

Maliki Jurists and the Maghreb Rural Life Through Habits and Customs

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Abstract:

Researchers owe a better understanding of the history of the Maghreb countryside, *al-badia* during the medieval and modern eras to the books of the Maliki *Al-nawazil* (pl of *nazila* “a new controversial juristic issue”) and the Sufi books of virtues, which, to some extent, established the notion of the religious and social independence of *al-badia* from the centralization of cities, while remaining subject to the jurists’ authority and supervision with the help of the notables and tribal chiefs’ authority. Religious independence does not mean a religion different from that of the city, but it is a set of tasks that accumulate many customs and traditions that make it a different religion from that of major cities. The *Al-nawazil* of the late Middle Ages (8-10 AH / 14-16 CE) reveal the entrenchment of the duality of “mysticism and doctrine” and the power of habits and customs. As a consequence, the Maliki jurists remarkably allowed the presence of “habit” and “custom” in their *Al-nawazil* in multiple and different contexts. This made the Maliki School more flexible and closer to observing people’s customs, including those that seem against the legislation of the Islamic religion, such as depriving women of their legal right to inheritance in some regions of the Maghreb. Habits and customs witnessed an increasing presence in people’s daily religious and social practices, including some additions in their worship. In the social field, some researchers assume that many customs and traditions such as marriage represent a continuation of an old mentality dating back to the pre-Islamic period in the Maghreb. The presence of habits and customs is embodied in the sources of Maghreb history based on the formulation of asked questions and the texts of the answers. The initial impression prevails that the presence of habits and customs in the Maliki jurists’ answers shows that the Maliki jurisprudence has been adapted to the conditions of the Maghreb environment since the first Hegira centuries. The intersection of the habit and custom terminologies is confirmed in the texts of *Al-nawazil*, so we read: “For that which has been customary and habitual” which are synonymous and have the same meaning. Some jurists seem to recognize the status of habit and its impact on *Al-nawazil*, as what al-Hawzali (d. 913 AH / 1001 CE) said that rulings are transmitted by the diffusion of customs. The sources of that period allow us to measure the extent to which the circle of habit and custom expanded at the expense of some religious rules. The sources of the Maliki *Al-nawazil*, whether those that have been investigated and published, or those that have not been explored yet, reveal huge accumulations, which are considered an indication of the jurists’ sovereignty in a marginal Maghreb environment confined to cities and metropolises at a time of the central state weakness. We refer to studies that investigated the social role of the religious institution, within narrow scopes; including the mosque institution.

Keywords: custom – habit - Sufism - the Maliki School of Thought – The rural Maghreb.

1. Introduction:

Most of the monographic studies specialized in Maghreb affairs showed special interest in the major cities and metropolises, and did not pay the same attention to the Maghreb *Al-badia* (countryside). This is due to several reasons, including the abundance of historical information on the cities compared to the rural areas while considering the cities as the centre of the historical event and that *Al-badia* is not worth the trouble of search.¹ Some foreign studies, including Jacques Berque's ones, were the first to highlight the vitality of the *Maghreb* rural areas through their arsenal of habits and customs.² Most of the information related to *Al-badia* came in the context of the interest in the jurists' answers to the local *Al-nawazil*, or in the context of documenting the virtues of the ascetics and mystics who lived in *Al-badia*, and accordingly documenting the history of *Al-badia* was not intended for its sake.

Previous researchers have dealt with the subject of *Al-badia*, and most of the studies were based on Ibn Khaldun's approach, who talked about the Maghreb *Al-badia* through:

- The urban-rural duality from the perspective of different lifestyles, and the principle of economic and livelihood integration. He said: "It turned out that the generations of urban and rural residents are natural and inevitable."³

– Most of the inhabitants of the Maghreb are people of tents, and troglodyte facilities.⁴

– Obtaining adequate studies on the urban-rural dialectical relationship remained limited as many of the available studies hardly deviate from the classical dichotomy (the urban positivity and the rural negativity).

In this paper, we will seek to explain the problematic status of the jurists in the Maghreb *Al-badia*, to what extent their role can be considered effective and influential, and what about the presence of other competing powers with the jurists in *Al-badia*?

The sources of the Maliki *Al-nawazil* are an important alternative through which one can closely identify the Maghreb rural life during the Medieval and Modern eras

The topic of *Al-badia* is often present in the questions which are loaded with useful social, religious and intellectual manifestations. For instance: "Is it permissible to sit on the rooftops of rural mosques to study and perform other acts of worship? And, is it permissible for the people of the place to sit

¹. Bin Talib/Ouaziz 2018: 349.

². Chelhod 1973: 246.

³. Ibn Khaldun 2013: 1/68.

⁴. Ibn Khaldun 2013: 1/202-203

their guest and feed him and let him sleep there?⁵ In his answer, a jurist may go on and add information about the rural life through his prior knowledge of the life of *Al-badia*.

We will rely on a sample of sources that contain aspects of rural life, including the answers of Al-Hawzali and Al-Abdusi. Both of them are sources of the type of *Al-nawazil* issues. They both chronologically belong to the period of the end of the Middle Ages and the beginning of the modern era. Among them are: *Al-Tashawouf ila Rijal al-Tasaouf* by Ibn al-Zayyat (617AH/1220AD), and *al-Mustafad* by: Al-Tamimi Al-Fasi (died: 604AH).

In this paper, we hypothesize the ability of Maliki jurists to manage the affairs of rural communities in *Al-badia* and oases by raising a **problem**: the features of the Maliki jurisprudence system (mysticism, habit, custom) in rural Maghreb at the end of the Middle Ages, and social influence patterns. The importance of the *Al-nawazil* that we will adopt lies in the fact that they employ issues inspired by reality and not as a matter of theory and probability. They, in fact, express well the reality of the Maghreb society at that time. The research **aims** to highlight the Maliki jurisprudence system as an institution that improves the management of the social domain, and exploits the community's trust in the Maliki doctrine on the one hand, and the remoteness of the central political authority on the other hand.

2. Customs and Habits and Maliki Jurisprudence.

We will adopt the terms “habit and custom” as two synonymous concepts. We will avoid going into highlighting the nuances between them, favouring some researchers’ opinions who think that the two words do not differ much. A custom is an act or a behaviour that has become a habit by repetition till it becomes approved by a group of people.⁶ The Maliki jurists nearly agree that customs are included in the fundamentals of the doctrine - among them is al-Qarafi (d.684AH/1285CE). They are classified as evidence of opinion as al-Shatibi said. That is to say; what is permitted by *ijtihad* “legal reasoning”, except for the legislative texts of the Qur’an and Sunnah.⁷ However, reality has proven in many cases that the applications of habits were at the expense of what is necessarily evident in religion.

The abundance and diversity of the origins of the Maliki doctrine makes clear the desire to keep pace with people’s habits and customs. That gets along with the adjective which considers it as the most flexible doctrine.⁸

⁵. Al-'Abdûsî 2015: 487.

⁶. Abu Zahra 1952: 447/Vigo 1993: 65

⁷. El Jidi 2016: 65-66

⁸. El Jidi 2016: 65-66

It is sufficient for the researcher to look at the Maghreb Maliki sources about *Al-nawazil* to discover the extent of habits and customs that exist in people's lives. Among the phrases most used in this context is "what is customary." Other texts link the habit with rural people, saying, "It is the habit of some tribes."⁹

The Maliki jurists sought to defend the particularity of the Maghreb Maliki jurisprudence regarding the divergence of the doctrine, and the large number of its references. Al-Mazouni mentioned in his book *Al-Durer el-Maknuna* ("The Hidden Pearls") that Fez contained some books of odd Maliki jurisprudence. He invoked what was specific to the Maliki doctrine of divergence and dispersal and the interest of each horizon in what they transmitted from it with no reference to others. He also defended the unknown Maliki jurists who specialized in jurisprudence issues that the imams of the doctrine did not come up with. So, he assumed: "And God acquaints those who are much less than others in rank, on what they did not perceive."¹⁰ It is as though Al Mazuni acknowledged and defended the principle of ramification and branching for which the Maliki doctrine is famous for in the Maghreb, so as it intersects with many habits and customs.

The Maliki jurists gave a great importance to the habit. Among the nice things we encountered is that the habit rises by permanence and continuity to the testimony of two men. Some jurists said, "A continuous habit rises to the status of two witnesses."¹¹ It seems that this is consistent with Ibn Khaldun's vision that the Malikis are the majority of the Maghrib population and they are rural people who have little crafts.¹² The one who carefully examines the Maliki jurisprudential discourse becomes well aware of the incorporation of habits and customs into the sources of legislation since the time of the well-known Maliki jurist Ibn Abi Zaid al-Qayrawani (d. 386AH/996CE), who was famous for his *fatwas* (v. *Yufti*: to advise, to counsel) to some rural groups according to their own customs.¹³

It is not surprising that a competent researcher like Brunshvig decided, in his study on the history of Ifriqiya in the Hafsid era, to study religious rituals from the point of view of habit, believing in the power of its influence on the original religious teachings.¹⁴ In a related context, researchers believe that the institution of scholars in the rural Maghreb is the producer and framework of everything related to religion, perception, practice and management. The religious world was greatly interfering and influencing political and social roles.¹⁵

⁹. Al-'Abdûsî 2015: 344, 347

¹⁰. Al-Mazouni 2012. 2/639

¹¹. Al-'Abdûsî 2015: 362

¹². Ibn Khaldun 2013: 1/260

¹³. Amara 2018: <https://www.mominoun.com>

¹⁴. Brunswik 1988: 2/311-312

¹⁵. Al-Akhal 2018: 332

Researchers point to the level of difference in the application of religious rites between the city and *Al-badia*, as it is closer to the correct application in the city thanks to the alliance of the political authority and the jurists. In *Al-badia*, it is more distorted because it is governed by the duality of the jurists and the tribe authority.¹⁶ Some rural jurists are accused of having invented a new jurisprudence, which they called "the rural jurisprudence".¹⁷ It is a jurisprudence with a special nature directed to local communities. It deals with issues and *Al-nawazil* that are not referred to in the well-known jurisprudential literature. The truth is that elites favoured and were convinced of the necessity of keeping pace with the people in their habits and controlling them, rather than delving into suspicions. The jurist Sheikh Muhammad al-Mami (d.1875AD) was a pioneer when he wrote "*Al-badia*" and many Maghreb studies (after independence) did not manage to make deep research about the Islam of *Al-badia* because they started from the urban standpoint, considering urban Islam as the original true Islam, while looking down at the rural Islam, and possibly accusing it of *bida'* (pl of *bid'a* 'innovation'), because of the size of accumulations of the numerous customs.¹⁸ A researcher explained the reason for the prevalence of rural habits to the concentration of jurists in the cities and their absence from *Al-badia*, as well as the historical accumulations and the inability of real Islam to really penetrate the rural areas.¹⁹

3. "*Inflas*" laws, a model for the dialectic of the rural control.

The rural habits and customs of *Al-nawazil* represent a fertile field for monitoring the jurists' divergence. One of the most contentious issues at the end of the Middle Ages was the *fatwas* of Maghreb scholars regarding the "*Inflas*". They were people with a great power and authority in the Western Atlas mountains. They decided to organize their affairs through the creation of a customary institution.

This system main goal was to maintain internal security in the rural community and to deter violators of the habits texts. So, they agreed to issue a set of laws that they would adopt in their rulings, against thieves and bandits.²⁰ The most important of them are:

- Recovering money from the offender, if it is available.
- A fine for the perpetrator if what was stolen is not available.
- Punishment by a paying a fine called 'equity' (*Lansaf*)
- Demolition of the offender's house

¹⁶. Brunswick 1988: 2/330

¹⁷. Al-Akhal 2018: 338

¹⁸. Arab 2015: <https://www.mominoun.com>

¹⁹. Boutchich 1998: 241

²⁰. Azaykou 1995: 166; Rashidi 2017: 116

- Slaughtering the offender's cow and consuming it
- Selling the offender's property if he has nothing in his possession
- Taking the value of what was stolen from his relatives, if he does not have property.²¹

The level of sensitivity and interest in this phenomenon started when someone made public a question about this customary system, “which is accused of being illegitimate.” He is a jurist called Sheikh Yahya bin Abdullah Al-Hihi (d. 1626 AD). The question that he sent to five jurists was about the control of a group of chiefs over the fate of *Al-badia*, far from the influence of the central authority, and probably far from the jurists’ *ijtihad* (informed reasoning). The question was as follows: “Your answer for Almighty God’s sake, about what some of the rural people do. They gather to the last of them - appoint the people of power and authority. They call them: “*Inflas*” and some others call them the chiefs. Then, they issue agreements about control and interests for their own.²²

The answers bear important indications about urban-rural management and the difference between them. The five jurists differed in their vision of the phenomenon as some of them looked at *Al-badia* from the angle of the city.

The jurist, Ahmed Baba Al-Tanbukti, answered that when a place is not attached to the rule of the Sultan, the Muslim community may gather and establish the provisions of the *Sharī‘a*. Their ruling replaces that of the Sultan and the judges. However, he required them to strive to enter under the rule of the Sultan. His position about their system of discipline, especially the custom of ‘equity’ (*inṣāf*), is one of injustice. He said that it is unjust to make someone pay for the crime of a relative. He accused the *Inflas* of changing Islamic law when they obliged the accused to take fifty oaths.²³ Al-Tanbukti’s answer reflects his jurisprudential position, which focused on the *nazila* and gave it care and detail though the outputs of the answer are classified within an urban point of view about *Al-badia*. The Mufti of Marrakesh, Abd al-Wahed al-Rakraki (he was alive in 1602 AD), also gave a general answer, accusing the *Inflas* of following the whims in setting their customs, and that it is one of the heinous heresies.²⁴

Then, came the answer of the judge of Marrakesh, Muhammad bin Omar al-Hashtouki (d. 1686AD) which was distinguished by generality like his predecessors and was not elaborate. His initial verdict was that the rulings of *Inflas* are “clear misguidance” because they are external to religion and contrary to *Sharī‘a*. This jurist was decisive in the issue of the habit violating law. He said: “Leaving

²¹. Askan 2010: 263 “It is known that this custom is contrary to Islamic law as it is not permissible to punish someone for someone else’s guilt. In spite of that, it was not applied only by the tribe, but rather by the existing Maghreb states, including the Almohads. The relatives of those accused of guilt are often considered responsible according to tribal customs.”

²². Azaykou 1995: 137-138; Rashidi 2017: 119

²³. Azaykou 1995: 142

²⁴. Azaykou 1995: 146

the legal rulings and devising regulations and laws that contradict the Muhammedan Shari‘a, is blasphemy.” He rejected the rural customs altogether, and called for fighting their advocates. He said: “The one whom God has empowered on earth must resolve the matter of those immoral people and return them to the *Shari‘a*, even by killing them. And *salam*.”²⁵

What is remarkable in the answers of the congregational judge, Issa bin Abd al-Rahman al-Saktani (d. 1652 AD), which were numerous and different is his distinguished and detailed answer as he attempted to grasp the aspects of the issue. At the beginning, his answer was similar to those who preceded him in dealing with the errors of ‘Inflas’ rules. He described them as delusion satanic panels and falsehood.

In the second time, he seemed more understanding of the context of the rural life and he said: “The group is acting as with the status of the sultan in the country where the question is asked, and hearing is never the same as seeing.”²⁶

In the third time, after he had checked out the previous jurists’ answers, he was more flexible through the expressions he employed, such as: “Al-nawazil comprise permissible and forbidden.” It’s a matter of necessity, not choice... Unlike those who preceded him, he invoked the local necessities as he said: “It seems to me that it is a matter of tolerance rather than choice...One of the rules of our doctrine is that necessities permit prohibitions.” He, then, reprimanded the rest of the jurists, as they had to follow this approach (necessities legalize prohibitions). The jurist presented a text that we consider as one of the most important ones which reflect the jurisprudence’s readiness to understand the rural conditions and customs considering their difference with those of the city. He said about the urban jurists: “Their justification is that they are urban. They can make rulings in the manner they answered, if God grants their success. What was mentioned about the loss of rulings in their place (‘Al-badia’) and the impossibility of really applying them according to the recommendations of shari‘a, which is doubtless, and he who has seen is not like he who has heard, and neglecting the matter of their country is more harmful as the rent is beyond repair. Then, they cannot be able to implement punishment for banditries and theft, because their country is a country of zealots and sectarian conflicts. So, being able to keep away from corruption is the goal of their power, and God knows best.”²⁷

However, what made the jurist Issa bin Abd al-Rahman to change his mind from attacking the rural laws to sympathizing with them? Has he moved to the Al-badia to coexist and see till he said, “He

²⁵. Azaykou 1995: 147.

²⁶. Azaykou 1995: 153

²⁷. Azaykou 1995: 154

who sees is not like he who hears". The "Inflas" notables might have strived to explain the merits of their rulings to the jurist out of their desire and to show their respect for the jurists' authority.²⁸

We have a final answer of Judge Ibrahim bin Yunus who was vague and not elaborate from the legal point of view. It seemed more compassionate to the "Inflas" with a firm stance on the bandits and the security disturbance they caused during the rule of the Saadian dynasty. He described them as an aggressive group that were out of the Sultan's authority. He settled that establishing an "Inflas" regime "is not only tolerable but rather a duty." ²⁹ In this case, the custom is an auxiliary factor for the ruler and a collaborator in establishing security.

The "Inflas" model represents a phenomenon of applicable custom throughout the rural Maghreb and *Al-badia* in general. It also raises controversy about the view of the urban jurists towards *Al-badia*. Here, we evoke Ibn Khaldun's saying: "The urbanite does not look to the conditions of *Al-badia* except for a necessity."³⁰ Among the indicators that reflect the view of the urban jurists on the rural norms and customs, is what we find in some sources of *Al-nawazil* issues that classify some habits within "issues of *bida*" "heresy", as is the case in *Al-nawazil*'s answers.³¹ Relying on those sources, researchers proceeded to reject the difference between the urban Islam and the rural Islam; between a rational and Salafi Islam based on the Qur'an and Sunnah and a superstitious, naive and superficial Islam.³² Among the issues in which the urban jurists were firm with the ruralites is the permissibility of accepting their testimony, as they did not accept it easily, and stipulate conditions for it. Al-Abdusi was asked about a provincial who testified against himself and then denied the testimony. The jurist replied that it was more appropriate to reprimand him, and he said: "But where is the one who can reprimand in a loose country like yours?"³³ Some judges were criticized because they were lenient with the rural witnesses, because they were known to follow desires, deal with usury, and waste prayers.³⁴

It is likely that the customary law is ancient in the rural Maghreb and it dates back to the pre-Islamic period. It was compulsorily taken over by the notables and village chiefs, as the central political authorities were unable to extend their real influence over the remote *Al-badia* and mountains,³⁵ which were freed from the control of urban jurists. That was applied to the "Inflas" ruling or "*Al-rebba'in*", which was legislated by the notables, as they saw it as a guarantee for security and

²⁸. Azaykou 1995: 154

²⁹. Azaykou 1995: 160-161

³⁰. Ibn Khaldun 2013: 1/69

³¹. Al-Hozali 2015: 387.

³². Bentaleb/Ouaziz 2018: 348.

³³. Al-'Abdûsî 2015: 443

³⁴. Al-'Abdûsî 2015: 465

³⁵. Chelhod 1973: 246

stability, instead of the state of chaos and turmoil caused by the sultan weakness. In such cases, the notables of the rural Maghreb returned to their old customary systems and took the initiative to revive it whenever they feel the weakness of the influence of the central authority.³⁶ This is an indication of the customs' persistence of the pre-Islamic period in the rural Maghreb to the modern era as a phenomenon of the collective organization within the Berber tribes.

When the notables or the chiefs decided to activate the organizational customs, they do not refer to the urban jurists because consulting them would take time, and their answers may be theoretical; far from the rural reality. In this situation, they do seek the assistance of young jurists: *talaba* "students" who are settled with them. The *talib* student or the jurist, as Ahmed Al-Tawfiq describes, is a pivotal religious character in *Al-badia*, created by the "assembly" or "notables" because of the society's need for him. Then, they permanently disagreed with him; they did not do with him and did not fully accept him.³⁷ The position of the rural jurist was negatively affected by the presence of two indicators: the first is when he derived his financial resource from the assembly whereas the second is when he was from an external tribe which was a justification to limit his influence outside the boundaries of the jurisprudential field.

That was what justified the urban jurists' opposition to this system and makes it easier for them to fight it by finding what contradicts the legal rulings. We have in the jurist al- Ĥiĥi's question to a group of jurists about the law as well as in Issa al-Saktani's answer who said: "And they ask the people of knowledge", two indications of the jurists' exclusion from some issues of rural society. Among the indications of the scholars' rejection of the "*Inflas*" law as it did not correspond to Malik's doctrine, the jurist Issa bin Abd al-Raĥ²man's saying: "I came across the words of some of those who were afflicted with the tribes affairs and knew them, in which he says: "The issues of the tribes' *Alwāĥ* (panels) include what agree with the *sharī'a*, and they are the majority, but not according to the Maliki doctrine, while the least are contrary to the *sharī'a*."³⁸ Therefore, it was understood that the jurists exercised all their authority to disparage every local authority that operated away from the jurist's system in accordance with the Maliki doctrine. On the other hand, we found that the religious authority framing of the custom without interfering in making its details is a phenomenon that is almost prevalent in the Maghreb depth. We have an agreement dating back to 1832, by an Ibadhi group in the Mzab region (southern Algeria) which says: "A group of people from El-Ateuf; students and commoners (notables) agreed to allocate a land for ploughing and not to be sold. Their agreement was witnessed by some "*Azzaba*"; the religious authority in the town.

³⁶. Askan 2010: 253

³⁷. Bentaleb/Ouaziz 2018: 357

³⁸. Azaykou 1995: 156

This example strengthens the principle of the distribution of powers in rural Maghreb villages. It is somewhat a manifestation of the separation between religious and civil powers, according to one researcher.³⁹ Some researchers noticed that the legacy of the social system in the rural Maghreb represents a local democratic model, in which it was possible to invest and set out to build a democratic whole.⁴⁰ Some rural groups might have been divided into three distinct groups in terms of roles and functions. The *Zawiya* specialized in managing the community's religious affairs. The habits and customs *Al-nawazil* that urban jurists classified as heresies reflected the urban-rural dialectic and were a manifestation of the competition over the field management. This explains the failure of the urban jurisprudential system to impose its absolute authority over *Al-badia* as it is sufficient to look at the size of the *Al-nawazil* of “violations, heresies and customs” that are found in jurisprudence sources to ascertain the reality of the urban and rural jurisprudences. Nevertheless, we cannot deny the great influence of religious authority in terms of societal framing.

4 Keeping up with customs that contradict jurisprudential laws

It is logical to proceed on the basis that the process of spreading Islam in the Maghreb was long and complex as it entirely spread only in the fifth century AH (11 AD).⁴¹ Hence, we wonder about the possible roles of customs in obstructing the process of Islamisation at the rural level in particular. We also wonder if Islam has not spread to all the rural areas provided that many habits and customs that seem to oppose and contradict the legal texts, were preserved.⁴² These are all legitimate questions in the light of what is known about the Maliki jurisprudence's conformity to the Maghreb customs. The sources mentioned an old approach of some jurists' keeping up with local rural habits that were for nullifying women's right to inheritance.

Some studies have argued that the Berber family is patriarchal, whether before or after Islam. As a result, some regions of the central Maghreb have deprived the woman of her legal right to inheritance for centuries after the spread of Islam, keeping up with a habit that was prevalent then. Some jurists have followed this custom for quite some time.⁴³ A question was repeated in the books of Maghreb *Al-nawazil* about a region of central Maghreb that used to deprive women of inheritance since the 5th century AH / 11th century CE.⁴⁴

Just as it was mentioned in early medieval history, this phenomenon was also found in the late *Al-nawazil* sources. Al-Abdusi was asked about daughters who handed over their inheritance from their

³⁹. Askan 2010: 255

⁴⁰. Bentaleb/Ouaziz 2018: 349

⁴¹. Amara 2018: <https://www.mominoun.com>

⁴². J. Chelhod 1973: 246

⁴³. Alfred Bell 1987: 50; AMARA/2 2002: 651

⁴⁴. The jurists gave multiple opinions on the issue, and they doubt that the phenomenon is widespread and old, as stated in the claim of the questioner. Al-Wansharisi /13 1981: 293.

father to their brother, for fear of him. The country people testified that the custom was that women do not take their inheritance from their brothers or their relatives. The jurist did not seem to denounce this custom, saying: "This custom is correct, fixed, common and well-known among them and among most people."⁴⁵ Abdullah bin Yassin, the founder of the Almoravid state, also failed to convince the leaders of Lamtuna to back down from their customs and apply the *Sharī'a* when dealing with murder, theft and adultery. We go on here to show the amazing effect of norms on the individual in the rural community. It was common among the Berber tribes that if the murderer is not killed, then he is exiled for a period of seven years and he cannot come back until his family pays blood money. The exiled murderer is subjected to harsh treatment in the tribe in which he resides. He is treated as a stranger deprived of his rights. It is customary in the habits and traditions of the Maghreb tribes that the individual who is separated from his group has a low status in the new group that hosts him. This made this matter to rarely occur.⁴⁶ Thanks to this customary mentality, the individual's belonging to his tribe and voluntary submission to its customs were firmly established.⁴⁷ In cases other than killing, the tenant of another tribe may have a special status.⁴⁸

A hypothesis is put forward by such customs and habits. Because of being ancient and existing before Islam, they continued after the Islamic advent. It seems in the most accurate judgment that some of these customs, accused of their "pre-Islamic" roots, continued to resist until the end of the Middle Ages. In a reply by Isa bin Abd al-Rahman al-Saktani, the jurist of Sousse, about the laws of "*Inflas*", that punishing a person for the crime of a relative of his, is one of the remnants of the "*jahilia*" (the pre-Islamic period). It seems that the jurist was familiar with these laws, and he called to oppose them with benevolence, because "*Inflas*" had grown up with them and found their fathers used to them.⁴⁹

It must be said that not all scholars agreed to keep on with norms. In the case of preventing a woman from inheritance, other jurists protested, and pointed fingers at their colleagues in the profession accusing them of encouraging the obstruction of a well-known part of religion.

The jurists exercised their authority in *Al-badia*; a geographical and social space that remained marginal in the Maghreb medieval history, -and still is-, where the role of the central political authority is secondary and weak. The matter, then, is related to a local religious representation that corresponds to popular or people's Islam, or is it a jurisprudential religiosity, moderate and open to the local realities, beliefs, practices and societal rituals. It can be said that the jurists exercised their

⁴⁵. Al-'Abdûsî 2015: 405.

⁴⁶. Askan 2010: 256.

⁴⁷. Boutchich 1998: 241, 243.

⁴⁸. Askan 2010: 252.

⁴⁹. Azaykou 1995: 150-151.

authority from a religious standpoint, but they were able to frame the various aspects of the religious, social, cognitive, cultural and symbolic life of *Al-badia*, because they represent a sacred religious symbolism.⁵⁰

It is difficult to determine the criteria that jurists follow in accepting or rejecting a custom. Some jurists' may seem selective, such as the custom of the "morning of the grave" procession, which is to visit a person's grave the morning after his death.⁵¹ Ibn Abi Zaid attended the procession, and Al-Sabai did not condemn it and considered it a manifestation of Muslims' solidarity in the ordeal, and Al-Qabisi approved it.⁵² Likewise, the jurists did not show much opposition to the habit of "reading al-Bukhari" and *Kitab al-Shifa*" (the Book of Healing) by Qadi Iyad, at specific times in the Maghreb mosques.⁵³

It is clear that some jurists overlooked some customs, out of a strategic standpoint to maintain their social authority and their religious *Marji'ya* (reference). It seems that they succeeded in this course, as it was known that some people were negligent in performing their daily prayers, but they respected and sanctified Ramadan fasting.⁵⁴ Despite the difference in the jurists' positions regarding this duality, the general trend was not to provoke this group. When some customs took root, the official jurists were the first to defend them. They saw their opposition as sowing sedition. Ibn 'Arafa accused a Maghreb ascetic of heresy and forced him to emigrate from Ifriqiya because he was not praying with the people in congregation because the imams used to take payment for the prayer.⁵⁵ One of the jurists, who went along with the custom and tolerated its permissibility, justified it as a claim of ruralism, saying: "Easy with this people's assembly that necessity has resorted to rural life."⁵⁶ He defends himself in observing the customs and habits, and preferring permissibility over prohibition, by saying: "I wanted to make it clear to the imitators like me that they have uncertainties about graduation and judging the habit for the sake of interest, and, suspicion is better than the explicit forbiddance."⁵⁷ Among the texts which keep up with the traditions is what is related to the sultans' customs. A text says: "It is proven by a permanent habit that the sultan takes the endowments collection"⁵⁸ as a cash advance from the endowments' overseer.

5. The role of the Sufis in managing rural affairs.

⁵⁰. Arab 2015: <https://www.mominoun.com>

⁵¹. Al-Hawzali 2015: 388

⁵². Roger Idris 1992: 2/325.

⁵³. Brunschvig 1988: 2/324

⁵⁴. Roger Idris 1992: 2/327

⁵⁵. Brunschvig 1988: 2/329.

⁵⁶. Beryat 2016: <https://www.arrabita.ma/blog>

⁵⁷. Beryat 2016: <https://www.arrabita.ma/blog>

⁵⁸. Al-'Abdûsî 2015: 361.

The Sufis, being themselves a type of jurists, played an essential role in people's lives in the Maghreb urban and rural areas. Through their network of relationships based on studentship, companionship and brotherhood, they were able to spread the Sufism mentality out there.⁵⁹ We do not find a field of social life in which the Sufis did not intervene and exercise their influence. There is no doubt that their moral religious influence was the greatest as the manifestations of piety, devotion, and asceticism formed sufficient indicators for a wide social group so as to believe that they are from the rest of the ancestors who resemble the Prophet's companions.⁶⁰ The Sufism movement developed within the Maliki doctrine context.

This link between them was presented as a dialectical relationship that grew during the mid-Middle Ages, and became more intense as we moved towards the end of the Middle Ages. It was represented in the weakness of the Maliki Salafi jurisprudence, and its victory which was saturated with *karamats* miracles, Sufism has been able to triumph in the rural and urban areas since the Almohad era in the 12th century AD. It showed a wide assimilation and respectful consideration for the conditions, customs and traditions of the Maghreb society.⁶¹ It also contributed to a cumulative addition to those habits, through its contact with the communities and the adoption of the discourse of poverty and the poor. Its victory in *Al-badia* was greater, for reasons including: the stability of the great jurists in the cities, and because the Sufis agreed to distance themselves from the city life, and more from the sultans and rulers' circles. The motives for victory in there were based on simple and perhaps naive conditions. As the ascetic and mystic who rises above ordinary people devotes himself to worship, he becomes a "lord's saint" and has followers. Then, his authority develops by fulfilling the condition of holiness that is transmitted to him by a former Sufi sheikh. This may lead him to be a sacred figure in Islamic history such as Ali bin Abi Talib and the Prophet (GPBUH).⁶² It is likely that the percentage of reclusive Sufis constituted a weak percentage.⁶³

At the beginning of the Middle Ages the urban jurists combined jurisprudence and Sufism in a more moderate manner.⁶⁴ Then, soon, Sufism swept the cities, either by the settlement of ascetics and Sufis in the precincts of the cities and the surrounding hills and the number of their followers increasing, or by being summoned by the rulers and sultans who forced them to live in cities. They also provided them with schools, apprehending their sweeping popularity.⁶⁵ Whenever the people's daily life

⁵⁹. al-Tamimi 2002: 1/222.

⁶⁰. al-Tamimi 2002: 1/210.

⁶¹. Al-Sharif 2004: 55, 56.

⁶². Brunschvig 1988: 2/340.

⁶³. Al-Tamimi 2002: 1/210

⁶⁴. Brunschvig 1988: 2/345-346

⁶⁵. Al-Sharif 2004: 60-61.

worsened, the more popular Sufis became. The supremacy of the Sufis over the urban jurists was evident in the rulers' refusal to implement the jurists' calls to confront some abnormal behaviour of some Sufis who were described as charmed and mad. The rulers consolidated their relationship with the Sufis and approached them because of their popularity, the belief in their supernatural power, and the fear of the consequences if they were offended.⁶⁶

Undoubtedly, Sufism contributed greatly and effectively to increase the connection with Islam in the rural Maghreb despite the fact that these accumulations were marred by practices alien to the *Shari'a*. The additions of the Sufis to the aspects of worship were undeniable and their personal diligence in worship may have moved to compulsory theories for inhabitants of rural areas but with no basis in the *Shari'a*. We read, for example, in Al-Hawzali's answers: "Whoever takes a handful of the dust of the grave of the dead and recites on it *Al-Qadr Surat* seven times, and places it under the head of the dead, he will neither be tormented nor see evil."⁶⁷ They had also a contribution to the process of popular Arabization of the rural Maghreb.⁶⁸ Their initiative to build mosques in the rural areas was a strong factor to consolidate religion and language. Their role in people's lives was mentioned in one of the sources, in the context of a question, in which it was stated:

"We have a group somewhere who dedicate themselves to worship by praying, fasting, reading the Qur'an, teaching the believers' children and striving to meet their needs and those of poor widows and orphans. They usually reconcile Muslims with perseverance and persistence. Among them is a man who has manifestations of knowledge, with an abundant share of what he needs of jurisprudence and Sufism. His companions consider him as a sheikh and a model. All of them appear to be good and righteous, except that they gather on the Prophet's birthday (*Mawlid*) in a celebration of preach and remembrance. A singer may chant poems to praise the Prophet (GPBUH) with what is appropriate to what urges obedience without the presence of women. Some people criticized them, and said: This is a heresy and a reprehensible act."⁶⁹

This text rightly expresses the foundations of religious mysticism that is acceptable to the Maliki jurists which are based on:

- The presence of a sheikh who applies the jurisprudence of Malik and the position of a Sufi with followers (*among them is a man who has a great deal of jurisprudence and Sufism, and his companions took him as a sheikh and a role model*)

⁶⁶. Brunschvig 1988: 2/345

⁶⁷. Al-Hawzali 2015: 415

⁶⁸. Al-Tamimi 2002: 1/212-213.

⁶⁹. Al-Wansharisi 1981: 8/38

- Accomplishing the basics of worship continuously (*dedicated to worship such as prayer, fasting, praise (dhikr)*),
- Performing according to the habits and customs (*meeting on the occasion of the Prophet's birthday for preaching and chanting*)
- Carrying out social tasks (*meeting the needs of people, widows and orphans, and reconcile Muslims*).

The main factor that qualified the Sufis to be at the forefront of the social scene in Al-badia is their social appearance. They are the most active with their presence and initiative during periods that witness the weakness and absence of the central political authority, the domination of evil people and thieves, and the emergence of crises such as drought and famine. People rush to them to relieve their worries and distresses.⁷⁰ They also call for solidarity initiatives, through their strong social networks, and they find cooperation from the country's notables. The Sufis' sources provide us with many examples of their roles within society, including:

1-They spend on the needy. 2- They feed the incoming strangers. 3- They alleviate starvation. 4- They intervene in order to reduce the taxes of the authorities. 5- They mediate between the rulers and the ruled in certain issues. 6- They treat or alleviate the sick. 7- They reconcile the spouses. 8- They meet people's needs. 9- they build social facilities of public interest. 10- They secure roads by removing obstacles. 11- They purify society from forbidden manifestations. They fought banditry, drinking and selling alcohol, and exposing heretics and corruptors. 12- They mediate in tribal disputes.⁷¹ In this context, we do with one model embodied by the Sufi jurist Abu Zakaria Yahya Al-Zawawi, who helped the poor in Bejaia when they were afflicted with famine.⁷² He used to go to the notables of the country and invite them to contribute to the support of the poor, and thus collected important aid.

Sufism was opposed by a current of students of knowledge and jurists, who can be called as Salafi Malikis. A text described them in the following terms: "Some people slandered them and said: This is a heretic and a reprehensible thing."⁷³

But it seems that the majority of the Maliki jurists at the end of the Middle Ages were in their favour. This was expressed by a jurist: "I wish I had been with them to achieve a great victory."⁷⁴ To a certain extent, the largest percentage of the Maliki jurists was carrying a mystical smear. The text also benefits from the dialectic of the intellectual conflict between the Ash'ari Malikis, the Salafi Malikis,

⁷⁰. Al-Tamimi 2002: 1/214-215.

⁷¹. Al-Tamimi 2002: 1/215-217.

⁷². Ibn al-Zayyāt 2014: 429.

⁷³. Al-'Abdūsī 2015: 481.

⁷⁴. Al-Wansharisi 1981: 8/39

and the Sufi Malikis. The jurist Al-Abdusi expressed his position on the deniers of Sufism: "Do not pay attention to an ignorant, rude and insolent student who does not understand the Maliki doctrine or anyone else who does not carry the narrations without their meaning. Talking to such a person is a pain in the heart, and a delay in time without benefitting the human being in this world and in the hereafter.." ⁷⁵

We point out that the jurists' rejection of another type of Sufis, who practiced superstition and dancing in their incantations "*dhikr*", did not prevent their activities and influence on an important section of the rural community. It is clear that the repetition of questions about them is an indication of their presence. The Maliki *Al-nawazil* sources contain many texts and questions expressing the Maghreb reality as asking about the dancing ritual while reciting religious hymns "*dhikr*", and asking about the status of the marabouts reciting incantations while dancing. They claim that those movements help them to attract reverence. ⁷⁶ As most of them were in *Al-badia*, the urban jurists took a strict stance against them, and warned the rural residents not to gather around them. One of the sources described their rituals as one of the jurists said: "It is forbidden to meet eulogizer with drums which have round shapes covered with leather, the strings, the rabab, and the zither. They may gather with women surrounding them on the roofs of the alleyways." ⁷⁷ They were also accused of abandoning knowledge and jurisprudence.

The penetration of Sufism in the depth of the Maghreb *Al-badia* increased with the end of the Middle Ages. Among the customs that illustrated the Sufis' dominance was the habit of paying visits to the graves of the righteous, seeking blessings from them and praying there ⁷⁸ even if the willingness to adopt the discourse of miracles has been clearly prevalent since the 4th century AH / 10th century AD. as Ibn Abi Zaid al-Qayrawani (d.: 386 AH / 996 AD) wrote about the existence of the saints' miracles, and Abu Nasr al-Dawdi defended their existence. ⁷⁹

The Sufis, then, were able to dominate the social scene of the Maghreb society and its rural areas in particular, during the last centuries of the Middle Ages. More than one researcher concluded that Sufism has been able to organize the Maghreb social life outside the rules of official states, since the Almohads' dynasty. ⁸⁰ This is a strong indication of the existence of two parallel authorities sharing influence within the Maghreb society.

6. Models of the impact of custom and habit on acts of worship.

⁷⁵. Al-'Abdûsî 2015: 483

⁷⁶. Al-'Abdûsî 2015: 476, 486

⁷⁷. Al-'Abdûsî 2015: 489

⁷⁸. Roger Idris 1992: 2/326.

⁷⁹. Roger Idris 1992: 2/334, 337.

⁸⁰. Al-Tamimi 2002: 1/219.

The customary accumulations contributed to getting closer to the people's worship in the Maghreb. Brunschvig provides us with an example of the deviation of the *qiblah* direction in many African mosques and this continued throughout the Middle Ages. Despite the condemnation of some jurists of the need for mosques to direct their *qiblah* correctly, the phenomenon did not stop as a result of the accumulated customs.⁸¹ The Maliki jurists may have taken into account the effect of weather fluctuations, such as rain, to easing the *Maghrib* and *Isha* prayers. However, they did not accept in any way their combination although the jurisprudential texts, according to the Maliki School, allow this as it is based on an agreed-upon legal license. It is likely that the motive for this is the custom that did not like the combination process.⁸² Moreover, some Maghreb rural areas still maintain the habit of calling to Friday prayers by three muezzins which dates back to the early Middle Ages. This habit does not find support in the original jurisprudential texts.⁸³ In the mosques of Gafsa in the Tunisian *Jerid* region, it was customary that women pray in sheds. However, on Friday when crowds are heavy, the women's rows join the men's ones. What we notice is that when the custom is allowed to expand, it may take over purely religious powers, forcing the jurists after a while to find a compromise solution, such as allocating a new constructed space for women, and undo the custom. In this context, the judge and some sheikhs allocated a cabin built of bricks for women.⁸⁴

The custom provides room for jurists to compete for support or rejection by using jurisprudential texts. The custom of performing the funeral prayer in mosques built in the middle of cemeteries (funeral places) came out. The jurists disagree about it; Al-Barazli confirmed it in his *fatwas*, Ibn Al-Kateb authorized it, Abu Imran Al-Fassi prevented it and considered it an unacceptable habit and Ibn Mahrez contented himself by saying that there is a difference between the jurists on the issue.⁸⁵

The Maliki jurists showed flexibility in some issues related to worship, in which the ruling was decisive according to the jurisprudential rules. For example: adding the word "*Our Master*" in prayer. Al-Aqbani gave two answers: The first is that the best *dhikr* is what came in accordance with the *Shari'a*, and the second is that mentioning our Prophet (GPBUH), with sovereignty and similar qualities indicate reinforcement and reverence and is not forbidden but rather an increase in worship and faith."⁸⁶ So, notice how Al-Aqbani acknowledged that the principle is to be satisfied with what was stated in jurisprudence, then he permitted the addition and considered it an increase in faith. What is said about the prohibition is correct. But he corrected and said that the one who does that

⁸¹. Brunschvig 1988: 2/312.

⁸². Brunschvig 1988: 2/313

⁸³. Brunschvig 1988: 2/314.

⁸⁴. Roger Idriss 1992: 2/322

⁸⁵. Roger Idris 1992: 2/323.

⁸⁶. Al-Mazuni 2012: 2/584.

does not lead to prohibition. In a related devotional issue, which is raising the hands in supplication after prayer, one of the Maliki jurists issued a two-sided fatwa. The first is that what was mentioned regarding the prohibition is right, but he then added that the one who does that does not reach prohibition,⁸⁷ referring to his acknowledgment of what exists actually. It is likely that such issues were produced by the influence and impact of Maghreb Maliki mysticism, and people promptly and automatically accepted them because they are among the issues that draw a sacred image of the Prophet in their hearts.

7. Samples of jurists' management of social habits.

Some of the rural habits reveal a degree of unspoken openness, such as the issue of rural women to uncover their limbs for the necessity of travelling and not for the purpose of adorning themselves. What is remarkable is that the jurist was not hasty in denouncing the phenomenon. However, we find him explaining the phenomenon anthropologically when he said that the rural people in covering the nakedness have a share with their name, which is the bedouin of the nakedness (the appearance of the nakedness). This is not an argument for their nakedness except for necessity or excuse. He concluded that it is possible to determine the appearance of the private parts by rural people according to what was mentioned by Ayad about uncovering the leg out of necessity.⁸⁸ On the issue of women, some texts reveal that the mentality of ownership is entrenched in the issue of marriage. Some tribes may have violated the clear legal rules of marriage. There is a *nazila* about a habit in some tribes that the fiancée's father obliged the fiancé to pay him an amount of money and that was considered illicit and infringing marriage laws since only the dowry should be paid.⁸⁹

In the chapter on violations, Ibn Ardun mentioned an entire chapter warning of the reprehensible *bida'* (pl. of *bid'a*: innovation in religion) that occurred in the feast and that he considered as a custom. He also mentioned the intermingling of men and women at the wedding party as they used to do in the past. They also resisted trying to change that habit, saying: "There is no way to cut off the customs of our great grand parents"⁹⁰ The Sufi jurists in those regions sought the help of their followers and took initiatives, such as reciting the Qur'an and a set of *dhikr*, which is a means to impose a new reality at the expense of displacing some old customs.

The sources reveal the inability of the jurists to change some other habits, to which people are accustomed and which are entrenched in their minds and behaviour, such as a *nazila* which is stated as follows: "Sidi Abdullah Al-Abdusi was asked about a pervaded issue, and the jurists were

⁸⁷. Al-Mazuni 2012: 2/588

⁸⁸. Beryat 2016: <https://www.arrabita.ma/blog>

⁸⁹. Al-'Abdûsî 2015: 485.

⁹⁰. Ibn Ardûn 2010: 1/442-443

confused in resolving it. This habit was about using the school houses for storage and rest by some well-off people who do not attend the learning and the Qur'an recitation assemblies.⁹¹ Among the factors that contributed to the difficulty of finding a satisfactory answer to this *nazila* is that: The origin of the custom used by a group of people was unknown such as a mosque supervisor who used to take two dirhams for the houses surrounding the mosque. A man bought one of those houses, and refused to give the two dirhams claiming that the purchase contract did not contain any reference to the mosque and the witnesses did not know why the residents of the other houses were giving the two dirhams.⁹² Many of those habits were used to be applied by people who were unable to determine their beginning and explain the circumstances of their spread.

8. Conclusion

Some of the customs with their multiplicity and rituals divergence were a recall of the Berbers' pre-Islamic mentalities and rituals. However, these customs were soon registered under the jurist's authority, and the relationship between them has known controversy and intellectual attack at times, and absorptive flexibility at other times.

The habits and customs have known victories through their continuity, spread, and accumulation over time. One of the manifestations of their victory is their ability to penetrate the ranks of the jurists, separating them into two: a class described as a Salafi Sunni who opposed every new matter and a class that condoned and encouraged under various justifications.⁹³ Abi al-Abbas Ahmed al-Azfi al-Sabti is credited with the celebration of the Prophet's anniversary. His argument was that the Muslims were weak and affected by the Christian holidays in Andalusia, and it is better for them to celebrate the Prophet's anniversary. Likewise, the adoption of the custom by the sultans was a reason for reducing the number of opposing jurists. For instance, Al-Barzali did not denounce the anniversary celebration in itself but the way it is celebrated by holding music concerts.⁹⁴ Then, it is sufficient for the jurists to call this habit a "desirable heresy" so that its meaning becomes closer to *Shari'a*.⁹⁵ Some local customs sometimes appeared more severe than the ritual rule that was regulated by the Maliki doctrine.⁹⁶

The alliance of jurists and the authorities sought to weaken the connotation of the tribe and its customs in *Al-badia*, and they claimed that the goal was the victory of the nation's principle, as was the case with the Almohad dynasty. However, the reality was that the state itself did not deviate in

⁹¹. Al-'Abdûsî 2015: 343.

⁹². Al-'Abdûsî 2015: 347-348.

⁹³. Brunshwig 1988: 2/318.

⁹⁴. Brunshwig 1988: 2/319.

⁹⁵. Brunshwig 1988: 2/327.

⁹⁶. Brunshwig 1988: 2/313.

its ruling from the mentality of the tribe and the principle of the victorious and the vanquished in the dualism of a Masmuda tribe and the other. The policy of weakening the tribe with its mentality, custom and habit did not succeed.⁹⁷ Yet, the interest of the rural populations in their customs and traditions constituted, in one of its dimensions, an insistence on preserving the tribal spirit and common lineage.

Whatever the matter, and whether the jurists opposed the custom or supported it, the custom did not come out of the jurists' reference and framework. It seemed as if the custom belonged to their authority, and people themselves preferred that the customs were supported by the jurists' blessing. Brunschwig expresses this relationship by saying: "The Maliki scholars in Tunisia during the fifteenth century did not complain about the apathy or indifference of their followers. Rather, they complained about the zeal of some worshipers, whose excessive zeal reached the point of offending real legal obligations, by exaggerating in the performance of some religious rites."⁹⁸

This intertwined relationship is what gave the jurists their authority over society in the rural areas. In this context, we employ the saying of the jurist, Sheikh Muhammad al-Mami, in keeping with suspicious habits, by saying: "In my opinion, if they were restricted, they would have broken into prohibition without suspicion." This view can also be generalized to the rest of the jurists who went along with some customs that were not compatible with the jurisprudential rules. The jurists vigorously defended their personal and sectarian authority and their framing of the rural community. They did not hesitate to ridicule the customs that were woven away from their framing considering them heresy if they violated the rules of the Maliki School. The previously mentioned manifestations reflect the argument of the rural religious and social independence from the centralization of the cities, and its survival under the jurists' authority and control.

⁹⁷. Askan 2010: 259.

⁹⁸. Brunschwig 1988: 2/330-331.

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