

Inheritance as a God-Given Right: the Debate on the Family *Waqf* in 20th and 21st Century Saudi Arabia

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Abstract

The institution of the family endowment (*waqf*) has been abolished in almost all Muslim countries. One important exception is Saudi Arabia. Although Islamic jurists (*‘ulamā*) in the kingdom consider family *waqfs* permissible, they are critical of the institution because it is often used to deprive women of their inheritance. Based on Saudi legal literature and court decisions, this article explores the legal discourse surrounding the family *waqf*. I show that while the debate on the family *waqf* in other parts of the Arab world was dominated by the rise of the modern state, capitalism and European colonialism, the criticism of the family *waqf* in Saudi Arabia predates these discourses and emerged independently from the thought of Ibn ‘Abd al-Wahhāb (d. 1792). Subsequent Saudi jurists did not simply repeat Ibn ‘Abd al-Wahhāb’s critique. Instead, they regularly diverged from it and from the Ḥanbalī school more generally. This challenges conventional descriptions of Saudi jurists as being monochromatically “Wahhabi-Hanbali” in their legal thinking.

Keywords

Islamic Endowment (*waqf*) – Islamic Inheritance Law – Saudi Arabia – Salafism – Wahhabism – Ḥanbalī school

1 Introduction

In February 2012, the Imam of the Prophet's Mosque in Medina, Ḥussayn b. ʿAbd al-ʿAzīz Āl al-Shaykh criticised the use of endowments (*awqāf*; sing. *waqf*) to deprive some heirs of their rightful share of the inheritance. Āl al-Shaykh was especially concerned with the exclusion of women, particularly daughters, from the family estate, a practice that has been common on the Arabian Peninsula for centuries.¹

The institution of the *waqf* has traditionally played an important role in circumventing Islamic inheritance law in the Muslim world.² While the *waqf* is often associated with a charitable institution that benefits a certain infrastructure, such as a school or a mosque, all schools of Islamic jurisprudence allow the establishment of a *waqf* for family members, usually the children.³ Today, this form of *waqf* is usually referred to as “family *waqf*” (*waqf ahlī*) or “*waqf* for descendants” (*waqf ʿalā l-dhurriyya*).⁴ When a family *waqf* is established, the assets are “frozen” and cannot be sold by the family, even after generations. The revenues of the *waqf* are distributed among the family according to the founder's will, which is laid down in the *waqf* deed (*waqfiyya*).

David Powers has pointed out that scholars of Islamic law have long focused solely on inheritance law when studying the intergenerational transfer of property in Muslim societies. They have failed to recognise that the rules of inheritance were developed in the socio-economic context of the first centuries of Islam and, over time, led to the fragmentation of wealth and capital.⁵ Early Muslim communities, therefore, sought ways to avoid this fragmentation with the help of jurists who distinguished between *post-mortem* (after death) and *inter vivos* (among the living) transactions. According to the jurists, the inheritance rules only apply to property owned by the deceased at the moment of their death or deathbed illness. Thus, individuals could dispose of their property in any way they wished before that moment, largely without

1 <https://www.alriyadh.com/706878> [last accessed: 14.9.2021]. The Imam's criticism is still discussed in the media today, see <https://www.alwatan.com.sa/article/1072191> [last accessed: 11.6.2024].

2 In the Ottoman Empire, this practice continued until the 19th century. See, B. Doumani, “Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860.” *Comparative Studies in Society and History* 40, 1 (1998): 3–41.

3 D. Powers, “The Islamic Inheritance System: A Socio-Historical Approach”. *Arab Law Quarterly* 8/1 (1993): 13–29, 27.

4 W. Al-Zuhaylī, *Al-fiqh al-islāmī wa-adillatuhu* (Damascus: Dār al-Fikr, 1404/1984): vol. 8, 161.

5 Powers, “The Islamic Inheritance System”: 28.

restrictions.⁶ A person could transfer assets through an *inter vivos* transaction, such as a *waqf*, gift, donation, sale, or acknowledgement of a debt, provided that the transactions met legal formalities.⁷ A *waqf* benefitting the founder's own family was the most important form of transferring property *inter vivos* between generations.⁸

A founder can establish a *waqf* solely for the benefit of their children and thereby exclude the parents and male relatives from the paternal line. Thereby, the *waqf* opens a way for the founder to keep family assets together and prevent the fragmentation of lands or business structures.⁹ While the reasons for establishing family *waqfs* varied throughout Islamic history, the *waqf* has demonstrated several advantages over other forms of *inter vivos* transactions for founders.¹⁰ Whereas other *inter vivos* transactions affected only one generation, establishing a family *waqf* ensured the primacy of the male lineage for several decades or even centuries. Moreover, in contrast to a gift, establishing a *waqf* has an important symbolic function, since it reinforces the ties between members of the male lineage through shared revenues.¹¹

While the family *waqf* played an important role in premodern Islamic societies, its relevance declined in most parts of the Muslim world during the 19th and 20th centuries. The institution increasingly came under attack with the rise of European powers, colonialism, and the introduction of the modern state, and the vast majority of Muslim countries eventually abolished family *waqfs*. In Lebanon, the French colonial power did not consider the family *waqf* part of the religious sphere. Hence, religious law could not be applied to it. Instead, family *waqfs* were seen from an economic perspective and considered to have a negative effect on the national economy. *Waqf* abolitionists argued that family *waqfs* are harmful to the nation because they bind capital

6 Although there is the concept of a last will (*waṣīya*) in Islamic law, it is restricted to one-third of the estate.

7 D. Powers, "The Islamic Family Endowment (Waqf)" *Vanderbilt Law Review* 32 (1999): 1167–90, 1170.

8 Powers, "The Islamic Inheritance System": 23.

9 A. Layish, "The Family Waqf and the Sharʿī Law of Succession in Modern Times." *Islamic Law and Society* 4/3 (1997): 352–88, 385. Layish argues that even with the application of inheritance law, especially in the first generation, wealth is less fragmented than it seems, as heirs often work together to preserve wealth. However, Layish's research is based on older *waqf* deeds (*waqfiyya*) from Israel and Palestine, a completely different social and economic context compared to contemporary Saudi Arabia. It remains to be studied to what extent estates are also kept together by heirs in contemporary Saudi Arabia.

10 Powers, "The Islamic Family Endowment": 1170.

11 M. Hoexter, "Waqf Studies in the Twentieth Century: The State of the Art." *Journal of the Economic and Social History of the Orient* 41/4 (1998): 474–95, 478.

that could be used for economic success. Since the family *waqf* was not considered a religious but rather a secular institution, it could be abolished.¹² In colonial Algeria, French orientalist argued that although premodern Islamic jurists considered the family *waqf* to be permissible, in its current form, it contradicted the “true”, pious goals of endowments and was therefore immoral and illegal. Eventually, this critique as well as the interests of French settlers to access land led to the abolition of the family *waqf* in Algeria.¹³

Today, Saudi Arabia is the only country in the Arab world where family *waqfs* are operating. Compared to other parts of the contemporary Muslim world, endowments of all forms play a relatively large role in Saudi Arabia's economic and social system. Unfortunately, there are no reliable records of the exact prevalence and types¹⁴ of *waqfs* in Saudi Arabia, which makes it difficult to assess who is founding *waqfs* and how many of these are family *waqfs*. Moreover, *waqf* deeds are not made public. Media reports estimate that more than 33,000 *waqfs* were registered in the kingdom in 2016.¹⁵ One of the most famous *waqfs* is a charitable *waqf* recently established by Saudi businessman Sulaymān al-Rājihī. The revenues from the *waqf*'s assets, which are valued at 16 billion SAR (around four billion Euros), are used primarily for promoting Islam and supporting social services.¹⁶

In recent years, the institution of the *waqf* has increasingly come into the focus of the Saudi government, which hopes that *waqfs* will make a significant contribution to the social and economic changes envisioned in ‘Vision 2030’, an ambitious plan to prepare Saudi Arabia for a post-fossil fuel world. The Saudi government promotes *waqfs* as a means of achieving the United Nations Sustainable Development Goals and providing sustainable financing for social services such as education, healthcare, and poverty alleviation.¹⁷

12 N. Mourtaz, *God's Property: Islam, Charity and the Modern State* (Oakland: University of California Press, 2021): 174–84.

13 D. Powers, “Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algeria and India.” *Comparative Studies in Society and History* 31/3 (1989): 535–71, 543.

14 R. b. Fahad Al-Ḥarbī, “Al-awqāf bi-l-malaka al-‘arabiyya al-sa‘ūdiyya bayna al-wāqī’ wa-l-ma’mūl.” *Majallat al-Qaḍā’* 27 (2022): 541–46, 508.

15 https://www.aleqt.com/2016/10/29/article_1097953.html [last accessed 14.9.2021].

16 See the *waqf*'s homepage www.rajhiawqaf.org and english.alarabiya.net/media/digital/2017/04/17/Saudi-businessman-reveals-his-Islamic-endowment-of-16-billion-during-Snapchat-interview [last accessed 12.6.2024].

17 According to the ‘Vision 2030’, the non-profit sector should be 5% of the kingdom's GDP. At the moment, however, the majority of charitable *waqfs* in the kingdom are still dedicated towards establishing religious infrastructure for pilgrims and the construction and operation of mosques. See a 2021 report by the UN and the Islamic Corporation for the

Additionally, new approaches to establishing a *waqf* have been developed. In 2009, the International Fiqh Academy (*Majma' al-Fiqh al-Islāmī al-Dawlī*) issued a decision allowing temporary *waqfs* as well as *waqfs* founded on company shares and abstract and intellectual rights.¹⁸ 'Investment *waqfs*' have become possible, which operate similarly to traditional investment funds.¹⁹ However, the Saudi government's efforts to promote the *waqf* are generally focused on charitable rather than family *waqfs*. Given the Saudi government's efforts to promote the *waqf*, it is surprising that no specific law addressing the *waqf* has been issued. Instead, when adjudicating *waqf* cases, Saudi judges still refer to books of Islamic jurisprudence as they do in other areas of uncodified law.

In this article, I analyse how Saudi jurists discuss the family *waqf* and how their legal reasoning relates to Islamic inheritance rules and, more generally, notions of the proper transfer of wealth between generations. My focus lies on the relatively technical question of the female progeny's rights to inheritance and the implications for the status of women in Saudi Arabia. The jurists' debates on this question are not abstract academic endeavours, but have direct consequences for everyday legal practice, since Islamic jurists play a key role in the Saudi state and largely control the kingdom's legal system. Apart from working in state structures, prominent jurists, such as the Imam of the Prophet's Mosque mentioned earlier, also substantially shape public discourse.

I demonstrate that Saudi jurists have been criticising the institution of the family *waqf* since the 18th century, beginning with Muḥammad b. 'Abd al-Wahhāb (d. 1792), the founder of the Wahhābī movement. Ibn 'Abd al-Wahhāb's critique predates the colonial encounter as the Najd at the time was forgotten by the major Empires, and European influence was not strongly felt. His opposition to the family *waqf* was largely motivated by his fundamentalist rejection of the religious establishment of his time, which, in his view,

Development of the Private Sector (ICD) titled "The Role of Awqaf in Achieving the SDGs and Vision 2030 in KSA". The report can be found on <https://saudiarabia.un.org/en/146145-role-awqaf-achieving-sdgs-and-vision-2030-ksa> [last accessed 12.6.2024].

18 Resolution No. 181 (7/19) from the Council's 19th session in Sharjah, 26–30.4.2009, printed in International Islamic Fiqh Academy, *Resolutions and Recommendations of the International Islamic Fiqh Academy: Sessions 2–24, Resolutions 1–238*. (Jeddah: International Islamic Fiqh Academy, 1442/2021): 416–9.

19 By 2023, there are already 25 such investment fund *waqfs*, which have invested over 500 million Saudi rials (more than 120 million euros), <https://www.arabnews.com/node/2383566/business-economy> [last accessed 4.7.2024]. The concept is explained in a video released by the Saudi waqfs authority (*al-hay'at al-'amma li-l-awqāf*), see <https://www.youtube.com/watch?v=wNoZMkBYxjk> [last accessed 8.7.2024].

had deviated from the primary sources of Islamic law and the practices of the earliest Muslims, who supposedly rejected the family *waqf* as an illicit means of circumventing Islamic inheritance law.

Subsequent jurists in Ibn ‘Abd al-Wahhāb’s tradition built on his critique. However, they did not merely echo his views. Instead, they presented differing opinions. This challenges the conventional portrayal of Saudi scholars as uniformly “Wahhābī” in their legal reasoning. Most importantly, although they are traditionally aligned with the Ḥanbalī school, Saudi jurists also openly reject certain established Ḥanbalī rulings on the *waqf* and frequently refer to other schools of Islamic jurisprudence.

While my article focuses on Saudi Arabia, I want to highlight that the ideal of keeping wealth within the male lineage is not unique to Saudi Arabia. It has been practised throughout the Muslim world for centuries. This point is illustrated by the premodern jurists’ debates that I will discuss later in this article. Moreover, it is important to recognise that these practices are not part of a singular “Muslim culture,” but are instead rooted in local political and economic conditions.²⁰

2 Ibn ‘Abd al-Wahhāb’s Polemics against the Family *Waqf*

In the 18th century, the Najd, the remote inner part of the Arabian Peninsula, was largely left to itself. In 1744, the Islamic preacher and activist Ibn ‘Abd al-Wahhāb made a famous pact with the local ruler Muḥammad b. Sa‘ūd (d. 1765) in the small town of Dir‘iyya near present-day Riyadh, which marked the beginning of the first Saudi state. Ibn Sa‘ūd promised to support Ibn ‘Abd al-Wahhāb’s mission, who in turn granted religious legitimacy to Ibn Sa‘ūd. Ibn ‘Abd al-Wahhāb’s vision was to establish an Islamic community based on the example of the Prophet Muhammad and his early followers. Part of this vision was to reject any innovations (*bida‘*) in Islamic creed and law, which he fought against both through his writings and, at times, through violent political actions.²¹

In the 18th century, the practice of disinheriting female offspring was widespread on the Arabian Peninsula. Surviving *waqf* deeds show that women were regularly excluded from the group of the *waqf*’s beneficiaries.²² Ibn ‘Abd

20 See, for instance, Doumani, “Endowing Family”: 39.

21 D. Commins, *The Wahhabi Mission and Saudi Arabia* (London: I.B. Tauris, 2006): 12.

22 A. b. ‘Abd al-‘Azīz Al-Bassām, “Awḍā’ al-awqāf fi najd qabal al-da‘wa al-iṣlāḥiyya wa-mawqif al-shaykh Muḥammad b. ‘Abd al-Wahhāb minhā.” *Majallat al-Dāra* 24, 1 (1419/1998): 5–61, 17.

al-Wahhāb polemically opposed this practice in a letter, accusing scholars who permitted family *waqfs* of committing unlawful innovation.²³

Some of his contemporaries, he complained, issued fatwas allowing a *waqf* to be directed towards disinheriting the founder's wife,²⁴ favouring some children over others, and, since the beneficiaries cannot dispose of the *waqfs* assets, prohibiting the beneficiaries from selling *waqf* property even if they were in need. For Ibn 'Abd al-Wahhāb, this was a way to circumvent God's law. In the letter, he wrote:

One of the greatest sins and greatest evils is changing the law of God and His religion or using tricks to come close to changing it. As it is in the *waqf*, I am [referring to], when one wants to deprive of what God has given to the woman, or the woman of the son, or the daughters' offspring or others, or gives them what God forbids, or increases the share that God assigned, or reduces the share. One wants to be closer to God with this but is [in fact] distancing.²⁵

Ibn 'Abd al-Wahhāb built his argument on the alleged practice of the people of Kufa, a famous centre of learning in the first centuries of Islam in present-day Iraq, and the opinion of their prominent judge Shurayḥ al-Qāḍī (d. around 697), who rejected the family *waqf*. However, Ibn 'Abd al-Wahhāb's reasoning went beyond merely citing the practice in Kufa. He argued that a man, by nature, would be lovingly connected with his son, preferring him over everyone else. But if God allowed some children to be preferred over others, Ibn 'Abd al-Wahhāb provocatively asked, why did the early Muslims, including the founders of the schools of jurisprudence, not do this? For the early Muslims, Ibn 'Abd al-Wahhāb claimed, establishing a *waqf* was solely about giving charity, not about favouring family members over one another in financial matters. He accused his contemporaries of not following the example of the early Muslims.²⁶ Since the family *waqf* contradicts the practices of the early

23 The letter is printed as 'Letter 12' in Ibn 'Abd al-Wahhāb, *Mu'alifāt al-shaykh al-imām Muḥammad b. 'Abd al-Wahhāb*. (Unknown location: Markaz al-Islāmī li-l-Ṭabā'a wa-l-Nashr, 1396/1976): vol. 7, 78–85. Some Saudi jurists write that Ibn 'Abd al-Wahhāb apparently authored three letters on the *waqf*, but they only refer to the one discussed here. I was not able to get information on the title and content of the other two letters. Even if these two other letters exist, they did not influence the later debate on the family *waqf*.

24 Ibn 'Abd al-Wahhāb here presumes that only men establish *waqfs*. In other contexts, women also established important *waqfs*.

25 Ibn 'Abd al-Wahhāb, *Mu'alifāt*: vol. 7, 78–9.

26 Ibid.: vol. 7, 78.

Muslim community, it should be considered an unlawful innovation in Islam. Refusing the family *waqf* is therefore a way of refusing unlawful innovation as such.²⁷ Whenever such a *waqf* has been established, the *waqf* should be deemed invalid (*bāṭil*).

In his letter, Ibn ‘Abd al-Wahhāb only sporadically engaged with earlier jurisprudential literature. Instead, he cited accounts of early Muslims to show that whenever jurists assumed that family *waqfs* existed in early Islam, they were mistaken. In the context of Ibn ‘Abd al-Wahhāb’s other writings, the letter is remarkable. In general, his work was less focused on sophisticated legal issues and more on mission and theology, particularly his strict emphasis on the unity of God (*tawḥīd*). This focus has led some scholars of Islam to describe him more as an activist than a scholar in the traditional sense.²⁸ While this depiction has been criticised as an oversimplification, he indeed rarely engaged in more technocratic debates on family, inheritance, or contract law.²⁹ The fact that he wrote in detail about the family *waqf* illustrates the importance of this issue during his time.

Ibn ‘Abd al-Wahhāb was very careful about preserving his legacy. He trained his sons as jurists to follow in his footsteps. He was successful, and his descendants later established themselves as the religious establishment and dominated Islamic thinking in the inner Arabian Peninsula over the following centuries.³⁰ They became known as the ‘House of the Shaykh’ (*Āl al-Shaykh*). Although the religious establishment in Saudi Arabia has diversified considerably over the last century, the Āl al-Shaykh still play an important role in the Islamic discourse in the kingdom. Members of the family today are also active in many other areas of public life not directly related to Islam.

Ibn ‘Abd al-Wahhāb’s descendants not only followed him in pursuing careers as Islamic jurists, but also took a particularly restrictive stance towards the institution of the family *waqf*. For instance, in a fatwa on the permissibility of the family *waqf*, Ḥasan b. Ḥusayn Āl al-Shaykh (d. 1923) stated: “The *waqf* for the descendants (*dhurriyya*) is not permissible, whether it concerns all [of the

27 Ibid.: vol. 7, 82.

28 N. Mouline, *The Clerics of Islam: Religious Authority and Political Power in Saudi Arabia* (Yale: Yale University Press, 2014): 62.

29 Some Saudi jurists therefore call him ‘*imām al-da‘wa*’ (Leader of the Mission) to highlight his missionary efforts. See, for instance, ‘A. b. ‘Abd Allāh al-Zāmil, *Sharḥ al-qawā‘id al-sa‘diyya* (Riyadh: Dār Aṭlas, 1422/2001): 194.

30 Mouline, *The Clerics of Islam*: 69.

founder's] assets or only a part of them. If such a *waqf* is established, it is void, and the *waqf*'s revenues are to be divided among the heirs."³¹

When the office of the Grand Mufti was established in 1953, it was not surprising that a jurist from the Āl al-Shaykh family was appointed: Muḥammad b. Ibrāhīm Āl al-Shaykh (d. 1969). Muḥammad b. Ibrāhīm was one of the kingdom's most influential jurists, and his opinions continue to play an important role in contemporary legal writings and court practice. Like his ancestors, Muḥammad b. Ibrāhīm took a particularly restrictive position on the family *waqf*. In his view, a family *waqf* can never be established in favour of an heir, even if the founder is still alive. Muḥammad b. Ibrāhīm referred to the institution of the last will (*waṣīya*), which, according to all schools of Sunni jurisprudence, is limited to one-third of the testator's assets and cannot be made in favour of a legal heir.³² For the jurists of the four schools of Islamic jurisprudence, a *waqf* established while the founder is still alive (*inter vivos*) is not subject to the same restrictions. They argued that since transactions among the living are generally not restricted in Islamic law, a *waqf* established during the lifetime of the founder would not be comparable to a will.³³

Muḥammad b. Ibrāhīm, however, placed less importance on an individual's freedom to dispose of their assets and more on God's will as expressed through the Quran and Sunna. After explaining that the first Muslims did not establish family *waqfs*, he argued in one of his fatwas:

It is an obstacle for the heirs and a restriction for them. It prohibits them from disposing of the inheritance that God has assigned to them. Its objective is to prohibit the heirs from selling it or otherwise dispositioning it, for example by gift, or other forms of disposition, even though God has permitted them to do so.³⁴

For Muḥammad b. Ibrāhīm, the problem regarding the family *waqf* hence does not lie solely in disinheriting some of the heirs, but also in the fact that the heirs cannot dispose of the assets because they are *waqf* property.

31 'A. b. Muḥammad b. Qāsim, *Al-durar al-saniya fi al-ajwiba al-najdiya* (Unknown publisher, 1417/1996): vol. 7, 52–3.

32 Powers, "The Islamic Family Endowment": 1167–90, 1174.

33 M. Z. Abbasi, "The Classical Islamic Law of Waqf: A Concise Introduction." *Arab Law Quarterly* 26 (2012): 121–53, 147.

34 M. b. 'Abd al-Raḥmān Al-Qāsim, ed. *Fatāwā wa-rasā'il samāḥat al-shaykh Muḥammad b. Ibrāhīm Āl al-Shaykh*. (Mekka: Maṭba'at al-Ḥukūma, 1399/1979), vol. 9, 63.

3 The “Unjust Waqf” in Contemporary Saudi Legal Discourse

A *waqf* excluding heirs is known in the Saudi legal discourse as *waqf janaf*. The term was most likely introduced by Ibn ‘Abd al-Wahhāb in his famous letter.³⁵ In Arabic, *janaf* means the inclination and the deprivation of a right.³⁶ A *waqf janaf*, therefore, describes an ‘unjust waqf’, one that deprives others of their rights instead of having a charitable effect. Muḥammad b. Ibrāhīm explicitly refers to the concept of the unjust *waqf* in another fatwa. When asked about the nature of the family *waqf* (*waqf alā l-dhurriyya*), he simply replied: “This is an unjust waqf (*waqf janaf*).”³⁷

Muḥammad b. Ibrāhīm’s complete rejection of the family *waqf*, however, did not prevail in Saudi Arabia. Today, Saudi jurists generally allow the establishment of a *waqf* for the benefit of one’s own family. While I can only present some prominent voices in this article, the notion that a family *waqf* is permissible prevails in most contemporary Saudi writings on the subject.

The jurists maintain that a *waqf* must always serve a good cause. However, they also understand donations to one’s own family as a good cause, since a person thereby fulfils their religious obligations, namely, to provide for their family. But there are still critical voices. Muḥammad b. Ibrāhīm’s student ‘Abd al-‘Azīz b. ‘Abd Allāh b. Bāz (d. 1999), for instance, who later succeeded his teacher as Grand Mufti, considered the family *waqf* generally permissible but made a few restrictions. When a man asked Ibn Bāz in 1995 whether he was allowed to establish a *waqf* for his children, the then Grand Mufti replied that “the *waqf* should be for those in need among the descendants.”³⁸ Ibn Bāz argued that kinship alone should not be a determining factor. Rather, a rich person should generally share with the poor, whether they are within or outside their own family.

Instead of questioning the validity of the family *waqf* itself, the contemporary jurists’ debates focus on which family members should be beneficiaries. In the *waqf* deed, the founder must specify who benefits from the *waqf* and appoint an administrator. The extent to which family members, particularly daughters, can be excluded from the *waqf*’s revenues has been a subject of discussion since early Islam. The schools differ on whether equality between

35 When I searched for the term on the exhaustive online library shamela.ws, the term only appeared in connection with Ibn ‘Abd al-Wahhāb or later Saudi scholars.

36 See, for instance, Al-Munāwī, *Tawqīf ‘alā muhamāt al-ta’arīf* (Cairo: ‘Ālam al-Kutub, 1410/1990): 13.

37 Al-Qāsim, *Fatāwā wa-rasā’il*: vol. 9, 99.

38 Ibn Bāz. *Majmu‘a fatāwā wa-maqālāt mutanawwi‘a*. (Riyadh: Dār al-Qāsim, 1423/2002): vol. 20, 17.

the children is merely desirable (*mustaḥabb*) or must be reflected in the *waqf* deed.

According to the majority opinion in all four schools, a *waqf* discriminating against some of the children is permissible. This notion is especially prominent among Ḥanafī and Ḥanbalī jurists. The Ḥanbalī jurist Ibn Qudāma (d. 1223), for instance, wrote that it is desirable for the founder of the *waqf* to allocate the revenues according to the inheritance shares and give his sons twice the share of his daughters. However, the founder is also free to prefer some of his children over others, either because of his personal relationship with them or their special needs, from the founder's perspective.³⁹

Some premodern jurists, however, held that a founder has to treat their children equally. If not, the *waqf* would be void (*bāṭil*).⁴⁰ The founder of the Mālikī school, Mālik b. Anas (d. 795), for instance, held that a *waqf* established by a man solely for his sons and not his daughters would be an "act of pre-Islamic times (*min 'amal al-jāhiliyya*)," since before the advent of Islam only men, and not women, inherited, thereby causing hardship for women.⁴¹ His opinion, however, did not become the prominent view in his school. Similarly, Abū Yusūf (d. 798), an influential companion of Abū Ḥanīfa, maintained that children must be treated equally, a view which only remained a minority position in the Ḥanafī school.⁴² Some scholars in the Shāfi'ī tradition also argued for restrictions on the family *waqf*. The 19th century Shāfi'ī traditionalist Al-Dimyātī (d. 1886), for instance, wrote that a *waqf* benefiting only sons would discriminate against the daughters and, therefore, such a *waqf* would be invalid (*bāṭil*).⁴³ Ibn Ḥazm (d. 1064), the most prominent jurist of the Zāhiri tradition, also argued against depriving heirs. He wrote that whenever the founder dedicates the *waqf* to a specific child, the *waqf* remains valid, but all of the founder's children become beneficiaries.⁴⁴

The vast majority of Saudi scholars followed this minority opinion. When asked about how the revenues of a *waqf* should be divided, 'Abd al-Raḥmān b. Nāṣir al-Sa'dī (d. 1956), a contemporary of Muḥammad b. Ibrāhīm, first presented the Ḥanbalī opinion before condemning it. Discriminating against

39 Ibn Qudāma, *Al-mughnī*. (Riyadh: Dār 'Ālam al-Kutub, 1406/1986): vol. 8, 208.

40 Ibn Ḥajar al-Haythamī, *Ḥawāshī tuḥfat al-muhtāj bi-sharḥ al-minhāj* (Cairo: Maktabat al-Tijāriyya al-Kubra, 1357/1938): vol. 6, 307.

41 Al-Ṣāwī, *Bulghat al-Sālik li-aqrab al-masālik* (Beirut: Maktabat al-'Ilmiyya, 1415/1995): vol. 4, 24.

42 Ibn 'Ābidīn, *Radd al-muhtār 'alā al-darr al-mukhtār* (Beirut: Dār 'Ālam al-Kutub, 1423/2003): vol. 6, 664.

43 Al-Dimyātī, *I'ānat al-Ṭālibīn*. Cairo (Dār Iḥyā' al-Kutub al-'Arabiyya, n.D): vol. 3, 165.

44 Ibn Ḥazm, *Al-muḥallā bi-l-athār* (Cairo: Maṭba'at al-Nahḍa, 1425/2003): vol. 9, 182.

daughters would ignore necessary justice (*‘adl wājib*) and would therefore be forbidden.⁴⁵

In his comment on a widely studied Ḥanbalī treatise, Ibn ‘Uthaymīn, one of the few Saudi scholars to become widely known outside Saudi Arabia, highlighted the relationship between his personal opinion and the Ḥanbalī school:

If a person has established a *waqf* for his sons and dies, according to the Ḥanbalī school, we should proceed with the endowment as it was [...]. The preponderant view (*qawl rājiḥ*) is that we revoke this endowment and do not approve it. These assets belong to the heirs because the Prophet said: “Whoever performs an action that we have not commanded will have it rejected”.⁴⁶

The influential Permanent Committee for Scholarly Research and Counselling (*al-Lajna al-dā’ima li-l-buḥūth al-‘ilmiyya wa-l-iftā’*), which consists of members of the Council of Senior Scholars (*Hay’at kibār al-‘ulamā’*), the kingdom’s highest religious authority, was approached by a man who had endowed his house to two of his older sons, excluding his daughters until the two sons had become independent. After that, he wished to benefit his daughters until they married and, once they had married, his younger sons. In their fatwa, the Committee stated that all these stipulations were not allowed as the rights of at least some of the children were violated. First, the rights of the daughters would be disregarded, and subsequently the rights of the younger sons. The Committee suggested that the man either dedicated his *waqf* to charity or, if he wanted to benefit his children, did this in a way that the rights of his heirs were not violated.⁴⁷

In a 2023 article, Qays b. Muḥammad Āl al-Shaykh Mubārak,⁴⁸ a former member of the Council of Senior Scholars, not only criticised the *waqf* as a way to prefer some family members over others in matters of inheritance but, more generally, any *waqf* that affects the rights of the heirs and deprives them of their inheritance, whether it is charitable or not. Like Mālik b. Anas, the founder of the Mālikī school, Āl al-Shaykh Mubārak refers to the alleged practice in pre-Islamic times, where people deprived each other of their

45 ‘A. b. Nāṣir Al-Sa’dī, *Al-fatāwā al-sa’diyya* (Riyadh: Maktabat al-Ma’ārif, 1402/1982): 444–5.

46 M. b. Ṣāliḥ Al-‘Uthaymīn, *Al-sharḥ al-mumtī ‘alā zād al-mustaqnī’* (Dammam: Dār Ibn al-Jawzī, 1428/2007): vol. 11, 49.

47 A. b. ‘Abd al-Rāziq Al-Dawīsh, *Fatāwā al-lajna al-dā’ima li-l-buḥūth al-‘ilmiyya wa-l-iftā’* (Riyadh: Ri’āsat Idārat al-Buḥūth al-‘Ilmiyya wa-l-Iftā’, n.D.): vol. 16, 123.

48 Despite the similar name, the Āl Shaykh Mubārak trace their ancestry not to Ibn ‘Abd al-Wahhāb but the Mālikī jurists and judge Mubārak b. ‘Āli al-Aḥsā’ī (d. 1815).

right to inheritance and one person was able to give their whole estate to a single heir.⁴⁹

Even though Saudi jurists argue that daughters and sons should not be discriminated against through establishing a *waqf*, it is important to keep in mind that this does not necessarily mean that both receive identical shares of the *waqf*'s revenues. Rather, most jurists hold that the division of revenues should be based on the consensus of Islamic jurists, according to which daughters are entitled to only half of what their brothers receive.⁵⁰

While most contemporary Saudi jurists hold that a family *waqf* preferring some heirs over others is unjust, there are still voices that follow the traditional Ḥanbalī view, which allows some children to be preferred. Ṣāliḥ b. Fawzān al-Fawzān, another prominent member of the Council of Senior Scholars, wrote that it would be the right of the founder to establish a *waqf* explicitly for their sons. However, if the founder dedicates the *waqf* generally to their children (*awlād*), then both are to be equally favoured.

4 Keeping Wealth inside the Family

Whereas most Saudi scholars assume that both daughters and sons must be beneficiaries of the family *waqf*, they disagree on whether the descendants of the daughters, the founder's grandchildren, can be excluded from the group of beneficiaries. For the jurists, this to some extent depends on the formulation in the *waqf* deed.

Founders usually stipulate in the deed that their children (*awlād*), followed by their children's children (*awlād al-awlād*), should benefit from the *waqf*. The four schools differ in their opinions regarding the status of the daughter's children. The Ḥanafī, Mālikī, and Shāfi'ī schools, in addition to some Ḥanbalī jurists, held that the daughter's children are included in the group of beneficiaries of such a *waqf*.⁵¹ Most Ḥanbalī jurists, on the other hand, argued that only the sons' children are beneficiaries in this case.⁵² However, according to all major schools, the founder is allowed to explicitly state in the deed that the daughter's children should be excluded. Moreover, if the wider family (*āl*)

49 Q. b. Muḥammad Āl al-Shaykh Mubārak, "Faḍl al-waqf wa-maqāṣiduhu." *Majallat Waqf* 7 (1444/2023): 246–57, 249.

50 See, for instance, Ibn Qāsim, *Al-durar al-saniya*: vol. 7, 56.

51 See, for instance, Al-Nawawī, *Rawḍat al-ṭālibīn* (Beirut: Maktab al-Islāmī, 1412/1991): vol. 5, 336.

52 Al-Bahūtī, *Kashshāf al-qinā' 'an matn al-iqnā'* (Riyadh: Wizārat al-'Adl fi al-Mamlaka al-'Arabiyya al-Sa'ūdiyya, 1428/2007): vol. 10, 78.

is stipulated as beneficiaries in the deed, the descendants of both male and female family members receive a share of the revenues. The same is the case when the founder refers to their kinship (*al-qarāba*).⁵³

In the past, Saudi jurists seemed to have followed the majority opinion and included the daughter's progeny when the founder dedicated a *waqf* to their children. Muḥammad b. Ibrāhīm reported that the practised opinion (*al-muftā bi-hi*) at his times was that the daughter's children are included in the group of beneficiaries.⁵⁴

However, the prevailing opinion among Saudi jurists has changed. Today, they tend to follow the mainstream Ḥanbalī opinion when it comes to the daughter's children. Ibn 'Uthaymīn wrote that the daughter's offspring could not be considered children (*awlād*) of her father (the maternal grandfather).⁵⁵ Premodern jurists, Ibn 'Uthaymīn maintained, had formed a consensus (*ijmā'*) that the daughter's children would, under no circumstances, count as children of their maternal grandfather in the legal sense, as they had become part of a new family, namely their father's family. This consensus, however, is less evident than Ibn 'Uthaymīn portrays it, especially outside the Ḥanbalī school.⁵⁶ Similarly, Ṣāliḥ b. Fawzān al-Fawzān wrote that the daughters' children are not beneficiaries of the *waqf*, as they are, in fact, children of another man.⁵⁷

However, if the founder of the *waqf* stipulates in the deed that he also wishes to favour the children of the daughters, Ibn 'Uthaymīn considered this permissible.⁵⁸ This can but does not need to be stated explicitly. Ibn 'Uthaymīn provided the following example: if the founder specifies in the deed that the *waqf* should benefit his children and subsequently his children's children, but only has grandchildren from his daughter's side, this should be understood to mean that he intends them to be beneficiaries.⁵⁹

At first glance, the Saudi jurists' reasoning regarding the founder's grandchildren might go in a different direction compared to the founder's children. However, their arguments must be understood within the context of Islamic inheritance law. According to the established rules of inheritance, the daughter's children are not seen as heirs, but as so-called cognates (*dhawū al-arḥām*),

53 Al-Zuhaylī, *Al-fiqh al-islāmī wa-adillatuhu*: vol. 8, 211.

54 Ibn Qāsim, *Al-durar al-saniya*: vol. 7, 59.

55 Al-'Uthaymīn, *Al-sharḥ al-mumtī'*: vol. 11, 44.

56 E. Hovden, *Waqf in Zaydī Yemen* (Leiden: Brill, 2019): 245.

57 Al-Fawzān, *Al-mulakhaṣ al-fiqhī*: vol. 2, 203.

58 Al-'Uthaymīn, *Al-sharḥ al-mumtī'*: vol. 11, 46.

59 Ibid.

and only inherit when no heir is alive. Given the large number of heirs, this is usually very unlikely.⁶⁰

In his writing on the *waqf*, Ibn ‘Uthaymīn explicitly referred to the daughter’s children as cognates.⁶¹ While God assigned daughters a fixed share of the inheritance, the daughter’s children, as cognates, are not heirs. Therefore, the daughter’s children do not have to be beneficiaries of the family *waqf*. By allowing the exclusion of the daughter’s children, Saudi jurists brought the family *waqf* in line with the general system of Islamic inheritance law as established by the major schools of jurisprudence.

5 How Saudi Courts Address the Family Waqf

The *waqf* was, at least for now, excluded from the recent initiatives to codify the kingdom’s laws. In February 2021, then Crown Prince Muḥammad b. Salmān announced the codification of Islamic law, which put an end to a debate on the permissibility of codification that had been going on for more than 100 years.⁶² In the following months, the first two codifications of Islamic law were issued: the Code of Evidence (*niẓām al-ithbāt*) and the Personal Status Code (*niẓām al-aḥwāl al-shakhṣiyya*), which addressed family and inheritance law. In December 2022, large parts of Saudi civil law were codified in the Code of Civil Transactions (*niẓām al-mu‘amalāt al-madaniyya*).⁶³

The 2022 Code of Civil Transactions specifically excludes *waqfs*. In Art. 698, the Code stipulates that a designated law will regulate the *waqf*. However, by 2024, no such law has been issued. The only piece of legislation addressing the *waqf* is the 2015 Code for the General Authority for Awqaf (*niẓām al-hay’a al-‘amma li-l-awqāf*). The code regulates the supervision, registration, and administration of *waqfs* by the General Authority for Awqaf (GAA), which was

60 There are two groups of heirs in Islamic law, Quranic and agnatic heirs. The Quranic heirs (*aṣḥāb al-furūd*) include members of the nuclear family with the prominent exception of the sons (the husband and the wives, the father, the mother, the daughters and full, maternal and paternal sisters). The agnatic heir is the closest male relative connected to the deceased through another male, such as a consanguine or full brother. This includes sons, fathers, paternal grandfathers, paternal uncles, and nephews. Agnatic heirs receive any remaining inheritance after the Qur’anic heirs have received their shares. See M. Baderin, *Islamic Law: A Very Short Introduction* (Oxford: Oxford University Press, 2021): 82–3.

61 Al-‘Uthaymīn, *Al-sharḥ al-mumtī‘*: vol. 11, 44.

62 D. Krell, *Islamic Law in Saudi Arabia* (Leiden: Brill, 2025): Chapter 7.

63 All *anzīma* can be accessed through the Bureau of Experts’ (*hay’at al-khubarā’*) website: laws.boe.gov.sa/BoeLaws/Laws/Folders/1 [last accessed 11.6.2024].

established in 2016.⁶⁴ The GAA's main task is to register all endowments and their assets. In case no administrator has been appointed, the GAA manages the *waqf*. Otherwise, it supervises the administrator's work, for instance, by reviewing annual financial reports. The GAA also ensures that the revenues of the *waqfs* are distributed as stipulated in the deed.⁶⁵

According to the Code for the GAA, three types of *waqfs* can be established in the kingdom: public/charitable (*‘āmm*), private/family (*khaṣṣ*), and mixed *waqfs* (*mushtarak*), in which some parts of the revenues are dedicated to charitable causes and others to the family. A family endowment is defined as “a *waqf* dedicated to certain descendants and relatives by name or description”.⁶⁶ However, the code does not stipulate any further requirements that a *waqf* has to fulfil in order to be valid. Instead, it focuses on the way the GAA works, who its members are, and other organisational and administrative questions.

Since there is no written law governing how a family *waqf* can be established and how it should be run, Saudi judges continue to refer to Islamic jurisprudence in their judgments without limiting themselves to a single school. Saudi jurists reject the binding authority of the schools of jurisprudence.⁶⁷ While the Saudi judiciary is often seen as following only the Hanbali school, published court judgments show that the judges use opinions from all major schools of jurisprudence.⁶⁸ In order to counter potential legal insecurity, an informal system of precedent has been established in the past decades which, to some degree, binds the judges to opinions chosen by the higher courts in the kingdom.⁶⁹

The Saudi judiciary must be considered a part of the wider Saudi legal discourse. Saudi courts, including the higher courts, regularly refer to the writings of famous Saudi jurists. This strong connection between Islamic legal scholarship and the courts in the kingdom can also be seen in the fact that many great Saudi jurists have worked in the courts before becoming more independent scholars. Ibn Bāz, for instance, served for 12 years as a judge in al-Kharj, a small city south of Riyadh.⁷⁰

64 The GAA was founded as a specialised government body to oversee the *waqfs*. Before the establishment of the GAA, *waqfs* were administered by the Ministry of Hajj and Awqaf, which later was transformed into the Ministry of Islamic Affairs, Dawah, and Guidance.

65 Art. 5 of the Code for the GAA.

66 Art. 1 of the Code for the GAA.

67 Krell, *Islamic Law in Saudi Arabia*: Chapter 3.

68 Ibid.: Chapter 2.

69 Ibid.: Chapter 4.

70 ‘A. b. ‘Abd Allāh b. Bāz, *Majmū‘ fatāwā wa-maḳālāt mutanawwi‘a* (Riyadh: Dār al-Qāsim, 1420/1999): vol. 1, 10.

The interconnectedness of Saudi legal scholarship and court practice can also be observed in the case of the family *waqf*. Like Saudi jurists today, the kingdom's courts allow for the establishment of a family *waqf*. For instance, in a court decision from the town of al-Baḥā near Mecca, which was confirmed by the Appeal Court in Mecca in 2013, a judge ruled that a man could legally establish a *waqf* during his lifetime based on most of his assets that benefits only his children.⁷¹

If, however, the *waqf* is used to disinherit daughters, Saudi courts intervene. In a decision from 1996, which today serves as an important, although not strictly binding, precedent,⁷² the Higher Judicial Council (*majlis al-qaḍā' al-a'lā'*)⁷³ addressed the rights of daughters. The Council stated that if an individual uses their entire estate to establish a *waqf* in a way that excludes some of the heirs and discriminates against the female line (*nasal al-banāt*), this constitutes an unjust *waqf* and is therefore considered invalid.⁷⁴ In 2015, the Council, then renamed the Supreme Judicial Council, reaffirmed this view in another decision on the *waqf*. In their decision, the Council stated:

The *waqf* in favour of only some heirs is an unjust *waqf* (*waqf al-janaḥ wa-l-jawr*), which later jurists (*muḥaqqiqūn*; literally: revisers) have declared null and void, based on the tradition of al-Nu'mān b. Bashīr⁷⁵

71 The decision of the Baḥā General Court (Nr. 33482076; case filed on 29.12.1429/28.12.2008) is printed in Markaz al-Buḥūth, ed., *Majmū'at al-aḥkām al-qaḍā'iyya li-ām 1434* (Riyadh: Markaz al-Buḥūth, 1436/2015): 84.

72 The Saudi judiciary operates based on the idea of a prevailing court practice, which resembles an informal system of precedent. For more information, see Krell, *Islamic Law in Saudi Arabia*: Introduction and Chapter 4.

73 The Higher Judicial Council was the predecessor of the current Supreme Judicial Council (*al-majlis al-a'lā' li-l-qaḍā'*) and consisted of senior judges. The Supreme Judicial Council now also includes the Minister of Justice and his deputy.

74 Higher Judicial Council Decision, No. 3/457 (1.11.1416/21.3.1996), printed in Markaz al-Buḥūth, ed., *Al-mabād'a wa al-qarārāt al-ṣādira min al-hay'a al-qaḍā'iyya al-'ulyā wa-l-hay'a al-dā'iima wa-l-'amma bi-majlis al-qaḍā' al-a'lā' wa-l-maḥkama al-'ulyā min 'ām 1391 h. ilā 1437 h.* (Riyadh: Wizārat al-'adl al-sa'ūdiyya, 1438/2017): 159.

75 The story of Nu'mān b. Bashīr is often quote in debates on the equality of children. According to the narration, Nu'mān b. Bashīr said: 'My mother asked my father to present me a gift from his property; and he gave it to me after some hesitation. My mother said that she would not be satisfied unless the Prophet was made a witness to it. Being a young boy, my father held me by the hand and took me to the Prophet. He said to the Prophet, "His mother, Bint Rawḥa, requested me to give this boy a gift." The Prophet said, "Do you have other sons besides him?" He said, "Yes." The Prophet said, "Do not make me a witness for injustice."'. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Damascus: Dār Ibn Kathīr, 1423/2002): 644 (No. 2650), my translation is based on <https://sunnah.com/bukhari:2650> [last accessed: 19.6.2024].

and others, as well as because the *waqf* in this form causes divisions and disputes between the offspring and relatives.⁷⁶

The decision explicitly refers to 'later jurists,' which in this context most likely means the Saudi jurists discussed above and their divergence from the mainstream opinion in Islamic jurisprudence. In another decision from 2015, the Supreme Judicial Council made an explicit reference to Islamic inheritance law:

A *waqf* for the benefit of male and female children (*awlād*) is permissible according to the Islamic regulations on inheritance, [according to] Q 4/11: 'Concerning your children, God commands you that a son should have the equivalent share of two daughters.'⁷⁷

The case, however, is different when it comes to the daughter's children. Although the Council explicitly stated that the female line cannot be discriminated against, this principle does not extend to all female descendants, as the daughter's children are excluded. In the aforementioned decision from al-Baḥā, for instance, the *waqf* benefited only the sons' children, but not the daughters' children. The judge referred to twelve books from all major Sunni schools, including Ibn 'Uthaymīn's commentary discussed earlier, and concluded that it was permissible to exclude the daughter's children.⁷⁸

The judge in al-Baḥā thereby followed the argumentation of the Supreme Judicial Council. According to the Council, after sons and daughters, "the sons of the sons [are benefitted] without the children of the daughters".⁷⁹ Hence, the founder's daughters must be beneficiaries of the *waqf*, but their children can be excluded.

6 Conclusion

From the perspective of Saudi jurists, the question of the family *waqf* revolves around respecting God's will. Unlike in other parts of the Muslim world,

⁷⁶ Supreme Judicial Council Decision, No. 4/268 (20.5.1436/11.3.2015), printed in Markaz al-Buḥūth, *Al-mabād'a wa al-qarārāt*: 157.

⁷⁷ Ibid.

⁷⁸ Baḥā General Court Decision (Nr. 33482076; case filed on 29.12.1429/28.12.2008).

⁷⁹ Supreme Judicial Council Decision, No. 4/268 (20.5.1436/11.3.2015), printed in Markaz al-Buḥūth, *Al-mabād'a wa al-qarārāt*: 157.

references to a perceived “backwardness” of the family *waqf* do not appear in Saudi legal discourse; nor does the colonial critique, which is unsurprising given that Saudi Arabia was never formally under European control. While Western influence in Saudi Arabia, especially after the start of oil production in the 1920s, is difficult to deny, the line of argument established in Saudi Arabia originates in Ibn ‘Abd al-Wahhāb’s thinking and has continued since. Notably, unlike in the Levant, the family *waqf* was never regarded as a secular institution.⁸⁰ Similarly, economic considerations are entirely absent in the jurists’ legal reasoning, which instead focuses on more theoretical legal ideas, most importantly the balance between individual inheritance rights and the freedom of disposing of one’s assets.

The debate on the *waqf* illustrates that Saudi jurists do not limit themselves to debates inside the Ḥanbalī school, which again is a result of the Salafī tradition.⁸¹ The jurists even openly reject the prevailing opinion within the Ḥanbalī school that allows preferential treatment of some children over others, and instead navigate various opinions in the schools of jurisprudence.

The jurists’ debates on the family *waqf* also challenge the common assumption of Saudi jurists as “Wahhābīs”. Saudi jurists do not simply repeat Ibn ‘Abd al-Wahhāb’s views. Although they frequently refer to him and his letter in their discussions on the family *waqf*, there is significant plurality of opinion among them. Some prominent Saudi jurists, such as Ṣāliḥ b. Fawzān al-Fawzān, even completely reject Ibn ‘Abd al-Wahhāb’s critique. Hence, his legacy in the legal sphere is less influential than is often assumed.

Furthermore, the debate on the family *waqf* sheds light on how Saudi jurists approach gender. Family is still largely defined by the male line, as children are considered members of their father’s family rather than their mother’s. While the emphasis on a patriarchal understanding of the family is not surprising in the Saudi context, the way these debates unfold contradicts common notions of “Wahhabism.” Often portrayed as ultra-conservatives, Saudi jurists nonetheless occupy a position in Saudi society that cannot be easily labelled using conventional categories. When it comes to daughters’ rights in family *waqfs*, they push against local traditions and emphasise women’s rights. On the other hand, they do not advocate for the rights of daughters’ children, even though this contradicts the majority opinion in Islamic jurisprudence.

It is difficult to speculate why the family *waqf* has not been abolished in Saudi Arabia, despite the jurists’ critique. As this article has shown, Saudi jurists almost never explicitly refer to political and social circumstances in their legal

80 Moutaz, *God’s Property*: 178.

81 See Krell, *Islamic Law in Saudi Arabia*: 50–3.

reasoning. Instead, they respond to individual questions in fatwas or comment more abstractly on earlier legal writings, where they discuss opinions based on the sources of Islamic law. Given the prevalence of the family *waqf* described by Ibn ‘Abd al-Wahhāb as early as the 18th century, it seems likely that the jurists simply lacked the power to counter established tribal structures. In a tribal society, the family *waqf* can be an important tool for reinforcing tribal identity and emphasising the male lineage by creating a shared community of beneficiaries, which in turn can help tribes achieve economic and political success. Similar phenomena are evident regarding marriage equality (*kafā’a*), where many Saudi jurists have unsuccessfully argued against treating “unequal” tribal affiliation as a valid reason to annul a marriage.⁸²

These examples show that the usual portrayal of Saudi jurists as competing only with the king is insufficient to explain the power struggles in Saudi law. Tribal customs, customary law, and traditional authorities also oppose some of the jurists’ rulings. While the jurists occasionally succeed in abolishing practices they consider reprehensible, they fail in other instances. In the case of the family *waqf*, they managed to reach a compromise that allows the institution to continue while preventing it from circumventing Islamic inheritance law. By emphasising inheritance as a God-given right, the jurists have effectively constrained an institution they generally condemn.

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82 See Ibid.: 191–5.

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