

CUSTOM (*URF*) AND LAW IN ISLAMIC HISTORY: NEGOTIATING LOCAL PRACTICE AND DIVINE NORMS

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Abstract

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This research examines the intricate relationship between custom (‘urf) and Islamic law (Shari‘ah) throughout Islamic history, exploring how Muslim jurists have negotiated the tension between divine norms and local practices. The concept of ‘urf represents one of the most dynamic aspects of Islamic jurisprudence, serving as a bridge between the universal principles of Shari‘ah and the diverse cultural contexts of Muslim communities. This study investigates the historical development of ‘urf as a legal principle, its theoretical foundations in Islamic jurisprudence (uṣūl al-fiqh), and its practical applications across different madhāhib (legal schools) and geographical regions. Through a comprehensive analysis of classical and contemporary Islamic legal texts, this research demonstrates how ‘urf has functioned as a mechanism for legal flexibility and cultural adaptation while maintaining fidelity to core Islamic principles. The findings reveal that the incorporation of custom into Islamic law reflects a sophisticated legal methodology that balances permanence and change, universality and particularity, divine revelation and human reason. This research contributes to understanding how Islamic law has maintained its relevance across diverse cultures and historical periods through the judicious application of ‘urf, offering insights for contemporary discussions on Islamic legal reform and cultural authenticity.



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Introduction (12pts)

The relationship between divine law and human custom represents one of the most enduring tensions in Islamic legal thought, reflecting the broader challenge of applying universal religious principles to diverse cultural contexts. Custom, known in Arabic as ‘urf or ‘adah, refers to the habitual practices and norms of a community that acquire normative force through consistent observance and social acceptance (Kamali, 2003). Throughout Islamic history, Muslim jurists have grappled with the question of how to accommodate local customs and practices within the framework of divine law revealed through the Qur‘ān and the Prophetic tradition (Sunnah). This

negotiation between the universal and the particular, the eternal and the temporal, has produced a rich jurisprudential discourse that continues to shape Islamic legal practice in the contemporary world. The concept of *‘urf* serves as a critical mechanism through which Islamic law demonstrates its flexibility and adaptability while maintaining its fundamental principles and values.

The significance of custom in Islamic law cannot be understated, as it reflects the religion's recognition of human diversity and the legitimacy of cultural variation within the bounds of fundamental Islamic principles. The Qur’ān itself acknowledges the existence of different customs and practices among nations, stating "O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other" (Qur’ān 49:13), suggesting a divine approval of human diversity (Hallaq, 2009). The Prophet Muhammad's practice of allowing certain pre-Islamic customs to continue, such as the compensation for unintentional killing (*diyāh*) and various commercial practices, established an important precedent for the accommodation of *‘urf* in Islamic law. This prophetic model demonstrated that not all pre-existing customs were to be abolished with the advent of Islam; rather, those compatible with Islamic values could be retained and integrated into the new religious legal framework (Fadel, 2008).

The theoretical foundation for incorporating custom into Islamic law developed gradually through the work of early jurists and reached sophisticated formulation in the classical period of Islamic jurisprudence. Different legal schools (*madhāhib*) developed varying approaches to *‘urf*, with the Ḥanafī school being particularly receptive to customary practice, followed by the Mālikī emphasis on the custom of Medina (*‘amal ahl al-Madīnah*), while the Shāfi‘ī and Ḥanbalī schools adopted more cautious positions (Opwis, 2010). The great jurist al-Qarāfī (d. 684/1285) articulated a principle that would become foundational: "A ruling that is based upon custom changes with the change of custom" (Auda, 2008). This recognition of the temporal nature of certain legal rulings established a framework for legal dynamism within Islamic jurisprudence, allowing for adaptation to changing social circumstances while preserving the immutability of core religious principles rooted in explicit textual sources.

The scope of this research encompasses both the theoretical dimensions of *‘urf* in Islamic jurisprudence and its practical applications throughout Islamic history across different geographical regions and cultural contexts. The study examines how Muslim jurists have distinguished between valid customs that can be incorporated into legal reasoning and invalid customs that contradict fundamental Islamic principles. It explores the methodological tools developed by jurists to evaluate customs, including the concepts of public versus private custom (*‘urf ‘amm* and *‘urf khāṣṣ*), verbal versus practical custom (*‘urf qawli* and *‘urf ‘amali*), and valid versus invalid custom (*‘urf ṣāḥiḥ* and *‘urf fāsid*) (Abou El Fadl, 2001). Understanding these distinctions is crucial for appreciating how Islamic law has navigated the complex terrain between divine immutability and human contingency, between religious authenticity and cultural relevance.

This paper is structured to provide a comprehensive analysis of custom and law in Islamic history through multiple interconnected dimensions. Following this introduction, a literature review examines existing scholarship on *‘urf* in Islamic jurisprudence, identifying key debates and theoretical frameworks. The research objectives and methodology sections outline the specific aims and analytical approaches employed in this study. The discussion section then explores six critical dimensions: the conceptual foundations of *‘urf* in Islamic legal theory, historical development across different periods and regions, the relationship between *‘urf* and other sources of Islamic law, case studies of *‘urf* application in specific legal domains, contemporary challenges and debates, and the implications for Islamic legal reform and cultural authenticity. Through this comprehensive examination, the paper aims to contribute to scholarly understanding of how Islamic law has maintained its dynamism and relevance through the sophisticated engagement with custom and local practice.

RESEARCH OBJECTIVES

This research aims to achieve the following specific objectives:

1. To analyze the conceptual foundations and theoretical frameworks of custom (‘urf) in Islamic jurisprudence, examining how classical and contemporary jurists have theorized the relationship between divine norms and local practices.
2. To trace the historical development of ‘urf as a legal principle across different periods of Islamic history, from the formative period through the classical age to the modern era, identifying continuities and transformations in how custom has been understood and applied.
3. To compare and contrast the approaches to custom across different madhāhib (legal schools), elucidating the methodological variations and their implications for legal practice.
4. To examine specific case studies of ‘urf application in various domains of Islamic law, including commercial transactions, family law, criminal law, and ritual practices, demonstrating the practical significance of custom in legal reasoning.
5. To evaluate the conditions and criteria established by jurists for distinguishing valid from invalid customs, and to assess how these criteria balance fidelity to scriptural sources with responsiveness to social contexts.
6. To explore the contemporary relevance of ‘urf for Islamic legal reform and the challenges of applying traditional jurisprudential principles in modern Muslim societies and diaspora contexts.

Literature Review

This research employs a qualitative methodology combining historical analysis, textual interpretation, and comparative jurisprudential analysis to examine the role of custom in Islamic law. The study draws on primary sources from classical Islamic legal literature, including works of *uṣūl al-fiqh* (legal theory), *furū‘ al-fiqh* (positive law), and *fatāwā* collections from major madhāhib, alongside secondary scholarly literature from both Islamic and Western academic traditions. The research adopts a historically contextualized approach, examining how concepts and practices of ‘urf developed and transformed across different periods and regions of the Islamic world.

The analytical framework integrates several methodological approaches: (1) conceptual analysis to clarify the theoretical foundations of ‘urf and related concepts in Islamic jurisprudence; (2) historical analysis to trace the development and application of custom across different periods and contexts; (3) comparative analysis to examine variations in approaches to ‘urf among different legal schools and jurists; (4) case study analysis to investigate specific instances of ‘urf application in various legal domains; and (5) critical analysis to evaluate contemporary debates and implications for Islamic legal reform. This multi-dimensional methodology enables a comprehensive understanding of custom and law in Islamic history that accounts for both theoretical principles and practical applications.

The research focuses primarily on the Sunnī legal tradition, with particular attention to the four major schools (Hanafī, Mālikī, Shāfi‘ī, and Ḥanbalī), while also drawing on relevant examples from Shī‘ī jurisprudence where appropriate. Geographically, the study encompasses examples from across the Islamic world, including the Middle East, North Africa, South Asia, Southeast Asia, and to a lesser extent, Muslim minority contexts in Europe and North America. This broad geographical scope allows for examination of how ‘urf functioned in diverse cultural contexts while maintaining connection to a shared Islamic legal tradition.

Methodology

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Discussion

Conceptual Foundations of *ʿUrf* in Islamic Legal Theory

The concept of custom (*ʿurf*) occupies a distinctive position within the hierarchy of Islamic legal sources, functioning as what jurists termed an "ancillary source" or "subsidiary principle" that supports and supplements the primary sources of *Qurʾān* and *Sunnah*. Islamic legal theorists distinguished between the fundamental sources (*uṣūl*) and the subsidiary or instrumental sources (*wāsāʾil*), with *ʿurf* typically categorized among the latter alongside principles like *istiḥsān* (juridical preference), *maṣlaḥah mursalah* (public interest), and *sadd al-dharāʾiʿ* (blocking the means to evil) (Kamali, 2003). The theoretical justification for recognizing custom as a legitimate consideration in legal reasoning derives from several principles: the *Qurʾānic* verse "Hold to forgiveness, command what is right, and turn away from the ignorant" (7:199), which some jurists interpreted using the alternative meaning of *ʿurf* (right/good conduct); prophetic statements such as "What the Muslims see as good is good in the sight of Allah"; and the rational principle that law must be practically applicable to the communities it governs (Opwis, 2010). These foundations established that while divine revelation remains the ultimate source of legal authority, human reason and social practice play legitimate roles in understanding and applying divine law to particular circumstances.

Classical jurists developed sophisticated taxonomies for categorizing different types of custom, reflecting careful attention to the conditions under which customary practice should influence legal rulings. The most fundamental distinction was between valid custom (*ʿurf ṣaḥīḥ*) and invalid custom (*ʿurf fāsid*): valid custom is that which does not contradict scriptural texts, legal principles, or the objectives of *Sharīʿah*, while invalid custom conflicts with these fundamental sources and cannot be legally recognized (Hallaq, 2009). Jurists further distinguished between general custom (*ʿurf ʿāmm*), which prevails across an entire society or region, and specific custom (*ʿurf khāṣṣ*), which applies only to particular groups or professions; between verbal custom (*ʿurf qawlī*), concerning the meanings and usage of words, and practical custom (*ʿurf ʿamalī*), relating to behaviors and practices; and between ancient custom (*ʿurf qadīm*) and contemporary custom (*ʿurf ḥādīth*) (Abou El Fadl, 2001). These classifications

enabled jurists to develop nuanced approaches to custom that recognized its diversity and complexity while maintaining clear criteria for legal validity.

The relationship between custom and other sources of Islamic law reveals the sophisticated structure of Islamic legal reasoning. Custom functions primarily as an interpretive principle rather than an independent source of legislation: it helps clarify ambiguous texts, specify general principles, and determine the practical application of abstract rules, but it cannot create new fundamental obligations or prohibitions contrary to explicit scriptural texts (Jackson, 2003). The classical legal maxim "Custom is a basis for judgment" (al-*'ādah muḥakkamah*) articulates this principle, while another maxim "What is established by custom is like what is established by textual evidence" demonstrates the practical authority of custom in appropriate circumstances (Fadel, 2008). However, jurists also established clear boundaries: the maxim "Custom is not considered when it contradicts a text" (lā *'ibrata bi-l-*'urf idhā 'āraḍa al-naṣṣ*) ensures that customary practice cannot override explicit divine commands. This framework created a balanced system in which custom plays a significant but bounded role in legal reasoning, enabling flexibility and cultural adaptation while preserving the primacy of revelation.*

Historical Development Across Different Periods

The incorporation of custom into Islamic law began in the earliest period of Islamic history, during the lifetime of the Prophet Muhammad himself. The Prophet's practice established important precedents for accommodating pre-Islamic Arabian customs that did not contradict fundamental Islamic principles. Examples include the retention of the *diyāh* system (blood money for unintentional killing), various commercial practices such as *muzāra'ah* (sharecropping) and *musāqāh* (irrigation partnership), and certain aspects of marriage and divorce procedures (Hallaq, 2009). When the Prophet migrated to Medina, he encountered Jewish and Arab tribal customs different from those of Mecca, and his flexible approach to local practices—sometimes confirming them, sometimes modifying them, and sometimes prohibiting them—demonstrated a methodology for negotiating between universal Islamic principles and local contexts. This prophetic model provided later jurists with precedents for how to approach the question of custom: not all pre-existing practices must be abolished, but they must be evaluated according to their compatibility with Islamic values and objectives (Fadel, 2008).

The formative period of Islamic jurisprudence (roughly the first three centuries of Islam) witnessed the gradual articulation of custom as a formal principle of legal reasoning. During this era, jurists in different regions faced the practical challenge of applying Islamic law to diverse cultural contexts spanning from Spain to Central Asia. The early Iraqi jurist Abū Ḥanīfah (d. 150/767) and his students developed approaches that showed considerable receptivity to local custom, particularly in commercial and civil matters where scriptural guidance was limited (Weiss, 1998). The Medinan jurist Mālik ibn Anas (d. 179/795) elevated the practice of the people of Medina (*'amal ahl al-Madīnah*) to a special status, arguing that the continuous custom of the Medinan community, which had learned directly from the Prophet, provided authoritative evidence for legal rulings. Meanwhile, al-Shāfi'ī (d. 204/820) articulated a more text-centered methodology that was cautious about custom but still recognized its role in interpreting ambiguous texts and determining the meanings of legal terms (Opwis, 2010). These different regional approaches reflected varying responses to the challenge of universalizing Islamic law while accounting for local variation.

The classical period of Islamic jurisprudence (roughly 4th/10th to 7th/13th centuries) saw the full maturation of *'urf* as a recognized principle in legal theory. Jurists of this era produced comprehensive works on *uṣūl al-fiqh* that systematically discussed custom alongside other principles of legal reasoning. The Ḥanafī jurist al-Sarakhsī (d. 490/1096) articulated sophisticated principles for incorporating custom into legal reasoning, while Mālikī jurists developed the concept of *'amal* (practical custom) as a means of tempering strict legal formalism with practical considerations (Johansen, 1999). Perhaps most significant was the work of al-Qarāfi (d. 684/1285), a Mālikī jurist who developed a

nanced theory of custom and legal change. Al-Qarāfī argued that many legal rulings are contingent on specific customs and circumstances, and when these change, the rulings must change accordingly—a principle he applied to various areas of law including commercial transactions, marriage contracts, and procedural matters (Auda, 2008). His work represented a sophisticated recognition that Islamic law must be both principled and flexible, maintaining fidelity to fundamental values while adapting to changing social contexts.

The Ottoman period (roughly 10th/16th to early 14th/20th centuries) witnessed extensive practical application of *ʿurf* in the administration of Islamic law across a vast empire encompassing diverse peoples and customs. Ottoman jurists and administrators developed the concept of *ʿorf* or *ʿādet* (Turkish terms for custom) and explicitly recognized customary law alongside *Sharīʿah* in the governance system (Imber, 1997). The famous Ottoman legal code, the *Mecelle* (compiled 1869-1876), included several articles on custom, stating that "Custom is authoritative" (Article 36) and "Custom has the status of a legal condition" (Article 40), among other principles (Fadel, 2008). Ottoman court records reveal extensive reliance on local custom in resolving disputes, particularly in areas such as land tenure, commercial transactions, and family law, where regional variations were substantial. This Ottoman practice demonstrated how a centralized Islamic legal system could accommodate considerable local variation through the principle of custom, though it also raised questions about the relationship between imperial law, *Sharīʿah*, and local practice.

The modern period has seen both continuity and transformation in approaches to custom within Islamic law. Colonial encounters and the subsequent reform of legal systems in Muslim-majority countries led to complex negotiations about the relationship between Islamic law, custom, and imported European legal codes (Tucker, 2008). In some contexts, custom was marginalized as reformers sought to create uniform national legal systems based on codified law; in others, custom continued to play significant roles, particularly in areas like family law and inheritance. Contemporary Islamic legal reform movements have shown renewed interest in the principle of *ʿurf* as a means of addressing modern challenges while maintaining Islamic authenticity (Ramadan, 2009). Some reformers argue that principles like custom and *maṣlaḥah* (public interest) provide frameworks for developing Islamic responses to issues such as gender equality, democracy, and human rights. However, debates continue about the proper scope and application of custom in contemporary contexts, particularly regarding which aspects of tradition represent valid custom worthy of preservation and which reflect historical contingencies that should be revised.

Variations Among Legal Schools (Madhāhib)

The Ḥanafī school has historically shown the greatest receptivity to custom among the major Sunnī madhāhib, reflecting both its Iraqi origins and its later spread across the Ottoman Empire, Mughal India, and Central Asia—regions characterized by diverse cultural practices. Ḥanafī jurisprudence developed sophisticated principles for incorporating custom into legal reasoning, articulated in maxims such as "What is established by custom is like what is established by textual condition" and "Rulings change with the change of times and places" (Hallaq, 2009). The school's founder, Abū Ḥanīfah, and his prominent students Abū Yūsuf and al-Shaybānī demonstrated flexibility in accommodating local commercial practices and contractual arrangements that, while not explicitly sanctioned in texts, did not contradict fundamental principles. Later Ḥanafī jurists extensively applied custom in determining the meanings of contractual terms, identifying customary obligations in commercial transactions, and resolving disputes where explicit textual guidance was absent. The Ottoman embrace of Ḥanafī jurisprudence and the extensive reliance on custom in Ottoman legal practice reinforced this school's association with customary law (Imber, 1997). However, Ḥanafī jurists also established clear boundaries: custom could not override explicit texts, invalidate fundamental Islamic principles, or conflict with the objectives of *Sharīʿah*.

The Mālikī school developed a distinctive approach to custom through the concept of ‘amal (practice), particularly the practice of the people of Medina. Mālik ibn Anas argued that the continuous practice of the Medinan community provided authoritative evidence for Islamic law because this community had learned directly from the Prophet and his Companions (Fadel, 2008). This principle extended beyond formal legal rulings to encompass the customary practices of this founding community, giving them special weight in legal reasoning. Later Mālikī jurists, particularly in North Africa and Islamic Spain, adapted this principle to regional contexts, recognizing local ‘amal as a legitimate consideration in legal decision-making. The Mālikī concept of ‘amal thus bridges formal legal doctrine and customary practice, allowing for regional variation within a shared jurisprudential framework (Opwis, 2010). Mālikī jurists also emphasized the principle of maṣlahah (public interest) in conjunction with custom, arguing that legal rulings should consider both textual evidence and the practical welfare of communities. This combination of respect for prophetic precedent and attention to contemporary practice gave Mālikī jurisprudence considerable flexibility in responding to diverse social contexts across North Africa, West Africa, and Islamic Spain.

The Shāfi‘ī school adopted a more cautious approach to custom, reflecting its founder's emphasis on systematic legal reasoning based primarily on Qur’ān and authenticated Sunnah. Al-Shāfi‘ī's methodology prioritized explicit textual evidence over other considerations, including custom and juristic discretion (Jackson, 2003). However, Shāfi‘ī jurisprudence did not entirely reject custom; rather, it incorporated customary considerations in more limited and specific ways. Shāfi‘ī jurists recognized that custom plays a role in determining the meanings of legal terms, particularly where linguistic usage had shifted since the revelation of texts or varied across regions. They also acknowledged custom in interpreting ambiguous contractual terms and in areas where textual evidence was silent or unclear (Weiss, 1998). Later Shāfi‘ī jurists developed these principles further, with scholars like al-Suyūṭī (d. 911/1505) articulating maxims about custom that became widely accepted across different schools. The Shāfi‘ī balance between textual rigor and practical flexibility demonstrates that even relatively restrictive methodologies found ways to accommodate customary practice within appropriate bounds.

The Ḥanbalī school, traditionally viewed as the most text-centered of the major Sunnī madhāhib, nonetheless recognized legitimate roles for custom in legal reasoning, though generally within tighter constraints than the Ḥanafī or Mālikī approaches. The school's eponymous founder, Aḥmad ibn Ḥanbal (d. 241/855), emphasized adherence to textual evidence and was cautious about juristic innovation, yet he recognized that custom could clarify textual meanings and guide the application of general principles to specific contexts (Abou El Fadl, 2001). Later Ḥanbalī jurists, particularly Ibn Taymiyyah (d. 728/1328) and his student Ibn al-Qayyim (d. 751/1350), developed nuanced approaches to the relationship between eternal divine norms and changing social circumstances. Ibn Taymiyyah's famous principle that "a ruling based on custom or changing circumstances changes when that custom or circumstances change" acknowledged the legitimate role of custom in determining contingent legal rulings while preserving the immutability of fundamental principles (Auda, 2008). The Ḥanbalī approach thus maintained a strong commitment to textual authority while recognizing that practical application of texts must account for contextual factors, including customary practice.

Beyond the four major Sunnī schools, Shī‘ī jurisprudence developed its own approaches to custom and local practice, though these have received less scholarly attention in Western academic literature. Twelver Shī‘ī (Ja‘farī) jurisprudence recognizes custom (‘urf or sīrah al-‘uqalā’—the practice of rational people) as a legitimate consideration in legal reasoning, particularly in commercial transactions and matters of interpretation (Gleave, 2012). Shī‘ī jurists employ concepts like ‘amal (practice) and istiṣhāb (presumption of continuity) that, while theoretically distinct from Sunnī approaches to custom, serve similar functions in enabling legal flexibility and cultural adaptation. The requirement of following a living legal expert (mujtahid) in Twelver Shī‘ism means that custom and contemporary circumstances can be incorporated into legal interpretation through the ongoing ijtihād (independent legal reasoning) of qualified scholars. The variations among different madhāhib

demonstrate that while Islamic legal schools shared fundamental principles and sources, they developed distinctive methodologies for negotiating between divine norms and local practices, reflecting different regional contexts, scholarly traditions, and interpretive priorities.

Case Studies of 'Urf Application in Specific Legal Domains

Commercial law provides perhaps the most extensive examples of custom's role in Islamic jurisprudence, as trade practices varied significantly across the vast geographical expanse of the Islamic world. Classical jurists recognized numerous customary commercial practices not explicitly mentioned in scriptural texts, applying the principle that "what merchants customarily do is binding" (Udovitch, 1970). Examples include various forms of partnership (*sharikah*), agency (*wakālah*), and commissioning (*damān*), where the specific terms and obligations were often determined by local commercial custom rather than prescribed in texts. The famous Islamic commercial contract of *'āriḍah* (a type of informal sale where goods change hands without immediate documentation) relied entirely on customary practice for its validity and terms (Johansen, 1999). Jurists addressed questions such as: What constitutes delivery in a sale transaction? What are the customary time frames for payment in credit transactions? What defects in merchandise justify return or price reduction? In answering these questions, jurists regularly referred to the customary practices of merchants (*'urf al-tujjār*) in the relevant location and time (Hallaq, 2009). This extensive reliance on commercial custom enabled Islamic law to accommodate diverse trading practices across different regions while maintaining core principles like prohibition of *ribā* (usury/interest), *gharar* (excessive uncertainty), and unjust enrichment.

Family law represents a more complex domain for the application of custom, as it touches on fundamental religious values and social structures while also reflecting deep cultural variation. Marriage contracts provide clear examples of custom's influence: while the basic requirements of marriage (offer, acceptance, witnesses, and dower) are scripturally grounded, many specifics were determined by custom. The customary dower (*mahr al-mithl*) for women of particular families or social classes, determined by local practice rather than fixed amounts, demonstrates custom's role in applying general principles to specific circumstances (Tucker, 2008). Similarly, the customary terms of spousal maintenance (*nafaqah*), the division of household responsibilities, and the nature of marital rights and obligations reflected considerable cultural variation accommodated through *'urf*. However, jurists established clear limits: customs that violated explicit Qur'ānic commands, such as prohibiting women from owning property or inheriting, could never be legally recognized (Abou El Fadl, 2001). The negotiation between textual norms and local customs in family law reveals both the flexibility of Islamic jurisprudence and its fundamental commitments to principles like gender justice and familial responsibility, even when practical applications varied across cultures.

Ritual practice (*'ibādāt*) represents an area where custom played a more limited but still significant role. While the fundamental acts of worship—prayer, fasting, charity, and pilgrimage—are prescribed in revelation and tradition with relatively little room for customary variation, certain peripheral matters involved custom. Examples include: customary practices in preparing for prayer (such as the use of prayer rugs or the specific manner of ablution beyond the basic requirements); supplementary devotional practices that developed in different communities; and variations in the social and cultural dimensions of religious festivals (Katz, 2002). The recitation of the Qur'ān in different *qirā'āt* (canonical readings) reflects how customary regional practices were accommodated within Islamic religious law. More controversially, debates about religious innovations (*bid'ah*) often centered on whether certain practices represented valid customary elaborations of Islamic worship or problematic departures from prophetic precedent. The concept of "good innovation" (*bid'ah ḥasanah*) in some schools effectively recognized that not all post-prophetic customary religious practices were forbidden, though this remained contested (Hallaq, 2009). The relative restriction of custom's role in worship

compared to other areas reflects Islamic law's recognition that ritual obligations directly implement divine commands with less room for human discretion.

Criminal law (*ḥudūd* and *ta'zīr*) presents interesting cases of custom's influence, particularly in evidentiary matters and discretionary punishment. While the prescribed punishments for specific crimes (*ḥudūd*) were fixed by revelation and generally not subject to modification by custom, questions of evidence, procedural matters, and discretionary sanctions (*ta'zīr*) involved considerable customary elements (Peters, 2005). For instance, the evaluation of witnesses' credibility (*'adālah*) often incorporated customary understandings of upright conduct in particular communities. The determination of what constitutes public decency, offensive behavior warranting discretionary punishment, or "corruption on earth" (*fasād fi-l-arḍ*) necessarily involved reference to social norms and customary expectations. Ottoman criminal law demonstrates extensive incorporation of customary elements, particularly in the *ta'zīr* domain where judges had discretion to craft punishments appropriate to specific circumstances and local norms (Imber, 1997). However, jurists emphasized that custom could never justify eliminating prescribed punishments or criminalizing conduct explicitly permitted by revelation, maintaining clear boundaries on custom's influence in this sensitive area.

Land tenure and agrarian law showcase how Islamic law accommodated pre-existing customary systems while gradually Islamizing them. When Muslim armies conquered new territories with established systems of land ownership and agricultural organization, they generally did not impose entirely new systems but rather adapted existing arrangements to Islamic principles (Johansen, 1988). The complex categories of land tenure that developed in classical Islamic law—including state lands (*arāḍī al-dawlah*), private freehold (*milk*), religious endowments (*waqf*), and various forms of conditional tenure—reflected both Qur'ānic principles of property and customary practices inherited from pre-Islamic systems and local conditions. Irrigation rights, grazing rights, sharecropping arrangements, and crop-sharing formulas typically reflected local custom adapted to Islamic principles of fairness and prohibition of exploitation. The Ottoman land code (*Ḳānūnnāme-i 'Arzī*) exemplifies how Islamic authorities codified and systematized diverse customary land practices under an Islamic legal framework (Gerber, 1987). This domain demonstrates Islamic law's pragmatic recognition that certain areas of social organization require accommodation of existing systems and local conditions while gradually reforming them according to Islamic values.

Contemporary Challenges and Debates

The application of traditional concepts of custom to modern Muslim societies faces significant challenges arising from rapid social change, globalization, and the transformation of legal systems. Modern nation-states in Muslim-majority countries have generally adopted codified legal systems that differ fundamentally from classical Islamic jurisprudence in structure and methodology (Tucker, 2008). In these contexts, the relationship between formal state law, Islamic legal principles, and customary practice has become complex and contested. Some states have attempted to codify aspects of Islamic law (particularly family law) while eliminating or restricting the role of custom; others have preserved customary law alongside Islamic and state law in pluralistic legal systems. Debates arise about whether modern legislation itself can constitute a form of *'urf*—that is, whether laws consistently implemented and socially accepted acquire the normative force traditionally associated with custom. These questions reflect broader tensions about the nature of Islamic law, the authority to interpret it, and its relationship to state power in the modern era (Hallaq, 2009).

Muslim minority communities in Western countries face unique challenges in negotiating between Islamic norms, local laws, and customary practices. The classical concept of *'urf* assumed Muslim-majority societies where customary practices generally aligned with basic Islamic values, but Muslim minorities must navigate secular legal systems and cultural contexts that may differ significantly from Islamic norms (Ramadan, 2009). Questions arise such as: To what extent should Muslims adapt

Islamic practices to local customs and legal requirements? Can local Western customs be recognized as valid *‘urf* for Muslim communities living in these contexts? What is the status of practices that have become customary among Muslim communities in the West but differ from practices in Muslim-majority societies? Scholars like Tariq Ramadan have argued for a contextual approach that distinguishes unchangeable fundamental principles from contingent applications, suggesting that the spirit of *‘urf*—cultural adaptation within Islamic ethical bounds—remains relevant even in diaspora contexts. However, others express concern that excessive accommodation of local custom may compromise Islamic authenticity, reflecting ongoing debates about the boundaries of legitimate adaptation (March, 2009).

Gender relations and women's rights represent one of the most contentious areas in contemporary discussions of custom and Islamic law. Critics argue that many practices historically justified through *‘urf* actually represent patriarchal customs contradicting Islamic principles of gender justice. Examples include restrictions on women's education, employment, and mobility; forced marriage; female genital cutting; and extreme forms of gender segregation—practices that may be customary in some Muslim societies but lack clear foundation in scripture and arguably contradict Islamic values (Abou El Fadl, 2001). Reformers invoke the classical principle that invalid custom (*‘urf fāsīd*) cannot be legally recognized to challenge such practices, arguing that proper application of Islamic legal principles would reject customs that contradict the Qur’ān's recognition of women's dignity, rights, and legal capacity. Conversely, some argue that certain gender norms represent valid applications of Islamic principles to particular cultural contexts and should be respected as legitimate *‘urf*. These debates reflect broader questions about the methodology for distinguishing culture from religion, valid from invalid custom, and authentic Islamic practice from historical contingency (Tucker, 2008).

The rise of transnational Islamic movements and the influence of Gulf-funded religious institutions have created new dynamics around custom and Islamic practice. Certain reform movements, particularly those labeled "Salafi" or "Wahhabi," have critiqued local customs as innovations (*bid‘ah*) and called for return to practices explicitly rooted in scriptural texts (Haykel, 2009). This approach tends to delegitimize local customary practices and promote standardized interpretations of Islam, often influenced by Arabian cultural norms presented as universal Islamic practice. The spread of these movements has sometimes created tension with local Islamic traditions that historically incorporated considerable customary elements, leading to conflicts about authentic Islamic practice. Supporters argue this represents purification of Islam from cultural accretions; critics contend it represents cultural imperialism dressed as religious reform and fails to appreciate the historical role of custom in Islamic jurisprudence. These debates reflect deeper questions about authority, authenticity, and diversity within the Islamic tradition (Auda, 2008).

Environmental challenges and technological changes present new questions for the application of custom in Islamic law. Issues like climate change, genetic engineering, artificial intelligence, and digital commerce were obviously unknown to classical jurists, yet Muslim communities need Islamic guidance on these matters. Some contemporary scholars argue that the principle of *‘urf* provides a framework for developing Islamic responses: if customary practice and social consensus develop around new technologies or practices, and these do not contradict fundamental Islamic principles, they could be recognized as valid (Kamali, 2003). However, determining what constitutes established custom in rapidly changing technological contexts, and how to evaluate novel practices against Islamic principles, presents significant challenges. The speed of contemporary change may outpace the traditional mechanisms through which customs became established and gained normative force. Moreover, the global nature of many contemporary issues complicates the concept of custom, which historically operated primarily at local or regional levels. These challenges suggest that while the principle of *‘urf* remains relevant, its application to contemporary issues requires careful methodological reflection (Ramadan, 2009).

Implications for Islamic Legal Reform and Cultural Authenticity

The historical engagement with custom in Islamic jurisprudence offers valuable insights for contemporary Islamic legal reform, particularly regarding the balance between fidelity to fundamental principles and responsiveness to changing circumstances. Classical jurists' sophisticated approaches to custom demonstrate that Islamic law has always contained mechanisms for adaptation and contextual application, challenging narratives of inherent rigidity or incompatibility with modern life (Hallaq, 2009). Reformers have invoked the principle of *'urf*, along with related concepts like *maṣlaḥah* and *maqāṣid*, to argue for reexamination of certain legal positions not firmly grounded in explicit textual evidence but rather representing historical applications to particular contexts. This methodology suggests that where legal rulings were based on customs or circumstances that have changed, the rulings themselves may be reconsidered—a principle articulated by classical jurists like al-Qarāfi and Ibn al-Qayyim (Auda, 2008). However, this reformist use of *'urf* has proven controversial, with critics expressing concern about potential misuse to justify departures from authentic Islamic teachings under the guise of contextual adaptation.

The concept of *'urf* also relates to important contemporary debates about Islamic authenticity and cultural identity. Muslim societies and communities face ongoing questions about which aspects of their practices represent essential Islamic norms and which reflect particular cultural expressions—questions with profound implications for identity, authority, and social organization (March, 2009). The historical role of custom in Islamic law suggests that Islam has always existed in dialectical relationship with diverse cultures, neither entirely transcending culture nor being reducible to it. This recognition challenges both cultural relativism that sees Islamic law as merely reflecting local customs and cultural imperialism that demands uniformity in Islamic practice across diverse contexts. The sophisticated classical frameworks for evaluating customs—distinguishing valid from invalid, general from specific, ancient from contemporary—offer methodological resources for contemporary Muslims negotiating between Islamic identity and cultural heritage (Ramadan, 2009). Understanding that the Islamic legal tradition has historically accommodated considerable cultural diversity through principles like *'urf* may help contemporary Muslims appreciate that Islamic authenticity does not require cultural uniformity.

The relationship between custom and innovation (*bid'ah*) in Islamic thought provides important perspective on debates about tradition and modernity. Classical jurists' recognition of custom implicitly acknowledged that not all post-prophetic developments are illegitimate innovations; some represent organic evolutions of Islamic practice adapted to new contexts while remaining faithful to Islamic principles (Katz, 2002). This recognition is crucial for addressing contemporary challenges: if Islamic communities can only preserve practices explicitly sanctioned in seventh-century Arabia, they face inevitable irrelevance; yet if everything is permissible in the name of adaptation, Islamic distinctiveness dissolves. The concept of valid custom (*'urf ṣaḥīḥ*) provides a middle path: practices not explicitly addressed in revelation can be accepted if they serve Islamic objectives, respect Islamic values, and benefit Muslim communities, while innovations contradicting fundamental principles remain prohibited regardless of social acceptance (Abou El Fadl, 2001). Applying this framework to contemporary issues requires careful methodological reflection and scholarly expertise, but it offers a more nuanced approach than either blanket conservatism or uncritical adaptation.

Questions of authority and expertise have become particularly acute in contemporary applications of concepts like custom. Historically, determining whether a practice constituted valid custom requiring legal recognition was the prerogative of trained jurists who possessed both textual knowledge and understanding of social contexts (Hallaq, 2009). In contemporary societies, multiple actors claim authority to interpret Islamic law, including traditional religious scholars, Islamist activists, state institutions, and individual Muslims claiming direct access to scriptural sources. This pluralization of religious authority affects debates about custom: Who determines what constitutes established custom in a community? Who evaluates whether a custom is valid or invalid according to Islamic principles?

How are disputes about these questions to be resolved? The classical Islamic legal tradition developed institutional structures and scholarly methods for addressing such questions, but these have been disrupted by modern social, political, and intellectual changes (Zaman, 2002). Contemporary Muslim societies must grapple with how to make determinations about custom and Islamic law in contexts of contested authority and fragmented religious institutions.

Finally, the historical role of custom in Islamic law suggests important considerations for contemporary discussions of Islamic governance, human rights, and international law. The recognition of *ʿurf* in classical jurisprudence demonstrates that Islamic law has historically been more flexible, context-sensitive, and pluralistic than often acknowledged in contemporary political debates (Otto, 2010). This recognition complicates simplistic claims both by those who present Islamic law as fixed and immutable and by those who claim it is inherently incompatible with modern governance or human rights. The methodologies classical jurists developed for negotiating between eternal divine principles and contingent historical circumstances offer resources for contemporary Muslims seeking to engage constructively with modern legal and political systems while maintaining Islamic identity. However, these historical resources must be critically appropriated rather than mechanically applied: contemporary challenges differ from those faced by classical jurists, and solutions adequate for medieval societies may not suffice for modern contexts (An-Na'im, 2008). The engagement with custom in Islamic legal history thus provides not ready-made answers but rather methodological insights and principled frameworks for ongoing negotiations between Islamic norms and contemporary realities.

Conclusion

The examination of custom (*ʿurf*) in Islamic legal history reveals a sophisticated jurisprudential tradition that has successfully negotiated the tension between universal divine norms and particular local practices across diverse cultural contexts and historical periods. Far from being a rigid, unchanging system, Islamic law has demonstrated remarkable adaptability through the principled incorporation of customary practice within a framework that preserves fundamental religious values and scriptural authority. The concept of *ʿurf* served as a critical mechanism enabling Islamic law to speak meaningfully to diverse Muslim communities while maintaining connection to shared sources and principles. This historical experience offers valuable insights for contemporary Muslims grappling with questions of Islamic authenticity, cultural identity, legal reform, and religious practice in rapidly changing modern contexts.

The variations in approaches to custom among different *madhāhib* and across different geographical regions demonstrate that Islamic legal tradition has always encompassed methodological diversity and practical pluralism. Rather than understanding these variations as weaknesses or contradictions, they can be appreciated as reflections of the Islamic legal tradition's capacity to accommodate diverse contexts while remaining rooted in common foundational principles. This historical pluralism challenges contemporary tendencies toward standardization and uniformity in Islamic practice, suggesting that authentic Islamic identity has historically coexisted with considerable cultural diversity. Understanding the historical role of *ʿurf* thus provides important perspective on contemporary debates about what constitutes genuine Islamic practice and who possesses authority to make such determinations.

The study of custom in Islamic legal history also illuminates ongoing challenges in Muslim-majority societies and Muslim minority communities regarding the relationship between Islamic norms, state law, and customary practice. The disruption of traditional Islamic legal institutions and the transformation of legal systems in the modern era have created new contexts for negotiating these relationships, contexts that differ fundamentally from those in which classical jurisprudence developed. Yet the principles and methodologies articulated by classical jurists—particularly the careful distinction between valid and invalid customs, the recognition that contingent rulings may change with changing

circumstances, and the emphasis on both textual fidelity and practical wisdom—remain relevant resources for contemporary legal and ethical reasoning. The challenge lies in creatively appropriating these historical resources while recognizing the unprecedented nature of many modern challenges.

Several important areas for future research emerge from this study. First, more detailed investigations of how *‘urf* operated in practice in different regions and periods, drawing on court records, *fatwās*, and other documentary sources, would enrich understanding beyond the theoretical discussions in legal literature. Second, comparative studies examining the relationship between Islamic approaches to custom and analogous concepts in other legal traditions could illuminate both distinctive features of Islamic jurisprudence and common patterns in how legal systems balance universality and particularity. Third, empirical research on how contemporary Muslims understand and apply concepts of custom in various contexts would inform discussions of Islamic legal reform and cultural authenticity. Finally, normative inquiry into appropriate methodologies for engaging Islamic legal tradition in contemporary contexts, building on historical precedents like *‘urf* while addressing unprecedented modern challenges, represents crucial work for Islamic legal and ethical thought.

In conclusion, the historical engagement with custom in Islamic law demonstrates that the Islamic legal tradition possesses sophisticated resources for maintaining both principled commitment to divine revelation and contextual responsiveness to human circumstances. The concept of *‘urf* embodies a fundamental recognition that divine law must be understood and applied by human communities situated in particular times and places, and that this situatedness necessarily shapes legal practice without compromising divine authority. This insight remains profoundly relevant for contemporary Muslims seeking to live authentic Islamic lives while engaging constructively with modern societies and cultures. The challenge—then as now—is to discern which aspects of practice represent unchangeable divine commands and which represent contingent applications to particular circumstances, and to make this discernment with both scholarly rigor and practical wisdom. The historical Islamic engagement with custom provides not definitive answers but rather methodological guidance and inspirational examples for this ongoing task.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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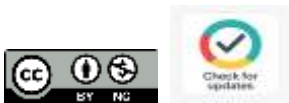
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