

Ibn ‘Abd al-Wahhāb, Salafī Islam, and the Saudi Judiciary

1 Introduction

The Saudi judiciary is commonly described as one of the strongholds of Wahhābī Islam – a reform movement that was started by the eighteenth-century Najdī preacher Muḥammad bin ‘Abd al-Wahhāb (d. 1792). Ibn ‘Abd al-Wahhāb called for the return to *tawḥīd*, the belief in the absolute singularity of God. He and his followers forbade the worshipping of Sufi graves and other practices that they considered forbidden innovations (*bid‘a*, sing. *bida‘*) in the Islamic creed. The strict focus on *tawḥīd* served as the blueprint for Ibn ‘Abd al-Wahhāb’s idea of a perfect Islamic community. Around the year 1744, he famously made a deal with Muḥammad bin Sa‘ūd (d. 1765), the chieftain of the small town of Dar‘iyya in the center of the Najd, in order to establish a state that would bring the people of the Arabian Peninsula back to *tawḥīd*. This was the beginning of the institutionalization of what has since been known as “Wahhābism.”

At the time of Ibn ‘Abd al-Wahhāb, the center of the Arabian Peninsula was forgotten by the big empires. Strategically of minor importance, it was left by the Ottomans to several local rulers who regularly engaged in feuds with each other.¹ With the support of Ibn ‘Abd al-Wahhāb’s followers, Muḥammad bin Sa‘ūd’s military and political influence rose. Eventually, his son ‘Abd al-‘Azīz bin Muḥammad for the first time unified the Najd under one reign. The kingdom flourished until Muḥammad bin Sa‘ūd’s grandson, Sa‘ūd bin ‘Abd al-‘Azīz conquered the Ḥijāz. The Ottoman rulers realized the threat that the Saudi emirate and its Wahhābī allies presented to the Ottoman sultan’s claim to protect the two holiest cities in Islam, Mecca and Medina. Ottoman troops attacked the Saudi emirate and eventually conquered the Najd. In 1818, the first Saudi state was defeated.²

What initially was a bond between a local ruler and an unconventional preacher had by that time already become a pact between two families that

1 For an overview of the situation in the Najd before Ibn ‘Abd al-Wahhāb, see David Commins, *The Wahhabi Mission and Saudi Arabia* (London: I.B. Tauris, 2006), 7–10.

2 *Ibid.*, 37.

shapes Saudi Arabia until today. Although he had many disciples, Ibn 'Abd al-Wahhāb preferred that his children and grandchildren carry on his legacy and gave them the best possible education.³ Over the next decades and centuries, his descendants held key positions in the kingdom and functioned as advisers and judges. They adopted the patronym *Āl al-Shaykh*, the "house of the shaykh." When the second Saudi kingdom was founded, after the withdrawal of Ottoman troops from the Najd in 1824, it was the scholars from the house of the shaykh who legitimized the rule of King Turki bin 'Abd Allāh. When King 'Abd al-'Azīz finally unified the Arabian Peninsula again in 1932 and declared the third Saudi kingdom, scholars from Ibn 'Abd al-Wahhāb's family were once again in leading state positions.

Until today, the bond between the two families is very visible, especially in the legal system. For example, the current Grand Mufti 'Abd al-'Azīz bin 'Abd Allāh is a direct descendent of Ibn 'Abd al-Wahhāb. However, whereas in the past, the scholarly discourse was dominated by members of the *al-Shaykh* family, the Saudi scholarly establishment today consists of members of many different Najdī families. Nabil Mouline called this the democratization of the Saudi Arabian clerical corps.⁴ However, scholars from outside the Najd, especially from the *Ḥijāz*, remain underrepresented.⁵

This chapter explores how the Wahhābī tradition has developed in Saudi Arabia and how its key beliefs have redefined the authority and role of the schools of Islamic jurisprudence. We will put a special focus on how the Wahhābī and Salafī roots of the Saudi judiciary are reflected in the way legal reasoning is understood and how this relates to the jurists' understanding of pluralism in Islamic law.

2 Wahhābism and Salafism

2.1 *What Is Wahhābism?*

2.1.1 The Controversy Surrounding the Term Wahhābism

Ibn 'Abd al-Wahhāb never used the term Wahhābism (*wahhābiyya*) to describe his movement. It is and was mostly a foreign appellation that was historically used by opponents of the movement. Later, the term continued to be used in a pejorative way. Muḥammad bin 'Abd al-Laṭīf (d. 1921), one of the most

³ Mouline, *Clerics of Islam*, 69.

⁴ *Ibid.*, 171.

⁵ According to Nabil Mouline, seventy-three percent of the Council of Senior Scholars' members between 1971 and 2010 were of Najdī origin. Mouline, *Clerics of Islam*, 181.

prominent members of the al-Shaykh family at his time, complained that, for him, the problem with the term Wahhābism did not lie in the association with Ibn ‘Abd al-Wahhāb, but in the fact that the term implied that the movement followed another authority than the Quran and the Sunna.⁶ This line of thought is still very present. The Saudi-based Syrian scholar Ṣāliḥ al-Munajjid, one of the most influential Muslim voices today, argued that since the movement would clearly not constitute a new madhhab, only ignorant people would use the term Wahhābism.⁷

The movement’s adherents call themselves by different names that reflect their focus on tawḥīd. Most importantly, they use the term *al-muwaḥḥidūn*, which can be translated as “monotheists”.⁸ However, since all Muslims understand themselves as monotheists, the term *al-muwaḥḥidūn* did not prove to be distinguishable. As a result, the movement’s followers increasingly accepted being called Wahhābīs by others.⁹ When Ibn Bāz (d. 1999) was asked about the term, he stated that, for him, Wahhābism was, in fact, an honourable and acceptable description because it was the name of the people who call for tawḥīd.¹⁰ Ṣāliḥ al-Fawzān even replied in a fatwa that it would be an honour to be called a Wahhābī since Wahhābism was not more than the legitimate quest for tawḥīd.¹¹ Nevertheless, even though some scholars accept being called Wahhābīs, Saudi ‘ulamā’ usually do not refer to themselves as Wahhābīs, and many still consider the term a misnomer.¹²

The controversy about the term Wahhābism is reflected in the way Saudi kings referred to the movement. In 1929, King ‘Abd al-‘Azīz forbade the use of the name and replaced it, mostly for political reasons, with the then still less contentious term “Salafism.”¹³ By that time, the movement had gotten a bad

6 ‘Abd al-Raḥmān bin Muḥammad bin Qāsim, *Al-Durar al-saniyya fī al-ajwiba al-najdiyya* (N.p, 1417/1996), 1566.

7 Al-Munajjid’s fatwa page islamqa.info is constantly ranked as one of the most visited websites on Islam worldwide. The fatwa can be accessed through the website, see bit.ly/2uBDTSs [last access: 28 January 2020].

8 ‘Abd Allāh bin Ṣāliḥ al-‘Uthaymīn, *Al-Shaykh Muḥammad bin ‘Abd al-Wahhāb: Ḥayātuhu wa-fikruhu* (Riyadh: Dār al-‘Ulūm, 1406/1986), 103.

9 Mouline, *Clerics of Islam*, 9.

10 An audio recording of the fatwa can be found on binbaz.org.sa, bit.ly/2RDOJYh [last access: 29 January 2020].

11 An audio recording of the fatwa can be found on YouTube, www.youtube.com/watch?time_continue=10&v=u2MeW1CN1A4&feature=emb_title [last access: 29 January 2023].

12 ‘Abd Allāh bin Muḥammad al-‘Abd al-Laṭīf, *Da‘āwā al-munāwīn li-da‘wat al-shaykh Muḥammad bin ‘Abd al-Wahhāb: Arḍ wa-naqd* (Riyadh: Dār Ṭayba li-l-Nashr wa-l-Tawzī’, 1409/1989), 76.

13 Mouline, *Clerics of Islam*, 9, 111.

image. Since the late nineteenth century, Ottoman propaganda and Western travellers had increasingly become aware of the movement and depicted them as bloodthirsty, ignorant, and fanatical Bedouins.¹⁴

Until today, Saudi leaders refrain from using the term Wahhābism when they talk about law and religion in Saudi Arabia. In his famous interview with *TIME* magazine in 2018, Crown Prince Muhammad bin Salman said that there was no such thing as Wahhābism in Saudi Arabia and stated that he would “need someone to explain to me what are the teachings of Wahhābism.” Instead of describing a particular set of beliefs, Muhammad bin Salman argued that the term was first used by extremists to legitimize themselves by creating a link to Saudi Arabia, and second by Iran, which claimed that Saudi Arabia had invented a different school of Sunni Islam. Muhammad bin Salman insisted in the interview that Saudi Arabia encourages and includes all schools of Islam, the four major schools of Sunni Islam and the various schools of Shia Islam.¹⁵ However, from an academic perspective, the teachings of Saudi ‘ulamā’, as it will be shown presently, are undoubtedly influenced by the thought of Ibn ‘Abd al-Wahhāb and his followers.

2.1.2 The Teachings of Ibn ‘Abd al-Wahhāb

The Prophet Muḥammad had once said that Islam began as something strange and would become strange again.¹⁶ Ibn ‘Abd al-Wahhāb was convinced that it was in his times, the late 1700s, that Islam had, due to deviations from the Prophet’s original teachings, again turned into something strange.¹⁷ He saw himself as one of the “renewers” (*mujaddidūn*, sing. *mujaddid*) of Islam, who according to a Prophetic hadith, appear at the turn of every century.¹⁸

Ibn ‘Abd al-Wahhāb is often described more as an activist than an intellectual. Although he was from a scholarly family, his writings are widely considered to lack originality. For instance, Nabil Mouline argued that Ibn ‘Abd al-Wahhāb did not change Ḥanbalī doctrine but only aimed to impose orthodoxy.¹⁹ Mouline claimed that “[h]is writings are a near systematic reprise of the classic Ḥanbalī corpus, his main contribution being to render this generally

14 Ibid., 107.

15 The interview can be found on *TIME* magazine’s website, [time.com/5228006/mohammed-bin-salman-interview-transcript-full](https://www.time.com/5228006/mohammed-bin-salman-interview-transcript-full) [last access: 30 January 2023].

16 Al-Tirmidhī, *Jāmi’ al-Tirmidhī* (Riyadh: Bayt al-Afkār al-Dawliyya, 1424/2003), 426 (Nr. 2629).

17 Commins, *Wahhabi Mission*, 16.

18 Abū Dāwūd, *Sunan Abī Dāwūd* (Damascus: Dār al-Risāla al-‘Ālamiyya, 1430/2009), 6:349 (Nr. 4291).

19 Mouline, *Clerics of Islam*, 62.

very elitist production accessible to a larger public.”²⁰ Samira Haj criticized this common depiction of Ibn ‘Abd al-Wahhāb as a simple transmitter of Ḥanbalī thought as an oversimplification. She suggested that his originality lies not in the fact that he “invented” new ideas but in the way he referred to ideas that were already present in the Islamic tradition. Haj pointed out that Ibn ‘Abd al-Wahhāb did not just randomly pick quotes from medieval texts but that his thinking was expressed in the way he put together these ideas.²¹

In fact, Ibn ‘Abd al-Wahhāb’s theological and legal opinions differ in many aspects from traditional Ḥanbalī thought. For example, he was quick to declare others, even prominent Muslims, to be unbelievers whenever they did not follow his understanding of tawḥīd.²² Mainstream Ḥanbalīs, on the contrary, were very careful in doing so. Moreover, his stance against Sufi practices contradicted traditional Ḥanbalī doctrine, which was more tolerant.²³ These deviations from traditional Ḥanbalism led to fierce disputes between him and other Najdī and Ḥijāzī ‘ulamā’, among them many Ḥanbalīs.

David Commins called the association with the supposedly strict Ḥanbalī school “one of the myths about the Wahhābī tradition.”²⁴ He pointed out that the most distinctive aspect of Wahhābī thought is that for Ibn ‘Abd al-Wahhāb, the mere claim of practising tawḥīd is not sufficient. The true Muslim, Ibn ‘Abd al-Wahhāb demanded, has to refute any object of worship other than God.²⁵ From the Wahhābī perspective, whoever turns to holy men or saints for help or sacrifices animals for anybody other than God is an idolater (*mushrik*) and thus an unbeliever (*kāfir*). Consequently, Ibn ‘Abd al-Wahhāb’s main aim was to fight popular practices that he considered idolatry (*shirk*), most importantly, the worshipping of tombs of saints.

Violence was a legitimate way for him to reach his goals. He justified the destruction of popular Sufi shrines, legitimized attacks on Muslims he considered idolaters, and had prisoners of war executed when they refused to adopt his understanding of Islam. One of the most problematic practices, in his opinion, was the prayer at the Prophet’s tomb, which he considered a violation of tawḥīd. Until today, scholars in Ibn ‘Abd al-Wahhāb’s tradition, like Ṣāliḥ al-Uṣaymī, a professor at Riyadh’s Imām University, call for the destruction

20 Ibid., 67.

21 Haj, “Reordering Islamic Orthodoxy,” 340.

22 Ibn ‘Abd al-Wahhāb even declared his own brother Sulaymān an unbeliever, because he was critical of Ibn ‘Abd al-Wahhāb’s teachings, Commins, *Wahhabi Mission*, 22.

23 For example, one of Ibn ‘Abd al-Wahhāb’s earliest critics, the Ḥanbalī scholar al-Ṭandatāwī, was a member of a Sufi ṭarīqa, see Samer Traboulsi, “An Early Refutation of Muḥammad ibn ‘Abd al-Wahhāb’s Reformist Views,” *Die Welt des Islams* 42, no. 3 (2002), 380.

24 Commins, *Wahhabi Mission*, 12.

25 Ibid., 7–10.

of the tomb. In 2005, al-'Uṣaymī prompted the Saudi authorities to demolish the tomb's dome. However, the jurists are aware that the tomb's destruction is refused by many Muslims, especially outside of Saudi Arabia. Therefore, the king, al-'Uṣaymī wrote, should wait for a good opportunity to destroy the tomb in order to avoid unrest (*fitna*) among the Islamic community.²⁶

2.1.3 The Difference between Law and Creed in Ibn 'Abd al-Wahhāb's Thought

When assessing Ibn 'Abd al-Wahhāb's teachings, we have to differentiate between his creed (*aqīda*) and his approach to jurisprudence (*fiqh*). Whereas the Ḥanbalī tradition remained important for Ibn 'Abd al-Wahhāb's understanding of creed, he held that the individual believer was free to follow the school of his choice in jurisprudence.²⁷

But Ibn 'Abd al-Wahhāb's strict understanding of tawḥīd also has implications for the law.²⁸ For him, idolatry not only has negative implications for the relationship between an individual and God but for the whole Islamic community. He considered law to be one of the foundations of the Islamic community and looked at it through the lens of his understanding of tawḥīd. As a result of the unconditional submission to God, all human-created aspects and categories of the law lose their authority.²⁹

Accordingly, Ibn 'Abd al-Wahhāb was suspicious of *fiqh* and its methodology, whereas he emphasized the role of the revelation. This scepticism resulted in a profound critique of the religious establishment of his times. He accused them of blindly following (*taqlīd*) established opinions in jurisprudence. Ibn 'Abd al-Wahhāb complained that the jurists took medieval legal opinions for granted and did not review whether they were actually in line with the Islamic revelation.³⁰ The scholars should again engage in the study of Quran and Sunna and re-evaluate their teachings. At the same time, he was cautious in his call for independent legal reasoning (*ijtihād*) and never explicitly referred to himself as a *mujtahid*, a scholar capable of independent legal reasoning.³¹

26 Ṣāliḥ Al-'Uṣaymī, *Bida' al-qubūr: Anwā'uha wa-aḥkāmaha* (Riyadh: Dār al-Faḍīla, 1426/2005), 253; Today, the question whether the tomb of the Prophet should be destroyed is discussed in the context of *siyāsa shar'iyya*. See, for example, Al-'Utaybī, *Maqālat fī al-siyāsa al-shar'iyya*, 81–83.

27 Mouline, *Clerics of Islam*, 65.

28 Haj, "Reordering Islamic Orthodoxy," 339.

29 *Ibid.*, 343.

30 *Ibid.*, 340.

31 Guido Steinberg, *Religion und Staat in Saudi-Arabien: Die wahhabitischen Gelehrten 1902–1953* (Würzburg: Egon Verlag, 2002), 313.

Even though many Najdī scholars refused his call, Ibn ‘Abd al-Wahhāb’s bond with the Saudi rulers helped him to spread his message. By the nineteenth century, his reformist movement dominated the religious and legal life in the Najd. With the Saudi conquest of the Ḥijāz in the 1920s, his followers encountered another intellectual movement in Islam, which surprisingly shared many of their key beliefs: modernist Salafism.

2.2 *What Is Salafism?*

2.2.1 The Two Forms of Salafism

Like Wahhābism, Salafism (*salafiyya*) is a contentious term. Firstly, as Henri Lauzière pointed out, it describes not only one movement but very different understandings of Islam.³² Lauzière even argued that the question “What is Salafism?” could not be answered due to the concept’s controversial nature, both in the primary and the secondary literature.³³ Secondly, like Wahhābism, the term Salafism is mostly a foreign appellation, which is refused by the majority of the people who are called Salafists. Thirdly, due to the rise of Salafī jihadism, the term is increasingly linked with violence and terrorism.

Today, two main movements are commonly described as Salafī in Western literature: modernist Salafism and purist Salafism. Even though both movements are very different in their goals and beliefs, they share a focus on the first three generations of Muslims, the *salaf* (often translated as the “pious predecessors”), which traditionally play an essential role in the Islamic tradition. According to a well-known account, the Prophet said that the best people were those of his and the two following generations.³⁴

2.2.2 Modernist Salafism

The Salafī movement started at the end of the nineteenth century, when Islamic scholars and activists, mostly from Egypt, engaged in a reinterpretation of the Islamic tradition. This movement is today known as the first salafiyya, or modernist Salafism. It is mostly associated with three scholars: Jamāl al-Dīn al-Afghānī (d. 1897), Muḥammad ‘Abduh (d. 1905), and Rashīd Riḍā (d. 1935). These Muslim intellectuals wanted to leave behind the rigid system of norms that Islam had, in their opinion, become and to renew Islam by thinking again like the salaf. For ‘Abduh, the salaf were not only the first three generations of Muslims, as it was commonly understood, but he used the term more broadly

32 See Lauzière, *Making of Salafism*, 2.

33 Ibid., 14.

34 Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Damascus: Dār Ibn Kathīr, 1423/2002), 1601 (Nr. 6428).

to describe the timeframe in which the fundamentals of Muslim thought were established. In his view, this period ended with the death of al-Ghazālī in 1111.³⁵

The modernists questioned the authority of traditional Sunni teachings, which they considered backward and antiquated. Islamic teachings should be revived and brought in line with modernity,³⁶ which made some of their ideas radical at the time. In his famous book *The Liberation of the Woman (Tahrīr al-mar'a)*, Qāsim Amīn, a companion of Muḥammad 'Abduh, even argued that the veil was not mandatory for women but a non-Islamic custom that was adopted by Islam and framed religiously.³⁷ Further, a strong sense of anticolonialism fueled the movement's desire to modernize Islam. Throughout the nineteenth century, European influence had risen in the Arab world, and secular ideas and laws spread in the region. The modernist Salafis hoped that a reform of Islam could help to overcome the European domination of the region and restore the leading role of the Islamic community. To achieve the desired renewal, modernist Salafis called to end the blind imitation (*taqlīd*) of established opinions in law and creed and advocated for a new interpretation (*ijtihād*) of the sources of Islam. Their goal was a more rational religion. However, from the perspective of the orthodoxy, this meant moving away from the revelation.

Even though 'Abduh and his circle spoke of a revival of the salaf, they did not adopt the label salafiyya themselves.³⁸ For centuries, to follow the salaf was a common and favourable description for an Islamic scholar. However, this did not evoke adherence to a particular movement in Islam. Lauzière pointed out that Salafism as a conceptual construct was created after 'Abduh's death in the early twentieth century by Western orientalist like Louis Massignon (d. 1962). Later, Islamic scholars absorbed the orientalist's concept and used it in their writings.³⁹

35 Albert Hourani, *Arabic Thought in the Liberal Age, 1798–1939* (Cambridge: Cambridge University Press, 1983), 230.

36 I understand modernity as the set of technologies and modes of organization that originated in eighteenth- and nineteenth-century Europe.

37 Qāsim Amīn, *Tahrīr al-mar'a* (Cairo: Mu'assasat al-Ḥindāwī, 2016), 39.

38 Frank Griffel, "What Do We Mean by 'Salafi'? Connecting Muḥammad 'Abduh with Egypt's Nūr Party in Islam's Contemporary Intellectual History," *Die Welt des Islams* 55, no. 2 (2015), 202.

39 Henri Lauzière, "The Construction of Salafiyya: Reconsidering Salafism from the Perspective of Conceptual History," *International Journal of Middle East Studies* 42, no. 3 (2010), 370, 380–81.

From the 1920s onwards, many of the modernist Salafis began to follow a more literalist approach to Islam. Most prominently, Rashīd Riḍā, one of ‘Abduh’s closest companions, turned away from the speculative theology of ‘Abduh and started to sympathize with the Wahhābīs. In his writings, he tried to rehabilitate the Wahhābī movement’s adherents who, as we have seen, had a reputation for being religious fanatics. When the Ottoman caliphate ended in 1924, Riḍā and others looked for new Islamic leadership and found it in the Saudi king ‘Abd al-‘Azīz. Riḍā established close connections to the Wahhābī establishment in the kingdom, and many of his students started to teach at universities in the Ḥijāz and engaged in fierce debates with Wahhābī scholars.⁴⁰

Although, at first glance, the Wahhābī tradition and modernist Salafism depart from different presumptions, their views are often surprisingly similar. For example, both reject superstitious beliefs, albeit for other reasons. Whereas the Wahhābīs regard superstitious beliefs as a violation of tawḥīd, modernist Salafis dismiss them as irrational and primitive. Riḍā’s students, many of whom followed their teacher’s literalist understanding of Islam, differed from the Wahhābīs not so much in their creed but more in their approach to modernity.⁴¹ Scholars from the Najd had a notorious reputation for their scepticism towards modern science. In the 1920s, many Wahhābīs still held that the earth was flat, and in 1966, Ibn Bāz famously claimed that the sun orbited the earth, contrary to established scientific evidence.⁴²

2.2.3 Purist Salafism

The interaction between modernist Salafis and traditional Wahhābīs led to a movement that is commonly described as the second salafiyya, or purist Salafism. It is important to note that in this context, my use of “purism” does not imply a normative claim but refers to these Salafis’ typical preoccupation with the unadulteratedness of Islamic teachings and practices.⁴³ From the 1970s on, purist Salafism almost entirely superseded modernist Salafism, and many of its concepts and ideas became part of mainstream Islam.⁴⁴ Both forms of Salafism share the idea that Islam must be reformed by focusing on the model of the Prophet and his early followers. However, in contrast to modernist reformers, purists not only want to use the first generations as a model

40 Lauzière, *Making of Salafism*, 60–94.

41 Ibid., 80.

42 ‘Abd al-‘Azīz bin ‘Abd Allāh bin Bāz, *Al-Adilla al-naqliyya wa-l-ḥisṣiyya ‘alā imkān al-ṣu‘ūd ilā al-kawākib wa-‘alā jarayān al-shams wa-l-qamr wa-sukūn al-arḍ* (Riyadh: Maktabat al-Riyāḍ al-Ḥadītha, 1982).

43 See Lauzière, *Making of Salafism*, 4–6.

44 Ibid., 25.

for reform but aim to imitate them in any way possible. Instead of just rehabilitating their way of thinking, the salaf should become role models for every aspect of life.

Because of its focus on religious purity, purist Salafism does not seem to differ much from the Wahhābī tradition at first sight. This similarity has led scholars to question the originality of purist Salafism.⁴⁵ However, many famous twentieth-century Salafis substantially disagreed with the more traditional Wahhābī doctrine. A good example is Muḥammad Nāṣir al-Dīn al-Albānī (d. 1999), one of the most prominent purist Salafis. Originally from a working-class family in Damascus, al-Albānī soon became known for his strict emphasis on the Prophetic tradition. He developed a new methodology for the analysis of ḥadīth transmission by focusing on the transmitter's reliability. In 1961, Ibn Bāz invited him to Saudi Arabia, where al-Albānī taught at the University of Medina. Once in Saudi Arabia, his controversial views clashed with the Najdī establishment. This was not surprising since al-Albānī had declared the *miḥrāb* a forbidden innovation and claimed that Muslims could pray in a mosque with their shoes on.⁴⁶ When he published a book in which he argued against the veiling of women's faces, he had to leave Saudi Arabia.⁴⁷ However, despite his disputes with the Wahhābī establishment, al-Albānī gained a large following in Saudi Arabia. He and his followers were critical of the religious aristocracy of the Najdī Wahhābīs, who had built their own networks and developed their own tradition and canon of literature. Despite the opposition of part of the religious establishment, al-Albānī's opinions became prominent, and today he is considered a respectable scholar in Saudi Arabia and is regularly cited in legal literature.

The views of Saudi jurists today resemble more purist Salafism than traditional Wahhābism. Their approach to Islamic law reflects the influence that modernist Salafism had on Wahhābī thought throughout the second half of the twentieth century, as most Saudi scholars have moved away from anti-modern Wahhābī ideas. The vast majority today, as we will see in the next chapters, embrace modern technology and, to some extent, accept new social developments. Even though today purist Salafism is still associated with Saudi Arabia, its mission to spread a purist understanding of Islam outside the kingdom has been successful. Purist groups are now on the rise globally. This was

45 Nabile Mouline, for example, described contemporary Saudi scholars as Ḥanbali-Wahhābīs, see Mouline, *Clerics of Islam*, 10.

46 Stephane Lacroix, "Al-Albani's Revolutionary Approach to Hadith," *ISIM Review* 21 (2008): 6.

47 *Ibid.*, 7.

especially visible in Egypt when the purist Salafi Ḥizb al-Nūr (The Party of Light) became Egypt's second most popular political party after the revolution of February 2011.⁴⁸

We have seen that the goal of purist Salafism is a revitalization of Islam by strictly following the model of the Prophet Muḥammad. Next, we will look in more detail at how this has influenced the ways in which Islamic law is conceptualized.

3 Law in Wahhābī and Salafi Thought

3.1 School Coherency

Modernist Salafīs were not so much interested in the technicalities of Islamic jurisprudence but concerned with the overall reformulation of the foundations of Islam. Even though many modernist Salafīs were trained Islamic scholars, they were not jurists in the narrow sense of the word. ‘Abduh, for example, was criticized for using the terms *qānūn* (usually understood as positive law) and *sharī‘a* interchangeably.⁴⁹ Even though at first sight, this seems to be a terminological question with little practical relevance, the use of the terms, as we have seen in the last chapter, has implications for the way the relationship between Islamic and positive law is understood.

Since the focus of purist Salafism is on the correct following of Islamic law, even minor questions of Islamic jurisprudence are given great importance. As a result, purist Salafīs focus much more on fiqh and ḥadīth than modernist Salafīs. The purists not only put a stronger emphasis on the law but also have a distinct understanding of fiqh. This is reflected in their approach to the schools of Islamic jurisprudence.⁵⁰

Purist Salafīs claim to only follow the practices of the salaf.⁵¹ Muslims should not cling to any of the legal schools but build their reasoning directly on

48 See Griffel, “What Do We Mean by ‘Salafi’?”, 186–220.

49 Leonard Wood, *Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt, 1875–1952* (Oxford: Oxford University Press, 2016), 60.

50 The rejection of the schools is one of the main criticisms that traditional scholars have made against Salafī ‘ulamā’. The Syrian scholar Muḥammad Sa‘īd Ramaḍān al-Būṭī, for example, wrote a book, in which he called the rejection of the schools (*al-lāmadhhabīya*) the most dangerous innovation that threatens Islamic law today. See Muḥammad Sa‘īd Ramaḍān al-Būṭī, *Al-Lāmadhhabīya: Akhṭar bid‘a tuhaddidu al-sharī‘a al-islāmiyya* (Damascus: Dār al-Fārābī, 1426/2005).

51 Lauzière, *Making of Salafism*, 8.

the primary sources. Purist Salafis like Ibn Bāz argue that since the madhāhib and their institutionalization of dissent were created after the first generations of Muslims, they are generally not binding.⁵²

Contemporary Salafī scholars usually distinguish between the “school of the salaf” (*madhhab al-salaf*) and the “method of the salaf” (*manhaj al-salaf*).⁵³ They prefer to speak of Salafism as a method (*manhaj*), since the notion of a school would imply that they follow a specific group or sect of Islam and not the pure teachings of the Quran and the Sunna. By calling Salafism a method, they thus prevent being accused of violating their own strict understanding of tawḥīd.

The purist Salafī approach to the madhāhib has its roots in the Ḥanbalī tradition. Like premodern Ḥanbalī scholars, contemporary Salafis are traditionally much more interested in ḥadīth studies than in judicial reasoning.⁵⁴ Aḥmad bin Ḥanbal, the school’s founder, considered himself more a ḥadīth scholar than a jurist and explicitly disapproved the institutionalization of the schools.⁵⁵ He even tried to avoid his views becoming authoritative by not allowing his students to write down his legal opinions.⁵⁶ Many scholars in his tradition nevertheless developed a madhhab thinking comparable to that prevailing in other schools. For jurists like Ibn Qudāma⁵⁷ (d. 1223), the opinions of earlier scholars became an essential point of reference.

The Saudi scholars’ opposition against the madhāhib stems from another line of tradition in the Ḥanbalī school, most prominently from the thought of Ibn Taymiyya. Like Ibn Ḥanbal, Ibn Taymiyya was critical of clinging to a single school. In one of his fatwas, he stated:

If a man follows Abū Ḥanīfa, Mālik, Shāfiʿī, or Aḥmad [bin Ḥanbal], and thinks that in some questions, another school would be preferable and follows it, [then] this might be better. This does not infringe on his

52 Recorded fatwa of Ibn Bāz. Available on binbaz.org.sa, bit.ly/3alNft9 [last access: 17 January 2023].

53 Lauzière, *Making of Salafism*, 225–26.

54 Griffel, “What Do We Mean by ‘Salafī?’,” 208.

55 Christopher Melchert, *Aḥmad ibn Hanbal* (Oxford: Oneworld Publications, 2006), 79.

56 Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E.* (Leiden: Brill, 1997), 14.

57 Here, and throughout the book, I am referring to Muwaffaq al-Dīn bin Qudāma al-Maqdisī, who is commonly known simply as Ibn Qudāma. There are, however, other great Ḥanbalī scholars stemming from the Qudāma lineage, including Ibn Qudāma’s nephew ʿAbd al-Raḥmān bin Qudāma (d. 1283).

religion, nor his integrity [*‘adāla*], without question. It is even the most proper [way]. This is more affectionate towards God and His Prophet than to take the side of someone specific other than the Prophet.⁵⁸

Even though the scepticism towards the schools predates modernity, it was in the wake of modernity that the critique of the legal schools became more popular, not only among Ibn ‘Abd al-Wahhāb and his followers in the Najd. One of the most famous voices against the legal schools was the Yemeni reformer al-Shawkānī (d. 1834), who advanced the idea that no madhhab should be followed in the Arab world.⁵⁹

Even though Salafis deny their binding authority, the schools continue to play an important practical role in Salafī jurisprudence, in particular as a tool to structure legal reasoning. Sa‘d al-Shithrī, for example, contended that although the schools were not binding for the individual believer, they did offer a vehicle for education and the systematization of knowledge.⁶⁰

In their legal reasoning on a specific issue, Saudi jurists almost always refer to all four schools. Usually, they present the established opinions in the schools before weighing (*tarjih*) them by analyzing the presented arguments and the textual references to the revelation.

Another popular claim of Salafī scholars is that they would look beyond the four major schools of law. However, in fact, the only other school that is regularly referred to in Salafī jurisprudence is the almost extinct Zāhirī school. For example, Taqī al-Dīn al-Hilālī (d. 1987), an influential student of Rashīd Riḍā, admired the Zāhirī school for its devotion to a literalist approach and its refusal of taqlīd.⁶¹

The influence of Ibn Ḥazm, the most prominent Zāhirī today, is very visible in the Saudi legal discourse. Even though he is rarely cited in court decisions, Saudi scholars often think of him and the Zāhirīs as the fifth school of jurisprudence. One example of this is the debate on the maximum length of pregnancy. Whereas premodern scholars of all four major schools held that women could be pregnant for two or four years or even longer, Ibn Ḥazm criticized the jurists for relying on unreliable reports about prolonged pregnancies and maintained that the maximum length of pregnancy was one year.⁶² Although

58 Ibn Taymiyya, *Majmū‘at al-fatāwā*, 22:248.

59 Griffel, “What Do We Mean by ‘Salafī’?,” 205.

60 Sa‘d al-Shithrī emphasized this in a TV interview, which is available on YouTube, www.youtube.com/watch?v=P-TP5To7pbs, min 3 [last access: 29 January 2023].

61 Lauzière, *Making of Salafism*, 158.

62 Ibn Ḥazm, *Al-Muḥallā bi-l-athār* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1425/2003), 10:133. For the debate on the maximum length of pregnancy see Dominik Krell, “Saudi Arabia,” in

this still exceeds the actual average length of pregnancy, many Saudi jurists today refer to Ibn Ḥazm in order to bring their legal reasoning in line with modern science.⁶³

3.2 *The Acceptance of Normative Pluralism*

The Salafī critique of the schools' binding authority breaks with traditional understandings of authority in Islamic jurisprudence. Without the limitation to the established schools, diverse opinions can stand side by side. This leads to what I call the normative pluralism in Salafī jurisprudence: a multitude of equally recognized but possibly contradicting legal opinions. Normative pluralism should not be confused with legal pluralism. Whereas legal pluralism describes the parallel existence of several normative systems,⁶⁴ normative pluralism refers to a variety of accepted norms that can be found in a single normative system.

The roots of the jurists' acceptance of normative pluralism lie in the foundations of Islamic jurisprudence. According to a popular narration, the Prophet Muḥammad said that the disagreement (*ikhtilāf*) in his community was a mercy of God.⁶⁵ Finally, the respect for normative pluralism also derives from the fundamental Islamic principle that no human should stand between the believer and God.⁶⁶

Regarding law and legal reasoning, this entails two important aspects: Firstly, human legal reasoning cannot be absolute. "The respect for normative pluralism (*ikhtilāf*)," as Baber Johansen pointed out, "is possible only because the fiqh scholars conceive an ontological difference between the knowledge as revealed by God in Koranic texts, the Prophet's praxis, or the community's consensus on the one hand, and the knowledge which human beings acquire through their own reasoning."⁶⁷ Human reasoning can thus never reach the

Filiation and the Protection of Parentless Children: Towards a Social Definition of the Family in Muslim Jurisdictions, ed. Nadjma Yassari, Lena-Maria Möller, and Marie-Claude Najm (The Hague: T.M.C. Asser, 2019), 304–308.

63 We will discuss the debate on the maximum length of pregnancy in more detail in Chapter 7.

64 See John Griffiths, "What is Legal Pluralism?" *Journal of Legal Pluralism* 24 (1986): 2.

65 Today, some scholars question the authenticity of this ḥadīth. Al-Albānī, for example, noted that whenever scholars in the past attempted to link the ḥadīth to a reliable chain of transmitters (*isnād*), they were unable to do so. Muḥammad Naṣir al-Dīn al-Albānī, *Silsilat al-aḥādīth al-ḍaʿīfa wa-al-mawduʿa* (Riyadh: Maktabat al-Maʿārif, 1412/1992), 1:141.

66 Wael Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 78–83.

67 Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: Brill, 1999), 65–66.

level of “true” knowledge, which is restricted to God, whereas the Islamic community’s consensus (*ijmāʿ*) is located somewhere between human and Godly knowledge. Although the consensus stems from human efforts, it has been raised to the level of “true” knowledge, since the Prophet, among other things, declared that his followers would never agree on the wrong.⁶⁸ As a result, all legal reasoning is necessarily subjective.⁶⁹

Secondly, the immediacy between the believer and God hinders the development of an Islamic clergy that, similar to the Catholic Church, could elaborate binding interpretations for all Muslims based only on its structural religious authority. The idea that all human action and reasoning is contingent thus forms the basis of Islamic jurisprudence and the institution of the schools.⁷⁰ Some Islamic scholars have even argued that contradicting legal opinions should not only be respected, provided that they are derived through the methods of Islamic jurisprudence, but that every legal question has many equally correct answers. If God had wanted the jurists to be united, they claimed, he would have sent them clear textual evidence.⁷¹

Although the normative pluralism of Islamic legal thinking is acknowledged by Western scholars of Islamic law, purist Salafis or Wahhābīs are often excluded. For example, in an influential article on the Salafi movement, Quintan Wiktorowicz claimed that by focusing on the strict following of the Quran and the Sunna, Salafis “eliminate the biases of human subjectivity and self-interest, thereby allowing them to identify the singular truth of God’s commands.” Consequently, he asserted that, “from this perspective, there is only one legitimate religious interpretation; Islamic pluralism does not exist.”⁷² Wiktorowicz concluded that, in practice, purist Salafi jurisprudence does nothing more than to “narrowly rel[y] on the Quran and authentic (sound or verifiable) hadiths.”⁷³

68 Ibn Mājah, *Sunan Ibn Mājah* (Cairo: Dār Iḥyāʾ al-Kutub al-ʿArabiyya, n.d.), 2:1303 (Nr. 3950). For an overview of the concept of consensus in Islamic law see Mairaj Syed, *Ijmāʿ*, in *The Oxford Handbook of Islamic Law*, ed. Anver Emon and Ahmed Rumei (Oxford: Oxford University Press, 2018), 271–98.

69 See Norbert Oberauer, “Wahrheitssuche und ‘Mut zur Hölle’: Zum Problem juristischen Entscheidens im Islam,” in *Religion und Entscheiden: Historische und kulturwissenschaftliche Perspektiven*, ed. Wolfram Drews, Ulrich Pfister, and Martina Wagner-Egelhaaf (Baden-Baden: Ergon, 2018), 151.

70 See also Johansen, *Contingency*, 65–66.

71 Khaled Abou El Fadl, *Speaking in God’s Name: Islamic Law, Authority, and Women* (London: Oneworld Publications, 2001), 306.

72 Quintan Wiktorowicz, “Anatomy of the Salafi Movement,” *Studies in Conflict & Terrorism* 29 (2006): 207.

73 *Ibid.*, 209.

While Wiktorowicz’ assessment might be accurate for Salafī creed, where there is, as we have seen, less space for pluralism, it is less convincing when it comes to the law. Legal reasoning in Saudi Arabia, which he considered the origin and promotor of Salafī beliefs and jurisprudence,⁷⁴ is much more complex. In fact, the Saudi scholars’ dismissal of school coherency makes them much more open to normative pluralism in law than is widely imagined. The general acceptance of plural legal opinions not only exists in practice, as we will see in the upcoming chapters, it is also openly admitted by Saudi ‘ulamā’.

Ibn Bāz acknowledged the advantages of normative pluralism in one of his fatwas. When asked about the soundness of the Prophet’s account that pluralism was a mercy of God, he replied:

This is not true, it is not a word of the Prophet, but it is from some of the second generation of Muslims [*tābi‘ūn*]. The Prophet did not say this. Some of the *tābi‘ūn* said: I saw the companions [*aṣḥāb*] of the Prophet disagree, only for God’s mercy. This means: The mujtahid looks into it and considers the textual evidence [*dalīl*]. In the pluralism [*ikhṭilāf*] of the scholars [*‘ulamā’*] lie benefits [*maṣāliḥ*] for the Muslims, even though consent is preferable and better. In consent lies mercy and blessing, as God says: “They will not cease to differ, except whom your Lord has given mercy” [Hūd 118–19]. Mercy is within unity. However, if there is a question on which there is disagreement between the scholars, the jurist has to look into the textual evidence [*dalīl*] and has to undertake *ijtihād* by weighing between [the opinions] that are based on the evidence. He must not be lenient in this matter and not careless, but look into the evidence of the *sharī‘a*, and what he considers preponderant is what should be worked with, no matter if there are two, three, or four opinions on this question, he studies the textual evidence in the verses [of the Quran] and the accounts [of the Prophet] with open eyes. He stays away from personal affection [*ḥawa*] and fanaticism [*ta’aṣṣub*].⁷⁵

Here, Ibn Bāz presented the ideal type of Salafī legal reasoning, whereby normative pluralism is considered necessary and beneficial. At first, all opinions should be considered, no matter from which school they originate. The work of the jurist now lies in verifying the opinions that are presented by the schools.

74 Ibid., 221.

75 A transcript of the audio recording of the fatwa can be found on binbaz.org.sa, bit.ly/2yRBHyY [last access: 21 April 2023].

Wiktorowicz was right when he argued that Salafī jurisprudence was particularly strongly connected to the revelation. However, this does not mean that the acceptance of normative pluralism inherent in Islamic law is abolished. Instead, it serves as a map for the jurist in his search for the opinion that he finds is most in accordance with the primary sources. Normative pluralism thus lies at the heart of the Salafī concept of law; it is the starting point for the jurist's *ijtihād*.

4 The Debate on *Ijtihād*

4.1 *What Is Ijtihād?*

Whilst *ijtihād* is understood, both in Western scholarship and in Islamic legal writings, very broadly as the jurist's effort to find a solution to a particular legal question,⁷⁶ its nature remains one of the most controversial topics in Islamic jurisprudence. To better understand what the term means in the Saudi context, we have to keep in mind that *ijtihād* refers to two different levels of legal interpretation: the "basic" level and the "particular" level.⁷⁷ The basic level consists of debates over fundamental concepts of Islamic jurisprudence, whereas the particular level comprises discussions on specific rulings inside each school. Since it is often unclear to which level of *ijtihād* an author is referring, the unreflected use of the term has, as Montgomery Watt pointed out, led to many misunderstandings.⁷⁸

At the center of the controversy surrounding *ijtihād* lies the idea of the closing of the "gate to *ijtihād*" (*bāb al-ijtihād*).⁷⁹ Western scholars, most famously Joseph Schacht, forwarded the idea that Islamic jurists around the ninth century started to feel that all essential questions in Islam had been answered by their predecessors and concluded that all that was left for them to do was the mere application and interpretation of the established doctrine.⁸⁰ This was the time when the gate of *ijtihād* was supposedly closed and the age of *taqlīd*

76 See for example 'Abd Allāh bin Muḥammad Āl Khunayn, *Tawṣīf al-aqḍiya fī al-shar'īa al-islāmīyya* (Riyadh: Dār Ibn al-Farḥūn, 1434/2014), 1:353.

77 This division was introduced by Montgomery Watt. See Montgomery Watt, "The Closing of the Door of *ijtihād*," *Orientalia Hispanica* 1 (1974): 678.

78 *Ibid.*, 678.

79 For a more detailed discussion of the different perspectives on the closure of the gate of *ijtihād* see Shaista Ali-Karamali and Fiona Dunne, "The *Ijtihad* Controversy," *Arab Law Quarterly* 9, no. 3 (1994).

80 Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon, 1982), 70–71. Others date the assumed closure of the gate of *ijtihād* to the fourteenth century. See Count Léon

(commonly translated as “imitation”) began, in which the existing corpus of jurisprudence was supposed to be accepted and replicated.⁸¹

The underlying assumption of this narrative is that Islamic law became static and thus unavailable for new interpretations, a notion that was, as we have seen, very present among modernist Islamic scholars in the late nineteenth century. The idea that there was no innovation in Islamic law after a certain time period has, among other things, its roots in the epistemology of premodern Islamic law. As Bernhard Weiss pointed out, premodern Muslim jurists never considered themselves to be *inventing* rules. Instead, their exercise of premodern *ijtihād* meant articulating what had already been decided by God but remained concealed to humans.⁸²

But the closure of the gate of *ijtihād* was largely a myth: Wael Hallaq showed that *ijtihād* was prevalent in Islamic legal theory as well as in the jurists' practice throughout time and was considered a crucial element of Islamic law.⁸³ However, even though Hallaq was the first to emphasize that the closure of the gate of *ijtihād* was more theory than actual practice, earlier writers were also aware of this. Schacht himself, for example, stated that later Islamic jurists were in practice not less creative than their predecessors.⁸⁴

Premodern jurists supporting *taqlīd* were often reacting to practical demands. Sherman Jackson showed that some jurists viewed *taqlīd* positively as a tool to stabilize the schools' inner coherence, which helped secure their authority.⁸⁵ Similarly, Muhammad Fadel suggested seeing *taqlīd* as a way to standardize Islamic law. He argued that *taqlīd* is “best understood as an expression of the desire for regular and predictable legal outcomes,”⁸⁶ similar to European notions of the rule of law.

With the advent of modernity and the influence of new epistemologies on Islamic scholars, the prevailing understanding of *ijtihād* changed. Aria Nakissa argued that premodern Islamic jurisprudence was based on a linguistic

Ostrorog, *The Angora Reform: Three Lectures Delivered at the Centenary Celebrations of University College* (London: University of London Press, 1927), 31.

81 Schacht, *Introduction to Islamic Law*, 71.

82 Weiss, “Interpretation in Islamic Law,” 200. Like Schacht and later Hallaq, Weiss concluded that the gate of *ijtihād* was never fully closed despite the jurists' reluctance to engage in *ijtihād*.

83 Wael Hallaq, “Was the Gate of *Ijtihad* Closed?,” *International Journal of Middle East Studies* 16, no. 1 (1984): 4.

84 Schacht, *Introduction to Islamic Law*, 73.

85 Sherman Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: Brill, 1996), 227.

86 Mohammad Fadel, “The Social Logic of *Taqlīd* and the Rise of the *Mukhtaṣar*,” *Islamic Law and Society* 3, no. 2 (1996), 197.

conception of knowledge and should, therefore, “more accurately [be] understood as being similar to language.”⁸⁷ According to Nakissa, premodern Muslim jurists held that “just as there is no progress or creativity in grammar, there is none in law.”⁸⁸ Premodern Islamic education, Nakissa asserted, combined the teaching of law with that of language. Both areas, the ‘ulamā’ believed, involved the mastery of a specific corpus of rules. An Islamic scholar’s proficiency was not judged according to his production of original works but his mastery of the already established rules. However, this is not to say that Muslim jurists did not acknowledge that the law was developing. When circumstances changed or new legal questions arose, they used the established methodology of Islamic jurisprudence to develop an answer.⁸⁹ Yet, for them, the task of a jurist was not to change the doctrine.

Beginning in the nineteenth century, the foundations of legal training changed. Natural science, with its strong belief in progress, introduced the idea that legal knowledge could be advanced.⁹⁰ This meant that legal reasoning was not anymore about adopting established rulings to changing circumstances but about the introduction of new concepts. A successful jurist now formulated new ideas based on his original thinking. Nakissa concluded that this change of epistemes led to the conception in Western oriental literature and modernist Islamic writings that premodern Islamic law lacked dynamism and innovation.⁹¹

At this time, *ijtihād* became associated with law reform. Muslim reformers used established terms like *ijtihād* to frame their efforts within the tradition of Islamic jurisprudence. The South Asian intellectual and politician Muhammad Iqbal (d. 1938), for instance, understood *ijtihād* as a thoroughgoing rethinking of the corpus of Islamic jurisprudence.⁹² *Ijtiḥād* was now not anymore restricted to technical legal questions but signified the fundamental re-evaluation of Islam, most notably in the fields of education, authority, and the state.

Today, this notion of *ijtihād* is still very present among Muslim reformers. However, at the same time, the term continues to have many different meanings. While many associate *ijtihād* with Islamic reform, it is also used as a legal

87 Aria Nakissa, “An Epistemic Shift in Islamic Law: Educational Reform at al-Azhar and Dār al-‘Ulūm,” *Islamic Law and Society* 21 (2014), 246.

88 *Ibid.*, 212.

89 *Ibid.*, 223.

90 *Ibid.*, 213.

91 *Ibid.*, 244.

92 Muhammad Qasim Zaman, “Evolving Conceptions of *Ijtiḥād* in Modern South Asia,” *Islamic Studies* 49, no. 1 (2010): 15.

technical term, both in contemporary Islamic jurisprudence and positive law. In most Arab countries, the word is also used to describe the secular courts' legal reasoning. For instance, decisions of the Syrian High Court (Maḥkamat al-Naqḍ) are usually called *ijtihādāt*.⁹³ Furthermore, *ijtihād* is today not anymore limited to Islamic scholars. In Egypt, the constitutional court explicitly granted the legislator the right to undertake *ijtihād* in disputed questions of Islamic jurisprudence.⁹⁴

4.2 *Ijtihād in the Saudi Context*

When Saudi scholars write or speak about *ijtihād*, their understanding of the term resembles Nakissa's description of premodern Islamic jurisprudence. While Saudi jurists acknowledge that the law has to be adapted to modern circumstances, they avoid giving the impression that they create new rulings. This is coherent with the Salafī idea that any kind of innovation (*bidaʿ*) in Islam should be rejected.

For Ibn Khunayn, for instance, *ijtihād* is not more than the simple application of Islamic legal methodology through the scholar's legal reasoning. Consequently, in his view, it is and was possible at any time to undertake *ijtihād*.⁹⁵ However, whereas other scholars held that the scope to undertake *ijtihād* narrowed over the centuries, Ibn Khunayn argued that *ijtihād* was, in fact, much easier today. In early Islam, the Quran and the Sunna were not yet wholly compiled, and the basic methodology of Islamic jurisprudence was not yet developed. Thus, the deduction of rules from the sources, Ibn Khunayn claimed, was much more complicated than today.⁹⁶ He quoted the medieval Ḥanbalī scholar Ibn Ḥamdān (d. 1296), who wrote that already in his times, in the thirteenth century, *ijtihād* had become much easier to master than in earlier periods due to the availability of literature.⁹⁷

93 See for example Maḥmūd Zakī Shams, *Ijtihādāt al-hay'a al-ʿamma li-maḥkamat al-naqḍ* (Damascus: Maṭbaʿat al-Dāwūdī, 2008).

94 Kilian Bälz, "The Secular Reconstruction of Islamic Law: The Egyptian Supreme Constitutional Court and the 'Battle over the Veil' in State-Run Schools," in *Legal Pluralism in the Arab World*, ed. Baudouin Dupret, Maurits Berger, and Laila al-Zwaini (The Hague: Kluwer Law International, 1999), 237.

95 Āl Khunayn, *Tawṣīf al-aqḍiyya*, 1:361.

96 Ibid.

97 However, the jurists of his times, Ibn Ḥamdān complained, neglected their responsibilities and had "little ambition and languid desire" for *ijtihād*, since they had become "satisfied with imitation (*taqlīd*), had no need for substantiated labor, [and] were running away from [their] burden," see Ibn Ḥamdān, *Ṣīfat al-fatwā wa-l-muftī wa-l-mustaftī* (Damascus: Al-Maktab al-Islāmī, 1380/1960), 17.

Since the corpus of Islamic jurisprudence and its sources can be easily accessed today, Ibn Khunayn demanded that judges and scholars should undertake *ijtihād* in their work and not rely on *taqlīd*. Most importantly, Ibn Khunayn called upon the ‘ulamā’ to address new legal questions (*nawāzil*) that are raised by modern life. Although this resembles the modernists’ call to bring Islamic law in line with modernity, Ibn Khunayn did not question the established methodology of Islamic jurisprudence but wanted to adapt the law by using the traditional corpus of Islamic jurisprudence. Especially in the context of new legal questions, Ibn Khunayn emphasised that *ijtihād* could also be undertaken collectively by a group of scholars (*ijtihād jamā’ī*).⁹⁸

Ibn Khunayn’s approach is a good example of contemporary Saudi legal methodology. Contrary to the extreme social conservatism that dominated the Wahhābī tradition, Ibn Khunayn is generally open to new technical and social developments, provided they are in line with the basic tenets of Islamic law. On the other hand, he emphasized the importance of premodern Islamic legal methodology and its strict adherence. For him, the revitalization of Islamic law through *ijtihād* signifies the correct application of the established teachings, which, in his view, have been neglected for a long time. When we later turn to Saudi case law, we will see that even though the judges follow a grammar-like application of the law similar to Ibn Khunayn, their critical attitude towards the schools leads to surprising results that often resemble the opinions of modernist scholars.

4.3 *Who Is a Mujtahid?*

Despite their scepticism towards *taqlīd*, Saudi scholars do not allow everyone to undertake *ijtihād*. Due to the importance of legal methodology, they restrict the right to *ijtihād* to people formally trained in Islamic jurisprudence. For instance, Sa’d al-Shithrī contended that it was forbidden for people not trained in the principles of Islamic jurisprudence (*uṣūl al-fiqh*) to give a ruling, even if they present the textual evidence in the revelation (*dalīl*) for their decision.⁹⁹ Al-Shithrī followed a very narrow understanding of *ijtihād*. For example, whereas most scholars hold that the determination of the qibla before prayer by a lay Muslim would already constitute a form of *ijtihād*, al-Shithrī did not consider this an *ijtihād*. He maintained that only a ruling that was given by trained ‘ulamā’ who have reached the level of a *mujtahid* could be considered

98 Āl Khunayn, *Tawṣīf al-aqdīya*, 1:362.

99 See Sa’d bin Nāṣir al-Shithrī, *Sharḥ al-waraqāt fi uṣūl al-fiqh* (Riyadh: Dār Kunūz Ishbiliyā, 1425/2004), 185.

an *ijtihād*, such as, for example, the determination of the qibla by a trained scholar.¹⁰⁰

The question of who is a *mujtahid*, namely a jurist who is allowed to undertake *ijtihād*, was intensively debated by premodern Islamic scholars. The majority opinion in Islamic jurisprudence, including in the Ḥanbalī school, requires a judge to be a *mujtahid* in all fields of the law.¹⁰¹ As we have seen, the Salafī tradition gives particular importance to *ijtihād*, and it is thus not surprising that Saudi scholars, too, generally require a judge to be a *mujtahid*.

However, to be called or to call oneself a *mujtahid* implies that one is in the line of the great scholars of Islam, a claim that could be seen as presumptuous. This difficulty is nicely illustrated by a statement made by Ibn Khunayn during an interview in August 2018. After we had talked for over an hour about more detailed aspects of Islamic law, I asked him whether he would allow a personal question. “Please, go on”, he replied. “Are you a *mujtahid*?” I asked. Ibn Khunayn laughed and said no. “Not even within the school?” He smiled and said, “Maybe within the school, maybe.”¹⁰² This did not come as a surprise to me since during an earlier meeting, Ibn Khunayn had already made fun of a first-instance judge who did not want to accept the appeal courts’ comments on his judgements because he claimed to be a *mujtahid*.¹⁰³ Although Ibn Khunayn’s statement could be dismissed as false modesty, his comments show that the office of a judge does not automatically mean that someone is recognised as a *mujtahid*.

The question of how to appoint judges if there are no or only a few scholars available that are widely considered *mujtahids* was already debated by premodern jurists. In order to come up with a pragmatic solution, some ‘ulamā’ argued that exceptions from the general rule could be made under certain circumstances. For instance, the sixteenth-century Ḥanbalī jurist al-Ḥajjāwī (d. 1560) stated,

There are ten requirements for judgeship: [a judge] has to be mature, sane, and male, free, [...], a *mujtahid*, if only in the school of his Imām, in case of necessity, picked [according to his] eloquence and care, or a *muqallid* [a scholar only able to undertake *taqlid*].¹⁰⁴

100 Al-Shithrī emphasized this in the second episode of his lecture series *Manhaj al-ijtihād wa-l-taqlid*. The lecture series is available on YouTube, see www.youtube.com/watch?v=vQHLeKV400&t=192s, min 3 [last access: 21 April 2023].

101 ‘Abd al-‘Azīz bin ‘Abd al-Rahmān al-Mash‘al, “Sharḥ al-ijtihād fī man yalī al-qaḍā’,” *Majallat al-‘Adl* 34 (1430/2009): 114.

102 Interview with Ibn Khunayn in his house in Riyadh, 1.8.2018.

103 Interview with Ibn Khunayn in his house in Riyadh, 24.4.2018.

104 Al-Ḥajjāwī, *Al-iqnā’* (Beirut: Dār al-Ma‘rifa, n.d.), 4:398.

In Saudi Arabia, jurists have developed a similar solution for the scarcity of mujtahids. Muḥammad al-Zuḥaylī, a renowned Syrian scholar with links to Saudi Arabia, wrote in 1982 that although the premodern scholars considered the capability to undertake ijtihād a requirement to become a judge, the Saudi king would only be obliged to appoint the best available person as a judge. Al-Zuḥaylī traced this opinion back to Aḥmad bin Ḥanbal.¹⁰⁵ In 2009, ‘Abd al-‘Azīz al-Mash‘al, a professor at the Imām University in Riyadh, argued in a similar fashion that a non-mujtahid could work as a judge in case no mujtahid is available.¹⁰⁶ He referred to the Ḥanbalī jurist Ibn Muflīḥ (d. 1362), who stated that from his perspective, the ‘ulamā’ agreed on this compromise.¹⁰⁷

To cope with the scarcity of mujtahids, the majority of premodern scholars accepted that a judge is only a mujtahid in some areas of the law or in one of the schools.¹⁰⁸ The schools developed sophisticated hierarchies of jurists, with several ranks between a mujtahid who is not restricted to any school (*mujtahid muṭlaq*) and a muqallid. These hierarchies are supposed to regulate the limits of a scholar’s competences.¹⁰⁹ While the details vary from school to school, the general idea is that a jurist can be a mujtahid in only one of the schools if he studied the schools’ authoritative scholars, learnt their rulings, and mastered their way of legal reasoning.¹¹⁰ Alternatively, a scholar can be a mujtahid only, for example, in inheritance law, provided that he has extensively studied that area, but would remain a muqallid in all other areas of the law.

This division of mujtahids allows Saudi scholars to uphold the requirement that a judge should be a mujtahid, at least to some degree. Sa’d al-Shithrī held that this division of ijtihād was necessary today because of the high degree of specialization in contemporary Islamic jurisprudence.¹¹¹ Due to the complexity

105 Muḥammad bin Muṣṭafā al-Zuḥaylī, *Al-Tanzīm al-qaḍā’ī fī fiqh al-islāmī wa-taṭbīquhu fī al-Mamlaka al-‘Arabīyya al-Sa‘ūdīyya* (Damascus: Dār al-Fikr, 1402/1982), 60.

106 Al-Mash‘al, “Shart‘ al-ijtihād,” 126.

107 Ibn Muflīḥ, al-Mardāwī, and al-Ba‘lī, *Kitāb al-Furū‘ wa-ma’hu taṣḥīḥ al-furū‘ wa-ḥāshīyyat Ibn Qaldas* (Beirut: Mu‘assasat al-Risāla, 1424/2003), 11:104–6.

108 The majority of Ḥanafī scholars, however, did not require the judge to be a mujtahid, provided that he can consult a mujtahid if needed. See al-Mash‘al, “Shart‘ al-ijtihād,” 114–15.

109 See Mohammad Fadel, “The Social Logic of Taqlīd and the Rise of the Mukhtaṣar,” *Islamic Law and Society* 3, no. 2 (1996): 200.

110 For more details, see Norman Calder’s analysis of al-Nawawī’s Typology of Muftis. Norman Calder, “Al-Nawawī’s Typology of Muftis and Its Significance for a General Theory of Islamic Law,” *Islamic Law and Society* 3, no. 2 (1996): 145.

111 Second episode of al-Shithrī’s lecture series Manhaj al-ijtihād wa-l-taqlīd. The lecture series is available on YouTube, see www.youtube.com/watch?v=-vQHLeKV400&t=192s, min 7 [last access: 29 October 2022].

of today's life, jurists could no longer have in-depth knowledge of all areas of the law.

Ultimately, the question of whether a judge must be a mujtahid muṭlaq, a mujtahid in only one school, or not a mujtahid at all, is largely symbolic.¹¹² The Saudi king simply has to appoint the most qualified person as judge, whether he is recognised as a mujtahid or not. Although most of Saudi jurists do not consider themselves to be mujtahids, we will see in the course of the next chapters that Saudi judges of all levels of experience and knowledge undertake ijtihād, even beyond school boundaries.

5 The Saudi Judiciary and the Ḥanbalī School

5.1 *The Role of the Schools in Early Twentieth-Century Saudi Arabia*

Although Ibn 'Abd al-Wahhāb rejected their binding authority, he did not completely refuse the four major schools of law.¹¹³ Later Najdī scholars were even less critical of the schools, and some openly followed Ḥanbalī law. In 1926, Ibn Bulayhid, one of the most influential Najdī scholars of his times, wrote that although people in the Najd were Salafī in creed, they followed Ḥanbalī law.¹¹⁴ The predominance of Ḥanbalī law can also be seen in the education of Najdī scholars. The former Grand Mufti Muḥammad bin Ibrāhīm (d. 1969), for example, was educated in Islamic law by primarily studying al-Ḥajjāwī's *Zād al-mustaqni'*, an abridgement of the classical Ḥanbalī compendium *Al-Muqni'* by Ibn Qudāma.¹¹⁵ From the early twentieth century onwards, the Saudi judiciary gradually opened itself to other schools of law. In 1927, King 'Abd al-'Azīz proclaimed,

112 Historians of Islamic Law have made similar observations in premodern jurisprudence. Muhammad Fadel argues that the primary function of the hierarchy of jurists was the regulation of communication to a non-legal audience. See Fadel, "Social Logic of Taqlīd," 200.

113 Commins, *Wahhabi Mission*, 20.

114 Lauzière, *Making of Salafism*, 93.

115 Additionally, he was tutored by three local Najdī scholars and studied the creed of Ibn 'Abd al-Wahhāb with his uncle 'Abd Allāh bin 'Abd al-Laṭīf Āl al-Shaykh. See Muḥammad bin 'Abd al-Raḥmān al-Qāsim, ed., *Fatāwā wa-rasā'il samāḥat al-shaykh Muḥammad bin Ibrāhīm bin 'Abd al-Laṭīf Āl al-Shaykh* (Mecca: Maṭba'at al-Ḥukūma bi-Makka Mukarrama, 1399/1979), 110.

The shari‘a court is not limited to a particular school of law but decides according to what the court endorses from any of the schools. There is no difference between one school and the other.¹¹⁶

Seven years later, in 1934, the king issued a similar statement:

We are not limited to one school. When we find strong textual evidence (*dalil*) in one of the four schools, we refer to it and stick to it. However, if we do not find strong proof, we use the opinion of Imām Aḥmad.¹¹⁷

In 1937, King ‘Abd al-‘Azīz wrote in the spirit of Ibn ‘Abd al-Wahhāb that he was not against the schools as such but only against following a single school of jurisprudence.¹¹⁸

In practice, however, the Saudi judiciary still had to follow the Ḥanbalī opinion in most questions. On 10 September 1928, the Highest Judicial Authority (al-Hay‘a al-Qaḍā’iyya) circulated their decision that “the judiciary must apply the followed opinion (*al-muftā bihi*) in the school of Imām Aḥmad bin Ḥanbal, considering the ease of consulting the school’s books.”¹¹⁹ However, if “the judges find that the application [of the Ḥanbalī opinion] is inconvenient (*mashaqqqa*) and contradicts the public interest (*maṣlaḥat al-‘umūm*), it is looked at the remaining schools [and considered] what suits the interests (*maṣlaḥa*).”

The decree by the Highest Judicial Authority listed two books by the seventeenth-century scholar Manṣūr al-Bahūtī (d. 1641),¹²⁰ which judges had to use to determine the correct Ḥanbalī opinion. Both books by al-Bahūtī are commentaries on handbooks (*mukhtaṣarāt*, sing. *mukhtaṣar*) of Ḥanbalī doctrine, the first on al-Futūḥī’s (d. 1564) *Muntahā al-irādāt*, and the second on al-Ḥajjāwī’s (d. 1560) *Al-Iqnā’*. The decree further stipulated that if the two books disagree, the judge has to follow the opinion found in al-Bahūtī’s

116 The proclamation is printed in Muḥammad bin Barrāk al-Fawzān, *Al-Tanzīm al-qaḍā’ī al-jadīd fī al-Mamlaka al-‘Arabiyya al-Sa‘ūdiyya* (Riyadh: Maktabat al-Qānūn al-Iqtisād, 1431/2010), 58.

117 Printed in *Ibid.*, 58.

118 ‘Abd al-Raḥmān bin Muḥammad Ibn Qāsim, *Al-Durar al-saniyya fī al-ajwiba al-najdiyya* (N.p., 1417/1996), 14:401–2.

119 The decree is printed in Al-Fawzān, *Al-tanzīm al-qaḍā’ī*, 62–64.

120 Little is known about al-Bahūtī, except that he was one of the last great representatives of the Ḥanbalī school in Egypt. Henri Laoust described al-Bahūtī’s works as “devoid of any great originality on the part of the author.” However, his works remain among the most cited books in Saudi jurisprudential writings. See the article “al-Bahūtī” in the *Encyclopedia of Islam, Second Edition*. Available online: dx.doi.org/10.1163/1573-3912_islam_SIM_1079 [last access: 24 June 2022].

commentary of the *Muntahā*. In case the judge did not have access to any of the two books, he could also use another commentary by al-Ḥajjāwī (*Zād al-mustaḥṣin*)¹²¹ as well as the today lesser-known *Dalīl al-ṭālib* by al-Karmī (d. 1624).¹²¹ Only if the judge could not find a ruling on the issue in the mentioned Ḥanbalī books was he allowed to turn to books from other schools. However, the availability of books at the time must have limited the extensive use of any non-Ḥanbalī opinions, since even Ḥanbalī books were scarce, especially in the Najd. It is reported that before 1926, even Ibn Qudāma's *Al-Mughnī*, one of the most authoritative books in the Ḥanbalī school, could not be found as a complete copy in the whole Najd.¹²²

The decree thus not only bound the judges in most questions to the Ḥanbalī school but even to certain books inside the school. In 2012, Ḥasan bin Muḥammad Safar, a lecturer in *siyāsa shar‘iyya* from Jeddah, argued that the decree was intended as an alternative to codification, an issue that, as we will see in Chapter 7, was debated at that time.¹²³ What is rather certain is that the decree did not constitute a significant rupture in the courts' workings, as the majority of judges seemed to have accepted the decision. This is illustrated by later decisions of appeal courts that revoked court decisions on the grounds that they had been issued contrary to the mainstream opinion in the Ḥanbalī school.¹²⁴

In 1936, the Saudi-Lebanese diplomat Fu‘ād Ḥamza (d. 1951) observed that judges used, in addition to the two commentaries by al-Bahūtī, four other books in their everyday practice: the *Iqnā‘* by al-Ḥajjāwī, the *Muntahā al-irādāt* by al-Futūḥī (which both form the basis of al-Bahūtī's commentaries mentioned in the 1928 decree), the *Mughnī* by Ibn Qudāma and the *Sharḥ al-kabīr* by Ibn Qudāma's nephew, ‘Abd al-Raḥmān bin Qudāma (d. 1283).¹²⁵

5.2 *Are Judges Still Bound to the Ḥanbalī School?*

Whether and, if so, to what extent the 1928 decree still applies, and Saudi judges are bound to the Ḥanbalī school is still debated among Saudi scholars.

121 At the time of the decree, however, the *Dalīl al-ṭālib* was discussed and used in education. See Steinberg, *Religion und Staat*, 113.

122 Ibid., 320.

123 See, for example, Ḥasan bin Muḥammad Safar, “Taḥqīn aḥkām al-sharī‘a fī al-tajriba al-islāmiyya,” *Majallat al-Qadā‘iyya* 3 (1433/2012): 106.

124 Muḥammad bin Ibrāhīm al-Sa‘īdī, “Ishkāliyat al-taḥqīn wa-l-tadwīn,” in *Al-Niẓām al-‘adl fī al-Sa‘ūdīyya*, ed. Muḥammad bin Sa‘ūd al-Baḥr and Maṣṣūr bin ‘Abd al-Raḥmān al-Ḥaydarī (Riyadh: Markaz al-Fikr al-‘Ālamī, 1436/2010), 300.

125 Fu‘ād Ḥamza, *Al-Bilād al-‘arabiyya al-sa‘ūdīyya* (Riyadh: Maktabat al-Naṣr al-Ḥadītha, 1355/1968), 197.

In 2000, members of the Council of Senior Scholars mentioned a case that supposedly occurred in 1967 in Riyadh. According to the Council's members, the Riyadh Court of Appeal (at the time called Hay'at al-Tamyīz) overruled a decision for being contrary to Ḥanbalī doctrine, and Muḥammad bin Ibrāhīm, at the time Grand Mufti, apparently backed this decision with a fatwa.¹²⁶ In another case, to which the Council's members referred, the appeal court argued that the first instance judge was a muqallid and, therefore, a verdict issued by him that deviates from his school could be overruled.¹²⁷

The common understanding in the Saudi judiciary today is that the judges gradually moved away from the Ḥanbalī School in the decades after the 1928 decree.¹²⁸ Muḥammad bin Ibrāhīm al-Sa'īdī, a professor at the Umm al-Qurā University in Mecca, argued that the judges felt the need to adapt the law to the economic and social changes in Saudi Arabia and saw themselves as obliged to undertake ijtihād outside the Ḥanbalī school whenever they felt capable of doing so.¹²⁹ Similarly, Ḥamd al-Khuḍayrī, a well-known judge at the Riyadh Court of Appeal and author of a book on Saudi court practice, claimed that the inclusion of non-Ḥanbalī opinions was a natural and necessary process in order to adapt the law to the changing needs and demands of the Saudi people.¹³⁰ For others, the opening towards other schools is a result of the Salafī understanding of Islamic law. Qays Āl Mubārak, for instance, a member of the Council of Senior Scholars, held that judges departed from Ḥanbalī teachings whenever they found that it contradicted the textual evidence in the revelation or saw a benefit in following another school in a particular legal question.¹³¹

Due to the scarcity of historical sources, the reasons for the inclusion of non-Ḥanbalī teachings are difficult to assess. However, as we will see in the coming chapters, the application of non-Ḥanbalī opinions in Saudi court practice is a reality today. Yet, at the same time, late Ḥanbalism still plays an important role in the everyday work of Saudi judges. This is reflected in the judges' use of fiqh books and manuals.

126 Al-Amāna al-Āmma li-Hay'at Kibār al-'Ulamā' (ed.), *Abḥāth Hay'at Kibār al-'Ulamā'* (Riyadh: Hay'at Kibār al-'Ulamā', 1434/2013), 3:248.

127 *Ibid.*, 249.

128 See also Vogel, *Saudi Business Law*, 78.

129 Al-Sa'īdī, "Ishkāliyat al-taqnīn wa-l-tadwīn," 301.

130 Interview with Ḥamd al-Khuḍayrī in his office at the Appeal Court in Riyadh, 25 July 2018.

131 Qays bin Muḥammad Āl Mubārak, "Al-Madhhab al-qaḍā'ī fi al-Sa'ūdiyya," in *Al-Niẓām al-'adl fi al-Sa'ūdiyya*, ed. Muḥammad bin Sa'ūd al-Bashr and Manṣūr bin 'Abd al-Raḥmān al-Ḥaydarī (Riyadh: Markaz al-Fikr al-Ālamī, 1436/2010), 284.

5.3 *The Judges' Use of Ḥanbalī Literature*

The books of the Ḥanbalī school still remain important in Saudi court practice, especially those mentioned by Fu'ād Ḥamza in 1936. To give an example, al-Bahūtī was still the most cited scholar in the law of sales (*bay'a*), according to the published court judgements of the hijrī year 1434 (2012/2013). Thirty-one percent of all references to fiqh literature were made to his books *Kashshāf al-qinā'*, *Al-Rawḍ al-murbi'* and *Sharḥ al-muntahā*. Twenty percent were references to books by Ibn Qudāma, and fourteen percent to books by Ibn Taymiyya and his student Ibn al-Qayyim. The rise of the influence of Ibn Taymiyya and Ibn al-Qayyim in Saudi court practice thus seems to be one of the most significant changes that occurred between the 1930s and 2010s.

The published court judgements from the hijrī year 1435 (2013/2014) paint a similar picture. According to a list made by the collection's editors, al-Bahūtī's *Kashshāf al-qinā'* and Ibn Qudāma's *Al-Mughnī* were by far the most used books. Even though they mostly consulted Ḥanbalī books, the judges additionally referred to a huge variety of books from all madhāhib in their judgements. In the 1,153 published court decision, Saudi judges referred to sixty-three different fiqh books, of which the large majority were written by premodern jurists. Only nine books (14%) by nineteenth- and twentieth-century jurists were cited, most of them written by Najdī scholars. Thirty-two books (52%) were premodern works from the Ḥanbalī tradition, twelve books (19%) stem from the Mālikī school, five books (8%) from the Shāfi'ī school, and only three books (5%) were written by Ḥanafī jurists. One judge (2%) cited Ibn Ḥazm, the most famous proponent of the Zāhirī school. The popularity of Mālikī books is surprising, especially compared to the limited use of works by nineteenth- and twentieth-century scholars.¹³²

In their everyday practice, Saudi judges very rarely consult many books to find the proper ruling for every single case. The huge workload, I heard from Saudi judges, made extensive research in every case impossible. Furthermore, as we will see in more detail in Chapter 5, the judges have agreed among themselves to apply the same ruling in many disputed questions in Islamic jurisprudence.

When I visited Saudi courts in the summer of 2018, it was surprising how few books could be seen, especially in the appeal court judges' offices. Appeal court judge Ḥamd al-Khuḍayrī, for example, only had a copy of the first compilation of Saudi court judgements and an old edition of Ibn Qudāma's *Al-Mughnī*

¹³² Nevertheless, as we will see in Chapters 6 and 7, the reliance on premodern books does not mean that contemporary views in Islamic jurisprudence have no influence on Saudi court practice.

in his office.¹³³ Al-Khuḍayrī's colleague Muḥammad Jār Allāh explained that he did not use any legal books in his daily practice at court.¹³⁴ On an average day, there was simply no time to consult them. Thus, the judges' everyday work is, to some extent, detached from the detailed debates in Islamic jurisprudence. In difficult cases, however, Jār Allāh said that he took the files home and conducted research in his private library.¹³⁵ Many lawyers work similarly. For example, one lawyer from Riyadh explained that there was no need for extensive use of fiqh books in his daily practice. However, in difficult questions, he consulted the published court decisions and sometimes also premodern fiqh books.¹³⁶

None of the published decisions cited Ibn 'Abd al-Wahhāb's writings, which is not surprising, given that explicit references to Ibn 'Abd al-Wahhāb in the Saudi legal discourse are rare. If scholars make a reference to Ibn 'Abd al-Wahhāb, it is in preambles or introductions to books or fatwa collections. For instance, on a rare occasion, the Council of Senior Scholars mentioned Ibn 'Abd al-Wahhāb in the introduction to their influential decision on codification, but they only briefly referred to his call for *tawḥīd* and did not further engage with his ideas.¹³⁷

6 Conclusion

Acceptance of pluralism in Islamic law might be one of the last things that come to mind when one thinks about contemporary Salafism. Yet, normative pluralism and the critique of the schools' authority is one of the main aspects in which the Salafis' strict focus on the revelation and their refusal of any interference between humans and God is reflected in the law. When deciding on a legal question, the ideal Salafī scholar considers all opinions in the schools and, through his *ijtihād*, determines the correct one for the individual case.

133 Visit of the Riyadh Court of Appeal, 25 July 2018.

134 Appeal court judges usually do not quote fiqh literature in their comments on the first instance judges' decisions.

135 Interview with Muḥammad Jār Allāh in his office at the Riyadh Court of Appeal, 31 July 2018.

136 Interview with Maṣṣūr al-Dhufayrī at his law firm's offices, 13 May 2018.

137 Al-Amāna al-'Āmma li-Hay'at Kibār al-'Ulamā' (ed.) *Abḥāth Hay'at Kibār al-'Ulamā'*, 3:232.

In practice, however, Saudi judges are more pragmatic. Although they consult books from all madhāhib in some challenging legal questions, in most judgments, the judges only refer to a handful of classic Ḥanbalī books.¹³⁸ Nevertheless, legal flexibility remains one of the fundamental concerns of Saudi scholars and judges when they think about the law.

138 This gap is well illustrated by a conversation that I had with five lawyers of a mid-sized law firm in Riyadh. All of them were very familiar with Islamic family law, were confident in their work, and represented clients at the local court. After I had asked some more detailed questions on Islamic family law, I became interested in the way the young lawyers use legal literature. They insisted that fiqh books only played a minor role in their daily practice. However, the most senior of them explained that in some rare cases she consulted Ibn Qudāma's *Al-Mughnī*. I wanted to know more about her use of books and asked what role the fatwas of Muḥammad bin Ibrāhīm played in their work. She hesitated and looked at her colleagues, who started to debate who the shaykh was. It became evident that the young lawyers had heard the name, but never actually read his works. Then, the senior lawyer turned to me with a smile and said, "of course we use the books of Muḥammad bin Ibrāhīm!".