THOMAS LEISTEN

BETWEEN ORTHODOXY AND EXEGESIS:
SOME ASPECTS OF ATTITUDES IN THE SHARI'AH
TOWARD FUNERARY ARCHITECTURE

It has long been an accepted notion in Islamic art history that funerary architecture was a rather late development in Muslim building and that it did not come into wide use before the ninth century. K. A. C. Creswell supported this idea by claiming that the Arabs showed no interest in commemorating the dead with built structures both during the *jāhiliyya* and after they had accepted Islam.¹ At most they piled stones up over the dead; more commonly they covered them with earth and left them to oblivion. Creswell argued that the Prophet had discouraged any tendencies toward constructing funerary monuments by prohibiting them from the outset. According to him, this prohibition was observed until the Qubbat al-Sulaibiyya was built in Samarra; it violated the rule of *tawziyat al-qubūr*, or leveling to the ground of all tombs, for the first time.²

In fact, however, Islamic funerary architecture was from the beginning of Islam subject to dispute and opposition. Even if today art historians categorize funerary structures as “religious” buildings,³ that should not detract from the fact that a substantial group of Muslim religious texts, including hadith, commentaries, and pious tracts, regard them as distinctly unreligious, pagan, and anti-Islamic, and one ought not to consider funerary architecture without bearing this in mind. The insistence with which this disapproval was expounded in the collections of the hadith of the third century after the hijra, and later in the high Middle Ages, in opposition to the spreading and flourishing cult of saints that centered on their tombs shows how much those who regarded themselves as guardians of the undiluted Islamic creed resisted the construction of buildings over tombs and rituals at gravesites.

Measures dealing with funerary building, whether instructive or prohibitive, cannot, however, have been inspired only — to go back to Creswell’s thesis — by a concern that hitherto unknown funeral customs would develop among the Arabs. The prohibitions were rather a reaction to an already existing and widely practiced cult of the dead in the Arab peninsula that had been found objectionable. The abolition of a great number of pre-Islamic funeral customs by the Prophet, as reported in the hadith collections, had apparently not been sufficiently effective, and the discrepancy between traditional observances and the new religious rules was noticeable. Attempts to bridge this gap and either to change pre-Islamic funeral customs into Islamic sunna or to eliminate them completely can be detected in hadith in often contradictory rules — for example, hadith both favoring and prohibiting visiting tombs or performing prayers at graves and in cemeteries — that tended to cancel each other out. Even questions regarding the details of the cult of the dead clearly reaching back to *jāhiliyya* times — libations, blood sacrifice on the grave, and attaching palm fronds to the grave — were touched on and the first and the last were finally approved as properly Islamic in the sunna of the Prophet himself.⁴

The construction of funerary architecture therefore represents not only a special problem in the architectural history of the Muslim Middle East, but also touches on a whole array of questions concerning burial and the permissibility of treating a tomb in special ways, among them marking and indicating them with architectural structures, and reconciling those practices with the creed. In the course of this short study, the notion that Islam had a completely negative attitude toward funerary architecture will be more closely examined. Arguments drawn partly from theology, partly from jurisprudence, both of which had to interpret and to enforce the law based on the hadith, will show whether the prohibition against building over tombs in early Islamic times was purely preventive in a general way, or whether it aimed at suppressing particular forms of veneration of the dead and particular built structures. Through such an inquiry one can perhaps discover why funerary buildings represent such a problematic form of architecture for Islam, being, on the one hand, interdicted by
the Prophet himself and, on the other, enjoying great popularity, especially in certain periods.

Collecting a sufficient number of relevant sources on the subject turns out to be more difficult than one might expect. In Islamic literature up to the thirteenth century, descriptions of funerary architecture and its position in Islamic law were of secondary interest. Neither geographers nor historians nor theologians nor jurists appear to have been sufficiently familiar with that particular set of questions to have been drawn into a detailed discussion of them. The easiest to approach, and for that reason the only sources consulted by Western scholars, are the canonical hadith collections of the ninth and tenth century. Their consistent rejection of any kind of building over tombs was what provided the apparently satisfactory explanation for the lack of mausolea in the early Islamic period and was the source for the belief that Islam strictly rejected funerary architecture. Not included in that research were the law compendia and the commentaries on the hadith from the tenth and eleventh century, nor the debates about mausolea and visits to cemeteries in the twelfth and thirteenth set forth by the Syrian Hanbalites Ibn Taimiyya (d. 1328) and his pupil Ibn Qayyim al-Jauziyya (d. 1350) that arose when the pompous and monumental tombs of the last Ayyubids and the first Mamluks in Aleppo, Damascus, and especially Cairo eclipsed — no doubt to the annoyance of many — the mosques, madrasas, and mansions of the city. Wherever cemeteries began to turn into proper cities of the dead, the question of the compatibility of funerary structures with the creed was generally debated.

The arguments for and against the compatibility with Islamic principles and the legality of mausolea and the veneration of tombs were supplied by theologians and jurists. They began by looking to the past for statements or sunna of the ancestors (salafl) on which they could build a decision. There the first thing that strikes one is that their arguments do not center on whether the hadiths concerned were genuine or the insâds (line of transmitters) authentic, but on the views of Malik, Shafi′i, Ibn Hanbal, and Abu Hanifa, whose teachings became the basis for the four madhâhib. An explanation might be that except for the Shi′ites, the greater part of medieval fuqaha and ulema were connected with one of the four schools. Nevertheless if one compares the early law compendia, the first writings reflecting the hadith, such as Shaibani′s Kitâb al-Āthār, Sahun′s al-Mudawwana al-kubra, and Shafi′i′s Kitâb al-Umûm with commentaries on law from the eleventh to the thirteenth century, a confused picture emerges in which the statements of the various generations of jurists do not always agree. Apparently the law was flexible enough to allow perfectly lawful decisions handed down by fuqaha or qadis to diverge from the guiding rule of the hadith. From that some observations can be made which allow us to give a more precise picture of the treatment of these prohibitions in actual practice.

THE INTERDICKTIONS AGAINST TOMBS IN THE HADITH

Islam′s disapproval of tomb building arose mainly from efforts to separate graves from places of worship and to stop the practice of praying at the grave site. Religious rules with that purpose appear in all hadith collections and are regularly found in chapters entitled "jumalā or "tâbi′in, the companions of the Prophet and their followers of the first two Muslim generations.

Among this set of instructions are the following prohibitions against the cult of the dead and the veneration of tombs:

a) an interdiction against praying in cemeteries and especially by graves;

b) an interdiction against visiting graves and sitting next to them (an interdiction leveled almost exclusively against women);

c) an interdiction against making sacrifices on graves;

d) an interdiction against marking a grave or attaching an inscription to it.

They also include the following rules against building on grave sites:

e) an interdiction against the use of lime mortar (jîss) and brick (ajurr) both inside and on top of the grave and against coating the outside of the grave with clay (tîn);

f) an interdiction against erecting tents over graves;

g) a general interdiction against erecting a building or constructing places of worship (masajid) over graves. This is also aimed against burials in buildings, especially houses, that existed before the burial took place, as well as new constructions.
Finally the instructions aimed at ensuring observance of these interdictions are:

h) an order to destroy the graves and tombs of the unbelievers of the jāhiliyya;[22]

i) a more general order to level all tombs to the ground (taswiya't al-qubūr).[23]

Such a detailed and extensive catalogue of prohibitions and instructions concerning the cult of tombs and the erecting of structures above them must be understood — contrary to Creswell’s thesis — as representing a complete list of pre- and early Islamic funeral customs that were actually practiced, and not merely as an abstract set of preventive measures. Interdictions of this kind must have been conceived by Muslims as proscribing ancient traditions practiced by their predecessors who had established a cult of ancestors and practiced veneration of the dead.[24] Only actual practice can explain why the prohibition of visiting graves and praying at them could not be enforced, and was violated — if tradition is to be believed — even by such authorities as Malik b. Anas (d. 796).[25]

The reason for breaking with these ancient customs in Islamic times was that performing prayer at, or facing toward, a grave was considered by strict believers to border on polytheism (shirk), and it therefore violated the principle of the unity of God, the tauhid. In later times the Hanbali Ibn Qudama al-Maqdisi (d. 1223) formulated that attitude in these words: “The special treatment (takhsis) of graves by praying by them is similar to the veneration of idols (asnām) by prostrating (sujūd) oneself before them and wishing to draw near them. We have already mentioned that the beginning of idolatry was the veneration of the dead . . . .”[26]

The prohibition against erecting structures over a tomb (rule g above) has been the basis for alleging a negative attitude by Islam toward tomb structures and mausolea. Summarized in the works on tradition under the collective rubric al-binā ‘alā l-qubūr (i.e., “building on graves”),[27] it occurs together with the interdictions against tafsīr (treating the tomb with lime mortar), tayyin (covering the tomb with clay), and kitāba (inscribing tombs).[28] Nowhere, however, is this building prohibition explained, nor does it refer to a particular type of architecture. We do not know with certainty, for example, whether tomb structures such as the domed mausoleum did or did not originally come within the terms of such an interdiction. The contemporary references mentioning only mortar and bricks seem rather to indicate that they were talking about simple enclosing structures of stone or brick or of cenotaphs in brick.[29] Only in later commentaries on hadith collections can more precise references to the kinds of tomb structures that were disapproved of be found, that is, structures referred to as interdicted by the Prophet and at the same time known to be in the repertory of medieval Islamic tomb architecture.[30]

Although direct references to this group of the Prophet’s sayings are not unknown, they do not belong to the hadiths transmitted by all collectors right from the beginning. In the largest canonical collection of hadith, that of al-Bukhari, they are completely missing; the five other collections as a rule transmit the group via one single isnād. Only the Musnad of Ibn Hanbal contains three separate lines of tradition. The early collections of the Shi‘a do not mention the prohibitions against building over tombs at all. Only the late compilation of al-Hurr al-‘Amili (d. 1650) contains the hadith in its common form, but traced back as usual to one of the imams (in this case, ‘Ali al-Rida).

Of the three main lines of transmission that can be distinguished, only one was probably involved in the wider circulation of the hadith concerned. Ibn Maja (1:498) and Ibn Hanbal (6:299) are based on two isolated lines of transmission whose individual members — often difficult to identify — came from Iraq, Syria, and Egypt, but traditions from these regions are in the case of this hadith exceptions to the rule.[31] It was mainly transmitted from the Iraqi cities of Basra, Kufa, and, later on, Baghdad. In the case of the prohibition against building over tombs, the tradition that was handed down by the Prophet’s companion Jabir b. ‘Abd Allah was preferred over all others. Ibn Hanbal incorporated it in his Musnad from Basri and Baghdadi transmitters.[32] The key person for the circulation of this hadith, however, remains the Basri Ibn Juraij (d. 767) in the beginning of the Abbasid period. Not until then, i.e., fairly late, did his tradition become the basis for a many-stranded transmission of the hadith by men from Kufa and Baghdad, ending in the collections of Ibn Hanbal (3:299),[33] Abu Dawud,[34] Muslim,[35] Tirmidhi,[36] and finally Nasa‘i[37] (see fig. 1).

THE ARGUMENTS AGAINST FUNERARY ARCHITECTURE

It is striking that apparently no one felt a need to formulate theological arguments against funerary architecture. The well-known eschatological images of paradise or hellfire as the last abode of the soul are only rarely introduced into the discussion as an argument for
the futility of building a habitation, a *domus aeterna* or *domus animae*, for the soul of the dead. Rather the opponents of funerary architecture adduced their reasons against it from the form and features of buildings associated with tombs. In the popular mind in all times the idea persisted that the dead were mentally and physically actually present in the grave, untouched by death. This led to the notion that buildings on top of, or structures inside, the grave could be a bad influence on, or even cause physical pain to, the corpse. The disapproval of funerary structures sometimes took the form of an aversion to particular building materials such as lime mortar, brick, and clay. Covering a tomb with brick and lime-mortar structures was regarded as a manifestation of worldly vanity (*zinat al-dunya*) for which the dead man on his passage to the other world had no use and was not suited. It was felt to be inappropriate to make tombs both obvious and durable through the use of bricks and mortar. Both contradicted the principle of *taswiyat al-qubur*. It was much more important, however, not to expose the dead inside the tomb to lime and brick or to seal the *lahd*, the charnel vault and the lateral niche, with those materials, because lime and brick had been in contact with fire, and it was believed
that they could dry out the grave, a belief also derived from the Prophet’s sunna: “The Prophet attached a palm frond to two graves and said, ‘Perhaps this might help against the desiccation of both of them.’ Therefore they [sc. the theologians] thought that what had been touched by fire would accelerate the desiccation of the grave by sun and air."

The rejection of fired brick and lime thus finds its explanation in the idea of the grave as a place without coolness or shade, a common belief in ancient Mesopotamia and pre-Islamic Arabia that was taken over by Islam. It was believed that the soul of the dead would suffer thirst in the grave and be in need both of libations of water and of the coolness of shadow. In Islamic times, the idea of the adhāb al-qabr, a punishment that could be inflicted on the dead in the grave for lesser sins, might have been combined with it. The association of bricks and lime made in fire (al-nār) with the hellfire (al-nār) that threatened to burn the dead in his grave apparently added to their aversion to those two materials. Concern for the welfare of the dead was also what led to the argument over coating the outside of the tomb with clay. People were afraid that the dead would not be able to hear the call to prayer (adhan) or to perform the prayer. Behind this fear lay the common belief that the dead were able to hear and understand the voices of the living. The prohibition against covering a tomb with clay can be traced back, just as in the case of bricks and mortar, to the highest authority, the sunna of the Prophet. Ibn Sirin (d. 728) is reported to have avoided its use, and the prohibition against tatāyin can still be found in Ibn Quḍāma, who refers to Ibn Hanbal. This is remarkable when one considers that both al-Shafi’i and Hasan al-Basri allowed tatāyin al-qabr and obviously placed no special significance on the hadith. In the same vein funeral structures were thought to pose a threat to the intact body, a heavy burden lying on the corpse, crushing and oppressing it by its weight. It was because of this, according to the fuqaha, that the Prophet ordered the leveling of all tombs to the ground to alleviate the corpse’s suffering.

The last argument against building over graves was that it had its origins in pagan pre-Islamic or non-Islamic custom, for obviously those roots were known: “The objection [to funeral buildings] consists in its imitating the unbelievers (al-kuffār) among the ahl al-kitāb and the polytheists (al-mushrikūn) among the ahl al-jāhilīyya, because they covered the tomb with panels of marble or built over it. The shari‘a, however bases many of its instructions on its opposition to unbelievers and polytheists.”

**ATTITUDES TOWARD TOMB STRUCTURES IN THEOLOGY AND JURISPRUDENCE**

When one turns to the writings of Islamic theologians and jurists one finds a very different picture. To determine the role in everyday life played by prohibitions based on the hadith of the Prophet, particularly those incorporated into legal practice, it is useful to cite Goldziher’s comment that the hadith were held in greater esteem by the Muslims of the first generations after Muhammad’s death than by the later fiqh generations. Perhaps the need to reconcile religious requirements with the reality of funeral customs led to the decision by Sunni and Shi‘ite theologians and jurists not to stigmatize funerary architecture out of hand as harām. Instead structures over tombs were classified as makrūh (objectionable, disapproved of), a much weaker expression. That this term did not convey a strict prohibition is clear from its definition: “Makrūh is what the shari‘a requires be avoided, but it is an admonition without coercion. A person who does it [sc. a deed classified as makrūh] will not be condemned for it, but he will be praised if he avoids doing it.”

Al-Shafi’i, Malik b. Anas, Ahmad b. Hanbal, and Abu Dawud (the transmitter) are reported to have agreed that building over tombs should be categorized only as makrūh, not as harām. Although it is likely that Shi‘ite circles also agreed, evidence for that cannot be found until the fifteenth-century Kitāb al-Muntaza, a legal manual compiled by the Zaidite Ibn Miftah. This moderate attitude, regarding funerary structures as only a minor infraction, on the part of those who had to deal with this hadith in practical terms was probably not formulated before the eighth or ninth century, but there are indications that even before that time prohibition, disapproval, or even consenting to erecting funerary structures depended on the attitudes, views, and judgment of the faqih. For instance, Abu Hanifa is reported to have regarded building over tombs (al-bīna‘ al-l-qubūr) as legal and not objectionable. Unfortunately neither the Musnad of Abu Hanifa nor the Kitāb al-Aṣl of Muhammad Hasan al-Shaibani have chapters on janā‘iz, from which one could draw actual statements by the early Hanafīyya on that complex of questions.

It might have been the liberal attitude of Abu Hanifa and his followers toward funerary architecture which
still in the high Middle Ages caused Ibn Qayyim al-Jauziyya to list Shafi'ites, Malikiites, and of course the followers of Ibn Hanbal, but not the Hanafites, among the opponents of mausolea. 38 In reality, however, there were never any consistent blocks of supporters and opponents of funerary architecture identified with the madhābiḥ; no particular position for any of them can be definitely determined. This explains why already quite early on we find different points of view between teacher and pupil. Malik subscribed to the idea of disapproving building over tombs, but objected only to constructions made out of stone. 39 But Sahnun, who spread Malik's teachings in the Islamic west, clearly requires the literal fulfillment of this order because the hadiths postulate the taswiyyat al-qubūr, regardless of what the structure is built: “This [sc. the tradition concerned] is clear evidence (aithār) in favor of leveling tombs to the ground. How [after all] can one intend to build over them?”

The opposite view was held by the Maliki qadi of Baghdad, Abu'l-Hasan 'Ali b. 'Umar b. Ahmad al-Qassar (d. 1008). 40 He allowed building a gubba, a bayt, or a madrasa over a tomb, so long as it did not touch the grave properly, 41 and so long as the structure did not strive for vainglory and pomp (mabāha). 42 We can find a similarly acquiescent attitude in the Kitāb al-Muhallā by Ibn Hazm (d. 1064) of Cordoba: “If over it [sc. the grave] a bayt or a raised construction (qā'im) was built, this was not regarded as objectionable.” 43 He distinguishes strictly, however, between the bayt, which was permitted, and constructions inside the tomb or the erection of a gubba, which he did not consider acceptable. 44 The Hanbalite Ibn Muflih (d. 1362) unambiguously says the same thing when he quotes from the Kitāb al-Mustaw'ab: “A pompous building (bina'? al-ja'khir) is objectionable. But he [sc. the author of the Kitāb al-Mustaw'ab] emphasizes that there is no objection to a building enclosing it [sc. the tomb] (bina'? mulāsiq) because its intention is to mark and preserve it.” 45 Judging from this evidence, the basic attitude of some important authorities who collected and interpreted the hadith and sunna toward the question of building over tombs was less strict than the uncompromisingly negative statements in the hadith texts themselves would lead us to expect. That this interdiction — half-hearted and expressed only in a “disapproval” of funerary architecture — did not seriously inhibit tendencies in the other direction now becomes understandable when we find authorities of religious law simultaneously granting permission for the practice.

A special problem the ulema had to deal with and the one that probably weakened the enforcement of the prohibition against funerary buildings was posed by the bayt, the simple Middle Eastern one-room house commonly used as a funerary structure. On the one hand, the bayt belonged among the structures banned by the hadith; 46 on the other, Islamic theology had to cope with the fact that the Prophet had died and had been buried in one. He had been entered in ‘A'isha's bayt — which together with other baytāt and the court wall formed the dār of Muhammad in Medina — in spite of the fact that a number of other places outside the house had been proposed for the Prophet's burial site. 47 It very soon became obvious, however, that this site ran counter both to quite a number of instructions in the hadith and to the sunna of the companions.

According to tradition, Abu Bakr had been the one to tip the scale in favor of the bayt for the Prophet's burial, justifying his decision by referring to the Prophet's own words: “No Prophet had died who has not been buried where he died.” 48 The fact remained, however, that the very authority the ulema were appealing to as prohibiting house burials and funerary structures was himself buried in such a place. This inconsistency caused considerable consternation and led to a series of apologies and attempts to answer the questions it generated. Ibn Hanbal, a zealous opponent both of built tombs and their veneration, explained the contradiction by referring to the exceptional position of the Prophet: “He [sc. Ibn Hanbal] held the view (ra?ā) that the burial of the Prophet took place in a building because it was an appropriate privilege for him by virtue of his exceptional position (al-tamyiz, al-lā'iq).” 49 The following quotation also shows that even the Hanbalites of the later Middle Ages were disturbed by this problem and countered attacks by referring to the views of the people closest to the Prophet: “The sahāba and the sbā'ī ‘ān and those who came after them were still buried in the open field (fi l-sahārā). If somebody argued: But the Prophet was buried in his bayt and two of his companions [sc. Abu Bakr and ‘Umar] with him, then we answered, ‘‘A'isha said: ‘This was only done so that his grave would not become a place of worship (masjid).’” 50

Even if it is impossible to ferret out completely the role the “bayt of ‘A'isha” played in forming the attitudes of the ulema toward funerary architecture, the tendency was to permit the bayt as a funerary structure on the grounds that it had such a respectable precedent. Writes Ibn Hazm: “He [sc. Muhammad] already announced the place of his grave by his word: ‘The space
that lies between my grave and my minbar belongs to the gardens of paradise." By saying that, he announced that it [sc. his grave] would be in his bayt. He did not object to his grave’s being located inside the bayt and [therefore] did not object to an erected building (binâ’ qâ’im) [on a grave]."72 When in the Middle Ages two zealous, if unsuccessful, campaigners against mausolea appeared in the persons of Ibn Taymiya and Ibn Qayyim al-Jauziyya, who demanded the demolition of mausolea with domes, "because they represent disobedience to the Prophet, who banned them,"73 the arguments on the other side were not completely unfounded: "Our ancestors (salaf) already permitted buildings over the tombs of venerated shuyûkh and ulama so that people could visit them and find refreshment sitting next to their mausolea as, for instance, ribats or mosques, which stand over their tombs."74

LEGAL DECISIONS

There are some indications that the decision to tolerate funerary architecture depended not only on the views of particular individuals, but on the development of a legal tradition based — somewhat surprisingly — on the laws governing real property.

What gave rise to this were funeral buildings that occupied more of the precious space in a cemetery than the deceased was normally entitled to and thereby prevented the burial of someone else not in a position to enjoy a built tomb.75 Added to that was the complaint that constructions above ground led to a lack of homogeneity in the cemetery as a whole. There was also strenuous objection to a practice that made one part of the Muslim community more privileged (tamyız) than the rest after death, when at least theoretically all should be on the same level.76 Because of this, funerary buildings were deprecated as an innovation (bid‘a)77 and as symbols of worldly pomp for which the dead had no need.78

The earliest evidence for the beginnings of a law governing funerary architecture known to me takes these objections into consideration, but no longer questions the existence of funerary architecture as such. They obviously tried only to limit exaggeration:

Al-Shafi‘i said: "I have seen governors who demolished [tombs] in Mecca built inside the city, and I found no jurist who saw therein a wrong decision. If it was a question of tombs on land owned by the dead in their lifetime or bequeathed to their offspring, nothing that was built on their part was destroyed. Only that which no one called his own was demolished. The demolition took place so that the space around the tomb would not be inaccessible to [other] people or prevent others from being buried there, and to avoid people's being hampered."79

The conclusions that can be drawn from this passage are that there existed in Mecca toward the end of the second and beginning of the third century A.H. a kind of legal principle for dealing with funerary buildings derived from the rights governing land ownership and the structures built upon it. The demolitions described by al-Shafi‘i might have been occasional acts by particular governors trying to distinguish themselves by their pious observance of the command regarding taswiyyat al-qubûr that had been approved as legal by the fuqaha7 of the city after the event. Even so it is clear that in these early times there was already an accepted and well-defined place where funerary architecture could exist and within whose borders the requirements of the shari‘a obviously ceased to function. A tomb on one's own land (mland) was untouchable, according to al-Shafi‘i’s report. For all time to come, this principle would be the guiding rule for dealing with all kinds of funerary structures. The Shafi‘ite law in this case even annulled the kirâha, the disapproval of funerary buildings: "The ajrâb [of the Shafi‘iyya] say, 'If the tomb was his [sc. the proprietor’s] own property, then he was permitted [to build] what he wanted, in spite of the disapproval [of al-bina‘ al-l-qubûr], and whatever was standing over it [sc. the tomb] was not destroyed."80

This view was apparently shared even by the Hanbali madhhab. A pupil of Ibn Taymiyya, Ibn Mujlih, quotes the Kitâb al-Muharrar: "There is no objection to a qubba, a bayt, or a hâzûra on an owner's land. For burial at such a place, even though it is like this [i.e., even though there is a building standing over the grave], is permitted (ma’dhûn)."81 It is therefore not surprising that after the early ninth century the erection of a funerary structure often went hand in hand with the acquisition of land to ensure its survival. Only in that context can one understand the measures undertaken at the death of the Barmakid Umm al-Fadl, the wet nurse of Harun al-Rashid, who passed away in ‘Ana while the Abbasid court was on its way from Raqqa to Baghdad: "Al-Rashid ordered 10 ajrâb of land bought for her in a garden next to the Wadi l-Qanarit on the banks of the Euphrates. She was buried there and a qubba built over her grave."82 In contrast to land under tenure (mland), to build mausolea on land that was open and unclaimed (mushbala/sâhkira’),83 in a public cemetery (maqbara mus-
Orientalisches Seminar der
Eberhard-Karls Universität Tübingen
Federal Republic of Germany

NOTES


4. For an extensive description of early Islamic funerary customs based on the hadith collections of both Ibn Sa'd and al-Bukhārī, see Irene Grütter, "Arabischen Bestattungssitten in frühislamischer Zeit?" *Der Islam* 31 (1954): 147–73, and *Der Islam* 32 (1957): 79–193. For sacrifices and libations, see ibidem, p. 181; for attaching parts of plants to the grave, see ibidem, p. 173.


24. The pre-Islamic treatment of a deceased person and his grave could combine commemoration and veneration in the form of his funeral stela, rendered in texts mostly as *nf* (= soul, life). Those stelae were common not only on the Arab peninsula but also in Nabataean and in isolated cases even in the Palmyrene. Greek bilingual inscriptions give either stele (*οφηλιά*) or memorial (*μνημείον*) (=as the equivalent of *nfs* or *shf*); see Enno Littmann, *Publications of the Princeton University Archeological Expeditions to Syria in 1904–1905 and 1909,* "Division IV: Semitic Inscriptions; section A: Nabataean Inscriptions" (Leiden, 1914), nos. 41, 105. In addition, *nfs* had the meaning "funeral monument," (C. Brauner, *A Comparative Lexicon of Old Aramaic* (Ann Arbor, Mich., 1974), pp. 381 ff.; see also *Corpus Inscriptionum Semiticarum*, Pars V, "Inscriptiones Himyariticas et Sabaeas continens I–III")
(Paris, 1889), vol. 2, no. 191. Erecting stone stelas designated as nāb (in Arabic nābū, pl. nāṣib) was associated not only with the funeral but also with the cult of gods and ancestors. For the cult of the nāṣib and its disapproval by Islam, see Ignaz Goldzihier, “Über Todtenverehrung im Heidenthum und im Islam, Muhammedanische Studien, Teil I, Excurs II (repr. Hildesheim/New York of the 1880 Halle edition), pp. 232 ff. The “masjid” erected by the pre-Islamic poet and orator Qūṣq b. Sāʿīda al-lyāḥi between the graves of his two brothers might have been such a commemorative stela (see Henri Lammens, Fāṭima et les filles de Mahomet [Rome, 1912], p. 119). When one considers the translation of the word masjid as “a place where one prostrates oneself,” the connection to the commemoration of the dead by prayer becomes obvious. Compare J. T. Milik and J. Starcky, “Nabataean, Palmyrene and Hebrew Inscriptions,” F. V. Winnett and W. L. Reed, eds., Ancient Records of North Arabia III (Toronto, 1970), p. 157, no. 111: “(dhū m) sgd ʿaḥba PN” “Ceci est le lieu de culte qu’ont fait PN.” This inscription was associated with a grave. In pre-Islamic times cultic actions such as the sacrifice and the oath at the grave (Goldzihier, “Todtenverehrung,” pp. 239 ff; Julius Wellhausen, “Reste arabischen Heidentums,” Skizzen und Vorarbeiten Nr. 3 [Berlin, 1887], pp. 101 ff; Maria Höfler, “Die vorislamischen Religien Arabiens,” Religionen der Menschheit, vol. 10.2 [Cologne-Stuttgart-Berlin-Mainz, 1970], p. 358), and the enclosing of the gravesite with nāṣib forming a sacred area (“ḥima”; see Goldzihier, “Todtenverehrung,” pp. 235 ff; Wellhausen, “Reste,” pp. 101 f.; Höfler, “Religionen,” p. 359), belonged to a set of practices in which the cult of the grave and the death of the veneration of the pagan pantheon in Arabia were intermingled in a striking way.


26. Ibn Qudāmā, Maghribi 2:508. Nevertheless, Ibn Qayyim al-Jauziyya regarded as the source of the pre-Islamic cult of the gods Wadd, Yaghūth, Yaʿāqūb, Nāṣrā, and al-Lāt the veneration of tombs of people who had the same name (Ighāthāt al-Lahjūm min Musayyid al-Shāṭīn, 2 vols., ed. M. S. Kālānī [Caïro, 1981/1961], vol. 1, p. 203). The completely different effect and reception of that prohibition in the widest circles of theologians and jurists is reflected in a short resumé in al-ʿĀmilī’s (d. 1448) commentary on the Šāhīl of al-Bukhārī. According to him, Ibn Ḥanbal (d. 855) regarded praying in cemeteries as essentially ḥaram and Ibn Ḥazm in later times agreed with him (Maḥmūd b. ʿĀmilī, Ṣuddūl al-Qarî fī Shark Šāhīl al-Bukhārī, 11 vols. [Caïro, 1906/1968], vol. 2, p. 351). Şufyān al-Thauri (d. 770), the Azzāfī (d. 774), and Abu Ḥanifa (d. 767), however, categorized the same thing only as “disapproved of” (bi-kāraḥa). Al-Ṣaḥḥī (d. 820) allowed prayers in cemeteries under the condition that the soil was pure (jābir) and had not been contaminated by dug-up graves (ibidem, 2:351). Malik b. Anas, Hasan al-Baṣrī (d. 728), and ʿAbū ʿĀlā b. ʿUmar (d. 693) departed again from that view; they permitted praying in cemeteries without any restriction (ibidem, 2:351 ff).


29. Compare the slightly altered saying of the Prophet in the inscription of the tomb of Dhū l-Nūn al-Miṣrī, who died in 859 (Corpus Inscriptionum Araborum, 9 vols. (Paris, 1894 f.), part I, “Le Caire II,” no. 562): “wa-aṣūq fi waqayyatiha l-mazad μārī ʿan la yahūna gubrāni wa la yuqāda ʿalāhī qubbatan.” This testamen-
ATTITUDES IN THE SHAR'I'A TOWARD FUNERARY ARCHITECTURE


38. Compare Grüter, “Bestattungsriten,” Der Islam 32, p. 172, and the corresponding investigations in the hadith, supra, notes 16 and 17. For the condition of the dead person and his soul within the grave, see Ragnar Eklund, Life between Death and Resurrection according to Islam, Ph. D. diss., Upsala 1941.


41. Ibn Abī Shaiba 3:337 f. To illustrate this archaeologically, one can refer for instance to grave shafts connected with above-ground tomb-houses and towers in Ravy, all built with bricks; see Chahbīyar Adīr, “Constructions funéraires à Rey circa X-XIIe siècle,” Akten des VII. internationalen Kongresses für islamische Kunst und Archäologie (Berlin, 1979), pp. 511 ff.


43. For the Babylonian and the Greater Syrian region, compare André Parrot, Le "Refrigierium" dans l’au-delà (Paris, 1937), pp. 5 ff. and pp. 55 ff., and, for the Arab peninsula, J. Smith and Y. Yarzbeck-Haddad, Islamic Understanding of Death and Resurrection (Albany N.Y., 1981), pp. 149, 153. For that reason, Daneshvar recognizes as one of the main characteristics of a tomb building that its shadow cools the grave and the dead. For that view, worked out especially by Iranian mystics, see Abbas Daneshvar, Medieval Tomb Towers of Iran (Lexington, Ky., 1968), pp. 9 ff.

44. Smith and Yarzbeck-Haddad, Islamic Understanding of Death, pp. 44 ff.

45. Ibn al-Siddiq, Ḥiyā, p. 14, adds that the prohibition against building the grave with bricks and lime mortar does not apply if they are used only for the outer building, because the dead will in that case have no immediate contact with them. A similar view is found in the Shīʿite collection of ʿĀmilī 4:5, in which ʿĀmilī attests that bricks on a grave can cause no harm to the dead.


47. Ibn Abī Shaiba 3:342.


52. Ibn Qudāma, Ḥiyā, and Ibn Muflīḥ, Funūr, quoted by Ibn al-Siddīq, Ḥiyā, p. 16.


55. Nawawī, Majmūʿ 5:298; Ibn Muflīḥ, Funūr 2:272, appeals to a corresponding statement by Ibn Ḥanbal. Al-Shāfīʿī does not use the word karsha, but says ”la wāḥibbi” (Muḥammad b. al-Idrīs al-Shāfīʿī, K. al-Umm (hereafter K-Umm), 8 vols, ed. M. Zuhri

al-Najjār [Cairo, 1381/1962], vol. 1, p. 277.

56. ʿAbd Allāh b. Abī l-Ḥasan b. Muḥammad al-Zahī, Ktab al-Muntazama ʿal-Makhtūr min al-Ghaith al-Mīdār al-Muṣaffatī in-Kanāʾīn al-Azhār fi Fiqh al-Aʿimmā al-Āthār, 4 vols. (Cairo, 1341/1922), vol. 1, p. 440. The K. al-Muntazama is the commentary to the Kanāʾīn al-Azhār fi-Fiqh al-Aʿimmā al-Āthār of Aḥmad b. Yaḥyā al-Murtaḍā (d. 1437); see Brockelmann, GAL 2:244. Ibn Miṭfāḥ pronounces himself as disapproving funerary structures only in cases in which the deceased was not known for his or her virtue. Obviously he would not have disapproved of the ishtihād for the imams, the exceptional case in which it was permitted to build tombs over their graves. This exception, including the tombs of the Prophet and the imams explicitly, can still be found at ʿĀmilī 4:90.

57. Nawawī, Majmūʿ 5:298; Abū ʿAbd Allāḥ Muḥammad Qāḍī Ṣafād al-Dimashqī, Ṣayr al-Aʿimmā al-Āthār fi Ṣanāʿat al-Aʿimmā (Cairo, 1386/1967), 7; Abī al-Wāḥib al-Sharīʿī, Ktab al-Miṣūrān, 2 vols. (Cairo, 1291/1874), vol. 1, p. 271. Reports that Abū Ḥanīfa approved of tombs without any restriction may have been negative propaganda by other religious schools against the Ḥanafīya, but they did circulate widely. Compare the work on the differences between the teachings of the madhābīhs by Muḥammad b. Aḥmad b. Rushd, Kitāb Buṣayyāt al-Muṣṭaḥfa wa-Nihayat al-Muṣṭaqṣīd (Cairo, n.d.), part 1, p. 143.

58. Ibn Qayyim al-Jauzīya, Igtīhād al-Lahfān 1:204. He stresses that the majority of the religious schools (ʿissāmāt al-tawāfūq) had declared buildings on graves to be prohibited (bi-nahāy) and in addition that especially the schools of Mālik, Shāfiʿī and Aḥmad b. Ḥanbal declared them to be strictly forbidden (ṣarāqa bi-ṭarrīm), which is, as we have seen, not quite true. Significantly, Ibn ʾAtṣurja could visit the “qubba ʿazīma” of Abū Ḥanīfa in the Khazirūn cemetery in Baghdad, but not of Ibn Ḥanbal, who had none: attempts to build him a qubba had failed by “divine interference” (Ibn ʾAtṣurja, Rūḥā [Beirut, 1388/1968], p. 220).


60. Ibidem. For Saʿīnūn’s written work, see GAL 1, Supplement, p. 299.


63. Ibidem. His source is a sharḥ commentary of a certain al-Sijīlmaṣī, about which he gives no further detail.


66. Ibn Muflīḥ, Funūr 2:272. The author of the K. al-Mustawāʾr and the K. al-Muḥarrar, whose name is not mentioned by Ibn Muflīḥ, is probably Mājīd al-Dīn Abū l-Barakāt ʿAbd al-Salām b. Taʾṣīnīya (d. 1243), the grandfather of the famous Taqi al-Dīn. Mājīd al-Dīn lived and taught at Ḥarrān and was attached to the Hanbila. Among his works is the K. al-Muḥarrar al-Fīl-Fiqh al-Madīkhāb al-Imām Aḥmad b. Ḥanbal (GAL 1, Supplement, p. 690) which has been preserved, together with its commentary, the Nukāt wa-l-Fawāʾid al-Sunnīya by Ibn Muflīḥ. In this commentary Ibn Muflīḥ quotes very often from the K. al-Mustawāʾr, but does not mention the author. He introduces his quotation with
the words, "qāla ẓāhib al-mustuṣṭab wa-l-muḥarrar," as he does in the K. al-Furāʾī. He obviously means the same person.

67. See n. 22.


70. Ibn al-Ṣiddiq, Iḥyāʾ, p. 5. Ibn al-Ṣiddiq rejects the notion that the early Muslim community in Medina consciously gave the privilege of being buried in a building only to the Prophet, because his successors, the caliphs Abū Bakr and ʿUmar, were later buried with him in the same place. The companions of the Prophet, who had allowed these burials in the baiṭ of ʿĀlīsha, apparently knew nothing of this privilege.

71. Ibn Qudāmā, Maghni 2:509.


74. Ibn al-Ṣiddiq, Iḥyāʾ, p. 9. Compare ṬAbd al-Muḥammad al-Ṭahāwī, Sharḥ Maʿāni l-ʿĀthār, M. ʿUmar al-Ḥaqq, quotes (vol. 1, p. 516, n. 3) the same passage from the K. al-Umm in the following way: "qāla al-Ṣiddiq ʿalā ṣarāʾīt ʿumārāʾa zamāni yahdāmānā mā bānā l-nāṣu mina l-qibāhī ʿalā l-maqābir wa-mā raʾʾīsū ahadān mina l-fuqahāʾ ankarā ʿalāzkim." An edition of the text with these emendations is unknown to me.


76. Ibn al-Ṣiddiq, Iḥyāʾ, p. 15.

77. Ibn Muḥlih, Fath 2:272, is referring to Ibn Ḥanbal.

78. Shāfiʿi, al-Umm 1:277, al-Nawawī, Majmāʿ 5:296; Sarakhsi in the K. al-Muṣfiṣṭī "and many other jurists of the Ḥanafīyya" (Ibn al-Ṣiddiq, Iḥyāʾ, p. 16). Ibn Qudāmā, Maghni 2:507; Ibn Muḥlih, Fath 2:272, rejects funerary buildings because of their "similarity to buildings of this world"; so does the Imamite theologian al-Ḥilli (d. 1325) at ʿAmīlī, Waṣīd 4:91.

79. Shāfiʿi, al-Umm 1:277. Possibly two versions of the beginning of that passage exist. The editor of Ṭahāwī’s Sharḥ Maʿāni l-ʿĀthār, M. ʿUmar al-Ḥaqq, quotes (vol. 1, p. 516, n. 3) the same passage from the K. al-Umm in the following way: "qāla al-Shāfiʿi ʿalā ṣarāʾīt ʿumārāʾa zamāni yahdāmānā mā bānā l-nāṣu mina l-qibāhī ʿalā l-maqābir wa-mā raʾʾīsū ahadān mina l-fuqahāʾ ankarā ʿalāzkim." An edition of the text with these emendations is unknown to me.

80. Nawawī, Majmāʿ 5:298.


83. Ibn Muḥlih, Fath 2:272; Yalḫyā b. Sharaf al-Nawawī, Mīnḥāj al-Taḥṣīl (Cairo, 1325 m.), p. 25.

84. Nawawī, Majmāʿ 5:298.

85. Jāzīrī, al-Fiqh 1:536. He takes as an example the Qarāfa of Cairo which was allegedly endowed by the caliph ʿUmar for the burial of Muslims. Compare Muḥammad b. al-Ḥājj, al-Mudhkhal, 4 vols. (Cairo, 1980/1960), vol. 1, p. 246.
