nor would he himself like to see them in that condition.

This espionage on the life of the individual cannot be justified by the government on the grounds that it is necessary to know the secrets of dangerous persons. Though, for all intents and purposes, the basis of this policy is the fear and suspicion with which modern governments look at their citizens who are intelligent and dissatisfied with the official policies of the government. This is exactly what Islam has called the root cause of mischief in politics. The injunction of the Prophet is, "When the ruler begins to search suspicion amongst his people, he spoils them" (Al Albani, 1969, v.2, p. 54).

2.10.4 Freedom of Expression:

Islam gives the right of freedom of thought and expression to all citizens of the Islamic State on the condition that it should be used for the propagation of virtue and truth and not for spreading evil and wickedness.

The attitude and activities of the Khawarij ⁴¹ in the days of the Caliph 'Ali are well-known to the students of Muslim history. They used to abuse the Caliph openly, and threaten him with murder. But they were never arrested for these offences. Ali would set them free and tell his officers, "As long as they do not actually perpetrate offences against the State, the mere use of abusive language or the threat of use of force are not such offences for which they can be imprisoned." (Ibn Katheer, v. 7, p. 285)

On another occasion, Ali was delivering a lecture in the mosque when the *Kawarij* raised their special slogan there. Ali said, "We will not deny you the right to come to the mosques to worship God, nor will we cease to give your share from the wealth of the state, and we shall never take military action against you as long as you do not fight with us." (Ibn Katheer, v. 7, p. 287)

2.10.5 The Right to Basic Necessities of Life:

Islam has recognized the right of the needy people to have help and assistance provided for them.

⁴¹ Khawarij is a group of rebels who revolted against Ali bin Abi Talib, the fourth Caliph (655-662).

{And in their wealth there is acknowledged right for the needy and the destitute}⁴².

In this verse, the Qur'an has not only conferred a right on every man who asks for assistance in the wealth of the Muslims, but has also laid down that if a Muslim comes to know that a certain man is without the basic necessities of life, then irrespective of the fact whether he asks for assistance or not, it is his duty to reach him and give all the help that he can extend. For this purpose, Islam has not depended only on the help and charity that is given voluntarily, but has made compulsory charity, Zakat, as the third pillar of Islam, next only to profession of faith and worship of God through observing regular prayers. The Prophet has clearly instructed in this respect that, "It will be taken from their rich and given to those in the community in need" (An Nawawi, v. 1987, v.1 p. 196).

2.10.6 Freedom of Religion:

Islam also gives the right of freedom of conscience and conviction to its citizens in an Islamic State. The Holy Qur'an has laid down the injunction: {There should be no coercion in the matter of faith}⁴³. Though there is no truth and virtue greater than the religion of Islam, and Muslims are enjoined to invite people to embrace Islam and advance arguments in favour of it, they are not asked to force this faith on anyone. No force will be applied in order to compel people to accept Islam. Whoever accepts it, he does so by his own choice.

2.11 Reflection of Individuality on the Built Environment:

As a rule, there is a close correlation between what people build and what they believe, and this equation works both ways: man structures his environment, while he is also influenced by it as a result of interacting with it over time (Bianca, 2000, p. 23).

The traditional city was mainly built by individuals. When building his house, every individual had the chance to choose the location, the time, the size of the land he needed and sometimes the shape of the land. This may seem to be a kind of primitive spontaneous performance, but it was actually practiced successfully for several centuries.

⁴² Surah Ath Thariat, verse 19.

⁴³ Surah Al Baqarah, verse 256.

For, of course a man has a mind of his own, and a pair of hands that do what his mind tells them. A man is an active creature, a source of action and initiative, and you no more have to build him a house than you have to build nests for the birds of the air. Give him half a chance and a man will solve this part of the housing problem - without the help of architects, contractors, or planners- far better than any government authority ever can (Fathy, 1973, p. 32).

There are several aspects of the social system that are clearly reflected in the built environment such as the *Khittah* system of city planning and systems of rights and duties. These were actually the driving forces shaping and reshaping the traditional city.

2.11.1 Concept of *Khittah*:

This concept of *Khittah* in city development supports both the concept of *Ummah* and the individual. In the traditional city, *Khittah* was a piece of land granted to a tribe. The tribe enjoyed the freedom to work within its *Khittah*, and usually they sub-divided it according to the number of sub-tribes. Each sub-tribe or moiety enjoyed freedom of its own, and its "sub-*Khittah*" would be further divided, eventually at the individual level. This concept gives variety within unity, leaving room for diversity at each level.

Many existing traditional cities like Tunis, Fez, Damascus, and Aleppo express the concept of *Khittah*, and sub-*Khittah*.

One can observe the diversity on the different levels, where city hierarchy starts from the whole city to the individual level. There will always be diversities within each level that reflects several variables; some related to land such as location, size, shape and direction, others related to the individuals role in each level which may include customs of tribes, social level, financial abilities and personal education.

Figure 2-2 expresses the different levels of the hierarchy of the city. The city consists of several *Khittah* and each *Khittah* consists of several sub-*Khittah*. Each sub-*Khittah* may be divided to many sub-sub-*Khittah* and so on which leads to the level of the housing unit.

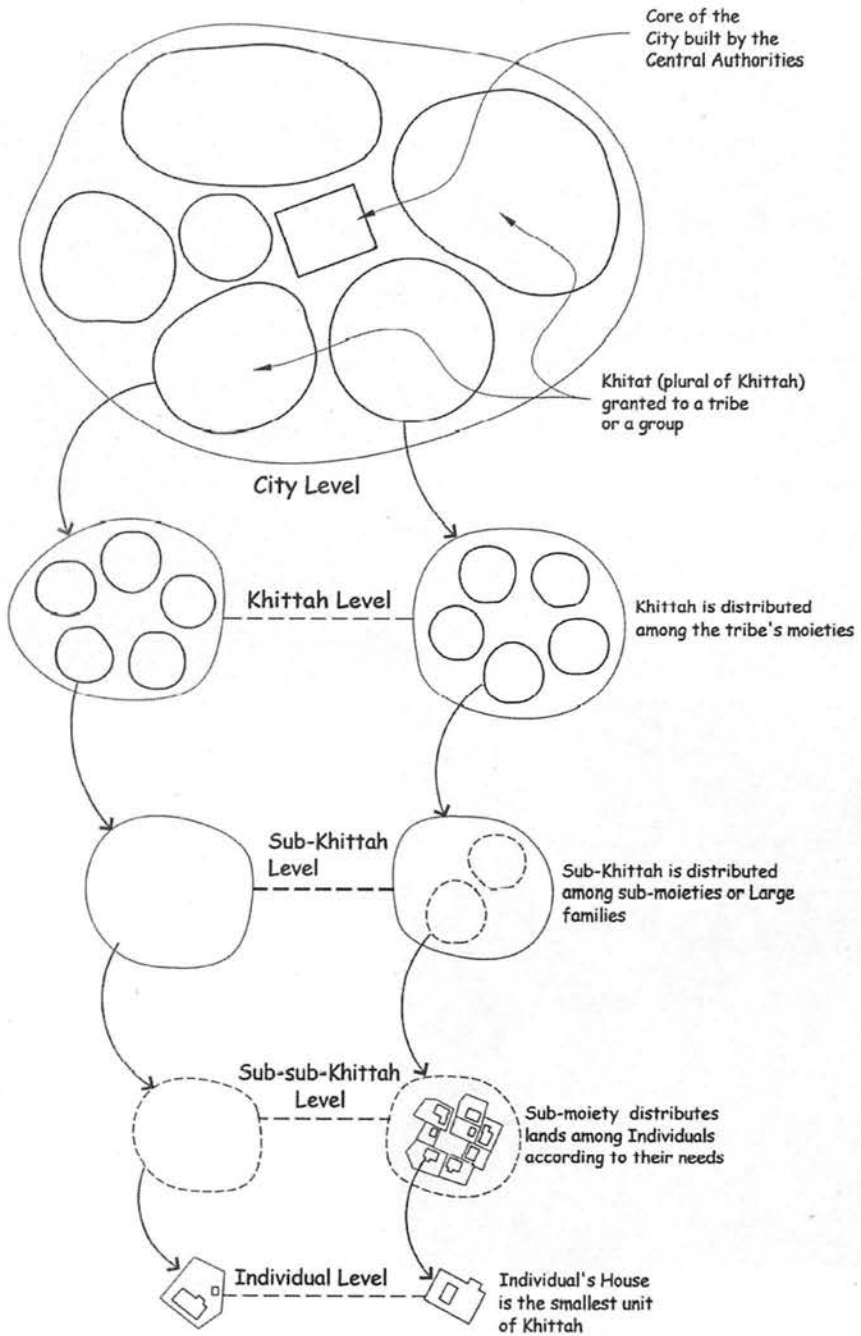


Figure 2-2 The Hierarchy of traditional city units

Source: The author.

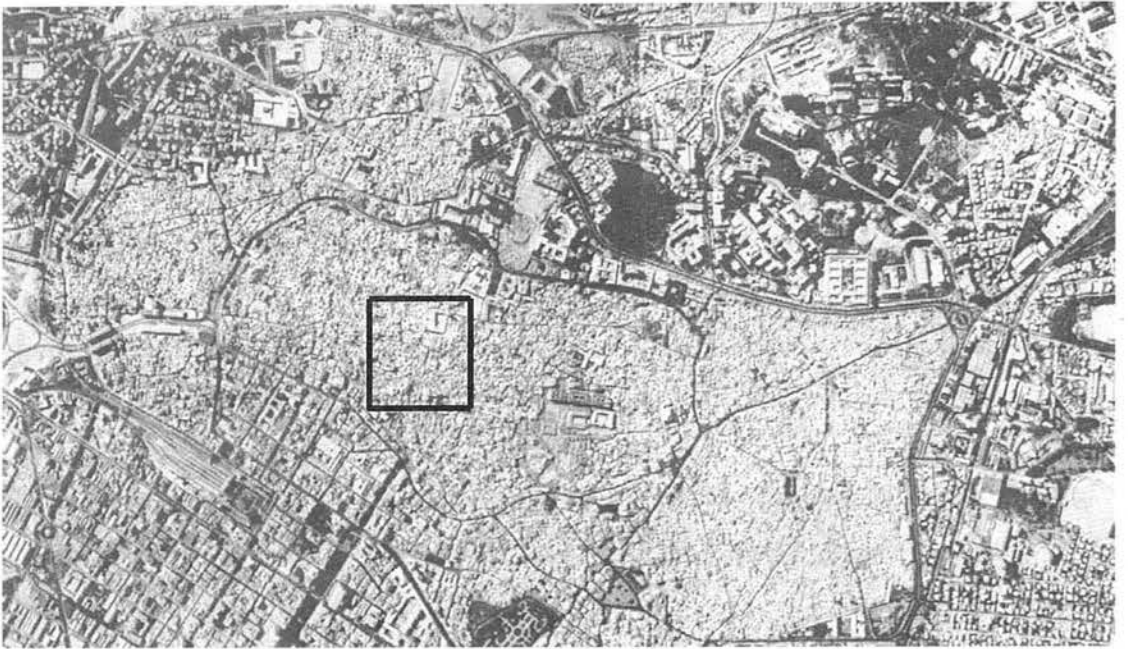


Figure 2-3 Aerial photo for the city of Tunis (1975)

Source: Hakim, 1988

This photo shows the traditional part of the city. Although this fabric was formed by the driving forces of the traditional city, it may lose its essence and not continue its transformation if legislation denies the individuals rights that enable them to be the active developers of the built fabric. In this case such authentic fabrics may still be organic in shape, but static in reality.

2.11.2 Rights and Duties:

The whole life of individual Muslims is based on the concept of rights and duties. This flexible system allows the individuals to draw the boundary lines between them according to their needs. It is a system reflected in the built environment. Unlike the contemporary city with its fixed predetermined boundaries, the traditional city was in a continuous motion; its physical boundary lines changed constantly. This was not due to central authority decisions but because of individual transactions which included selling and buying all or part of land or structures, dividing property according to the inheritance system, buying a room on the second floor of the neighbour's house and connecting it to the buyer's house with a bridge, reusing space or a structure because of new circumstances, protruding to the street without objection from the neighbours, etc.

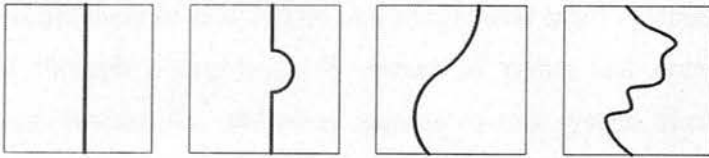


Figure 2-4 Rights and duties draw boundary lines.

These diagrams represent the flexible boundary lines separating one individual's rights from those of another. A square can be divided into two parts in many ways.

Source: The Author

If applied on a group of people, this concept will look more complicated (see Figure 2-5), and if applied on spatial ground it may help to shed light on how the traditional city developed through the transformation of rights between individuals.

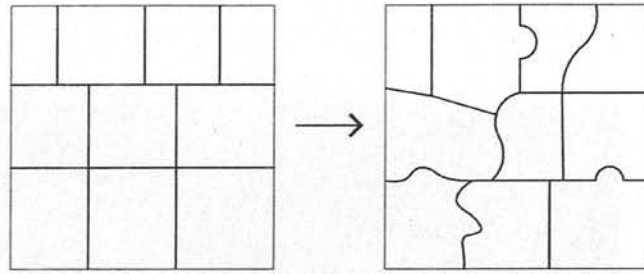


Figure 2-5 Transformation of rights

When rights change they create new boundary lines that can take any shape according to the changes of rights. This point helps in understanding the transformation of existing highly-ordered cities to organic cities.⁴⁴

2.11.3 Beauty in Individuality:

How was the beauty of the traditional Islamic City generated then? It came from unity, but how could there be unity while every individual acted independently? The unity was produced through a sophisticated system of rights and duties that applied to all individuals. Besides the obligatory aspects of this system, there were supplementary networks of cooperation, integration, kindness and sympathy. The unity was not a physical module or specific forms or fashions; in fact the individual himself was this module.

2.11.4 Individual as a Module:

In the traditional Islamic city, the individual represented the module that was repeated to build the city. This module is unique, active, dynamic, developable and above all, alive.

Traditional Islamic cities are known as “organic” cities. This description is given because of their irregular shapes in streets and building boundaries. The author argues that Islamic cities are organic because their module is organic. That is why they continuously changed and developed. During the transformation of the Islamic cities, particularly in the last century, the individual started to lose his powers gradually with changes in legislation, not only in land policy and building codes, but in all aspects of

⁴⁴ This point is discussed in chapter 6.

life. Simultaneously, the traditional city was losing its originality in proportion to the weakness of its module (the individual).



Figure 2-6 Living example for individuality.

A recent aerial view of the old city of Fez showing the traditional city centre around the Qarawiyyin Mosque. A city that was built in 789, it is still able to accommodate 156.000 inhabitants within 280 hectares, a living example of how individuality produces beauty and coherency.

Source: Bianca, 2000.

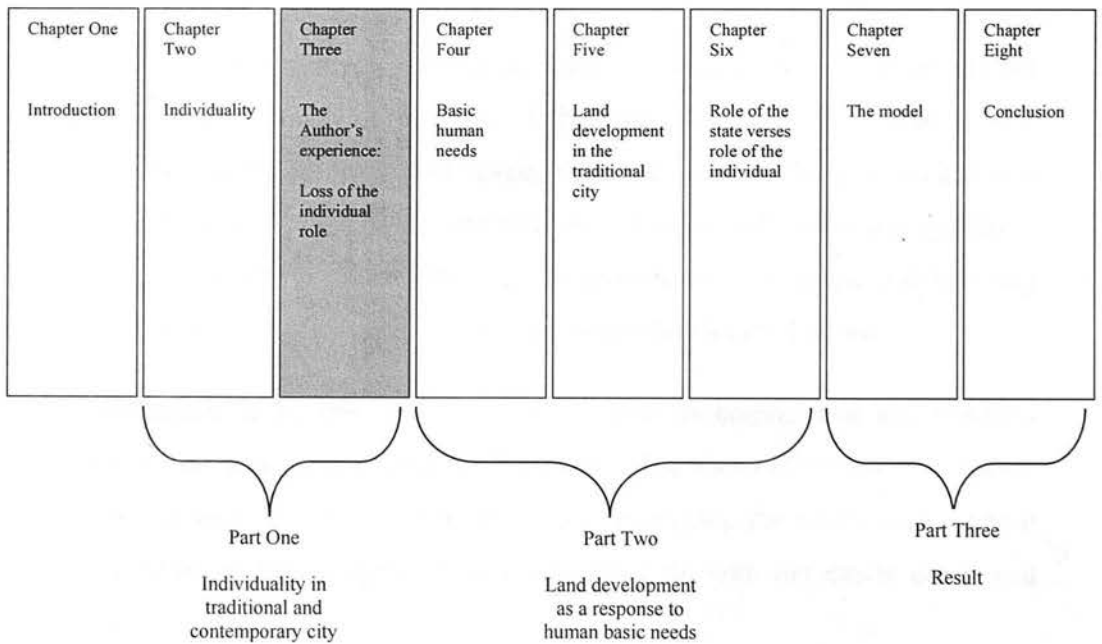
2.12 Conclusion:

There are three facts that determine the overall concept of Islam; God, man and universe. God created the universe to serve the man in his mission to colonize the earth. There is no competition between man and any of the universe elements, in fact there can be an integration. Man is the core of civilization in the Islamic concept. As an individual, he was given enough freedom to practice his role in this life. *Sharia* supported independency of the individual within a comprehensive system of *Ummah*. That support was reflected in several systems like inheritance system, concept of *Ihya* and *Ijtihad*.

While independently performing their duties in this life, individuals will jointly produce integrated products if they are acting under the umbrella of *Sharia*. Individuality was strongly reflected in the built environment in the overall concept of *Kittah* and local solutions within each neighbourhood. Misunderstandings and problems can be solved as they arise. There are no prepared solutions, because the number of solutions is as many as the individuals themselves.

Chapter Three

The Author's Experience: Loss of the Individual Role



Chapter Three

3 The Author's Experience: Loss of the Individual Role:

3.1 Introduction:

This chapter will relate the author's experience in developing the centre of Riyadh, the capital of Saudi Arabia, as well as experiences in the cities of Makka and Madina. It will also relate these projects with similar ones in other countries. It appears that land ownership is a vital element in development or redevelopment. Even so, the examples studied reflect the insistence of some government authorities to deal with existing land ownership patterns as if redevelopment can never occur unless the government or major developers have full control. The chapter concludes with an analysis of the lessons learned from these experiences in relation to responsibilities in land development.

3.2 The Author's Experience:

In the early seventies the municipal authorities in Riyadh decided to redevelop the city centre now known as the Justice Palace District. Approximately 100 years ago, this area represented the whole walled city of Riyadh.

The author had the opportunity to spend more than 20 years of his career within the authority in charge of redeveloping this area. During this period, he noticed the strong relationship between land ownership and development motivation. The government was very keen to complete the project in the shortest possible time and took many actions to make this objective happen; however, the more the government interfered in developing the private sector areas, the more reluctant the individual developers became.

Like many downtown areas, this district started to lose its commercial and business importance when new areas developed around the city in the boom of the early seventies. What made the situation difficult was the decision to redevelop the whole area without enough consideration of the competition that was going on with the newly developed area of the city.



Figure 3-1 Justice Place District within Riyadh city.

Source: JPD 3rd stage report, 1988. ADA.

3.2.1 Kasr alHokm District (Justice Palace District):

The Justice Palace District (JPD) covers an area of 54 hectares. By 1979, the government owned 40% of the area by the power of eminent domain.⁴⁵ Approximately 1200 different owners own the remaining 32 hectares. The individual parcels of land range from 500 square meters to 12 square meters. The area also contains a large number of lots tied to .⁴⁶

The idea of developing this area emerged in 1974 (1395H). It started as a project to rebuild a group of administrative buildings and the main mosque and then expanded into a large project for the development of the historical centre of the city. It eventually turned into a comprehensive development program named “Kasr al Hokm Development Program” or The Justice Palace Development Program (JPD).

The overall goal for the program was to redevelop the historical centre of the city in order to attain the level of quality adequate for the capital city centre.

⁴⁵ The power reserved by the government to condemn and take private property with compensation for public purpose.

⁴⁶ endowment according to Sharia’, defined as detaining the substance and giving away the fruits. Details in chapter 5.



Figure 3-2 Justice Palace District in 1968

Source: ADA

In a period of seven years, the government built the administrative buildings (the emirate, the municipality, the police headquarters, the main mosque and the Justice Palace) and the public spaces and renewed all the utilities for the whole area.

3.2.2 Development Plans:

Beginning in 1976, development plans for this area passed through several stages. Exploring these stages will reflect how the concept developed from redeveloping part of the city centre to a comprehensive redevelopment plan. The role of the government and the role of the private sector (both institutes and individuals) have passed through different concepts according to each stage.

3.2.2.1 The first development plan:

In 1976 the municipality of Riyadh assigned an Italian consultant, Studio F. Albini, to conduct a feasibility study for developing the Justice Palace District. Albini prepared an urban design plan for the area, which represented the physical and administrative heart of the city at that time. This area incorporated the main mosque, the Justice Palace, emirate building and the most important markets for several decades.



Figure 3-3 JPD before redevelopment program 1968

Source: ADA

Approximately 60% of the area covered by the plan was government land; the remaining 40% was expropriated for the sake of the project. All this expropriated land was for public use, i.e. streets, public open spaces and public buildings.

After completion of the plan, the municipality decided to acquire 4.5 hectares for an area known as “Almeigliah”, occupied by hundreds of small size houses and shops. Expropriating private sector land for investment was never practiced in Saudi Arabia before that date. Almeigliah as a turning point in this regard will be discussed later in this chapter. The same consultant was employed to create a development scheme for the

area. The scheme suggested commercial and residential developments. Although Almeighiah was expropriated, it was not vacated or demolished for several years.

The government played a dominant role during this stage. Neither private sector institutions nor individuals, including original owners, were part of the thinking process, decision making or development implementation.

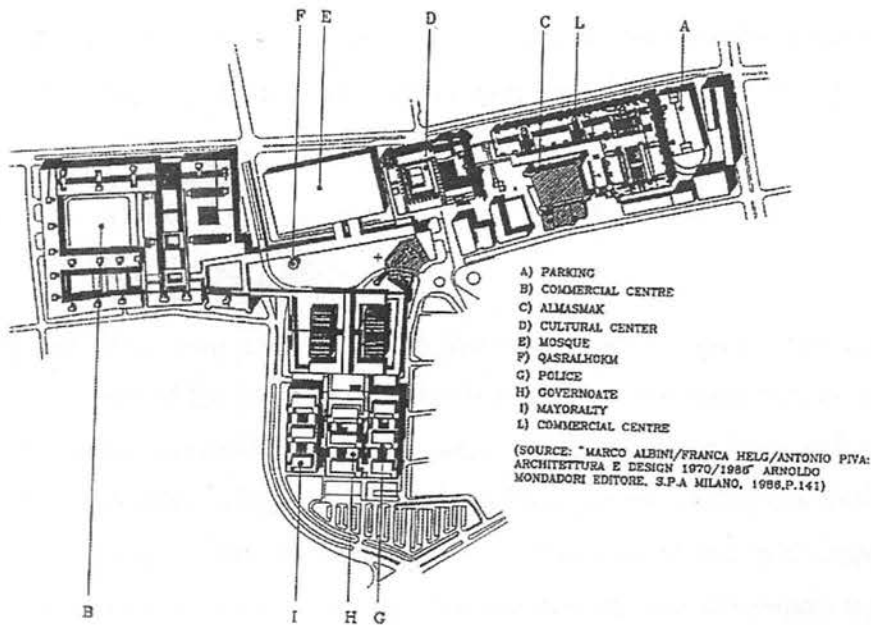


Figure 3-4 Albini's Development Plan

Source: Marco Albini, 1970/1986 Arnoldo Mondadori Editore. S.P.A. Milano. 1966.

3.2.2.2 The second development plan:

When the High Commission for the Development of Arriyadh took over responsibility for the area in 1979, it decided to proceed with the construction of the first phase which contained the administrative buildings (emirate, police headquarters and municipality) with some modifications to the original design to accommodate new requirements for the three authorities. At the same time, the High Commission assigned the Saudi Beeah Group Consultants to review the urban design for the rest of the area. The consultants suggested conducting a comprehensive study that covered double the area included in the first development plan. In 1981, the High Commission appointed Beeah Group to re-design an area of (40) hectares. The consultants' philosophy was based on the following principles:

- The area should not be allowed to develop under the regulations the master plan provided, nor would it be possible to restore the old city.
- Automobile traffic in the old city should be limited.
- The area ought to be developed in a way that would require minimal public funds and no intervention by government agencies. That meant development of the area had to be economically feasible.
- There were very few historical buildings that balanced the commercial value of the land; nevertheless, two clusters were thought worth preserving.
- The area should be rebuilt from scratch.
- The original land ownership pattern should not be taken into consideration. (Othman Z, 1992, p.209-211)

By the end of the year 1981, the High Executive Commission for the Development of Arriyadh approved the preliminary urban design that was submitted by the consultant and, of course, accepted the basis on which it stood. At the same meeting, the High Commission decided to hold (suspend) all building permits in the area until approved for the urban design.⁴⁷ This decision was to become one of the most important factors affecting the development of the area. The reaction of most developers was to wait for land expropriation by the government. Some developers decided to submit for building permits, but through the next ten years no permission was given.

3.2.2.3 The Third Development Plan:

When the High Commission for the development of Arriyadh formed its executive arm, Arriyadh Development Authority (ADA) in 1983, the first mission towards the Kasr Alhokm Area was to review the urban design prepared by Beeah Group. Serious points of weakness were found in the scheme of Beeah, most of which is related to the negligence of the existing property boundaries and to the implementation strategy. The only way to implement this scheme was through major land acquisition by the government. By July 1984, ADA reported to the High Commission questioning the practicality of the scheme. (Othman Z, 1992, p.217)

⁴⁷ Minutes of the first meeting of the High Executive Commission in the year 1402 H (November, 1981).



Figure 3-5 Beeah Group Development Plan.

Source: ADA

ADA then developed an urban renewal approach instead of the rebuilding approach. The plan determined that the second phase boundary, which contained public buildings and open spaces, should be allowed immediately to enter the design stage, and it initiated a strategy plan for the private areas.

3.2.3 Development Strategy:

Four objectives were determined for private area development:

- to provide adequate utilities,
- to provide required offices, commercial and residential facilities,
- to upgrade the quality of development and
- to preserve the urban and architectural heritage.

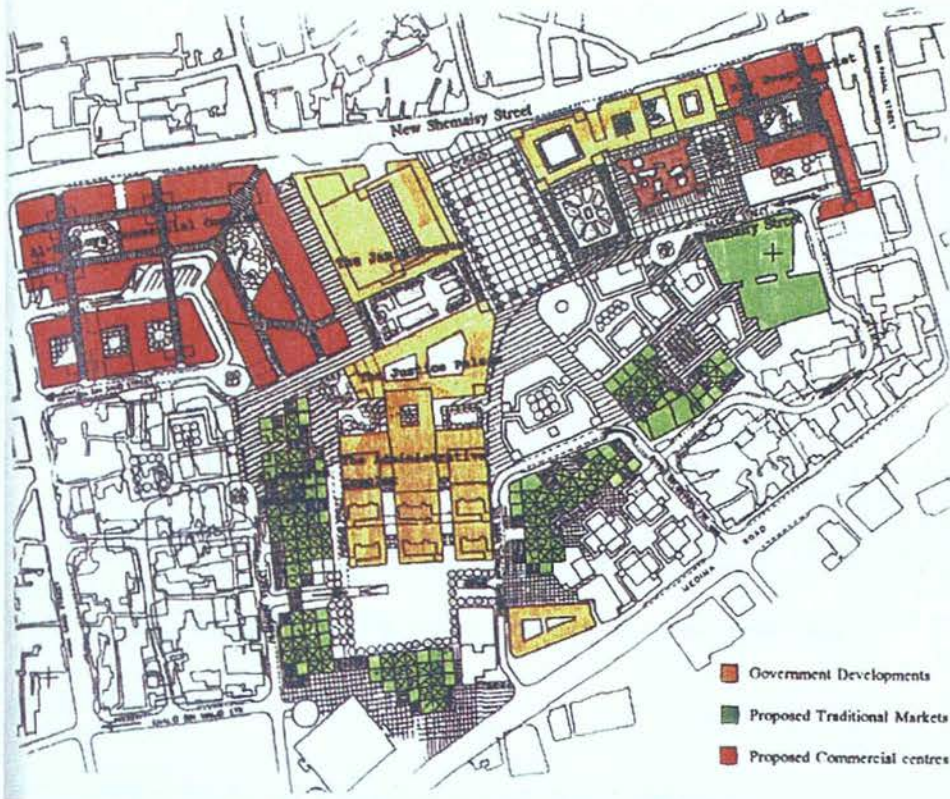


Figure 3-6 Arriyah Development Authority Plan.

Source: ADA

3.2.3.1 Development Methodology:

As part of the strategy, and to avoid more expensive land acquisition, two major characteristics were obvious: flexibility and staging. It was important that flexibility be maintained in urban design, zoning of land use and building controls. Services and facilities were to be provided in stages, and permanent or interim solutions for required services were important to enable the activities in the area to continue with the least disturbance.

3.2.3.2 Guide Plans:

As explained earlier, most of the area belonged to the private sector with a huge number of different owners. The government took the direction of minimizing land acquisition, and that was clearly reflected in the guide plans. The guide plans covered the following aspects: 1) land use, 2) development size, 3) traffic and parking and 4) pedestrian movement.

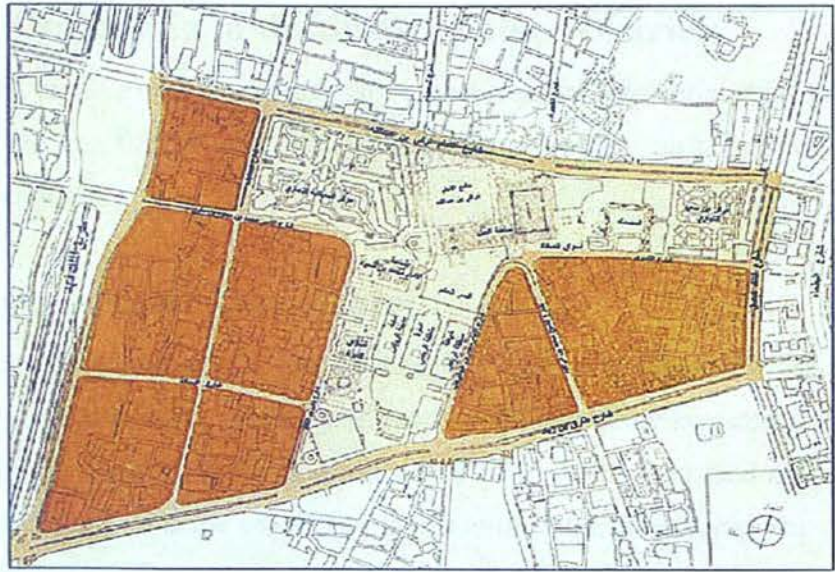


Figure 3-7 Area included in the JPD. Privately owned areas shown in dark color.

Source: ADA

3.2.4 The Role of Government Authorities:

It is the role of the Arriyadh Development Authority (ADA) to prepare and update development plans and to endeavour to meet the following objectives:

- to encourage the private sector to develop in the area
- to encourage and help in land assembly
- to prepare frame works and legal avenues in order to create development companies
- to continue providing the area with needed services.

3.2.5 The Role of the Private Sector:

During the development stages, the definition of the private sector was a reference to major individual owners or development companies. Very little attention was given to the small owners assuming that they were not able to comply with the development objectives because of the small size of most of the properties. In fact, after approving the development strategy that minimized the role of the government in the physical development, one huge private development company was seen as the magical solution. Fortunately, the final decision in 1991 was to allow all types of developers to participate within the adapted strategy.

3.3 Land Ownership in the Justice Palace District:

This section will focus on the land ownership in the area, the evolution of government decisions and the reaction of the individual owners towards such decisions (and sometimes indecision).

3.3.1 Changes in Land Ownership:

Thirty years ago the whole area began to change in plot size. Gradually developers amalgamated some lots in order to build new, larger buildings. Other investors thought it would be profitable to acquire some land and wait for the government land acquisition. The municipality found, in some cases, that land acquired for public purposes was no longer needed and should be sold to investors or proposed for a joint venture with them to develop it.

Following are the areas or projects that experienced changes in land ownership. Each case is separately explained.

3.3.1.1 *Soq* Alsedrah:

The *Soq* Alsedrah (Alsedrah Market) is a case of direct land acquisition for public interest. There were approximately 1000 shops in this area. Most of them were mud houses converted into shops. The government, under the power of eminent domain, acquired the entire area. In these cases, particularly at that period, landowners were fairly compensated.

3.3.1.2 Almegliah District:

The municipality acquired a 4.5 hectare area known as Almegliah in 1981 for an expected (not planned) need. During preparation of the development plan, it was realized that there was no public need for the land. The Commercial Complexes Company was proposed for the development of Almegliah District. The Municipality of Arriyadh would function as a partner in the value of expropriated land, and the shares of the company could be advertised for subscription provided that priority for sale is given to the original owners. The main objective behind this idea was to enable original landowners, whose properties had been expropriated, to participate in the development. The participation of the original landowners was very important, because this case formed a precedent in government land acquisition. In Saudi Arabia, land acquisition

occurred only for the public interest, and this case represented land acquisition for investment. In the end, the company was never created, because some of the original owners objected to the concept.

Four years later, it was decided to form the Saudi Company for Almegliah Commercial Centre, a partnership between Arriyadh Municipality (whose share is the value of the land), the Pension Fund, Social Insurance, and the Saudi Real Estate Company. All these parties are governmental or semi-governmental bodies. The company was actually established and the area was redeveloped, and with that, the relationship with the original landowners ended.

3.3.1.3 Bin Saeed/Alsani/Alrumaizan Joint Venture:

Three investors who owned large parcels (of approximately 14000m² in total) decided to develop a complex. In 1980 the design was ready. Although it was one complex, the owners decided to make clear lines marking ownership. The complex, which appeared as one building, was separated into three structures with expansion joints at the boundary of ownership lines in order to create the maximum independence for each owner. The project was never built, because the government decided to acquire some of the land to allow a street view to an old fort, yet the project represented a unique experience of the ability of individuals to amalgamate land without government interference. It also reflected how important it was for the developers to define the boundary line for each of them.

3.3.1.4 Swaiga Centre:

Swaiga is part of the land involved in the joint venture described above. It is a unique experience in that it is an individual initiative by an investor who, by himself, began assembling land in 1955 and by 1985 was able to assemble 16000 square meters on which he built the project. He faced difficulty in acquiring one of the houses due to the owner's illness. This problem was solved through government intervention. The case represents a long-term process for land amalgamation by an individual. ADA gave some incentives to the owner in order to complete the development in the right time for the *Soq* (market) reallocation plan. These incentives included supervising design and construction and approval of a one floor *Soq* without underground parking as an interim

solution for the area which was zoned as multi-use and can reach the height of five stories.

3.3.1.5 Arriyadh Development Company:

In its efforts to develop the JPD area, the High Commission for the Development of Arriyadh decided to help in forming a large real estate development company. After getting the King's approval in 1993 the municipality and the ADA (the executive arm of the High Commission) arranged for a meeting of businessmen to discuss the idea of a development company. The concept was accepted, and the company was established by the group of founders with the remaining shares advertised for public subscription. Original landowners were then given the option either to take part as company founding members or to sell their real estate to the company. The company did not face any serious difficulties in acquiring the land. Some landowners objected to the land price of their parcels, but in the end they joined the company. This is an example of a sudden change in land ownership from multi- owners of land parcels to multi- owners of common property. The concept of land acquisition via power of the government was troubling to small landowners in the area and became another setback in the development plan.

3.3.1.6 Carpet *Soq*:

This is an early example of land redevelopment in the local market. In the mid-seventies, a real estate group began to acquire land covering an area of 6000m² in order to redevelop it. The land and buildings were purchased, and an open mall was constructed with small shops around and offices on the first floor. After completion of construction, each shop was sold individually in an auction, resulting in fragmented land ownership again. The *Soq* proved to be very successful. This concept of amalgamating, building and then selling, has since been implemented in some other areas of the city, particularly for developing *Soqs*.

This *Soq* was within areas to be demolished and rebuilt, according to the early plans. Twenty years later, authorities realized the success factors behind it and decided to upgrade its environment by improving floor pavement, roof shades and utility infrastructure. These improvements are to be implemented with great care, not to disturb the commercial activities.

3.3.1.7 Safa Soq:

This is a case of public land transferred to . The building was originally suggested in the urban design process to complete the form of the main Maidan and was designed and built as part of the redevelopment project by the government. Later it was sold to the Awqaf⁴⁸ fund that is run by the Ministry of Islamic Affairs.

3.3.1.8 Dallah Parking:

In the late seventies the municipality decided to invest in car parks. It acquired some parcels of land in the city centre, one of which was this area that was later developed by a company called Dallah. The contract stated that the company would build and invest the multi-story car park for 15 years after which the municipality would own the building. The investor was granted another five years at a later stage. In this case the land was transferred by eminent domain to public land and continued as such even during its occupancy by the investor.

3.3.1.9 Temporary Soq:

When it was decided to demolish the Sidrah Soq (the first case above), the shops were temporarily relocated on nearby public land in order to be returned after redevelopment. This land was left over from the land acquisition for a major road in the city. The municipality built around 1000 shops and accommodated the owners of all the demolished shops. This Soq was evacuated when the temporary shops returned to the redeveloped area. The municipality then leased the land to Arriyadh Development Company. This is an example of private land acquired for public interest, invested in by the municipality and later sold to a public share holding company.

3.3.1.10 Dirah Soq:

This area was part of the old city. In the late sixties the municipality acquired an area of approximately 1.8 hectares to build a vegetable Soq. The Soq was built of pre cast concrete and was partially used. During the redevelopment plan, it was decided to develop the Soq by Almegliah Company which developed Almegliah district. The land value represented the municipality shares in this project, which became part of

⁴⁸ is a plural of

Almegliah company properties. The *Soq* was built to accommodate more than 350 small shops for different use.

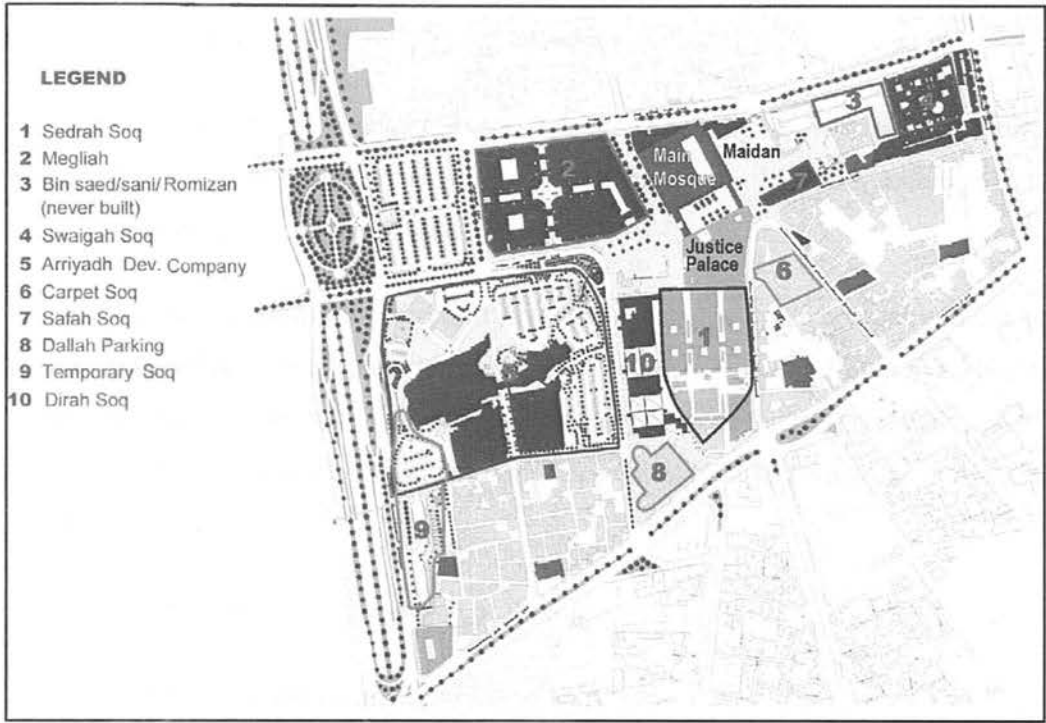


Figure 3-8 Projects witnessed changes in land ownership in JPD.

Source: ADA and the author

3.4 Other Saudi Experiences:

Major redevelopment of city centres happened in two other cities, Makkah and Madinah. These are the two holy cities of the Muslim World.

3.4.1 The Case of Makkah Al Mukarramah:

Makkah Al Mukarramah is a distinguished city in the Islamic World. If able, every adult Muslim should visit it to perform pilgrimage at least once in his or her life. The areas surrounding the Holy Mosque are considered among the most valuable both spiritually and financially. To own a parcel of any size whatsoever in the area near the Holy Mosque is a wish for many Muslims. This condition has caused complicated parcel shapes. Children and grandchildren have inherited small plots of land in this area, and there are also endowments provided by people from all over the Islamic world for the pilgrims coming from their homelands.

The first practical idea to redevelop part of the area close to the Holy Mosque was brought to reality when one of the distinguished businessmen in Makkah al Mukarramah called for the establishment of a real estate development company in which investors and landowners can share in the development of the area.

The district selected for redevelopment was bordered by four streets and directly overlooking the Holy Mosque with an approximate area of 14000 square meters. It involved more than 140 different landowners.

The founders of the company offered to give owners shares in the company in exchange for the whole value of their parcels or part of it. After two years of attempts, they were able to convince the majority of owners (80%). A proposal for the establishment of the company was then submitted to the King that would have given the owners three options:

- to share in the company at the value of their property
- to sell their lands to the company
- to receive alternative lots of land elsewhere in the city of Makkah as compensation for their property.

The King approved the establishment of the company but giving the owners the first option only. Afterwards it was decided to allow for the second option or the first and second options together, namely accepting compensation for part of the land and sharing in the company with the remaining part.

Four owners continued to object to the idea of selling their land or obtaining shares in the company. Eventually, their land would be expropriated in the public interest.

The company tried to propose some practical ideas to encourage company shares. For example, many owners relied on the revenue from their real estate as a source of living; and hence, could not give up this revenue during the execution period of the project. The company decided to pay annual amounts for interested shareholders equivalent to the income they were earning from their real estate provided that such amounts would be deducted from their future profits in the company.

The project began in 1993 and was highly successful in attracting both users and investors. In this case the land ownership was transferred from 140 different owners to approximately 1000 owners who were the shareholders in the company. In other words, the land became jointly owned by the shareholders.



Figure 3-9 The area surrounding Makkah Holy Mosque. Makkah Development Company project shown in blue.

Source: ADA

3.4.2 The Case of Al Madinah al Munawwarah:

The idea of redeveloping the central area of Almadinah al Munawwarah emerged after the government took big strides in the extension of the Prophet's ﷺ Mosque and in response to the call made by the King that the private sector participates in the development projects of Makkah al Mukarramah and al Madinah al Munawwarah. The Governor of al Madina al Munawwarah region invited businessmen to participate in establishing a share holding company. After a series of formal procedures, a royal decree was issued in 1986 approving the establishment of Taibah Company. The company was established by investors and was not obliged to have landowners as shareholders. Shares were advertised for public subscription.

During this period, a plan was prepared for the area surrounding the Prophet's ﷺ Mosque extension amounting to 130 hectares. The plan assumed re-building the entire area and was based on consolidating small land parcels into ones of suitable size to facilitate the development process. Except for a limited number of buildings, which the plan judged

appropriate to remain, the entire area was considered open for redesign. At the time of the preparation of the plan, it was not decided how to consolidate properties, but a decision to cease granting building licenses was taken. Taibah Company initially laid down a group of alternatives to deal with the owners and to determine the ways through which they could participate in development; however, no firm decisions were reached. In 1988 the Central Area Development Executive Committee was formed and it was decided to expropriate all the land and to sell it by public auction. The executive committee consisted of the governor of the region, the mayor of the city, and the main contractor of the extension project. An executive body of the committee was formed to carry out the activities of a sub-municipality for issuing licenses and checking drawings in accordance with the approved plan.

The amount of compensation ranged from £ 860 to £ 9,300 per square meter of land and £ 170 to £ 215 per square meter of building. When the first package land was auctioned, the prices received for these parcels again varied widely. Some greatly exceeded the value of expropriation and some were just less than expropriation value. For example, the sale prices of the first auction ranged from £ 9,200 to £ 11,500 per square meter. In one special case, the price reached £ 20,000 per square meter (Al Sari, 1995, p. 53).

This was the first expropriation for re-sale in Saudi Arabia. The government acquired the land under the power of eminent domain and then put the land in auction. There have been many objections to the concept, but implementers defended this as expropriation for the public interest.

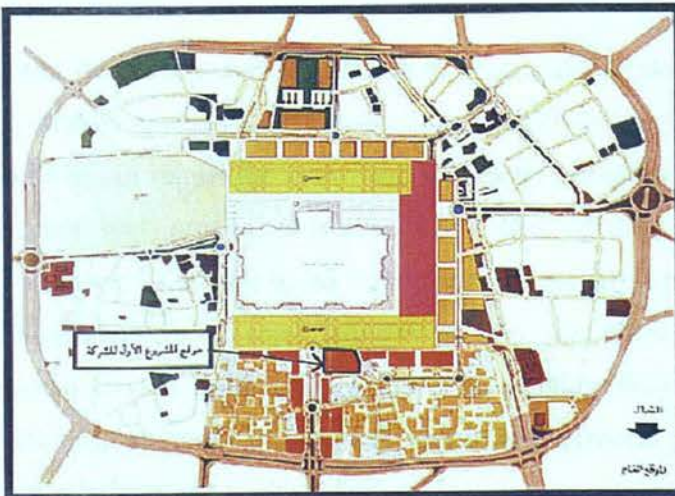


Figure 3-10 Central area in Al Madinah Al Monawarah. Tybah first project pointed at by the arrow.

Source: ADA

3.5 Earlier World Experience:

The world continuously faces real estate redevelopment issues. Plans prepared for rebuilding after natural disasters, reorganizing cities after wars or large-scale redevelopment projects will always have to deal with land ownership and solve the issue through land readjustment, land compulsory or, if worse comes to worst, acquisition through eminent domain. In the following pages several worldwide redevelopment plans will be reviewed, concentrating on treatment of land ownership by the responsible authorities.

3.5.1 The City of London:

When the city of London was destroyed by fire in 1666, it presented an unrivalled opportunity to plan the city on a grand scale. At least six plans were produced, but ultimately none were used. The city was rebuilt along the lines of the old streets with few modifications. (Gakenheimer and Sarkis, 1995, p.18)

3.5.2 The City of Frankfurt:

It was in Germany, in the late 1800's, that comprehensive land readjustment was tried for the first time in modern Europe. This principle was called Lex Adickes. Lex Adickes involves expropriation under conditions of scarce land resources and then re-parcelation, or redistribution of property rights, based on land value in order to establish the best possible land use.

Franz Adickes, mayor of Frankfurt, proposed the idea that private landowners would voluntarily exchange their landholdings, which the city needed to build streets and public facilities, in return for more land in new neighborhoods outside of town. It had little success and proved unworkable for two reasons: 1) Often the most interested "volunteers" were not in the right places for the city's plans for building, and 2) many of the volunteers were small landowners who were not interested in exchanges but simply wanted to sell their land to the city. Adickes then began to consider alternatives, including comprehensive land regrouping projects organized by the government. (Gakenheimer and Sarkis, 1995, p.21)

Franz Adickes started his concept in 1891. Four years later he proposed regrouping of land parcels to take place by petition of one-half of the owners in the proposed area.

More modifications were added later to receive the first application for statutory regroupment in 1910.

3.5.3 The Japanese Experience:

In 1923 Lex Adickes was adopted in Japan when Tokyo was completely destroyed in the Great Kanto earthquake. (Gakenheimer and Sarkis, 1995, p.23)

The Tokyo Metropolitan Rehabilitation Agency was created and between 1923 and 1930, rehabilitated and developed approximately 2000 hectares. Expropriation of all heavily damaged areas was paid for by government issuance of land bonds, resembling a land nationalization scheme. A system of monetary compensation was established, but was paid only for those contribution sites within the project area which exceeded 10 % of the entire project area. The value of land to be taken for public purposes was decided by a commission of three men on the basis of values after, not before, the destruction. The city was divided into 65 replotting divisions. Each district had a commission consisting of twenty committees elected from the landowners and leaseholders resident in the district.

Another Japanese experience is a process by which private landowners enter into partnership to add efficiency and value to their land under legal rights conferred by public authorities. It is regarded as a tool by which the residents of an area can improve their community with their own actions rather than waiting for government intervention. The process involves the "pooling" of land parcels into a readjustment district among affected property owners who then retain individual percentage shares of ownership rights before and after development. After the land is completely assembled and cleared, it is treated as whole and is generally replotted into three separate parts: The largest portion is allocated to a new private building development. A second portion is contributed for local infrastructure and facilities to support new intensification of land use. Finally, the third part is reserved and sold to defray project expenses. (Minerbi and Nakamura, 1984, p. 247) In order to initiate a land readjustment program, there must be an agreement of 2/3 owners and 2/3 lessees, comprising 2/3 of a project area.

3.5.4 The City of Rotterdam:

In 1940 Hitler bombed the city of Rotterdam, Holland. The commercial centre of the city was virtually levelled, including over 24000 residential buildings and over 10000 non-residential buildings.

In expectation of redevelopment after the war, the Dutch government expropriated all the land via compulsory purchase by extending a military ordinance over most of the blitzed area. Some 400 acres were expropriated. Immediately afterwards, the National Board of High Commissioners for reconstruction was established. The Board was empowered to issue acquisition directives to the burgomasters. Next the Reconstruction Registry was set up. The registry recorded the compensation claimable for the lost premises, which would be paid later when a new building was put up in its place. The value of the expropriated site was determined by a commission of experts, and land values were taken at their 1940 values. But compensation was not paid at the time, and owners had the right to another piece of land of the same value. (Gakenheimer and Sarkis, 1995, p.27)

3.5.5 French Cities:

After the Second World War the French Government adopted a form of *Lex Adickes* for badly damaged town centres. French planners were given the freedom to re-plan without regard to land ownership, and property owners were given some rights for reinstatement in the new town centre. (Burns, 1963, p.46)

3.6 Methods in Changing Land Ownership Patterns:

These strategies, originally created to rebuild following a natural disaster or war, were also used for redeveloping old areas of developed cities. Several techniques have been created over the years to solve what has been considered "the problem" of fragmented land ownership. In general these techniques were studied, developed and finally implemented by the responsible authorities. The role of original landowners varied depending on the concept of each technique. Following is a summary of several methods used to reshape land ownership patterns.

3.6.1 Land Readjustment:

Joint ventures involving land contributions by the private sector and land servicing by the public sector are referred to as “land adjustment” or “land pooling”. In land adjustment, an undeveloped parcel on the periphery of an urban area is declared a land-adjustment area by appropriate legislation. Landowners are notified of the scheme, which may or may not be compulsory, depending on the percentage of landowners consenting. A site plan, prepared by either the government or the landowners, subdivides the parcel into streets, parks, schools, and sections for other uses. The area to be devoted to public use is measured and compared to the total project area. The cost of servicing the public and private areas is calculated, as well as the probable value of the private lots if they were placed on the market after servicing and land titling. With these figures, it is possible to determine how much serviced land must be sold to the private sector to recoup the cost of subdividing and servicing the land. The object is to create three categories of land in the project area (a) the public land (roads, schools, and the like) that will remain in the public sector (usually between 15 and 25 percent of the total area); (b) the private land that will be sold by the government at a public sale to reimburse the government for its out-of-pocket costs for servicing the entire area (between 15 and 25 percent of the area); and (c) the private land that will be returned to the original owners in amounts proportional to original ownership shares from the remaining, now-serviced land after the public sector set-aside and after the land sales (between 50 and 60 percent of the area). (Kitay, 1983, p.24)

3.6.2 Excess Condemnation:

In excess condemnation, a central authority uses compulsory purchase to acquire more land than is needed for a particular physical improvement project. After redevelopment in the area, the excess land is sold at its increased value price, in order to defray development costs. Authorities may choose to lease all or some of the land instead. (Gakenheimer and Sarkis, 1995, p.36)

This type of purchase can only be done under the power of eminent domain. Depending on the legislation in each country, such decision may need different levels of government approval. In some cases new laws may have to be issued. Haussmann's famous redevelopment plan of Paris under Napoleon III, between 1850 and 1872, was made

possible through this principle. In the United States, the Washington Metropolitan Area Transit Authority owns many parcels of land alongside its subway, which were acquired in this manner. These are being sold or leased to private developers in a process that earns about \$1.5 million per year for the authority. (Kitay, 1983, p. 30)

3.6.3 Land Sharing:

Land sharing is a term used to describe the development and joint use of land occupied by squatters from which the legal owner does not have the practical ability to evict them. In these cases, generally involving very valuable inner-city land, the legal owner will approach the squatters with a development proposal by which the squatters will agree to vacate a portion of the land in return for a package of benefits to be given by the legal owner. Land sharing in this manner has been used successfully on an informal, ad-hoc basis in countries such as India and Thailand, to name a few. (Kitay, 1983, p. 30)

3.6.4 Urban renewal programs:

All the above examples can be considered as urban renewal programs. True, they were initiated because of certain circumstances, but the end result was physical development for a city or an area. Land ownership boundaries were always imagined as a great obstacle for renewal and redevelopment. These programs used every possible tool, including those mentioned above, to free redevelopment sites from any ownership lines.

3.7 Observations and Discussions:

From his own experience and examples worldwide, the author will raise several points for discussion that will form the base of the initial argument.

3.7.1 Land Ownership:

It is very clear that land ownership was a key issue in redevelopment plans as expressed in the first half of this chapter. Whether kept as is or changed, all redevelopment plans started by proposing solutions on to how to deal with the existing land ownership. In nearly all cases, very little attention was given to any social or demographic implications that may occur from changes proposed in land ownership.

3.7.2 Land Ownership Pattern:

The physical urban fabric of traditional Islamic cities is a product of several factors that were present during a certain time period. *Sharia* (Islamic legislation) played a major role in forming this pattern. Unfortunately very little effort was made to understand the concepts of *Sharia* in order for it to be reflected in contemporary redevelopment plans. It appears to the author that *Sharia* policy towards land was the major force in the creation of the marvelous urban fabric in traditional Islamic cities and still has great potential as a solution for contemporary projects if properly adapted.

The secret of the beauty in Islamic cities is the land ownership pattern. In order to benefit from these concepts, it is useful for the modern planner to ask several questions. How was the land owned? What did the owner do to own the land? How was the ownership transferred to others? How many types of land ownership were in the traditional Islamic city and how did these types affect the urban pattern?

These are some of the questions that will be answered in the next chapters of the thesis.

3.7.3 The Role of Land Ownership Plans in Misleading the Planners:

In any redevelopment plan one of the output drawings shows the types of ownership in the study area. Most plans categorized the land ownership as either governmental or private. Some details may be given about the governmental ownership, but all the parcels that are non- governmentally owned are given a single color which can be highly misleading for two reasons. Firstly, the types of land ownership in the Islamic city are much more than private and governmental. One can count up to eight types. Most of these are still in existence. *Al Waqf*, *Al Mawat* (dead land), *Al Aradi Al Matrooka* (no one land), *Al Hima* and other types can be given as different types of land ownership in the traditional Islamic City.⁴⁹ In many cases mosques are shown as governmentally - owned while, technically, they belong to *AlWaqf*. Of course all private properties are not owned by a single landowner, but unfortunately the practice of indicating all privately-owned properties with a single color takes attention away from the fact of individual

⁴⁹ All these types shall be explained in chapter 5.

property owners and their specific circumstances. Effective land ownership plans are those that consider all types of ownership and all property owners.

Figure 3-12 shows two plans one reflects the traditional ownership plans prepared by planners, while the other shows the each individual's ownership, which is a true representation to land ownership.

The detailed land ownership plans would enlighten planners to many factors in the existing condition that must be considered during the preparation of redevelopment plans. All of these factors can never be sensed from the traditional way of presenting the land ownership plans. As a result of the previous point, in most cases the role of the original owners was neglected. No attention has been given to their opinion, their needs and, in some unfortunate cases, to their rights.

3.7.4 Land Expropriation :

The concept of land expropriation has been extensively used in examples previously mentioned. There were many reasons, such as the need to open traffic movement in a very dense area, the requirement for new governmental buildings, and the necessity for infrastructure and open spaces. All of the above can be classified as in the public interest and as justifications to expropriate land. On the other hand land was also expropriated for other reasons such as creating large parcels, or because it did not match with a proposed urban redesign. In worse cases, land was clearly given to other investors, as in the case of Riyadh, or resold in auctions for investors as in the case of Madina. In many cases the owners were confronted with only two choices: either to sell their lands to a development company or to consider the value of their land as shares in such company.

There is a great need to review the philosophy of *Sharia* towards land ownership and the respect that is given to the individual's rights and needs. To what extent is the concept of eminent domain accepted by the *Sharia* Law? Are there any limitations to this power? The author is going to answer these questions in Chapter 5: Land in Islamic cities.

Although there are always good intentions behind land expropriation, it is essentially based on weak assumptions as explained in the next point.



Figure 3-11 Private ownership in JPD.

Source: ADA

The left plan reflects the simplicity in dealing with ownership. The blue color represents government ownership (mosques were considered governmental) and the yellow represents the private ownership. In the right plan each color represents a different ownership.

3.7.5 Land Size:

In redeveloping old cities it is always claimed that the small land parcels and the scattered ownership form strong obstacles against redevelopment. This assumption can not be accepted as a fact while many successful examples can prove the opposite. In the case of Kasr Al Hokm District (JPD) in Riyadh, the authorities were hoping to speed up the development and considered land assembly through expropriation via eminent domain the best means to accomplish this. Ironically, some areas north of JPD were developed faster, although their ownership was very fragmented.

3.7.6 Fragmentation after Assembly:

On the other hand, real estate businessmen have their own concepts of redevelopment that are not documented, not written in a book nor part of the education courses, yet are very successful, and more importantly, trusted by the landowners.

The case of the Carpet *Soq* in JPD is a good example of such a strategy. Land was amalgamated, the project was built and finally shops were sold in an auction. When the land was amalgamated it was still owned by the same owners. At completion of the project, the number of final owners was even more than the number of original owners. True, the building was not sophisticated, but more importantly, the *Soq* was, and still is, very successful.

The power of eminent domain is not a magic bullet. It has the potential to change ownership patterns and assemble them in a short time, but it cannot force redevelopment to happen.

3.7.7 Behavior of Developers:

Developers can be classified into three categories: 1) the State, 2) the individual developer and 3) the institutional developer. Of course, any action the State takes, whether as an authority or as a developer, would directly affect other developers. There is a significant difference in the reaction of the individual and the institutional developers.

3.7.7.1 The State as a developer

The state acts as an authority in relation to preparing development plans or issuing development controls or new regulations. The development role of the State takes two directions: firstly, when developing infrastructure and public facilities, and secondly when developing investments, such as land to be redeveloped or buildings for rent.

The State as a developer does not necessarily consider profit potential. In the case of JPD, the authorities decided to build the temporary *Soq* as part of a plan to enable the markets to remain in the area and to return when development was completed. Although profit was not a goal, the temporary *Soq* proved to be very lucrative. Another building in the area, the *Safa Soq*, was built to contain the *Maidan Aladl* (Justice Plaza) as an urban design requirement. It contained shops on the ground floor and offices on the three upper

floors. The Development Authority was able to convince the *Awgaf* fund to invest in this building. The *Soq* was built and shops were rented, but the offices remained unoccupied for years. Eight years later, the whole building was leased for half a million Saudi Riyals (£ 72000), which represented less than 3% of its construction cost.

3.7.7.2 The individual as developer

The individual developer can be defined as any developer that acts as an individual, where one person makes decisions. An owner of a shop is an individual developer, and a rich man who owns hectares of land is an individual developer. This type of developer has full control and can act freely to sell, rent, buy, etc. In Islamic jurisprudence, he is known as the *Motasarrefi Arragabah* (one who has the power of authority). Originally, in any Islamic city, he would have full control on the *Ain* (property). Once the government initiates development, individual developers can sometimes react negatively for fear of losing control over their property through land expropriation, new land use, new regulations, etc. The experience of JPD demonstrates that individuals become more reluctant to invest once the government begins to interfere in an area.

3.7.7.3 The institutional developers

Developments conducted by shareholding companies, real estate companies and others, as well as banks, can be called institutional developments. In such cases, decisions are not taken by individuals but by a group of people, such as the board of directors. Shareholders have limited authority by electing members to the board of directors.

Often governments faced with a large scale redevelopment project prefer to throw the ball to a powerful player. If this player does not exist, they create one. Because of this relationship with the authorities, such a developer can be monopolistic from the first day. Such behavior is sometimes supported by the government on the account of individual rights.

In most cases, institutional developers are established by, or at least supported by, governments. Often they start out very government - dependent but once they stand on their feet, they begin to pressure the authorities for more facilities.

3.7.8 Special Cases :

In Makka Almukarramah and Almadina Almonawarah the situation is very different due to the special religious status of these two cities and the value of the land surrounding the holy mosques. This situation makes the concept of land acquisition for public interest very questionable. In Almadinah almunawarah it was decided to completely expropriate 130 hectares to implement a new urban design. The whole area was totally demolished, and a new subdivision plan was prepared upon which parcels were resold. The aim of this maneuver was to consolidate the small fragmented parcels, but many of the new parcels were not very different from the originals in size, location and suggested land use. In many cases, the land expropriation changes from being a tool to ease the redevelopment to an objective by itself.

3.7.9 Real Estate Shareholding Companies:

Shareholding companies are an effective tool for land consolidation. They acquire land by purchasing it directly from owners and entering into partnership with them with the objective of redeveloping a project area. Through this process, large areas of land, previously belonging to several owners, become owned by one party. (Alsari, 1995, p.58)

The reasons behind the formation of such companies are numerous. Political and economic issues play a major role in determining the direction they take. They may be formed by owners themselves to overcome some redevelopment obstacles such as a large number of lots or difficulty of access. They may be needed in order to construct large-scale projects. In many cases, such companies are formed through government incentives in order to provide economic viability for a certain area.

No doubt, the establishment of a shareholding company benefits the responsible authorities, because they have to deal with fewer owners, and a powerful company facilitates the achievement of their development objectives.

There is a common belief that to speed up redevelopment a major player needs to be involved. In Saudi Arabia, the real estate holding company filled this role. The author believes the contrary was proven to be true. Redevelopment did not occur as fast as it would have without such companies. The motivation to protect their investment

appeared clearly in JPD when individuals acted independently from the plans of the government.

An example is the Dirah *Soq*. To build the huge complex of AlMegliah it was necessary to relocate hundreds of shops to another place in the area. The Megliah Company developed a *Soq* (later called Dirah *Soq*) with hundreds of small shops tailored to meet the existing tenants' requirements, but some tenants suffered a significant decline in business and were not satisfied with the alternative location. They managed to amalgamate land in an area approximately 400 meters north of the project (later called Swailem *Soq*) and established their shops there. Upon completion of Almegliah Complex, tenants were encouraged to relocate, as originally planned, but many left their shops vacant and advertised that they had moved to Swailem *Soq*. The Megliah Company was forced into a frantic campaign to convince the public and the merchants that their development is the right substitute to the old *Soq*.

3.7.10 The Role of the Individual:

Most redevelopment plans did not pay enough attention to the role the individual. Individuals are very reluctant to spend money on redevelopment since the super power of the government has decided to take over.

In the traditional built environment individuals would usually initiate land development. In Islamic cities development by individuals was encouraged and was one of the reasons for land ownership. Most of the contemporary solutions for redeveloping inner cities unfortunately take the leadership from the hands of individuals and passes it either to government authorities or a huge private sector body.

3.7.11 The Private Sector:

The term "private sector" is used for all non-governmental bodies and activities in redevelopment. Share holding companies, banks, small businesses, individuals etc. are included in this term. Although these are all classified under the category of private sector, they behave much differently. A share holding company, as an entity, behaves differently from the individuals acting on their own. This term has contributed to misleading development plans, contributed to the neglect of the individuals in developments and redevelopments.

3.7.12 Who Takes the Lead in Development?

In the traditional Islamic city, the individual took the lead in development, and there were no constraints that.

Unfortunately, in the contemporary city many obstacles have been created for individual developers. The desire of governments to expedite development sometimes leads to an unhealthy expansion of their role to the disadvantaged individuals. It is time to rethink the roles of both the individuals and the State. What is the role of the State? The key point may be in understanding the mechanisms that created the traditional Islamic city.

3.7.13 Common Factors in Development Experiences:

- The wish of development authorities to develop or redevelop the area in the shortest time.
- A significant change in land ownership pattern
- The project was always initiated by the state or major development companies
- Development companies depended on the government to solve the major land acquisition problems.
- Very little role was left for the individuals; in many cases it was totally neglected
- The goal of development plans concentrated on the physical output of the redevelopment given to the human factor.

Such experiences reflected the difference between the behavior of the individual and that of the state or large companies towards development.

3.8 Testing Ownership in JPD According to Forms of Submission:

In his book, *Crisis in the Built Environment*, Jamil Akbar suggested a model that could help in understanding the traditional Islamic city morphology. Akbar's model is a synthesis of two concepts, the concept of claims and the concept of parties. (Akbar,

1988, p. 17) The concept of claims is based on the plurality of using, owning or controlling an object.

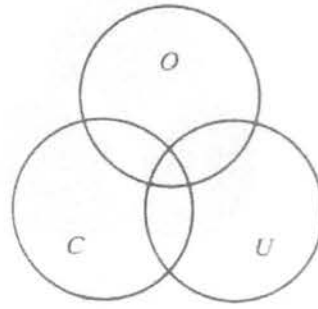


Figure 3-12 The three parties:
O: owner, C: controller, U: use

Source: Akbar

Any property is subject to three distinct and observable claims: the claim of ownership, the claim of control and the claim of use. Therefore, he defines ownership of a property separately from its control or its use.

Akbar suggested five forms of submission, as follows:

- The dispersed form of submission
- The unified form of submission
- The permissive form of submission
- The possessive form of submission
- The trusteeship form of submission

3.8.1 Definitions of Forms of Submission:

Five forms of submission are observed; dispersed, unified, permissive, possessive and trusteeship.

3.8.1.1 The dispersed form of submission:

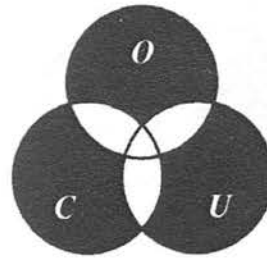
In the dispersed form of submission, three parties share a property: One party uses it, a second party controls it, and a third party owns it. *Al Waqf*⁵⁰ is an example of this form.

The tenant is the user, the *Nazir*⁵¹ (guardian or trustee) is the controller and the original owner actually owns the property.

⁵⁰ *Waqf* is a property endowed by a Muslim. *Waqf* is defined as “detaining the substance and giving away the fruits.”

⁵¹ *Nathir* or *Motawalli* is appointed by the original owner of to control and look after it. The owner himself can, during his life, act as a *nathir*. If the owner does not appoint a *Nathir*, the *Qadi* (judge) will.

Figure 3-13 The dispersed form of submission



Source: Akbar

3.8.1.2 The unified form of submission:

In the unified form of submission, the three interests coincide in one party who owns, controls and uses a property. An example is a house that is used by its owner. Akbar considered the unified form of submission the most desirable state of property under *Sharia* law and argued that jurists' interpretations and rulings encouraged it (Akbar, 1988, p. 26).

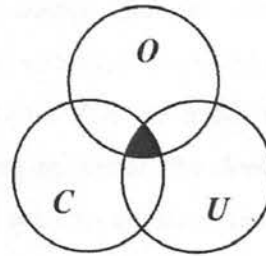


Figure 3-14 The unified form of submission

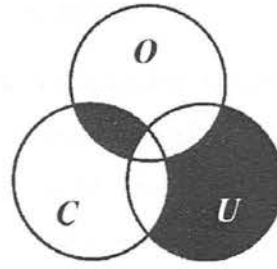
Source: Akbar

3.8.1.3 The permissive form of submission:

In the permissive form of submission, two parties share the property. One owns and controls it, the other uses it. This form is divided into two main categories: servitude and leasing (Akbar, 1988, p. 33). In the case of servitude, a property owner may have certain rights, such as to discharge his rain water through the neighbour's roof. In the case of leasing, the property is used by a party other than the owner. In both cases, conflicts between the two parties sometimes arose but were always solved by jurists through documented customs based on *Sharia*.

Figure 3-15 The permissive form of submission

Source: Akbar



3.8.1.4 The possessive form of submission:

The possessive form is also shared by two parties. One party uses and controls the property, and the other owns it. This is appropriate when the owner is not capable, not allowed or not interested in exercising control. It is generally the remoteness of owners from the property that characterizes this form of submission. Akbar explains that the fundamental difference between the possessive form of submission and the permissive form of submission is the nature of agreements entered into by the parties involved. In the permissive form, agreements between the owner and the users control the relationship between the two parties, and the owner continues to control the relationships with the adjoining properties. In the possessive form, it is the user's responsibility to control the relationship with neighbours. According to Akbar, the dominant properties that fall into the possessive form in the traditional Muslim environment are agricultural lands, mineral lands and appropriated spaces such as streets⁵² and markets (Akbar, 1988, p. 37).

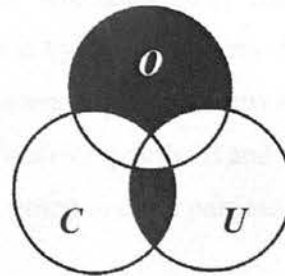


Figure 3-16 The possessive form of submission

Source: Akbar

⁵² According to land ownership classification, streets are not owned by the state nor are they owned by any individual. They are in fact owned by all citizens. This subject is discussed in Chapter 5.

3.8.1.5 The trusteeship form of submission

In this form, two parties share the property in a state of trusteeship. One controls it only; the other uses and owns it. This form of submission is both rare and unstable. It is known as *hajr*⁵³, which actually means to limit someone's legal competence and place him under guardianship. An example is a resident owner of a house who cannot make decisions regarding it, such as a child, a mentally disabled individual or a prodigal person prevented by the court from mismanaging his own properties. Another case is that of an insolvent individual or group when the properties are controlled by the authorities.

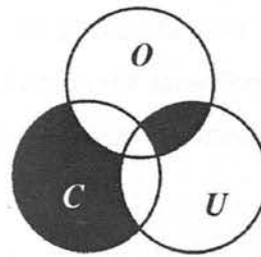


Figure 3-17 The trusteeship form of submission

Source: Akbar

Akbar considered this to be a largely transitional form, since the orphan can ultimately take control of his property, and the insolvent must pay back his debt or lose his property.

3.8.2 Applying Akbar's Model on JPD:

The JPD area is an example of a traditional Islamic city. Except for the public buildings (mosques, emirate, justice palace etc.), streets and squares, the rest of the area was owned by individuals. Since most of the buildings were houses they were in the unified form of submission, i.e. owned, controlled and used by the same party. Some properties being *Waqf* were in the dispersed form of submission, i.e. shared between three parties, one owns (the original owner), one controls (the *Nazir* or guardian) and one uses. Others were in the permissive form of submission, being rented to other parties.

⁵³*Hajr*: Linguistically means prevention from action. Shafiee and Hanbali define it as prevention form. There are two types of *hajr*. One is for the benefit of others as in the case of the insolvent, mortgagor and the person during his death sickness. The second is for the benefit of the one under guardianship (Al Mousoaa, 1990, 84/17)

Many changes happened in the form of submission during development of the JPD. Most of the properties, according to Akbar's model, were in the unified form of submission. The role of the owning parties was very strong because those parties owned and controlled at the same time. Even when the property was leased (in the permissive form of submission) the owner still owned and controlled, although he did not use.

3.8.2.1 Mandatory changes in form of submission:

In the Sedrah *Soq* case, hundreds of properties in the unified form of submission were expropriated to build a governmental complex; and hence, converted to a single property in the possessive form of submission.

In the case of *Al Megliah*, hundreds of properties in the unified form of submission were expropriated and temporarily converted to one property, in the same form, owned by the State. Later, it was owned by four governmental and semi-governmental bodies, which shifted it to the permissive form of submission.

Also hundreds of properties were expropriated for the benefit of Arriyadh Development Company, and an area of approximately 12 hectares was owned and partially developed by a share holding company. This shifted the whole area into single ownership in the permissive form of submission.

In the three examples above, all changes in form of submission occurred by power of the State. The first case was direct expropriation that can be claimed as public use to justify it. The next two cases appear to be a healthy situation where the owners are still in control, but upon closer examination of ownership, a different picture emerges. Al Megliah Company is made up of four parties: the municipality, the pension fund, the social insurance and Al Akariah Company. Al Akariah Company is a share holding company owned by the State (the Ministry of Finance) and individuals who hold approximately 20% of its shares. The controller, in this case, is not actually the owner, but an entity which supposedly represents the owner, i.e. the board of directors. The users, of course, are the tenants. Arriyadh Development Company is mainly owned by individual shareholders, some of them former landowners. The controller is the board of directors, and the users are the tenants.

The point that needs to be discussed in more detail, relating to Akbar's model, is that of the owner. The shareholding companies, although they appear as if they are owned and controlled by the same party, are in reality owned by several parties, only some of whom control. This actually shifts all shareholding companies to the dispersed form of submission, where three parties share a property.

3.8.2.2 Volitional changes in form of submission

In the case of Swaigha, one owner managed to buy all properties (except one) during a period of 20 years, and the 16.000 m² is now owned and controlled by one individual who rents the 250 shops. This classifies the property in the permissive form of submission. This change in ownership and form of submission occurred due to market forces without the power of the State.

In the case of the Carpet *Soq*, 6000m² used to be owned by tens of owners. Each property, according to Akbar's model, was either in a unified form of submission or permissive form of submission, as in both cases the property is owned and controlled by one party. When the properties were amalgamated into one common property owned by the original individuals it was moved to a single ownership in the unified form of submission. After sale to either one of the original owners or a new buyer, each single plot, according to the new subdivision, was in the unified form of submission. Of course, all rented properties would be shifted to the permissive form of submission.

Both cases in which changes in the form of submission were forced witnessed resistance from the original owners. On the other hand, the two cases where changes were optional had no claims recorded by the original owners. It is not only the change in ownership that matters, but also the tools used to facilitate the process.

3.8.2.3 Changes in ownership factor in JPD

In the JPD area, land ownership passed through several transformations. Table 3-1 summarizes these changes.

	Projects	Before Development 1970	After Development 2003	Notes
1.	Sedrah	Multi ownership	Government ownership	By expropriation
2.	Megliah	Multi ownership	Owned by four governmental and semi governmental bodies	By expropriation. There was an attempt to create a share holding company between the original owners but failed.
3.	Bin saed/ Sani/ Romizan (never built)	Multi ownership	Three owners	Land assembly by direct purchase for long period.
			Later the government decided to acquire the land to allow a better view to a historical castle from the street	Land expropriation
4.	Swaigah	Multi ownership	One owner	Land assembly by direct purchase for long period.
5.	Arriyadh Dev. Company	Multi owners	Share holding company	By expropriation through the government power
6.	Carpet market	Multi ownership	Assembled (commonly owned) then resold to individuals	Fragmented after redevelopment
7.	Safa soq	Public land		Sold by the municipality to Waqf fund to develop it
8.	Dallah Parking	Multi ownership	Public land	Expropriated then leased to Dallah co. to develop, invest and return.
9.	Temporary soq	Multi ownership	Share holding company	Excessive land from the expropriation for new road. Finally sold to Arriyadh Dev. Co.
10.	Dirah Soq	Municipally real-estate	Share holding company	In early sixties this municipality acquired this area to build vegetable market. Land price represented was added to municipality share in Megliah company.

Table 3-1 Changes in land ownership in JPD.

Source: The author

According to Akbar's model, the owner controls the property in two forms of submission (the unified and permissive forms) and uses the property in two cases (the unified and the trusteeship forms). Except in the case of trusteeship, the owner can retrieve the other two factors and convert the property to the unified form. This indicates that the main effective factor is ownership. The table above shows that the cases 3, 4 and 6 ended in the preferred form of submission. Although ownership was fragmented after

amalgamation in the case of the carpet market (case 6), every new owner owned a specific piece of land. In cases 1, 8 and 9 the property ended up in government hands. In cases 2 and 5 there were multi owners, but ownership by an entity such as a share holding company did not exist in the traditional city. This is not necessarily a negative point, particularly when looking at the submission of its projects, which are either in the unified or the permissive form, meaning that the share holding company either owns, controls and uses or at least owns and controls.

In reality, the ownership is in the dispersed form of submission. The share holders own the company, but they neither control nor use what they own. Some can claim that the share holders control through electing the board of directors. The author argues that this is not the kind of control that will satisfy the individuals' ambition and make them play an active role in land development.

3.8.2.4 Al Owais and Tybah markets, Riyadh:

The concept used in the carpet market was repeated in two other newer areas of Riyadh. In 1986 a group of investors developed a one story complex, known as Al Owais market, designed as a traditional *Quaysariah*⁵⁴. Some shops had another floor design to be used as offices. Each shop or office was sold independently in an auction after determination of its main use, such as a gold shop, and the owner was given a separate deed. The parking areas (available free for users) and corridors were controlled by the municipality. The original owner, who still owns some shops and offices, is now equivalent to any other owner.

Four years later, the same concept was repeated in a complex south of Al Owais Market known as Tybah Market. Here some owners divided their shops that were open to two corridors and sold each half⁵⁵. This market is simple in design, but its value is increasing rapidly. The ownership pattern in both markets is in a continuous state of transformation.

These two cases clearly show the positive effect of independent ownership. Some may imagine what the case would be if these markets were owned by a share holding company. The author does not suggest that they would not be successful but draws

⁵⁴ *Quaysaraiah* is a market complex composed mainly of aisles that are surrounded by shops.

⁵⁵ Owners faced difficulties in documenting the selling because the municipality did not encourage subdividing ownerships beyond to what was in the original design, yet this did not prevent them from continuing their deals.

attention to the attitude of the owners in each case. Independent ownership helped to create a healthy atmosphere that allowed a great deal of interaction between the owners, encouraging a variety of investment deals, as in the traditional city, according to the individual needs.

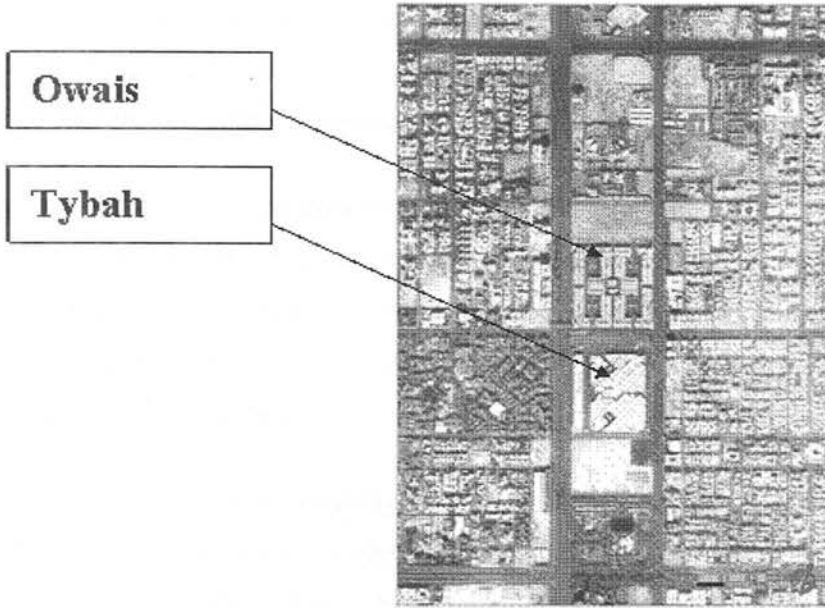


Figure 3-18 Al Owais and Tybah Markets, Riyadh. Located in the central spine of the city.

Source: ADA

3.9 Conclusion:

In the case of Islamic cities, it is very important to understand the legal bases that governed the society and individuals. The *Sharia* was the base of all rules and regulations. Many studies in the last twenty years explored the relationship between the *Sharia* and the development controls. This research focuses on the philosophy of *Sharia* through which its objectives can be understood and models can be abstracted and implemented in contemporary life. The role of the individuals in land development appears to be greater in the traditional city. This is not only because individuals were more active, or because the authorities did not wish to practice a stronger role in the development, but because, as the author argues here, the legislations aimed to put the initiative in the hands of the individuals.

Akbar rightly stated: "*Under Muslim law this (the unified form of submission) is considered the most desirable state of property. Although not distinguished by the jurists as a distinctive form, all their interpretation and rulings encouraged this type of property.*" (Akbar, 1988, p.26). The author believes that it is preferred because it gives full control to the individuals to practice their role in land development as part of their struggle to fulfil their needs. The parties in Akbar's model may have a different definition in the contemporary city due to new legal forms such as semi-governmental companies and share holding companies.

To a great extent, the contemporary city neglected the role of individuals in redeveloping inner cities, whereas individuality is a unique feature of the Islamic City which can be maintained through maintaining the traditional land ownership pattern. The originality of a traditional pattern can be maintained even during and after changes that take place if these changes were not forced.

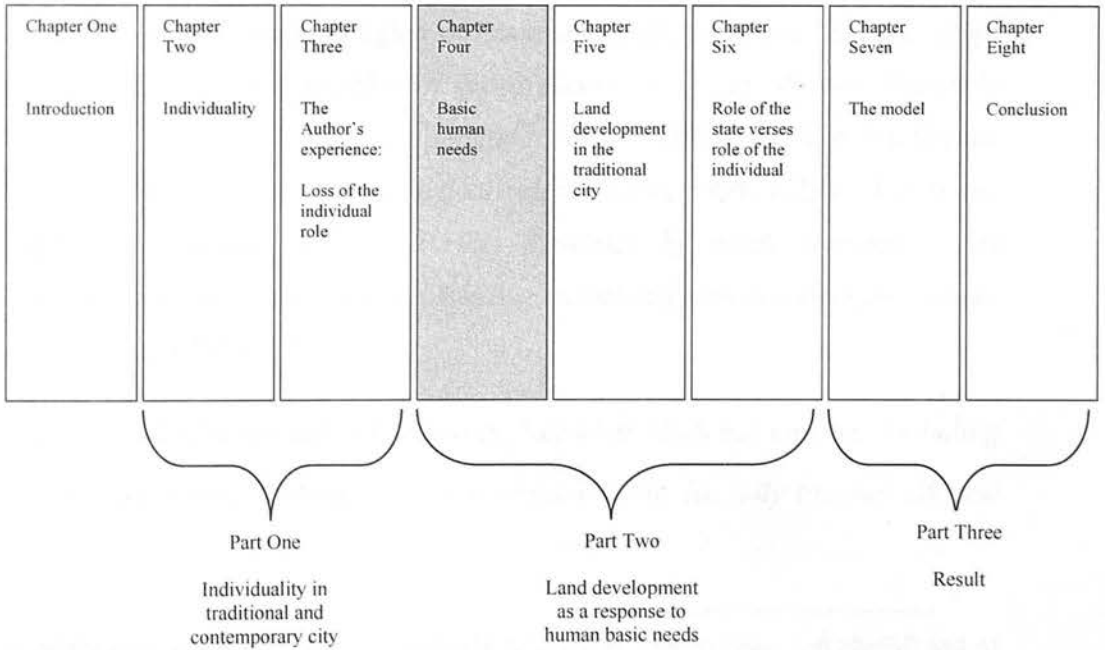
Of course, land development has always been a response to human needs. Individuals are responsible to meet the needs of themselves and their families. On the other hand, authorities are responsible to furnish basic needs to the society, according to availability and capability. There was a balanced relationship between the role of the state and the role of the individual which lead to a sustainable built environment. The next chapter will introduce the concept of basic human needs in *Sharia*. Chapter Five will review traditions related to land development in the traditional city. Both Chapters Four and Five will pave the way to a discussion of the role of the state verses the role the individual, which is covered in Chapter Six.

PART TWO

Land Development as a Response to Basic Human Needs

Chapter Four

Basic Human Needs



Chapter Four

4 Basic Human Needs

4.1 Introduction:

The term, "basic needs" was not used in the traditional terminology of *Sharia*, but the meaning was expressed within the concept of *Magasid Ash Sharia* (the intentions of *Sharia* or *Sharia Objectives*). As will be noticed later, the overall intention of *Sharia* is to preserve and protect basic human needs. *Magasid Ash Sharia* is one of three sciences of *Sharia*, along with *Fiqh* (Islamic jurisprudence) and *Osol Al Fiqh* (source methodology in Islamic jurisprudence). It discusses the objectives of *Sharia*, the basic human needs, the levels of interest and related subjects. Some contemporary scholars refer to this subject as the *Nathariyat* (The Theory of)⁵⁶ *Magasid Ash Sharia*. The following paragraphs will introduce *Sharia*, its origins and related sciences, and will give a brief of the history of legislation in *Sharia* in order to introduce the theory of basic needs.

4.2 *Sharia*⁵⁷:

The Arabic word, "*Sharia*" has several meanings: religion, way, method and system. It may be used to reflect the whole religion of Islam or the Islamic Law. In *Osol Alfiqh* (the science concerning the principles of jurisprudence or origin of law), *Sharia* is defined as, "*Allah's Word related to the obligator's deeds*" (Alim, 1994, p.20). On the level of *Fiqh*, it is defined as, "*the practical rules*" (Alim, 1994, p.21). The book, *Kashaf Alestilahat*⁵⁸ defines it as, "*all rules legislated by Allah, directed to his worshippers and revealed by the Prophets, whether associated with practical procedures or beliefs*" (Al Yobi, 1998, p.30).

Ibn Taimeya (1263-1328) has defined *Sharia* as, "*all what Allah has enacted, including both the beliefs and deeds,*" adding, "*Sharia is obeying Allah, his holy Prophet ﷺ, and*

⁵⁶ For more details refer to Raysoni, Ahamad "*Nathariat Al Magasid End Al Imam Ash Shatibi*" and Al Hasani, Ismael "*Nathariat Al Magasid End Al Imam Attahir bin Ashor*".

⁵⁷ Literally means a waterhole where animals gather daily to drink, but also refers to "the straight path", as in the Qur'anic verse: "Then we put you on a straight path (*Sharia*) in your affairs, so follow it and do not follow the desires of those who have no knowledge". 45:18

⁵⁸ *Kashaf Istilahat Alfonso*, by Mohammad bin Ali At Tahanawi. (died: 1780)

responsible chiefs." Also, he stated, "The soul of Sharia is reflected in following the Messengers and showing adherence" (Ibn Tymiya [1263-1328], 1988, p. 306).

Ash Shatibi stated, "Legislation is made for the benefit of people in *ajil*⁵⁹ and *aqil* as well." These two words can be interpreted as "the present life" and "the Hereafter", or can also mean "short term" and "long term". Ibn Ashor argued very strongly that *Sharia* was legislated to regulate peoples' actions in this life (in the present and future). He argued that the word *aqil* in Ash Shatibi's expression did not mean the Hereafter, because legislation does not determine peoples' status in the Hereafter (Ibn Ashor, 1999, p. 130).

According to Al-Hasani, the overall meaning of *Sharia* refers to the Law of Islam that deals with civil interactions (Al Hasani, 1995, p. 281). In this research, this latest definition will be used, except where noted.

4.2.1 The Origins of *Sharia*:

According to Islam, none save Allah (God) has the right to legislate the rules for mankind. This point is emphasized by an incident in the life of the Prophet Mohammad. A Christian, Oday Bin Hatim, met with the Prophet ﷺ while the Prophet ﷺ was reading the Qur'anic verse, {They take their scholars and monks as lords besides Allah.}⁶⁰ Oday said, "Oh Messenger of God, we have never worshipped them." The Prophet ﷺ replied, "Haven't they legitimized the unlawful and forbid the lawful deeds, and you followed them accordingly?" Oday answered, "Yes." The Prophet ﷺ replied, "That is how you worshiped them."⁶¹

According to Islam, a man cannot dictate what is lawful and what is not. When prophets state what is forbidden and what is not, they only convey God's message. The role of mankind in *Sharia* is directed towards interpretation, classification, and implementation. This gives man authority to be resourceful in the application of *Sharia* but to never overstep his limits as a submissive creature to his Creator.

⁵⁹ In Arabic "الآجل و العاجل"

⁶⁰ Sura 9, verse 31

⁶¹ Termathi no. 3094, www.dorar.net

4.2.2 Sources of *Sharia*:

The two main sources of *Sharia* are the Qur'an and *Sunnah*. According to Islam, Qur'an is the word of God, which was gradually revealed to the Prophet over a period of 23 years. The Prophet ﷺ then dictated the revelations to some of his companions who were able to read and write. They used to write on leather, shoulder bones, palm tree wood and *Likhaf* (white, thin and light stones) (Shaban, 1988, p. 50). During the period of the third righteous caliph, Othman (644-658), four copies of the Qur'an were written and sent to different parts of the Islamic World. The Qur'an consists of 114 chapters called *surahs*. *Sunnah*⁶² is the way of life of the Prophet ﷺ, consisting of his sayings, actions and approvals.

Another source of *Sharia* is *Ijma'*. This is the unanimous agreement of the Sahabah (companions of the Prophet ﷺ) or scholars of a certain period on a rule of Islamic law. This is legitimized by a saying of the Prophet ﷺ, "My *Ummah* (nation) cannot come together on perversity." There are two types of *Ijma'*. One is *Ijma' Sarih* (explicit *Ijma'*) where all scholars in a certain period agree clearly on a specific rule. The second is *Ijma' Sokoti* (silence *ijma'*) where one or more scholars conclude on a rule that is known by their contemporaries and none of them objects (Shaban, 1988, p. 114).

Although not a source, *Ijtihad*⁶³ is an important tool to deduct rules from *Sharia*. *Ijtihad* is defined as a process of reasoning in which one exhausts one's efforts to one's full capacity in order to acquire exact or probable knowledge to reach judgment in a given case (Masud, 2000, p. 277). *Sharia* encouraged Muslims to practice *Ijtihad*. The Prophet said, "Whoever practices *Ijtihad* and reaches an incorrect conclusion, he receives a reward; and if his conclusion is correct, he still receives double reward" (Sakhr CD, Encyclopedia of Islamic Juresprudence).

Ijtihad led to other secondary sources, which are *Qiyas*, *Istihsan*, *Al Maslaha Al Morsalah*, *Urf*, *Istishab*, *Shar' man Gablana* (previous prophets' legislations) and *Math-*

⁶² Linguistically *Sunnah* means custom, practice or tradition whether good or bad.

⁶³ Linguistically *Ijtihad* is to do one's best in approaching the goal. In *Fiqh* it is used in the same meaning. In *Osol Al Fiqh* it is defined as the jurist's best in approaching a rule where no direct evidence is available. *Ijtihad* is classified as absolute and limited depending on the ability of the jurist. An individual can also practice *Ijtihad* in his daily life, such as determining Quiblah (the direction of Makkah) when he is away from home by doing his best (through use of knowledge, instruments, etc.) (Al Mousoaa, 1993, v.1, p.316).

hab As Sahabi (opinion of a companion of the Prophet). These secondary sources are explained below.

Qiyas is juristic reasoning, which is defined as the annexation of a case that has no literal evidence to a case that has literal evidence, because the two cases are similar in *Illah*⁶⁴ (reason) (Khallaf, 1981, p.62). There are four pillars for *Qiyas*: 1) the original case that has determined a rule (called origin), 2) the analogous case that no text rule has been found for (called branch), 3) the rule of the origin and 4) the *illah* (reason) (Shaban, 1988, p. 154).

Istihasan is the deviation of a jurist from a direct *Qiyas* to an indirect *Qiyas*; or it is a deviation from a general rule to an exceptional rule because of evidence that necessitates such a deviation. For example, it is forbidden for someone to sell what he does not own or that which does not exist, yet jurists agree on accepting the *Istisna'* for manufacturing contracts. In such contracts, the buyer may pay the value of what he is asking to be manufactured for him before it exists. This is against the general rule of selling and buying only that which exists but is approved by scholars using *Istihasan*.

Al Maslaha Al Morsalah: means the benefits that suit *Sharia* rules and are not stipulated as accepted or forbidden.⁶⁵ This is an important source under which all new needs can be discussed to find the suitable rule for them.

Urf or *Adah* refers to custom or habit, defined as what people agreed upon, whether by statement or action or abandonment (Khallaf, 1981, p.89). Local traditions, which differ from place to place, are another source of *Urf*. Most urban development controls in the traditional city such as width of street, right of way and overlooking were created using this source.⁶⁶

Istishab is the principle of the presumption of the continuity of the legal validity of a rule or practice (Masud, 2000, P.278). If one bought a hunting dog then claimed that the dog was not capable to hunt, his claim would have been accepted until the seller proved the

⁶⁴ *Illah* is a description in the original case that causes the reason for the rule. Drunkenness is the reason (*illah*) for forbidden wine, so any other substances that cause the same effect will have the same rule.

⁶⁵ Concept of *Masalih* (plural of *Maslaha*) is discussed in detail in 4.3.

⁶⁶ For detail examples refer to *Al Ilan fi Ahkam Al Bonian* by Ibn Arrami (?-1334) and *Al Jidar* (The wall) by Eisa At Tatili (946-1004).

opposite, because the dog is presumably not trained to hunt until proven so. The original status is presumed until the new status is proven.

Shar' Man Gablana literally means the rules of those who came before us. That refers to rules from previous prophets mentioned in Qur'an or *Sunnah* that have not been superseded by new Islamic rules. Some jurists accept such rules as unconditional references for legislation; others argue that they can be considered only if approved by Qur'an and *Sunnah* (Khallaf, 1981, p.93-94).

Math-hab As Sahabi is when a companion of the Prophet has stated an opinion in a rule, some jurists, like Abo Hanifa, consider his opinion as a reference. Others consider it as an opinion only that is subject to methodical criticism through *Ijtihad* (Khallaf, 1981, p.94-96).

4.2.3 Classification of *Shaira* Sources:

There are two methods of classifying *Sharia* sources. The first is to categorize them as either textual or extraction sources. *Qur'an*, *Sunna* and *Ijma'* are textual sources; the rest are extraction. This classification treats the extraction sources as evidence while instruments for the extraction of rules form the textual sources. The second method is to classify sources as 1) agreed upon sources, under which lie *Qur'an*, *Sunnah*, *Ijma'* and *Quiyas*, and 2) disputable sources, under which lie the remaining ones discussed above (Shaban, 1988,p.33). This classification assumes that all sources are evidence and classifies them according to scholarly opinion.

4.2.4 The Human Role in *Sharia*:

According to Islam, Man cannot be a legislator, neither individually nor collectively. This concept of limiting the origin of legislation is an important part of the Muslim creed. Basic Islamic legislation is conveyed in the Qur'an and *Sunnah*, yet obviously, these sources cannot cover the details of all situations in all ages. They contain the fundamental objectives and enough detailed examples to enable scholars to form the general rules, principles and models that form the comprehensive Islamic Law, *Sharia*.

4.2.5 *Fiqh*:

According to Omar Al Ashgar, *Sharia* is perfect because it is created by God, but *Fiqh* is not. *Fiqh* is the human *Ijtihad* in understanding *Sharia* (Al Ashgar, 1991, p.18). *Fiqh* literally means, "the true understanding of what is intended." Technically, however, it refers to the knowledge of deducing Islamic rules from evidence found in the sources of Islamic law (Philips, 1996, p.1). *Fiqh* has passed through several stages including foundation, establishment, building, flowering, consolidation, stagnation and decline.

In the early days of Islam, *Fiqh* was practiced by direct implementation of the instructions of the Qur'an and of the Prophet ﷺ. Later, the addition of vast new territories brought Muslims into sudden contact with many different cultures, and this produced a host of new problems which were not specifically covered by the law of *Sharia*. Legal rulings became increasingly necessary, and the Righteous Caliphs gradually developed certain procedures for arriving at *Ijtihad* with a minimum of disagreement.

During the establishment stage, the scholars of *Fiqh* followed two main trends in making their rulings: that of *Ahl Al Hadith* (the people of *Hadith*) and *Ahl Ar Ra'I* (the people of opinion). With the dispersion of the scholars, there was a marked increase in their individual *Ijtihads*. The overall result was a number of *math-habs* (doctrines) or schools of thought.

During the flowering stage, several distinguished *Math-habs* were developed:

1. **Al Hanafi School:** Imam Abo Hanif Alnoman (702-767) lived in Kufah, one of the largest educational centers of that period. The school reached its pinnacle when it was announced as the official Mathahb of the Ottoman Empire; hence, its teachings spread over Iraq, Egypt, Syria, Turkey, India, Pakistan and Afghanistan (Naseer, 2001, v.1, p.10).

2. **Al Maliki School:** This school was started in Al Madinah Al Munawarah by Imam Malik bin Anas (717-801). His students spread its teachings throughout Iraq, particularly in Basrah, and Egypt. It then spread throughout the rest of North Africa (Ahmad Ali, 2000, p.62).

3. **Ash Shafi'ee School:** Imam Mohammad bin Idrees Ash Shafi'ee (767-820), a student of Malik, founded his school in Iraq, where he spent the early years of his life, then he moved to Egypt. The school's teachings spread throughout Iraq, Egypt, Yemen, Hijaz⁶⁷ and partially into Persia and Indonesia. They did not spread into North Africa or Andalusia (Abo Zahrah, 1987, v.2, p. 432-433).

4. **Al Hanbali School:** This school was founded in Iraq by Imam Ahmad bin Hanbal (778-855), a student of Shafi'ee. Its teachings then spread to Ash Sham.⁶⁸ Today it is the generally accepted school in Saudi Arabia, particularly Najd, and partially in Iraq and Ash Sham (At Toraigi, 1987, p.131).

5. **Ath Thahiri School:** This school was not named after a person. In fact, its leaders were named after it and were given the title, Ath Thahiri, which actually means "apparent". The school supports the concept of accepting the obvious meanings of *Qur'an* and *Sunnah*. It began in the East, but its teachings spread to Andalusia by the efforts of Ibn Hazm Ath Thahiri (994-1064) (Abo Zahrah, 1987, v.2, p.550).

6. **Az Zaidi School:** This school was named after Imam Zaid bin Ali Zain Alabideen bin Al Husain (698-740), who led a revolution against Hisham bin Abdulmalik and was killed during the battle. At present, the school is in Yemen.

7. **Al Ebadhi School:** Named after Abdullah bin Ebadh Al Maga-esi (643 – 718), this school is in Oman and in specific parts of Yemen, Libya, Tunisia and Algeria (Al Mousoa Al Moyassarrah fi Al Adian wa Al Mathahib Al Moasirah, 1989, p. 15-20).

8. **Al Ja'fari School:** Named after Imam Jafar Alsadiq (699-765), this school is in Iran, Iraq, Lebanon and parts of the Arabian Gulf and Yemen (Al Mousoa Al Moyassarrah fi Al Adian wa Al Mathahib Al Moasirah, 1989, p. 299-305).

This author will refer to the first four schools in this thesis.

⁶⁷ West part of Arabian Peninsula.

⁶⁸ The area that covers Syria, Jordan and Palestine.

4.2.6 *Osol Al Fiqh*⁶⁹:

Eventually, the development of *Fiqh* led to the creation of *Osol Al fiqh*.

In his book, *Al Mahsol fi Elm Al Osol* (The Harvest of the Knowledge of Source Methodology in Islamic Jurisprudence), Al Fakhr Ar Razi⁷⁰ (1149-1209) defined *Osol Al Fiqh* as, “The aggregate, considered per se, of legal proofs and evidence that, when studied properly, will lead either to certain knowledge of a Sharia ruling or to at least a reasonable assumption concerning the same; the manner by which such proofs are adduced, and the status of the adducer” (Al Alwani, 1990, p.1).

Al Razi argued that Ash Shaf’i’ee was the first to create a holistic system of *Sharia* sources, evidence, contradictions and probabilities (Shakir, 1939, p.13). In his book, *Ar Risalah*⁷¹, he argued that *Qur’anic* rules could be placed into five categories:

1. That which *Qur’an* expressed as a specific legal provision which admits of no interpretation other than its literal meaning. This category needs no other explanation than the *Qur’an* itself.
2. That which the *Qur’an* mentions in texts that may be interpreted in several ways; and for which the *Sunnah* provided an explanation as exactly which one was intended.
3. That which was clearly stated to be obligatory; and which the Prophet ﷺ explained in terms of how, why, upon whom, and when applicable and when not.
4. That which was explained by the Prophet ﷺ but not mentioned in the *Qur’an*. Allah commanded in the *Qur’an* that the Prophet ﷺ be obeyed and his rulings accepted. Therefore, what is said on the authority of the Prophet ﷺ, is said on the authority of Allah.

⁶⁹ The lexical meaning of *Osol* is foundation, or basis. *Asl* is plural of *Osol* or that upon which something is built. *Fiqh* is built upon and stems from the bases of *Osol* which constitute its source-evidence (Alwani, 1990, p. 4)

⁷⁰ Mohammad bin Omar bin Husain Al Bakri, known as Al Fakhr Ar Razi, was born in Iraq, from the Shafee doctrine. He wrote a great number of books in several subjects such as *Osol Al Fiqh*, *Tafsir* (interpretation of Qur’an), history, philosophy and the Arabic language. He also wrote some books in the Persian language.

⁷¹ *Ar Risalah* is considered the first book on *Osol Al Fiqh* (Shaker, 1939, p.13)

5. That which Allah requires His creation to seek through *Ijtihad*. This is *Qiyas*. According to al Imam Ash Shafi'ee, *Qiyas* is a method for reaching a legal decision on the basis of evidence (a precedent) in which a common reason, or an effective cause, is applicable (Al Alwani, 1990, p. 39).⁷²

The knowledge of *Osol Al Fiqh* is rightly considered to be the most important method of research ever devised by Muslims. *Osol Al Fiqh* not only benefited Islamic civilization, but contributed to the intellectual enrichment of world civilization as a whole. It will not be out of place to note here that the methods of analogical reasoning developed within the framework of Islamic jurisprudence constituted the methodological starting-point for the establishment and construction of empiricism, which in turn is considered to be the basis of contemporary civilization (Al Alwani, 1990, p. xi).

4.2.7 *Magasid Ash Sharia:*

Magasid Ash Sharia means **objectives** or **intents** of *Sharia*. It began to evolve in the beginning of the 11th century (fifth century in the Islamic calendar). Abdulmalik Aljowainy (1028-1085), known as *Imam Alharamin* (the Imam of the Two Holy Mosques), wrote that the purpose of the *Sharia* is to protect the people's basic interests which he categorized into five levels⁷³(Aljowainy [1028-1085], 1997, v.2, p.602). His student, Al Ghazali⁷⁴ (1058-1111), was the first to determine what was later to be known as the five necessities: the preservation of religion, life, reason, posterity and property (Al Yobi, 1998, p.51) (Al Ghazali [1058-1111], 1997, v.1, p.417).

In his book, Gawaed AlAhkam fi Masalih AlAnam, Al Ezz bin Abdulsalam (1181-1262) further developed this theory. He stated that, "The purpose of *Sharia* is to simplify people's life" (Al Yobi, 1998, p.57). He adopted the five necessities as suggested by

⁷² For more details refer to Ar Risalah p. 91-116.

⁷³ These categories are as follows: 1) absolute necessities, such as legislating *Ismah* (preservation) of life, 2) general needs that do not reach the level of necessity, such as legislation of renting, 3) what is not a necessary or a general need, but what may be termed a noble deed, such as cleanliness, 4) that which is not a necessary or a general need but is recommended by *Sharia*, 5) that which is not necessary, nor general nor included as a noble deed, which is a very rare case. The example given by Aljowainy is establishing good habits by continuous worship (Aljowainy, 1997, v.2, p.602-622).

⁷⁴ Abo Hamid, Mohammad bin Mohammad bin Mohammad Al Gazali. A well known scholar from the Shafee doctrine. He was born in Persia and moved to Baghdad when he was 33 to become one of its distinguished scholars. Sometime later he stopped teaching for several years due some psychological problems. Five years later he returned to teaching in his hometown of Tartos. He is the author of the well-known book, Ihyah Olom Ad Din as well as others in *Usol Al Fiqh* and *Fiqh* (Othman A., 1985, p. 376-378).

Aljowaini and then Al Gahzali and stressed that *Sharia* is built on the concept of gaining the most benefit and avoiding the most detriment.

The theory reached its mature stage in the hands of Ash Shatibi (1320-1388) in his book *Almowafagt*.⁷⁵ The book's publisher, Musa Jarullah, wrote, "*Almowafagt expounds the legislatives of the Qur'an and Sunnah more extensively and more clearly than any other book. It elaborates with minute details the basic human needs and secondary necessities of life. It explains the correspondence between human needs and legal texts in a very comprehensive manner. This book provides a liberal perspective on each issue for those who want to study them rationally with complete freedom*" (Masud, M, 2000, p.112). It appears that Jarallah is the first who used the expression "basic human needs" to describe the subject of this theory.

The three sciences of *Fiqh*, *Osol AlFiqh* and *Magasid Ash Sharia* represent a legislation concept of three levels. They are illustrated below in Table 4.1.

Level of Science	Name of Science	Subject Discussed by Science
Philosophy	<i>Magasid AshShria</i>	Basic needs, levels of interest, Sharia objectives
Basis and general rules	<i>Usol Alfiqh</i>	Sources of Sharia, commands and prohibitions, general rules and main principles, comprehensive and particular terms, dispute etc.
Detailed and specific rules	<i>Al Fiqh</i>	Detail and specific rules: wajib (compulsory), Mustahab (recommended), Mubah (allowed), Makrooh (disliked) and Moharram (forbidden)

Table 4-1 Sciences related to *Sharia*

Source: The author

4.3 Concept of *Masalih* and *Mafasid*:

The terms *Masalih* and *Mafasid* could be translated, respectively, as interests and disinterests. It is very clear in Islamic references that the overall goal of *Sharia* is to fulfil the interests of people and prevent the costs or losses, in other words, to gain *Masalih* and exclude *Mafasid*. According to Ash Shatibi, the primary objective of the Lawgiver is the *maslaha* (singular of *Masalih*) of people.

⁷⁵ Detailed definition of this book is added as annex.

Maslaha is defined by Ash Shatibi as that which concerns the subsistence of human life, the completion of man's livelihood, and the acquisition of what his emotional and intellectual qualities require of him, in an absolute sense (Masud, 2000, p.151).

He further explains, "*Legislation is established to fulfil the interests of the worshippers in the short term and the long term,*" (Ash Shatibi [1320-1388], 1997,v.2, p.9) and added, "*It is clear that this fact was known after a thorough induction for the origins (sources) of Sharia to the point that nobody can argue about it, not Arrazi⁷⁶ or others.*"

This comparison further explains the goal of Sharia: "In contemporary secular planning, costs and disinterests are largely measured and weighed in the language of financial profit and loss. Planning, according to the objectives of Islamic law; however, must maximize total interests, or *Masalih*, and minimize total costs, or *Mafasid*".⁷⁷

All of the rules of *Sharia* are made to gain interests by either preventing *Mafasid* (disinterests) or gaining *Masalih* (interests). "*Most of Masalih and Mafasid of Addonia (this life) are known by logic. Any sensible adult would agree, even before the existence of Sharia, that gaining pure interests for the human being and preventing the human being from pure costs is considered a wise act and so is giving priority for gaining the better interests or preventing the worst costs*" (Ibn Abdussalam, 1990, v.1, p.6).

Ibn Tymiah noted, "The believer should know that whatever Allah commands shall fulfil a pure or overwhelming interest, and whatever he prevented is either a pure or overwhelming disinterest. Allah did not command the worshippers because he was in need of them or prevent them from doing something to complicate their life. In fact, He commands them to do what is beneficial for them and prevents them from what is harmful for them" (Al Yobi, 1998, p. 481).

4.3.1 Categories of *Masalih*:

Masalih are categorized into the following:

1. *Masalih Mo'tabarah* (accepted *Masalih*): those interests that are endorsed by the text of *Sharia*, such as gaining money by trade.

⁷⁶ Al Fakhr Ar Razi argued that *Sharia* rules were not put for objectives or reasons. He believed the same for Allah's acts.

⁷⁷ Othman Llwelllyn, 1994, Journal of research in Islamic economics

2. *Masalih Molghah* (rejected *Masalih*): those interests that are rejected by *Sharia* and not supported by text, such as gaining money by robbery. There is some gain for the thief, but these gains are rejected interests.

3. *AlMasalih Almorsalah* (undetermined *Masalih*): those interests that are neither proclaimed to be *Masalih mo'tabarah* nor they are proclaimed to be *Masalih molghah*, such as writing the text of Qur'an in a book, building bridges over rivers and, in contemporary life, creating a traffic regulation for the interests of the people.

4.3.2 Levels of *Masalih*:

Masalih are not equal in value and; hence, they were divided into three grades: *daroriyat* (necessities), *hajiyat* (needs) and *tahsinat* (luxuries) (Ash Shatibi [1320-1388], 1997, v. 2, p. 17). For easier reference, the author will use the following phrases⁷⁸:

Ad Daroriyat: The primary interest level

Al Hajiyat: The secondary interest level

At Tahsiniyat: The tertiary interest level

The primary interests, *Ad Daroriyat*, are those interests that are essential for the preservation of life. If neglected, corruption, confusion and system disorder will prevail. The secondary interests, *Al Hajiyat*, are the interests required by the individuals for a flexible and easy life. If these interests are not fulfilled, there will not be disorder or general corruption, but individuals will face hardship. The tertiary interests, *At Tahsiniyat*, refer to enhanced customs or highest ethics. If they are not fulfilled, there will not be disorder or hardship; nevertheless, life will deviate from the normal intuition and sublime customs.

4.3.3 *At Takmiliyat* (Supplementary Interests):

Each level of interest also contains what could be called *At Takmiliyat* (supplementary interests). These support the three levels of *Masalih*; however, the original *Maslaha* should not lose its priority in order to accommodate the supplementary interest. This

⁷⁸ *Daroriyat* is plural of *Darory* which means necessary. *Hajiyat* is plural of *Haji* drawn from *Hajah* which means need. *Tahsiniyat* is plural of *Tahsini* drawn from *Thasin* which means betterment.

point is illustrated by the following example: The eating of carrion is allowed in *Sharia* to save life, the reason being that the preservation of life is of utmost importance, and the preservation of *Muru'a* (manliness, honour) is only supplementary (*Takmily*) to the protection of life. Impure and polluted things are prohibited in order to preserve honour and to encourage morality, but if the preservation of the supplementary (in this case to preserve honour by avoiding eating unclean things), leads to the negation of the original interest (the preservation of life), the consideration of the supplementary interest is forsaken in order to preserve life (Masud, 2000, p.153).

The tertiary interests can be considered as supplementary to the secondary interests, while the secondary interests can be considered as supplementary to the primary interests. That leads to the fact that the primary levels of interest are the origin of interests (Ash Shatibi [1320-1388], 1997, v. 2, p. 25).

4.3.4 Interference Between *Masalih* and *Mafasid* :

Al Ezz bin Abdulsalam argues that pure *Masalih* or pure *Mafasid* rarely exist⁷⁹ (Ibn Abdussalam [1181-1262], 1990, v.1, p.8). This was explained later by Ash Shatiby. "*Masalih in this life cannot be absolute, because in many cases they are mixed with lots of effort and cost that come before or after their accomplishment. Eating, drinking, accommodation and husbandry can only be gained for a certain expense, whether high or low. Mafasid in this life are the same. They are always mixed with some interests such as enjoyment or material gain that occurs before or after the collection of such Mafasid*" (Ash Shatibi[1320-1388] , 1997, v.2, p.44).

This world is created from a combination of opposites, and it is impossible to abstract only one side. It is for this reason that the *Masalih* and *Mafasid* in this world are known only on the basis of the pro-dominant side; if the side of *Maslaha* dominates, the matters at issue are considered, customarily, a *Maslaha*, otherwise a *Mafsada* (Masud, 2000, p. 155).

⁷⁹ Ash Shatibi supported this concept when stated: " *Examining Masalih as they exist in this world leads to the fact that they are not found as absolutely pure Masalih. Rather, they are mixed with discomfort and hardship, however big or small, which may precede, accompany or follow the Masalih. Similar are the Mafasid which also are not pure but are found to be mixed with a certain amount of comfort and enjoyment,*" (Ash Shatibi, 1997, v.2, p.44).

4.3.5 Contradiction of *Masalih*:

Contradiction may occur among interests, whether between one interest and a better interest, an interest and a disinterest, or between two disinterests when it is a must to choose one of them. The interests and disinterests that are related to this life would be classified according to the dominant factor; thus, if the beneficial characteristics were dominant, that would be classified as *Masalih* by *Sharia*. On the other hand, should the other aspect be the dominant factor it will be classified as *Mafasid*. Ash Shatibi gave several examples for the above case such as amputating a patient's limb to save his life or removing a bad tooth (Ash Shatibi [1320-1388] , 1997, v.2, p.51). In both cases, pain is *Mafsadah* (disinterest), but because of the dominating *Maslaha* (interest) expected, the overall action is considered as *Maslaha*.

4.3.6 Relationship among levels of *Masalih*:

In general, the secondary level is considered a protection to the primary level, while the tertiary level is a protection to the secondary level. The achievement of the individual at the tertiary level in one of the five necessities indicates, by default, his prior achievement at the previous two levels; however, that would not necessarily indicate that he has attained the same level in the remaining four necessities. One might achieve the tertiary level in preserving his religion and reason; however, he may remain at the primary level in preserving his property and life.

Such levels of interest could be contemplated as concentrated circles where the core circle represents *Ad Daroriat*, the next circle represents *Al Hajiyyat* and the outer circle represents *At Tahsiniyat*.

The following figure represents the author's interpretation to the relationship between the three levels of interests.

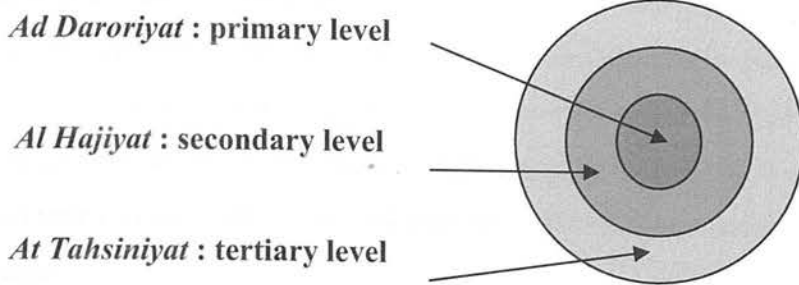


Figure 4-2 Levels of Masalih

Source: Interpretation of Ash Shatibi's classification by the author

4.3.7 Masalih Rules:

Al-Shatibi stipulated five rules that clearly control the relationship between the three grades of *Masalih*:

- The primary *Masalih* (*Ad Droriat*) are the origin of interests.
- The disorder of a primary *Masalih* would lead to absolute disorder of both the secondary and tertiary levels; however,
- The absolute disorder of both the secondary and the tertiary *Masalih* shall not necessarily lead to an absolute disorder of the primary interests (*Daroriayt*).
- The absolute disorder of secondary and tertiary (*Hajyat* and *Tahsiniat*) *Masalih* may lead to some disorder in the primary *Masalih* (*Daroriyat*).
- Both the secondary and tertiary levels of *Masalih* shall be preserved for the sake of the primary interests (Ash Shatibi [1320-1388], 1997, v.2, p.44).

Ash Shatibi considered that religion's interests are based on the preservation of the five necessities. "Existence in this world also depends on these necessities. If *Din* (religion) is abandoned, there shall be no reward thereafter; if *Nafs* (life) is abandoned, no one is left to follow religion; if *Nasl* (posterity) is abandoned, mankind will cease to exist; and if *Mal* (property; what can be owned such as food, drink, clothes. etc) is abandoned, life will not be possible" (Ash Shatibi[1320-1388] , 1997, v.2, p.44).

The *Daroriat* (necessities) are the origin of *Masalih*, and the other two grades of *Masalih*, *Hajiyat* and *Tahsiniyat*, in relation to *Daroriat*, are like an object and its

description or a root and a branch (Ash Shatibi [1320-1388], 1997, p. 32). If the object vanishes, obviously its description also vanishes, so do the *Hajiyat* and *Tahsiniyat* if *Daroriyat* are disrupted. If selling does not exist then it is meaningless to argue about conditions of selling. The same applies to property. If ownership is not legislated, then all related transactions, such as determining the value and documenting the sale, need not be discussed.

On the other hand, accumulated *Hajiyat* and *Tahsiniyat* rise to be on the level of *Daroriyat*, because completeness of *Daroriyat*, as necessities, can be appreciated only if they provide people with affluence without constrictions or tightness (Ash Shatibi [1320-1388], 1997, v.2, p.41). The Prophet ﷺ said, "I was sent only to accomplish noble manners," (Sakhr CD, Encyclopedia of Islamic Juresprudence)⁸⁰ which implies that if supplementary items were totally neglected, the primary level of needs would not be properly fulfilled. If supplementary items were partially defected to the point that they do not cause hardship, then this partial defect does not prevent enjoying the *Daraory* level (Ash Shatibi [1320-1388] , 1997, v.2, p.43). What can be understood from Ash Sahtibi is that *Sharia* aims to fulfil all levels of need but always gives priority to the primary level. At the same time, supplementary interests should not lead to defects of primary interests.

4.3.8 Summary of *Masalih* and *Mafasid*:

As a conclusion the subject can be summarized as follows:

- *Sharia* is a comprehensive statutory system that has its own overall goals and objectives.
- The main goal of *Sharia* is to gain *Masalih* (interests) and prevent *Mafasid* (disinterests) in the short and long term. These are considered according to *Sharia*, not the individual wishes of people.
- It is very rare to find pure *Masalih* or pure *Mafasid*.
- *Masalih* are categorized in three grades.
- In the case of contradiction, the higher *Masalih* are to be gained at the expense of the lower, and the lower *Mafasid* are to be accepted in order to avoid the higher.

⁸⁰ Al Bukhari, Al Adab Al Mofrad, no. 273,

4.4 *Sharia* Objectives:

According to AshShatibi, the proper method of Islamic legal reasoning is not to limit oneself to search for causes in a particular doctrine or case but to review *Sharia* as a whole and discover the **intent** of the Lawgiver.

From a thorough investigation of partial and comprehensive rules of *Sharia*, the scholars reached what was called *Magasid AshSharia*, its overall intentions or objectives. This process was called induction. In general, the objectives of *Sharia* could be defined as the purports and rules observed by the legislator in all legislation cases (Bin Ashor, 1973, p.200).

The most essential of the observable attributes would be the magnanimity attribute. It is also very clear that *Sharia* respects human nature and considers man's basic needs. This aspect is reflected in the observance of a person's individual situation, relieving him from being overburdened with tasks. The adult treatment differs from the premature, the normal man differs from the ill, man differs from woman (in their natural characteristics, not obligations and rights), and a compelled human (in certain situations) is not like somebody in normal life. Hence, a series of doctrinal rules have emerged, emphasizing the magnanimity principle, the necessity to respond to the human instinct and characteristics. A famous rule that reflects this concept is, "Necessities unveil the forbidden"⁸¹, and in the Qur'an, {Allah does not charge a soul except with that within its capacity.}⁸²

Justice, flexibility, mercy, achieving people's interests, protecting the same from harm would be among the most important characteristics of *Sharia*. Any article deviating from justice to oppression, mercy to its counterpart, *Masalih to Mafasid* (interests to disinterests), wisdom to vanity wouldn't be part of *Sharia*, even if it has been interpreted as so (www.Islamweb.net).⁸³

4.4.1 Principle and Subsidiary Objectives:

Ash Shatibi classified *Sharia* objectives into what he called principle objectives and subsidiary objectives. The principle objectives are those objectives that have no

⁸¹ Translation of the principle: "*Ad darorat tobih al Mah-dhorat*"

⁸² Surah Al Baqarah, verse.286

⁸³ Ibn Algaim (1292-1350), *Ialam Almowageen* v. 3, p. 3

immediate benefit to the individual such as bodily and financial rituals like prayer, *Zakah* (poor due), fasting and *Hajj* (pilgrimage). These objectives are referred to as *Fardh Ain*.⁸⁴ They could also include public responsibilities such as government employment, judicial service, teaching, *Jihad* and similar legislation for the public interest, which if non-existent or neglected could result in disorder. These missions are referred to as *Fardh Kifayah*.⁸⁵ They should not be sought only for personal interest (the honor of leadership and privilege of authority).⁸⁶

Subsidiary objectives are those objectives that carry direct benefit to the individual. They are objectives of *Sharia* and natural needs of the individual as well. They are all the activities undertaken by the individual to fulfil his basic needs such as finding food and securing shelter and clothing.

Ash Shatibi argues that “*the wisdom of God made the accomplishment of this life possible and continuous through self motivations of the human being that drive him to satisfy his and others' needs. God created for man the desire of food and drink when he is hungry or thirsty to stimulate his abilities to fulfill this need and created the sexual desire to motivate him towards continuing his offspring, and created the harmfulness of cold and hot weather to motivate him towards obtaining clothes and shelter*” (Ash Shatibi[1320-1388] , 1997, v. 2, p 303).

4.4.1.1 Responsibility of principle and subsidiary objectives:

Ibn Ashor simplifies Ash Shatibi's classification by distinguishing two types of objectives or interests: 1) what is apparently desirable for people and therefore naturally motivates them to achieve it, 2) what is not apparently desirable for people. The first type includes eating food, wearing clothes and relationships between men and women.

⁸⁴ *Fardh Ain* is an individual duty defined as an obligation on the individual which can be performed only by him.

⁸⁵ *Fardh Kifayah* is collective duty defined as an obligation on the whole nation (or group of people); if carried out by some it is waved for the rest.

⁸⁶ The Prophet said: "Do not ask for a position (of leadership), because if you ask for it (for self desire) you will be left on your own, but if you are entrusted with it, God will support you."

Sharia' overall objective

To preserve human basic needs represented in the five fundamentals according to three levels of interests.

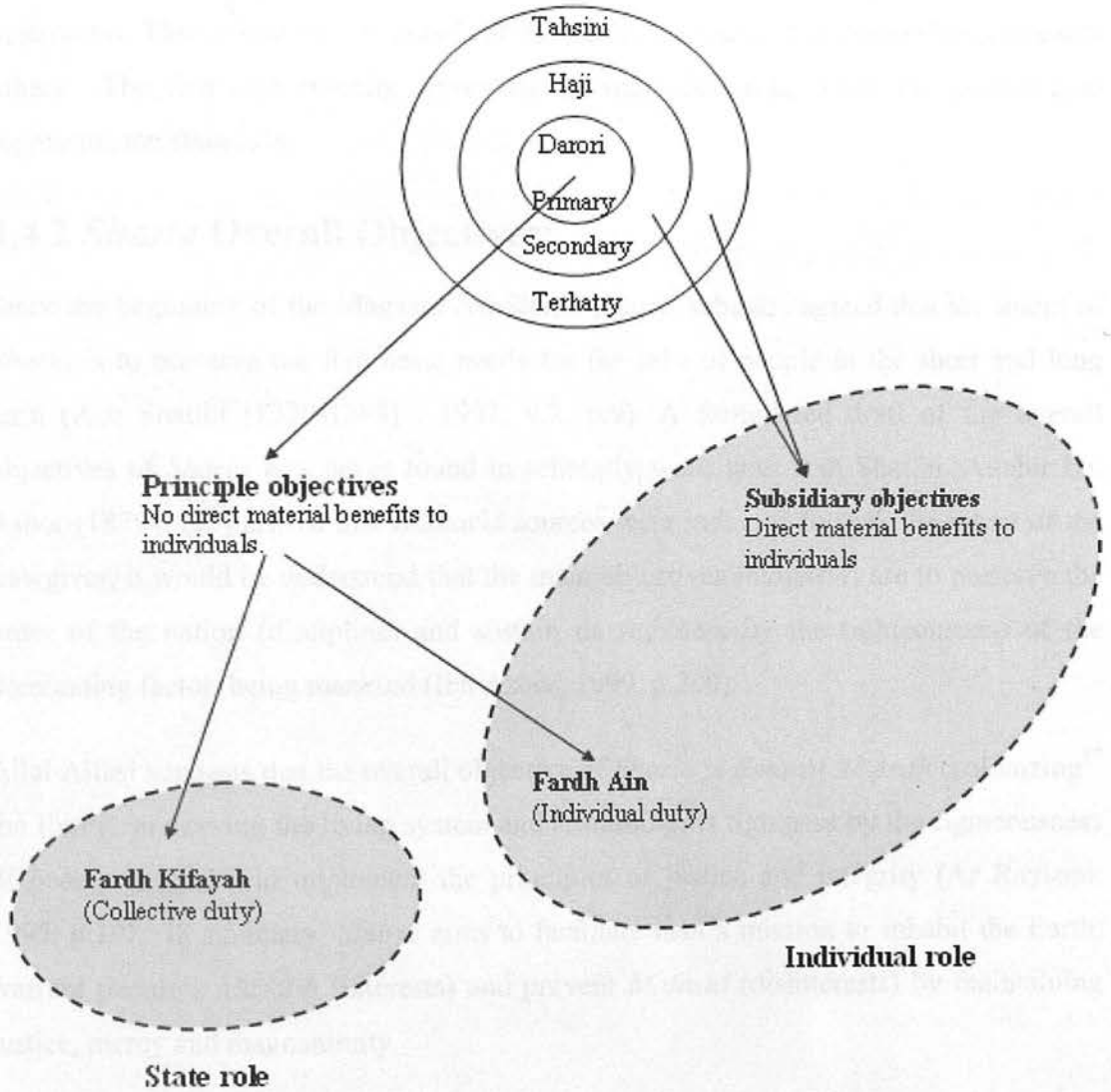


Figure 4-1 Principles and subsidiaries objectives. *Fardh Ain* and Subsidiary objectives represent the individual role; *Fardh Kifayah* represents the state role.

Source: The author, based on scholars statements

The second type includes public works like building roads and public security (Ibn Ashor, 1999, p. 213) or one's efforts to fulfil his family's needs. These should not be accomplished because of personal desires of the individual. If there is personal gain while executing public missions it is considered illegal.

The first type is not usually urged by *Sharia*, because human instinct is enough motivation. The second type is urged for the public interest and responsibilities towards others. The first type actually represents the individual role, while the second type represents the state role.

4.4.2 *Sharia* Overall Objectives:

Since the beginning of the Magasid AshSharia theory, scholars agreed that the intent of *Sharia* is to preserve the five basic needs for the sake of people in the short and long term (Ash Shatibi [1320-1388] , 1997, v.2, p.9). A formulated draft of the overall objectives of *Sharia* was never found in scholarly work until Ash Shatibi. Attahir bin Ashor (1879-1973) argues that if *Sharia* sources were inducted to seek the intent of the Lawgiver, it would be understood that the main objectives (*magasid*) are to preserve the order of the nation (discipline) and sustain its rightness by the righteousness of the dominating factor, being mankind (Ibn Ashor, 1999, p.200).

Allal Alfasi suggests that the overall objective of *Sharia* is *Emarat Al Ardh* (colonizing⁸⁷ the Earth), preserving the living system and sustaining its rightness by the righteousness of people who should implement the principles of justice and integrity (Ar Raysoni, 1995, p.19). In summary, *Sharia* aims to facilitate man's mission to inhabit the Earth, warrant people's *Masalih* (interests) and prevent *Mafasid* (disinterests) by maintaining justice, mercy and magnanimity.

4.4.3 Specific Objectives:

In addition to such general objectives, there are specific objectives for *Sharia* in its detailed aspects such as rituals, transactions and punishments. Besides the objective of worship, scholars noted other objectives of rituals. For example, *Zakah* helps the poor. *Sawm* (fasting) allows one to understand the feeling of the hungry person. In the area of

⁸⁷ *Emarat Al Ardh* means colonizing, settling, building, planting and all kinds of investing the resources of the Earth.

transactions, they discuss the objectives of selling, renting, lending and so on. Such a discussion extracts the objectives behind the detailed rules of transactions.

According to Ibn Ashor, the aim of punishment in *Sharia* is to discipline the criminal, satisfy the victim and prevent others from repeating such crimes (Al Yobi, 1998, p. 413).

4.4.4 Partial Objectives:

Sometimes a third category, the partial objectives, is considered. Under this category scholars discuss the objectives or the intents of a specific rule, such as *Sharia* objectives for fasting or marriage (Al Yobi, 1998, p.415). *Shaira* does not intend to starve people by fasting but to polish their manners. It does not intend only to satisfy their biological needs through marriage, but also views marriage as the avenue to create a new family.

4.5 The Five Necessities or Basic Human Needs:

Using the concept of induction, scholars have found that *Sharia* objectives are based on basic human needs or the essential five necessities, as described by traditional scholars. These are *Din*, *Nafs*, *Agl*, *Nasl* and *Mal* (religion, life, intellect, posterity and property) (Al Gazali,1997, p.417). Ash Shatibi confirmed this understanding and argued that these five necessities are respected in every law (Ash Shatibi [1320-1388] , 1997, v. 2, p. 20).

4.5.1 Preservation of the Basic Needs:

The five basic needs are preserved in two ways: first by supporting their existence and secondly, by protecting them from disorder and expected defect (Ash Shatibi [1320-1388], 1997, v. 2, p. 18). Ibn Ashor argues that this protection or preservation means protecting the basic needs for each individual and for the whole nation a fortiori (Ibn Ashor, 1999, p. 220). *Sharia* preserves the basic needs through legislation. Implementation of such legislation may be the responsibility of an individual, the state, a group of individuals or the whole nation.

4.5.1.1 Preservation of *Din*:

In Arabic, the word *Din* expresses a relationship between two parties; one of them glorifies and obeys the other. If used to describe the first party, it means obedience and compliance; if used to describe the second party, it means commandment and authority.

The English word *religion*, when used to describe the relationship between God and man, represents only one of the meanings that can be covered by the word *Din*. *Din*, as one of the basic needs, is man's belief and practices related to that belief.

The preservation of *Din* is accomplished in three ways: Islam, Eiman and Ihsan (Ash Shatibi [1320-1388], 1997, v.4, p. 347). These terms here express the levels of *Din*. Islam is to worship Allah alone and none else, to perform *Salah* (5 prayers every day), to pay *Zakat* (almsgiving), to observe *Sawm* (fasting) and to perform *Hajj* (pilgrimage) if affordable.

Eiman (faith) is to believe in Allah, His angels, His books, His messengers and the Resurrection. *Ihsan* is to worship Allah as if you see Him, and if you cannot achieve this state of devotion then you must know that He sees you (Al Bukhari, translated by Khan, 1994, p.76).

Islam, as the first level of *Din*, represents the apparent practice that expresses someone's affiliation to Islam. Eiman deals with belief and is a higher level of *Din*. Qur'an expresses this fact clearly in differentiating between Islam and Eiman: {The Bedouins say, "We have believed [fulfilled Eiman]." Say, "You have not [yet] believed; but say [instead], 'We have submitted [embraced Islam], for faith [Eiman] has not yet entered your hearts"}.⁸⁸

As a principle objective, *Sharia* preserves *Din* and supports its existence by legislating the three levels of interest and protecting it from being misinterpreted. This is valid for the nation as a whole and for every individual as well (Bin Ashor, 1999, p.220). Ash Shatibi mentioned calling people to Islam and defending and protecting *Din* physically and morally as subsidiary objectives to its preservation.

4.5.1.2 Preservation of *Nafs*:

Nafs means self. It expresses life. *Nafs* is preserved by legislating *Tanasul* (proliferation); preserving the continuity of mankind through eating and drinking, clothing and shelter; and prohibiting killing others and legislating punishment for the taking of life (Ash Shatibi [1320-1388], 1997, v. 4, p. 347).

⁸⁸ Surah Al Hujurat, verse 14

The preservation of *Nafs* includes keeping it away from harm. This is applicable for the whole nation and as well as each individual. An example would be to avoid common diseases to the best of one's ability. According to Ibn Ashor, responsibility is shared between the state and individuals in preserving all of the five basic needs (Al Hosni, 1995, p.297).

Before the existence of an embryo, *Sharia* determines the responsibility of his father and mother by legislating marriage and prohibiting adultery. Children's expenses shall be the responsibility of their father until they are of legal age and capable of work. If the father dies and leaves no money, the inheritors will take responsibility; if the inheritors are not capable, *Bait Al Mal* (treasury) is then responsible.

Nafs is preserved on the three level of *Masalih*. At the level of *Tahsiniyat* (tertiary) man enjoys all kinds of food and drink, except what is prohibited, as such items are available. At the secondary level, *Hajiyat*, he will be facing some difficulty and can be relieved of certain obligations by legal *Rokhsah*⁸⁹. For example, if using water in ablution causes illness (by being too cold or for any other reason), one may follow another way of ablution. One can break the fast of Ramdan (month of fasting) if he faces *Mashaqah* (hardship).

At the *Daroriyat*,⁹⁰ (primary level), *Sharia* legislates the necessity of taking the minimum amount of food and drink to keep one alive. When reaching the status of *Darorah*⁹¹ (necessity), a Muslim is urged to save his life even if he must do what is normally forbidden.

4.5.1.3 Preservation of *Mal*:

Mal stands for any kind of property whether money, land, animals food, etc. Qur'an describes *Mal* and sons as the adornment of life: {Wealth and children are adornment of the worldly life}⁹²

Legislation of ownership, in particular private ownership, is an important step in preserving *Mal*. *Sharia* encourages Muslims to depend on themselves in fulfilling their

⁸⁹ *Rokhsah* : is allowance, exemption, "a lenient view of law based on a legal excuse for hardship".

⁹⁰ This is the level where life may be in danger.

⁹¹ *Darorah* is defined as reaching the status that if not eating what is forbidden one will pass away be seriously harmed (Al Yobi, 1998, p. 230)

⁹² Surah Al Kahf, verse 46.

needs. The Prophet ﷺ said, "No one has ever eaten food better than what is earned from his hard work." He once kissed someone's hand that was swollen because of hard work and said, "That is a hand God and His Messenger ﷺ love" (Alim, 1994, p.493).

Preservation of *Mal* includes preserving the nation's wealth from being wasted and protecting an individual's belongings from damage. Properties are preserved by permitting ownership in *Sharia* and by all details of legislation that control ownership, transfer of property and methods of investment (Ash Shatibi [1320-1388] , 1997, v.4, p. 348).

To protect *Mal*, *Sharia* legislates punishment for robbery. It also encourages Muslims to protect their property. A man asked the Prophet ﷺ, "What if someone wants to take my property?" The Prophet ﷺ said, "Don't give it to him." The man said, "What if he fought me?" The Prophet ﷺ answered, "Then fight him." The man then asked, "What if he kills me?" The Prophet ﷺ replied, "Then you are a martyr." The man asked, "What if I kill him?" The Prophet ﷺ said, "Then he is in hellfire." (Sakhr CD, Encyclopedia of Islamic Juresprudence)⁹³

4.5.1.4 Preservation of *Agl*:

According to Al Ghazali (1058 -1111) *Agl* is the tool of apprehension, the trust holder, venue of obligation and the most honourable description of man (Alim, 1994, p. 350). The preservation of *Agl* can be achieved by protecting people's minds from being exposed to what may cause any shortcoming to them. Prohibition of alcohol and drugs is part of this preservation. All means used to protect the *Nafs* are also considered as protection of *Agl*.

Qur'an encourages people to contemplate the world around them and reason logically in order to determine the truth. {We will show them our signs in the horizons and within themselves until it becomes clear to them that it is the truth}⁹⁴. {Indeed, in the creation of the heavens and the earth and the alternation of the night and the day are signs for those of understanding}⁹⁵. Many verses of Qur'an end by reminding people to

⁹³ Reported by Moslem no. 225, v. 1, p. 124.

⁹⁴ Surah Fussilat, verse 53

⁹⁵ Surah Al Imran verse 189

contemplate the signs around them: {Indeed in that are signs for a people who give thought}.⁹⁶

Sharia urges Muslims to learn. Scholars suggested two levels of knowledge. One is *Fardh Ain* (individual duty) which every individual is obliged to learn. This includes basic information that every Muslim should know about his religion so that he can fulfil his duties. Every individual is also obliged to acquire the knowledge that he personally needs such as rules of trade, according to *Sharia*, for one who is involved in such a business. The second level of knowledge is *Fardh Kifayah* (collective duty). It refers to all knowledge and science that the whole nation requires such as medicine, engineering, administration, cultivating etc. If the nation does not fulfil its requirements, all qualified persons are held responsible until they are fulfilled (Alim, 1994, p. 352).

Al Ghazali, in his book *Ihyah Olom Ad din*, argued that living on this earth can be accomplished only by the efforts of mankind, including industries, which can be classified into three levels. The first level, which he considered the basics, are farming for food, knitting for clothing, construction for housing and politics for integrating and cooperation for living. The second level serves the basic industries above, i.e. smithery, ginning and spinning. The third includes activities regarded as ornaments for the basic industries such as grinding, baking, and sewing. The most honorable craft, in his opinion, is politics, by which he means leadership to guide people to what is beneficial to them (1939, v. 1, p. 24).

4.5.1.5 Preservation of *Nasl*:

Nasl means posterity. Desire for posterity is part of human nature. *Nasl* is preserved by legitimizing marriage, discouraging celibacy and forbidding emasculation. The principle objective of marriage is to preserve posterity and continuity of mankind. Subsidiary objectives include all the benefits men and women gain as a result of marriage such as emotional, sexual or even materialistic benefits. *Nasl* (posterity) may be achieved outside the framework of marriage, but such a benefit (*Maslaha*) is considered rejected (*Maslaha Malghiyah*).

⁹⁶ Surah Az Zumar verse 42

Some scholars used the term *Nasab* (parentage) instead of *Nasl*; others used *Irdh* (honour). Ibn Ashor argued that what can be considered as one of the five necessities is *Nasl* only. Protection of *Nasab* and *Irdh*, although important to each individual, can not be considered as one of the five necessities or the basic needs (Ibn Ashor, 1999, p. 222). Preservation of mankind is a basic need. Preservation of parentage is an important factor, but doesn't reach the level of basic needs.⁹⁷

Responsibility to protect the five basic needs is shared by legislation, the state and man. *Sharia* clarified the needed legislation, and the state was given the power to implement it. The individual is responsible to protect his own needs and those of his dependants.

4.5.2 Precedence of Needs:

The five basic needs vary in order. The *Din* (religion) comes first as lives and properties are sacrificed for the sake of *Din*. Next come *Nafs* (life), then *Mal* (property) and so on. (Al Obaidi, 1992, p.190) The discussion among scholars considered two aspects: 1) precedence of *Din*, and 2) classification of the remaining needs (*Nafs*, *Agl*, *Mal* and *Nasl*) among themselves.

Regarding the precedence of *Din*, there were two opinions. The first gives precedence of *Din* over the other four needs (Al Yobi, 1998, p.305). This opinion was based on the fact that the whole purpose of man's existence is to worship God, which gives priority to God's right in relation to the human rights represented by the other four needs. The second opinion⁹⁸ suggested that the other four needs are to be given priority over *Din* (Al Yobi, 1998, p.306). This view was that God's rights are based on magnanimity and forgiveness and human rights are based on selfishness and strictness.

Regarding the precedence between the remaining four needs, the scholars agree that *Nafs* is prioritized, but they debated the arrangement of the other three. Some suggested *Nasl*, *Agl*, then *Mal*. Others suggested *Agl*, *Nasl*, then *Mal*.

The above discussion is relevant when contradiction occurs between the basic needs. Actually, the two opinions are similar to each other if both consider the hierarchy of the

⁹⁷ For more details about including *Irdh* and *Nasab* within the basic necessities refer to (Al Yobi, 1998, p. 276-283)

⁹⁸ Represented by Ibn Al Hajib, Al Aznawi and Ibn Alamir Al Haj (Al Yobi, 1998, p. 306)

basic needs within *Masalih*. The need in a higher grade will take priority. The debate continues when the two needs are in the same level.

4.5.3 The Basic Needs in the Hierarchy of *Masalih*:

The following figure takes two of the five basic needs and explains how each of them is treated in the hierarchy of *Masalih*.

In the first example, the right of acquisition represents *Ad Daroriyat* (primary interest), the permission for transfer of ownership represents *Al Hajiyyat* (secondary interest) and the legislation governing the details of transferring the ownership represents *At Tahsiniyyat* (tertiary interest). Al Jowainy (1028-1085), in his book *Al Burhan*, states, "If people do not exchange what is in their hands that will lead to an apparent necessity" (Ash Shatibi [1320-1388] , 1997, v.2, p.41).

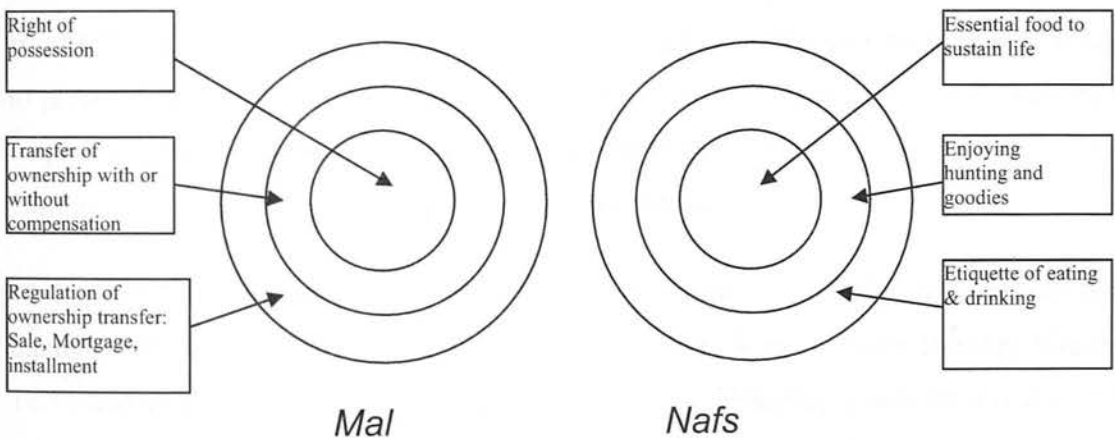


Figure 4-2 *Mal* and *Nafs* in the hierarchy of *Masalih*.

Source: The author's interpretation.

In the second example, the essential food to sustain life represents the primary interest; the permission for hunting and enjoyment of goodies represents the secondary interest, and the etiquette of eating and drinking represents the tertiary interest.

If the right of acquisition is not possible and the essential food to keep man alive is not available, properties would be lost, life would be diminished, and the whole system of

life would be disrupted. However, if the permission for the transfer of ownership in properties (with or without compensation) or the privilege of enjoying goodies was not granted, no lives or properties would be lost, but people would be facing hardships and inconvenience. In the absence of legislation governing the transfer of ownership, like purchasing and selling of properties, and the etiquette of eating and drinking, the system of life will not be disturbed and people would not face hardships and inconveniences, but life would not be according to the good nature of people.

If it is possible to identify the level of such *Masalih* or *Mafasid* with regard to achievement for any of the five fundamentals, the comparison could be enacted based on such a level. The following table demonstrates the hierarchy of interests under each of the five fundamentals.

This concept dictates that the essential objective of legislation is to preserve the five fundamental necessities, according to the hierarchy of interests. The five fundamental necessities shall continue to be the object of protection regardless of the luxury levels enjoyed by individuals. The primary interests will represent the minimum level required to preserve the system of life. In the primary level of interests the five necessities shall be preserved in their minimum limit. Upon fulfilling the minimum limit at this level, the individual would seek the accomplishment of the following level.

To explain the relationships in table 4-2 , let's assume a contradiction between two interests. If religion (primary interest Pr/R) contradicts with posterity (tertiary interest Te/P) and it is possible to fulfil only one of the two *Maslaha*, it will be obvious that religion will override the other.

In the case where the contradiction is between two necessities in the same level of interest, it would depend on the type of interest. If life (primary *Masalih* Pr/L) conflicts with property (primary *Masalih* Pr/P), life would take precedence. Also if a religion *Masalih* in a lower level conflicts with a life or property *Masalih* in a higher level, the life *Masalih* will take precedence. An example would be abstaining from the performance of an obligatory prayer to save a property from incurred damage due to catching fire, burglary, etc.

Basic necessities <i>Masalih</i> Grades	<i>Din</i> Religion R	<i>Nafs</i> Life L	<i>Mal</i> Property P	<i>Agl</i> Intellect T	<i>Nasl</i> Posterity Y
Tertiary Needs Te <i>Tahsiniyat</i>	Te/ R	Te / L	Te / P	Te / T	Te/ Y
Secondary Needs Se <i>Hajiyat</i>	Se / R	Se / L	Se / P	Se / T	Se / Y
Primary Needs Pr <i>Daroriyat</i>	Pr/R	Pr/L	Pr/P	Pr/T	Pr/Y

R: Religion **L:** Life **P:** Property **T:** Intellect **Y:** Posterity
Pr: Primary Needs **Se:** Secondary Needs **Te:** Tertiary Needs

Table 4-2 Basic necessities in the hierarchy of needs.

Source: Illustration of Ash Shatibi's text (Ash Shatibi [1320-1388], 1997, v. 2, pp. 17-34) by the author.

4.5.4 *Masalih* Classification as Positive and Preventative:

Ash Shatibi observed that *Sharia* obligations can be classified into two groups: positive and preventative. Included in the positive group are *Ibadat* (rituals, worship), *Adat* (habits, customs) and *Moamalat* (transactions); falling into the preventative group are *Jinayat* (penalties), (Ash Sahtibi, 1997, v. 2. pp. 18-23) (Masud, 2000, p.152). See Table: 4-3.

Obligations in the positive group preserve the human necessities by supporting their existence while those in the negative group drive back any existing or expected disorder (Ibn Ashor, 1999, p. 220).

The purpose of *Ibadat* is the protection of the *Din* (religion). Examples are belief and the declaration of faith (the unity of God and the prophethood of Mohammad); *Salah* (prayer); *Zakah* (compulsory form of charity); *Sawm* (fasting) and *Hajj* (pilgrimage). *Adat* serve to protect life and intellect. Seeking food, drink, clothing and shelter are examples of *Adat*. *Muamalat* also protect life and intellect but through *Adat*. *Jinayat* is that which concerns the above five *Masalih* in a preventative manner; they prescribe the removal of what hinders the realization of these interests.

To illustrate *Jinayat*, Ash shatibi gives examples of *Qisas* (retaliation) and *Diat* (blood money) for life and *Hadd* (punishment for drinking intoxicants) for the protection of intellect.

Groups Levels of <i>Masalih</i>	Positive Group			Preventive Group
	<i>Ibadat</i> Worships: Preserve religion	<i>Adat</i> Customs: Preserve life and reason	<i>Moamalat</i> Transactions: Preserve posterity and property	<i>Jinayat</i> Penalties: Preserve all of the five fundamentals
Primary level of interest <i>Dharoriyat</i>	Belief	Minimum requirement of food and accommodation	Ownership and marriage	Legislating punishment
Secondary level of interest <i>Hajiyat</i>	Prayer reduction and delay of fasting during travel. Patience prayer according to ability.	Hunting Luxuries in food, beverage and accommodation Rehabilitation of the arid land	Legislating variety of companies forms Rules for buying and selling Inheritance rules	Detailed rules of punishment.
Tertiary level of interest <i>Tahsiniyat</i>	Cleanliness to perform rituals of worship	Food and beverage etiquette	Debits, affidavits, prohibition of the sale of forbidden items.	Equality in punishment. Prohibition killing children, women and monks during war

Table 4-3 *Masalih* categorized as positives and negatives

Source: The author based on interpretation from Ash Shatibi, *Al Mowafgat* (v. 2, p. 18)

The *Hajiyat* (secondary needs) are so called because they are required in order to expand the purpose of the *Magasid* (objectives of Sharia) and remove the strictness of the literal sense, the application of which may lead to impediments and hardships and eventually to the disruption of the *magasid*; thus, if the *Hajiyat* are not taken into consideration along with the *Daroriyat* (primary needs) the people on the whole face hardship. The failure to comply with *Hajiyat*; however, is not disruptive to the whole of *Masalih*, as is the case with the *Daruriyat*. In *Ibadat* concessions in *Salah* and *Sawm* on account of sickness or journey are examples of *Hajiyat*. An example in *adat* is the lawfulness of hunting; in *Muamalat* the permission of *Qirad* (money lending or commenda and *Musaqah* (agrarian association); and in *Jinayat*, allowances for weak and insufficient evidence in decisions affecting the public interest.

Thasiniyat means to adopt what conforms to the best of customs (*Adat*) and to avoid those manners which are disliked by wiser people. This type of *masalih* covers noble habits (ethics, morality). In *Ibadat* it includes cleanliness (*Tahara*), decency in covering the private parts of the body (*Sitr*) or giving voluntary charity. In *Adat* it includes

etiquette, table manners, etc.; in *moamalat* prohibition of the sale of unclean (*Najis*) articles, the sale of surplus water, depriving a slave of the position of witness and leadership, etc.; in *Jinayat* the prohibition of killing women and children in war.

The table 4-4 summarizes the concept of positive and preventative obligations of *Sharia*, and its relationship to the five basic needs.

Basic Needs	Positive			preventive
	<i>Ibadat</i> (rituals, worship)	<i>Adat</i> (habits, customs)	<i>Moamalat</i> (transactions)	<i>Jinayat</i> (penalties)
<i>Din</i> Religion	O			O
<i>Nafs</i> Life		O		O
<i>Mal</i> Property			O	O
<i>Aql</i> Intellect		O		O
<i>Nasl</i> Posterity			O	O

Table 4-4 Positives and preventative groups and their relation Sharia basic needs.

Source: The author

4.5.5 The Role of the State and the Individual in Preserving the Basic Needs:

The basic needs are considered the necessities that the human being should strive to preserve in order to ensure the continuation of his life and quality of his existence. The individual is entrusted to preserve his religion, in belief and practice; as well as his life, intellect and posterity. He is also to save his money to implement the above four aspects.

On the other hand, the State is obliged to preserve these needs for the entire nation; otherwise, the personal responsibilities undertaken will be void and insufficient. The legislation of any society should therefore enable both the individuals and the State to practice their rights and duties.

These five fundamental necessities entail several physical, materialistic, social and psychological demands. The individual will always do his best to fulfil his basic needs. Human requirements from each need are not equal. The individual will fulfil the very necessary needs, which may be expressed as the minimum requirements. Upon

completing the minimum level of each demand, the individual would seek to achieve a higher level.

Overall Goals of Sharia

To facilitate man’s mission in inhabiting the Earth, warrant people’s *Masalih* (interests), and prevent *Mafasid* (disinterests) by maintaining justice, mercy and magnanimity

Through preserving human Basic needs

<i>Din</i> (Religion)	<i>Nafs</i> (Life)	<i>Mal</i> (Property)	<i>Aql</i> (Intellect)	<i>Nasl</i> (Posterity)
--------------------------	-----------------------	--------------------------	---------------------------	----------------------------

At three levels

Primary level of interest <i>Daroriyat</i>
Interests that are essential for preserving life. If neglected, corruption, confusion and system disorder will prevail.
Secondary level of interest <i>Hajiyat</i>
Interests required by the individuals to warrant a flexible and easy life. If these interests are not fulfilled, there will not be disorder or general corruption, but individuals will face hardship.
Tertiary level of interest <i>Tahsiniyat</i>
Enhanced customs or highest ethics. If they are not fulfilled there will not be disorder or hardship; nevertheless, life will deviate from the normal intuition and sublime customs.

Table 4-5 Summary of Sharia overall goal, basic needs and levels of interests.

Source: Author’s interpretation of scholars’ opinions.

4.6 Concept of *Raf' Al Haraj* (Elimination of Hardship):

The concept of *Raf' al Haraj* stems from a key component of *Sharia* which is *Samaha*⁹⁹ (magnanimity). *Samaha* is a balance between hardship and languor. Qu'ran explains: {Allah intends for you ease and does not intend for you hardship}¹⁰⁰, {He has chosen you and has not placed upon you in the religion any difficulty}¹⁰¹. Al Bokhari reported, "Whenever the Prophet ﷺ was to choose between two aspects, he always chose the easiest unless it is a wrongdoing"¹⁰².

4.6.1 *Haraj*:

Haraj is defined as what imposes an extraordinary materialistic or moral (physical or psychological) difficulty, directly or indirectly (Albahsin, 1996, p. 38). *Haraj* is eliminated in *Sharia* by 1) not imposing the impossible or the unfeasible, and 2) eliminating the accidental *Haraj* by legislating permissions such as breakfasting during travel or illness, taking forbidden food to save life, forgiveness of what people intend if they do not speak or act and forgiveness of unintentional mistakes¹⁰³. *Haraj* may be physical, like the above examples, or psychological like actions under coercion. *Haraj* may be *Hagigi* (real) or *Wahmi* (imaginable). All above classifications deal with *Haraj Hagigi* whether it has already occurred or is anticipated. *Haraj Wahmi* is not considered a reason for relief from *Sharia* obligations.

4.6.2 *Mashaqqah*:

The meaning of *Mashaqqah* is similar to that of *Haraj*. Literally, *Shaqq* means "rip apart". *Shaqq al amr* indicates the matter became hard or unbearable. In his book, *Shatibi's Philosophy of Islamic Law* Muhammad Khalid Masud argued that *Sharia* clearly does not intend *Mashaqqah* per se. Firstly, because:

a) Various statements in the Qur'an and *Hadith* categorically deny any intention by *Sharia* to impose hardship.

⁹⁹ *Samaha* comes from the verb *Samaha* which means forgive.

¹⁰⁰ Surah Al Baqarah, verse 185

¹⁰¹ Surah Al Hajj, verse 78

¹⁰² Al Bokhari no. 3560

¹⁰³ This is a general rule in Islam. It is confirmed by the saying of the Prophet ﷺ: "My nation is given forgiveness for mistaken actions, forgetfulness, what they compelled to do and what comes to their minds unless they talk or do". For more details refer to Jami' Al Olom wa Al Hikam for the author Ibn Rajab (1306-1398). Publisher: Maktabat Arriyadh Al Hadithah. No date.

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b) The existence of well-known allowances (*Rukhsa*¹⁰⁴) in *Sharia* proves the intention to remove hardship.

c) The consensus on the absence of any intention by *Sharia* to make difficult acts obligatory.

Secondly, from the perspective of *Ada* (custom), not all toil and hardship is *Mashaqqa*. For instance, seeking one's livelihood by practicing a craft or trade, although it involves toil, is not *Mashaqqa*. Rather a person is reproached if he avoids such toil. All states of the human being in this world are toilsome, yet they are not *Mashaqqa* (Masud, 2000, p. 188).

According to Ash Shatibi, *Mashaqqa* can be classified into the following three categories:

- *Ikhtiyariyah* (optional): when one intends *Mashaqqa* by his own choice.
- *Idhtirariyah* (forced): when *Mashaqqa* is an inevitable consequence of a certain act.
- *Kharijiyah* (external): when *Mashaqqa* is neither of the above but rather falls upon one without him having any connection to it. (Masud, 2000, p. 190).

Fasting voluntarily a hot, long day to worship God or fasting during travelling, although it is permitted to breakfast, is *Mashaqqa Ikhtiyariyah* because the hardship one faces is totally by his own choice and not imposed by *Sharia*. When a Muslim fasts during the month of Ramadan, which is mandatory, and faces some difficulty, it is classified as *Mashaqqa Mo'tada* (ordinary). Should the difficulty extend beyond his capacity to the point that it may cause him harm or endanger his life; such difficulty is considered *Mashaqqa Gair Mo'tada* (extra-ordinary) which is a kind of forced *Mashaqqa*.

Sharia does not intend to remove the ordinary *Mashaqqa*, but it does intend to remove the extra-ordinary *Mashaqqa* whether in rituals, customs or transactions. An example of the *Kharijiyah* (external) *Mashaqqa* in the above situation would be an incurable illness which prevents someone from being able to fast.

¹⁰⁴ Ash Shatibi defined *Rukhsa* as "What is legislated for a hard excuse as an exception from the original rule" (Abahusain, 1996, p. 414)

4.6.3 *Al Mashaqqah Tajlib At Tayseer* (Hardship Brings Ease):

The concept of *Al Mashaqqah Tajlib At Tayseer* is considered one of five¹⁰⁵ pillars on which *Fiqh* stands (Albahsain, 1996, p. 423). Ash Shafi'ee restated the concept in this way: "When the matter becomes tight, it expands." *Sharia* obligations are in direct proportion to the situation of an individual, a group or the whole nation in regard to the level of interest achieved. When an individual enjoys the third level of interest (tertiary) in fulfilling all his basic needs, he is expected to fulfill *Sharia* obligations. Once he faces some difficulty (such as travel, sickness, forgetfulness, ignorance, etc.) he will be relieved of some duties according to his situation. An example is the shortening and combining of the five daily prayers during travel.

4.7 Final Points:

The five necessities cover all aspects of the human existence (spiritual, corporeal and rational) and fulfill them in parallel. *Sharia* does not assume the satisfaction of one aspect as a prerequisite to commence to another aspect. Important points to remember are:

This concept assumes that humans are innately motivated to safeguard these five necessities related to his existence. As the level becomes higher, the self-motivation becomes stronger. As long as there are no external obstacles, each individual will take the responsibility to safeguard his fundamentals and will develop the appropriate means according to the surrounding environment.

An individual may fulfil one or more of his basic needs to a certain level, but others may remain unfulfilled. For example, an individual may have satisfied his needs in religion, life, posterity and intellect at the *Daroriyat* level and strive towards fulfilling those at the *Hajiyat* level, but at the same time, he may have not yet successfully met his needs at the level of *Daroriyat* for his property. Government is responsible for establishing the means to safeguard the five fundamentals for the people according to the level of priority and its ability.

¹⁰⁵ These five rules are: 1) *Al Yagin La Yazol Bi As Shak* (certainty does not disappear by doubt), 2) *Al Mashaqqah Tajlib At Taysi r* (hardship generates easiness), 3) *Addarar Yozal* (harm to be eliminated), 4) *Al Adah Mohakkamah* (custom controls) and 5) *Al Omor bi Magasidiha* (subjects are according to their intentions) (Abahosain, 1996, p. 423)

The individual's role versus the State's role towards fulfilling the three levels of interest can be expressed as follows: The State is to provide more of *Daroriyat* (primary *Masalih*) to the public, less of *Hajiyat*, and still less of *Tahsiniat*. The amount of *Daroriyat* needed by the individual is small, yet very essential to him. Once the individual has satisfied his *Daroriyat* level, he will look forward to fulfilling the next level, *Hajiyat*, which is more in quantity but less in importance.

It is very important not to confuse the government role and the individual role and to keep them in balance. If this balance is disturbed, individuals may suffer to obtain their needs or may be overly dependent on their governments.

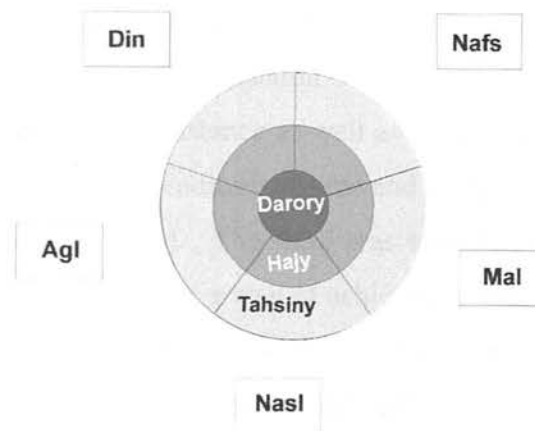


Figure 4-3 Basic needs and levels of *Masaleh*

Source: The author.

Comprehending the five fundamentals as an essential objective of *Sharia* assists in identifying priorities in all of life's aspects. Colonization is one of the most obvious aspects of the human existence in which such system is applied. Upon implementing such rules in the proper way, a concept of *Sharia* objectives regarding urban settlement can be formulated. Process of building the traditional city will be explored in the light of the individuals' effort to fulfil their needs in chapter six.

Urban settlement is considered an essential means to preserve the five fundamentals, since it is the secure safeguard to life and property in a direct way. Also, it could be considered a safeguard to religion due to the various urban elements that serve religious needs. Furthermore, urbanization would indirectly safeguard both the reason and posterity by preserving both the life and property. The parties in charge of urban

development should be aware of the basic needs of the individual and the priorities to be achieved in order not to interfere with the precedence of the fundamental needs.

4.8 Human Basic Needs and Motivation theories:

Over the years, numerous theories have been proposed attempting to pinpoint the source of motivation energizing individual behaviour (Scholl¹⁰⁶, 2002). Following is a summary of major theories developed in the West in this subject.

4.8.1 Friedman & Havighurst: Functions and Meaning of Work:

Five functions of work were developed by Freidmann and Havighurst. Along with the associated meanings, these functions were viewed as the major sources of the attachment individuals had to work. The first function was income, which included maintaining a minimum sustenance level of existence as well as achieving some higher level or group standard. The second was expenditure of time and energy (something to do or a way of filling the day or passing time). The third was identification and status. Work was viewed as a source of self-respect, a way of achieving recognition or respect from others and a definition of role. The fourth was association, which included friendships, peer-group relations and subordinate-superordindate relations. The fifth was as a source of meaningful life experience, meaning work gives purpose to life, fosters creativity and self-expression, provides new experiences and is a service to others (Friedman, Eugene A. & Robert J. Havighurst. 1954)¹⁰⁷.

4.8.2 David McClelland's 3-Needs Theory:

David McClelland's research indicates that individuals are motivated based on three needs. The first is the need for achievement (the drive to excel, to achieve in relation to a set of standards, to strive to succeed). The second is the need for power (to make others behave in a way that they would not have behaved otherwise). The third is the need for affiliation (the desire for friendly and close interpersonal relationships). Unlike Maslow, McClelland did not indicate any certain transition among the needs. He indicates that some people have higher levels of one need than others (Braden, Pameal A.)¹⁰⁸.

¹⁰⁶ Richard W. Scholl, Professor of Management, University of Rhode Island

¹⁰⁷ The meaning of work and Retirement.

¹⁰⁸ Lecture of Prof. Palela A. Braden. Parkersburg West Virginia University web site.

4.8.3 Herzberg's Motivation-Hygiene Theory (Two Factor Theory):

Frederick Herzberg performed studies to determine which factors in an employee's work environment caused satisfaction or dissatisfaction. He published his findings in the 1959 book The Motivation to Work.

Herzberg found that the factors causing job satisfaction (and presumably motivation) were different from those causing job dissatisfaction. He developed the motivation-hygiene theory to explain these results. He called the satisfiers "motivators" and the dissatisfiers "hygiene factors", using the term "hygiene" in the sense that they are considered maintenance factors that are necessary to avoid dissatisfaction but that by themselves do not provide satisfaction.¹⁰⁹

4.8.4 Douglas McGregor : Two theories of individual's behaviour in the work place

In "The Human Side of Enterprise", Douglas McGregor identified two theories of individual behaviour in the workplace, Theory X and Theory Y. Theory X assumes that humans have an inherent dislike of work and will avoid work if at all possible. Due to this dislike of work, people must be controlled and threatened to work hard enough. Theory X also assumes that the average human dislikes responsibility, prefers to be directed and desires security above all else. Theory Y assumes that humans will direct themselves if they are committed to the goals of the organization. It also assumes that if a job is satisfying, the result will be commitment to the organization and under the proper conditions, humans will learn to seek responsibility (Jennifer Pescatelli and Kirstin Cracuin 2002)¹¹⁰.

4.8.5 Maslow's Hierarchy of Needs:

Over the years, numerous theories have been proposed attempting to pinpoint the source of motivation for individual human behavior (Scholl¹¹¹, 2002). A major contribution has been that of Maslow, developed in the mid-twentieth century. Because of its significant

¹⁰⁹ Internet Center for Management and Business Administration, Inc. website.

¹¹⁰ Education Commission of the States website.

¹¹¹ Richard W. Scholl, Professor of Management, University of Rhode Island

influence on Western psychology and the modern view of human nature, it is of interest to compare it with the basic needs theory of *Sharia*.

According to Maslow (1954), individuals will be motivated to fulfil whichever need is prepotent, or most powerful, for them at a given time. The prepotency of a need depends on the individual's current situation and recent experiences. Starting with the physical needs, which are most basic, each need must be at least partially satisfied before the individual desires to satisfy a need at the next level.

Maslow views human motivation in terms of a hierarchy of five needs:

1. Physiological: includes the need for air, water, food and sex.
2. Security: includes the need for safety, order, and freedom from fear or threat.
3. Belongingness and love (or social needs): includes the need for love, affection, feelings of belonging and human contact.
4. Esteem: includes the need for self-respect, self-esteem, achievement, and respect from others.
5. Self-actualization: includes the need to grow, to feel fulfilled, to realize one's potential (Stoner, 1982, p.448).

There are certain conditions that are immediate prerequisites for the satisfaction of basic needs. Such conditions as freedom to speak, freedom to do what one wishes as long as no harm is done to others, freedom to express oneself, freedom to investigate and seek information, freedom to defend oneself, justice, fairness, honesty, and orderliness in the group are examples of such preconditions for the satisfaction of basic needs (Maslow, revised by Frager and Fandiman, 1987, p. 22).

For this reason, and for the influence of the man and his theory, Maslow has been considered one of the most influential psychologists and one of the most important contributors to our modern view of human nature (Leonard, 1983, p.326)¹¹².

¹¹² Esquire magazine's 50th anniversary issue featured articles on the most important American figures of the mid-twentieth century. The editors chose Maslow as the most influential psychologist. He wrote: "Maslow has done more to change our view of human nature and human possibilities than has any other American psychologist of the past fifty years. His influence, both direct and indirect, continues to grow, especially in the field of health, education, and management theory, and in the personal and social lives of millions of Americans. (Frager and Fadiman, 1987, p. xxxiv)

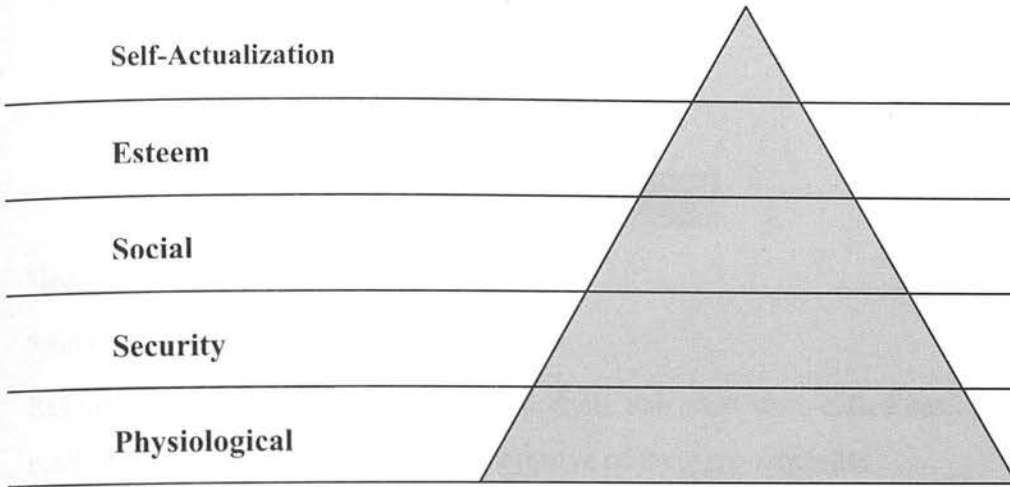


Figure 4-4 Maslow's Hierarchy of needs.

Source: James Stoner, Management

It appears that Maslow's theory has some similarities with the basic human needs theory as presented by Ash Shatibi; however, there are some important differences. Maslow's theory assumes that the lower need has to be fulfilled (not necessarily fully) to allow the motivation for the next higher need to be affective. In other words, if the physiological needs are not satisfied, security (being in the next highest level) is not considered relevant.

The basic needs outlined in *Sharia* cover all of mankind's characteristics (physiological, psychological, religious and social) in a parallel way, allowing man to satisfy the minimum amount needed from each necessity simultaneously. *Sharia* assumes that a minimum of all the five necessities (religion, life, property, reason and posterity) is absolutely necessary in the lowest level. If that minimum is not achieved, the life of the individual or the community may not continue or may continue but with great disorder and disintegration.

Although Maslow's motivation theory proposed a hierarchy of basic needs, it assumed many pre-requisites to these needs. The famous triangle should stand on a base of these pre-requisites (see Figure 4-6).

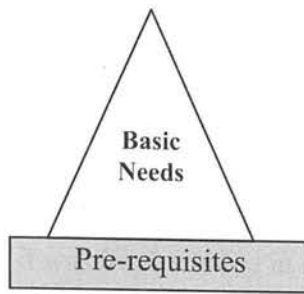


Figure 4-5 Maslow's basic needs and pre-requisites.

Source: The author

Referring to the above point, one could argue that what were called basic needs are **not** really **basic**. Indeed, this is more descriptive of their pre-requisites.

Another difference between Maslow's theory and that of *Sharia* is that Maslow views the subject of basic needs from the individual's point of view only. *Sharia* views basic necessities from three perspectives: legislative, individual and state.

4.9 Conclusion:

Sharia is built around a clear concept of five basic human needs: *Din* (Religion), *Nafs* (Life), *Mal* (property), *Aql* (Intellect) and *Nasl* (posterity). These were protected through *Sharia* legislation, and at the same time *Sharia* instructed Muslims to work to fulfill their individual needs.

Each of these needs progressed through three levels, meaning each can be partially satisfied.

Man doesn't need to fully satisfy his physiological needs in order to be motivated to fulfill his security or social needs.

Both the State and the individual are held responsible to fulfill these needs.

Land development is one of the major concerns of man on this earth; therefore, land development in *Sharia* is considered one of the most important means man can use to satisfy his basic needs.

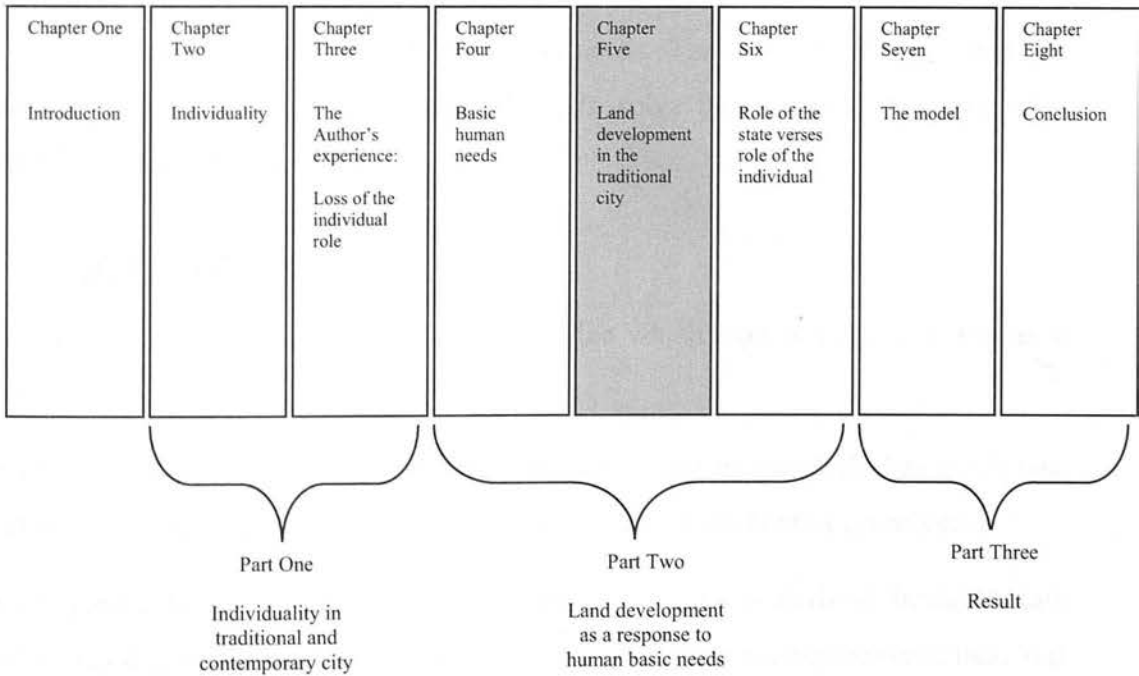
Ash Shatibi model of basic human needs (or *Sharia* Objectives Theory) is mature enough to explain the basis on which *Sharia* stands and can be subject to many applications.

The next chapter will look at the specific subject of land development from the perspective of *Sharia* and how it was implemented in the traditional city.

In chapter seven, the author will use the *Sahira* model of basic needs to build his model that explains relationship of the individual and the state in regard to the levels of interests.

Chapter Five

Land Development in the Traditional City



5 Land in the Traditional City:

5.1 Introduction:

The word *Al ardh*, which means "land", has been mentioned more than 400 times in the Qur'an. The word has two meanings: the **Earth** or the **globe**, and **land** that is opposite to the sky. Land is viewed as one of the creations that Allah made subservient to man. It is where he lives, works, dies and is buried. Land is valuable and limited.

Man is tied to the land. His country is a portion of land. His city is built on a piece of land. His palace, his house, his tent or even his humble shelter needs a parcel of land to exist. No matter how rich a man is, his ambition and his dreams are tied to the land.

In the traditional Islamic city land was a resource for all inhabitants. It could be owned by individuals but only through an exerted effort to revive it. An individual was able to make his own decisions concerning his land, such as when, where and how he built his house. The individual was able to act freely, but once he interfered with the freedom of others, he was obligated to begin a dialogue.

The beauty of the traditional city was not created by pre-planning but by the liberty given to every individual to act in fulfilling his needs. The network of rights that the traditional city was built upon worked perfectly to solve the problems that may have occurred from such individuality.

5.2 Concept of Ownership:

The Qur'an regards property as the wealth of Allah which man is entitled to use as a successor.

{Believe in Allah and His Messenger and spend out of that in which He has made you successors.} ¹¹³ {And give them from the wealth of Allah which He has given you.} ¹¹⁴

From this perspective, the scholars' definition of ownership was derived. In the Hanafi School, ownership was viewed from the perspective of the relationship between man and

¹¹³ Surah Al Hadeed. Verse 7

¹¹⁴ Surha Al Norr. Verse 33

wealth or the object to be owned. It was defined as, "A power given by *Sharia* to allow disposal," (Al Madkhali, 1996, p.38) or, "A connection between a man and a thing which grants the power to dispose [of such thing] and prevent others to dispose of it," (Al Madkhali, 1996, p.38).

In the Maliki School they concentrated on variations in the object itself. Al Garafi¹¹⁵(?-1285) defines ownership as, "A legal description of the *ain* (object) or *manfa'a* (utility) implying who the *Ain* is imputed to, which allows him to utilize the *Rogabah* or *manfa'a* and to receive compensation." (Bagori [?-1308], 1996, v. 2, p.157)

In the Shafi'ee School they go closer to the Maliki School definition. "It is a description added to the *ain* or the *manfa'a* implying the right of the user or the utilizer to use or utilize and be deserving of the compensation (Al Madkhali, 1996, p.40)"¹¹⁶.

Ibn Tymiya gives a summarized definition that represents the Hanbali School. "Ownership is the legitimate right to manipulate the *ragabah* (*ain* or *manfa'a*). (Ibn Tymiya, 1978, v. 29, p.178)

All schools of law give the full power of the owner to dispose of his property. This, of course, is still under the concept of succession, which implies that the owner's disposal can be acceptable only within the limits given by *Sharia*. An example is that *Sharia* prevents a testate man or woman from disposing of more than one third of his/her wealth. The thirds will, in any case, be shared between his/her inheritors according to *Sharia*.

5.2.1 Means of Ownership:

Scholars classify means of ownership in several ways. Some scholars differentiate between reasons for ownership, the optional reasons and the obligatory reasons. That is the first classification. The optional reasons are sale and endowment, and the obligatory reason is inheritance. Ash- Shafi'ee in his book Al Om, believed that all Muslim scholars agreed that anyone who does not want to own something will not be forced to except from inheritance. Living persons will inherit from their deceased relatives whether they wish to or not; and a Muslim's ownership shall not be transferred except by his will, either by sale or donation (Al Jonaidil, 1980, p. 24).

¹¹⁵ Ahmad bin Idris Al Sanhaji Al Garafi. From the Malliki doctorine.

¹¹⁶ This definition belongs to Ibn As Sobki. (Al Madkhali, 1996, p.40)

The second classification of ownership is made according to the action taken to achieve it. Scholars suggested three actions lead to ownership; 1.consequence of legal act such as trade, sale and hunting, 2.consequence of *Sharia* rules such as *Zakah* and inheritance, and 3.consequence of other person's action such as gifts, charities and wills.

A third classification is made according to effort made to gain the ownership; through personal effort like in sale, trade, land revivification, or without personal effort like in inheritance, gifts and wills (Al Jonaidil, 1980, p. 26).

Reasons of ownership	Means of ownership		
	Personal effort	Other's act	Sharia rules without the need of personal or others act
<i>Zakah</i> *		O	O
Inheritance			O
**		O	O
Trade	O		
Hunting	O		
Ihya'	O		
Gifts		O	
Charities		O	
Wills (for non-inheritors)		O	

* *Sharia* designates the money of *Zakah* for precipitant according to the categories, but determining the exact beneficiary of with the category is done by other's act.

** is legislated by *sharia*, the beneficiary is given the right to enjoy by *Sharia* but after others act who donated and nominated the beneficiaries.

Table 5-1 Reasons of ownership verses means of ownership

Source: The author's interpretation.

Al Majallah¹¹⁷ stated in article no. 1248: "*Ownership reasons are three; 1.transfers ownership from one person to another like sale and donation, 2.when one inherits the other and 3. acquiring a permissible object that is not owned by others such as laying hands on an object (by revivification of dead land or hunting etc.) or through preparation of means for acquisition like collecting rain water in a container or erecting hunting net for hunting.*" (Al Majallah, 2004, p. 340).

¹¹⁷ *Majallat Al Ahkam Al Adliyah*, known as *Al Majallah*, was prepared during the Othman Empire period. The state noticed the urgent need for a written civil law taken from the Hanafi doctrine hence a committee was formed for this mission which was accomplished between 1869 and 1876. In 1869 *Al Majallah* was issued as the Empire civil law and continued active until the year 1926. *Al Majallah* consisted of 1851 articles in 16 sections covered subjects as sales, renting, warranties, mortgage, associations etc.

5.2.2 Ownership in Regard to the property:

Ownership is classified to three types:

1. *Mulk Ain* or *Mulk Ragabah* (ownership of the object or the substance): is the ownership of the object itself, whether this object is landed property or movable property; such as owning a house, a chair, or pin that is not shared by any means with others.
2. *Mulk Manfa'a* (utilization ownership): the right to use a property, such as the borrowing of objects or renting or in the case of. However, in this type of ownership there is no right to dispose of the property by sale or grant.
3. *Mulk Addain* (debit ownership): as in the case when someone demands the value of goods for the buyer or the value of a damaged property (As Somih, 1983, p.71).

5.2.3 Authority of Ownership:

Ownership can be classified as *Mulkiyyah Tammah* (complete ownership) and *Mulkiyyah Nagisah* (incomplete ownership) (Abo Zahrah, 1976, p.68).

5.2.3.1 Al Mulkiyah At Tammah:

Al Mulkiyyah At Tammah gives the owner the power to perform all legal acts such as sale, donation, rent, will and . It also gives the owner the full right of utilization that is not stipulated in regard to time, location and condition. The only provision is that the utilization he chooses is not prohibited by *Sharia*.

In this kind of ownership the owner owns both *Ar Ragabah* (substance) and *Al Manfa'a* (utility).

Al Mulkiyyah At Tammah is not limited by time or by a specific location and does not end except by transfer through legal contracts, inheritance or when the *Ain* vanishes or is destroyed. The owner of an object (*Ain*) is not held responsible for any kind of warranty if the *Ain* is damaged, because he is the ultimate owner.

5.2.3.2 Al Mulkiyah An Nagisah:

In this kind of ownership the owner owns either *Ar Ragabah* or *Al Manfa'a*. If he (or she) owns *Ar Ragabah* alone, he can will the utilization of a property to a person after his

death, indefinitely or for a limited time during the life of the beneficiary. Such beneficiary owns only the utilization of *Ar Ragabah*, but he does not own *Ar Ragabah* itself. At the same time, the inheritors own only *Ar Ragabah* and do not own *Al Manfa'a* (utilization). When the limited period finishes or the owner of *Al Manfa'a* dies, the inheritors will have complete ownership of the property.

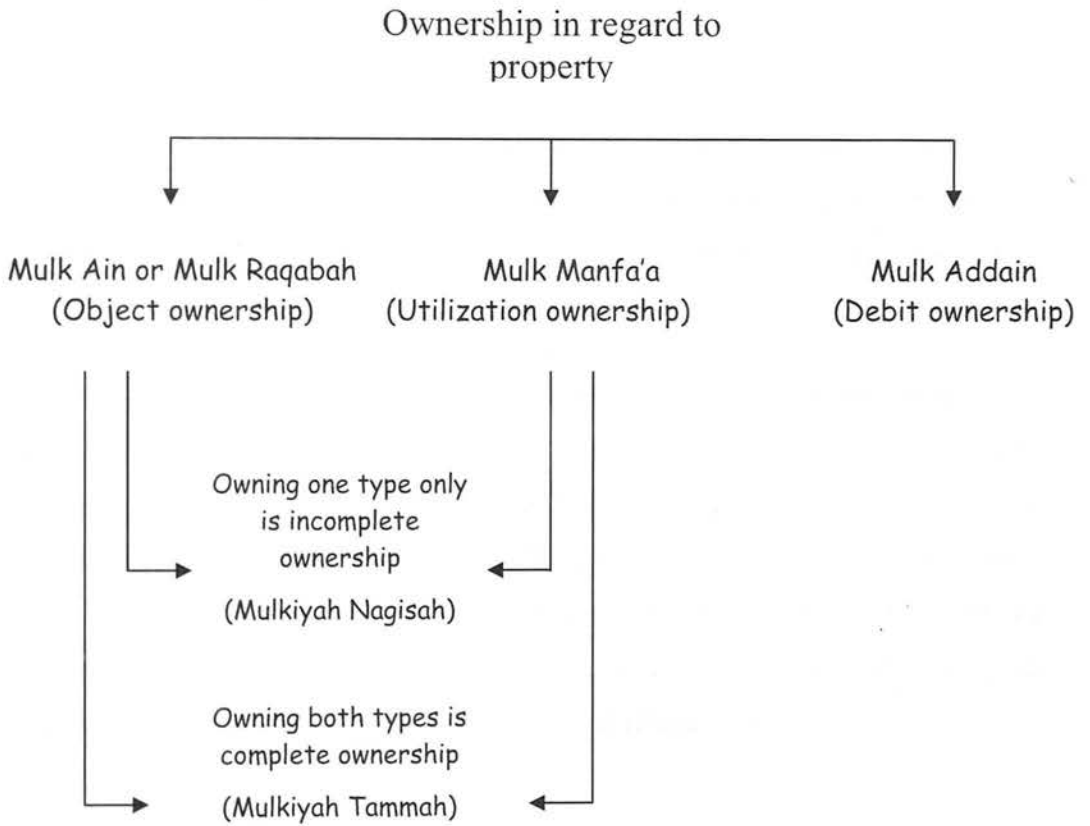


Figure 5-1 Types of private ownership

Source: The author

Another shape for *Al Mulkiyah An Nagisah* occurs when the owner wills the utilization (*Manfa'a*) of a property to a person and the object (*Ar Ragabah*) to another, then the latter owns *Ar Ragabah* only as long as the other is enjoying the utilization of the object

whether limited to a period or by the death of the utilization owner. In both forms *Mulk Ar Ragabah* (object ownership) is temporarily limited by the period of *Mulk Al Manfa'a* (utilization ownership) and once the utilization period ends the object ownership is transferred to a complete ownership (*Mulkiyah Tammah*) (Abo Zahrah, 1976, p.69).

5.3 Ownership in Regard to the Owner:

According to Al Mawardi¹¹⁸ (981-1059) and Ibn Qodamah¹¹⁹ (1147-1224), mal (property, wealth, money or treasury) entitled to Moslems are of three resources *Fai'*, *Ghanimah* (booty) and *Sadaqah* (Al Mawardi [981-1059], 1988, p. 354) (Ibn Qodamah [1147-1224], 1981, v. 6, p. 402).

Fai' is defined as all transferable properties and landed properties captured from non-Moslems without fighting (Al Mowsoa', 1993, v. 8, p. 246), *Ghanimah* is defined as what is captured during fight (Ibn Qodamah, 1981, v.6, p. 402) and *Sadaqah* is *Zakah* which is almsgiving.

Income from these resources is classified into three categories: 1) state property, 2) public property and 3) private property (Masri, 1989, p. 41). The first two types of properties are under the supervision of the state. The difference is that the state has the authority to dispose of the state property similar to what the individuals' disposal in their properties, but neither the state nor an individual can have the same disposal in the public property since it belongs commonly to all individuals. This actually means all individuals own the utilization (*Manfa'a*) not the object (*Raqabah*).

¹¹⁸ A distinguished scholar from the Shafiee doctrine. His book refers to is Al Ahkam As Soltaniyah wa Al Wilayad Ad Diniyah is classified under the subject of *As siyah Ash Shareiyah* (Government administration according to *Sahria* rules). In the same subject he authored four other books 1. *Gawanin Al Wazarah wa Siyasat Al Molk* (Ministry rules and governing policy), 2. *Tashil An Nathar wa Tajeel Al thafar fi Akhlaq Al Malik wa Siyasat Al Molk* (Facilitating consideration and acceleration of accomplishment in king's ethics and ruling policy), 3. *Siyasat Al Molk* (Ruling policy) and 4. *Nasihah Al Molk* (Kings' advice).

¹¹⁹ A scholar from the Hanbali doctrine was born in Damascus. On the age of thirty travelled to Baghdad for four years, and then returned to Damascus where he died. He authored over 30 books. His book Al Moghni is considered an encyclopaedia in the Hanafi jurisprudence doctrine.

5.3.1 State property (*Bait Al Mal*):

*Bait Al Mal*¹²⁰ (the treasury house) contains the nation's wealth. Actually, there was always a building called *Bait Al Mal*, but here it is not the tangible meaning that is referred to but the concept (Al Mowsoa', 1993, v. 8, p. 242).

According to Al Mawardi: "All kind of properties that are entitled to Moslems without determined ownership to a particular individual of them, then it belongs to *Bait Al Mal* whether been collected or not " (Al Mawardi, 1988, p. 354).

The state controls *Bait Al Mal*, but the ownership of what it contains belongs to all Moslems of the State. Every individual has some right in *Bait Al Mal*.

What are the resources of *Bait Al Mal*? And what are its expenditures?

5.3.1.1 Resources of *Bait Al Mal*:

There are several resources for *Bait Al Mal* as follows:

1. *Zakah*, a mandatory tax which should be extracted from the wealth of all Moslem citizens whose total net worth is above a certain designated minimum. It is not an income tax, nor a growth-capital tax (Abo Saud, 1983, p.109). There are different types of *Zakah*, such as that for cash money, plants, and cattle (Al Mawsoa', 1993, v. 8, p. 246).
2. One-fifth of *Al Ghana' em Al Mangolah* (transferable booties), which are gained during *Jihad* battles.
3. One fifth of the land's mineral resources such as gold, silver, iron etc. Some scholars also suggest one fifth of what comes out of the sea, such as pearls (Abo Yosif, , p. 70).
4. One fifth of *Rikaz*, which are treasure troves found from *Jahiliyah*¹²¹ (pre-Islamic) period, whether gold, silver, goods, jewels, trinkets, coins or else (As Somaih, 1983, p.151).
5. *Fai'*, defined as all transferable properties and landed properties captured from non-Muslims without fighting (As Somaih, 1983, p.151). There are several types of *Fai'*: 1.

¹²⁰ The concept of *Bait Al Mal* started during the period of the first Caliph Abu Bakr As Siddiq. It was developed further during the period of the second Caliph Omar. (Al Mowsoa', 1993, v. 8, p. 244)

¹²¹ Can be translated as ignorance.

land and properties evacuated during conquest, 2. *Kharaj*¹²² taken from non-Moslems, 3. *Jiziah*¹²³ taxes taken from non-Muslims whether from *Ahl Ath-thimmah*¹²⁴ or *Mosta'man*¹²⁵, and money paid by non-Muslims according to peace agreements, etc. (Al Mawsoa', 1993, v.8 p. 246-247).

6. Revenues of *Bait Al Mal* Investments.
7. Donations and wills designated for public good.
8. Gifts presented to state officials and judges.
9. Taxes imposed on citizens¹²⁶.
10. Lost and non claimed properties.
11. Fines and penalties.

5.3.1.2 Components and Expenditures of *Bait Al Mal*:

According to Al Mawsoa', *Bait Al Mal* is composed of four treasuries: 1) treasury of *Zakha*, 2) treasury of *Akhmas*, 3) treasury of *Dawa-ea'* (lost properties) and 4) treasury of *Fia'* (As Somaih, 1983, v.8 p. 248-251).

Rafiq Al Masri, in a simplified classification, suggested three treasuries: 1) treasury of *Zakah*, 2) treasury of *Masalih* (interests) and 3) treasury of *Dawa-ea'* (Al Masri, 1989, p.48). In this classification, he joined the treasury of *Akhams* with the treasury of *Fai'* under one treasury, which is treasury of *Masalih*.

Following are the definitions of each treasury and its expenditures.

1. Treasury of *Zakah*:

Zakah or alms tax can be defined as that portion of a man's wealth which is designated annually for others determined by Qur'an. Its amount is 2.5% of the wealth if exceeds a minimum amount depending on its type. All kinds¹²⁷ of *Zakah* are to be brought to this treasury. There are eight categories of qualified recipients, as stated in *Qur'an*:

¹²² Land tax, will be explained later.

¹²³ Head tax

¹²⁴ The covenanted non-Moslem people (under Islamic protection)

¹²⁵ Non-Moslem who is not a citizen in Islamic State when given temporary protection.

¹²⁶ Taxes can be imposed only in exceptional cases.

¹²⁷ *Zakha* covers cash money, gold, silver, trade, real estate trade, plant and others.

{Zakah expenditures are only for the poor and for the needy and for those employed to collect [Zakah] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveller – an obligation [imposed] by Allah. And Allah is Knowing and Wise} ¹²⁸.

According to the above verse the eight categories are as follows:

1) *Foqara* (poor): defined as destitute persons, 2) *Masakin* (needy): defined as who does not even have basic needs fulfilled, 3) *Al Amilon Aliha* (collection employees): which covers official appointed to collect and distribute *Zakah*. That means their salaries shall be paid from *Zakah*, 4) *Al Moallafah Golobohom* (Reconciliation of hearts): This applies primarily to that group of people whose hearts, due to their weak Islam, need to be reconciled or strengthened for Islam. This category includes leaders, recently converted Moslems and to even non Moslems either to reconcile their hearts or to neutralize their hostility, 5) *Fi Ar Reqab* (freeing captives) : slaves are to be aided by *Zakah* to obtain their freedom, 6) *Al Gharimon* (debtors): people burdened by debts and unable to pay them, 7) *Fi Sabil Allah* (for the sake of Allah): Most scholars understand this phrase as fighting for the cause of Allah, 8) *Ibn Assabil* (wayfarer): who is traveller stranded in a foreign land. He is to be given *Zakah* if he lacks the means to achieve his destination (As Sayed Sabiq, 1991, v. 3, p. 59-65).

2. Treasury of *Akhmas*:

Akhmas in Arabic is a plural of *Khomos* which means "fifth". The treasury is named that because its resources are the one fifth of transferable booties.

Then the resource of this treasury will be one fifth of *Rikaz*¹²⁹ and one fifth of *Fai*¹³⁰. This treasury is to be shared by five categories as mentioned in Qur'an:

{And know that anything you obtain of war booty – then indeed, for Allah is one fifth of it and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveller} ¹³¹. Accordingly, the five shares are for 1) Allah and His Prophet ﷺ,

¹²⁸ Surah Tawbah, verse 60

¹²⁹ *Rikaz* is trove treasures found from *Jahiliyah* (pre-Islam) period, whether gold, silver, goods, jewels, trinkets, or coin or else. (1983, As Somaih, p.151)

¹³⁰ According to Shafi'ee and one opinion of Hanbali School fifth of *Fai* is included in *Akhmas* treasury. (Mawsoa, 1993, v. 8, p.249)

¹³¹ Surah Al Anfal, verses 41

2) *Bani Hashim* and *Bani Almuttalib* (the close relatives of the Prophet ﷺ)¹³², 3) orphans, 4) *Masakin* (needy people) and 5) *Ibn As Sabil* (traveler).

The first share, which is known as *Khomos al Khomos* (fifth of the fifth), was at the disposal of the Prophet ﷺ during his life. After his death, scholars agreed that it should be at the disposal of the Imam¹³³.

3. Treasury of *Dawa-ea'* (Lost Properties):

All lost properties are added to this treasury, such as stolen and lost properties where the rightful owner is not known, and *Loqatah*.¹³⁴ Only the Hanafi School designates specific expenditures for this treasury which are the poor foundlings and poor people who have no *Wali* (somebody from their relatives who can take care of them) (Mawsoa', 1993, v.8, p. 250). Other schools of law include contents of this treasury within the fourth one.

4. *Fai'* treasury:

Resources of this treasury have been mentioned earlier. This is the only treasury that does not have designated recipients. The State has discretion to allocate it for public interests. This treasury actually represents expenditure of the state budget (Masri, 1989, p. 48).

The treasuries of Bait Al Mal, its resources and types of expenditures and beneficiaries are illustrated in figure 5-2.

5.3.2 Public Property:

Public property here is different than state property. It includes all property shared by all Muslims such as seas, rivers, barren land, *Harim* (protected zones), wild animals, minerals above land, etc. Public property is not state property which implies that the State has no power of disposal over public property (Masri, 1989, p.49).

At the same time, public property is not private, although it can be, in some cases, transferred to private ownership. Taqi Addin Al Sobki (from the Shafiee School) expressed his complaint of mixing public property with state property: "*It is a great problem that some common people believe that river land is owned by Bait Al Mal.*"

¹³² Known as *Ahl Al Bait*.

¹³³ Moslem leader.

¹³⁴ *Loqatah* is a lost fallen purse or thing that is picked up some body.

There is no evidence for that. It (river land) is like exposed minerals. An Imam does not have the right to grant it by *Iqta'* nor can he transfer its ownership... If this door is open it will lead some people to buy all rivers of the country and prevent other people from it....river land is not even like *Mawat*, because it cannot be owned by revivification” (Masri, 1989, p.49).

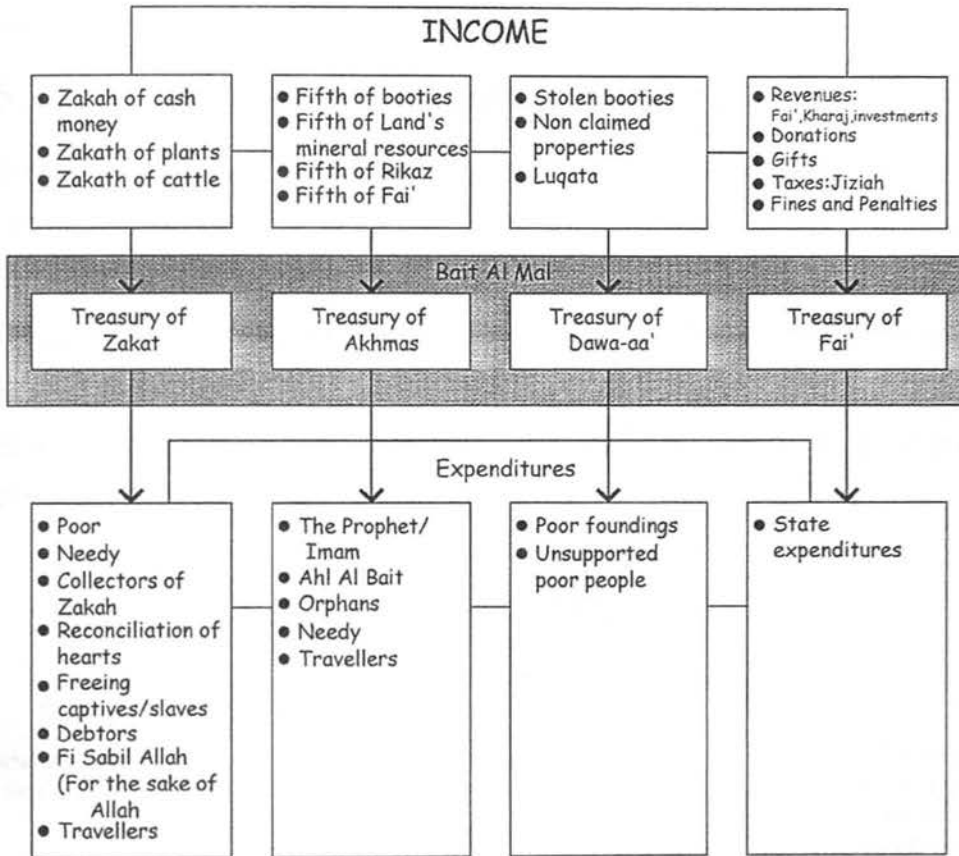


Figure 5-2 illustrates the treasuries of Bait Al Mal, its resources and types of expenditures and beneficiaries.

The treasuries of *Dawa-aa'* and of *Fai'* may be combined in one treasury.

Source: Constructed by the author upon *Al Mowsoa Al Fiqhiyah* v.8, p.242-257.

5.3.3 Private Property:

The right to individual ownership of property has such a high degree of respect in *Sahria* as it is an expression of the desire to possess which is innate in humans (Khoder, 1988, p. 72-73). Under this classification private ownership is neither a state property nor a public

property. All classifications mentioned earlier, such as object ownership or utilization ownership, complete and incomplete ownership are actually applicable to the private ownership.

According to *Sharia* there is no limit to what an individual can possess of any kind of *Mal* (property) (Al Khafif, 1990, p. 112).

Private property refers to an individual ownership, group of individuals or body corporate such as companies, establishments or foundations.

5.3.3.1 Distinct and Common Property:

Private property can be classified into distinct property and common. The distinct property is ownership of a specific object that belongs to a single person, such as the ownership of a house or a specific floor of a house or a specific land or a specific utility. On the other hand the common property is the ownership of an undetermined portion of an object or utility or debit, as owning a third of a house or half of a well or a percentage of a debit. In this case the ownership is spread in all part of the property (Al Khafif, 1990, p. 157).

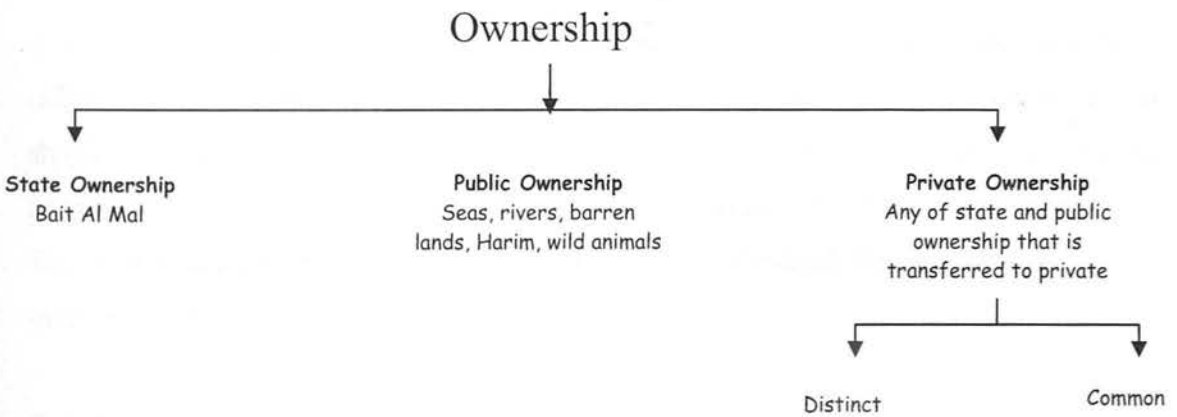


Figure 5-2 Major types of ownership

Source: The author

5.3.3.2 Objectives of Private Property:

Multiplicity of owners to a single property normally leads to conflicts and disputes. It appears that *Sharia* prefers the distinct ownership. Ali Al Khafif in his book *Al Milkiyah fi Ash Sharia Al Islamiyah*, argues that common ownership is not but an exceptional

status that leads eventually to a distinct ownership, either by splitting shares among partners or by any other reason that transfers all partners shares to one of them (Al Khafif, 1990, p. 161).

Abdullah At Toraiqi in his book Al Iqtiasad Al Islami (Islamic economy) suggested that private property is legislated to achieve several objectives:

- Motivating individuals to work in developing this earth through cooperation.
- Creating equal competition between the individuals to promote them for more economical production.
- Fulfilling the ownership need as a natural want of mankind.
- Allowing the individuals to play their role as a parallel role to the state in land development. (At Toraiqi, 2002, p. 47-49)

5.4 Land Possession:

In general Sharia treats land as any other property. Land can be possessed by the same reasons mentioned above (sale, donation, inheritance etc). In addition to those reasons, there are special ways of possessing land which are *Ihya* (revivification) and *Iqta'* (allotment) (Al Mawsoa', 1993 v.3, p.116). These two means had very strong impact on shaping the physical output of land development in the traditional city. As for land possession, *Ihya* and *Iqta'* are the primary sources, while other sources are secondary. The two concepts shall be explored hereafter to understand the morphology of the traditional city.

5.4.1 Concept of *Ihya'*:

Ihya was briefly discussed in Chapter two. *Ihya'* literally means "giving life" and is applied to *Al Ardh al AMawat* which literally means "dead land". So *Ihya'* can be translated as "revivification of dead land".

According to the Shafi'ee School, *Ihya'* is developing a wasted land which has no owner and no one is utilizing it (Mawsoa', 1993 v.2, p.238).

The Hanbali School defines it as developing what has not been owned and has no sign of development (Ibn Godamah [1179-1257], 1981 v.5, p.563).

This principle was based on the direction of Prophet Muhammad ﷺ as in the following Ahadith¹³⁵:

"He who revives a dead land, it shall be his." (Abo Dawood, v.2, p.158) (Ali, A., 1996, p. 58).

"He who cultivates land that does not belong to anybody is more rightful [to own it]" (1994, Al Bukhari, translated by Khan, Muhammad M., p.508).

"Who revives a dead land, it is his. And no right for the unjust root¹³⁶" (Abo Dawood, v.2, p.158) (Ali, A., 1996, p. 59).

"Who cultivates a dead land, it is his. And what is eaten by *Aqfiah*¹³⁷ from it then it is a handout from him" (Ali, A., 1996, p. 60).

All schools of law accept the concept of revivification and accept that it is a legal reason to obtain ownership for the revived land. Ibn Godamah argued that most Muslim jurists agreed that dead lands are owned once revived; although they differed in its condition.

5.4.1.1 *Ihya'* prerequisites:

This opportunity given to the individual to own land through *Ihya'* is applicable only to lands subject to *Ihya'*. Obviously one can not decide to revive somebody else's land or a land that is demarcated by others as long as it is still within *Tahjir* (demarcation) period.

Atif Abozaid Ali in his book *Ihya' Al Aradhi Al Mawat fi Al Islam* presents a good summary for the prerequisites discussed among Jurists for any land so it can be subject to *Ihya'*. All jurists agree upon three conditions: a) land is not owned by anybody, b) it is

¹³⁵ Plural of *Hadith* which the saying of the Prophet ﷺ.

¹³⁶ Orwah (the narrator of the *hadith*) said: "I was told that two men litigated to the Prophet ﷺ one of them planted palm trees in the other's land. The Prophet ﷺ judged that land is for the original owner, and ordered who planted the palm trees to remove his palms" (Abo Dawood, v.2, p.158)

¹³⁷ *Aqfiah* is a general word means all who asks for livelihood whether man, animal or bird.

free of being demarcated (by another individual), allotted (to another individual by the state) or being *Hima*¹³⁸ and c) it is not *Harim*¹³⁹.

The other three, where jurist opinions defer, are: a) not being attached to a developed area, b) absence of previous ownership and c) state permission (Ali, A, 1916, p. 93-130).

In regard to the agreed upon prerequisites it is clear that the objective of these conditions is to make sure that using the right of *Ihya'* is not made on the account of other individuals' right. *Hima* is a protected zone (usually for pasture) by the state hence it is excluded from being subject for *Ihya'*. *Harim* is a description for areas that are not developed but adjoining the *Amir* (developed areas). Although such areas are not developed, owned, demarcated nor allotted to someone they are not subject to *Ihya'* because they are close to the *Amir*. In other words *Harim* works as *Hima* for the *Amir*. It appears that jurists are in agreement that *Harim* land is not subject to *Ihya'*¹⁴⁰.

In regard to the disputable prerequisites; some jurist stipulated that land subject to *Ihya'* is not to be attached to *Amir*. The difference between this condition and the *Harim* is that *Harim* has definite interests to the *Amir* as mentioned above, which implies that attached areas that are not of interests to the *Amir* may be subject to *Ihya'*; while, this opinion suggests that any attached area to *Amir* is not to be revived whether of interest to it or not.

Regarding the absence of the previous ownership there are several opinions. Some jurists suggested that when a revived land becomes dead again, someone can re-revive it and claim ownership. The previous reviver right will be dropped. Others argued that the first reviver owns that land by *Ihya'* and this ownership cannot be lapsed. Al Bagori from the Malki doctrine strongly argued that the *Illah*¹⁴¹ (reason) for ownership is the absolute *Ihya'*; once it occurs it can not be nonexistent. What is nonexistent is the continuity of *Ihya'* which is not the *Illah* for ownership (Al Bagori, 1966, v. 2, p. 208).

¹³⁸ *Hima* is a protected zone by the state. It will be discussed in detail later in this chapter.

¹³⁹ *Harim* is the undeveloped land close to the built areas.

¹⁴⁰ Ibn Godamah from the Hanbali doctrine stated : "What is close to the *Amir* where some interests are attached to it such as roads, flumes or dumps is not subject to *Ihya'* (without any dispute in the doctrine). Also all what is related to a village *Masalih* (interests) such as its yards, pastureland, firewood resource, roads, flumes can not be possessed by *Ihya'*" (, Ibn Godamah,, 1981, v. 5, p. 566)

¹⁴¹ *Illah* is discussed in chapter 4.

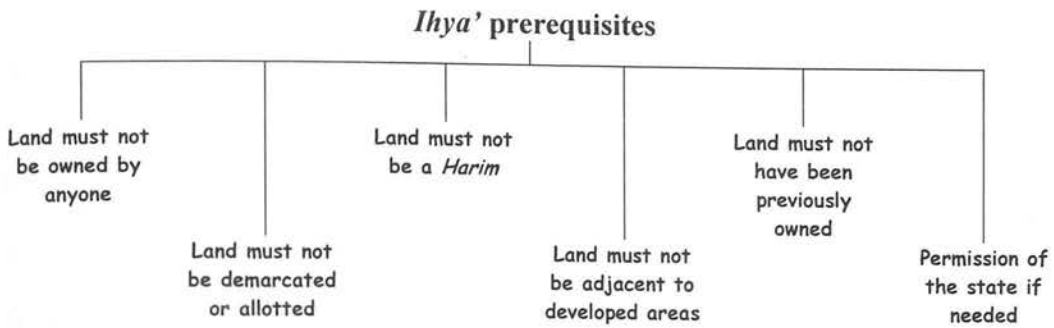


Figure 5-3 *Ihya'* prerequisites

Source: The author

The last prerequisite is the state permission. Most of the schools do not require the permission of the State to conduct revivification. A few in the Hanifa School, including Abo Hanifa¹⁴² himself, stated that it is necessary to obtain State permission before revivification. Malik¹⁴³ made a distinction between dead land abutting developed areas and those which are distant from them. Only land abutting developed areas requires State permission, he argued (Ali, A, 1996. p.116)

During the Othman Empire, the Hanafi doctrine was predominant. *Al Majallah* stated clearly that state permission is needed for authorized *Ihya'* (*Al Majallah* article 1272, 2004, p.345)¹⁴⁴.

5.4.1.2 Process of *Ihya'*:

To revive a land one has to go through several steps: *Tahjir*, development and investment.

5.4.1.2.1 *Tahjir* (Demarcation) Stage:

The first step of *Ihya'* is *Tahjir*¹⁴⁵ or demarcation. *Thajir* or *Ihtijar* is an action taken by Al Mohtajer (who demarcates) to claim a piece of land by identifying it with marks of stone or else form the four directions to prevent others from claiming it (Mawsoa', 1993 v.2, p.239). *Tahjir* does not give the right of ownership, but it gives the right of *Ikhtisas*

¹⁴² The founder of the Hanafi doctrine.

¹⁴³ The founder of the Malki doctrine.

¹⁴⁴ Article 1272 reads " If one revives a *Mawat* land (dead land), by sultanlic permission, it becomes his ownership". The article differentiate between for utilization and *Ihya'*. Utilization permission will not end up by ownership. See also articles 1501 for *Ihya'* and *Tahjir* definitions.

¹⁴⁵ According to *Al Majallah*, article 1052 : *Tahjir* is putting stones or any other materials on the borders of lands by someone to prevents others from laying hand on it (*Al Majallah*, 2004, p. 297)

only, which means "belonging"¹⁴⁶. This implies that a person who demarcates a land has the priority to revive it (Mawsoa', 1993 v.2, p.239). From opinions of jurists and actions of authorities, it is evident that demarcated lands are not owned and so may not be sold unless they have been revived (Akbar, 1988, p.31).

This stage cannot continue indefinitely. If *Tahjir* (demarcation) is not followed by another step that reflects the seriousness of the *Mohtajir* (one who demarcates), he will lose his right of *Ihya'*. This is according to Prophet Muhammad's ﷺ *Hadith*, "A *Mohtajir* will not have the right after three years," (Abo Yosif, 1979, p.140).

Most jurists are in agreement that unless followed by further steps towards development, *Tahjir* is not enough to prove ownership. Land is for who revives, not for who demarcates but is not able to revive (Abo Obaid, 1968, p. 368) (Ali, A, 1996, p.76)

5.4.1.2.2 Development stage:

Jurists mentioned several actions that come under *Ihya'*. All jurists considered that building or cultivating is enough to revive a parcel of land. The Hanafi School considered that preparing land for planting by bringing water to it or blowing it is enough to justify *Ihya'* (Ali A, 1996, p.76).

The Malki School mentioned seven ways of *Ihya'*: 1) digging a well, 2) drying submersed land, 3) building on a land, 4) planting trees, 5) plowing a land, 6) cutting trees off a land to prepare it for further development and 7) levelling a land (Mawsoa', 1993, v2, p.248). According to Mawardi from the Shafi'ee School, to prepare a land for planting, such as bringing water to it and plowing it, is enough to demarcate it. Planting is not necessary to accomplish *Ihya'*, as inhabiting is not necessary to accomplish *Ihya'* after building, since the building can be rented or leased (Al Mawardi, 1988, p. 306). Ibn Godamah from the Hanbali School supports that cultivating is not a requirement for completing *Ihya'*. Planting is a repetitive work to utilize the land. In fact, in the Hanbali School, it is enough to build a strong wall around the land to fulfill *Ihya'* requirements (Mawsoa', 1993, v.2, p. 249).

¹⁴⁶ See (Al Mowsoa' , 1993, v. 2, p. 239) for definition of *Ikhtisas* and other related phrases.

In summary, *Ihya'* can be accomplished by preparing a land for cultivating or building a structure in a land. Sowing and planting the land, or inhabiting the built house are not required to fulfil *Ihya'* requirements.

5.4.1.2.3 Investment Stage:

Investing in an agricultural land is by cultivating it. The reviver can exercise this step by himself or can do through others without losing the ownership of the revived land. Inhabiting a house or renting it are considered as investment actions. Jurists consider this stage as a post-*Ihya'* stage because cultivation is *Istifa' Manfaa'* (profit making), which is something beyond *Ihya'*. (Ali A, 1995, pp. 81-82)

5.4.2 Iqta' (Allotment):

The second way to possess land is *Iqta'*. *Iqta'* is defined as the ruler allotting a piece of land to an individual. There are three types of allotment (As Somaih, 1983, p, 167). The first type is *Iqta' Tamlik* (ownership allotment), the second is *Iqta' Istighlal* (profiting allotment) and the third is *Iqta' Irtfaq* (easement allotment).

5.4.2.1 Iqta' Tamlik (ownership allotment):

In this type the individual is allotted a land for possession. Some jurists argued that even if an individual were allotted a fief, it could only be owned after revivification. The Hanafi and Shafie' Schools and most of the Hanbali School argued that land is not owned solely by allotment, but priority for revivification would be given to whom it was allotted (Ibn Godamah, 1981, v.5, p.579). In this case, allotment takes the place of demarcation. Malik and other jurists stated that the individual would own the land immediately upon allotment by the ruler (As Somaih, 1983, p.164). It appears that this judgment depends on whether land belongs to Bait al Mal or it is Mawat. This is detailed in 5.4.2.6 below.

5.4.2.2 Iqta' Istighlal (Profiting Allotment):

This is when the ruler allots a fief in order that an individual can profit from it by any means without having the right to own it. The individual can cultivate the land or build on it. He can also lease it, but in all cases he cannot sell it.

5.4.2.3 *Iqta' Al Irtifaq* (Easement Allotment):

This is when the ruler designates a location for an individual to sell goods. The location can be in open spaces, wide streets or in deserts beside the roads and resources. In this case, the individual is not expected to invest the location, as he will only use it.

5.4.2.4 Temporary *Iqta'*:

Iqta' can be limited to the life of the granted person. In this case it is called *Omra* (Al Masri, 1989, p.178).

5.4.2.5 *Iqta' Al Maadin* (allotment of lands contain minerals):

*Maadin*¹⁴⁷ are areas contain land's treasures. These treasures of lands (minerals) are classified by the scholars to tow types on surface and under surface (Mawardi, 1988, p. 235). On surface minerals like salt and kohl are not¹⁴⁸ to be granted by *Iqta'* according to most doctrines (Hanafi, Shafiee and Hanbali) (Madkhali, 1996, p. 110). Under surface minerals are those that can not be reached to except after sparing some effort like gold, silver and iron (Mawardi, 1988, p. 235). There are two opinions in granting this type as *Iqta'*. The first opinion does not differentiate between on surface and under surface minerals; accordingly both are not to be granted. The second opinion allows granting lands containing under surface minerals. From the ownership point of view there are two opinions; either to consider it *Iqta' Tamlik* (ownership allotment) or *Iqta' Istighlal* (easement allotment) (Mawardi, 1988, p. 236).

5.4.2.6 Is Ownership achieved by *Iqta'*?

Scholar differentiated between the lands according to their source. In the case of the lands belong to *Bait Al Mal*, they can be allotted only according to profiting allotment (*Iqta' Istighlal*) of lands to be allotted. In the case of *Mawat* lands Imam is given the option to allot them as possession allotment (*Iqta Tamlik*) or as profiting allotment (*Iqta' Istighlal*). But if *Mawat* lands are allotted as profiting allotment (*Iqta' Istighlal*) their

¹⁴⁷ In Arabic language *Maadin* is plural of *Ma'dan*, which actually means the centre. *Maadin* is an adjective for lands that contains treasuries. Later the name was given to the content itself, i.e. minerals.

¹⁴⁸ A man call Al Abyadh bin Hammal requested the salt land of Ma'reb (in Yaman) as a fief from the Prophet ﷺ and the Prophet granted it to him. One of the Prophet companions said: "Oh Prophet, I have visited this salt land in Jahiliyah (pre-Islam) and found it the only of its kind in the vicinity available for who ever needs and it is like running water. The Prophet then tendered Al Abyadh resignation, who agreed on the condition that it is considered as a donation from him. The Prophet said it is a donation from you and it is like running water who reaches it can take from it (Mawardi [1179-1257], 1988, p. 235).

Ragabah can not be owned. This is the opinion of all schools (Al Khafif, 1990, pp. 320-323).

In the case of allotting *Mawat* lands as possession allotment (*Iqta' Tamlik*), Hanafi, Maliki and Shafiee schools consider allotment sufficient to justify full ownership. Hanbali Schools requires *Ihya'* after *Iqta'* to achieve ownership (Al Khafif, 1990, p. 322).

5.4.3 Summary of *Ihya'* and *Iqta'*:

According to most jurists, revivification is a handy procedure through which individuals can possess land. Clearly, this process means a land can only be owned if it is developed. That means undeveloped land cannot be a commodity unless it is developed. Land would continue to be a resource for all inhabitants and can be transferred to a commodity when individuals exhaust their efforts through revivification to add value to the land. This objective of *Sharia* would leave no room for land monopoly and speculation. Another clear objective is to allow individuals direct access to land so they can take initiative themselves. It is necessary to add here that this ideal situation was not always implemented.

Iqta' Istighlal (profiting allotment) was mostly used in the period of the Prophet ﷺ and the Rightly Guided Caliphs. From the Umayyad period, ownership allotment (*Iqta' Tamlik*) was extensively used to distribute the wealth and to gain votaries. *Ihya'* started to be segregated from *Iqta'*, which helped in transforming land from being a resource to become a commodity.

5.5 Types of Land in the Traditional City:

The traditional Islamic city encompassed different types of land. Below is a summary of these types and the sequences of such classification.

5.5.1 *Al Amir* (Developed Zone):

When a city is developed it is composed of the mosque, public buildings, houses, streets and open spaces. The cluster that consists of all these elements is called *Al Amir*, which means developed zone.

5.5.2 *Al Mawat* (Dead Land):

Al Mawat is the opposite of *Al Amir*; literally meaning dead land. Scholars have discussed the definition of *Al Mawat* at length. Abo Yosif from the Hanafi School suggests that *Al Mawat* is land that has no sign of construction or cultivation and not a yard for the villagers, their cemetery, their wood nor their pasture and neither owned nor possessed by anybody; that is *Mawat*. Who revives any of it, then it is his (Abo Yosif, 1981, p. 137), (Ali A, 1995, p.19).

Malik argued that what is close to the built zone is not *Mawat* and is not subject to revivification unless allotted by the ruler (Sahnon, 1902, v. 15, p.195).

The status of *Mawat* is *Mobah* which means "permissible land". According to Al Mawsoa Al Fiqhiyah, *Mobah* is classified as all what Allah created for people to benefit from in an ordinary manner and that is not under the control of others and at the same time can be possessed. Anybody can own a *Mobah* object whether it is an animal, a plant or an inanimate (Mawsoa', 1993 v.1, p.131). Examples for *Mobah* are water, pasture, fire, *Rikaz*¹⁴⁹, *Mawat*, minerals and wild animals.

Who originally owns *Mawat*? In Hadith: "Dead land belongs to Allah and His Messenger, then it is from me to you" (A Ali, 1995, p. 65). Ownership of *Mawat* was transferred to every individual, so it is a common property belonging to the whole nation; it is not a State property. *Mawat* is like a free wild animal; it belongs to who catches it first.

5.5.3 *Al Harim* (Buffer Zone):

Harim is usually imputed to *Amir* and so in many references is mentioned as *Harim Al Amir* (the *Harim* of *Amir*).

According to Almawsoa Al Fiqhiyah, *Harim Al Amir* is what is needed (of the land) to satisfy utilization of *Amir* (Mawsoa', 1993 v.2, p.244). For instance, *Harim* of a village is the area surrounding it that contains its wood, pasture, playgrounds and its natural flume (As Somaih, 1983, p. 128). *Harim* can also be for a cultivated land, a well, a river, or a single house.

¹⁴⁹ *Rikaz* is trove treasures found from Jahiliyah (pre-Islam) period, whether gold, silver, goods, jewels, trinkets, or coin or else. (1983, As Somaih, p.151)

Jurists of all schools are in agreement that *Harim* is not subject for *Ihya'* and in the case of the village it is commonly owned by the villagers; however, jurists differ in determining the extent of *Harim*. Both the Hanafi and Malki schools suggested standards to determine the *Amir*. The Hanafi School's standard is the distance that a man's voice reaches when he shouts from the end of *Amir* (As Somaih, 1983, p. 128).

The Malki School standard was a distance of one-day (walking), or what is not reachable by livestock of the town (As Somaih, 1983, p. 129). The Hanbali School stated that *Harim* can be defined by *Urf* (customary practices). The Shafiee School did not make a distinguished definition.

5.5.4 *Al Hima* (Protected Zone):

Hima is a protected pastureland that is dedicated by the ruler for specific livestock (As Samhodi, 1955, v.3 p. 1083). Prophet Muhammad ﷺ designated *Hima* that was called *An Naqia'* (Shawkani [1760-1834], 1973, v.5, p.52), and Omar bin Al Khattab designated Ar Rabatha¹⁵⁰ for alms' camels (Shawkani, 1973, v.5, p.53). Jurists are in agreement that, except for the *Hima* designated by the Prophet ﷺ, all *Hima* by other rulers can be eliminated in case of Maslaha (Mawardi, 1988, p.319). This type of land cannot be revived as long as it is protected.

5.5.5 *Waqf* Land:

Al Waqf is a new system that was not known in the Arabian Peninsula before the presence of Islam (Obaidi, H, 2002, p. 5). Literally means stopping or restraint. When Omar bin Al Khattab, the second caliph possessed a land in Khaibar¹⁵¹ and decided to donate it; he went to the Prophet ﷺ and asked him for advice. The Prophet ﷺ said, "If you like, you can restrain the substance and give away the fruit." Omar then endowed it on the condition that its substance shall not be sold, given away or inherited (Ibn Hajar¹⁵², 1996, v. 5, p.399). This action of Omar considered as the first in Islam.

¹⁵⁰ An area close to Madinah.

¹⁵¹ A small city near Madinah.

¹⁵² Ibn Hajar (1449-1372), a distinguished scholar in *Hadith Science*.

From these words of the Prophet ﷺ: "Restrain the substance and give away the fruit", scholar derived the definition of *Waqf*¹⁵³. In summary when a Moslem decides to assign a property as *Waqf*, he no longer will have the right of disposal in this property and the revenues of the property will be designated to what the owner himself has decided (Obaidi, H, 2002, p. 8).

Waqf can be any property, whether real estate (a house, a shop, a mosque) or non-real-estate (like a book, a horse or kitchenware). The revenues from *Waqf* are devoted according to the wish of the original owner.

Al Magrizi¹⁵⁴ (1364-1441) argued that it was only during the period of Ikhshids state (935-969), when Egypt witnessed *Waqf* in raw lands. Previously he argued that *Waqf* was implemented only on *Riba'* (developed lands either by structure or plant) and what is similar (Abo Zohrah, 1971, p. 16).

This argument of Al Magrizi supports that raw lands were not subjects for ownership except after they are revived. And hence the author believes that raw land could not be transferred to *Waqf* because it only could be owned after *Ihya*.

The amount of literature written about *Waqf* in Islam's heritage is vast, which is proportional to size of implications of *Waqf* in the life of Muslims¹⁵⁵. During the history of Islam, *Waqf* proved to be a great resource for charity. By the end of the nineteenth century, Muhammad Ali, the ruler of Egypt (1805-1848), surveyed all Egyptian land in order to impose taxes. To his surprise, he found that one third of agricultural lands were *Waqf* (Al Lahim, 2002, p.24). Until today there are 70 schools in Jerusalem which were tied to *Waqf* between the eleventh and the eighteenth centuries (Al Asali, 1983, p.95).

¹⁵³ According to Hanafi doctrine: "to restrain the substance as an ownership to the original owner and to give away the utilization". Malki's definition: "to the fruit of an object during its existence and restrain the ownership to the original owner". Shafie's definition: "to restrain a property that can be fruitful without passing its substance by halting the owner disposal in the *Ragabah* (substance, object). Hanbali's definition maintains the exact wording of the *Hadith*: "restraining the substance and giving away the fruit" (Al Lowaihaiq, 2002, p. 12).

¹⁵⁴ Ahmad Al Magrizi, a historian born in Cairo. He met Ibn Khaldun (1332-1406) and was very impressed by his works specially *Al Mogaddimah*.

¹⁵⁵ *Waqf* revenues were spent for every possible benefit such as building and maintaining mosques, schools, hospitals, bridges and inns; also digging wells, providing *Asbilah* (plural of *Sabil* which is drinking fountain). For more examples see (Al Salih, 2002, pp.34-44)

There are two types of *Waqf*: *Thorri*¹⁵⁶ (sometimes called *Ahli*, which means "national") and *Khairi* (charity). The difference is that in the first type revenues are spent on relatives and offspring only, while the charity *Waqf* is general.

Usually the donator would write a deed that specifies to the *Nathir* or *Motawalli Al Waqf* (trustee) where and how to spend the revenues. These deeds were sometimes very detailed and determined exactly what was to be spent and where.¹⁵⁷

During the years *Waqf* proved to be an effective financial developmental institute. It played a great role in financing economical, social, cultural, and scientific development in Moslem societies. Mosques, schools, hospitals were of the most beneficiaries of *Waqf* (Tofail, S, Al Bayan Magazine, April 2000, p. 20).

5.5.5.1 Substituting and transferring :

It is noted that *Waqf* is given great protection. All scholars agreed that in the case *Waqf* is a mosque it is not to be substituted by other type of property nor can it be transferred (Ibn Godamah, 1981, v. 8, p. 220). In case a mosque is not usable any more for any reason there are three opinions; 1) it can not to be sold or exchanged or transferred, 2) it can be sold or exchanged if not usable at all, 3) it can return to the control of the *Waqf* designator or his inheritors and 4) it can be exchanged and transferred even if not totally unusable if more interests existed (Al Ahmadi, 2002, p. 18-19). If *Waqf* is not a mosque and is not usable or profitable there are three opinions; 1) not to be exchanged or transferred, 2) can be sold if totally not useful and 3) can be transferred and exchanged if proved to be more beneficial (Al Ahmadi, 2002, p. 46-47).

5.5.5.2 Miss use of *Waqf* :

The flourishing of *Waqf* invited two kind of people to misuse it for their own benefits; *Nathir* (trustee) and rulers. Bad administration to *Waqf* by trustees led to serious doubts in the concept of *Waqf* in some stages. On the other hand greedy rules used their power under the connivance of corrupted judges to benefit from *Waqf* through some legal

¹⁵⁶ Refers to *Thorriyah* which means offspring.

¹⁵⁷ The Ministry of *Awqaf* in Egypt keeps a *Hojjah* (documentation) of *Waqf* that consists of 229 pages to document *Waqfs* of the Mamluki Sultan Brisby who ruled Egypt between 1382 and 1395. In an uncommon practice, Brisby engraved his *Hojjah* on the wall of his *Madrasah* (school), which represented the only engraved *Hojjah* in Egypt (Hafith, Omar, 2002, p. 9)

tricks.¹⁵⁸ In some cases *Waqf* was used by others to prevent specific inheritors to take their share from his inheritance by determining his properties as *Waqf Thorry* and assign his favourite inheritors as the only beneficiaries from the *Waqf* (Abo Zohrah, 1971, p. 4). Such situations led the jurist be inflexible in the changing or transferring *Waqf* in order to protect from misuse.

5.5.5.3 *Al Waqf* as Body Corporate:

The contemporary Arabic term for body corporate is *Ash Shakhsiyah Al Etabriyah*. Such term was not used in the traditional *Fiqh* literature, but they used the term *Thimmah*¹⁵⁹ (Al Lowaihiq, 2002, p. 26). Bait Al Mal (treasury) acquires an independent *Thimmah*¹⁶⁰ which means it is treated by jurists as an independent entity or body corporate. This implies that a *Waqf* can buy, own, sell, lend, borrow, assign a *Waqf* for its benefits, and accept gifts and wills.

5.5.6 *Al Aradhi Al Matrokah* (leftover land):

During the process of *Ihya'* leftover land is used for roads, streets, open spaces and pastures. According to Al Majallah, article 1271: "*The lands nearby Al Omran (developed area) are to be left for the inhabitants as pasture and wood gathering and are called Al Aradhi Al Matrokah*" (Al Majallah, 2004, p. 345). Water runways and spaces devoted for public and common use, such as cemeteries and firewood places, continued to be common in ownership. All these types of lands are not subject to *Ihaya'* nor *Iqta'*. By this definition, Harim is a kind of *Al Aradhi Al Martokah* land.

5.5.7 Land Captured During Conquest:

This land is classified into three categories: 1) land captured by force in *Jihad* 2) land captured peacefully by the withdrawal of its inhabitants and 3) land acquired through a peace agreement (Al Mawardi, 1988, p. 243). Treatments of the first type of land varied

¹⁵⁸ In the Hanafi doctrine it is possible to substitute (transfer it location) *Waqf* if it is proven that it harms the neighbors and pedestrians. When some rulers wish to put their hands on valuable *Waqf*, they used to bring false witnesses to proof the case; the conniver judge then approves the substitution and sells the valuable *Waqf* to the ruler very cheaply (Abo Zohrah, 1971, p.18).

¹⁵⁹ *Thimmah* is defined as a description that make the person eligible for obligations and rights (Al Lowaihiq, 2002, p. 26)

¹⁶⁰ According to Al Mawardi (350H,370H) in his book *Al Ahkam As Soltaniyah* : "If an expenditure item in Bait Al Mal needs expenditures more than what is available within the item, the ruler can borrow from an over budgeted item (Al Mawardi, 1988 , p. 365)

among the schools. The Shafie' doctrine suggested that such land is to be shared by the conquering fighters, because it's their right unless they agreed to leave it for *Waqf*, in which case it would be controlled by the State. The Malki School stated it could only be *Waqf*. Abo Hanifa argued that is the choice of the State either to distribute it between the conquerors or return it to the original non-Muslim owners on the condition that they pay *Kharaj* or transfer it to *Waqf*. Most schools suggested that the second type of land defined above should be left as *Waqf*. The status of the third type would depend on the conditions of the peace agreement.

5.5.8 *Sawafi* Lands:

After the capture of Iraq, during the period of Omar bin Al Khattab, all land that belonged to the Kaiser and his family, a man killed in the war, a man who left his property and joined the enemy, and any other property belonging to the previous Persian State was designated for the benefit of Bait Al Mal (Abu Yosif, 1979, p. 169). This land and real estate was called *As Sawafi*. In Ash Sham, *Sawafi* land originally belonged to the emperor, nobles and senior officers of the Byzantine Empire. In summary, all land left by the defeated army and those killed in battle was taken as *Sawafi* (Husain, 1989, p.445). *Sawafi* can also be defined as all land left without an owner after the conquest.

When an owner of *Kharaj* land dies, leaving no heir, the land is added to *Sawafi*, as was the practice of Abdulmalik bin Marwan during the Umayyad period (Husain, 1989, p.444).

5.5.9 *Al Aradhi Al Miriyah* (Miri Lands):

The land management system of the Othman Empire was based on Islamic principles but included ideas inherited from the Seljukids and Sasanian Empire. The Othman Empire was later able to develop a system of state land. This system was based on the *Iqta'* concept, local traditions, and old Turkish customs (Biyik and Yavus, 2003).¹⁶¹

¹⁶¹ From a research titled "The Importance of Property Ownership and Management System in the Othman Empire in point of Today", by Cemal Biyik and Ayse Yavus submitted to 2nd FIG Regional Conference. Marrakech, Morocco, December 2003.

The land code of 1858¹⁶² defined the *Miri* land as state land left to the disposal of particular people under certain rules. It was not possible to transfer *Miri* land into other land varieties without the Sultan's permission. Later in this chapter *Miri* land will be detailed in the discussion of land policy in the Othman Empire.

5.6 A special Case:

A strong debate occurred among the scholars regarding ownership and rental of land and houses in Makkah, the holy city. There are three major opinions: 1) forbiddance of owning or renting the land and houses of Makkah, 2) allowance of both owning and renting, and 3) allowance of owning structures but not land and selling but not renting (Somaih, 1983, p. 215).

This debate is based on how Makkah was conquered. Those who consider it was conquered in conciliation, which is the opinion of Ash Shafiee, argue that Makkah's land and houses belong to their original owners and can be sold and rented. Those who consider that Makkah was conquered by force make the case that Makkah's land and houses cannot be owned or rented, because they belong to all Muslims and not to their original owners.

Ibn Taymiyah (1263-1328), from the Hanbali doctrine, supports the third opinion. Although he believes Makkah was conquered by force, he advocates that it was a special case, because the Prophet did not treat the land or objects as booty nor did he treat the people as captives (Somaih, 1983, p. 220). This is a continuing debate.

5.7 Land Classification in regard to financial liability:

From the financial liability aspect, land can be classified as *Ashri* land and *Kharaj* land (Abbadi, 1989, p.730). Jurists have different opinions about what is considered *Ashri* land and what is considered *Kharaj* land. Two distinguished opinions have evolved from the Hanafi School and for *Al Jumhor* (majority of jurists). Both opinions are explained hereafter.

¹⁶² Because most of the land types are state land, the system was called the *Miri* Land System or sometimes the *Dirlik* (fief) system or the *Timar* system.

5.7.1 *Ashri* Lands:

Ashri land is actually the privately owned land (*Mamlukah*). This land is subject to *Zakah* (alms). The amount of *Zakah* is one tenth¹⁶³ of the produce of the land if it is watered by rain and half of the tenth (5%) if watered by supplied water.

Hanafi School jurists stated that land would be considered *Ashri* in the following cases:

- Land belonging to individuals converted to Islam during their occupation of the land.
- Land taken by force during *Jihad* which has been distributed among the conquerors.
- Land taken by force during *Jihad* and then the original owners converted to Islam and were allowed to occupy it again.
- Mawat land that was revived by Muslims if watered by water from *Ashri* land or that was close to *Ashri* land.

Land is considered *Ashri* land in *Jumhor* opinion in the following cases:

- Land belonging to owners who converted to Islam
- Land taken by force and distributed among conquerors (Some jurists from the Malki School consider such land *Waqf*.)
- Land revived by a Muslim.

(Abbadi, 1989, p.730)

5.7.2 *Kharaj* Land:

There are two types of *Kharaj*: *Kharaj Al Wadhifah* and *Kharaj Al Mogasamah*. *Kharaj Al Wadhifah* is a determined amount of money paid annually in return for land utilization. *Kharaj* will be paid by who seizes the land even if he does not really utilize it. *Kharaj al Mogasamah* is a percentage of the product that comes out of the land, one fourth or one fifth, according to what the Imam determines. *Kharaj* land is subject to an annual tax other than *Zakah*.

¹⁶³ One tenth in Arabic is *Oshr*. *Ashriyah* is related to *Oshr*.

According to the Hanafi School, *Kharaj* land includes the following:

- Land conquered by force, and its original owner did not convert to Islam but was allowed to remain on the land with *Kharaj* imposed on it, or other people were transferred to the land and *Kharaj* was imposed on them.
- Land conceded through a peace agreement in return for specific compensation. This compensation is *Kharaj*.
- Land revived by Muslims using water from *Kharaj* land or close to *Kharaj* land.
- Land revived by *Ahl Ath-thimmah*.¹⁶⁴
- Land purchased by *Ahl Ath-thimmah* from *Ashri* land.

The opinion of *Jumhor* is that land will be considered *Kharaj* land in three cases:

- Land conquered by force then considered for all Muslims. The *Shafie* School stipulated the approval of the conquerors, the Hanbali School left the decision to the Imam, and the Malki School suggested that *Kharaj* will be as rental value.
- Land peacefully taken on the condition that the land belongs to Muslims and its original non-Muslim owners pay an agreed upon amount of *Kharaj* as annual rental in return for the right to occupy it. *Kharaj* would continue even if they converted to Islam and they could not sell the land, but they would have the priority as long as the peace agreement stands. Such land would not be taken from them whether they convert to Islam or keep their religion. If the agreement does not stipulate land possession, *Kharaj* will be *Jiziah*¹⁶⁵ and they will still own the land and can sell it.
- Land abandoned by its original owners. Most jurists stated that such land is *Waqf* for all Muslims. *Kharaj* will be taken from who occupies such land, regardless of his religion.

This classification is based on who seizes the land when the tax is imposed. If the land is in Muslim hands then it is *Ashri* land, because the owner must comply with *Zakah*

¹⁶⁴ The people of covenant: a phrase describing non-Muslim citizens of the Islamic State.

¹⁶⁵ Poll-tax (Dictionary of Islamic Terms), Al Khuli, Muhammad, 1989.

requirements. If the land is in non-Muslim hands, it is *Kharaj* land and tax is imposed because non-Muslims are not required to follow *Sharia*. The Hanafi School considers *Kharaj* in this case as a substitute to *Zakah*, but *Jumhor* considers *Kharaj* as land rental (Abbadi, 1989, p.733).

5.8 Who Owns What:

In summary, land ownership can be classified into four categories:

1. State land: the land that is actually owned by the State is that land which the State utilizes for specific purposes, such as land occupied by public buildings. *Sawafi* land can be considered as owned by the State. The State controls, not necessarily owns, other types of land such as *Kharaj* land and *Hima* land.

2. Public land: covers most types of land, i.e. *Mawat*, *Harim*, *Matrokah* (streets, open spaces. etc), and water resources (seas and rivers). Public land is commonly owned by all Muslims and cannot be sold or allotted for ownership (*Iqta' Tamlik*). It may be allotted for profit or easement (*Iqta' Istighlal* and *Iqta' Irfaq*).

3. Private land: revived land and land bought by individuals from the State. Some jurists state that *Iqta' Tamlik* lands are owned immediately upon allotment without the need for revivification.

4. Waqf land: land tied to *Waqf* whether *Khairiy* or *Thorri*. It is not state land, nor is it public or private. An example would be land on which a mosque is erected.

Table 5-2 summarises the types of land in the traditional city and the ownership status applicable in each type.

5.9 Development of Land Policy:

Principles of *Sharia* towards land development began to evolve from the first days of the Prophet ﷺ in Al Madina Al Mohawarah. During the Prophet's ﷺ life and that of the first Caliph, Abo Bakr, no new towns were built. It is only during the period of Omar bin Al Khattab when the State started to expand, that the need for new cities and land policies arose.

	Type of land	Applicable ownership			
		State	Public	Private	Waqf
1	<i>Al Amir</i> (Developed zone) : Public building, houses, streets, farms, open spaces	O	O	O	O
2	<i>Al Mawat</i> (Dead lands)		O		
3	<i>Al Harim</i> (Buffer zone)		O		
4	<i>Al Hima</i> (protected zone)		O		
5	<i>Waqf</i> : Mosques land, <i>Waqf Thorri</i> , <i>Waqf Khairy</i> .		O		O
6	<i>Al Aradhi al Matrokah</i> : Streets, roads, open spaces.		O		
7	Land captured during conquest by force, peaceful withdrawal or peace agreement.		O		O
8	<i>Sawafi</i> lands	O			
9	<i>Miri</i> lands	O			

Table 5-2 Type of land and its ownership in the traditional city

Source: The author

Through the history of urbanization, Muslims developed systems and regulations to meet new challenges they faced. At the same time, jurists have sometimes clashed with rulers who would like be free of some *Sharia* obligations.

In the following paragraphs the author will examine the role of both the State and the individual in regard to land development and *Sharia*.

5.9.1 The Period of the Prophet ﷺ and the Four Caliphs:

Private ownership was practiced in Yathrib when the Prophet ﷺ arrived. From the first day, the Prophet ﷺ began to prepare Al Madina Al Monawarah (the name given to Yathrib) to be the first capital of the Islamic State. The first action he took was purchasing land to build his mosque and his house. Some of his companions who immigrated from Makkah (Al Mohajireen) lived as guests with the Muslims of Madinah (Al Ansar) until the Prophet ﷺ allotted land to them from leftover land or that donated to him by Al Ansar (Al Ali, 1989, p.401). Land was granted to individuals or sometimes to a tribe (Al Ali, 1989, p.402). References did not mention any conditions imposed by the Prophet ﷺ for such allotments. All such lands are classified under Mawat land. Ash Shafi'ei argued that the Prophet ﷺ allotted some people land within *Al Amir* (built

fabric) among Ansar houses (Othman M,1988, p.54). When a tribe was allotted a piece of land, the individuals from that tribe would revive it. This practice is actually *Ihya'* within *Iqta'* (revivification within allotment). During this period, an individual enjoyed direct access to land, either by direct *Ihya'* of *Mawat*, by *Ihya'* of allotted land or by *Ihya'* within *Iqta'*, as in the case when a large piece of land is granted to the tribe through *Iqta'*.

According to scholarly opinion about *Iqta'*, those who acquired land according to *Iqta'* but could not revive it within three years would not have the right to own the land anymore. There are some documented cases where land was taken away, at least partially, from those who acquired it through *Iqta'* and could not revive it.

One of those cases is that of Bilal ibn Al Harith Al Mozani. The Prophet ﷺ allotted him a piece of land, but he did not revive it. Omar bin Al Khattab later gave him the choice either to return all the land, to revive it, or to keep what he was able to revive and return the rest. The third option was actually implemented (Ibn Godamah, 1981, v. 5, p. 579).

An important debate occurred during Omar's period in relation to *Sawad* land. *Sawad* land was seized by force and, according to precedent; it should be shared between the conquerors. Omar's opinion was to treat it as *Kharaj* land, which implies that it is owned by all Muslims. Its original owners can occupy it, assuming that they pay *Kharaj*, and its revenues will be part of *Bait Al Mal*. Omar consulted the *Sahabah*, and most of them suggested distributing the land. Omar's justification was if land was divided every time between conquerors, there would be none left for new Muslims who came later. After three days of discussion, the decision was according to Omar's opinion (Abo Yosif, 1985, p.117).¹⁶⁶

People continued to practice *Ihya'* freely during the periods of the four caliphs. A man who had revived a barren land came to Ali (the fourth caliph) and said, "I came across a land that was ruined or its original inhabitants had left it, and I dug streams and cultivated it." Ali responded, "Eat pleasurably you are righteous not impious, a reviver not a destroyer" (Ibn Godaman, 1981, v.5, p. 563).

¹⁶⁶ For more details about *Sawad* refer to (Katbi, 1994, p. 88-105)

Waqf began to flourish during this period, and most of the *Sahaba* donated houses and sometimes land as *Waqf*.¹⁶⁷

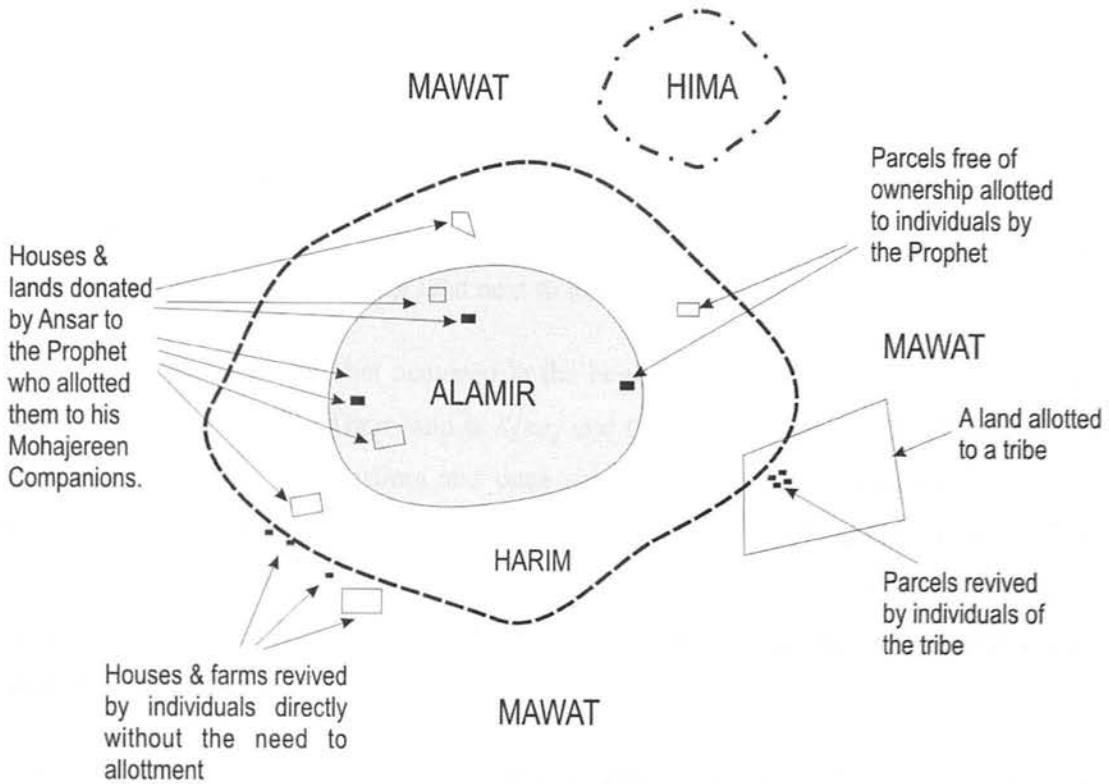


Figure 5-4 Hypothetical distribution for major land types for Al Madina Al Monawwarah during the Prophet's period.

Source: The author

5.9.2 Umayyad Period:

During the Umayyad period, changes in land policy emerged: the need for State permission to practice *Ihya'* and modification of the concept of *Iqta'* to be a sort of feudality. These restrictions pertained to agricultural land, not land to be used for building houses, which continued to be practiced freely.

Rulers began to practice *Iqta'* widely for themselves and for their followers and to gradually disengage themselves from some of its conditions. It became possible to claim

¹⁶⁷ Abu Bakr donated his house in Makkah for his sons (*Waqf Thorri*), Omar donated a *Robaa* to his offspring, Ali donated his land in Yanbu', Az Zubair donated his houses in Makkah and Egypt for his sons. (Kubaisi,1983, p.24)

full ownership of the land acquired by *Iqta'* without the need for revivification. Land gradually became more of a commodity than a resource.

The main substance for this new direction towards *Iqta'* was *Sawafi* land. At Tabari, Al Balathri and Ibn Asakir mention a series of events that reflected the vast number of fiefs granted by rulers during this period. Falih Husain argued that most major landowners in both Iraq and Ash Sham were from upper class society such as caliphs, rulers and their relatives. All documents related to *Sawafi* were destroyed in a fire in the year 700. After this fire every one seized *Sawafi* land next to him (Husain, 1989, p.444).

One of the new practices that occurred in the beginning of this period was buying land from *Ahl Ath-thimah*¹⁶⁸. Their land is *Kharj* and taxes from it go to *Bait Al Mal*, which means it belongs to all Muslims and once sold would only belong to the owner. Ibn Godama reported that people asked Abdulmalik, Al Walid and Sulaiman to allow them to buy land from *Ahl Ath-thimah*, and they were granted such permission. During his period, Omar bin Abdulaziz stopped the continuation of this practice, but could not undo what had happened earlier.

A negative phenomenon, called *Ilja'*, appeared during the middle stage of the Umayyad period. In this case, a landowner looked to an *Amir* or another powerful person seeking for his protection from the tax collectors. This would imply making an agreement to transfer land ownership to the latter to guarantee his protection. The real owner would undertake payments due to *Bait Al Mal* plus an extra amount to the protector (Al Samirra'ei, 1989, p.482). After a period of time the protector becomes the real owner of the land while the original owner becomes only a farmer in his own land (Ad Dori, 1995, p.56).

The Umayyad caliphs actively developed *Waqf*. During the rule of Hisham bin Abdulmalik (724-743), the first Diwan for *Waqf* was established in the year 736 in the hands of Egypt's judge, Tawbah bin Namir, to protect *Awqaf* from being misused (Abo Zahrah, 1971, p.12). According to Al Magrizi, most *Awqaf* were houses and what is similar; land was rarely tied to *Waqf* (Abo Zahrah, 1971, p.16).

¹⁶⁸ A description given to non-Muslims who are citizen of the Islamic State.

5.9.3 The Abbasi Period:

The Islamic State continued to expand during the Abbasi period; hence, more land of *Mawat*, *Sawafi* and *Kharaj* were added. Revivification flourished accordingly (As Samerra'ei, 1989, p.481). The State capital during this period moved from Ash Sham to Iraq. In general the types of land were the same as in the Ummayed period.

The second Abbasi caliph (753-775) made several reforms related to land policy. The most important was to review the situation of *Kharaj* land which led to three major decisions.

The first was a deletion of all illegal actions relating to *Kharaj* land back to the period of Omar bin Abdulaziz (36 years). This occurred after a review of the amount of taxes imposed on this land in light of its actual production.

The second was a cancellation of *Kharaj al Wadhifa* and implementation of *Kharaj Al Mogasamah*¹⁶⁹; instead, which depends on a percentage of land products. Although Al Mansor made this decision at the end of his period, it was actually implemented by his son, Al Mahdi (774-885), (Al Samirra'ei, 1989, p.491). Al Mansor himself took several actions to change *Kharaj* land into *Ashri* land, which allowed him to grant it as *Iqta'*.

During the period of Al Mahdi, his *Wazir* (minister), Moawiah bin Abdullah bin Yasar, suggested a complete reformation plan. His plan was very detailed and aimed to a real reformation based on *Sharia* and a sound knowledge of the actual situation of the land and the agricultural market. The minister's recommendations included determining the role of the State, which included building bridges, digging canals, severing land with water. Most of these recommendations were not implemented, in particular those pertaining to the State's role; however, Al Mahdi issued an important decree that his tax collectors were forbidden to punish and torture the farmers in order to force them to pay extra taxes (Al Samirra'ei, 1989, p.491).¹⁷⁰

An important development occurred during the period of Haron Ar Rashid (786-809) in regard to *Kharaj* land. He saw the negative impact of imposing a high percentage tax on

¹⁶⁹ difference is explained in paragraph 5.7.2.

¹⁷⁰ It seems these actions continued to the next Caliph period Al Rashid as it was stated in *Al Kharaj* book "It came to my knowledge that they (the state officers) force Kharaj people in the sun and beat them very hard and hang stones on them and tie them in a way that prevents them from performing Salah (pray) which is a very awful act in Islam" (Abo Yosef, 1979, p.109)

such land, and asked his judge, Abo Yosif, to submit his recommendation. Abo Yousif submitted them in the form of a book, *Al Kharaj*. The book was based on a sound knowledge of *Sharia* and the reality of the land situation. Scholars considered it a great reference in its subject. In his book Abo Yosif criticized many steps taken by the State and the behavior of the State officials. He specifically objected to *Al Gabalah* which was a practice in which the State gave the right of impost of a certain village to a *Motagabbil* who in return pays a specific amount of money to Bait Al Mal. Of course, the *Motagabbil* will do his best to collect as much as he can, which leads to a great deal of injustice (Abo Yosif [731-798], 1999, p.119). He submitted detailed recommendations regarding collection of *Kharaj* land taxes, suggesting that such taxes be in proportion to the kind of product and the type of irrigation system used. As Samirra'ei argues that Ar Rashid did not implement most of Abo Yosif's recommendations.

During the remainder of the Abbasi period, land policy, in particular that related to *Kharaj*, was the cause of many disturbances and rebellions. In general, *kharaj* land was the main source of Bait Al Mal during this period.

Upon the transfer of authority to the Abbasi State references confirm that the new State seized the Umayyads' *Dhiya'* (landed properties). These landed properties were subject to be granted as *Iqta'*, particularly to the members of the new ruler's family (Al Samirra'ei, 1989, p.520).¹⁷¹ The authorities always confiscated properties of revolutionists and those who were accused of defalcation. Such properties were subject to *Iqta'* as well.¹⁷² The concept of stipulating *Ihya'* to claim ownership of allotted land began to vanish at this stage. *Iqta'* was understood as the granting of full ownership whether revivification occurred or not.¹⁷³

Several illegal procedures were implemented during the Abbasi period, but at the same time there was some effort by jurists to reform. Also, during this period there was a great development of *Waqf* property, much of which was stipulated by the Abbasi

¹⁷¹As Saffah (the first Abbasi Caliph) appointed Amarah bin Hamza to supervise Marwan's (Umayyad) family landed properties which were allotted to the As Saffah relatives. Hisham bin Abdulmalik landed property that was call Hani and Mari was taken by Al Mansor and later inherited by his granddaughter Zubaidah.(Al Balathiri, 2000)

¹⁷²Al Baramikah were ministers for Ar Rashid, they were accused of disloyalty and their properties were confiscated. (Tabari, 1902, vol.3, p.679)

¹⁷³During this period Ibn Godamah Al Magdisi (1179-1257), who lived in Baghdad, the capital of Abbasid authored his book *Al Moghni*, a major reference in the Hanbali doctrine in which he stated very clearly that *Iqta'* is not enough to own the land and it can only be owned after *Ihya'*. (Ibn Godaman, 1981, v. 5, p. 579)

caliphs. As Saffah, Al Mansor, Al Mahdi, Al Rashid, Al Mo'tasim, Al Wathiq and their relatives and ministers tied a significant amount of their property to *Waqf* (As Samirra'ei, 1989, p.550-552).

5.9.4 The Ottoman Empire:

The Ottoman Empire lasted for more than six centuries (1299-1924), extending from the Middle Ages to the Twentieth Century. During this long period, the Empire passed through several stages. The foundation stage extended until the conquest of Istanbul; the stage of development lasted until the end of the sixteenth century, when the stage of stagnation began. The siege of Vienna in 1683 began a stage of deterioration which was interrupted by a period of reforms until the year 1839. From there the Empire passed through the regulation period to the first and second constitutional stages. It began to break down after the First World War and disappeared by the cancellation of the caliphate in 1924 (Oghli, 1989, p.591-592).

Property law in the Ottoman Empire was based on the Hanafi School of Law, which was codified in 1869 and published under the title of *Majallah*. It was a guide to all the courts of the Empire (Akbar, 1988, p.47).

In 1858 a land code was issued. The code divided lands into five categories:

- 1) *Mamlukah* property, or property held by individuals in absolute ownership in which the owner could convert his property into *Waqf* or bequeath it. Such actions were the highest form of manipulation, denoting a state of pure ownership;
- 2) *Miri* land, or property owned by the State and possessed by individuals who use and control it;
- 3) *Waqf* land;
- 4) *Matrukah* property, or property left for public use; and
- 5) *Mawat* land (Akbar, 1988,p.48).

The interpreters of the code defined the *Miri* land as one of the following cases:

- 1) Land abandoned when its original owners migrated during conquest and was then occupied by other non-Muslims but which is owned by *Bait Al Mal*,
- 2) Land transferred to Bait Al Mal without knowledge of how it was transferred,
- 3) Land that was originally privately owned but its owners died leaving no heirs, wills or debts,
- 4) Land transferred to *Bait Al Mal* because its original owners were unknown.
- 5) *Mawat* lands that were revived through State permission on the condition that its *Ragabah* (ownership) belonged to *Bait Al Mal* (Abbadi, 1989, p.717).

Ihya', particularly for houses, continued during this period, but increasing interference of the state in land policy slowly erected barriers between individuals and land, resulting in less initiative from individuals and more dependence on the State.

Land policies in most Arab cities continued to be influenced by the policies of the Ottoman Empire. During the occupation of many Arab countries by the European powers, new influences emerged in many aspects of life, including land policy and building codes.

5.10 Land Expropriation:

Private ownership is valued in *Sharia*. The Prophet ﷺ said that a man who is killed while defending his property is a martyr, which indicates a very high respect for property ownership.

Ownership of properties can be transferred by *Al Ogod An Nagilah lil Milkiyah* (ownership transformation contracts) such as sale, *Waqf*, donation etc. The effective factor in these contracts is satisfaction. Satisfaction is the general rule that controls property transformation (Abo Zahrah, 1976, p. 148).

The Qur'an states: {Oh you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent.}¹⁷⁴

¹⁷⁴ Surah An Nisa', verse 29

There are cases where *Sharia* legitimizes the condemnation of property when necessary. That can occur either in consideration of *Maslaha Aammah* (public interest) or in consideration to another individual's interest who is given higher priority according to *Sharia*. Expropriation for the public interest is permissible only in three cases:

- 1) Expropriation of landed properties for building a necessary new street or digging conduits.
- 2) Expropriation of properties adjacent to a mosque that is not large enough to accommodate the worshippers.
- 3) Selling the monopolized food in spite of its owner's wish when people are in deep need for it. (Gaigab, 1998, p. 242)

One of the early cases of land expropriation attempts is the case of Al Abbas, uncle of the Prophet ﷺ.¹⁷⁵ It reflects the high level of respect *Sharia* gave to the private ownership.

In 1988, the Islamic Fiqh Counsel issued a *Fatwa* in relation to land expropriation for the public interest. Following is the *Fatwa* text:

"Private property should be maintained and protected from any violation. It is not permissible to impose any constraints upon it. The owner has full right of disposal of his property, and within Sharia rules he can utilize his property in any manner. It is permissible to expropriate landed properties for public interest within the following precepts:

- 1. Expropriation should be in return for instant and just compensation.*
- 2. The expropriator should be the Imam or his successor.*

¹⁷⁵ According to As Samhodi (1440-1506): when the number of worshippers increased during the period of Omar bin Al Khattab to the point that it was not enough to accommodate them, Omar bought the houses around the mosque except the house of Al Abbas and the rooms of the Prophet ﷺ wives. Omar asked Al Abbas to sell his house and name the compensation. Al Abbas refused. Omar gave him three options: to sell, to substitute it with any land in Madina and build a new house on the expenses of Bait Al Mal or to donate it to Moslems to expand the mosque. Al Abbas refused all options. Omar asked him to suggested someone to act like a judge; Al Abbas suggested Obay bin Ka'b. Obay's decision was that there was no way to force Al Abbas to sell. Omar then accepted not to force Abbas to sell and gave up the idea of buying his house. Finally Al Abbas donated his house the benefit of the mosque. (As Samhodi, 1955, v.2, p. 482)

3. *Expropriation is intended for public interest caused by public necessity such as mosques, bridges and roads.*

4. *The expropriated landed property is not to end at utilization in public investment or private investment and not be expropriated before the time that it is needed at.*

If any of these conditions are not met expropriation shall be considered unjust and compulsory which is prohibited by Allah and His Messenger. The original owner or his heirs shall have the priority when the expropriation is dismissed' (Decision no.4, 1988), (Gaigab, 1998, p. 246-247).

In summary, although *Sharia* permits land expropriation, it does so only in exceptional cases. Expropriation can only be imposed if proven to be necessary for the public interest. The *Fatwa* expresses very clearly the prohibition of expropriation for the purpose of investment, whether public or private.

5.11 Impact of *Sharia* on the Built Environment:

The impact of *Sharia* on the built environment of the traditional city is significant. This chapter has discussed the mechanisms related to land policy. The author will hereafter explore aspects of *Sharia* related to individual rights such as the right of easement (*Haq Al Ertifaq*), the inheritance system and *Shofaa* (right of pre-emption) and then summarize the impact of all systems on the built environment.

5.11.1 Right of Easement (*Haq Al Ertifaq*):

Haq Al Ertifaq (right of easement) is one of the restrictions on private ownership. For one of the reasons listed below, the disposal of a piece of real estate will be restricted. The right belongs to the real estate not to the owner. See Figure 5-5.

Haq Al Ertifaq is defined as a right obligatory upon a real estate for the sake of another real estate that is owned by another owner (Khafif, 1996, p. 113). Rights of *Ertifaq* are classified into three categories: *Haq Ash Shirb* (right of water share), *Haq Al Masil* (right of drainage) and *Haq Al Moror* (right of passage) (Abo Zohrah, 1976, p. 78).

Several differences exist between *Mulk Al Manfa'a* (utility ownership), which was discussed earlier in this chapter under the title of *Al Mulkiyah An Nagisah* (incomplete ownership), and *Haq Al Ertifaq*. *Haq Al Ertifaq* belongs to the real estate while *Mulk Al*

Manfa'a belongs to a person. It is obligatory upon the real estate while the other is applicable to the real estate. It is permanent while *Mulk Al Manfa'a* is limited according to the contract between the owner and the user. It's a negative right in relation to the real estate owner, because he is not to perform any action except allow the other real estate occupier to use his easement right, while *Mulk Al Manfa'a* is positive because the user is expected to act in order to benefit from the real estate (Khafif, 1996, p. 114).

5.11.1.1 Reasons Leading to *Haq Al Ertifaq*:

Haq Al-Ertifaq can be granted by such things as a public partnership, as a condition of a contract, as a voluntarily contribution by the owner or by prescription.

All publicly-owned areas, such as roads, rivers and open spaces, sustain rights of easement (*Hag Al Ertifaq*) for all property attached to them. Every house opening to a street has the right of passage (*Haq Al Moror*), and all agricultural land adjacent to a water source has the right of water share (*Haq Ash Shirb*) (Khafif, 1996, p. 115). If any easement rights are stated in a sale or rental contract, these rights will be granted to the user. Finally, if any of the easement rights are voluntarily granted by the owner, temporarily or permanently, the user will be entitled to them accordingly.

The three categories of *Haq Al Ertifaq* will be explored below.

5.11.1.1.1 Right of Water Share (*Haq Ash Shirb*):

Haq Ash Shirb is the amount of water an area of land may need for irrigation. In the case of water for human and animal consumption and for washing, it is called *Haq Ash Shifah*. Water resources are classified into three categories: 1) major rivers and other resources provided by the state, 2) running water in private land and 3) water possessed by any means such as purchasing or collecting from a legal resource (Abo Zohrah, 1976, p.79-85).

Both *Haq Ash Shirb* and *Haq Ash Shifah* are permissible for everybody in the first category. This implies that if a parcel of land can access water only through another parcel of land, the first parcel will be given the right of easement (*Haq Al Ertifaq*). In the second category, *Haq Ash Shifah* is permissible but not *Haq Ash Shirb* unless permitted by the owner. In the third case, the water is considered privately owned, and it is not permissible for others to use.

Subsequent to *Haq Ash Shirb* is *Haq Al Majra* (waterway right). When the right to access water is applicable, the right to run it through another's land is also permissible (Khafif, 1996, p. 122).

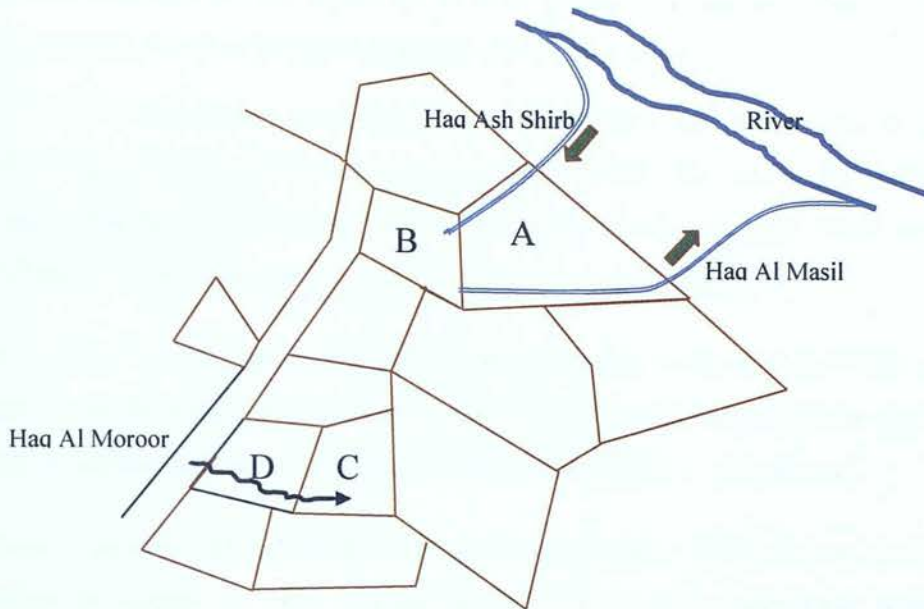


Figure 5-5 *Haq Al Ertifaq* (right of easement). Land B with no direct pass to the river will have the right of *Shirb* and the right of *Masil* through one of the neighbours in this case land A. Land C will have the right of *Moroor* through land D.

Source: The author

5.11.1.1.2 Right of Drainage (*Haq Al Masil*):

A landowner reserves the right to drain excess or useless water through another's land if he does not have direct access to the public road where the water is drained. In both *Haq Ash Shirb* and *Haq Al Masil* the waterway, whether for providing water or for draining, will be maintained by the beneficiary.

5.11.1.1.3 Right of Passage (*Haq Al Moror*):

According to Al Majallah, *Haq Al Moror* is the right of passage through another's property (Al Majallah, 2004, p. 104). If an individual's property is not accessible from the public road, he would have the right to pass through another's property in order to access his own.

5.11.2 Neighbourhood's Rights:

Sharia emphasizes the rights of the neighbour. The following verse from the Holy Qur'an draws attention to the rights of several groups of society including two kinds of neighbours, the near neighbour and the one farther away.

{ Worship Allah and associate nothing with Him, and to parents do good, and to relatives, orphans, the needy, the near neighbour, the neighbour farther away, the companion at your side, the traveller, and those whom your right hands possess. Indeed, Allah does not like those who are self-deluding and boastful.} ¹⁷⁶

The Prophet Mohammad ﷺ emphasized neighbours in the Hadith: "The Angel Gabriel continued advising me to take care of the neighbour till I expected that God may include the neighbour among the inheritors" (Al Al Bani, 1979, v. 5-6, p. 144).

Some contemporary jurists considered the neighbours' rights as part of *Haq Al Ertifaq* (right of easement) (Abo Zohrah, 1976, p. 101). The neighbours' rights¹⁷⁷ include subjects like overlooking, *Haq Al Olo' wa As Soful* (right of height and relationship between owners of two levels of one structure) and the status of the common wall. These rights actually fall under the definition of *Ertifaq* from one point of view, because it imposes restrictions on others properties. The difference, however, is that *Haq Al Ertifaq* belongs to the property itself, while neighbours' rights are mainly concerned with preventing harm or removing it from the neighbours (Faya', 1995, p.28). The neighbour may as well enjoy *Haq Al Ertifaq* (easement right) if applicable.

5.11.3 Right of Pre-emption (*Haq Ash Shofaa*):

This right gives the priority to a partner or a neighbour to own a property that is sold to a third party. This subject is covered in several Hadith. Al Bukhari reported through Jabir bin Abdillah, one of the Prophet's Companions, that: "The Prophet ﷺ imposed *Ash Shofaa* upon every partnership that was not divided, whether *Rob-ah* (house) or *Ha-it* (farm). He is not to sell until he informs his partner and ascertains if the partner wishes to

¹⁷⁶ Surah An Nisa, verse 36.

¹⁷⁷ Jurists from the Hanafi and Maliki doctrines defined the neighbour as only those who are next to each other. Those from the Shafiee and Hanbali doctrines defined the neighbour as all those who live within 40 houses in every direction. Abo Yousif, of the Hanafi doctrine, suggested that neighbours are those who are close to each other and are gathered in one mosque (Faya', 1995, p. 31-37). Also refer to Al Wanshasiri, 1981, v.9, p. 394.

buy or quit. If he (the owner) sells without informing his partner then the partner has the priority to own (Al Mousoa, 1992, v. 26, p. 136). The Prophet ﷺ also said, "The neighbour of a house is more entitled to the house" (Al Mousoa, 1992, v. 26, p. 136).

Accordingly, *Ash Shofaa* is defined as an entitlement of a partner to seize his partner's share that is transferred to a third party (Ibn Godamah, 1981, v. 5, p. 307). Most of the jurists accept *Shofaa* only in non-transferable property like land, houses and farms (Ibn Godamah, 1981, v.5, p. 311).

Haq Ash Shofaa between neighbours is applicable only to the attached neighbours. When a property is attached to two neighbours, the neighbour who owned his property prior to the other would have the priority. If they owned their properties at the same time, then who claims *Shofaa* earlier would have the priority.

In case of a property that is shared between three owners, i.e. one owns a half, the other owns a third and the third owns a sixth, and one of them decides to sell, *Haq Ash Shofaa* will be granted to the other partners according to their shares.

Ash Shofaa is applicable only in *Mulk Ar Ragabah* (ownership of the object) not in *Mulk Al Manfa'a* (utilization ownership). If an owner decides to rent his house (renting is classified as utilization ownership), his neighbour would not have the right of *Shofaa* (Al Mowsoa, 1992, v. 29, p. 139).

Waqf property would not enjoy *Haq Ash Shofaa*. So when a property adjoining *Waqf* is sold or a share of property that is shared with *Waqf* is sold neither the *Nathir* (supervisor) nor the *Waqf* utilizer would be granted the right of *Shofaa* (Al Mousoa, 1992, v. 29, p. 140). Scholars are in agreement that *Haq Ash Shofaa* is not applicable in the cases of grant, gift or will.

5.11.4 Inheritance System:

The inheritance system in *Sharia* is unique and detailed. A Muslim is authorized to will a maximum of one third of his wealth. On the other hand, none of his inheritors is eligible to gain any of his wealth by will, meaning a Muslim is authorized to dispose of one third to other than his inheritors. Inheritance results due to marriage or consanguinity (Bakhtiar, 1996, p. 294).

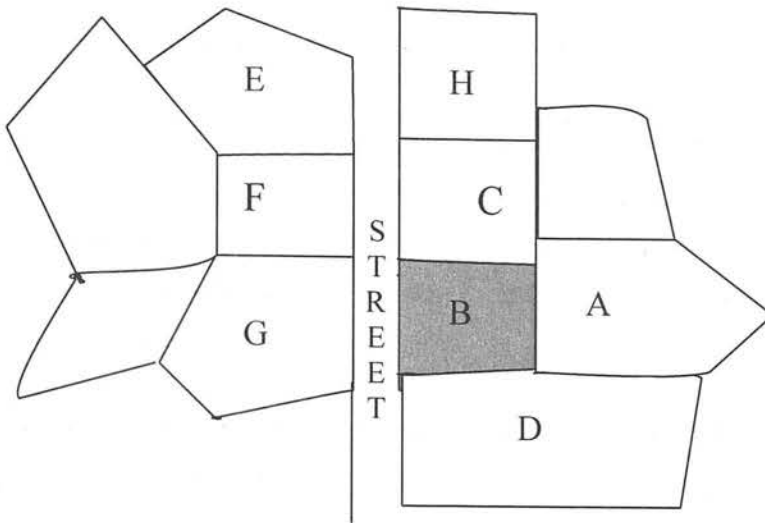


Figure 5-6 *Haq Ash Shofaa*

If the owner of home B decides to sell, adjacent neighbors C, D and A will have the right of *Shofaa*. Other non-adjacent neighbors (E, F, G, or H) will not have this right.

Source: The author

The goal of *Sharia* is to fragment the wealth through each generation where it is redistributed among all members of the family. The inheritance system is a dynamic mechanism which works on its own without the need of interference by authorities (Quotob S., 1973, v.1, p. 597).

The impact of such a system on the built environment appears clearly in the changes of the ownership pattern due to the division of property among inheritors. It appears that the jurists encouraged the physical splitting of property in order to allow all inheritors to enjoy their share of the estate.

5.12 Conclusion:

The land policy of *Sharia* proved to have a major impact on shaping the physical form of the traditional city. The major classifications of land ownership (state land, public land, *Waqf* land and private land) are unique and can lead to a new contemporary land system that balances the relationship between the land and the beneficiaries.

It is clear that land classified as public according to *Sharia* was subject to encroachment beginning in the Umayyad period. In the contemporary city, the whole classification

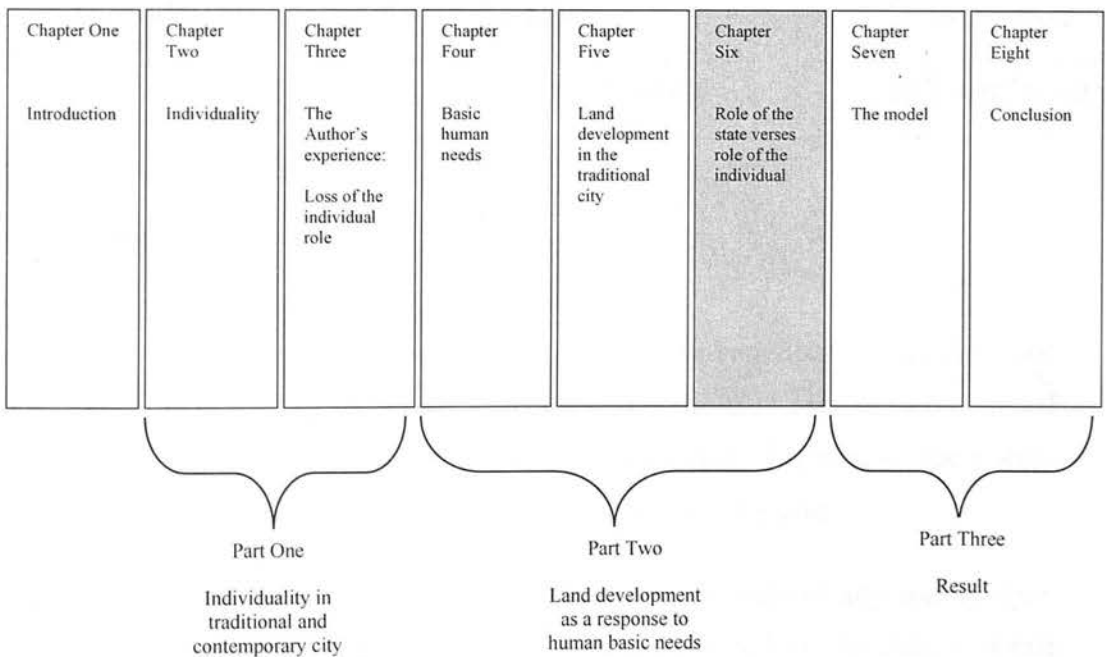
disappeared. lands were able to impose themselves by the power of religion and the belief of the individuals.

Sharia did not impose specific physical solutions but stressed the rights and obligations of all parties: the state, the individual and the society. These formed a network of mechanisms that worked coherently with other aspects of the traditional city such as location, natural environment, building materials and local climate, to produce a sustainable built environment.

The next chapter will explore the role of the individual verses the role of the state in shaping the traditional city. The two roles emerged and were distinguished by implementing the rules and principles discussed in this chapter.

Chapter Six

The Role of the State Verses the Role of the Individual



Chapter Six

6 The Role of the State Verses the Role of the Individual:

6.1 Introduction:

Cities are living entities that come into being, live and die. The physical output of land development results from a series of actions and reactions within the society, which are caused by many factors.

In every genuine cultural tradition, architecture and urban form can be seen as a natural expression of prevailing spiritual values and beliefs which are intimately related to the acknowledgment of a cosmic order of the world (Bianca, 2000, p.23).

6.2 Factors affecting land development:

The author believes that there are three main factors that strongly affect the final product of land development. These factors are belief, land and man.

Belief:	Land:	Man:
Legislation	As resource	As controller
Practice	As commodity	As beneficiary

Table 6-1 Main factors affecting land development.

Source: The author

Home is a major element of land development; man is the beneficiary of a home, and without him the need for development does not exist. The land represents the spatial dimension for home, and without it no home can be provided. Legislation, taken from belief, is the framework governing relations between man and the land.

All these factors, and others through the years, form the heritage of any society upon which cities are originated and form a built environment that reflects the culture of that particular society.

6.2.1 Belief:

By belief the author means religion or system of life that has been accepted by a society. Belief of any society is the source of its legislation. Marxism is a system of belief for a communist society, democracy is a system of belief in the contemporary Western world and Islam is the belief and source of legislation in the Muslim world. Nevertheless the actual practice of the state and individuals in a society may vary from what is ideally required by belief and legislation.

“As a rule, there is a close interaction between what people build and what they believe, and this equation works in both senses; man structures his environment, while he is also influenced and confirmed by it in his attitudes as a result of interacting with it over time” (Bianca, 2000, p.26).

In the case of the Islamic city, legislations extracted from the *Sharia*, and represented in *Fiqh* were developed simultaneously with complexity of land development, yet it will appear in this chapter that practice was not always to the same level.

6.2.2 Land:

Depending on legislation and actual practice, the look of the land varies from time to time. In the case of the Muslim city, and as described in Chapter 5, land in its raw state is a resource. It gains value to become a commodity after it is developed. People have equal opportunities to access land, but only he who makes the effort at the right time will possess it. This policy started to lose its impact in the Umayyad period when *Iqta'* was segregated from *Ihya'*, and land was owned without the need for *Ihya'*. Through the years more values started to shatter due to the behaviour of the authorities, but this was actually considered a sort of bad practice or corruption, while laws presented in *Fiqh* continued to be the same and a series of reformations occurred to bring practice back according to legislation. To a great extent, land became inaccessible to individuals as a resource in the contemporary city. The only available way to own land was by buying it. It became possible to possess vast tracts of land through *Iqta'* and leave it undeveloped for years. Land became monopolized.

In this chapter, by exploring the formation process of the traditional city, it will appear that land was always made available to the individuals as a resource, which had its impact on shaping the traditional city.

6.2.3 Man:

Muslims believe that man was brought to this Earth to colonize (live, settle, inhabit, develop) it according to the will of God. Man plays the role of the controller when he acts as an authority, but as an individual he is a beneficiary. In Islam it is believed that God created Earth for the purpose of accommodating man, so it is prepared and made subservient for this purpose. When man develops the land, he actually practices part of the mission he is put on this Earth to do. When he acts on behalf of the authorities, he becomes part of the process and is held responsible to practice according to *Sharia* legislation.

6.2.4 Synchronization between the factors:

If synchronization were observed between man and legislation, the land development process would progress smoothly and coherently. In the renaissance ages of Islamic civilization, the Islamic city experienced an integrated set of legislation and realistic implementation that made land development a natural result carried out by individuals and the State for achieving relevant interests.

Belief, legislation and practice were growing coherently in the early days under the umbrella of *Sharia*. Although Islamic societies generally continued accepting the guidance of *Sharia*, practice by individuals and governments did not continue at the same level. Legislation copied from other sources was one of the most important factors that caused the disruption in land development in the Islamic world. These alien rules affected the Islamic built environment on several levels: design of housing units, urban design of communities, and the major city planning as a whole. The negligence of the major factors that traditional cities were built upon caused severe damage to the land development in Islamic cities.

Two major factors will be explored in this chapter: the land ownership pattern and the relationship between the role of the State and the role of the individual.

6.3 Traditional urban pattern:

A quick look at the old parts of Muslim cities that were subject to a major modern redevelopment shows the *revolution* that occurred in the traditional urban pattern. The urban fabric that gave the special character to the traditional city was formed as a living entity over the years. It expanded, shrunk and developed continuously. This natural, systematic growth of the urban fabric was suddenly confronted with a major change in the form of rapid new development that resulted in the appearance of strange bodies within the fabric. This transformation, happening in a relatively short period, not only influenced the shape of the traditional urban fabric, but it discontinued or at least weakened the regular development operation. The main cause of this discontinuation is the alteration of the land ownership pattern (L.O.P).

When a sudden major change occurs to the pattern of land ownership, it automatically causes many other modifications in the core architecture of the city. Since this pattern is not arranged on a planner's drawing board, but instead is the result of many factors, the results of such action on the built environment cannot be readily predicted.

Means of land possession, rights of ownership, relationships between owners, easement rights (*Haq Al Ertifaq*), *Haq Ash Shofaa*, neighbourhood's rights and all other mechanisms discussed in the previous chapter are some of the factors that actually created the traditional built environment. Many planners may accept this as a fact for the traditional built environment but not for new or redeveloped areas, assuming that such factors do not exist any more or are not as effective as they used to be.

The author argues that the land ownership pattern, which by default reflects the factors mentioned above, is an accurate indicator of the authenticity of any urban fabric in Islamic cities.

6.4 Land Ownership Pattern:

In the contemporary physical planning process for an area it is normal to prepare an ownership map which denotes public and private ownership. Regrettably, the ownership map is one of the most misleading factors in the contemporary redevelopment process, because types of ownership cannot be generalized into simply two domains, "private" and "public". In the previous chapter the author summarised four major types of land in

regard to ownership: state land, public land, private land and *Waqf* land. It is true that these types of land may not exist in every part of a city, but many do, particularly in old parts of most Islamic cities. It is also obvious that public land is classified under state land and in many cases *Waqf* land is either neglected in the classification or sometimes also classified as state land.

On the other hand, classifying different types of ownership under one category of "private" is also erroneous. A piece of land owned by one owner differs greatly from the same area owned by ten owners. Heaping all private land owners into one lump neglects the individuality and uniqueness of each of them and drastically reduces the role of the individuals in the process of land development and redevelopment. What usually happens is that hundreds of land owners are ignored because of this broad classification of private land ownership. Exposing the land ownership in all its detail is the first step in understanding the traditional city and beginning a course of effective land development in the modern era.

6.5 Formation of Land ownership pattern:

During the formation of traditional Islamic cities there were factors that played a key role in the formation of the physical urban pattern. The first factor is the system of land possession by individuals, and the second is the role of authorities against the role of the individual in developing the land. Major Islamic traditional cities will be explored hereafter to examine the formation process and the roles and responsibilities of the individuals and the state in this process.

Al Madinah Al Monawarah was the first Muslim city. It was not built from scratch, but it was a continuation to existing Yathrib (the name of the city before Islam). Al Madinah can be considered the city that reflected the main values of Islam and it was used, by default, as a model for future cities.

In a later stage some of these cities were built solely or partially to accommodate the ruler and his entourage. Muslims also inhabited existing cities that had been built by other nations with different values. What is clear is that these cities grew through the years to take a different shape than the original being gradually transformed to embrace the same character of the newly built Muslim cities.

In general, the early Muslim cities can be classified into four categories: the origin city (Al madinah Al Monawwarh), the newly built cities (*Al Amsar*), the transformed cities and the royal cities. This classification will be explored hereafter to examine the formation process and the roles and responsibilities of the individuals and the state.

6.5.1 Al Madinah Al Monawarah:

The city of Madina is located in a flat land surrounded by volcanic mountains from all four directions. Madina was the first capital of the Islamic State. Before 622 A.D. it was a group of independent settlements inhabited by Jewish and Arab tribes (Othman A, 1988, p.53), united into a city only after the Prophet Mohammed's ﷺ Hijrah¹⁷⁸ from Makkah (Al Hathloul, 1996, p. 31). Several actions were taken to accommodate the immigrating Muslims from Makkah and to organize the city as the first settlement in the Islamic society.

The first action was to choose the location of the mosque which would become the centre of the city. According to most Islamic narrations, the location was chosen by the will of God. When the Prophet arrived to Madinah, every Muslim of Al Ansar (the Muslims of Madinah) wished the honour of hosting the Prophet. The Prophet said: "Leave my camel, it is commanded" (Ibn Al Athir [1161-1235], 2004, p. 219). When the camel kneeled down, the Prophet told his companions that he would build his mosque in that particular location. The land belonged to two orphans¹⁷⁹. The Prophet said, "I will satisfy them," which meant buying the land from them with a generous price. The orphans suggested donating the land, but the Prophet insisted to buy it (An Nadwi, 1993, p. 199).

The mosque was built and then the nine houses of the Prophet's wives which were built in different times (Ibn Idris, 1982, p.169). The *Mohajirin* (immigrants) who arrived from Makkah continued for some time as *Al Ansar's* guests.

Yagot Al Hamawi (1178-1229) narrated: "When the Prophet ﷺ arrived from Makkah to Madinah he granted people *dur*¹⁸⁰ and *riba'*¹⁸¹. He determined a *Kittah* for Bani Zohrah

¹⁷⁸ Hijrah is the immigration of the Prophet from Makkah to Madinah.

¹⁷⁹ Who were from the same tribe of the Prophet's mother.

¹⁸⁰ Plural of *Dar* which means house.

¹⁸¹ Plural of *Rab'* which means house. (Al Fairozabadi, 1987, p. 927)

towards the back of the mosque. Abdurahman Bin Awf gained the fortress that was named after him, and (the Prophet ﷺ) granted Abdullah and Otbah, the sons of Masood Alhothali, the well known khittah near the mosque. He granted Alzubair ibn Alawwam a large land (baqui' wasi). He granted Talha bin Obaidellah the land where he built his houses (dur) When the Prophet ﷺ was granting these fiefs to his companions, those which were non-arable land (afa of alardh) he granted them, while those Khitat¹⁸² which were settled, were donated to the Prophet ﷺ by the Ansar. Thus he granted from these whatever he wished¹⁸³ (As Samhodi [1440-1506], 1955, p. 718).

The above text has been used by many scholars to explain the concept of *Kittah* in the Islamic city, where a tribe or group of people are granted a specific area of land for their accommodation. Each group will take control and internally grant land to their individuals. Individuals can also be granted land directly. One can understand from the same text the role of the authorities versus the role of the individuals in the development of the Islamic city. The Prophet ﷺ built the mosque, his house and determined a location for the market (*Soq*) and then granted lands to the tribes to start development.

The Prophet ﷺ encouraged the individuals to build their own homes through the concept of revivification (*Ihya'*).

There has been a lot of debate among contemporary scholars on the extent of interference of the authorities in determining the shape of the built environment, or in other words, in controlling the development.

Khittah was a piece of land granted by the authorities, under the concept of *Iqta'* (allotment), to a specific tribe or group of people to build their houses on (Othman A, 1988, p. 55).

Some suggested that the *Khittah* was used as a planning unit; others accept *Khittah* as a planning system rather than a unit, because each *Khittah* was so large that every tribe had its own cemetery and mosque (Akbar, 1988, p. 88).

¹⁸² *Khitat* plural of *Khittah*

¹⁸³ Translation as per Al Hathloul (Al Hathloul, 1996, p. 33)

Some would support that the people themselves, when they developed their land, made all decisions and therefore controlled all or most aspects of the development. Others would argue that major decisions were made by the authorities; therefore, the authorities controlled the planning that determined the location of the main streets and the public buildings but did not interfere inside the *Khittah*.

The role of each party is simply referred to in *Sharia* as duties and obligations from one side, and rights from the other. In the early days of Madinah's development, the role of the authorities was to protect the right of people to access land, build public buildings and provide services. It appears that there was no direct interference in constructing houses for the individuals, and the authorities did not practice agriculture in the early Islamic city. The shape of the built fabric evolved according to the effort put forth by the individuals in fulfilling their needs. The major factor here was the land shape and size.

Within the parameters of the city, individuals owned their land by direct *Iqta'* (allotment) from the Prophet ﷺ or by *Ihya'* (revivification) of a piece of land within the *Khittah* dedicated to their tribe or group. The second method is actually *Ihya'* within *Iqta'*. Through *Iqta'* the land location and size is determined by the authority, while through *Ihya'* the individual determined the location within the *Khitta* and the size of the developed land. Some interference could have happened but would have been solved by the principles within their tribe as internal arrangements.

Al Madinah Al Monawarh started to take its urban form at the city centre where major elements were built while the location of housing quarters was determined for each tribe or group of people through the concept of *Ihya'*.

This city was a sort of prototype of the all Muslim cities that were built later. It is worthwhile to examine its major components. In his book Wafa Al Wafa bi Akhbar Dar Al Mostafa, Al Samhodi (844-911) introduces a thorough description of Al Madinah during its development stages from which the major elements can be described as follows:

The mosque: the mosque's location was at a central point in relation to the houses of Al Ansar (Ibn Idris, 1982, p. 166) and continued to be the centre of Al Madinah after its development. The mosque was not used for prayers only but as the ruler's office and as the major gathering place.

The Prophet's house: the Prophet built rooms for his wives attached to the mosque. Those rooms presented the Prophet's house. In later Muslim cities there was always *Dar Al Imarah*, the governor's accommodation and working place. During the Prophet's life, the mosque was used for many purposes such as public gatherings and major events. These were later distributed amongst several elements.

The Soq (market): There were several areas that were used as *Soqs* distributed throughout the inhabited area (As Samhodi [844-911], 1955, p. 747). The *Soq* was a common area available for everybody to sell his goods. The *Soq* was also described as an open area where one can leave his saddle and go around without losing sight of his saddle (As Samhodi [844-911], 1955, p. 748). The Prophet chose a location and said, "This is your *Soq*, not to be diminished and no taxes to be imposed." The *Soq* obviously is not the only place where commercial activities took place, but it was the common area that enabled any individual to find a place for his activity without being charged. Omar bin Al Khattab established the concept of, "he who precedes to a place in the *Soq* has the right to use it," (Othman A, 1988, p. 253). It was only during the period of Moawiyah bin Abi Sufian when the *soq* was built for the first time and rent was imposed on the merchants (As Samhodi [844-911], 1955, p. 748).

Cemeteries: Al Baqi' was the major cemetery, but there were other local cemeteries in each *Khittah* (As Samhodi, [844-911], 1955, p. 748).

Manasi': During the early Muslim periods of Al Madinah there were areas designated to be used as latrines outside the city. In particular, Al Manasi' was a place dedicated for women who used it at night (As Samhodi, [844-911], 1955, p. 694).

Khittat: As described earlier, each group was granted a *Khittah* and within each *Khittah* individuals built their own houses. Each *Khittah* also might contain a local mosque, a cemetery and a *Rabad* (yards) for horses.

Mosalla Al Eid: This is an open space dedicated for the *Eid* (feast) prayer. It was in a place outside *Al Amir* (the developed area) call Aqiq. This place was not a mosque; therefore, its land is not *Waqf* land. In later cities, *Mosalla Al Eid* continued to be an open space located outside the built areas in order to accommodate the entire city population.

Soldiers' camps: During the last days of the Prophet ﷺ, he assembled an army under the leadership of Osama bin Zaid and placed their camp outside Al Madinah at a place called Al Jorf. A few days after the Prophet's death, the first Caliph, Abu Baker As Siddiq, ordered all the soldiers of that army to leave the city to their camp (At Tabari [839-923, 2004, p. 493).

Bait Al Mal: As a formal structure, the treasury house (Bait Al Mal) was known in the period of the second Caliph, Omar bin Al Khattab, but as an institution it began in the time of the Prophet. When *Zakah* was imposed nine years after the Prophet's arrival to Al Madinah, he sent delegates to all Muslim countries to collect it (An Nadwi, 1993, p. 384) and bring the payment, whether in cash money, livestock or dates, to Al Madinah.

Guests' house: One of the Prophet's companion's houses was used as a guest house to accommodate the delegations that used to visit Al Madinah to meet the Prophet ﷺ.

The ditch: Al Madinah did not have a wall, but during a battle of Al Ahzab, when the Arab tribes of the peninsula gathered to invade Al Madinah, the Prophet ﷺ decided to dig a ditch along one side of the city. The tunnel was 6 km long.

6.5.2 *Al Amsar* (New Cities):

The Arabic word *amsar*¹⁸⁴ is a plural of *misr* which means "city". It was used in the historical references as an indication of the building of a new city. For instance, Al Balathiri in his book *Fotoh Al Buldan* used the expression *Tamsir Al Basrah* and *Tmsir Al Kufah* to indicate the meaning of planning, demarcating, allotting and constructing.

According to *Al Mowsoa' Al Fiqhiyah*, *Misr* is a large town that contains roads, *soqs*, and houses and is controlled by a ruler who can do justice to the victim against his opponent (Al Mousoa 1998, v. 38, p. 24). For the jurists, this definition is important because it has several implications. Some are related to rituals, like the necessity to perform the call to prayer, or determining rules related to travel, like permission to break the fast in the holy month of Ramadan. Others may have direct impact on the built

¹⁸⁴ In the dictionary *Mokhtar As Sihah*: *misr* mean city. *Massara al amsar* mean *maddana Al modon* (brought the cities into being) (Ar Razi, 1981, 625).

environment, like the necessity of a *Jami'* mosque where Friday prayer can be preformed.¹⁸⁵ The author will explore the rise of three *Amsar*: Basrah, Kufah and Fustat.

6.5.2.1 Al Basrah:

Basrah was an early Muslim city founded by Otbah bin Ghazwan as a military camp in the year 635 (At Tabari[839-923], 2004, p. 621). It was the first city Muslims built from scratch, since Al-Madinah Al-Monawarah was an urban continuation to the previous Yathreb.

Basrah passed through several stages, evolving from a military camp to a city (El Kassar, 2001, p. 53). Early Basrah consisted of tents with no advanced construction.

According to Al Balathiri (?- 892), Otbah, who was the leader of the army, reached a place called Al Khuraibah and wrote to the Caliph Omar that there was a need to determine a location to be used as a base for the military operations and as a camp for the soldiers. The Caliph advised him to gather people in one place close to water and pasture. After some correspondence between them, it was decided to choose Al Basrah (Al Balathiri, 1991, p. 341).

“They built their houses of reed. Otbah built the mosque of reed in the year 14 (636)... Otbah built Dar Al Emarah (the governorate house) close to the mosque in the rahbah (open space) that was called Dahna’, where the jail is and the Diwan... When they conducted raids, they took apart the structures, tied the reed, and stored it until they returned from the raid. When they returned, they rebuilt their structures. This was the case until they started to determine Khittat and build their houses. Abo Mosa built the mosque and the governorate house of mud ...” (Al Balathiri, 1991, p. 341-432). From this text, one can understand that Basrah began as a temporary camp made of reed then became permanent when Muslims started to build with mud.

Ibn Ya’ la Al Farra’ (990 – 1066), in his book *Al Ahkam As Soltaniyah*, elaborates that *“the Sahaba (the companions of the Prophet ﷺ) had settled in Al Basrah during Omar’s reign and made it as khittat for their inhabiting tribes. They made the width of its major streets 60 cubits, the other streets 20 cubits and the width of each lane seven cubits. In the centre of each khittah they also established a wide forecourt (rahbah) for their*

¹⁸⁵ For more details about *Fiqh* rules related to Misr, refer to (Al Mowsoa 1998, v. 38, p. 24-28).

horses and for their cemetery. Their dwellings abutted each other. They did not do this without unanimous agreement" (Al Farra', 2000, p. 213).¹⁸⁶

The concept of *Iqta'* was also implemented in Basrah. A man called Nafi' asked Omar bin Al Kahttab to be granted land "*that is not of Kharaj land and (the granting of it) does not harm anybody*" (Al Balathiri, 1991, p. 347).

Individuals built their houses and other types of buildings for investment such as Hammamat (baths). "The first Hammam (bath) built in Basrah was the one of Abdullah bin Othman ...then the bath of Feel, and third was that of Moslim bin Abi Bakrah" (Al Balathiri, 1991, p. 348). According to Al Balathiri, this last bath was a good source of income to its owner to the point that he was reluctant to inform his father about the amount of income generated by it. His secret was known when he became ill and his brother, who ran the bath for him, informed everyone about the high income, encouraging many others to make the same investment (Al Balathiri, 1991, p. 348).

It appears that the major decisions related to the main roads, the approximate size of each *Khittah* and location of main public buildings were made either by the authority or a group of people. Other decisions related to land subdivision within each *khittah* were made either by consensus of the individual residents or by the individuals and their leaders.

On the other hand, the state continued to play a role in constructing and enlarging the public buildings and providing the city with needed utilities, particularly water for which most of the rulers of Basrah spared no effort in either digging wells or excavating canals (Al Balathiri, 1991, p. 351-359).

The state did not charge the tribes for allotting them *Khitat*, nor did the tribes charge their individuals for granting them land to build their houses.

¹⁸⁶ For more discussion about this narration see Al Amid, 1986, p. 213 and Othman M, 1988, p.65.

6.5.2.2 Al Kufah:

Kufah was also founded as a camp town during the fourth year of Omar ibn Al Khattab's reign (Akbar, 1988, p. 85).

It appears that both Basrah and Kufah were built simultaneously. Both were built initially of reed, and both were burned necessitating that they be reconstructed with a more durable material, i.e. mud bricks (Ibn Al athir [1161-1235], 2004, p. 337).

When the Muslims in Al Mada'in were attacked by mosquitoes, Sa'd ibn Abi Waqqas, the leader of the army in Iraq at that time, wrote to Omar seeking his approval to build a city in a better location. With his approval, Omar gave advice on the planning of Kufah, and Sa'd in turn passed it on to Abo Al Hayaj who was in charge of the actual layout of the city (Al Hathloul, 1996, p. 36).

According to Ibn Al Athir (1161-1235), Omar noticed that the soldiers looked exhausted and was told that the climate of their location was not suitable for them. He ordered to look for a place close to the sea but not separated from Madinah by sea or river (Ibn Al Athir, 2004, p. 336).

Al Tabari states, "*Omar ordered Almanahij (main roads) to be 40 cubits, those following them to be 30 cubits, those in between to be 20, and Aziqqah¹⁸⁷ (lanes) to be seven cubits, nothing being made less than that. The Qata'i (lands granted to tribes) were to be 60 cubits except those of Bani Dabbah..*" (At Tabari [839-923], 2004, p. 649) (Al Hathloul, 1996, p. 36).

According to At Tabari (839-839), "*The people of opinion (Ahl Arra'i) met for evaluation. When they agreed on something, Abo Al Hayyaj (the man in charge) subdivided it accordingly. The first thing demarcated in Kufah was the mosque, built when they decided (later) to build it*" (At Tabari, 2004, p. 649). A canopy was built in the front part of the mosque. A house was built for the leader as well as a treasury house. The streets began from the main open space (*Rahbah*): four in the direction of Makkah, five in the opposite direction and three streets to the east and to the west (At Tabari, 2004, p. 649).

¹⁸⁷ Plural of *Ziqaq* which means alley.

At Tabari gave details about the location of each tribe: "*Saleem and Thaqif settled north of the sahn (the area protected by a trench) on two roads: Hamadan on one road, Bojailah on another road. Tyme Allat settled on the fifth road with Taghlib. In the Qiblah direction, settled Bani Asad on one road, separated from An Nakha' by a road. An Nakha' and Kindah were separated by a road, and Al Azd was separated from Kindah by another road. In the north, settled Al Ansar and Mozainah on one road, Tamim and Moharib on one road and Asad and Amer on one road. In the west, settled Bajalah and Bejlah on one road, Jadilah and mixed tribes on one road, Johainah and mixed tribes on one road. These tribes were next to the sahn, and the rest of the tribes were behind them.... they built narrower roads beside the main roads that met with them. Other, still narrower, roads followed in places (locations to be built) behind these roads and between them.... he (Abo Al Hayyaj) protected zones for those who were still at the battlefront, so when they came back they could settle"* (At Tabari, 2004, p. 650).

When newcomers arrive, they first take lodgings at a place prepared for that purpose, then Abo Al Hayyaj allots for them wherever they like (At Tabari, 2004, p. 650).

The role of the authorities in the case of al Kufah appeared in the following decisions:

- Determining the location of the city. Omar requested that no sea should come between the city and al Madenah Al Monawarh.
- Determining the locations and widths of the main and secondary roads.
- Allotment of *Khitat* (plural of *Khittah*) to different tribes and groups.
- Determining the locations of the public buildings.
- Building the public buildings.

The following figure 6-1 reflects the outlines of Kufa as described by At tabari. Different types of ownership are determined on the figure.

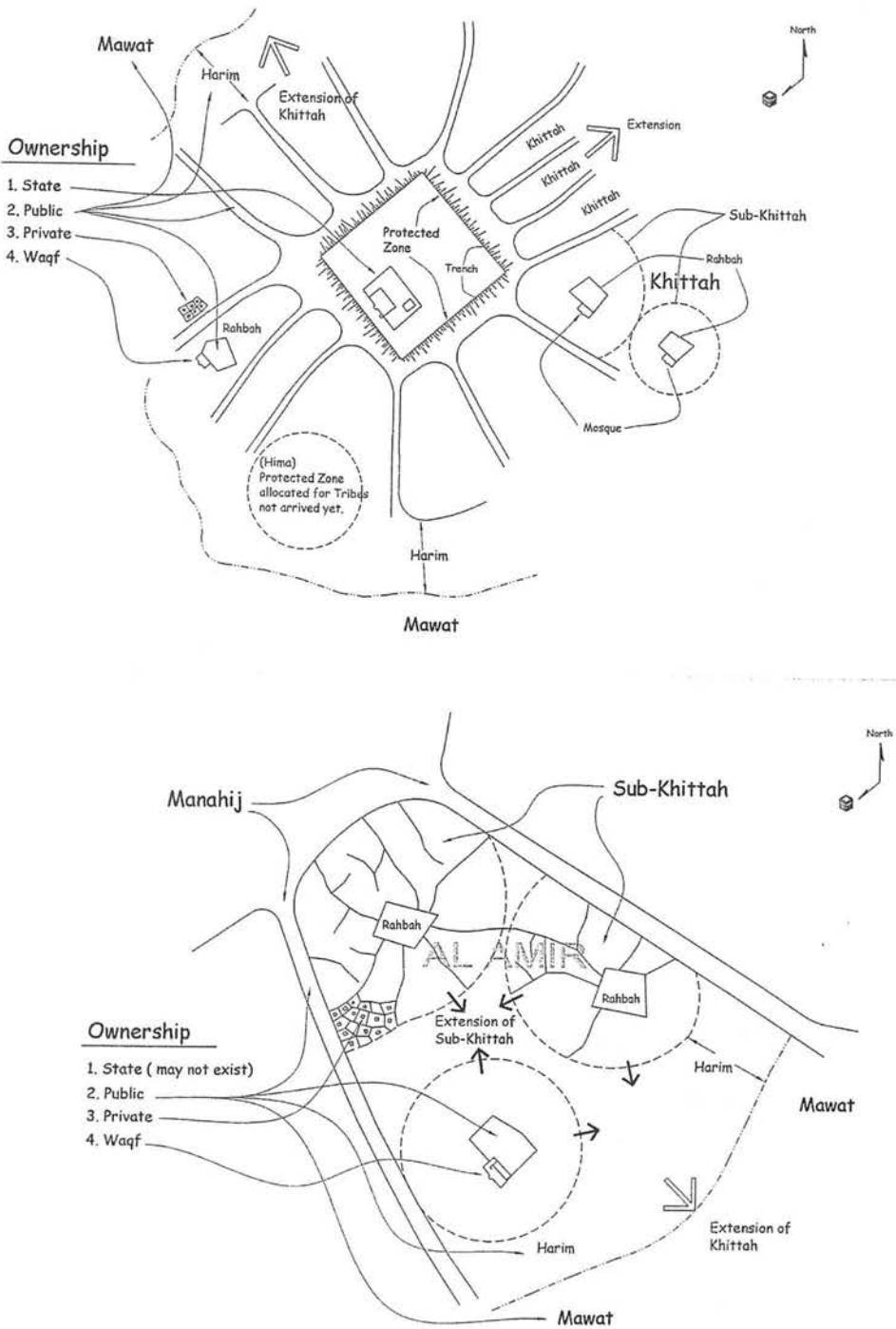


Figure 6-1 Al Kufah, a hypothetical plan for the structure of the city showing major elements (above), and detail of *Khittah* (below). Ownerships types are shown on both.

Source: Constituted by the author upon the narration of At Tbari.

The individuals had the freedom to build on non-allocated sites. This was clear from the method followed by the officials to protect the land of the mosque. When Sa'd arrived at the place destined to be the site of the mosque, he ordered a man to shoot an arrow toward Mecca, another arrow toward the north, a third to the south, and a fourth to the east, and then marked the spots where each arrow had fallen. Sa'd established the mosque and the governor's residence on the spot where the archer had stood. These shots formed a square, in the centre of which the mosque was to be located. Sa'd then ordered those who desired to build dwellings to do so outside the square. They also dug a ditch around the square, "so no one could intrude on it with buildings." (Akbar, 1988, .87).

6.5.2.3 Alfustat:

Alfustat was founded in 641 (21H) by Amr bin Alas, the leader of the Islamic army in Egypt, on the orders of Omar bin Al Khattab. Enough information is available to suggest that the process of settlement in Alfustat was similar to that of Alkufah and Albasrah. Information also suggests two issues that were certainly applicable in the other newly-founded cities: the *Khittah* as a system of planning and the actual process of physical development within the city, including the formation of the street patterns (Al Hathloul, 1996, p. 38).

The Caliph Omar bin Al Khattab repeated the same request of avoiding any barrier of water between the location of the city and Al Madinah, which was the reason why Amr bin Alas changed the location from Alexandria to Al Fustat (Al Amid, 1986, p. 245).

To a great extent, Al Fustat followed the model of Basrah and Kufah. First the location of the mosque was determined and then the location of *Dar Al Emarah*. Amr demarcated an area for the house of the Caliph Omar, who ordered to change the location to a public *Soq*. After that, *Khitat* were distributed among the tribes. Sources mentioned many *khitat* after the tribes' names such as the *Khitah* of Al Mahrah, the *Khittah* of Tajib, Lakham, Ghafiq, Kholan and many others. The same concept of grouping inhabitants in *Khitat* was a goal even though they did not belong to the same tribe. This was clear from the *Khittah* of *Ahl Ar Rahyah* (the people of the flag). People from various tribes too small to be allotted a separate *Khittah* were asked to gather under a flag raised for this purpose, and they were allotted one *Khittah* as a group; thus, they were named after the flag (Al amid, 1986, p. 252).

6.5.3 Transformed cites:

Damascus and Aleppo are good examples of transformed cities. They both existed before the Islamic conquest. Both, with an ancient, highly-ordered city plan, have been radically altered into an irregular street pattern and different character (Al Hathloul, 1996, p.27).

Saleh Al Hathloul¹⁸⁸ argued that the similarities between newly-founded cities and inherited ones with highly-ordered plans, such as those of medieval Damascus and medieval Madina, “suggests a very difficult and important question: Starting from two or more quite different urban patterns, how did Arab-Muslim society develop cities of similar pattern and distinctly similar character?” (Al Hathloul, 1996, p. 29).

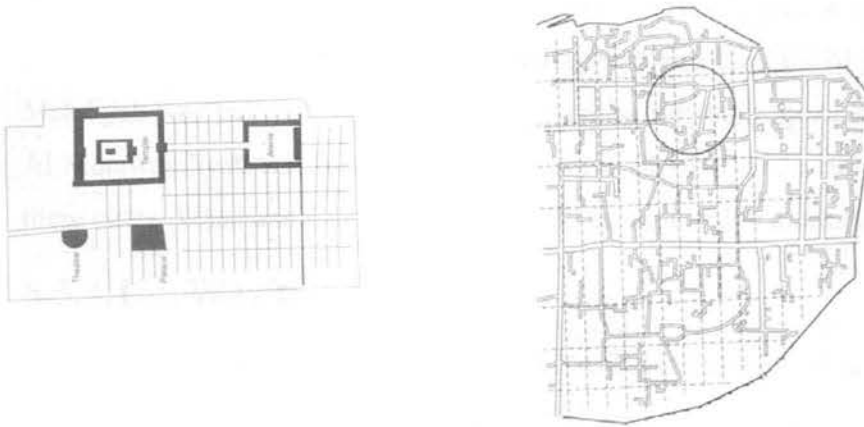


Figure 6-2 Damascus transformation.

Left: The original Roman city plan.

Right: Part of the original plan after transformation during the Islamic era.

Source: Al Hathloul, after Sauvaget, “Le plan antique de Damas”.

Muslims did use the existing structures and houses in all conquered cities. According to Al Balathiri, when Damascus was conquered, though peacefully, many of its people immigrated to Antakiah and left their houses which were occupied by the Muslims (Al Balathiri, 1991, p. 129). Such houses and land were treated as *Sawafi*,¹⁸⁹ so in the beginning the land ownership pattern followed the existing order of the city. Gradually, the author argues, the mechanisms of *Iqta'*, *Ihya'*, *Shofaa*, inheritance, neighbour's rights

¹⁸⁸ In his book *The Arab-Muslim City: Tradition, Continuity and Change in the Physical Environment*.

¹⁸⁹ As discussed previously under article 5.5.8, all lands that belonged to the Caesar and his family, a man killed in the war, a man who left his property and joined the enemy, and any other property belonging to the previous Persian State was designated for the benefit of Bait Al Mal and called *Sawafi*.

and rights of easement (*Haq Al Ertifaq*) worked together to reform the shape of land property accordingly. The land ownership classification¹⁹⁰ according to *Sharia* presented a new base upon which the physical transformation took place. Although this explanation may not provide the ultimate answer for the important question raised by Al Hathloul, the author believes this research may help to reveal it.

6.5.4 The Royal Cities:

The author uses the term "royal cities" to describe those cities which were initially built to serve as rulers' accommodations. They retain special characteristics that make them different than the cities described earlier. Most were pre-planned and, in many cases, built as one project.

Wasit was built by Al Hajjaj bin Yosif in 703, Al Hashimiyah was built by As Saffah (the first Abbasid ruler) in 751, Circular Baghdad was built by Al Mansour in 762, Al Mahdiyah was built by Al Mahdi in 776, Samirra was built by Al Mo'tasim in 837 and Al Motawakiliyah was built by Al Motawakil in 859 (Al Amid, 1986, 281-522). Two of these cities, Wasit and Circular Baghdad, will be explored in more detail.

6.5.4.1 Wasit:

During the Umayyad period, Al Hajjaj bin Yosif was the ruler of Iraq. He stayed first in Kufah then left for Basrah. He faced several revolutions against the Umayyad state in Basrah and Kufah between 695 and 703. He then decided to build a city "*between Al Masrain (Basrah and Kufah) where I become close to both cities. If something happens in either of them, I will be close to it,*" (Al Amid, 1986, p. 283-284).

"Wasit was organized similarly to Basrah and Kufah, but it was a royal city for Al Hajjaj, his men, administration and soldiers," (Shaker, 1980, vol. 1, p. 358)¹⁹¹. Al Hajjaj built the mosque and the emirate house, excavated a river, dug a ditch and built a wall to protect the city.

¹⁹⁰ As discussed there four main categories for land ownership State ownership, public ownership, private ownership and *Waqf*.

¹⁹¹ After El-Kassar, 2001, p. 81

It appears that Wasit was built on the west bank of the Tigris River. A bridge was built to connect it with the city of Kaskar on the east bank, but the new west bank continued to be the royal part (Ziadah, 2004, p. 121-122)

Al Hajjaj spent the income of Iraq for five years to build Wasit (Al Amid, 1986, p. 293), then brought scholars, craftsmen, and merchants and granted them land (Othman M, 1988, p. 123). Yagout Al Hamawi (1178-1229), in his book Mo'jam Al Buldan, mentioned that Al Hajjaj spent 43 million Dirham to build the mosque, his palace, the ditch and the wall. The figure was considered enormous, so he was advised to report a small amount of it as construction costs and the rest as part of war expenses (Ziadah, 2004, p. 120).

Building a city all at once imposed many physical, financial and social impacts. Most of the design decisions must be made earlier, walls are sometimes built before inhabiting the city and professionals of all kinds must be brought together from other places in order to make the city liveable as soon as possible.

6.5.4.2 Circular Baghdad (Madinat As Salam):

The second Abbasid caliph, Al Mansor, built the circular Baghdad, Madinat As Salam (the city of peace) in 762. He built it for himself and his soldiers, because he did not feel safe in Al Hashimiyah, the base for the first Abbasid caliph, after a revolution occurred there (Ibn Al Athir, 2004, p. 817).

Al Mansor spared no effort in choosing the location of his city. He sent explorers to find a suitable site for him, and then he went to the site himself. He was not satisfied, because the site was too small to accommodate the soldiers and people who would also suffer from being away from the main roads and rivers. He finally suggested a location himself that had what he considered the best specifications (At Tabari, 2004, p. 1548). He then brought together engineers, builders and surveyors and described to them the circular concept that he had in mind.

According to At Tabari and Ibn Al Athir, when Al Mansor decided to build his city he wanted to visualize it, so he ordered that it be drawn on the ground by ash. *“Then he entered through every door and walked through its Rihab (plazas), walls and colonnades...and its trenches ... then he ordered to put cotton on the lines, and let it by*

oil, and set fire to it and looked at the city at night,” (At Tabari, 2004, p. 1549).

With a diameter of 2,500 meters (Al Hathloul, 1996, p. 41), the circular city was divided into three zones, according to Lassner's¹⁹² interpretation (Akbar, 1988, p. 90). The central zone represented Ar Rahbah, which was an open space within which was located the palace of Al Mansor, the congregational mosque and two other buildings for the chief of police and chief of guard (Al Hathlol, 1996, p. 41). The second zone contained the government agencies, the residences of the younger sons of Al Mansor and his servants. In the third zone were the living quarters of the army chiefs and *Al Mawali* (their supporters).

The inhabitants of the city were mainly the caliph's family, state leaders, army chiefs and their families. According to Al Ya'qobi, "*Al Mansor granted (by Iqta') his Mawali and his army chiefs fiefs inside the city, so streets were named after them, and forced them to build, and granted others close to the doors (outside the city), and granted the soldiers in the suburbs of the city, and granted his family at the edges (of the city), and granted his son Al Mahdi (in side the wall)*" (Al Ali S, 1985, p. 260).

The living quarter, the third zone, was divided into four equal quadrants by vaulted galleries which ran from the main gate to the gate of the palace area in the central *Rhabah* (Akbar, 1988, p. 90). The city was surrounded by a trench that was filled with water from a nearby river. There were two circular walls around the city. The distance between the two walls was estimated between 30 and 50 meters and was left as open space where no one was allowed to build or live (Al Amid, 1986, p. 365-378). There were four gates at the outer wall named after Kuhfah, Basrah, Khorasan and Sham. According to At Tabair, there was a chief supported with 1,000 soldiers at every gate, and it appears that the 4,000 soldiers lived inside the circular city (Al Ali S, 1985, p. 262).

From this description, it is clear that security was the main concern of Al Mansor. What supports this is that nobody was allowed to ride to the middle *Rahbah* except him and his elder son. His uncle, being a sick man, was carried on a hand barrow and was given an exception. When he discovered that the watering mules reached his palace, he ordered to

¹⁹² In his book *The Topography of Baghdad in the Early Middle Ages*, Detroit, 1970

lay pipes from the gate of Khorasan to his palace (At Tabari, 2004, p. 1563) (Al Ami, 1986, p. 385-386).

Al Hathloul argued that, "Writers on Baghdad have been fascinated by its circular shape and have therefore tended to neglect the areas surrounding it which, according to Al Yaqubi, were planned and developed at the same time," (Al Hathloul, 1996, p. 41). Akbar supported the fact that, though neglected, the surrounding areas were of great importance. Individuals were allotted land outside the walls of the circular city. Al Hathloul concluded that the circular city was more of a palace precinct than an integrated city (Al Hathloul, 1996, p. 43).

The circular city was subject to many changes from its early days. According to At Tabari, Al Mansor ordered that all portals open towards Ar Rahbah be closed (Al Ali S, 1985, p. 306) and moved all the *soqs* outside the circular city to Al Karkh after he feared spies amongst the *soqs* habitués (At Tabari, 2004, p. 1563). He also widened the city's streets and demolished all houses that obstructed the determined width. In the end, Al Mansor decided to build a new palace named Al Khuld outside the circular city and moved there in the year 774.

6.5.4.3 Discussion:

The royal cities were built by a different process than *Al Amsar*. They were actually large government projects that were owned, designed and built by one party (the government). Although common people may have lived in such cities or used their facilities, this was only by permission of the city builder. For example, Al Mahdi built his city, Al Mahdiyah, and common people inhabited Zowailah next to Al Mahdiyah, but he located all *Soqs* and businesses in Al Mahdiyah, so they entered it during the day for their business and left at night to their homes. When he was told that the citizens were in pain, he replied, "But I am relaxed, because at night I segregate them and their properties and during the day I segregate them and their families, so I am safe from their perfidy during night and day," (Othman A, 1988, p. 123).

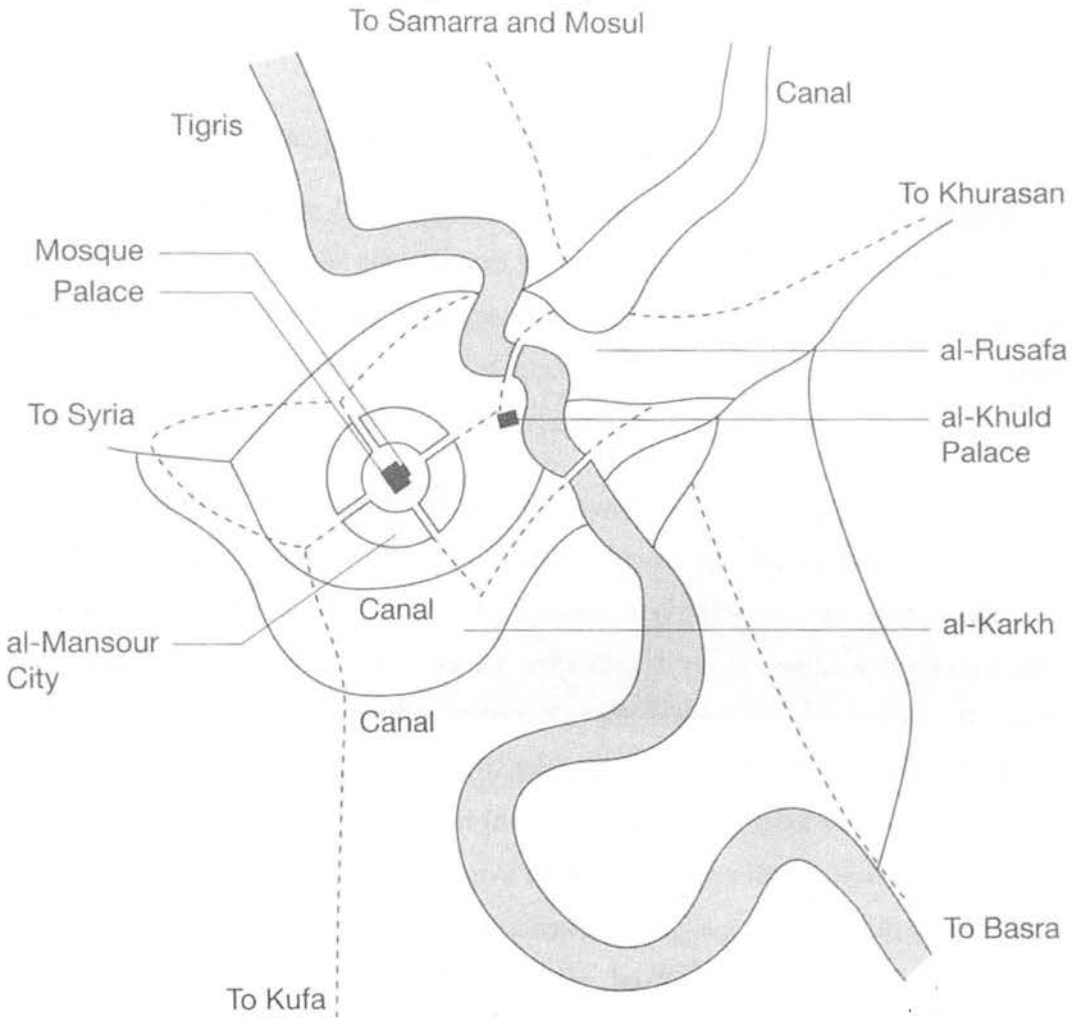


Figure 6-3 The circular city of Baghdad, Al Mansour city, and vicinity.

Source: Mortada, 2003, p.55.

The processes and mechanisms of traditional city development as described in Chapter 5 are not applicable here as such. Although *Iqta'* was practiced, it was not clear in circular Baghdad. For instance, whether or not those who built houses on the granted lots inside the wall were allowed to own the land on which they built and consequently, sell, rent or

bequeath it is not clear. In summary, royal cities are not an example of the traditional city; they can be considered a large project within the traditional city, which was actually the case.

6.6 Roles and responsibilities:

In his book, Crisis in the Built Environment, Jamil Akbar argues that patterns of responsibility in the traditional environment were different from those today and affected all aspects of the built environment. He gave examples such as the territorial structure of the city, the conversions and social relationships between the inhabitants, the potential of the physical environment, the building industry and the economy (Akbar, 1988, p. 31).

The role of authorities and the role left to the individuals in our contemporary cities are also very different from those in the traditional environment. The difference appears in two aspects. The **first** is the expansion of areas controlled by the authorities. For example, land is no longer available for the individual to revive, because the authorities control all non-built land, and decide, on behalf of the individuals, the land use, the land size and make many other decisions usually taken by the individuals. The **second** aspect comes as a result of the first. Since the individuals have no direct access to land, the authorities must create new systems to give this access under their control. To do this, they must take some of the roles traditionally belonging to the individuals. The authorities have to subdivide the land to the level of individual use, take the responsibility of all streets, roads and open spaces, establish building controls and sometimes build the homes for the individuals.

6.6.1 Role of the State in forming the Land Ownership Pattern (L.O.P):

In Chapter 3 the author defined the land ownership pattern as **the land pattern that reflects all types and sizes of land ownership of the subject area.**

The examples cited above show clearly that the State controlled some major decisions in the development of Islamic cities. The location of the city was always determined by the State for various reasons. The main mosque was always built and its location determined by the authority of the State. Other public buildings and facilities were treated like the mosque. Location and width of major roads were, in some cases, determined by the State

authorities. Using contemporary phrases, one can consider that the State's role could reach the level of a **structural plan** when the State determines the location and size of major *Khitat*, but that level would generally represent the end of the State's role. In most cases, the State would choose the location and build the public buildings only. None of the examples show that the State practiced land subdivision within a *Khittah*, nor did it build houses for individuals. Within each *Khittah* the individuals were free to develop land according to their needs.

Ibn Arrabei (?- 902), in his book, Solok Almalik fi Tadbir Almamalik, suggested that the duty of the State towards the city is the following:

“Provide clean water and drinking water and make it easily accessible for the inhabitants, and determine its (the city's) main and secondary roads to be well proportioned and not narrow, and to build a Jami Mosque for prayers in its middle, so he (the governor) can get to know all the people (of the city), and to provide a place for a market (Soq), so the inhabitants can readily buy their needs, and to segregate between the different tribes so that contrasting groups are not put together. If he (the governor) wants to live in the city, he should choose the widest part of the city and surround himself with (the houses of) his loyal prominent people from all directions. He should build a wall around the city to protect it from enemies, because the whole city represents one house, and he should transfer to it the scholars and craftsmen according to the needs of its inhabitants, so they can be independent and do not need to go to another city (for their needs),” (Othman A, 1988, p.111),.

In the above text, Ibn Arrabi determines the mission of the city authorities to be the following:

- Provide clean water
- Determine main and secondary streets
- Build the Jamie mosque
- Assign a market location
- Consider demographic characteristics
- Build a wall around the city for defense
- Bring scholars and craftsmen to enhance the quality of life in the city

6.6.2 The role of the individuals:

Individuals are driven by their needs. Motivated by their instinct, they would act to fulfil their needs. *Sharia* does not deny this fact but builds on it. Ash Shatibi states, "*Allah has ruled that religion (Din) and life (Dunia) will be fruitful and in harmony if the self-motivation of the individual leads him to make his earnings for himself and for others. Allah has created the appetite for eating and drinking in man, so when he feels hungry or thirsty these feelings will initiate him to fulfil his needs by seeking the means leading to that. Allah also created a tendency between the sexes to motivate them to seek for a means of fulfilling their needs and created the feeling of cold and hot and other inconveniences which drives man to wear clothes and occupy a shelter,*" (Ash Shatibi [1320-1388], 1997, p. 303).

Four hundred years earlier, Al Jowaini (1028-1085) noticed that commercial contracts are more motivating for people than contribution contracts. He gave an example of both, renting and lending. Lending rarely occurs, because people are reluctant to lend their money or property. The materialistic benefits of renting motivate most people, while moral benefits of lending motivate few (Al Masri, 2001, p.52).

This seems to coincide with the conclusion of Adam Smith (1723-1790) in his book, The Wealth of Nations, "*It is not from the benevolence of the butcher or the baker that we expect our dinner but from their regard to their own interest. We address ourselves, not to their humanity, but to their self-love, and never talk to them for our own necessities but for their advantages*" (Smith, 1937, p.14).

The land ownership pattern in the traditional Islamic city was mainly created by the desire of inhabitants to protect some of their basic needs. In land development, *Sharia* encouraged individuals to act freely in building their own shelters and homes, to dig wells, and to plant trees. *Sharia* rewarded those who put forth the effort to revive land by granting them its ownership.

Except for the basic actions taken by the State to form the traditional city, the inhabitants themselves developed the land ownership pattern while they worked to fulfil their needs. This role of the individual in forming the city no longer exists in contemporary development.

To allow people the natural freedom to fulfil their needs, there should be no laws or regulations created that work as a barrier between the people and the means they want to use in fulfilling those needs. In the traditional city, the role of the State and the role of the individual were balanced, allowing both parties to fulfil their duties according to *Sharia*. The more the State interferes in directing the land ownership pattern, the less motivated and self-sufficient the inhabitants become, instead becoming more and more dependent on the State. According to *Sharia*, each party, the State or the individual, is given a specific role in land development. When these roles are exchanged, even partially, it will negatively impact the land development process.

6.7 Transformation in L.O.P.:

In the traditional city, the land ownership pattern was in a continuous state of transformation. In most cases, changes were to the benefit of the built environment, signifying a continuation of life in the city. To the contrary, stagnation may reflect serious problems in the built environment.

6.7.1 Normal transformation in L.O.P.:

Normal transformation is defined here as any change occurring due to normal circumstances such as selling, buying, reviving, inheriting etc. without having been forced by authorities. This normal change is a positive sign and usually reflects an active built environment. This type of transformation usually takes place over a long period of time.

6.7.2 Compulsory Transformation in L.O.P.:

This type of transformation is defined as changes occurring to the built environment due to factors beyond the control of the original owners. In most cases, such transformation takes place in a short period of time. If such changes happen on a small scale, they can be absorbed, and the L.O.P. may return to its balanced state within a few years. Large-scale changes are like an earthquake in the built environment, because all relationships and connections that were created through the years in that part of the city will be disconnected. A sudden or forced transformation that occurs by expropriating large areas of a developed environment is an example of an abnormal transformation situation. It is

important to remember that the changes discussed are changes in the land ownership pattern, not the built form.

6.8 Exchange of Roles and L.O.P.:

The basic role of the State can be summarized in making land available for the individuals, furnishing the infrastructure and constructing the main public buildings. The individuals, motivated by their basic needs and by obligation of *Sharia* to endeavour to fulfil the needs of themselves and their families, are expected to develop the land for their individual purposes. It is the right of the individual to have a chance to revive an area of land, either to plant a farm or to build a shelter. It is obvious that if land is not available, because the state controls all non-built land, then the first ring of the system is broken.

When the State decides to take the responsibility of parcelling out land, it actually plays the role given to the individuals by *Sharia*. This switch in roles may cause the relationship between the individual and the land to discontinue and in fact, have a ripple effect, increasingly terminating several standards set by *Sharia* in land development. Individuals become reactive instead of being proactive.

It is important to note that in the land development system of the traditional city, the individual was required to make an effort in developing the land before he could claim ownership. Those who claimed they wanted to revive an area of land and made only the first step of *Ihya'* (revivification) by *Tahjair* (demarcation) but no further attempt to develop it would not deserve to be granted ownership unless they could prove their ability for successful development in three years.

6.9 Conclusion:

Legislations extracted from *Sharia* were the base of practice in building the traditional Islamic city. Mechanisms controlled the role of individuals and the role of the state beside other systems and mechanisms worked gradually to form the city. Transformed cities, started as continuation to existing cities, but over time the network of mechanisms and systems managed to change the existing fabric into a new morphology that is similar to the newly built cities. The differentiation between the state role and the individuals' role in the traditional city encouraged the individuals to fulfil their needs driven by their

motivation. At the same time the state was to concentrate on providing the public services. Both roles were working simultaneously in were fully integrated.

6.10 A need for a Model:

The concept of basic human needs according to *Sharia* (discussed in Chapter 4) on which was built the rules pertaining to land in *Shaira* (discussed in Chapter 5) and the exploration of city formation and transformation in Chapter 6 suggest a possibility of constructing a relationship extracted from these basic concepts that can help in forming a better base for land development in the contemporary city. This relationship should deal with the basic needs, the rules of *Sharia*, the individual role, the state role and simplify the connections amongst them.

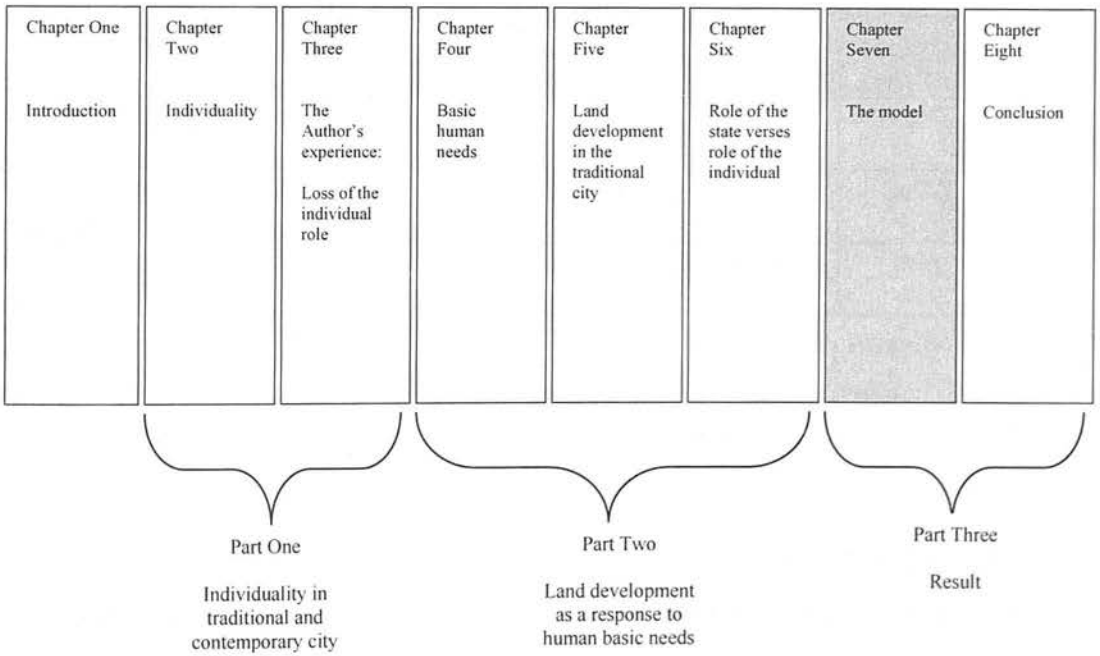
In the next chapter, the author will use the literature discussed, in particular Ash Shatibi's basic human needs theory, to construct a model in order to explain the relationship between the role of the State and the role of the individual in land development.

PART THREE

The Results

Chapter Seven

The Model



Chapter Seven

7 The Model

7.2 Introduction:

The aim of this chapter is to construct a model that clarifies the role of the state and the role of the individual in land development. The concept of this model will be derived from the basic needs theory extracted from *Sharia*, as described in Chapter 4, as well as aspects from the land policy and land development process in the traditional city. Differentiation of the roles of the state and the individual is also a key element of the discussion. In order to create this relationship, several aspects will be discussed to form the base of the model. These aspects shall include recalling the basic needs and levels of interest and their implications, land development being among them with home as a primary need. This will include exploring the case of the squatter settlements or illegal housing in order to understand the mechanism behind the formation of such phenomena.

7.3 Land development among basic needs:

In the fourth chapter, the basic needs in *Sharia* were illustrated in the following chart:

Basic necessities <i>Masalih</i> Grades	<i>Din</i> Religion R	<i>Nafs</i> Life L	<i>Mal</i> Property P	<i>Agl</i> Intellect T	<i>Nasl</i> Posterity Y
Tertiary Needs Te <i>Tahsiniyat</i>	Te / R	Te / L	Te / P	Te / T	Te / Y
Secondary Needs Se <i>Hajiyat</i>	Se / R	Se / L	Se / P	Se / T	Se / Y
Primary Needs Pr <i>Daroriyat</i>	Pr/R	Pr/L	Pr/P	Pr/T	Pr/Y

R: Religion

L: Life

P: Property

T: Intellect

Y: Posterity

Pr: Primary Needs

Se: Secondary Needs

Te: Tertiary Needs

Table 7-1 (repetition of table 4-2) The five necessities in the hierarchy of basic needs.

Source: The author.

Where would land development fall in the hierarchy of needs? Is it part of *Daroriyat* (primary needs), *Hajiyat* (secondary needs) or *Tahsiniyat* (tertiary needs)? How does it help to achieve the five basic necessities (needs)?

In Chapter four, the overall objectives of *Sharia* were discussed:

“Preserve the order of the nation (discipline) and sustain its rightness by the righteousness of the dominating factor, being mankind.” (Ibn Ashor, 1999, p. 200)

“To colonize (develop, build, inhabit) the Earth and preserve the living system and sustain its rightness by the righteousness of people who should implement the principles of justice and integrity.” (Arrysoni, 1995, p. 19)

In summary, the aims of *Sharia* are to develop the Earth, make it inhabited and full of life, warrant people’s *Masalih* (interests) and prevent *Mafasid* (disinterests) by maintaining justice, mercy and magnanimity. Land development, therefore, is one of the major activities expected from man on this earth. It will help to achieve all the five necessities on all levels.

To simplify the discussion, the author will concentrate on the home, man's dominant physical expression in developing the Earth. The Arabic expression for "home" comes from the root S-K-N, which carries a meaning far beyond the physical structure of a house. It means to be delighted, to be peaceful, to dwell, to inhabit, to settle, to calm down and to feel ease with. The word has been used in the Holy Qur'an to express the relationship between men and women, {And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought}¹⁹³

The author will discuss the home as a primary need, according to Ash Shatibi’s model, then will explore man’s struggle for shelter in the contemporary world through examination of the squatter settlements or so called "illegal housing" and the process that helped to form such settlements. Efforts made by the authorities to satisfy the need of home and the government's role in dealing with this phenomenon will also be explored.

7.4 Home as a Primary Need (*Darory*):

The Prophet Mohammad ﷺ said, “The man who spent his night **securely** within **his shelter**, **healthy** and with sufficient **food** for his day, is like a person who owns the

¹⁹³ Surah Ar Rum, verse 21

whole world.”¹⁹⁴ This *Hadith* considers security, home, health and food as basic human needs.

Security, health and food refer to the five basic needs, while shelter represents the environment within which man would live securely, particularly if he owns it. The importance of a home varies, according to the situation. In some circumstances, it may be a *Darory* (primary need), in others a *Hajy* (secondary need) or perhaps only a *Tahsiny* (tertiary need), depending on what it serves or protects.

A home is a *Darory* when it is essential to provide shelter in order to protect life, property or any of the five necessities from real danger that may lead to a loss of those five necessities; it may be a *Hajy* when the shelter needs improvement in order to lessen hardships for the inhabitants; and it may be a *Tahsiny* when it is improved to enhance the quality of life.

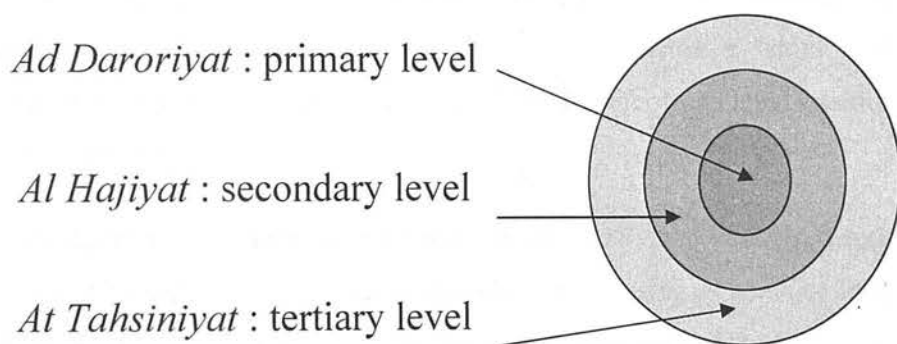


Figure 7-1 (repetition of figure4-2) Relationship between the three levels of home.

Source: The author

7.5 Man's struggle for shelter:

One of the most common means of poor people to fulfil their needs of shelter in contemporary cities is so called “squatter settlements”. No one can deny that people who live in these settlements struggle to protect their basic needs. A man may take the risk of losing his house in the future and being considered illegal to fulfil an existing

¹⁹⁴ At Termithi

need. In many parts of the world individuals decide to take this risk, because they are being driven by the pressing need for a home.

The author noticed that there are many similarities between the land development concept and process in the traditional Islamic city and the land development process that leads to squatter settlements. Similarity appears mainly in the motivation behind building the house, which is an effort to fulfil a basic need. Exploring the process that creates squatter settlements may lead to a better understanding as to how man should perform his role in land development and what may act as obstacles or incentives.

7.8.1 Squatter settlements:

A "squatter" is a person who settles on new, especially public, land without title; a person who takes unauthorized possession of unoccupied premises. Therefore, a residential area occupied by squatters becomes a squatter settlement (Srinivas H., 2002, www.gdrc.org). There are other names given to such land development such as illegal cities, slum areas, informal settlements, shantytowns, spontaneous settlements, unplanned settlements, low-income settlements, etc. While a "slum" refers to the condition of a settlement, "squatter settlement" would refer to its legal position (Srinivas H., 2002, www.gdrc.org).

Slums are defined as "residential areas that are physically and socially deteriorated and in which satisfactory family life is impossible. Bad housing is a major index of slum conditions. Bad housing consists of dwellings that have inadequate light, air, toilet and bathing facilities; those that are in bad repair, are dumps and are improperly heated; those that do not afford opportunity for family privacy and that are subject to fire hazard and overcrowd the land, leaving no space for recreational use.

Although both slums and squatter settlements can help in understanding a great deal about values within the traditional city, some concentration shall be given to understand the legality and availability of land of illegal settlements.

7.5.1.1 Broad categories:

The term "illegal settlement" is used to describe a great variety of different situations, but these can be grouped into two broad categories. The first refers to settlements established on either private or public land that has been subdivided to produce

individual plots for sale or rent. The subdivisions are illegal for a variety of reasons. The vendor may not have legal title to the property in the first place, or they may fail to obtain the necessary permits or to respect planning regulations concerning, for example, the provision of urban services. The second category is land invasion, when land is occupied for housing purposes without the permission of the owner (whether the state or an individual). This produces “squatter settlements” (Fedmanes E. and Varley A., 1998, p. 234). In this case, there is no vendor or mediator; the “squatters” deal directly with the land.

7.5.1.2 Development process of a squatter settlement:

The development of squatter settlements is a natural and instinctive response to man’s basic needs. In the traditional Islamic city, land is available for developers through the concept of *Ihya* (revivification). In contemporary Islamic cities, unfortunately, governments control all non-developed land, and individuals have no direct access to it. Individuals can legally obtain land from the government only by going through a certain process which varies from one country to another. In Saudi Arabia, individuals can possess land by requesting a grant from the government. If *Aradi Alminah* (land prepared for grants) is available, they may take their turns.

Ahmad Soliman in his book Sustainable Development in Developing Countries, presented an interesting comparison between three ways of possessing a house in Egypt: 1) government housing projects 2) legal private sector projects 3) informal housing. He noticed that to possess a house in the formal housing areas, procedures take a very long time and it takes several years to pay for the cost of the house. In the legal private sector projects, an individual has to go through the same steps as the government housing to apply for a housing unit. Developers would need 20 to 30 months before land subdivision occurs. On the contrary, informal housing projects can make land available for the individual in days.

7.5.1.3 Studies and policies for sheltering urban poor:

In his book, Man’s Struggle For Shelter in an Urbanizing World (1964), Charles Abrams noticed the housing problem and the shortage of houses in several cities in the Third World, particularly in India and some south Asian countries, from the period between the end of the Second World War until the beginning of the 1950’s. He concluded that

communities built by governments did not satisfy the basic requirements for the inhabitants and that public participation in constructing houses accommodates larger numbers at a lower cost. At the same time, public participation provides vast job opportunities.

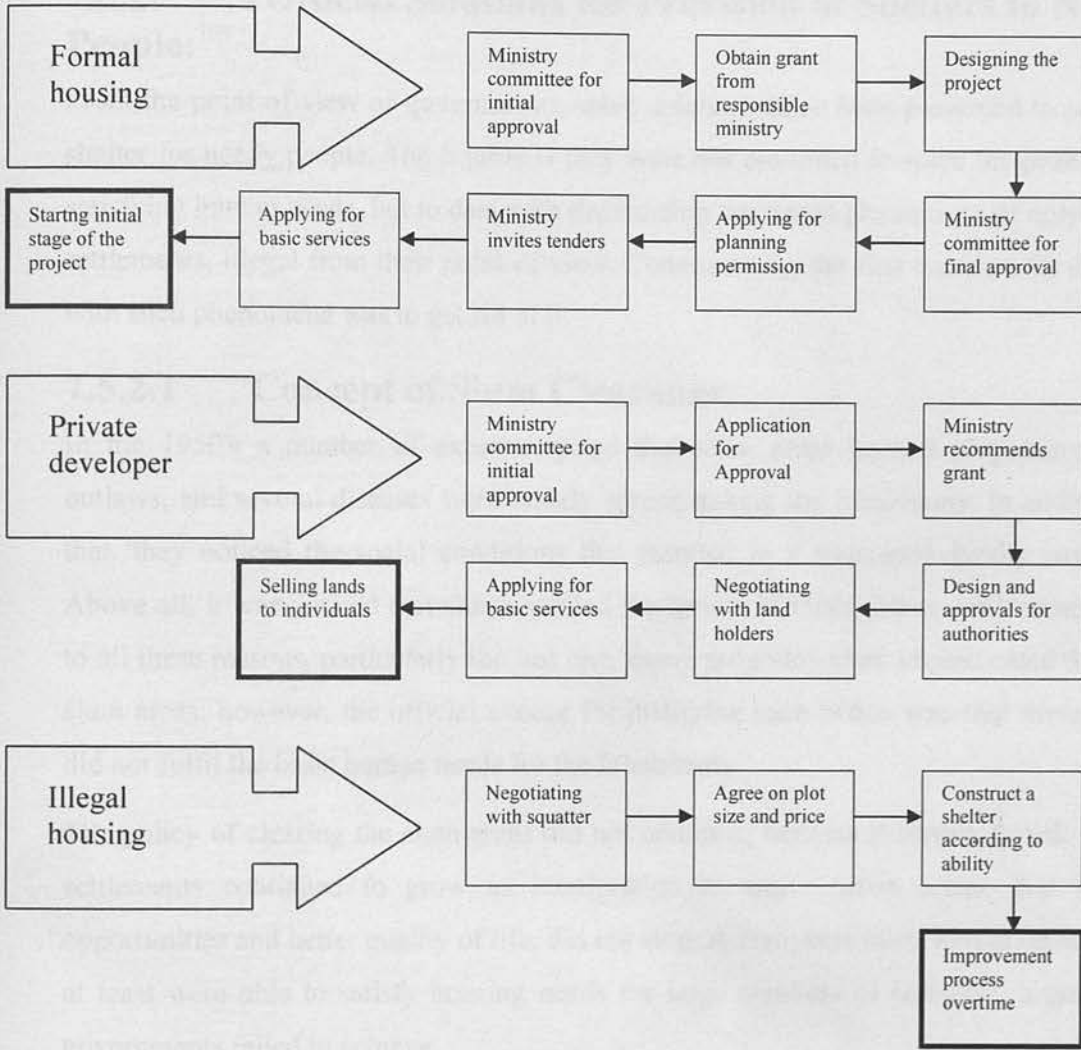


Figure 7-2 Process needed to possess a land in Egypt, comparing the case of formal housing, private developer and illegal housing.

Source: Suliman, Ahmad Monir. *Sustainable Development in Developing Countries*, p. 316.

Hasan Fathy in his book *Architecture for the Poor* argued that the standard of living and culture among the world's desperately poor peasants can be raised through cooperative building, which involves a new approach to rural mass housing. There is much more in this approach than the purely technical matters that concern the architect. There are

social and cultural questions of great complexity and delicacy; there is the economic question, the question of the project's relations with the government, and so on. None of these questions can be left out of consideration, for each has a bearing on the others, and the total picture would be distorted by any omission. (Fathy H.,1973 , p. xv)

7.8.2 Official Solutions for Provision of Shelters to Needy People:¹⁹⁵

From the point of view of governments many solutions have been presented to provide shelter for needy people. The trouble is they were not presented to solve the problem of satisfying human needs, but to deal with the existing unwanted phenomena of ugly urban settlements, illegal from their point of view. Consequently, the first reaction for dealing with such phenomena was to get rid of it.

7.5.2.1 Concept of Slum Clearance:

In the 1950's a number of experts agreed that slum areas housed perpetrators and outlaws, and several diseases were widely spread among the inhabitants. In addition to that, they noticed the social conditions that resulted in a weakened family structure. Above all, it was noticed that slums spoiled the beauty of major urban settlements. Due to all these reasons, particularly the last one, many programs were implemented to clear slum areas; however, the official excuse for justifying such action was that these areas did not fulfil the basic human needs for the inhabitants.

The policy of clearing the slum areas did not continue, because it simply failed. Illegal settlements continued to grow as immigration to major urban areas, due to job opportunities and better quality of life, did not stop. A few years later, illegal settlements at least were able to satisfy housing needs for huge numbers of residents, a goal that governments failed to achieve.

When John F.C. Turner¹⁹⁶ wrote, Freedom to Build ¹⁹⁷in 1972 followed by Housing by People in 1976, a new policy of slum upgrading began to emerge replacing the policy of

¹⁹⁵ Summarized form Soliman A. Housing and Sustainable Development in Developing Countries.

¹⁹⁶ John Turner was born in 1927 in London. He lived in Peru from 1957 until 1965, working mainly for Peruvian government housing agencies in the promotion and design of community action and self-help housing programs. In 1970 he directed an evaluation of self-help housing in the USA. UN adapted his concept which was considered revolutionary at that time.

¹⁹⁷ Edited by Turner with Robert Fichter, and co-authored with six other colleagues.

slum clearance. This direction was implemented by several means that are explained below.

7.5.2.2 Self-help Building:

In Freedom to Build John F. C. Turner argued that when the dweller makes the major decisions and are free to make their own contribution to the design and construction, both the process and the environment produced stimulate individual and social well-being. When people have no participation for key decisions in the housing process dwelling environments may instead become a barrier to personal fulfilment and a burden on the economy.

The writing of Turner considerably influenced the World Bank's slum upgrading approach, used for the first generation of its urban development projects during the 1970's and 1980's. Turner minimized the role of government, limiting it to providing essential environmental improvements and public services, thereby allowing squatters and/or slum-dwellers to gradually improve their living conditions.

Turner expressed the belief that networks of people can intelligently take control of their own surroundings without experts. He showed that housing, a most basic part of our daily environment, has escaped our grasp. He argued convincingly that housing policies need not be dictated by central governments but can be put under local control (Turner, 1972).

7.5.2.3 Community participation:

The concept of community participation was taken from research of squatter areas in the Third World. It was actually extracted from systems that were customarily used by the squatters themselves. (Soliman A, 1996, p. 133) There is no specific definition for the "participation" as such, but in general it appears as the cooperation and exchange of benefits between the inhabitants of a specific society.

The two major elements of community participation are 1) the building operation and 2) the financing source. Once the building materials and services are provided by the financing source, construction will be undertaken by all family members and their friends. Non-governmental organizations play an important role in this concept.

7.5.2.4 Wet core and core housing:

This concept was widely used in Turkey, Argentina, Mexico, Brazil, Egypt and other countries. Being the most expensive part of the dwelling unit, the idea was to construct the wet core, which is the toilet and the kitchen, and connect it to the public network. The rest of the unit was to be built by the dweller himself, on a land between 80 to 150 m² in area.

As a development of the wet core concept, the core housing concept added one or two rooms to the wet core. Both concepts were to be initiated by governments whose role was to determine the land, subdivide it and build the core. Of course, governments were to decide who would live in these units as well.

7.5.2.5 Improvement and upgrading:

Finally the direction was to accept the squatter settlements as a fact. Instead of relocating the residents, the more realistic solution of upgrading the squatter areas and legalizing them was implemented. This concept meant furnishing these areas with service networks, improving urban spaces, and social and financial improvements for the dwellers to improve their total environment.

This direction, of course, converted the illegal housing to legal, which was to the benefit of the dwellers but also laid new financial burdens on them. Legal housing in most countries required the financial capability to pay for completing land ownership, service connections and so on.

7.8.3 Discussion:

The subject of squatter settlements and illegal housing can be examined from the viewpoint of the beneficiaries and that of the officials. The beneficiaries' goal is to obtain a shelter, the minimum requirement to fulfil the basic need of a home. The officials' goal concentrates on the legality of land occupation according to the existing laws and regulations. The problem will never be solved, because the individual's need for a home is continuous and urgent, and in spite of any regulations, he will act to fulfil his basic needs. The latest solutions are to accept squatters and illegal housing areas as an accomplished fact, which may partially solve the problems of existing settlements but does not prevent new ones from being established.

The author argues here that such problems occur due to two main reasons: 1) the land policy that forms barriers between individuals and the land, and 2) the interpenetration between the individual role and that of the state in land development.

7.8 Different Models of Home as a Basic Need:

In the following paragraphs, the author will explore two models of home relating it to the level of needs. One is by Masaud Abubaker, based on Maslow's theory, the second is by the author, based on Ash Shatibi's theory. A proposed model by the author combining Maslow's needs with Ash Shatibi's levels of need will be presented at the end.

7.8.1 A Model based on Maslow's Motivation Theory:

Using Maslow's hierarchy of needs, Masaud Abubaker created a relationship between the levels of home and the achieved basic needs.

According to Maslow, there are six motivations. The first two are more basic and relate to biological and physiological factors such as thirst, hunger, safety, thermal comfort and protection. Others are less basic and may be interpreted as the human tendency towards abstraction and aesthetic experience such as belonging, self esteem, self-actualization and cognitive and cultural perceptions.

Motivations are set according to a hierarchical order, from the most basic to the most abstract. In other words, when a person is in need of food or protection, he/she is not likely to be engaged in matters of aesthetic appreciation. When basic needs are met, then man is motivated to fulfil needs higher in the hierarchical structure. Masaud argued that adaptation and motivation are two notions that are strongly linked together. Varied needs have prompted people to develop a creative architecture through the adaptation processes to fulfil and transcend human motivation and expectations (Masaud A., 1996, p. 98).

According to Masaud, the result of the first stage is the development of shelter as an output of the association of basic motivation (safety, physiological needs) with adaptation to physical environment. The second stage, which is the concept of habitat, is a result of adaptation to the social environment with esteem, belonging and love needs. Eventually, adaptation to culture signifies the satisfaction of self-actualization and cognitive and aesthetic motivation. The associated concept would then be found in the spirit of place or *Genius Loci*, a place which fulfils all human needs.

Motivation of The Basic Hierarchical Needs	Cognitive & Aesthetic Needs Self-Actualization Needs			GENIUS LOCI
	Esteem Needs Belonging & Love Needs		HABITAT	
	Safety & Protection Needs Physiological Needs	SHELTER		
		Physical Adaptation	Social Adaptation	Cultural Adaptation
The processes of Adaptation to The Environment				

Table 7-2 Types of built form in each stage of adaptation

Source: Masaud, Adaptation and Motivation

7.8.2 Hierarchy of Home Based on Ash Shatibi's Hierarchy of Needs:

According to Ash Shatibi, in the three levels of *Masalih* (*Daroriyat*, *Hajiyat* and *Tahsinaiyat*), it is not necessary to satisfy all basic needs in one level in order to aspire to some in the next level. That means one may satisfy his five needs in the level of *Daroriyat*, satisfy three needs in the level of *Hajiyat* and also be able to satisfy one of these three needs to the level of *Tahsinaiyat* before satisfying the two needs left from the *Hajiyat* level.

Necessities	<i>Din</i> Religion	<i>Nafs</i> Life	<i>al</i> Property	<i>Aql</i> Intellect	<i>Nasl</i> Posterity
Levels of needs					
<i>Tahsinaiyat</i>					
<i>Hajiyat</i>					
<i>Daroriyat</i>					

Table 7-3 Possibility of satisfying partial needs in one level.

The dark levels are the satisfied ones.

Source: The author

Partial satisfaction of one level of *Masalih* does not prevent a person from aspiring to other levels but only for those in which needs are fulfilled in the previous level.

The relationship between the three levels of *Masalih*, illustrated earlier in figure 4-4 by three concentric circles, clarifies the concept that *Hajiyat* and *Tahsinyat* work like *Hima* (a buffer zone) to protect the *Daroriyat*. This works for each need individually.

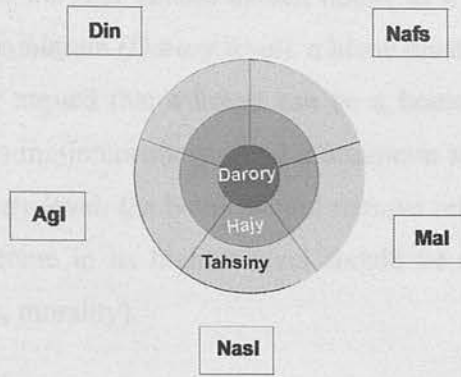


Figure 7-3 (repetition of 4-4) Levels of basic needs. One circle that represents all the five needs is divided into five parts, each part representing one of the basic needs

Source: The Author

Ash Shatibi made some clarifications to the relationship between the three levels of *Masalih* that give a better understanding of the five rules already mentioned in Chapter Four. These clarifications are:

The relationship of other *Masalih* to *Darory* is like that of protective zones (*Hima*). The disturbance of one protective zone amounts to the disturbance of the next zone and eventually to the disruption of the *Darory* which is at the centre of these zones.

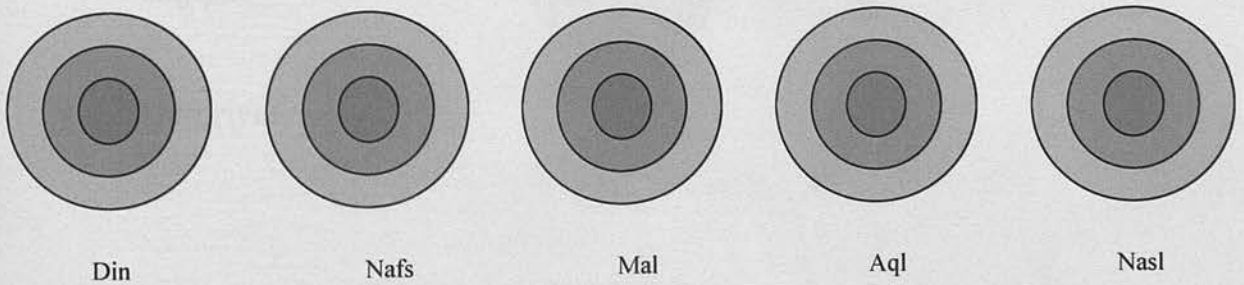


Figure 7-4 Another way to illustrate the basic needs: Each circle represents one of the five basic needs.

Source: The Author

This relationship may also be understood as that of the part and the whole; other *Masalih* together with the *Darory* make one whole. The absolute disturbance of the complementary parts leads to some disturbance of the whole.

Home is an essential want that protects man's life (*Nafs*), property (*Mal*), intellect (*Aql*) and posterity (*Nasl*). A want that serves four of the five basic needs is a basic need by itself. According to the Ash Shatibi model, home, as a basic need, can take more than one shape. At the minimum (*Darory* level), a home must safeguard the basic needs of its inhabitants. Turner argued that a house can be a home if and only if it is minimally accessible, provides minimum shelter, and a minimum security of tenure (Turner, 1977, p. 103). In the *Hajy* level, the home should remove impediments and hardships of the inhabitants' life. Home in its highest level should be able to sustain the inhabitants' noble habits (ethics, morality).

The primary grade of needs (*Daroriyat*) is the most important level for the individual, but at the same time it is the least in terms of quantity. When a man satisfies the *Daroriyat* of his house, he would then look for the *Hajiyat*, which are expected to be larger in quantity, though less important. *Thasiniyat* grade includes an endless list of improvements that improve the quality of life.

The above conclusion can be illustrated in the following chart.

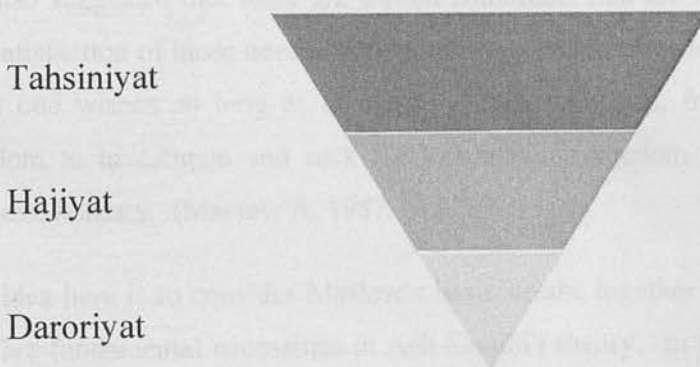


Figure 7-5 The role of the individual in achieving the basic needs.

Source: The author

What enables a home to fulfil the needs of its inhabitants is not the quality of design and materials, the size or equipment, but what it offers them. The value of housing is what it does for people; this matters more than what it is or how it looks (Turner, 1977, p. 102). Also, the value of a home in fulfilling his needs is judged by the inhabitant and not by others. A lavish home filled with luxuries may not fill the need for security, which may be achieved in a simple shelter.

On the other hand, what is considered *Tahsiny* (tertiary level) in one area may be considered *Hajy* (secondary level) or even *Darory* (primary level) somewhere else or visa versa. Serving homes with public sewerage is *Tahsiny* to most of the world's population, it is *Hajy* to many and it is very vital and *Darory* to relatively few.

7.8.3 Maslow's Hierarchy of Needs from another Perspective:

Maslow's Hierarchy of Needs can be understood from another perspective using the model abstracted from Ash Shatibi's theory.

Maslow suggested that human needs can be arranged in a hierarchical order as follows: 1) physiological needs, 2) safety needs, 3) belonging and love needs, 4) esteem needs, 5) self actualization needs and 6) cognitive and aesthetic needs. (Maslow, 1954, p. 86)

He also suggested that there are certain conditions that are immediate prerequisites for the satisfaction of basic needs. Such conditions include freedom to speak, freedom to do what one wishes so long as no harm is done to others, freedom to express oneself, freedom to investigate and seek for information, freedom to defend oneself, justice, fairness, honesty. (Maslow A, 1954, p. 22)

The idea here is to consider Maslow's basic needs, together with their prerequisites, as the five fundamental necessities in Ash Shatibi's theory. In this case, all six needs will be looked at as basic needs independent from each other, they will then be put into the hierarchy of needs according to Ash Shatibi, which are the three grades of *Masalih*.

Now Maslow's basic needs will all be **really** basic, because none of them is dependent on the other. In the *Daroriyat* grade, man will have his absolute necessities of each of the basic needs (i.e., fulfil his absolute necessities of his physiological needs, safety needs,

belonging and love needs, esteem needs, self actualization needs and cognitive and aesthetic needs).

Once *Daroriyat* level is satisfied, man will look forward to satisfy his *Hajiyat* of all six needs. If he succeeds in satisfying any of the needs in the secondary level, he will then look forward to the tertiary level. In other words, if one level is partially met, one may try to reach the next level.

According to Maslow :*“In actual fact, most members of our society who are normal are partially satisfied in all their basic needs and partially unsatisfied in all their basic needs at the same time. A more realistic description of the hierarchy would be in terms of decreasing percentages of satisfaction as we go up the hierarchy of prepotency. For instance, to assign arbitrary figures for the sake of illustration, it is as if the average citizen is satisfied perhaps 85 percent in physiological needs, 70 percent in safety needs, 50 percent in love needs, 40 percent in self-esteem needs, and 10 percent in self-actualization needs.”* (Maslow A, 1987, p. 28). Table 7-4 illustrates the author's argument using the suggested percentages from the quotation above.

Maslow's Basic Needs / Levels of Masalih	Physiological needs	Safety needs	Belonging & love needs	Esteem needs	Self-actualization needs
Thasiniyat	85%				
Hajiyat		70%	50%	40%	
Daroriyat					10%

Table 7-4 Maslow’s basic needs in the hierarchy levels of Masalih according to Sharia.

Assuming *Daroriyat* 0-35, *Hajiyat* 36-70, *Thasiniyat* 71-100. Shaded areas show the satisfied needs. Dark shade for the fully satisfied needs and light shade for the partially satisfied ones.

Source: The author

The above quotation raises several doubts about the way Maslow’s hierarchy was graphically illustrated. The famous triangle (Figure 4-5) gives the impression that each level of need must be fully fulfilled before moving to the next.

7.8 Composition of the Model:

The author will now compose his model. There are six elements that form the proposed model: the five necessities (basic needs), the levels of interest (primary, secondary, and tertiary), legislations, land, states and individuals.

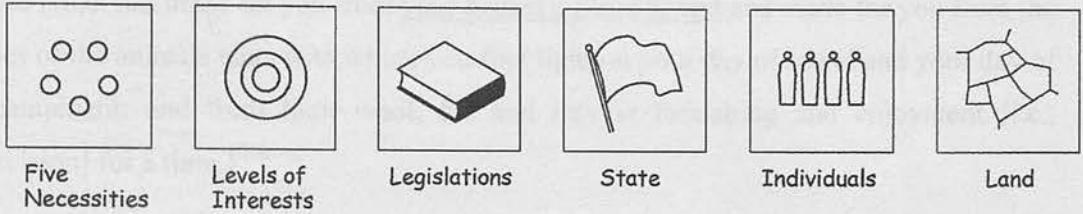


Figure 7-6 Model elements

Source: The Aauthor

7.8.1 The Five Necessities:

According to the theory of basic needs, *Shaira's* main intention is to protect the five necessities of man: religion, life, property, intellect and posterity. The traditional Islamic societies were governed by the Islamic *Sharia* in general. All legislation was taken from *Sharia*, including all related to land development.

Land development is a basic need for man to fulfil his obligations under the *Sharia*. *Magasid Ash Sharia* (the intent of *Sharia*) towards land development can be abstracted from the overall understanding of the rules of *Sharia*. Let's recall its overall objectives as discussed in Chapter Four.

“Preserve the national order (discipline) and sustain its rightness by the righteousness of the dominating factor, being mankind.” (Ibn Ashor, 1999, p. 200)

“Colonize (develop, inhabit, invest) the Earth and preserve the living system and sustain its rightness by the righteousness of people who should implement the principles of justice and integrity” (Arrysoni, 1995, p. 19)

Colonizing the Earth is accomplished through land development. There are also partial *Sharia* objectives towards urbanism that can be derived by investigation and induction:

{And to Thamud (we sent) their brother Salih. He said, “O my people, worship Allah; you have no deity other than Him. He has produced you from the earth and settled you in it so ask forgiveness of Him and then repent to Him. Indeed, my Lord is near and responsive.”} ¹⁹⁸

{Have we not made the earth a resting place?} ¹⁹⁹

{And Allah has made for you from your homes a place of rest and made for you from the hides of the animals tents with which you find light on your day of travel and your day of encampment; and from their wool, fur and hair is furnishing and enjoyment [i.e., provision] for a time.} ²⁰⁰

{It is Allah who subjected to you the sea so that ships may sail upon it by His command and that you may seek of His bounty; and perhaps you will be grateful.} ²⁰¹

{And He has subjected to you whatever is in the heavens and whatever is on the earth – all from Him. Indeed in that are signs for a people who give thought.} ²⁰²

The relationship between man and the earth is an integrated one. God has subjected the Earth for man to fulfil his mission to worship Allah through colonizing the Earth. Earth, in fact the whole universe, serves man in his mission. Man is asked to go in harmony with other creatures {Cause not corruption upon the Earth after its reformation. This is better for you, if you should be believers} ²⁰³.

7.8.2 The Levels of Interest:

As discussed in Chapter 4, there are three levels of *Masalih* (interest): *Daroriyat* (primary level), *Hajiyah* (secondary level) and *Thasiniyat* (tertiary level). The most important function of this classification is that it simplifies rating priorities. The benefit of this classification appears in the example given for the hierarchy of home in section 7.5.2, where the physical development of a home varies according to the level targeted by the individual.

¹⁹⁸ Sura Hud , verse 61

¹⁹⁹ Sura An Naba' verse 6

²⁰⁰ Sura An Nahl, verse 80

²⁰¹ Surah AlJathiyah . verse 12

²⁰² Surah AlJathiyah , verse 13

²⁰³ Surah Alaaraf , verse 85

7.8.3 Legislation:

The Islamic city enjoyed clear and simple legislation in regard to land development. Jurists and judges were able to develop rules based on *Sharia* to govern the interactions among individuals or between individuals and the state which enabled the Muslim society to exercise a continuous peaceful and coherent operation of land development. Such legislation was flexible and developable. Legislation covered the concept of ownership to the details of building codes.

Ihya made clear that land ownership was a fruit of land development. In other words, to possess land, a positive action has to be made towards the land by the one who claims it. The amount of land is to be proportional with the size of development made. Omar bin Al Khattab reacquired land allotted by the Prophet to Bilal bin Al Harith because he demarcated it for several years but did not use it. Omar said, "He allotted you to revivify, not to keep"

It is not the shape of the building, the width of the street or the nice proportions of the open spaces that are basically **intended** by *Sharia*; it is the satisfaction of people's needs through justice, mercy, protection of rights, equal opportunity and autonomy of the individual. This does not, by any means, neglect aesthetics; it simply indicates priorities.

In the traditional Islamic city, initiation of land development is in the hands of the individual. Access to land is an absolute right. The whole concept of *Ihya* begins to deteriorate when obstacles are introduced between man and land. Autonomy in land development should be one of man's basic rights.

7.8.4 The State:

The state is the authority that implements the objectives and legislation of *Sharia*. Depending on the performance of the state, objectives of *Sharia* may or may not be met; therefore, the fulfilment of an individual's needs relies to a great extent on state actions. Each individual is responsible to protect and fulfil his own needs and those of his dependents, but the state is responsible to facilitate the fulfillment of needs of all individuals in the society according to its capabilities and the priorities of needs.

7.8.5 The Individuals:

From the Islamic point of view, man is a respected creature. {And we have certainly honoured the children of Adam and carried them in the land and sea and provided for them food and preferred them over things and preferred them over much of what We have created, with [definite] preference.}²⁰⁴ Man was created for a great mission. {He who has made you successors upon the Earth.}²⁰⁵. God prepared the Earth to help man in fulfilling his mission. { Do you not see that Allah has made subject to you whatever is in the heavens and whatever is in the Earth and amply bestowed upon you His favours, [both] apparent and unapparent?}²⁰⁶

The five basic human needs, discussed earlier, are viewed by *Sharia* from different perspectives. Man is obliged by *Sharia* 1) to sustain and protect his own needs and the needs of who he supports, and 2) to respect others basic needs. There is complete integration between the obligations of *Sharia* and the needs of people; therefore, if land development operations do not fulfil man's needs, it does not fulfil *Sharia* objectives.

Following his model, discussed in Chapter 3, Jamil Akbar suggested that the unified form of submission, where one party owns, controls and uses a property, is the most desirable state of property in *Sharia*; thus, most of the traditional environment was composed of property in this form of submission. This conclusion by Akbar can be considered as one of *Sharia's* objectives in land development. One of the reasons that the unified form of submission was so effective was the support it provided for the concept of individuality.

Individual ownership of property is very much respected in *Sharia*. The individual is given the freedom to deal conclusively with his property, particularly what falls under the *Daroriyat*. As explained in Chapter Five, the power of the state to expropriate land was limited and used only on rare occasions in which the state had to give reasonable justification. In the cases studied in Chapter Two, land expropriation was a main tool in redevelopment.

According to instinct theory, humans are self-motivated; their own nature and their environment influences behaviour; their nature supplies them with a ready made

²⁰⁴ Sura AlIsra, verse 70

²⁰⁵ Sura Fatir, verse 39

²⁰⁶ Sura Luqman, verse 20

framework of ends, goals, or values; most often, under good conditions, what they want is what they need (Masud A., 1996, p. 87). Ash Shatiby stated that, "*It is the wisdom of the God which has ruled that Din and Donya (faith and colonization of Earth) can be right and fruitful if the self motivations of the individual lead him to earn what he or others need. God has created the appetite for eating and drinking in man, so when he feels hungry or thirsty these feelings will motivate him to fulfil his needs by seeking the means leading to that. Also, from the feeling of cold and hot, and other inconveniences, man has created for himself clothes and house*" (Ash Shatibi [1320-1388] , 1997, v. 2, p, 303).

Islamically, initiation of land development is in the hands of the individual. Access to land is an absolute right.

7.8.6 Land:

In the traditional city, land was classified into four categories: state, public, private and . This classification gave great freedom to individuals because of the opportunity due to the availability of land classified as public, which was owned by all Muslims and subject to individual initiatives.

In the traditional Islamic city, land before development (*Mawat*) was treated as a resource. This resource was made available equally to all people, which incites individuals to work and develop lands by all means of developments in order to own it. Once land is developed by any means, it starts to become a commodity.

7.8 Relationship between the Model Elements:

Each of the six elements has its implications on the others. The five necessities are the overall objectives facilitated by the interests in the three levels and served by legislation represented in all *Fiqh* and *Osol Al Fiqh*. Individuals are motivated by their needs to fulfil these necessities, the state is obligated by legislation to protect individuals' necessities and land is the spatial medium where all these elements are connected.

The basic needs, levels of interest and legislation represent the legal parameters of the model. They govern the other three elements. The five necessities and the levels of interest can be used as a reference to check the validity of legislation and state

performance. Legislation forms the framework that the individual and the state work within, and the situation of land reflects the physical output of their actions. The relationship is illustrated in figure 7-7.

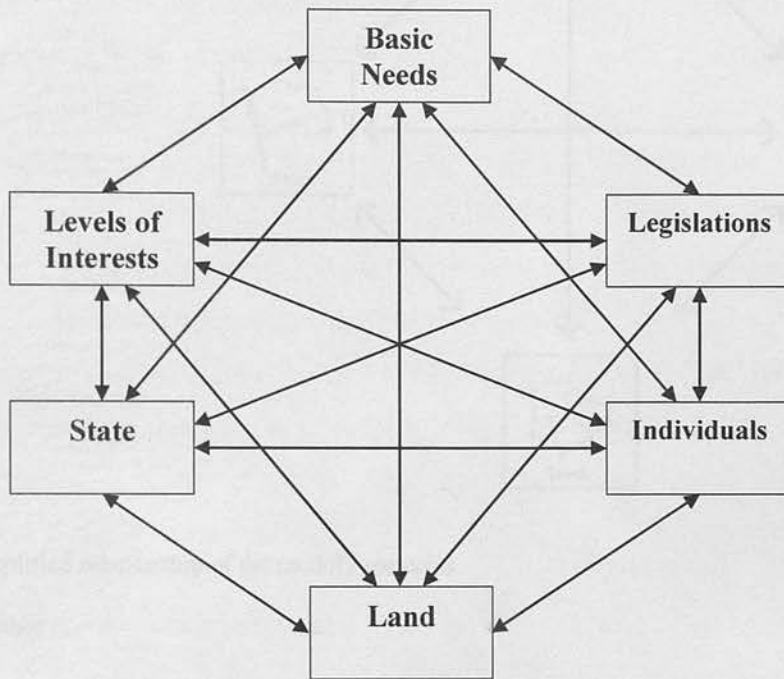


Figure 7-7 Relationship between model elements.

Source: the Author

This relationship can be simplified by combining the factors controlled by *Sharia* which will lead to the illustration in figure 7-8.

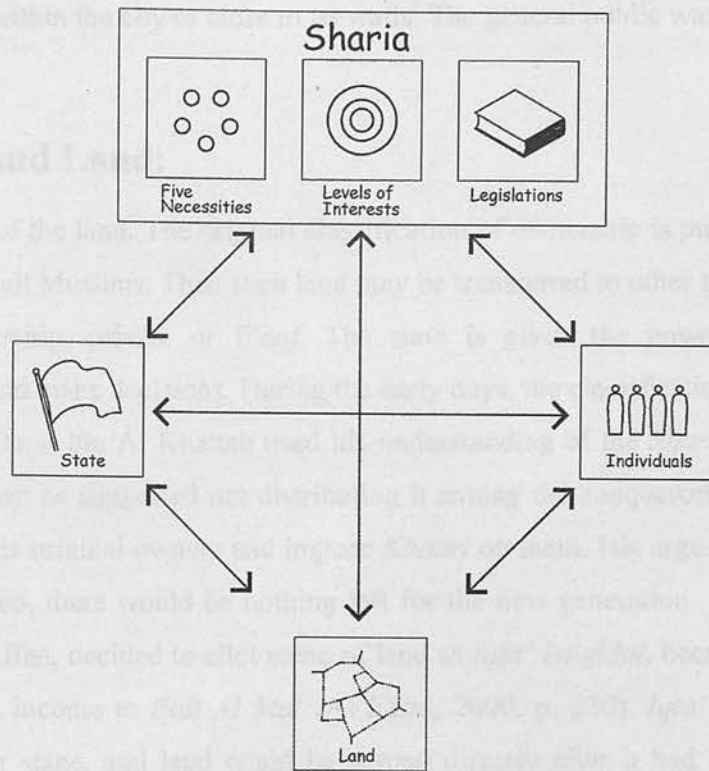


Figure 7-8 Simplified relationship of the model's elements.

Source: the Author

7.8.1 Individuals and Land:

Through the concept of *Ihya'* within *Iqta'* individuals were able to develop land wherever it was, because legislation left a great deal of land under the disposal of the individual. This disposal, however, was not unconditional or unlimited but was governed by detailed rules, as explained in Chapter 5.

The model city, Al Madinah Al Monawarah, was the first example of the Muslim relationship to the land according to the new law of *Sharia*. Tribes were granted large paces of land (*Khittah*) and individuals within those tribes developed their land within the allotted *Khittah*. Some individuals were directly granted land within the built environment. Later in developing new cities, such as Basrah and Kufah, the same concept was followed. It was also individuals' actions that transformed the urban fabric of adopted cities like Damascus and Aleppo through the years. In the case of royal cities, the situation was different. Supporters and influential individuals and groups (not

tribes) were granted lands within the city or close to its walls. The general public was not welcome.

7.8.2 The State and Land:

The state is not the owner of the land. The original classification of ownership is public, which in *Fiqh* is owned by all Muslims. Then such land may be transferred to other types of ownership: state ownership, private or *Waqf*. The state is given the power to implement the legislation and make decisions. During the early days, the classification of land was fully respected. Omar bin Al Khattab used his understanding of the *Sharia* in the case of *Sawad* land when he suggested not distributing it among the conquerors but to leave it in the hands of its original owners and impose *Khaarj* on them. His argument was that if it was distributed, there would be nothing left for the new generation. The next Caliph, Othman bin Affan, decided to allot some of land as *Iqta' Istighlal*, because, he thought, it brings more income to *Bait Al Mal* (Al Farra, 2000, p. 230). *Iqta'* was freed from *Ihya'* at a later stage, and land could be owned directly after it had been granted through *Iqta'* without any need of action.

7.8.3 The Individual and the State:

Both the state and the individual are the variables in this composition. Both actually are the players who represent the human factor. Each role will be discussed independently.

7.8.3.1 The Role of the State:

Legislation provides the basic means to protect the basic needs in the three levels of *Daroriyat*, *Hajiyat* and *Thasiniyat*. The state holds the responsibility to activate the legislation and to play a role in the provision and protection of the five basic necessities for all individuals in the nation. Every individual is responsible to protect his basic needs and the needs of those he supports. This means legislation provides the overall framework, and the state activates and implements it. Individuals provide for their needs through deeply-rooted self-motivation. Depending on how it plays its role, the state may act as an encouraging or discouraging factor for the individual motivations.

In the traditional cities, the role of the state in protecting the five basic necessities was fulfilled by public works projects which served the interest of all people. For example, Ibn Khaldon defined the role of the government as building the city, fencing it to protect

it from any harm, selecting the best location in terms of hygiene and safety, supplying water to the city, selecting the best pasture, and taking care of farmers (Azab,1997, pp. 70-71) .

Ibn Alarabei considers that there are rules which must be observed by the governor when constructing cities. *"He should supply people with potable water within their access in an easy manner and without harshness. He should design the roads and streets to keep them broad enough and build a grand mosque at the city center so that he can meet people at it. He should designate markets to enable people to obtain their necessities with ease. He should keep each tribe in a distinctive area, and if he wants to reside in the city he should select the most spacious part of the city for his residence and designate the area surrounding it to his henchmen. The governor should build a fence around the city to protect it from enemies, as the whole city must be considered as one house. He should bring traders, scholars, and professionals to meet the needs of the residents and to make the city a self – sufficient entity"* (Azab, 1997, pp. 74-75)

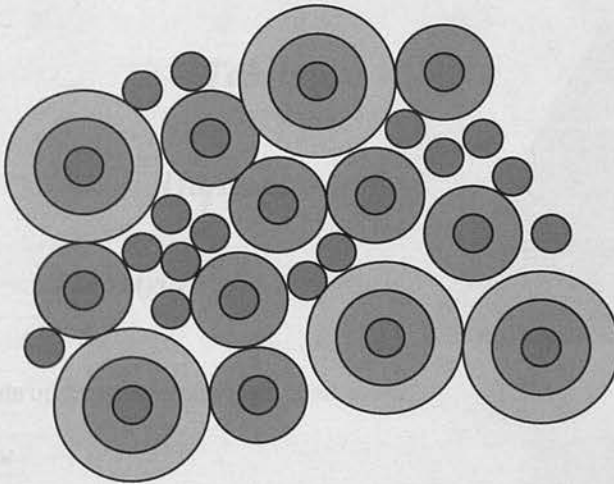


Figure 7-9 Basic needs within the society.

This shape represents individuals in a society. All of them have satisfied the primary level (*Daroriyat*) of their basic needs. Some have satisfied the primary and secondary (*Daroriyat* and *Hajiyat*). And few have satisfied the three levels (*Daroriyat*, *Hajiyat* and *tahsiniyat*)

Source: The Author

Ibn Arabie also discussed the general role of the state, which is to provide infrastructure, public services, security, education, health, sites for markets and skills needed for city development. The state is also to help in creating the appropriate environment that enables individuals and private corporations to interact positively in order to achieve the

basic needs in any of the three levels of *Masalih*. In quantitative terms, the state is responsible for the provision of *Almasalih Ad Daroriya* (primary needs) for the largest possible number of people. It will provide less of *Almasalih Al Hajiyah* (secondary needs) and the least of *Almasalih Altahsiniayah* (tertiary needs).

The role of the state can be represented by a triangle where the primary needs are at the base of the triangle, the secondary needs are in the middle, and the tertiary needs at the top.

From the text above and from the experiences of developing Islamic cities cited in Chapter 6, it appears that, in the field of housing, the state did no more than determine the location of *Khittah* to the tribe or allot a specific parcel of land to an individual. There were also some cases, particularly in the adopted existing cities, where actual structures were granted to individuals.

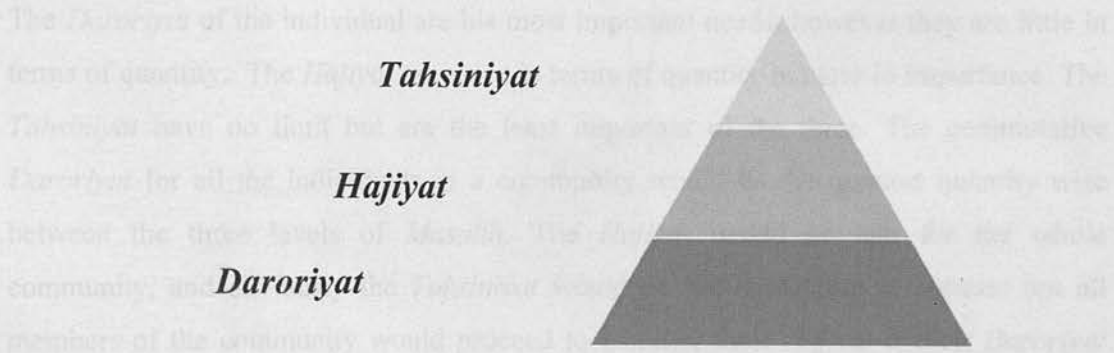


Figure 7-10 The role of the state in providing basic needs

Source: The Author

Constructing homes and then selling them or handing them over to residents as grants was not the government's responsibility. The role of the state, as mentioned, was to activate legislation and facilitate the acquisition of land and construction materials, in addition to providing services and infrastructure. More services were provided by authorities through the years in proportion to expanding knowledge and the state's capability.

In the contemporary city, the state's mission became more complicated due to the number of services that were centralized and could only be provided by the state. In this case, the state's role can be classified according to the levels of interest. In the *Daroriyat*

level its role might be to facilitate land provision for the individuals to build their homes. In the *Hajiyat* level its role could be to provide basic services like water, electricity, and roads. In the *Tahsiniyat* the role of the state might be the provision of secondary services like telephones and sanitary sewerage networks²⁰⁷.

7.8.3.2 Role of the individuals:

The individuals will work by themselves for the provision of their basic needs; however, the *Daroroyat* of an individual are limited in terms of quantity compared to his *Hajiyat*. In other words, one can continue striving for quality of life without any limitations. *Tahsiniyat* can be expanded without limit, depending on the capability of the person and his own vision.

The individual does not usually wait until the government satisfies his needs. He, himself, would take the initiative. This highlights the importance of integrating the efforts of the government with the efforts of the individual to achieve those interests.

The *Daroroyat* of the individual are his most important needs; however they are little in terms of quantity. The *Hajiyat* are more in terms of quantity but less in importance. The *Tahsiniyat* have no limit but are the least important of the three. The commutative *Daroroyat* for all the individuals in a community would be the greatest quantity wise between the three levels of *Masalih*. The *Hajiyat* would be less for the whole community, and obviously the *Tahsiniyat* would be the least. That is because not all members of the community would proceed to increase their *Hajiyat* if their *Daroroyat* have been satisfied. The demand of people for *Hajiyat* and *Tahsiniyat* varies depending on the nature of the community, level of urbanism, and the individual's personality and interests. The needs of the individual can be represented in terms of quantity by an upside-down triangle, where the *Daroroyat* are at the base, *Hajiyat* at the middle, and *Tahsiniyat* at the top.

²⁰⁷ The ability to dispose sewerage by any mean may rise to the secondary level of interests. Sewerage networking, the author believes can be considered as tertiary interest from the point of basic human necessities. On the other hand if this subject is looked at form the environmental protection point of view sewerage networking may jump as a secondary or even a primary interest.

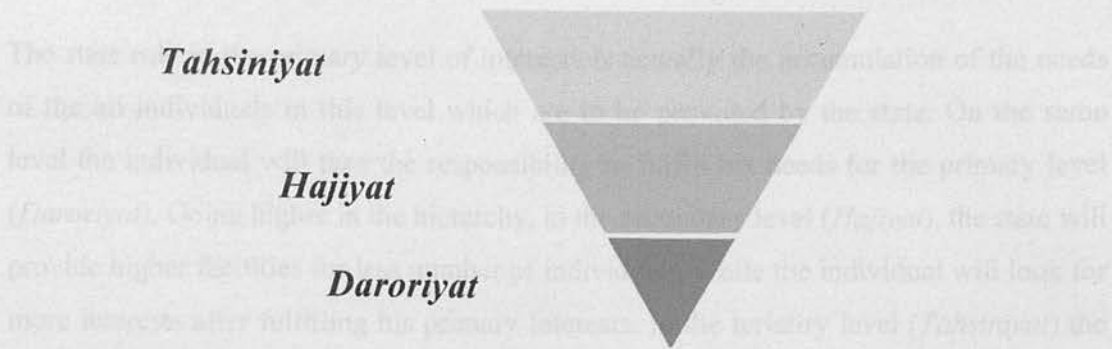


Figure 7-11 Role of the individual

Source: The Author

By considering home as a basic need, the provision of a **shelter** can be placed at the level of primary interest, the provision of a **house** with the basic services at the level of secondary interest, and the house provided with secondary services (**home**) at the level of tertiary interest (see figure 7-12). Improvements that can be added to the home may take it to further levels of comforts which will suggest endless possibilities in the tertiary level of interests.

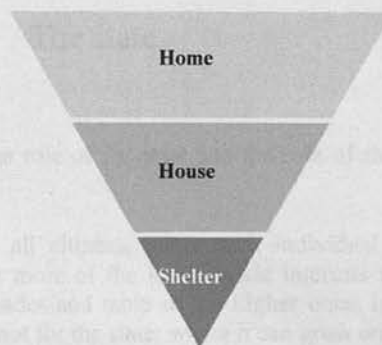


Figure 7-12 Accommodation in the hierarchy of *Masalih*.

Source: The author

7.8.3.3 Reflection of the both roles on the traditional city:

The role of the state expressed in figure 7-10 compared to the role of the individual expressed in figure 7-11 are combined in figure 7-13 for comparison. This figure compares the role of the state towards the all individuals in the society with the role of an individual towards himself and his independents.

The state role in the primary level of interests is actually the accumulation of the needs of the all individuals in this level which are to be provided by the state. On the same level the individual will take the responsibility to fulfill his needs for the primary level (*Daroriyat*). Going higher in the hierarchy, in the secondary level (*Hajiyat*), the state will provide higher facilities for less number of individuals, while the individual will look for more interests after fulfilling his primary interests. In the tertiary level (*Tahsiniyat*) the state will provide higher facilities to much less number of individuals, while it is expected that the individual who was able to fulfil his needs for the secondary level, will continue seeking after better life.

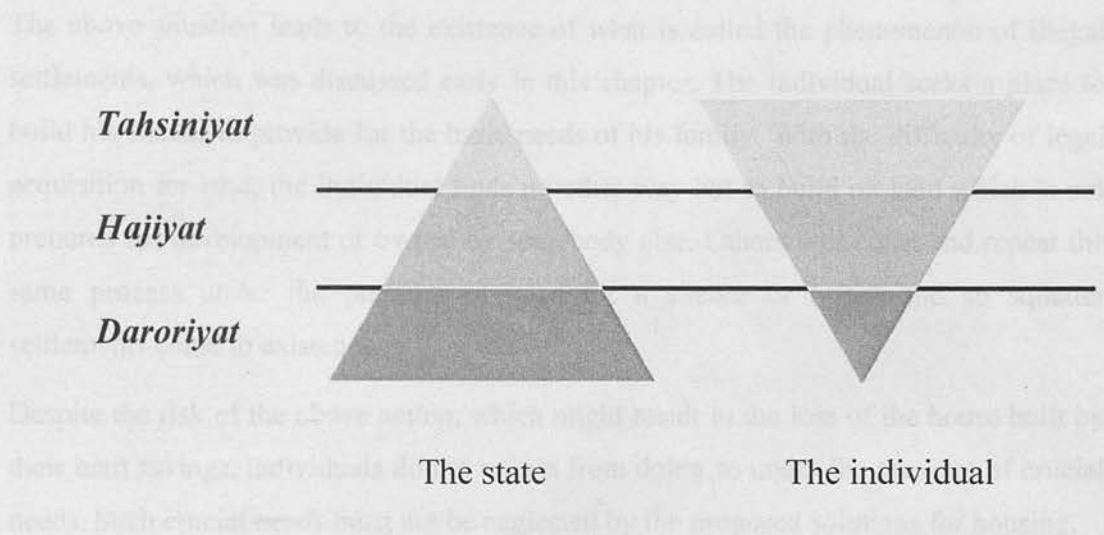


Figure 7-13. Comparison between the role of the state and the role of the individual in provision of the basic needs.

The state is to provide services to all citizens, while each individual will care for himself and his independents. The state will provide more of the lower grade interests than the higher ones, while the individual will need less of lower grades and more of the higher ones. In fact the level of *Tahsiniyat* is endless for every individual, but it is not for the state; where it can grow only of the other two levels grow.

Source: The Author

7.8.4 Exchange of Roles in the Contemporary City:

A major deviation from the status of the traditional urban fabric occurs if roles between the state and the individuals are exchanged i.e., if the individuals shoulder obligations of the state and the state shoulders the obligations of the individuals.

Sometimes the state may carry out procedures intended to be for the interest of the individuals, but such procedures may result in discouraging the individual self-motivation or cancellation of the role that is supposed to be carried out by the individual.

The three factors for the provision of a home (the availability of **land**, together with **man** and **legislation**) allow the individual to play a positive role in the provision of a shelter or house which meets his needs according to his capabilities. However, if the land is not made available, it would be difficult for the individual to build his shelter or house even if he has sufficient funds for this purpose.

The above situation leads to the existence of what is called the phenomenon of illegal settlements, which was discussed early in this chapter. The individual seeks a place to build his shelter to provide for the basic needs of his family. With the difficulty of legal acquisition for land, the individual finds no other way but to build on land which is not prepared for development or owned by somebody else. Others will come and repeat the same process under the pressure of need for a shelter or house and so squatter settlements come to existence.

Despite the risk of the above action, which might result in the loss of the house built by their hard savings, individuals do not refrain from doing so under the pressure of crucial needs. Such crucial needs must not be neglected by the proposed solutions for housing.

The solution is not limited to state housing projects for the needy (this action, of course, is necessary in some cases), because the state cannot meet the requirements of all individuals, no matter what the size of its resources and capabilities are.

Individuals will build their homes depending on their needs and capability. This formula can work providing that contemporary cities can find a way to allow the individuals to access land. If there is no easy access to land, states will have to provide more than just the infrastructure services and will be obliged to provide the houses themselves whether directly or indirectly.

7.8 Discussion:

The built urban fabric of the Islamic city can not be read in isolation from all factors that lead to the existence of this fabric. The author's model is actually an attempt to understand the hidden factors or forces that were able to influence the great cities around

the world giving them the same characteristics in spite of the differences that are related to location, climate or environment. These factors are not really hidden; they were there all the time. They disappeared from sight when they became unused.

The basic needs theory of *Sharia* was the background for the great tradition of *Fiqh* that became richer as it was practiced. Jurists were able to develop rules to comply with the needs of their time.

Jurists were not city planners, nor did they attempt to play this role, but they furnished the legal base to the society that enabled its individuals to play their role with the greatest possible freedom without sacrificing the unity of the society. Legislation of *Sharia*, though very influential in shaping the urban fabric, never dictated architecture, which always reflected the ability of the builders themselves.

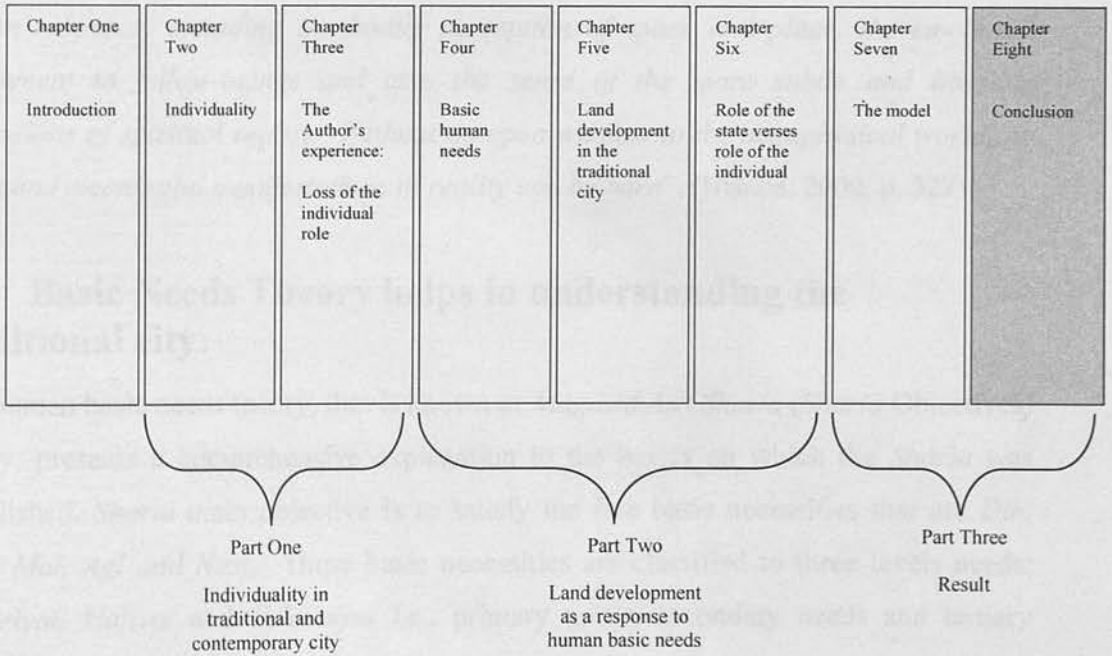
Land development is part of man's mission on Earth. He also desires to fulfil his basic needs. These needs, according to the *Sharia* theory, are obtained in three levels which can be developed. When Muslims built new cities or expanded existing ones, they began with their present needs, but the mechanisms they used allowed the cities to grow in order to meet future needs as they arose.

The model suggests that the relationship between the land and the individual has to be direct. This does not necessarily imply following the same techniques of the traditional city. It also suggests reconsidering the land ownership classification in the traditional city, which considers the public ownership as the main ownership type that can be transferred to state ownership in limited ways, but can be transferred to private ownership in many ways.

Even with all its contemporary needs of streets, public transportation and new facilities, if legislation followed *Fiqh* without imposing any predetermined imported laws, the modern city will eventually be transformed into an organic city.

Chapter Eight

Conclusion



Chapter Eight

8 Conclusion:

8.1 Introduction:

This thesis aimed to raise several points in conjunction with the traditional Islamic City and the contemporary redevelopment plans for traditional city centres.

Traditional Islamic cities were the physical product of highly sophisticated systems based on the beliefs of the society. Individuals, rulers and jurists continuously strove to develop new solutions in keeping with *Sharia* objectives. Islamic literature about land development expressed the exhaustive effort made by scholars to cope with the developments happening within the society.

8.2 Belief and the Built environment:

Man's perception of the objective of his existence and the clear concept about Allah and the universe were the bases of the physical output of the built environment.

“Cultural identity cannot be produced by rational thinking alone; it must involve all human resource, including the bodily perception of space and place, the emotional attachment to fellow-beings and also the sense of the more subtle and invisible dimensions of spiritual reality. Without an open window to the metaphysical world, no lively and meaningful manifestations of reality can be born”, (Bianca, 2000, p. 327).

8.3 Basic Needs Theory helps in understanding the traditional city:

The human basic needs theory, that is known as *Magasid Ash Sharia* (*Sharia* Objectives) theory, presents a comprehensive explanation to the basics on which the *Sharia* was established. *Sharia* main objective is to satisfy the five basic necessities that are *Din*, *Nafs*, *Mal*, *Agl* and *Nasl*. These basic necessities are classified to three levels needs; *Daroriyat*, *Hajiyat* and *Tahsiniyat* i.e., primary needs, secondary needs and tertiary needs.

People vary in their needs and desires and what is satisfactory to one may not be the same for others.

These necessities and needs are responses to the human nature, and most of the scholars argued that it was not possible for any legislation to neglect these five necessities.

This theory helps in understanding the main objectives of many of the detailed rules of *Sharia*. For example the aim of *Qisas*²⁰⁸ is to punish and deter the criminals. So if this aim is not achieved by *Qisas* it is meaningless to apply it. That is why Omar bin Al Khattab did not apply the punishment of robbery during the years of dearth saying: "I would have punished them that I did not know that you starve them till they need food."

Similarly *Sharia* objectives of land development are not zigzag streets, or court houses or nice domes and pointed arches. In land development policy *Sharia* aims in the first place to serve human basic needs to help man to readily inhabit this earth.

This research has been an attempt to understand *Sharia* objectives in general and then derive land policies adopted in the traditional city. These policies can help new researchers to reach land objectives as intended by *Sharia*.

8.4 Man as the Pivot of Land Development Process:

In the traditional city man was the pivot of land development process. Land development occurred to serve his needs. Forms and materials were not amongst the goals of developments in the traditional city, but working towards satisfying the individual needs in a comprehensive and balanced manner led to a beautiful built environment.

In the contemporary city land development became an objective by itself. Buildings and streets became more important than the inhabitants. Forms and materials became also goals themselves whether they serve man's needs or not. If land development policies are restated taking into consideration the five necessities of man on their three levels of interest, this would be a major reformation of land policy that will help to produce more human cities.

²⁰⁸ Like killing the murderer, and cutting the thief hand.

8.5 Balance Between State Role and the Individual Role:

Attahir Bin Ashor argued that *Al Maslaha* in *Sharia* is divided into two types: one is what includes apparent destiny for people according to their instinct; such as eating food, wearing clothes and marriage. The second type is what does not include a direct destiny for the individuals (the officials responsible for such works) such as building streets and night patrol. The first type (which are actually the private individuals' benefits) is not demanded by *Sharia* because it reflects all the natural desires and basic needs man is obliged to obtain as a response to his instinct. The second type (which are actually public benefits) urged by *Sharia* and punishments are consequent upon disobedience (Bin Ashor, 1999, p. 213). This explanation can be the base on which each role, the state's or the individual's, is defined.

This balance between the two roles was one of the successful aspects of the traditional city. The state is responsible to protect the basic needs of all individuals at the *Daroriyyat* (primary) level equally and according to its capability. Every individual then can progress through the hierarchy of needs according to his ambition, capability and potency, the matter that gives opportunities for fair competition between individuals. After satisfying his *Hajiyat* (secondary needs), there is no limit in satisfying his *Tahsiniyat* (tertiary needs).

8.6 Housing as a Basic Need:

Housing is a basic need that can be classified as the first type, according to Ibn Ashor, meaning it is a need which man is naturally motivated to satisfy. Man does not need any incentives to encourage him, and governments should not see it as their responsibility to fulfil this need.

In reality states create obstacles which block individuals from achieving their objectives, while at the same time carrying the burden of total responsibility for housing solutions. The main obstacle that creates this problem, the author argues, is the difficulty that the individuals face in acquiring land for their houses.

8.7 Illegal Cities as a Response to Satisfying Man's Need of Housing:

The state in the traditional Islamic city made no effort to provide houses to individuals, although the house was considered a basic need. On the other hand, the individual had direct access to land which allowed him to obtain his house according to his abilities.

Despite all difficulties, when needs are vital and in the primary level (*Daroriyat*) man is motivated to fulfil them even by challenging all rules and regulations. Not only that, but he may risk all his savings under such pressure.

From this point of view, the author concludes that most illegal cities are a direct result of unfair legislation faced by the individuals in responding to their basic needs. This is not to encourage such type of housing, but to understand the process that leads to such results

8.8 The Individual Takes the Initiative:

In the traditional city, individuals always took the initiative in land development. This was made possible because individuals had direct access to land. There were no barriers between man and land and there were no restrictions on the individuals' endeavours to fulfil their needs by developing lands. The individual was responsible to fulfil the basic needs for himself and for his family. These obligations on the individual; however, did not relieve the state from its responsibilities towards individuals.

8.9 Individual Struggle for Needs Shapes the City:

The author believes that the *Magasid Ash Sharia* theory can be adapted to create a better understanding of the traditional city not only in its physical form but in all its activities. He also believes that the strong role of the individuals in building the traditional city is what gave a special character to it.

The freedom of the individual to act within the law was a major feature of the traditional city. He had the right to accept damage to himself or his property. Of course he would agree to that for what he considered acceptable compensation. Many contemporary scholars expressed this freedom as discussions and agreements between individuals to reach an acceptable solution; the author sees this more as individual actions taken

independently. Direct agreement, or solutions through the court, were procedures taken later if needed. Individuals did not have to discuss among each other what they were intending to do. This is a feature of individuality.

8.10 Coherent Legislation:

The traditional city enjoyed coherent legislation which was presented by *Sharia*. *Sharia* was the source of belief and the source of law at the same time. The holistic umbrella *Sharia* provided to the traditional city environment made it possible to enhance land legislation through the gained experience of both the individual and the state. The simplest lesson that may be gained for the traditional city is eliminating the contradiction between legislations and buildings code.

8.11 Is Land a Resource or a Commodity?

Land in the traditional city was regarded as a resource available for every individual. Because it was a resource, it was not possible for either the State or an individual to monopolize it. Land can be transformed into a commodity after development. An added value has to be made to the land in order for it to be owned by the individual; and hence, become a commodity. Negligence after development may lead to losing the land to another individual who is more capable to keep such value added to the land.

During the transformation of the Islamic World, land gradually changed from a free resource to a conditionally free resource to a commodity until it eventually became a monopolized commodity in some areas. Nowadays individuals have no direct access to land. It is not only the development cost or the revivification cost they need worry about but also the cost of the land. This was a major change in land policy.

8.12 Traditional Royal Cities, a misleading example:

Royal cities such as circular Baghdad were presented in many cases as examples of the traditional Islamic cities. Circular Baghdad was only part of Baghdad city which extended far beyond the circular city. A thorough study by Saleh Al Ali²⁰⁹ left no doubt about this fact. This reality does not, however, underestimate the authenticity of the circular Baghdad and its creative architectural solutions; however, the development

²⁰⁹ In his book Baghdad Madinat As Salam, 1985

process and sophisticated mechanisms that formed the traditional city can not appear within the royal city process.

8.13 Loss of the Individual Role:

The role of the individual is not considered important in the contemporary city. Since the main goals of land development deviated from man's basic needs, individuals became an afterthought in land development policy. The State and private sector institutions make major decisions related to land development, even decisions related to land owned by individuals. Although some private sector institutions represent large numbers of individuals, individuals don't really have the power to make any decision related to their shares except to sell them. This concept of land development through large private sector institutions seems to contradict with land policy in the traditional city.

8.14 Discontinuity with the Heritage:

Heritage is the accumulated experience of a society. The experience of people in the past is part of our heritage, and our present experiences will be the heritage for the future generation. One of the great losses to Islamic cities is the discontinuity of the heritage which would have enabled the new generation to build on the accumulated experiences and add its contribution to it. To lose the connection with their roots, whether consciously or unconsciously, is a great sacrifice made by decision makers, planners, economists, scholars and even individuals.

8.15 Absence of the Public Ownership:

According the existing situation, there are only two types of land ownership, private and public. "Public", as used here, actually refers to state ownership. What was called public land in the traditional city such as *Mawat*, *Harim*, streets and open spaces, is now classified as state land. Somehow still maintains its independence in some Islamic countries, although many planning studies classify as state-owned.

8.16 Proposed Model:

The model proposed by the author in Chapter Seven is one of the major results of this research. Three points must be considered: 1) the role of the State, 2) the role of the

individual and 3) the medium of urbanization operation. This medium includes legislation and land policy.

The model calls for a balanced relationship between the State role and the individual role within a healthy medium of legislation and land policy. Through application of this model in housing policy, States may discover that they can relieve themselves from burdensome obligations towards individuals, and individuals will no longer be dependent on the State to satisfy their need for housing. Of course, there will be some contrast between each individual's benefit from this policy, depending on the effort he makes to fulfil his needs.

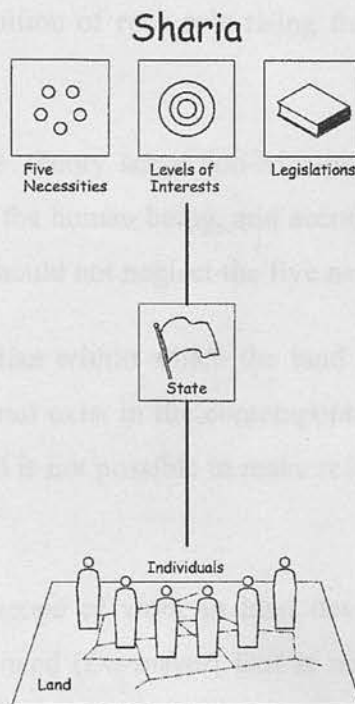


Figure 8-1 Factors related to land development in the traditional city
Individuals enjoyed direct relationship with land

Source: The author

8.17 A Fruit of Faith and Practice:

The situation in the traditional city was not a result of theoretical regulation, but instead the result of an exhaustive joint effort made by scholars and building specialists to create solutions for the challenges the city faced during its formation. These efforts have left us a vast treasure trove of experience and information which can be highly relevant for

modern city planners. It will take great effort to integrate such ideas into contemporary practice; it will many times be a trial and error process, but the reward will be to bridge the current gap between the contemporary city and the traditional one, resulting in a more meaningful and harmonious living environment.

8.18 Inquiries:

An inherent factor of research is that in its attempt to provide answers, it raises more questions. The author would like to propose the following inquiries as impetus for further study:

1. Is it possible in the contemporary city to correct the relationship between the state and the individuals with a new definition of each role rising from the *Magasid Ash Sharia* theory.
2. Can the *Magasid Ash Sharia* theory serve non-Muslim societies? The basic needs according to *Sharia* are to serve the human being, and according to the Muslim scholars any legislation that serves man should not neglect the five necessities.
3. *Sharia* formed a holistic median within which the land and building policies grew. Since this holistic median does not exist in the contemporary city, as it was during the traditional days, does this mean it is not possible to make reformations in land policy and urban planning?
4. What exactly is the state's scope of work in land development? Is it possible to determine the primary level of need (*Daroriyat*) that is under the role of the state in providing houses to individuals? Is providing land and primary services enough?
5. How can the contemporary city use the concept of *Ihya'* to put the initiative back in the hands of the individuals? The *Ihya'* concept can be applied in contemporary life if it is based on clear objectives and served by a simple process. The author suggests a methodology to introduce *Ihya'* to the contemporary city after correcting the relationship between the elements of the model. This is discussed in the next two points.

8.19 Model Elements in the Contemporary City:

The individuals, in the contemporary city, can access the land through other mediums. Another element is to be added to the model elements discussed in chapter 7. This is all kinds of private sector institutions that were given access to land and through which the individuals can possess land.

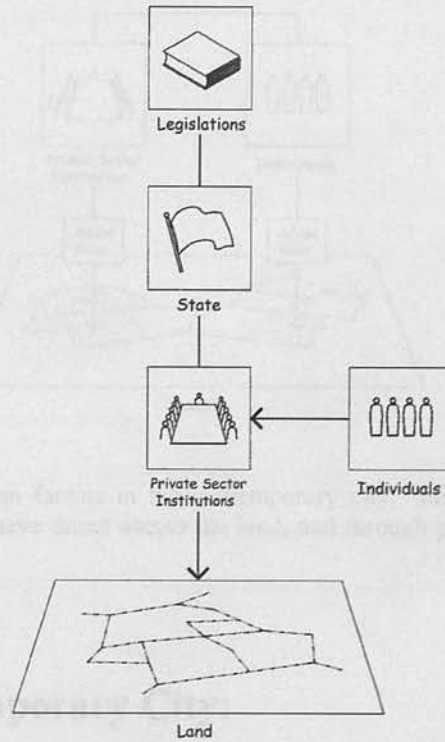


Figure 8-2 Factors related to land development in the contemporary city.

Source: The author

The lessons taken from the traditional Islamic experience suggest that there should be no barrier between the individuals and the land in order to ignite the individuals' enthusiasm to develop the land in their struggle to fulfil their basic needs. At the same time private sector institutions should be given their contemporary role but not on the account of the individuals. It is suggested that the relationship be corrected to allow both, the individuals and the institutions the possibility of accessing land (see Figure 8-3). This can be arranged through the concept of *Ihya'* modified to suite the contemporary situation.

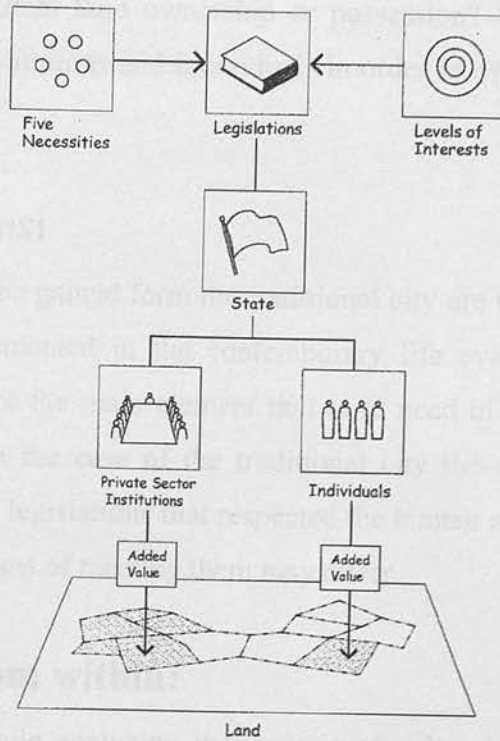


Figure 8-3 Suggested relationship between factors in the contemporary city. Practical solutions to be investigated to enable the individuals to have direct access the land, and through private sector institutes according to their choice.

Source: The author.

8.20 *Ihya'* in the Contemporary City:

The objective of *Ihya'* was to own the land in return for adding a value to it. This can be the starting point for reforms in the contemporary city. If individuals are given a chance to approach the land directly, then the concept of *Ihya'* can be equally applied to both institutions and individuals. Researches should be conducted on what can be accepted as the added value to the land in the contemporary city to entitle either the individuals or the institutions to claim the ownership of the land.

Traditional scholars were clear and determined in defining the added value²¹⁰ that the individual may present to be qualified to own that land through *Ihya'*. But is it enough to consider the same parameters for the contemporary city?

Institutions that were non-existent in the traditional city may interfere in the land development of the contemporary city. What is the added value that would enable the

²¹⁰ As discussed in chapter 5.

development institutions to claim land ownership or possession? What would be the relationship between these institutions and individuals in order to avoid monopolization of land?

APPENDICES

8.21 Values Not Forms:

The major lessons that are to be gained from the traditional city are timeless values that can be adopted and re-implemented in the contemporary life even in a completely different form. Legislations are the main element that is in need of reformation in the light of the society values. In the case of the traditional city the umbrella of Sharia helped in creating developable legislations that respected the human needs. Basic human needs are the same, but the means of meeting them may differ.

8.22 Regeneration from within:

Stifano Bianca argues that while analyzing the genesis of cultural identities and the significance of historic cities, it is found that their revitalization needs to be tackled from within, i.e., by reverting to the inner forces that are able to nurture a living culture and re-establish a sense of presence, integrity and continuity (Bianca, 2000, p. 335). The author can not agree more.

APPENDIXES

Glossary

This glossary is a brief explanation for the Arabic terminologies used in this thesis.

آية	Peace be upon him
<i>Aajil</i>	The life after death
<i>Ajil</i>	This life
<i>Aal Al Bait</i>	Close relatives of the Prophet
<i>Adat</i>	Customs
<i>Afiah</i>	Animals and birds
<i>Ahl Al Bait</i>	Close relative to the Prophet Mohammad ﷺ
<i>Ahl Al Hadith</i>	People of <i>Hadith</i>
<i>Ahl Ar Ra'I</i>	The people of Opinion
<i>Ahl Ath- thimmah</i>	The covenanted non-Moslem people
<i>Ahli</i>	National
<i>Ain</i>	Object
<i>Ajil</i>	Later, hereafter
<i>Akhmas</i>	Plural of <i>Khomos</i>
<i>Al Amilon Aliha</i>	
<i>Al Ansar</i>	Prophet's companions of Madinah
<i>Al Gharimon</i>	Plural of <i>Gharim</i> : debtor
<i>Al Masalaha Al Morsalah</i>	Undetermined interest
<i>Al Mohajireen</i>	Emigrant
<i>Al Mohtajer</i>	Who demarcates
<i>Al Ogod An Nagilah lil</i>	Contracts that transfer ownerships
<i>Milkiyah</i>	
<i>Al Omran</i>	Built area
<i>Amir</i>	Developed cluster
<i>Amr Bilma'roof wa Nahi</i>	Advocating good action and inhibiting bad action
<i>An Al Munkar</i>	
<i>Aql</i>	Intellect
<i>Aradi Al Mtrooka</i>	Leftover lands
<i>Ardh</i>	Land
<i>Ash Shakhsiyah Al</i>	Body corporate
<i>Etabriyah</i>	
<i>Ashri land</i>	Land subject of 10% tax
<i>Awqaf</i>	Plural of
<i>Bait Al Mal</i>	Treasury
<i>Dar</i>	House
<i>Daroriyat</i>	Absolute Necessities: Primary level of needs
<i>Darory</i>	Singular of <i>Daroriyat</i>
<i>Dawa'ea</i>	Lost things
<i>Dhiya'</i>	Country estate
<i>Diat</i>	Plural of <i>Diah</i> : blood money
<i>Din</i>	Religion
<i>Donya</i>	This life
<i>Dur</i>	Houses
<i>Eiman</i>	Faith
<i>Emarat Al Ardh</i>	Development of the Earth

<i>Faardh Kifayah</i>	Collective duty
<i>Fai'</i>	Booties taken from non-Muslims without fighting
<i>Fardh Ain</i>	Individual duty
<i>Fi Ar Reqab</i>	Freeing captives
<i>Fi Sabil Allah</i>	For the sake of God
<i>Fiqh</i>	Jurisprudence
<i>Foqara</i>	Poor
<i>Gabalah</i>	A practice in which the State gave the right of impost of a certain village to a <i>Motagabbil</i> who in return pays a specific amount of money to Bait Al Mal
<i>Ghana'em Mangolah</i>	Transferable booties
<i>Ghanimah</i>	Booty
<i>Hadd</i>	Punishment
<i>Hadith</i>	Saying of the Prophet Mohammad ﷺ
<i>Hagigi</i>	Real
<i>Haj</i>	Pilgrimage
<i>Hajiyat</i>	Necessities : Secondary level of needs
<i>Hajr</i>	Limit someone's legal competence
<i>Hajy</i>	Singular of Hajiyat
<i>Haq Al Ertifaq</i>	Right of easement
<i>Haq Al Majra</i>	Right of running water through other's land
<i>Haq Al Masil</i>	Right of drainage
<i>Haq Al Moror</i>	Right of pass
<i>Haq Al Olo' wa As Soful</i>	Right of height and underground
<i>Haq Ash Shifah</i>	Right of drink
<i>Haq Ash Shirb</i>	Right of water share
<i>Haraj Hagigi</i>	Real difficulty
<i>Haraj Wahmi</i>	Imagined difficulty
<i>Harim</i>	Buffer zone
<i>Hima</i>	Protected zone
<i>Ibadat</i>	Rituals
<i>Ibn Assabil</i>	Traveler
<i>Idh-tirariy, Idh-tirariyah</i>	Compulsory
<i>Ihsan</i>	Highest level of relationship with Allah. Worshipping Him as if you see Him.
<i>Ihtijar</i>	Demarcation
<i>Ihya'</i>	Revivification
<i>Ijma'</i>	unanimous agreement
<i>Ijma' Sokoti</i>	Silence Ijma'
<i>Ijtihad</i>	exhausts one's efforts to one's full capacity in order to acquire exact or probable knowledge to reach judgment in a given case
<i>Ikhtisas</i>	Authority
<i>Ikhtiyariyah</i>	Optional
<i>Ilja'</i>	Compelling
<i>Illah</i>	Reason
<i>Iqta'</i>	Allotment
<i>Iqta' Al Maadin</i>	Minerals allotment
<i>Iqta' Irfaq</i>	Utilization allotment
<i>Iqta' Istighlal</i>	Investment allotment

<i>Iqta' Tamlik</i>	Ownership allotment
<i>Ird</i>	Honor
<i>Irdh</i>	Land
<i>Islam</i>	Name of the mission of the Prophet Mohammad ﷺ , name of the faith of all prophets and primary level of Din.
<i>Istifa' Manfaa'</i>	Fulfillment of utilization
<i>Istihsan</i>	deviation of a jurist from a direct <i>Qiyas</i> to an indirect <i>Qiyas</i>
<i>Istishab</i>	the principle of the presumption of the continuity of the legal validity of a rule or practice
<i>Jahiliyah</i>	Ignorance period (pre-Islam period)
<i>jahiliyah</i>	Pre-Islam
<i>Jihad</i>	Struggle
<i>Jinayat</i>	Crimes , assaults
<i>Jiziah</i>	Poll tax
<i>Jumhor</i>	Majority of scholars
<i>Kharaj</i>	Land taxation
<i>Kharaj Al Iwad</i>	<i>Kharaj</i> upon fixed compensation
<i>Kharaj Al Mogasamah</i>	<i>Kharaj</i> upon percentage
<i>Kharijiyah</i>	external
<i>Khitat</i>	Plural of <i>Khittah</i>
<i>Khittah</i>	Large area of land given by the ruler to certain tribe, group or individual
<i>Khomos</i>	Fifth
<i>Kulliyat</i>	Generalities
<i>Lugatah</i>	
<i>Mafasid</i>	Plural of <i>Mafsada</i>
<i>Mafsada</i>	Disinterest
<i>Magasid Ash Sharia</i>	Objectives of <i>Sharia</i>
<i>Magsad</i>	Objective
<i>Maidan</i>	Plaza, open space
<i>Majel</i>	A place where water is collected
<i>Makrooh</i>	Not recommended by <i>Sharia</i>
<i>Mal</i>	Money, property
<i>Mamlukah</i>	Owned
<i>Manfa'a</i>	Utility, usefulness
<i>Masakin</i>	Poor
<i>Masalih</i>	Plural of <i>maslaha</i>
<i>Masalih Molghah</i>	Unconsidered interests
<i>Mashaqah</i>	Difficulty
<i>Mashaqqa Gair Mo'tada</i>	Up normal difficulty
<i>Maslaha</i>	Interest, benefit
<i>Maslaha Gair Mo'tabarah</i>	Unaccepted <i>maslaha</i>
<i>Maslaha Mo'tabarah</i>	Accepted <i>maslaha</i>
<i>Maslaha Morsalah</i>	Undefined <i>maslaha</i>
<i>Math-hab</i>	Doctrine
<i>Mawat</i>	Dead land
<i>Mawat</i>	Dead lands
<i>Milkiyah Naqisah</i>	Incomplete ownership

<i>Milkiyah Tammah</i>	Complete ownership
<i>Miri</i>	Type of lands during the Othman Empire
<i>Mo'tada</i>	Regular, normal
<i>Moamalat</i>	Transactions
<i>Moharram</i>	Forbidden
<i>Mosta'man</i>	Non-Muslim who is permitted to enter Muslim country
<i>Motagabbil</i>	Who accept <i>Gabalah</i>
<i>Motasarref fi Arragabah</i>	Who has the legal power of disposal in an object
<i>Motawalli</i>	Supervisor
<i>Mubah</i>	Permissible
<i>Mulk</i>	Ownership
<i>Mulk Addain</i>	Debit ownership
<i>Mulk Ain</i>	Ownership of the object
<i>Mulk Manfa'a</i>	Ownership of the utilization
<i>Mulk Ragabah</i>	Ownership of the object
<i>Muru'a</i>	Magnanimity
<i>Mustahab</i>	Recommended
<i>Nafs</i>	Self, life
<i>Najasah</i>	Uncleanness
<i>Najis</i>	Impure
<i>Nasab</i>	Parentage
<i>Nasl</i>	Posterity, offspring
<i>Nazir</i>	Supervisor
<i>Omra</i>	<i>Iqta'</i> during life time only
<i>Osol Al Fiqh</i>	Rules of <i>Fiqh</i>
<i>Qadi</i>	Judge
<i>Qisas</i>	Punishment
<i>Qiyas</i>	annexation of a case that has no literal evidence to a case that has literal evidence
<i>Quaysariah</i>	Open mall
<i>Raf' Al Harj</i>	Elimination of difficulty
<i>Ragabah</i>	Substance, object
<i>Ramadan</i>	The holey month of fasting
<i>Riba'</i>	Landed properties
<i>Rikaz</i>	Treasure troves found from <i>jahiliyah</i>
<i>Rokhsah</i>	Permission
<i>Roshan</i>	Curtain of wood covers windows
<i>Sadaqah</i>	charity
<i>Sahabah</i>	The Prophet's companions
<i>Salah</i>	Worship
<i>Samaha</i>	Magnanimity
<i>Sawad</i>	District in Iraq
<i>Sawafi</i>	Landed properties that has been left by its owners during conquer
<i>Sawm</i>	Fasting
<i>Shofaa</i>	Preemption
<i>Sitr</i>	Cover
<i>Souq</i>	Open market
<i>Sunnah</i>	Traditions of the Prophet ﷺ
<i>Surah</i>	Chapter form the Holey <i>Quran</i>

<i>Tahahra</i>	Purity
<i>Tahjir</i>	Demarcation
<i>Tahsini</i>	Complementary: the tertiary level of needs
<i>Tahsiniyat</i>	Plural of <i>Tahsiny</i>
<i>Tajlib</i>	Bring
<i>Takmiliyat</i>	Plural of <i>Takmily</i>
<i>Takmily</i>	Supplementary
<i>Tanasul</i>	Posterity
<i>Tayseer</i>	Making easy
<i>Thajir</i>	Demarcation
<i>Thorri</i>	Belong to offspring
<i>Urf</i>	Custom
<i>Wahmi</i>	Unreal
<i>Wajib</i>	Mandatory
	Trustee
<i>Wazir</i>	Minister
<i>Zakah</i>	Alms tax

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APPENDEIX C

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٥٨. العلي ، صالح ، (١٩٨٥) ، بغداد مدينة السلام (المجلد الأول) ، مطبعة المجمع العلمي العراقي ، بغداد ، العراق
٥٩. علي ، عاطف ، (١٩٩٥) ، إحياء الأراضي الموات في الإسلام ، مطابع رابطة العالم الإسلامي ، مكة المكرمة ، المملكة العربية السعودية
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٩٢. النيسابوري ، مسلم ، (١٩٧٨) ، صحيح مسلم بشرح النووي ، دار الفكر ، بيروت ، لبنان
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APPENDEX D

Summary of Islamic Main States and Rulers

Summary of Islamic Main States and Rulers²¹¹

The Prophet Mohammad ﷺ

571-633

The rightly guided Caliphs

Abo Bakr As Siddiq	633-634
Omar bin Al Khattab	634-644
Othman bin Affan	644-656
Ali bin Abi Talib	656-661

The Umayyad Caliphs

Moawiah bin Abi Sofian	661-680
Yazid bin Moawiah	680-683
Moawiah, the second	683-683
Marwan bin Al Hakam	683-684
Al Walid bin Abdulmalik	705-714
Solaiman bin Abdulmalik	714-717
Omar bin Abdulaziz	717-719
Yazid, the second	719-723
Hisham bin Abdulmalik	723-742
Al Walid bin Yazid	742-743
Yazi bin Alwalid,	743-744

²¹¹ Shawqi Abu Khalil, Atlas of the Arab-Islamic History, 2002

Ibrahim bin Al Walid	744-745 (70 days only)
Marwan bin Mohammad	745-750
Abu Al Abbas	754-755
The Abbasid Caliphs	
Al Saffah	750-754
Al Mansor	754-775
Al Mahdi	775-785
Al Hadi	785-786
Ar Rashid	786-809
Al Amin	809-813
Al Ma'moon	813-833
Al Mo'tasim	833-842
Al Wathiq	842-847
Al Motawakil	847-861
Al Montasir	861-862
Al Mostaeen billah	862-866
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Al Mohtadi	870-870
Al Mo'tamid	870-892
Al Mo'tadhid	892-902
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Ar Radhi	909 for one day only
Al Qahir	932-934
Abo Al Abbas	934-940
Al Mottaqi	940-945
Al Mostakfi	945-946
Al Moti'	946-974
Al Tae'e	974-991
Al Qadir	991-1031
Al Qaem	1031-1075
Al Moqtadi	1075-1094
Al Mostazhir	1094-1118
Al Mostarshid	1118-1135
Ar Rashid	1135-1136
Al Moqtafi	1136-1160
Al Mostanjid	1160-1170
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An Nasri	1180-1225
Az Zahir	1225-1226
Al Mostansir	1226-1242
Al Mosta'sim	1242-1258

Othman Caliphs

Othman bin Toghrol	1299-1326
Orkhan bin Othman	1326-1389
Murad bin Orkhan	1359-1389
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Mohammad, the first	1413
Murad, the second	1421
Mohammad Al Fatih	1444
Bayazid , the second	1481
Salim fin Bayazi	1512
Suliman the magnificent	1520
Salim, the second	1566
Murad, the third	1574
Mohammd, the third	1595
Ahmad , the first	1603
Mustafa, the first	1617
Othman, the second	1618
Murad, the fourth	1623
Ibrahim, the first	1640
Mohammad, the fourth	1648
Suliman, the second	1687
Ahmad, the second	1692

Mustafa, the second	1695
Ahmad, the third	1703
Mohmoud, the first	1730
Othman, the third	1754
Mustafa, the third	1757
Abdulhamid, the first	1774
Salim, the third	1789
Mustafa, the fourth	1807
Mahmoud, the second	1808
Abdulmajid, the first	1839
Abdulaziz, the second	1861
Mudrad, the fifth	1876
Abdulhamdid, the second	1876
Mohammad Rashad, the fifth	1909
Mohammad, the sixth	1922
Abdulmajid bin Abdulziz	1924

Ash Shatibi and his book *Al Mowafagat*

His name is Ibrahim bin Mosa bin Mohammad Al Lakhmi Al Ghornati. He belongs to the Malki School. He lived in Granada and died there. His family comes actually from Shatibah east of Spain on the Mediterranean Sea; and that's why he was known as Ash Shatibi. (Obaidi, 1992, p. 11-13).

There is some dispute about the date of birth of Ash Shatibi. Hammadi Al Obaidi suggests that he was born in 1320. There is no doubt that he died in 1388.

Very little details were recorded about his life. No mention of journeys outside Al Andalus, as it used to be a custom for the scholars to travel for more knowledge. In fact it is not clear whether Ash Shatibi performed the *Hajj* (pilgrimage) or not.

His major teachers and supervisors from Granada were Ibn Al Fakhar Al Bairi, Abo Ja'far Ash Shoqori, Abo Saeed bin Lub and Abo Abdullah Al Balansi. The others who came to Granada for specific periods where Ash Shatibi had the chance to learn from them are Abo Abdullah Ash Sharif At Tilimsani, Abo Abdullah Al Maqri, Abo Al qasim As Sobti, Abo Ali Azzawawi and Abo Marzouq Al Khatib (Raysoni, 1995, p. 108).

The most famous ones of his students are Abo Yahya bin Asim, Abo Bakr bin Asim, Abo Abdullah Al Bayani, Abo Ja'far Al qassar and Abo Abdullah Al Majari (Raysoni, 1995, p. 111).

The period of Ash Shatibi was a period of peace for the Muslim world. Political stability provided the much-needed peace for the intellectual activities essential to re-evaluating the tradition in the light of the multitudinous changes brought about by the turmoil of the thirteenth century (Masud, 2000, p. 26).

Ash Shatibi authored several books only three of them were printed until today. These books are *Al Mowafagat* (subject: Sharia objectives and human basic need), *Al E'tisam* (subject: faith) and *Al Ifadat wa Al Inshadat* (subject: *Fatwa*, legal opinions). The other known, but not printed are *Kitab Al majalis* (subject: jurisprudence) and *Sharh Al Elfiyah* (subject: grammar) (Raysoni, 1995, p.113).

Al Mowafagat:²¹²

The first printing of Al Muwafagat, though diligently edited, did not contain any commentary or analysis of the work (Masud M., 2000, p. 112).

Musa Jrallah in 1909 published Al Muwafagat and wrote an introduction in the Turkish language. He wrote “*Al Muwafagat expounds the legislative objectives of the Quran and Sunna more extensively and more clearly than any other book. It elaborates with minute details the **basic human needs** and secondary necessities of life. It explains the correspondence between human needs and legal texts in a very comprehensive manner. This book provides a liberal perspective on each issue for those who want to study them rationally with complete freedom*” (Masud M., 2000, p. 112)

The book contains five chapters. Chapter one is about premises and discusses the definition, nature and scope of jurisprudence. It explains that the principles of jurisprudence are exact and certain and not related with abstract theories.

Chapter two is about *Ahkam* (rules). It explains that there are two major divisions of rules; *Taklifi* (obligation-defining) and *Wad'I* (declaratory).

Chapter three is about *Maqasid* (objectives). The objectives actually are the human needs. This subject is the main subject of the book. Ash Shatibi discussed *Maqasid* Ash Sharia (objective of *Sharia*) as follows:

1. The intention of the *Shari'* (lawgiver, legislator's intent), which were classified as follows: a) the primary intention of the lawgiver in instituting law as such, b) his intention in instituting it so as to be intelligible, c) his intention in instituting it to demand obligation and d) his intention in including the *Mukallaf* (mature human being) under its command.
2. The intention of the *Mukallaf*.

Chapter four is about *Adillah* (sources), which deals with the sources on the whole as well as each of them separately.

²¹² Summarised from Muhammad Khalid Masud, *Shatibi's Philosophy of Islamic Law*.

Chapter five is about *Ijtihad* (legal reasoning), which deals with the definition, conditions and requirements for *Ijtihad*, *Mujtahid* (the expert jurist), the fatwa (legal opinion) and *Iqtida* (legal authority).

An immediate influence of Al Mowafagat can be noticed by the fact that Ash Shatibi's disciple Abo Bakr Mohammad bin Mohammad bin Asim (died 1433), the author of a well known Maliki text *Tuhfa*, wrote an abridgement of Al Mowafagat. Andalusian scholar Al Hafidd Ibn Marzuq (1438) described the book as *the most acceptable book*. Ahmad Baba (1036-1626) admired the book in the following words: "*The most valuable book in jurisprudence (Usul Al Fiqh). It is unique. It is an evidence of ha (Ash Shatibi's) leading position in sciences, especially in the science of Usul*".

Many contemporary scholars appreciated the book. Following are some of their words about Al Mowafagat:

"A great book without any precedent, the most noble writing" Mohammad Makhlof (died 1941)

"Thus the science of Usul continued to lack discussion of a significant par (intent of the lawgiver) ... until God, may He be praised and exalted, appointed Abu Isah q Ash Shatibi in the eighth century of Hijrah to make amends for this deficiency, and to erect this great edifice..." Abdullah Daraz (died 1958), the editor and commentator of the first published edition in Arabic.

"He explained the objectives of Islamic law clearly, and linked them with the rules expounded by the theorists. He discussed the sources of law in the light of these objectives and ends. Thus, he broke new grounds in jurisprudence and that is the road that must be followed form on" Abo Zuhrah (died 1974).

Ash Shatibi realised that he has invented a new kind of Sharia sciences in this book, so he drew the intention of the reader that although this the subject is new in its shape it is in his and that his book may be looked at negatively so he very original in its contents (Obaidi, 1992, p. 133).