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Custom and Modern Constructions of *Shari'a*: Transnational Juristic Discussions on the Status of 'Urf

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Abstract

This paper examines modern juristic discussions on the concept of custom in light of the proceedings of the fifth session of the International Islamic Fiqh Academy, which was held in 1988. It shows the extent to which these discussions not only address the role of custom in the derivation of Islamic law and its place in the Islamic legal tradition, but also reflect the impact of modern positive legislations on modern conceptualizations of *Shari'a* and how it has been constructed in the wake of the modern legal reform movement. In particular, the framing of custom in some civil codes as an independent legal source marked a significant development and created tension between *Shari'a* and modern legal codes. This perceived tension has, in turn, inspired efforts to reaffirm the primacy of *Shari'a* and demands for its implementation. While these discussions demonstrate how Muslim scholars situate *Shari'a* within national legal structures, they also show the role of juristic councils, such as the International Islamic Fiqh Academy, in the development of a transnational juristic discourse that transcends the boundaries of the nation state.

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