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"Aḥkām El-buniān" And The Stakes of Their Codification

Abdelmalek Houcine

Faculty of science and technology, lecturer at Tahri Mohamed University, Bechar. Algeria

abdelmalek.houcine@hotmail.fr

Djedid Abdelkader

Faculty of science and technology Professor at Abu Bakr University, Bel-Kaid. Tlemcen. Algeria

a_djedid@yahoo.fr

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Abstract: The issue of the codification of « aḥkām » (rulings), revealed in fatwās is still a subject of controversy between opponents and supporters. A fatwā, is to inform the legal ruling without obligating it. The deduced ruling may be different on the same issue, according to each of the Islamic schools of thought, or even different in some cases, within each school. It also changes according to time and place circumstances and the specificity of the case. In terms of construction and architecture, these differences provide the urban community and its neighbours with a free space that can be easily directed according to social and economic interests. Space is negotiated and shaped in accordance with the objectives of Sharia on the one hand and social development on the other. This paper examines the issue of codifying " aḥkām el-buniān ": The possibility of benefiting from the pros of rationing and not being exposed to its cons. It also addresses the question of its updating and its impact on construction management and the production of urban models. The question to be asked is: Why has el- aḥkām never been codified before in the history of Islam. At the end of the 19th century, the French civil code influenced the Ottoman State, which undertook the codification of the rules of jurisprudence (qawā'id al-fiqh), and " aḥkām el-buniān ", in particular.

Keywords: al- fatwā, al-ḥukm, codification, rigidity, flexibility, civil code, al- Majalaẗ.

1. Introduction

In Islam, during the Middle Ages, there were palaces and cities of different styles and shapes that were built in accordance with the provisions set out in fatwās after ijtihad according to the principles and rules of jurisprudence and in compliance with the purposes (al- maqāsid) of Islamic Sharia (al-sharī'ah). These rulings formed what is called the jurisprudence of architecture or construction. The Orientalist scholar, Robert Brunswick, referred to this as early as 1947, and stated the following:

«There is no serious study on city planning in the past or the present, which did not refer to taking into account the laws of urbanization. Likewise, the planning of Islamic cities in the Middle Ages is no exception to this rule. Since « fiqh » jurisprudence had its say in the field, and he said it..».

Fiqh is generally divided into two branches:

- fiqh al- ibādāt (jurisprudence of worship),
- fiqh al mu' āmalāt (Jurisprudence of transactions).

The rulings that deal with building issues, which are known as « aḥkām el-buniān », belong to the second branch, the jurisprudence of transactions. The first branch is known as simplicity because it is not subject to change according to space-time, because it is fixed. As for the second branch, the jurisprudence of transactions, it is distinguished by complexity (al- marǧi al- ṯaqāfi, 354 h.) because it must evolve according to the conditions of time and space and adapt to manage the renewable urban space. There were many rulings related to construction in this branch. Although it is divided into several chapters of the jurisprudence of transactions, it formed in its entirety a legal body

called " aḥkām el-buniān" (Provisions of the Building) which is very similar to what is currently known as the Urban Planning Law. However, it was not written in codes. It was not until the end of the nineteenth century, specifically in 1882, that these rulings began to be codified and formulated in the form of numbered articles, that is, in the very late period of the Ottoman era. It was published in the Journal of Judicial Judgments (Mājālāẗ al- āḥkām al-'adlīā, 1882). The form of this Ottoman law was influenced by the French Civil Code, promulgated by Napoleon in 1802. This influence was only formal. As for the content, it was the French civil law, which was influenced by the Ottoman law. This scientific contribution clearly shows the mutual influence between these two sets of laws(1). Since the advent of Islam in 632 AD until this date, that is, for more than twelve centuries, no Islamic nation has dared to write down the revealed rulings related to built areas(2). Where all these successive nations have chosen the legal practice based on the flexibility of rulings « al-āḥkām » emanating from fatwas which change and adapt to the place, time and specificity of the issues and the situation of the questioner.

2. Research problem and terminology

It is necessary, before going into the course of research, to define the vocabulary and terms used in this paper. What is the meaning of Islamic Sharia provisions targeted in this study and what is meant by codification?

2.1 « Ḥukm », « fiqh », « fatwā »

The legal ruling is the speech of Allah related to the actions of the servants. A discourse contained in the Qurʿān and the Prophet's Sunnah related to the actions of servants. It is general and abstract, not tied to a specific time or place. It is the speech of Allah Almighty related to the words, actions and beliefs that are issued by the individual (Encyclopedia of Translated Islamic Terms).

There are fixed legal rulings where there is no room for fatwas to broadcast or discuss, and there are legal rulings issued by the diligent jurist on the reality in the light of knowledge of the circumstances of time and place and knowledge of the condition of the questioner. As for fiqh, it consists of:

1. The legal rulings (aḥkām al-shar'īah) fixed by definitive texts that are not negotiable.

2. The rulings revealed by fatwas by way of ijtihad and deduction.

He is the knowledge of all these practical legal rulings deduced from its detailed evidence. It explains the legal rulings of what is permissible and what is forbidden, and what is Sunnah and what he hates, and what is permissible, whether it is related to worship, it is classified in the jurisprudence of worship, or transactions, then it is classified in the jurisprudence of transactions, this is on one hand. On the other hand, there should be no confusion between the judicial ruling issued by the person who has the authority of the judiciary, which is binding and the legal ruling deduced from the fatwā which does not rise to the level of being binding, except after it is pronounced by the judge. We note that the title "al-i'lān bi aḥkām el-buniān" (The Book of Declaration of the provisions of built Aears). The term "aḥkam" was used instead of the word "fatwā". The manuscript includes the two types of aḥkām (rulings): Judgments issued by fatwās and judgments issued by Judge Ibn Abd al-rafi', who relied in issuing them on the rulings of fatwas on the one hand, and reports expert Ibn Al-Rāmi on the other hand (Ibn al-Rāmi, 1333). This humble scientific contribution is confined to the study of these two types of judgments and bets of their codification. It neither addresses all legal provisions, nor does it address the codification of the rules of jurisprudence and its origins. Among the targeted provisions, it is concerned with studying the provisions related to built areas and urbanization that are included in the jurisprudence of transactions. It is subject to change according to time and place as well as the situation of the questioners and the specificity of their cases. In order to avoid confusion between all the legal rulings, we describe them in the course of the research as " aḥkām el-buniān". This paper, therefore, studies the bets of codefing "al-Bayan rulings" only.

2.2 Codification term.

«Codification» or « blogging » can be defined as the formulation of provisions in the form of general, abstract rules. It regulates the process of building and preparing the surrounding environment among the population, and obliges them to

(1) See at the end of this research analysis and comparison between the two laws

(2)What has been codified is related to jurisprudence rules (al-qa-wa'id), principles (al-usul), and colleges (el-kuliat)

work with it. They are issued by the authorized authority or the judicial authority in the form of regulations, and the executive authority undertakes to implement them. This study is summarized to collect the legislative provisions and rules related to the field of construction and urbanisation, which were issued by the jurists in Islamic history and the so-called « aḥkām el-buniān» (provisions of building classifying, arranging and formulating them in clear and concise terms in clauses called articles with serial numbers. Then they are issued through the legislative body in the form of law, or a system imposed by the state. The judges are obligated to implement such provisions among the people as well as between all individuals, bodies and entities. it becomes an easy and specific method that judges can abide by, lawyers can refer to, and people can deal on the basis of it (Abdelbaqi Abdelkabir, 2019).

The researcher in the sources of Islamic Sharī'ah rulings related to transactions and contained in the Noble Qurʿān, and the purified Sunnah, finds that most of them came in the form of general principles and general rules. They did not come in detail, and this is a Divine Wisdom so that the rulings keep pace with the change of time and place, thus achieving the interests of the servants of Allah. Therefore, the imams and jurists have endeavored throughout the ages to elicit rulings and explain them to people, on the basis of the universal rules and the purposes of the tolerant Sharī'ah (Muhammad A. S., 2019). The idea of codifying the provisions of Islamic jurisprudence is not a product of the current era, but rather goes back to the era of the Abbasid Caliph Ja'afar al-Mansour, (al-Sāḍeq Darīfī, 2016), who asked Imam Malik ibn Anas in 163 AH to compose for the people a book on jurisprudential issues with observe ease.

In the middle of the nineteenth century AD, the first official codification of Islamic jurisprudence with regard to transactions (al-Sāḍeq Darīfī, 2016) was established, in the Journal of Judicial Judgments, during which civil transactions were legalized according to the Hanafi School of Jurisprudence, which is the official madhab of the Ottoman state.

Where, for the first time in Islamic history, "aḥkām el-buniān " were written down in the form of numbered articles(3).

(3) An example of the codification provided in Mājālāt, (the Journal of Judicial Judgments) : Article 1192. « Any owner may dispose of his property as he wishes. Nevertheless the freedom of enjoyment must be restricted, when it affects the rights of the neighbor»

The researcher realizes that the question of codification has supporters and opponents (al-Gawhary Tarek, 2019).

2.3 Justifications for the trend against blogging

1. The sources of Islamic law guarantee the regulation of everything related to people's affairs and interests, either by its total rules or by its detailed provisions.

2. Codification will lead to the stagnation of the provisions of Islamic Sharī'ah and will close the door of ijtihād despite the availability of precise and flexible rules that can be applied at all times, regardless of the different times and environments.

3. Codification may be a pretext and a prelude to the enactment of regulations derived from man-made laws and in violation of the provisions of Islamic sharī'ah, based on the rule " sad bāb darā'i" (blocking the door of excuses), which is a legal basis (Muhammad A. S., 2019).

A group of contemporary jurists, especially the scholars of Hejāz, went to the view that it is not permissible to codify the provisions of Islamic jurisprudence (al-Sāḍeq Darīfī, 2016), of them: Shaykh Muhammad Al-Amin Al-Shanqiti, Shaykh Muhammad Nasir Al-din al-Albāni. It is that all these justifications opposing the issue of codifying legal rulings apply to revealed rulings and do not apply to principles, universals and rules.

2.4 Justifications for the trend in favor of codification

1. The lack of unity of judicial rulings, so the follower of judicial rulings issued, for example, by two judges in one case, finds huge discrepancies in some cases, according to the jurisprudence of each judge.

2. The jurisprudence books that judges use to download rulings and jurisprudence are of different methods, and they require an outstanding ability to master all the rules of the Arabic language.

3. Reducing the personal considerations of judges.

4. Rigidity will not be an inevitable result of codification. It is dealt with in two ways: First, if the judge does not find a text in the articles, he must refer to the provisions of Islamic Sharī'ah. The second way is to update the articles.

5. Relying on man-made laws is not a fault, as wisdom is what the believer seeks, wherever it may be as long as it does not contradict the texts and

purposes of the Islamic Sharī'ah.

6. Codification will combine adherence to the constants of the texts and flexibility in the variables in a way that preserves the spirit and purposes of Sharī'ah, and not just standing on the texts.

7. Codification makes it easier for judges to find el-ḥukm and the rule and it reduces a lot of time and effort.

8. Codification leads to defining rights and duties in a public and prior manner, so that each person knows what he has and what he owes.

Many scholars have said that it is permissible to codify " el-fiqh" (the provisions of the Islamic jurisprudence)[4].

2.5 Codification of kulliāt » (universals) or « qawā'id » (rules) or « aḥkām » (provisions)?

Engaging in the issue of codification can affect all levels of the Islamic law. Starting from the level of « ūsūl » (principles), " al- el-kulliāt " (universals), and " al-māqāsid" (purposes), to the level of " aḥkām " rulings revealed by jurists and mujtahids. Therefore, it is necessary to clarify the objectives of our scientific contribution, which deals only with the codification of " al-ahkam" provisions, especially those that deal with architecture and urbanization.

2.6 «fiqh» (jurisprudence), its " 'usūl" (foundations) and " al-qawā'id " (jurisprudence rules).

1. "Usūl el-fiqh": The principles of jurisprudence are the methods that limit and clarify the path that the jurist is committed to in deriving rulings from their evidence. He arranges the evidence in terms of its strength (Muhammad A. S., 2019): the Qurʿān takes precedence over the Sunnah, the Sunnah over analogy, and all other evidence that is not based on direct texts. As for " fiqh" jurisprudence, it is the extraction of rulings while adhering to these approaches.

2. al-qawā'id. Fiqh rules are a group of similar rulings that are due to a single standard that unites them, or to a jurisprudential standard that links them, such as the rules of ownership in Sharī'ah. It is the fruit of the various partial jurisprudence rulings. If the principles of jurisprudence are looking at the evidence of jurisprudence, then the rules of jurisprudence are looking at issues of jurisprudence, and they have absolutely nothing to do with the evidence. (Muhammad A. S., 2019).

2.7 Codification of « al-qawā'id » (jurisprudence rules)

The first to set the rules was the Messenger(may peace abd blessings of Allah be on him) (Muhammad A. S., 2019), because, Allah gave him theabbreviations of the meanings of words[5]. For example, the rule « lā ḍarar wa lā ḍirar » (no harm, no harm) (the golden rule) by which the jurists derived many

«āḥkām» related to construction and urbanization, especially real estate. In other words, this rule has been used by jurists to deduce several decisions regarding construction. This research paper studies the codification of these provisions " aḥkām " which fall under the fourth level of legislation.

In order to safeguard honors and elevate morals, ancient conceptions of Islamic architecture took into account the prevention of harm to the inhabitants of the city in general and to neighbors in particular. Just as the efforts of jurists, judges, muḥtasibs, engineers and builders have been combined and integrated to block the pretexts of morality offenses as they are more severe for people than other offenses. This type of rulings that came in the fourth stage of legislation, the issue of codification has not previously been raised in this regard. As for the principles (Usūl) and rules (al-qawā'id) , several manuscripts and books have been combined regarding them (« al-qawā'id el-fiqhīa »», authored by Muhammad, S.U, 2001, - « anwār el-burūq fī anwā' el-furūq », authored by al-Qarafi (died 684, - « tahdīb el-furūq wa al-qawā'id sunnia », authored by Muhammad A. H. (1367 h.), « al-kulliāt el-fiqhia 'ala madhhab al-īmām mālīk. Kulliāt ibn Ghazi »», author Ghazi ibn Ali, (841 – 989 h.), « naḍariat al-maqāsid 'inda al-īmām chātibi », authored by Rissouni, A., 1992.), and they still provoke a lot of controversy between

(4) Among these we mention: the scholar Abu al-Ala al-Mawdudi, Sheikh Muhammad Abduh, Dr. Yusuf al-Qaradawi, Sheikh Muṣtafa Ahmed Al-Zarqa, Dr. Fathi Al-Darini, Sheikh Muhammad Abu Zahra, Sheikh Ali Al-Khafif, Dr. Wahba Al-Zuhaili, Sheikh Muhammad Rashid Rida, and others

(5) Example : « el-'āria mou'adāt » (A contract requiring the permissibility of the usufruct of what is permissible to use while the same remains.). « el-kharadj bi ḍamān » (Whatever comes out of the thing in terms of income, benefit and yield, it belongs to the purchaser in return for what he owed from the property guarantee; If the thing sold is damaged, it is part of his guarantee, then the yield is for him.) (The proof is for the claimant, and oath for the denier) , « lā ḍarar wa lā ḍirar » (No harm, no harm.).

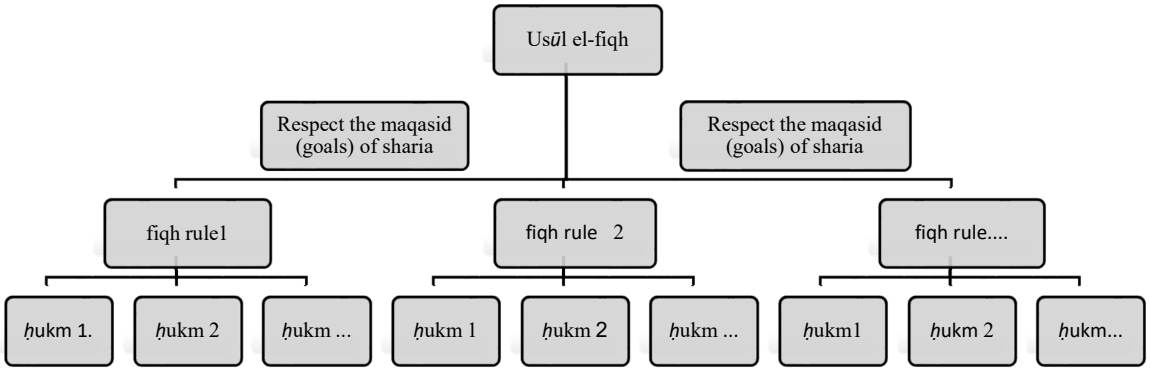

Figure (1). Levels of legislation in Islam. Source author

Table (1). Example of downloading the provisions of the rule « lā ḍarar wa lā ḍirar » (no harm, no harm).

n°	Legislation level	Example : « *lā ḍarar wa lā ḍirar* »
1	al-q*ā*'ida us*ū*lia fundamentalist base	The *ḥadīth* "There is no harm, no harm"
2	maq*ā*sid (purposes)	Avoid damage and bring the benefit
3	al-q*ā*'ida fiqhia (jurisprudence rule)	"*lā ḍarar wa lā ḍirar »* (no harm, no harm)
4	al-*ḥ*ukm (judgment)	If a person places his gutter on a public road in a way that harms passersby, it is removed, and the same applies if he encroaches on the road by building or digging a cesspool or otherwise.

supporters and opponents, and many forums, seminars and research are organized on them.

The term "codification" is characterized by solidity and constancy (Dictionnaire de droit international public, 2001), Professor Gerard Cornu defines this term as a process "consisting of the plural in a single verb, without changing its essence, a base verb and the modified verbs that affect it, by publishing the new verb and canceling all the others. But researcher Salmon, J. 2001, defines it as "an attempt to formulate the content of the international custom." On the practical level of legal techniques, the codification of fatwas has advantages and disadvantages. The main disadvantage is the application of the same codes in different situations. For this reason, it was rejected by the historical school advocated by the German jurist Friedrich Karl Von Savigny, hostile to any act of codification. This school considers codification as the "principle of death and immobility of law" (Charles, R. 1970), and it favors custom as a more flexible and better adaptive legal provision.

Al-fatwā. Imam al-Nawawi, said in his book (âdāb al-fatwā), "The muftī interprets what Allah says)".

Larousse dictionary, defines it as "legal advice given by a religious authority on a questionable issue or new question : resulting decision or decree" (Larousse, 1989). According to Masoud and Muhammad Khalil, the concept of fatwā developed in early Islam in the context of a question-and-answer process to better communicate in religious matters. His subject was ʿilm and knowledge without further details. Later, when ʿilm was linked to ḥadīths (sayings of the Prophet, which are divided into two parts, the text and the isnad, the fatwā became linked to raʿy (opinion) and fiqh (jurisprudence), (Masud, M. K., 2022).

The fatwā has morals (Agrama, H. A., 2010). According to Roland Laffitte, a "fatwā" is an answer, an explanation given by a specialized organization on a specific question in the field of Islamic jurisprudence. The fatwā covers any issue of Islamic law. Traditionally, you should respect a regular procedure, often very complex. It is submitted by any body or person authorized to issue fatwas, in particular the Muftī, and to be duly established and justified in Islamic law. All this according to the criteria of each sect's legitimacy, and the type of organization of scholars and the relations that were established between them and the political institutions in different countries and different eras, which gives an infinite number of formations and possibilities. (Roland L., 2006).

Thus, on the same question, it is possible to make several different, even contradictory judgments, according to each madhab (School of Jurisprudence), or even, in certain cases, even within each madhhab. Otherwise, al-aḥkām change according to temporal and spatial circumstances and are therefore very flexible. However, « al-āḥkām » are not always based on all habits (el-'urf). « al-āḥkām » are based solely on custom accepted by sharī'ah. In this case, al-'urf becomes a true source of law(6).

However, codification of the rulings revealed in fatwas has the advantage of facilitating the legal practice of jurists. In this case, jurists must master the practice of ijtihād (legal effort) and "el-qiās" (analogy) to approve the same legal article in situations that they consider similar. The problem that naturally arises is « aḥkām el-buniān » (jurisprudence relating to construction), has been abandoned for more than two centuries. Specifically, since the date of the abolition of the Ottoman Caliphate, that is, after the end of the first world war. Long before that date, most Islamic countries, especially the cities of North Africa, were under colonial Western administration at the beginning of the 19th century. As a result, Islamic jurisprudence ceased to be updated and developed. It has stagnated since then. For these reasons, the fatwā and the muftīs, have an important role in contemporary Islamic society (Ibrahim, B., Mahmad A. 2015).

So, how can we return to the old, outdated and inappropriate case law?

Modern Islamic studies (Ibrahim, B., Mahmad, A. & Siti, Z. A., 2015), (Yakar, E. E., 2021) confirm that after the formative period, Islamic objective law became stricter and eventually lost its connection with political, social and economic developments (Hallaq, Wael B., 1994). The referendum process has seen its broadcast shift from individual institutions to collective institutions (Yakar, E. E., 2021).

Fiqh el-nawāzil. Islamic sharī'ah has established mechanisms for the development of jurisprudence in cases that did not occur before, and this is through what is known as "calamity jurisprudence". **"el-nawāzil"** is defined by facts and emerging issues, and the incident that requires a ḥukm (legal decision). (Abdullah M. T., 2014).

The « financial Encyclopedia », (Yves S., 1999), defined this fiqh as " a branch of fiqh that addresses contemporary issues (emerging issues). These questions require fiqh reasoning al- ijtihād based on al- ūṣūl (principles and precepts of Islamic law) because of the absence of a textual proof of the question (al- nazilaï, singular of al- nawāzil) at hand. This ijtihād is led by al- fuqahā ' and jurists who will try to understand the rules of al-šarī'aï (al-āḥkām) by consulting the main sources of al-Sharī'ah law."

This case law, therefore, deals with new issues that have never been dealt with by jurists before (Samadī Muṣṭafā, 2007). Since the fall of the Islamic caliphate, jurisprudence has remained stagnant in most Islamic countries. While life continued with its challenges, it required diligence in various cases, to clarify the legal ruling in them. Many events that affected the reshaping and development of urban planning laws and ways of practicing space appeared. The most prominent event was undoubtedly the bets of the western industrial revolution, and the innovations it brought about in all sectors.

The urban space is a distinct space for the crystallization of these innovations. Their structures and shapes are very sensitive to these changes to adapt to these rapid changes ; and town planning laws and codes have been subject to constant revision. Since the fall of the Ottoman Caliphate and its division into several countries, and its becoming a colony by western countries, the jurisprudence of urbanism and codified « āḥkām » is no longer required to manage the new urban issues resulting from the social and technical development of Islamic societies. This jurisprudence has now been outdated for more than two centuries, whether in the production of urban space or its management. This move away from Sharia has continued and is continuing to this day, in most Islamic countries, even after their independence. The adoption of western planning laws and tools, regardless of their inappropriateness to the social and cultural reality of Islamic countries has continued. Sometimes, we just change the name of a plan, to claim the adaptation of Western urban planning instruments to our socio-cultural reality.

For example, the names of the urban plans adopted in France, the master plan of planning and town planning, (SDAU) (Hubert C.1997)(7),

(6) The custom becomes one of the sources of the sharia, if it does not contradict the Quran or the Sunnah

(7) SDAU, master plan of planning and town planning. Established spoke Loi of Orientation Foncière No. 67/1253 of 30 December 1967 (LOF, the SDAU, have been replaced by SD master plans) by law from 07 January 1983.

were converted to the word (PDAU) master plan of development and town planning in the Algerian urban plans in 1990 (Official Gazette n° 52 of 02 December 1990).

Why do city-planning laws themselves work relatively well - or at least give more consistent results - in Western countries and fail in the Maghreb cities?

Can't this failure be explained by the problem of inadequacy to social reality? This reflection leads to the following questions:

- If the application of al-Sharī'ah law had not been interrupted, the case law on space would very probably have continued to develop, as it had done so well between the 7 th and 18 th centuries[8].
- Would it not have produced new rulings related to architecture and urbanization? like the manuscripts of fiqh al bunīān (construction jurisprudence), which have reached us (Ibn al- Rāmī, « kitāb al- i'lān bi ' aḥkām al- bunīān «1333. al- marği T.,« kitāb alḥitān, 354 h. ») and which would require reworking to take care of all the new questions posed by social change? This type of manuscript is currently well known to most researchers in this field. The question that arises then is: What are the stakes of space codification « aḥkām el-buniān ». ?

The main hypothesis is: codification can lose the rules of law in general, and Aḥkām el-buniān in particular, their flexibility by becoming unadaptable. Thus, our current concern does not relate to the nature of the rules mentioned in these ancient manuscripts, but rather to the study of the legal techniques which have enabled jurists to construct this corpus. These « aḥkām », which in turn allowed the Ottoman government to codify and produce in 1882, for the first time, a code of Muslim urbanism. (Mājālāẗ al- āḥkām al-'adlīā, 1882)

Just after this date, all Muslim provinces that were administered by the Ottomans fell under the colonization of western countries. This code remained frozen until today. Under no circumstances can it be applied in its current state. It must be updated and supplemented by new urban issues that are not yet debated and regulated by muslim jurists.

(8) Since the construction of Medina in the 7th century, under the watchful eye of the Prophet, until the fall of the Ottoman nation, towards the end of the 19th century.

If we want to adapt the rules of town planning to the reality of Islamic societies, we must first master the legal techniques of Islamic law which enabled the "fūqāhā" "jurists" to issue ahkam el bunian. This allows us to update construction jurisprudence in accordance with the requirements of modern town planning.

In fact, this is not a task for urban planners alone. It is a very vast field where there must be collaboration between multidisciplinary teams led by al-fūqāhā and mūftis, mastering "maqasid sharī'ah", who mastered of fiqh sciences and had a level of knowledge of the objectives of al-Sharī'ah that would allow them to practice al-ijtihād, (the legal effort in order to produce new laws that are nonexistent until then in the Muslim legislation.

3.Research methodology and scientific articles

The elaboration of this text is based essentially on first-hand manuscripts, related to the Mālikī fiqh.

1. 'Isā ibn Mūsā, known as Ibn al- īmām, kitāb al- jidār, manuscript elaborated in 996 : This manuscript, is a collection of decisions emanating from the main Maliki jurists on various practical law issues, mainly on the reports of the owners of neighboring buildings, with each other and with the roads. This manuscript was translated into French and published by Professor Barbier, under the title " Rights and obligations between owners of neighboring estates", in the Algerian and Tunisian Journal of Legislation and Jurisprudence, Volume XVI, 1900-1901. What is interesting about this text is that it brought together several Ahkam legal deliberations relating to construction, emanating from almost all the followers of Imām mālak ibn ānas. Even in al-Mudawwanaẗ al-kubrā (the great encyclopaedia) which is the source par excellence for all research on Malikism, I only found a few excerpts - concerning the urban space in relation to the documentary mass edited by Barbier. Al-Mūdawwanaẗ al-kubrā, consists of VI volumes developed by Saḥnūn, the disciple of al-Imām Mālik, in the seventh century.

2. The manuscript written by Muḥamwad ibn ibrāhīm al-laḫmi, known as ibn al-rāmi the Tunisian : I would like to thank here Mr 'abd al-raḥmān al-fasi, curator of the public library of Rabat, for having kindly sent me a microfilm of this manuscript. This manuscript is entitled "kitāb al-

i'lān bi āḥkām al-bunīān"[9] (book of construction regulations) which was elaborated in the fourteenth century. What is mainly interesting about this book is that it is more practical, given the fact that ibn al-Rāmi was an expert mason working closely with Judge 'Abd al-Adafi' who requested his expertise whenever a misunderstanding arose between owners of neighboring estates. Like the manuscript of Ibn el Imām, this book evokes legal consultations based on Malikī's reasoning. Sometimes ibn al-Rāmi even quotes several texts from the manuscript of ibn al-Imam and the book of al-Ghazāli entitled " iḥīā''ulūm al-dwīn" (restoration of religious sciences) consisting of five volumes, elaborated in the twelfth century.

3. « Tabsirat el-ḥukām fi 'usūl al-aqdia wa manāhidj al- 'aḥkām ». Book of Judge Burhan al-Dedin ib rāhīm ibn Farḥūn al-Māliki, elaborated at the beginning of the 14th Century : See the last chapter entitled of this book, "Jurisprudence concerning daf' al- ḍarar (elimination of harm), pp. 334 - 364.

4. « kitāb al- jidār » (the walls book), manuscript of al- marği al- ṭaqāfi, published by Muḥamad Hai Ramaḍān īūsuf. Beirut, 1994.

5. « āḥkām al-sūq », the work of Iaḥīā ibn'umar, (market rules), manuscript developed in the 19th century.

6. « el-qisma wa 'usul al-arḍin », printed manuscript dealing with the subject of the jurisprudence of Islamic architecture, written by Abu al-Abbās bin Abi Bakr al-farastā'i, who died in 504 AH / 1110 AD, verified and edited by Shaykh Bakir bin Muhammad and Dr. Muhammad bin Saleh. Thurath Association, Garara, Algeria.

7. The manuscript "Riyadh Al Qassimeen" edited by Dr Ben-Hamouche Mustapha, "marāssid al-ḥeetan, massā'il al ḥeetan" the jurisprudence of Islamic urbanism, through the Ottoman-Algerian archives (1549-1830), that are all hanafite, elabored by Kāmi Muhammad bin Ahmed Al-Adrnawi al-ḥanafi, printed and publied in 2000, by Dār Al-Bashaer for printing and publishing. The editor reorganized the chapters of this manuscript according to the main themes, interpreted ambiguous words and translated problems written in Persian.

8. Mājālāï al-āḥkām (Journal of Judicial Judgments), elaborated in 1882 by a Committee of Ulema and Fuqahā during the Ottoman Caliphate. It is the Ottoman constitution translated and published by Young, George, - Ottoman body. Oxford, 1905, 7 volumes. The flight VI comprises the translation of the Mājālāï. We have only studied the part concerning the urban space of this body of Ottoman law. This jurisprudence has gradually developed over the centuries, often on the basis of the hadeeth " lā ḍarar wa lā ḍirar ", do not make any damage, whether you benefit from it or not. (ʿIsā ībn mūsā, known as, Ibn al-īmām, 1900.). It is not a question of proving the existence of a law of town planning adapted to the sociocultural and cultural reality of the Moslem nations[10]. It is now a question of knowing how to manipulate Islamic legal techniques, to update « āḥkām al-bunīān » and understand the stakes of their codification.

4.Results / discussion

4.1 Process and purpose of codification

The codification of judgments aimed at transforming and interlocking pluralism into an organized diversity according to new methods. The Ottoman constitution, published in 1882 in al-mājālāï al- āḥkām al-'adlīā, followed the following three stages in the codification of āḥkām:

- First of all, al-mājālaï, referred all questions of jurisprudence to jurisprudential bases (al-qawā'id al-fiqhīaï), which are 99 in number, each grouping many legal questions or āḥkām.
- Then it formed and built the jurisprudence of space based on « āḥkām al-bunīān ».
- Finally, it codified these « āḥkām » (provisions) in the form of numbered articles.

4.2 The update of the fīqh al 'ūmrān

Jurists and judges relied, in their dealing with issues of urbanization and the rulings on architecture in the Islamic city, on three sources of sharī'ah : « al-qias », « el-'urf », and « el-istishāb » (Khalil R., 2006)

As for the editor of, al-wancharissi,

(9) This manuscript has already been used by scholars, after Robert Brunswick: Al-Hadlul S. A., 1994. - Bassim al-Hakim, 2015. - Jamil A. A., 2020 - Muhammad A. O., 1988. And when a copy of the manuscript came to me from the city of Rabat in the form of a microfilm while I was studying in Paris in 1985, I did not know that a copy of the manuscript was also in the National Library in Algiers.

(10) This has been widely proven in my previous research, based primarily on manuscripts first analyzed by R. Brunswick in 1947 and by myself in 1985, and other researchers.

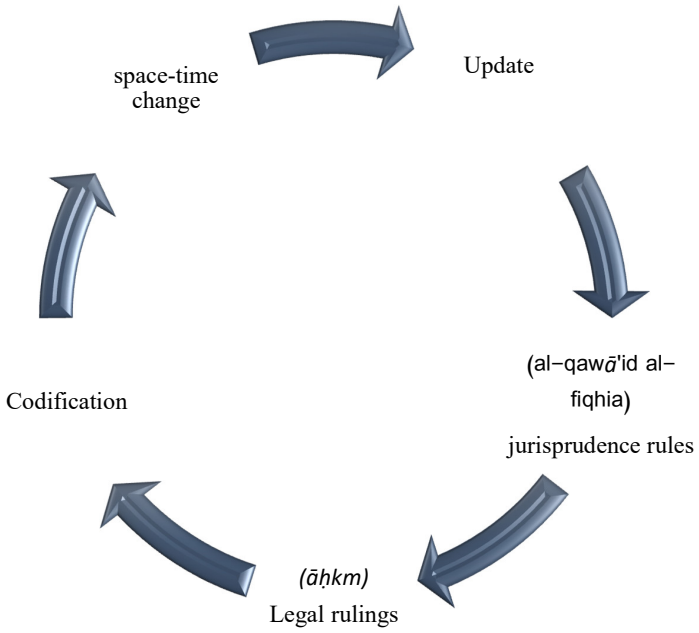

Figure (2). The cyclical process of codification. Source author

Muhammad Hajji, (1981), when he talked about a number of construction provisions in the countries of the Islamic Maghreb, he called it « nawāzil mina ḍarari wa el- bunīān » (the calamities of harm and the built areas" (the eighth part, p. 435). We see that he used the word "nāwāzil" referring to « fiqh el- nāwāzil » (the jurisprudence of calamities). So, the issue of updating « āḥkām » rules in general requires the practice of ijtihad to update them.

The process of codifying the provisions of the old structures requires, above all, updating them so that they are capable of dealing with modern urban issues.

After the update, we are building a set of numbered articles drawn from these provisions. In order to avoid the risk of obsolescence of the codified article, it must be updated as often as necessary. Figure 2 summarizes the cyclical process of notation.

We must specify, among the 99 above-mentioned rules, those which appeared most often during building the jurisprudence of urbanism. In fact, the formation of these rules is considered the first codification of jurisprudence on the basis of the purposes of Sharia. Each of these rules allowed the jurists to issue several rulings related to several issues, especially those related to building and city planning provisions. Moreover, the compilation of al- mājālaẗ, was not possible, except thanks to the existence of this first codification or this set of rules, which are the origins of jurisprudence « uṣūl al- fiqh », from which muslim jurists produced many studies and researches (Abdul Rahman F. A, 1996). For this reason, the journal devoted its entire introduction to these 99 articles, which are in fact just a umeration of these rules that produce jurisprudence. These construction rules are scattered in the books of fiqh in general[(11)], and especially compiled in some manuscripts elaborated especially in the field of neighborhood law. (al-Marği T., « kitāb al- hitān », (the wall book); 354 h. - Ibn al- Rāmi, "kitāb al-i'lān bi āḥkām al-bunīān (book of declaration the provisions of the building,1333.)

Among these rules, we mention a rule that jurists used many times in issuing building rulings,

(11) Almost all of « ahkam el-bunian « the rulings of built» are found in the books of fiqh (jurisprudence). But it is scattered between the chapters of joint ownership, neighbor rights, property rights, and sometimes also between « awkaf rules » and « ahkam chouf›a » (preemption). al mūdāwwānāẗ al- kūbrā, ofal- īmām mālīk, , devoted an entire chapter to «Rules of Neighborhood and Common Ownership». See also, Kitāb al- saī l al-jarār, Tab ṣiraẗ al-ḥukām. Studies related to Hisba and legitimate politics, are integrated with each other with jurisprudential works to provide us with a complete idea of the method adopted in the production and management of urban space with laws derived from Islamic Sharia.

Table (2). Codification of the legal rules (al-qawā'id) adopted in the jurisprudence of urbanism. Source: The author, through the information provided in " majalat el- āḥkām al-'adlīya"

N° article	Jurisprudence rule	The meaning
Article 2	Intentions are the most important thing	It means that the ruling that results from an order is based on what is intended by that order.
Article 5	The original is what it was	
Article 6	Old thing	The old leaves on his feet
Article 7	Old damage	The damage is not old.
Article 10	A ruling that is proven by time	What proves over time rules to remain unless there is evidence to the contrary. If it is proven at a time when someone owns something, he judges that the king remains as long as there is nothing to remove him
Article 11	Add incident	The original is to add the accident to its nearest time, means that if the difference occurred in the cause and time of occurrence of a matter that is attributed to the times closest to the case Unless its lineage has been established for a long time.
Article 19	Harm	No harm, no harm
Article 20	The damage is still	The damage is still
Article 25	The damage is still the same	The damage is still the same
Article 26	Special damage (Encroachment on the public road)	bear your own damage to pay general damage
Article 27	Remove the most damage	Remove the most damage with the lightest damage

and the fūqāhā' (jurists) call it the golden rule, which is " lā ḍarar wa lā ḍirar" "no harm, no harm" derived directly from the well-known noble hadith of the Prophet: "do not do damage, whether you benefit or not».

Al- mājālaï, mentions this rule in Article 22. In the version evoked by Ibn er-Rami, this hadeeth would have been followed by: "...and do not harm yourself and do not harm others."

It is very useful to have a closer look at this hadeeth. 'Isā ibn Mūs reports that Muḥamad ' abd al- salām, explained al- ḍarar, by the act of the one who does wrong to others, with the intention of doing good to himself. Whereas the " dhirar " is the act based on an intention to harm others without profit for oneself (al-Rāmi, 1333) These two explanations have been permuted in Barbier's translation of Ibn al-Imam's work, (Barbier, 1900).

However, what justifies and strengthens the explanation of Ibn al- Rāmi is that it is based on the Qur'anic aya (verse): « And [there are] those [hypocrites] who took for themselves a mosque for causing harm (ḍirār) and disbelief and division among the believers and as a station for whoever had warred against Allah and His Messenger before… »[(12)], al-ḍarar mentioned here was interpreted by Dr. Hamīdullah as " a harmful rival ".In both cases, the the Prophet (peace be upon him) advised us to avoid both verbs.

The meaning of harm (al- ḍarar) in al- Muwāṭi, one of the students of Malik bin Anas, stated that one of them harms his neighbor, and harm (al-ḍirār) is that each

(12) Verse 107 of Surah At-Tawbah

of the two neighbors harms the other. In this sense, the harm, according to him, is mutual harm (Ibn Farḥūn, 799 h.).

The Prophet forbade all this. Ibn al-rāmi classifies al- ḍarar acts into two categories:

- al- ḍarar al- qadīm (former prejudice)
- al- ḍarar al- ḥadīṯ (new prejudice)

If al- ḍarar exists before the discomfort is felt by the neighbor, he can no longer protest against the other. But if it is this new al- ḍarar that caused the inconvenience, the owner is obliged to suppress it whatever the period since its installation. Ignoring the type of al-ḍarar, old or new, it is considered old until the establishment of a concrete proof of being recent[(13)].

Examples of alḍarar: smoke bathhouse, ovens, the smell caused by tanneries and other similar sources of damage to neighbor, (Ibn Farḥūn, 799 h.). However, to define something as being a real ḍarar (excessive or abnormal damage) to the neighbor, is not always obvious. Again we must rely on al-'urf (customs), practiced in the urban space in question[14].

4.3 The reciprocal influence between al-Mājālāt and the civil Code

The French civil code that influenced almost all of Europe (Martin Xavier,2004) and a part of the countries of Latin America, was developed under the reign of Napoleon in 1802. It inspired Belgium,

(13) According to the disciple ibn al- qāsim, reported by ibn farḥūn al- māliki

(14) The jurisṫs have used this rule a lot in bringing down the rulings on the ṡtructure. We will explain this with examples in the section dealing with the rights of neighbors.

the Netherlands, Netherlands Code of 1838) Italy, Italian Code of 1868), Spain and Portugal, and later, Greece, Bolivia and Egypt. In the United States, the State of Louisiana used the Code of Napoleon as a basic source of its own code. In 1960, more than seventy different states had modeled their own laws on the Civil Code (Martin Xavier,2004).

As for the Islamic jurisprudence, the first codification was only elaborated in 1882, during the Ottoman period, i.e., eighty years after the elaboration of the French code. Despite the long period of time between the two codes, there are several similarities in the area of neighborhood rules, including those governing the "common wall".

Al- mājālāt, is the first attempt to codify « el-āḥkām». It consists of sixteen volumes. Elaborated by the Ottoman government in 1882, just before the Westernization of its right, it is strongly based on the Hanafi School. We consulted the section on construction and town planning. This part groups the articles of the n° 1192 to the n° 1233. It is entitled: "Part three: chapter dealing with issues relating to walls and neighbors."

First, the very form of this title curiously reminds us of the titles that we met in the manuscript of ibn al-Rāmi and that, of al marği al ṯaqāfi, kitāb al jidār (the walls book), manuscript published by muḥamawd Hai Ramaḍān īūsuf. Beirut, 1994.

By comparing al- mājālāt to these manuscripts, one realizes that the articles mentioned above often reproduce textually the fatwas mentioned in these manuscripts. It can be said then, that al- mājālāt presents « ahkam el bunian » in the form of codes. Although most of these manuscripts are related to the Maliki jurisprudence, with the exception of the manuscript "Riyad al-Qassimin", they were a strong source of inspiration for the Ottoman constitution, which is based on the Hanafi School. Chronologically, the French Civil Code cannot in any way be inspired by the journal, because mājālāt was issued 80 years later. Moreover, we know very well that before Ottoman law was formulated in its Western form (westernization of law), the source of codification that came in the Majalla was directly from Sharia through ḥanafi fiqh (ḥanafi jurisprudence)[15]. Thus, it cannot be recognized that what the mājālāt came up with was inspired by Napoleon's civil law. We are told that this notation was strongly inspired by the Roman law, which was developed around 450 BC. (Carbasse, J. M., 1998)

However, when we look at the twelve tables of Roman law (Marcel Le Glay, 1977), we find only a small number of articles relating to the law of adjacent buildings, compared to the number and form of those mentioned in Napoleon's Civil Code. The Roman tables that enter into construction and urbanization are:

Six tables relating to property

Table VI, properties: « Cum nexum faciet mancipiumque, uti lingua nuncupassit, ita ius esto. Satis esset ea praestari, quae essent lingua nuncupata, quae qui infitiatus esset, dupli poenam subiret, a iuris consultis etiam reticentiae poena est constituta. Usus auctoritas fundi biennium est, ceterarum rerum omnium annuus est usus tignum iunctum aedibus vineave sei concapit ne solvito ».

Translation. "When one makes (nexum) form of guarantee or mancipium, and one declares it orally, the right is given. It is enough to provide what has been formally declared, and whoever has deceived it is sentenced to double punishment. The usurapion of movable property is done by year, that of houses by two years. No one shall remove beams from buildings or vineyards of others. "

Table VII, real estate: « viae latitudoin porrectum octo pedes habet, in anfractum, id est ubi flexum est, sedecim. Amsegetes vias muniunto : donicum lapides sunt: ni munierint, qua volent jumenta agito. si aqua pluvia nocet iubetur ex arbitrio coerceri. Si per publicum locum rivus aquae ductus privato nocebit, erit actio privato, ut noxa domino sarciatur. ut XV pedes altius rami arboris circumcidantur. si arbor ex vicini fundo vento inclinata in tuum fundum est, de adimenda ea recte agere potes. ut glandem in alienum fundum procidentem liceret colligere. »

Translation. "The width of the path must be eight feet in a straight line and sixteen in turns. The private roads are lined with stones (by their owner), otherwise, by default, the others can get the animals where they want. If rainwater from another property causes damage to an owner, the owner may appeal to a judge".

"If a stream passing through a public place forms an aqueduct and harms an individual, the latter hasshall have an action to ensure the repair of the damage so caused. That trees shall be pruned up to 15 feet. If a gnarled tree leans from the neighboring property to yours, you shall have an action to bring it down. One may pick up the glans fallen on the property of others. "

(15) Compare the text of al māğālāt manuscripts dealing contents Islamic jurisprudence relating to space.

It was only these two tables that governed the space in Roman times, or at least what has come to us through historical research so far. What were then, the legal sources of the civil code, was used as a basis for the construction of twenty-two articles [16]relating to neighborhood law. What is curiously remarkable is that these items are very similar to the fatwas that we found in the manuscripts of Ibn Rami and those, of al-Marği al Taqāfi.

Let us have a look at the following example: The fatwā reported by ibn al-Rāmi, in 1333 after. JC : "Neither partner has the right, without the consent of the other, to establish anything on the wall that can prevent him from doing the same later; but each of them, may, without the consent of the other, establish anything that would not interfere with the latter, if he would one day put as much on the wall, like a roof, a beam for example. "

Article 622 of the Civil Code of Napoleon in 1802):

"One of the neighbors may not practice in the body of a common wall any depression, nor apply or support any work without the consent of the other, or without having, at its refusal, made by expert regulation the necessary means so that the new work is not harmful to the rights of the other. "

Article 1210 of al- Mājālāt in 1882:

"One of the two neighbors may not elevate the undivided wall without the consent of the other, as he may not build anything on that wall, whether it is harmful or not. But if one of them, wants to hang trunks to build a room on land adjacent to the wall, his neighbor may not prevent it. But it must not exceed half of the total number of trunks that can support the wall. And if they have already hung beams in equal numbers on both sides, and one of them wants to add, the other shall have the right to ban it. "The striking similarity of the fatwa reported by ibn al-Rāmi and the Civil Code of Napoleon and al- mājālāt are noted. We can even confirm that it is a simple translation. What has led us to make this comparison is the negligence, by many legal scholars, of the legal contribution of the Islamic civilization, which lasted for more than 13 centuries. This period is between the fall of Roman and Persian civilizations and the emergence of the current Western civilization. Can we easily admit that there is a break between human civilizations during any period ?

Valid arguments continued to confirm that the sources of the Civil Code of Napoleon were inspired by Roman law, neglecting thereby a period of thirteen centuries of Muslim civilization, as if this civilization had not contributed anything to legal matters. This prompts us to ask more than one question[(17)]: One might also wonder whether there were no Western translators who preceded R. Brunschvicg, 1947 in the discovery of the manuscript of as ibn al-Rāmi. All we know so far, about the issue is that, during Napoleon Bonaparte's 1798 expedition to Egypt, that is, just four years before the promulgation of the Civil Code in 1802, he had brought with him a commission of scholars from all disciplines to study and translate the oriental manuscripts, which allowed him to develop a monumental work " The description of Egypt ", (Alire R. D., 1809) which is not our concern here[(18)]. Our concern here is to know exactly who has thought about what ; and to establish the guiding thread of the evolution of the law, since the appearance of the very first legal rules of Hammurabi, until the contemporary era.

4.4 Example of codification: the right of neighborhood.

Al Mājālāt mentioned several articles governing the right neighborhood. These articles are based on ahkam (rules) taken directly from the fiqh books, which usually mention these ahkam under the chapter titled al- ḥiṭān (walls). Other fiqh literature (Ibn Farhūn, died: 799) specialized in the judiciary deals (al- qaḍā '), dealt with these questions in chapters entitled ""what is lawful and what is forbidden"

As an example, let us quote the two following articles:

Article 1192 of al- Mājālāt stipulates the following: "Any owner may dispose of his property as he wishes. Nevertheless the freedom of enjoyment must be restricted, when it affects the rights of the neighbor ..." ((Mājālāt al- āḥkām al-'adlīā, 1882).

This article is the codification of the hukm

(16) See the 22 articles of the civil code, from n ° 653 to n ° 673

(17) It would be desirable for this question to be further clarified by legal scholars.

(١٨) The Collection of Observations and Researches Made in Egypt During the Campaign of the French Army, published on the orders of Emperor Napoleon, is a monumental work, from Bonaparte›s Egyptian campaign.

mentioned in the manuscript of Īsā ībn mūsā :

"Any proprietor may enjoy his property as he sees fit, raise it, sell his share, etc., provided that he does not harm his neighbor. In any case, he is the guarantor of everything that happens to his neighbor, by his actions », (Isā ībn Mūsā, kitāb al-jidār.- elaborated in 996).

Article 1195: « No corbelling or appendage shall clear the boundary of the neighboring house. Anything that exceeds must be demolished ". In sum, 'al- mājālāt groups together the right of neighborhood in 17 articles from n° 1198 to 1212 under the title fi Haq al-mu' āmalāt al jiwārīaẗ (right of use between neighbors).

5.5 Neighborhood law codes during the Ottoman times

1. No one shall not elevate his construction to the point that it damages his neighbor.

2. It is forbidden to overhang the neighbor's house if it causes him harm. The prohibition shall be limited to the removal of the injury.

3. The establishment of excavations causing unacceptable harm to the neighbor's house is prohibited. However the harm to lesser effect or habitual is tolerated.

4. No one may enjoy his property until it affects the enjoyment of his neighbor's property. He must cut the tree limbs that protrude or retain them with tie rods, or do corbellings on the neighbor's property only after his consent.

5. We are responsible for water and fire damage in two cases:

a. Provocation, neglect and unusual behavior,

b. With the certainty that it spreads to neighboring properties.But if we use water and fire according to habits and customs, we are not responsible for the damage done to neighbors.

6. If a wall or building threatens ruins and leans over the neighbor's house or public road, its owner is responsible for any damage that may occur, warned or not. This fatwa was crystallized in a consensus of fūqāhā ' on the issue.

7. It is possible to hang beams on the common wall in proportion to the indivision, to allow the neighbor to hang his beams in case of need. But if the wall belongs entirely to the neighbor, one must first ask permission.

8. The passage of water channels in the neighbor's property is tolerated if it does not cause harm to the neighbor. This one may change the flow bed only after agreement of its neighbor.

9. If the ground floor collapses, its owner is obliged to rebuild it to allow the owner of the 1st to rebuild his floor. If he abstains, the cadi authorizes that of the 1st to rebuild the frame of the ground floor and the first floor. But it does not allow the owner of the ground floor to enjoy his property after payment of the costs of the construction of the ground floor.

10. However, if the first floor collapses and causes the demolition of part of the ground floor or its roof, its owner is not required to rebuild it or repair the damage to the ground floor.

11. If two neighbors claim an old right of enjoyment, we must return to initial state. Seniority of enjoyment is considered as proof of the legality of the right. The impasse is a private property belonging to all residents with doors open on it.

12. If people who do not live in impasse want to enjoy it by the passage or the opening of windows and doors, they may do it only after the consent of all the inhabitants of the so-called impasse.

13. The inhabitants of the impasse may move their doors or drill others, as long as they do not harm the inhabitants of the impasse. Finally, let us point out that all these fatwas had the legal basis of custom. They are therefore not eternally valid. What remains unchangeable are the general rules of fiqh.

5.Conclusion

The issue of transcribing aḥkām (rulings from fatwās), has its advantages and disadvantages, as previously mentioned. If we want to benefit from the positives without exposing the negatives, the judiciary must update them whenever necessary. Thus, we benefit from a fair law that is ready to be applied, while maintaining the appropriate flexibility for the spatial and temporal circumstances and the specificity of the issues treated.

Throughout the Islamic history, legal rulings in general and aḥkām el-buniān, in particular were not codified until the end of the nineteenth century when the Ottoman State, codified legal rulings for the first time. It also drafted the jurisprudence rules from which rulings « al-aḥkām shar'ia » are derived in the form of numbered articles, in the manner of the French Civil Code. We have explained that the legal rulings (aḥkām sharī'ah) come in the fourth level in the levels of the Islamic legislation, after the " maqāssid" purposes, " el-'usūl" the principles

and "al-qawā'id" the rules, which remain fixed through the times, proof of the tolerant Islamic sharī'ah:« …. like a good tree, its roots are firm and its branches are in the heaven(19). Therefore, " āḥkām " and the issue of "codification" are not necessarily contradictory concepts. The flexibility of " āḥkām al-bunīān " and the differing opinions of jurists on one issue in the same madhhab (School of Jurisprudence) resulted in a variety of Islamic palaces and cities with different shapes. Squares and common spaces are negotiated and shaped according to social evolution, which manifested its imprint in architecture. " āḥkām al-bunīān " Philosophy precedes and gives priority to the social dimension over the morphological dimension of the city, in contrast to the philosophy of western urbanization. The philosopher al-Farābi sees the virtues of the city through its inhabitants before its shape and morphological organization (al-Farabi, 9th century.)

In the Islamic concept, it is the city that serves the community and not the other way around. In order to maintain this philosophy, it is necessary to resort to codification because it is regulatory, however, this should be done with caution so as not to apply it in cases that require its updating.

Many manuscripts dealt with the provisions of architecture. It is necessary to make use of them, however, the provisions that were mentioned should not be used as they are, because the nature of urbanization has changed in form and functions ; and they are no longer the same as those treated by these manuscripts. In our view, the utilization of this legal inheritance, must be by learning the legal methods that were practiced by jurists, experts and judges, to download and derive rulings from universals, principles and rules, taking into account the purposes. Moreover, this scholarly contribution revealed the existence of a mutual influence between the Ottoman constitution in its form and the French Civil Law. In terms of content, especially concerning the right of adjoining properties, it is French Civil Llaw which has been influenced by ahkam el-bunian in the medinas.

This result requires us, in the future, to study some articles, such as the pre-emption system, neighborly rights and easement rights that did not exist before the Bonaparte's campaign. This result obliges us in the future to study certain themes, such as the right of pre-emption, the right of neighborhood and the rights of easements which did not exist before the Bonaparte's campaign against Egypt to compare and confirm the quotations the French Civil Code from the Islamic manuscripts.

(19) Verse 24 of Surah Ibrahim

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doi:

أحكام البنيان ورهانات تدوينها

عبد المالك حسين

قسم العمارة كلية التكنولوجيا
جامعة طاهري محمد. بشار. الجزائر

abdelmalek.houcine@hotmail.fr

جديد عبد القادر

قسم العمارة كلية التكنولوجيا
جامعة أبوبكر بلقائد. تلمسان. الجزائر

a_djedid@yahoo.fr

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ملخص البحث. مسألة تدوين (codification) الأحكام المنزلة من الفتاوى لا تزال موضوع جدال بين معارض ومؤيد. الفتوى هي الإخبار بالحكم الشرعي دون الإلزام به. الحكم المستنبط يمكن أن يكون مختلفاً حول القضية نفسها، وفقاً لكل مذهب من المذاهب الإسلامية، بل مختلفاً في بعض الأحيان داخل المذهب نفسه. كما أن الأحكام تتغير حسب الظروف الزمنية والمكانية وكذلك خصوصية القضية، وهو ما يترتب عنه عدد غير متناهٍ من الإجابات القابلة للتغيير حسب الظروف. فيما يتعلق بالبنيان، هذه الاختلافات توفر للمجتمع الحضري والجيران، ممارسة مساحة حرة يمكن توجيهها بسهولة وفقاً للمصالح الاجتماعية والاقتصادية. يتم التفاوض على الفضاء وتشكيله وفقاً لمقاصد الشريعة من جهة والتطور الاجتماعي من جهة أخرى. هذه الورقة تبحث في رهانات تدوين أحكام البنيان: إمكانية الاستفادة من إيجابياته وعدم التعرض لسلبياته. كما يبحث في قضية تحيينه وانعكاسه على إدارة البنيان، وإنتاج الأنماط العمرانية. السؤال المطروح هو: لماذا، لم يسبق في التاريخ الإسلامي أن دونت الأحكام المنزلة من الفتاوى؟ في أواخر القرن التاسع عشر، أثر القانون المدني الفرنسي (french civil code)، على الدولة العثمانية، فدونت القواعد الفقهية والأحكام بعامة، وأحكام البنيان بخاصة.

الكلمات المفتاحية: الفتوى، الحكم، التدوين، الصلابة، المرونة، القانون المدني، مجلة الأحكام العدلية العثمانية.