

Planning Middle Eastern Cities

An urban kaleidoscope in a globalizing world

edited by

Yasser Elsheshtawy

 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

**Also available as a printed book
see title verso for ISBN details**

Chapter 2

The Merits of Cities' Locations

Jamel Akbar

It is widely accepted, although not scientifically or logically proven, that the technical advancement of today's societies is due to capitalism. It is also widely accepted that globalization is the fruit of both capitalism and technical advancement (mass transportation, telecommunications, etc.). Since modern human societies have not had the chance to experience societal systems other than capitalism or socialism, accumulation of human knowledge has been largely associated with capitalism. It is not the place here to explain that the acceleration of human knowledge is not due to capitalism, nor is it also the place to argue that other societal systems if given the chance could produce more appropriate human knowledge than capitalism has produced (nuclear reactors for example). Yet, accepting the association between current human technical achievements and capitalism (although refutable), one should ask a central question: is capitalism as a producer of contemporary technical advancement the best among other systems to maintain and even develop such advancement? Or, could capitalism be the best societal system to continue governing today's global character?

If globalization has defeated both geographical and political borders, it is however characterized by its capacity to allow capitalists (corporations and the very rich) to seize all possible investments. Thus, as is pointed out by many scholars, globalization is unfortunately stratifying humans into two distinct groups, the rich and the poor. This is one major plight among many produced by capitalism. However, even if one accepts that other plights, such as pollution and environmental degradation, can one day be controlled under the existing internationally accepted democratic political structure (although refutable), then this plight arises as a serious one. Living those conditions would result in inefficient, crowded, and unjust cities. The nature, the morphological tissue, and the socioeconomic structure of our contemporary cities in the Arab Moslem world reflect this situation. These cities are inhabited by technocratic, consumerist individuals who have the right to empower some over others, and by the wealthy who have the capital to manipulate the poor immigrant job seekers. Thus, contemporary Arab cities, as will be explained, are parasitic, depending for their survival on the

products of surrounding localities. This illogical and unacceptable human setting, although criticized, is largely accepted by many as other societal alternatives beyond capitalism (such as Islam) are not immediately available.

One might argue that today's Moslem cities are not Islamic, but rather cities inhabited by Moslems. For a city to claim the title 'Islamic', it should follow Islamic principles in its creation and formation. Those principles will create towns that are neither capitalist nor socialist, yet truly global in their character. To clarify this, we will explain in brief three Islamic principles: the first is the right of access to resources; the second is the concept of *'Ibn as-Sabil*, or the traveller; and the third is alms giving. These are only examples to bring the attention of both economists and sociologists to search for systems of rights (human rights, property rights, common laws, etc.) that transcend the failures of capitalism. One need hardly point out that the system of rights in any society is the major factor that shapes society's structure whether socially, economically, or physically.

In modern societies, access to resources, minerals for example, is limited to those individuals who have the means to obtain the required permission from the State. The system of rights in modern societies is much based on the vertical obedient relationships between individuals and the State. The State, for example, defines the common interest of the public for the public. If the State decides that such and such a mineral resource is quite rare and thus should not be exploited without its permission, it will have the right to limit access to that resource. This would often lead to the manipulation of that resource to the advantage of some over others. In Islam, however, the situation is drastically different. No one, including the State, has the right to limit any resource to any individual. Those who manage to reach any resource will have the right to exploit

it. Of course, one would ask: but this would deplete some rare resources (oil for example)? It will, for sure, lead to the misuse of some minerals (uranium for example). Again, this is not the place to answer such concerns as it is beyond our context (the Arab Moslem city).¹ However, to understand the impact on the quality of cities of handing ownership of mineral resources (not lands) to those who can have access to them, we will first explain briefly the different opinions of Moslem scholars regarding access to resources. However, some explanation of the Islamic legal system is needed first.

The institution of Islam is based on three sources: the *Quran*, the traditions or sayings of the Prophet (*hadith*), and the teachings of jurists (*fiqh*). The first two sources were always referred to by jurists in reaching their rulings. This resulted in the development of different schools of law and gave the Islamic legal system its identity and cohesion. The most authoritative schools of law are: the Hanafi rite founded by Abu Hanifah (d. 150 H/767 AD) which covers India, Pakistan, Turkey, parts of Syria, South-East Asia and China; the Maliki school of law of Malik (d. 795 AD) which covers North and Central Africa, Upper Egypt, the Sudan and West Africa; the Shafi'i school of law of Imam Shafi'i (d. 820 AD) which covers Egypt, the southern and eastern Arabian peninsula, East and Meridional Africa and parts of South-East Asia; the Hanbali school of 'Ahmad b. Hanbal (d. 855 AD) which covers the entire Moslem world but does not prevail in any region except the central Arabian peninsula. Any individual can choose any rite or can even change from one school to another as they are all considered equally valid. The major differences between these schools are methodological, based on the particular method each founder used to interpret the two sources, such as *qiyas* (analogical reasoning), *ra'y* (opinion) and *ijma'* (consensus doctorum).²

The teachings of Islam regarding worship, or what relates a person to his God (prayer, fasting, etc.), were observed by most Moslems. However, what relates people to others, which is basically issues relating to rights, although explained by jurists at the theoretical level, was not fully implemented in practice except during the reign of the first four rulers (*Khalifs*). This is especially true regarding rights relating to the State's interest, for example in matters such as taxation. In general, early rulers were much keener to implement Islam compared to later ones. Thus, what will be explained next was never observed in our contemporary built environments, therefore current settlements cannot be characterized as Islamic, but rather as cities inhabited by Moslems.

Jurists have distinguished two types of mineral: surface minerals (*ma'adin zahirah*) and hidden minerals (*ma'adin batinah*). Surface minerals are the ones that can be obtained with little effort such as salt, while hidden minerals are those that need a great deal of effort to obtain such as gold. Hidden minerals were further divided into two types: solid minerals such as silver and liquid minerals such as oil. Further, jurists have classified properties that hold minerals into three types: private properties, treasury properties (owned by the State), and *mubahah* or accessible properties for the public.³

To minimize land speculation in order to maximize its utilization by as many individuals as possible to exploit minerals, the Islamic legal system has devised mechanisms to ensure that unutilized lands containing minerals cannot be owned by any party or individual, even by the State. To clarify this, we have first to explain the ownership of heights as an example.

Need and control without harming others have been the main prerequisites for establishing ownership. That is, only land which is needed and controllable can be owned. A debate took place

regarding the ownership of what is beneath a territory. Al-Qarafi's opinion (from the Maliki school of law, d. 684 H/1285 AD) is that the owner of a territory usually benefits from heights for viewing rivers and gardens or for protecting his privacy by building parapets on his edifices, but such benefits do not exist beneath the ground beyond the foundation. Thus that which is beneath a territory cannot be owned.⁴ This opinion was contested by 'Ibn ash-Shat, from the same school (d. 723 H), who pointed out that the owners of territories can, indeed, benefit from the ground by, for example, digging deep wells or basements. He argued that according to the principle of need there is no justification for preventing a person from deepening his well. Thus, the owner of a territory has the right to raise or deepen his territory as he wishes so long as he does not harm others.⁵

Regarding controllability as a determining principle of ownership, jurists debated the selling of the space on one's roof as a piece of land. Some schools of law consider the selling of height rights as selling the air above a territory, which is not controllable and therefore illegal. Other schools of law consider it as an ownership of the ceiling of the lower level which is controllable and ruled that an owner can sell the space on top of his house. Meanwhile, all schools of law agreed that an owner can sell the upper floor(s) or any part of his building – such as cantilevered parts – as long as it is built, since anything built is well defined and controllable.⁶

Thus, according to these two principles, no one can demarcate a piece of land to claim ownership if he does not need and thus use that land within three years.⁷ However, according to the principle of revivification, any individual has the right to own unused land if he uses it by building on or planting it, i.e. occupying it by exerting effort. In other words, the only method to own land is

by investing effort or capital. Thus, land appropriation by end users was common, since during the early Islamic period towns were expanding and land was often vacant. Not unexpectedly, appropriation has been extensively discussed by Moslem jurists. They recognized unowned and unused land as *mawat*, and followed certain principles in utilizing it.

Mawat literally means 'dead'. Land is considered *mawat* if there is no trace of building or cultivation; if it is not used by the neighbouring locality as, for example, a common pasture, burial ground, or as a source of minerals. According to custom, dead lands may be revived and consequently owned by the reviver. *'Thya* (or revivification) literally means 'life-giving'; it means that controlling and using dead lands will bring ownership to the reviver.⁸ There is ample evidence from the Prophet's traditions, rulers' actions and jurists' opinions to support the principle of assuming ownership of dead land by reviving it through cultivation or building on it.⁹ Indeed, the concept of asking for permission from authorities is quite new in the Moslem world.¹⁰ Owning dead land was a given right from the all mighty God.

If these principles are fully implemented, land with mineral resources will remain open for those who exert effort to obtain them. Cities will be characterized by dwellers who are often owners of the property they occupy, i.e. the city will be characterized by the least possible percentage of absentee owners. This will have tremendous impact on the quality of the city, socio-economically and environmentally. However, most importantly, as the State does not need and cannot utilize all available rural lands in the country, the State's ownership of land is reduced to the minimum compared to any other societal system (capitalism or socialism). Thus, land available for the access of end users to obtain minerals or to revive is the highest possible.¹¹

Regarding minerals on land not owned by the State, the rulings of jurists varied if minerals appeared on privately owned land. Most Maliki scholars had the opinion that minerals on all lands, including private lands, are in the ownership of the State. The ruler should decide on their exploitation. This opinion, of course, resembles our contemporary system of rights in the Arab world. On the other hand, the jurists of the three remaining schools of law, as well as some Maliki jurists, although agreeing that minerals on private lands are not owned by the State, had two different rulings. The first is that of all Hanafi jurists, some Shafi'i jurists and Sahnun (a prominent jurist from the Maliki School of law, d. 854 AD) which states that ownership of minerals belongs to the owner of the land. The second ruling is that of most Hanbali jurists and some Shafi'i jurists which states that solid minerals should be owned by the land owner, however, liquid minerals should not be owned by the land owner. Yet, if such liquid minerals could be reached from neighbouring property, it should be owned by those who managed to obtain them.¹²

The jurists of the Hanafi, Shafi'i, and Hanbali rites agreed that land containing surface minerals could not be revived or owned and could not be allotted by rulers. The reason for such prohibition, they explained, is to facilitate public access to such minerals. Those minerals are just like water and pasture. They are for those who collect them. They argued that if such lands were owned, a class of wealthy people would be created who were not in fact productive.¹³

What if a group of individuals as partners managed to discover a remote site with hidden minerals, and invested much time by erecting the needed construction for mining, do they own that land, or do they have to give others the right to collect minerals from the same spot? Regarding hidden minerals in dead lands, the majority of

rulings of jurists gave those who invested the right to remain in the area for mining, but that they should not hinder others trying to reach the same source of mineral from a neighbouring site. Jurists' rulings in these, and other, matters allowed for a maximum exploitation of resources by opening doors to as many end users as possible.¹⁴

As minerals are distributed naturally in remote sites, the Islamic legal system devised another principle that encourages travelling to mining sites. *'ibn as-sabil*, or literally, the sun of the road, is a specific term for the individual traveller whose travel is funded by *zakat*, or alms giving.

Taxation in Islam, known as *zakat*, is generally 2.5 per cent of a merchant's annual income. If the person is a farmer, it is 5 per cent of the annual crop if the land is irrigated by human effort or 10 per cent if it is irrigated by rain. If the income is from mining, then it is 20 per cent of each extraction, etc. In fact, many details of *zakat* for all types of human activities were explained by jurists. What is interesting is that such taxation should be spent on eight types of people: the poor, the needy, *'ibn as-sabil* (the wayfarer or the traveller), etc. according to the verse:

Alms are for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to the Truth); for those in bondage and in debt; in the cause of Allah; and for the wayfarer; (thus is it) ordained by Allah, and Allah is full of knowledge and wisdom.¹⁵

From this verse, jurists insist that it is not even the right of the State to relocate the funds of *zakat* to any other project.

With this wealth of funds designated for *'ibn as-sabil*, jurists have developed an extensive literature on the conditions that give an individual the right to obtain funds to travel. If one reviews these conditions they are minimal, such as that a person will not be funded if he declared that

he is travelling for a vacation, or if he is touring several regions. However, it is essential to favour *'ibn as-sabil* if he is seeking a job. In fact, *'ibn as-sabil* was mentioned seven times in *Quranic* verses encouraging Moslems to pay generously those wishing to travel. In one verse for example, the Holy *Quran* declared:

And render to the kindred Their due rights, as (also) To those in want, And to the wayfarer; But squander not (your wealth) In the manner of a spendthrift.¹⁶

In other words, society has designated much of its resources to encourage job seekers, mineral explorers, and merchants to explore new sites for jobs, minerals and imports.¹⁷ At the same time, Islam did not recognize borders between countries. The concept of a country demarcated by borders controlled by a State is quite modern in the Middle East. A world without borders would create a truly global situation that allows all members of society, especially the needy, to travel and exploit land resources. This is the exact opposite of our contemporary situation where borders between countries are opened only to the rich and the powerful to invest.¹⁸

Moreover, such travel would obviously be to sites of merit that contain minerals and other life supporting resources; i.e. to sites of productive jobs, and not to capital cities or regional cities occupied by bureaucrats as in our contemporary world. It is a well established fact that the current migration from rural areas to cities is due to several reasons among which is the presence of decision-makers in major cities. Most investments of contemporary societies (infrastructure, universities, hospitals, etc.) are in cities where the rich and powerful live at the expense of rural areas. Thus, hoping for a better life, migration of the poor has crowded cities as States have controlled access to resources. Although sites of contemporary cities do not support life, much of society's wealth is invested in them to resolve problems

of over-population. Water is brought to Amman and Riyadh. Food is brought to Dubai and Casablanca. The location of modern cities does not reflect the merit of their sites, but rather the socio-political structure. Even mega cities, with merited sites, such as Cairo, are over-crowded and thus became consuming cities living on surrounding economies.

On the other hand, if the Islamic legal system is implemented, job seekers will be drawn to sites that need jobs and sustain life. A major principle in *zakat* is that it should first go to the local needy. The prophet, peace be upon him, has declared that the poor of each locality are more entitled to *zakat*.¹⁹ This principle, coupled with the *'Ibn as-sabil*, would draw the poor to sites of the rich who can pay *zakat* and they, of course, are living in sites that have minerals and life support resources. Thus, sites of Islamic settlements compared to contemporary cities would reflect the merit of the sites and not the bureaucracy of the powerful. In such a scenario, settlements would compete to attract working people or job seekers. Over time, the unemployed (the poor) in crowded settlements would be attracted to newly established sites that are saturated by *zakat*, and so on. This mechanism would increase demand on workers. In such cases, the difference between the rich and the poor would certainly be much less than the disparity which the current globalization is producing. Thus we should expect a higher quality of life in such economically homogenous settlements, unlike the case of our contemporary globalized cities that are gradually transforming into a few islands of the rich in an ocean of the poor. Moreover, humans will not be forced to transport goods and life necessities from one site to another (which is costing societies much) as settlements are merited. Of course, not all sites could support all life necessities; some transportation of goods would be needed.

This flexibility of moving goods and people among sites to get the most out of our countries is reduced in this era of globalization compared to Islam, i.e., cities that are supposed to die are still living, while sites that are supposed to live are still covert.

In short, this brief prologue has tried to bring attention to the need for new concepts of rights that can support and reproduce today's advancements, beyond capitalism.

NOTES

1. Such issues are discussed in a forthcoming book by the author.
2. A fifth major school of law, the Shi'ite, which prevails in Persia, parts of Iraq and Lebanon and the eastern region of the Arabian Peninsula is not dealt with here. Neither did I investigate the Zaydi and Abazi rites which cover parts of the Arabian Peninsula. For details in English see Michon, 1980, pp. 21–22.
3. Properties were also classified differently regarding their ownership. The most well known classification that affected land subdivisions in the Arab world is the Ottoman classification made in 1858 AD which 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 a *waqf* (religious endowment) or bequeath it. Such actions were the highest form of manipulation, denoting a state of pure ownership. (2) *Miri* properties, or properties owned by the State and possessed by individuals who lived in them. (3) *Waqf*. (4) *Matrukah* property, or property left for public use. (5) *Mawat* or dead land. For further details see Akbar, 1988, pp. 47–52.
4. His argument is based on the principle that 'what is needed can be owned and what is not cannot' (*Wa ash-shar'u lahu qa'idah wahuwa 'annahu 'inna-ma yunlaku li'ajli al-hajah wa ma la hajata fihi la yushra'u fihi al-mulk*), Al-Qarafi, Shihabud-din Abi Al-Abbasi As-Sanhaji, nd, Vol. 4, p. 17.
5. Moreover, he argued that if someone attempted to erect a room beneath his neighbour's territory he would unquestionably be stopped, even if he were to reach such a room from his own territory. Ibn ash-Shat, nd, Vol. 4, pp. 17, 40–41.
6. For details see Akbar, 1988, pp. 26–27.

7. Three years was the limit set by jurists to allow an individual to revive a land. For further details see Akbar, 1988, pp. 30–31.

8. Akbar, 1988, pp. 27–32.

9. The Prophet said, 'The people are God's people, the land is God's land, he who revives a piece of dead land will own it, and the unjust root has no right'. In another tradition he declared, 'He who revives dead land will be rewarded by God (in the day of judgment)'. 'A man who had revived dead 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 (enjoy it) you are righteous not impious, a reviver not destroyer".' Ibn Qudamah relates that 'Reviving dead-lands is the custom in all regions even if there are differences among jurists regarding its regulation' (Akbar, 1988, pp. 28–33).

10. Most Jurists, with the exception of Abu Hanifa and some of his followers, agreed that revivification does not need permission from the authorities. For more details see Akbar, 1998, pp. 62–63.

11. For further details on these conclusions see, Akbar, 1998, Chapters 1 and 5.

12. Al-Abadi, 1974, Vol. 1, pp. 349–351; An-Nawawi, 1995, Vol. 15, p. 232; Al-Mawardi, 1960, p. 198; Al-Hanbali, 1966, pp. 236; Ibn Qudamah, 1992, 15 vols. *Al-Mughni*, 1412, V. 4, p. 245; V. 5, p. 573.

13. *Al-Majmu*, v. 15 pp. 222–223, 227; ash-Shafi'i, Vol. V. 4 p. 42; *Al-Mughni*, V. 5, pp. 571–572; Al-Abadi, V. 1, p. 355; V. 6, p. 184.

14. The term 'end user' does not exist in traditional Arabic language as this class of people was created by capitalism. One might even argue that all people would be within the same class with minor economic variations if the Islamic Legal System was fully implemented. This utopian stratification and other related issues are discussed in a forthcoming book by the author.

15. *Holy Quran*: Translated by Abdullah Yusuf Ali; Surah 9 (at-Tawbah), verse 60.

16. *Holy Quran*, *op. cit.*; Surah 17 (al-Isra), verse 26.

17. *Holy Quran*, verses 60 of at-Tawbah, 41 of al-Anfal, 7 of al-Hashr, 177 of al-Baqarah, 36 of an-Nisa, 26 of al-Isra, 38 of Ar-Rum. *Tafsir at-Tabari* and *Tafsir al-Qurtubi*, verse no. 60 of surat at-Tawba; ash-Shawkani, V. 4, p. 169; *Al-Majmu*, V. 6, pp. 203–205 (printed 1415 H), *Al-Mughni*, V. 9, p. 330 (printed 1413 H).

18. Of course, questions regarding security will be raised. Again, it is not the place here to answer such concerns. Many similar issues are discussed in a forthcoming book by the author.

19. *Sahih al-Bukhari*, Tradition no. 1458 and 1395; ash-Shawkani, V. 4 p. 151–152; Abu Ubayd, *Al-Amwal*, Tradition no. 1908, 1911, 1916; *Al-Mughni*, V. 4, p. 131.

REFERENCES

- Akbar, J. (1988) *Crisis in the Built Environment: the Case of the Muslim City*. Singapore: A Mimar Book.
- Akbar, J. (1998) *Imarat al Ard fi al-Islam*, 3rd ed. (in Arabic). Beirut: Muassasat ar-Risalah Press.
- Al-Abadi, A.D. (1974) *Al-Mulkiyyah Fi al-Shariah al-Islamiyyah*, 3 Volumes (in Arabic). Published PhD dissertation. Jordan: Maktabat al-Aqsa.
- Al-Hanbali, Abu Yala M. (1966) *Al-Ahkam al-Sultaniyyah* (in Arabic). Cairo: al-Halabi Press.
- Al-Kasani (nd) *Badai' as-Sanai*, 2nd ed. 7 Vol.; Ala ad-Din b. Masud (in Arabic). Beirut: Dar al-Kutub al-Ilmiyyah.
- Al-Mawardi, Abi Al-Hasan A. (1960) *Al-Ahkam al-Sultaniyyah* (in Arabic). Cairo: al-Halabi Press.
- Al-Qarafi, Shihabud-din Abi Al-Abbasi As-Sanhaji. (nd) *Al-Furuq*, 4 Volumes (in Arabic). Beirut: Dar al-Marifah Press.
- An-Nawawi, M. (1995) *Kitab al Majmu* (edited by Al-Mutii, Muhammad N.) 23 Volumes (in Arabic). Jeddah:
- Ash-Shafi'i, Muhammad b. Idris (nd.) *Al-Umm* (edited by M. Zahri an-Najjar) (in Arabic). Beirut: Dar al-Marifa Press
- Ash-Shawkani (nd) *Nayl al-Awtar*, 4 Volumes (in Arabic). Beirut: Maktabat ad-Dawah al-Islamiyyah
- Ibn ash-Shat (nd) *Hashiyat Ibn as-Shat ala al-Furuq*, 4 Volumes (in Arabic). Beirut: Dar al-Marifa.
- Ibn Qudamah, Abi Muhammad A. (1992) *Al-Mughni* edited by al-Turki, A. and al-Hilo, A. (in Arabic). Cairo: Hajr Press.
- Michon, Jean-Louis (1980) Religious institutions, in Serjeant, R.B. (ed.) *The Islamic City*. Paris: UNESCO, pp. 21, 22.