

Transcript

00:00:00 Speaker 1

So please help me welcoming Dr.

00:00:02 Speaker 1

Dominique Krell.

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Thank you for the introduction.

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Thank you for the invitation.

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It's an honor to be here.

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So as most of you will know, Saudi Arabia has spent quite a lot of money and effort promoting its version of Islam over the past decades.

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All across the Muslim world, one today comes across mosques funded by Saudi institutions, religious books and pamphlets printed in the kingdom and preachers emphasizing the importance of returning to the practice of the first Muslims, the Salafs.

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Yet much of the discussion about how all of this has actually shaped local Muslim communities remains often quite superficial.

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So in this talk, I want to look beyond simplified notions of Wahhabisation or Salafisation,

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which is often understood as the largely passive import of foreign, mostly conservative ideas, and I hope to paint a bit more complicated picture.

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And I will focus on Islamic courts.

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I'm a lawyer by training, and I will more specifically focus on the practice of Islamic judges of Qadis.

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And I will explore how the spread of Saudi Islam shapes Islamic normativity in court settings.

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and thereby affects the everyday life and even for those who have little or no admiration for Saudi Arabia and its version of Islamic law.

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And I will use two contrasting case studies, the Gambia and Sri Lanka, through which I hope to offer a window into the complex developments shaping Islamic law today.

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And I want to also show how messy, how surprising, and sometimes

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contradictory or seemingly contradictory Saudi influence plays out in the legal field.

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More specifically, I will focus on the condition under which legal change becomes possible.

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So all the Islamic law has often been, especially in the past, described as rigid and inflexible and fixed.

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It has always been subject, of course, to arguments, to contestation and to development, and it continues to do so.

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Yet since Islamic law has for most of its history been non-state law, it is not the state, at least not in the context that I'm looking at.

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It's not the state that necessarily drives legal change, but debates among Islamic jurists, at least in the context that I'm looking at.

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And these debates about change in Islam, Islamic law, are related to the role of the schools of Islamic jurisprudence, the Mazaib.

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And to illustrate how these debates on the Maasai play out in practice, I will use women's rights to divorce as an example throughout this talk.

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And I should be clear about what I mean by Islamic law here.

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The Sharia, as you will know, is much broader than the European notion of law.

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It encompasses almost all areas of life, from

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how to get up in the morning, to how to clean your teeth in the evening, from how to marry to how to do commercial transactions.

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And I will focus here on those areas of the Sharia that are implied in court, which is roughly equivalent what is considered law in Western settings.

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So the Islamic courts I'm interested in deal mostly with divorce, child custody, marriage,

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maintenance, and similar issues, family law.

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And there's a simple reason for this.

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In the large majority of Muslim countries, Islamic law was, in the 19th and 20th century, largely limited to family inheritance law, including in my case studies, Sri Lanka and the Gambia.

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And this talk, as Pascal mentioned, is based on a research project that I started almost three years ago at the Centre for Socio-Legal Studies here at Oxford as a Lever-Jung Early Career Fellow.

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So while I have already collected quite a lot of data, this still is very much a work in progress, and that's why I'm especially looking forward to your critique and comments, because eventually I hope to turn this into a book in the future.

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So far, I've collected more than 60 interviews with Islamic scholars, judges, and other actors in the legal system of both countries.

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many of them across several meetings, many hours, and I've collected and partly analyzed quite a large number of court decisions from both countries.

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And I will also draw on research that I've run in Saudi Arabia for my PhD.

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So while Sri Lanka and the Gambia do not really have much in common at first sight, it seems kind of random.

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If we look at Islamic law and the landscape of Islamic law, they actually share several elements.

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First, Islamic courts operate in both countries, like specific Islamic courts, which apply only Islamic law and to which Muslims have to turn in family matters, such as marriage, divorce and custody.

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And these courts are not informal signs of adjudication, but they're part of the state legal system.

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That's very important.

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And they are staffed by Islamic judges, and they're called Qadis in the Gambia and Quasis,

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in Sri Lanka, which comes from the Arabic word qadi.

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And their training differs from that of judges in other courts.

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And these Islamic courts are quite independent, and they're not seen as, they're not governed by the ordinary legal bureaucracy, but they're seen to be under the authority or on the religious authority, on the authority of religious leaders.

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The second thing they have in common, both countries have in common, is that a comparatively high number of students from both countries travel to Saudi Arabia to study, at least relatively to their population.

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And the University of Medina luckily publishes data on their graduates, which also includes their home country.

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So you can actually see where the graduates come from.

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Third,

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The Salafi movement plays a comparatively important role in both countries.

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So, and this might be surprising, overall the religious landscape in both countries is in some way very similar.

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And this is why, this is because many of the actors that you can find in both countries are operating globally.

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And one reason for this is also that both are former British colonies.

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and English plays an important role.

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So in addition to the Salafis, the Tabliri Jamaat is active in the country.

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You find Islamists, modernist Muslims, Sufis, and Muslim feminists.

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So basically, when I changed field sites, actors didn't really change.

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They started, they're just a bit, only a little bit different.

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So the 4th point

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is that to some extent both countries also share a legal history, same legal history, especially when it comes to law, since both were part of the British Empire and their legal systems are heavily influenced by British law.

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And British colonialism in both contexts also helped Islamic courts to become part of the national legal system in the 1st place, since the British were relatively relaxed about allowing Islamic law to be applied in family matters.

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So now it looks like these two countries are actually basically the same.

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This is, of course, not the case.

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There are considerable differences.

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These countries are in completely different parts of the world.

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And there is another important difference, and that is that Sri Lankan Muslims are a minority in the country, and they are a majority in the Gambia.

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However,

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the status as minority matters, but it's not as decisive as it might seem at first sight when it comes, at least when it comes to Islamic law and the Islamic court system.

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And I will talk about that later in more detail.

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So I'll start the talk by explaining how the Salafi critique of the schools developed in Saudi Arabia, how it has opened up interesting ways for legal change, and then how this has changed the way Saudi

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Juris, Saudi Ulama, how this has shaped the thinking of Saudi Ulama, and then how it has shaped Saudi court practice.

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And then I will move to my 2 case studies.

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So to very quickly recap, the schools of jurisprudence, the Mazahib, structural legal reasoning, and Sunni Islam.

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There are conventionally 4 major schools of jurisprudence, the Hanafi, the Hanbali, the Maliki, and the Sharqi'i school.

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So these schools differ both in their approach and their legal theory, but also in their substantive law.

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And these schools have traditionally been associated, historically been associated with different regions.

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So the Shafi school has predominated around the Indian Ocean, while the Hanbali school is associated with the Arabian Peninsula and Saudi Arabia in particular.

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In North and West Africa, the Maliki school has traditionally prevailed, and the Hanafi school was predominant in most parts of the Middle East and then South and Central Asia.

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So in pre-modern Islam, judges usually assigned themselves with a school, although the extent to which a judge must follow that school has always been debated.

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And I'm, of course, simplifying here, and we can talk about that in more detail in the Q&A.

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So in recent decades,

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In many contexts, the authority of the schools has declined and following a certain school has, at least in some places, become unfashionable.

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And this is often linked to the worldwide success of the Salafi movement, which is also sometimes called the Wahhabi movement.

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So both terms, Salafism and Wahhabism, are a bit problematic because they are largely external labels, whereas many who are labeled Salafi simply describe themselves as Muslim and Wahhabism

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is even more problematic because it's associated in popular debates with violent fanaticism.

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And this is why I will cautiously use the term Salafism and Salafi movement for the rest of the talk, just acknowledging that these terms are problematic.

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Much of the contemporary critique of the school, however, goes back to the Nashdi preacher Ibn Abd al-Wahhab, who died in 1792.

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So Ibn Abd al-Wahhab was not a

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one of the great jurists, at least compared to other great jurists in Muslim history.

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He wrote legal treatises, but overall he was known as an activist.

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His message was fundamentalist in the sense that he advocated a return to what he saw as the true practice of the first Muslim community, that of the Prophet and his companions.

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Ibn Abdullaah's influence on Saudi Arabia today lies

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at the heart of debates on the identity of the Saudi state.

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However, what is less widely recognized is that his message, although not focused on law as such, did have implications for Islamic law in the sense that I'm using here.

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for law applied by courts.

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So he criticized the scholars of his time for following opinions into his prudence without verifying that these opinions were actually based on the revelation.

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So for him, the revelation, Quran and Sunnah became the primary sources of authority rather than the schools.

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So Ibn Abd al-Whab's critique didn't immediately revolutionize the role of the schools in the Nasht area where Ibn Abd al-Whab was active.

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So subsequent Nashti scholars continued to follow the Hanbali school in legal questions, but they sometimes deviated from these established teaching.

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It was only in the 20th century that the authority of the schools further declined in the kingdom.

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And I believe there are also material reasons for this.

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So there's a report that until 1926, only one complete copy of Ibn Qudama's book Al-Muni

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which is one of the key Hanbali tags existed in the Nash.

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So one can imagine that even fewer books on other schools existed, which makes it, of course, difficult to learn more extensively about other opinions.

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And with the increasing availability of books from other schools, Saudi scholars then increasingly incorporated opinions from other schools, but also minority opinions within

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the Hanbali school.

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And this further now accelerated with the availability of books on the internet with Sharmila and Waqfiya, which obviously enable or give more access, even more access.

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Today, the schools have largely lost their authority in the Saudi legal system.

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As I argue in my recently published book, Islamic Law in Saudi Arabia, I just want to advertise the book a bit.

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Contemporary Saudi Ulama draw on opinions from across the Sunni legal tradition.

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Hanbali books remain an important resource, but the prevailing opinion in the school is not treated as more authoritative simply by virtue of being Hanbali.

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And in many cases, judges and scholars move between the schools to bring legal change, especially in order

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to adapt the law to contemporary life.

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And one example, which I discuss in the book, is child custody and modern tourism, just to give you a short example.

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So the prevailing opinion in the Hanbali school is that if a mother travels even for short distances, she loses custody and the child has to stay with the father.

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In practice, this means that the mother cannot go on holiday with the child, so it's an everyday problem.

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And Saudi judges therefore moved to the Maliki opinion, which allows women to travel, and now they can go on holiday with their children, especially when they're traveling with their families.

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So in some cases, changes happen through borrowing from other schools, but in other cases, Saudi jurists also refer to obscure, largely

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obscure minority opinions within their own tradition.

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And in particular, important and interesting example, which I will then also discuss in the Sri Lankan and in the Gambian context, is women's rights to divorce, which is of course a very important question in legal practice, but also has been a very disputed question in Islamic truth students.

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According to the majority position across the four schools, only a husband or a judge can end a marriage.

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I try not to get too technical.

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So a woman has two ways to get a divorce.

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So she can either go to the judge and ask him to dissolve the marriage, but this is usually only possible if she experiences some or she's suffering some harm.

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For instance, if she experiences domestic violence or the husband refuses

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to pay maintenance.

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So that's the 1st way.

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The 2nd way is that she can ask her husband for divorce for something called khulb.

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So the wife offers to return her dowry, which she receives at marriage, and then the husband in return pronounces the talaq, pronounced divorce.

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But the husband, and that's the important point, has to agree.

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So if the husband doesn't agree,

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to the whole and the wife cannot prove that she suffers any harm, the wife may then effectively be locked into the marriage.

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In Saudi Arabia, Saudi jurists began, starting from the mid-20th century, to move away from this mainstream opinion of divorce.

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And the first prominent jurist to do so

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As far as I know was Muhammed bin Ibrahim, who died in 1969 and who was the first Grand Mufti of Saudi Arabia, still very influential in the Saudi court system.

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So he referred to a short passage in the book, Al-Insafi, which is a classic pre-modern Hanbali book written by a scholar called Al-Madawi, who died in 1480.

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So this book records different opinions within the school.

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And Al-Madawi notes, it's just one sentence, he notes that some judges in the Levant at that time used to force husbands to accept the khul.

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So if the wife went to the husband, the husband basically had to agree.

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So Muhammad Ibrahim used this to argue that a woman could go to court and by offering to return her dowry, obtain a divorce even against her husband's will.

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Then subsequent Saudi scholars build on that.

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Ibn Ufaimin, another important 20th century Saudi jurist, argued that, who died in 2001, argued that since the judge tasks is to end the conflict between the spouses, in some cases this is only possible by dissolving marriage.

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Other famous Saudi scholars like Ibn Khanayn, who was born in 1956/7, argued that being in an unhappy marriage would itself constitute harm.

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So harm has to be avoided, that's a principle in Islamic law.

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So then the marriage has to be ended, or the judge has to end the marriage if that's necessary.

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So this opinion then entered Saudi court practice in a published court judgment from 2014, for example.

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A judge then wrote that love would be a prerequisite of a happy marriage and then a loveless marriage would constitute harm and there would be no reason for the marriage to persist and then he dissolved the marriage.

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And interestingly, these debates predate later debates elsewhere in the Arab world, and most notably in Egypt, where comparable reform was introduced through a controversial law in the year 2000.

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But these debates outside the Gulf

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including Egypt, which traditionally has been important, are not really present in the writings and teachings of Saudi Jewish.

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The sense is more that Saudi Arabia is and should be the center of Islamic orthodoxy and Islamic law.

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And it should be a place for Muslims to come and study.

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That's at least what I see in writings and teachings.

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And in some sense, this international role also becomes visible in everyday practice.

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So for instance, I remember meeting a judge from the general court in Riyadh, and I met him in a hotel lobby.

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And he came with a younger scholar whom he introduced as his students from India, and he used the very classical term *Talib al-Il*.

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And the student was spending time with the Sheikh to learn from him.

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And he listened to the conversation we had, to the interview I was conducting with the Sheikh, and then the Sheikh explained Islamic legal concepts to him.

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It's like a personal student.

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So Muslims have, of course, traveled for centuries to what is today Saudi Arabia in order to study with scholars there, especially Hijaz.

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However, the institutionalization of educating foreign students only began with the establishment of the University of Medina in 1961, and the university

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many of you will know this, should serve as a counterweight to other trends that happened at the time, Arabic nationalism, socialism, and also growing Shia influence.

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And it was meant to reinforce Saudi claims to leadership in the Muslim world.

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According to the university's website, more than 110,000 students have graduated since its foundation.

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So you see the website here.

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It's

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The universe describes itself as Saudi Arabia's gift to the world.

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Yet these international connections should never be treated as a one-way st.

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As Henri Lousier has shown, there were extensive exchanges between Nasht-i-Ulama and Egyptian reformists in the early 20th century in the Hejaz.

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And some migrants then even became very famous in the Nasht, such as the Mauritanian scholar Mohammed Al-Amina Shenkriti, who died in

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1973, who then became a really influential teacher in a Saudi context.

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He was, he taught Ibn Ufamin and also I think Ibn Bass went to his lessons.

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Okay, let me now turn to my first case study, The Gambia.

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So, The Gambia, if you haven't heard about The Gambia,

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It's a very small country on the west coast of Africa, and it's actually the smallest country on mainland Africa, maybe one of the reasons why you haven't heard of it.

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So in the region, the Gambia is something of an exception.

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So unlike Senegal and other surrounding countries like Mali in West Africa, the Gambia, Gambia was a British colony until its independence in 1965.

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And the Salafi movement has had a huge impact on West Africa recently.

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In the Gambia, Salafi preachers like Mufti Menk from Zimbabwe or Dr.

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Zakir Naik, originally from India, are really well known.

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And their sermons can be seen on phones, television sets throughout the country.

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So this is a photo of

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the very famous visit of Mufti Menk in Banjul.

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So I have heard many stories about his visit.

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Apparently, people collared because they were waiting for hours to hear him speak at the stadium in Banjul.

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So this was really an important event.

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So another important figure is the really controversial Salafi scholar Bilal Phillips, who founded the Islamic Online University.

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which has more than 300,000 students worldwide, and he based this university in The Gambia.

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And there's also a relatively high number of Gambians who have graduated from the University of Medina, 489 people in total, so compared to the country's population of around 2.5 million.

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So Sufism, on the contrary, which is often associated with West Africa, actually plays a limited role in Gambian Islam, particularly among younger people.

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Let me come now to the legal system.

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So the British introduced their legal system, which remains

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dominant in most areas of the law.

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Nevertheless, in 1906, they also allowed the establishment of the first formalized Islamic court in Bathurst, which was the colonial capital and what is now Banjul.

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Only in the 1950s, a second court was established in the coastal area.

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In other parts of the country, dispute resolution was handled by local village chiefs.

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They're called Al-Kalos, and these Al-Kalos acted as some

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judges as mediators, but also as local leaders.

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And they were usually not trained in Islamic jurisprudence, but they relied on a lay understanding of Islam, Islamic normativities, which was then shaped by local customs.

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So in the 1990s, the Islamic court system

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started to expand significantly.

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And today, these Islamic courts, which are called Qadi courts, have become, as I said, part of the state's legal system and they operate in all provinces of the Gambia.

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So the Al-Qados still play a minor role in some more rural areas.

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So as in many other contexts, jurisdiction of the Qadi courts is limited to family inheritance law.

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In practice, however, the Qadis interpret their jurisdiction quite broadly.

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The Gambian Constitution obliges them to refer cases like property cases to other courts, but in practice this doesn't happen.

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So the Qadis tend to see Islamic law as an all-encompassing system that offers answers to all legal questions.

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So it feels kind of unnatural for them.

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That's what they told me, to refer cases to a court which applies, doesn't apply Islamic law.

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So this expansion, and now I'm coming back to Saudi Arabia and the Arab world.

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This expansion is connected to the growing number of Gambians traveling to the Arab world.

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So in the past, Gambian Cadis often studied in Senegal, in Mauritania, in Morocco, like in the area.

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But these centers of

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learning have actually lost influence over the last few decades.

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Today, it's the Gulf, it's Saudi Arabia in particular, that has become an important destination for young religious Gambians.

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And it's very important to keep in mind here that they're not only religious reasons.

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So there's this idea that you become like a Salafi fanatic and then you travel to Saudi Arabia.

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That's not always the case.

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There are also economic reasons for that.

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So Gambia is one of the

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poorest countries in the world.

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And then traveling to the Gulf can also be a way to escape poverty, to see the world, and also to send money home to their families, like many Gambian migrants in Europe do.

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So you can send the money, you can build a house, and then you can start a family once you come back.

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So today, with one exception, all active Gambia and Qadis have been trained in the Arab world.

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So besides the Gulf, other destinations have, at least in the past, included Egypt, Libya, and Sudan.

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But as I said, Saudi has emerged as the dream destination, and the Islamic University in Medina plays an important role, although Gambia and Qadis have also studied at other Saudi universities, for instance, at Umm al Qura in Mecca.

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So when these students then returned after finishing their studies, becoming a Cardi can be a good career opportunity, even though salaries remain low.

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And for the leadership of the Cardi courts, so the head of the Cardi court system is himself a Medina graduate, these graduates have made it possible to professionalize the system.

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So the traditional Al Carlos had little or no legal training,

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Most of the Qadis, however, that have been appointed over the last three decades, they have studied at some of the best universities in the Muslim world, and they have a strong understanding not only of the substantive doctrine,

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but also of legal procedure, and this allows them to run hearings in a professional way.

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So let me clarify what I mean by professionalization.

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So I mean that CARDI courts tend to provide quicker adjudication than other courts.

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Formalities are less complicated and more streamlined, and evidentiary standards are observed.

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So that's what pretty much everyone I spoke to acknowledges also outside the CARDI system, and this is also very visible if you attend

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court hearings and it's also very visible for laypeople, especially when it comes to evidence.

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And this has increased the popularity of the Cardi court system in recent years.

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So the Cardi court system is, I would say, respected in The Gambia, even among senior government officials and, which is also surprising, among judges at other courts who also

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support or respect the expansion of the Cardi Court system.

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So it's seen as a local alternative to the still heavily British-influenced legal system, and the UK is often still seen as the colonizer, the negatively associated.

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So Arabic serves as the lingua franca among the Cardis.

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The main reason for this is the multilingual character of the Gambian society, where it's often difficult to find a language that everyone understands.

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Many, most of the Qadis don't speak English.

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So another factor is that when the Qadis speak Arabic, especially in front of the litigants, this also contributes to their authority.

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Let me show you some.

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some court decisions.

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So the judgments at the lower courts are usually written in Arabic, and only when they reach DP level they are then translated into English.

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So these training opportunities in Saudi Arabia have not only enabled the leadership to build a professionalized court system that delivers quick adjudication, it has also shaped how judges handle cases.

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So traditionally, the Gambia

00:30:33 Speaker 1

The Maliki school is dominant in the Gambia, like in other parts of West Africa, and local teaching has usually involved studying classical Maliki works.

00:30:45 Speaker 1

So this has changed.

00:30:46 Speaker 1

Most of the Kadis have good knowledge of several schools, and they also rely on various works of jurisprudence.

00:30:53 Speaker 1

There are some go-to books which are from the Maliki schools, but the Kadis usually draw on a broad range of literature.

00:31:03 Speaker 1

And here it's important to keep in mind that Islamic law has not yet been codified in the Gambia.

00:31:08 Speaker 1

So there is no law code that the Qadis apply.

00:31:13 Speaker 1

Instead, their legal reasoning is based on these thread books.

00:31:19 Speaker 1

So although the Qadis approach is shaped by their training in the Middle East, they do not replicate Saudi law, but they adapt it to the local context.

00:31:29 Speaker 1

So whenever I asked about the concept I knew from Saudi Arabia,

00:31:32 Speaker 1

some, especially some details, they usually insist that this is Africa, this is not Saudi Arabia, we cannot do the same thing here.

00:31:39 Speaker 1

And the Qadis very much respect the West African context that they're working in, even if they've spent years in the Middle East.

00:31:48 Speaker 1

So as the head of the Qadi court system put it, Al-Qadi, Al-Qadi Ibn Diyati, the Qadi is a product of his environment.

00:31:57 Speaker 1

So for instance, where Saudi judges emphasize gender separation,

00:32:03 Speaker 1

the Gambian Kadis are more relaxed, they're more pragmatic when it comes to behavior.

00:32:08 Speaker 1

When they're confronted with behavior, they're considered un-Islamic, at least compared to the Saudi counterparts.

00:32:14 Speaker 1

There is alcohol available in the Gambia, prostitution is visible.

00:32:20 Speaker 1

So, but this is something they don't like, but they don't really intervene in the net.

00:32:28 Speaker 1

That said,

00:32:29 Speaker 1

In Ghanaian society, the Kalis are seen as conservatives who advocate following Islamic law outside the courtroom, and many of them serve as imams in their local communities.

00:32:43 Speaker 1

So let me give you an example which illustrates their approach to divorce law, which blends Maliki tradition with their Saudi training and just to get, to give a, make it more concrete.

00:32:56 Speaker 1

So in this 2022 decision, the Cardi Appeal Panel had to decide a divorce case.

00:33:02 Speaker 1

So the couple has lived in Sierra Leone before the wife moved in the Gambia.

00:33:06 Speaker 1

Traditionally, strong ties between parts of the Gambia and then Sierra Leone also used to be dominated by the British.

00:33:15 Speaker 1

So the wife moved to the Gambia and the husband moved to the United States.

00:33:22 Speaker 1

The wife then accused him of failing to pay maintenance of being absent, which is ground for divorce in Islamic law.

00:33:30 Speaker 1

So the first instant court dissolved the marriage also because the husband had not responded to the court's request to appear at court.

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During the appeal hearing, however, the situation turned out to be more complex.

00:33:44 Speaker 1

So the husband then had paid maintenance, he had shown up, so it was a bit complicated, but the wife insisted on divorce.

00:33:53 Speaker 1

So similar question that I discussed in the Saudi context.

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But in the decision, the Qadi Appeal Panel made a broader argument and argued that any harm, and not only the traditional Maliki grounds of divorce, can justify

00:34:09 Speaker 1

a dissolution of the marriage.

00:34:11 Speaker 1

So to support this, it referred to a wide range of sources to extend a wife's right to divorce.

00:34:18 Speaker 1

So the panel first signed the Moroccan family law, the Mudawana, before referring to the Maliki scholar Adi Zukri, who died in 1815, and finally referred to the Hanbali text Zad al-Mustaqni,

00:34:39 Speaker 1

a commentary on the Hanbali text by the contemporary Saudi jurist Hamad bin Abdullah, a scholar from Ha'il, who is more known for Dawa than follow.

00:34:51 Speaker 1

So it's the combination that matters here.

00:34:54 Speaker 1

So here you see a photo of Hanb and Abdullah, and I think, if I remember correctly, there's an invitation to a class I think he was giving on

00:35:11 Speaker 1

So, according to all the Kalis I interviewed, I interviewed most of them, all of them now have this idea that women can get a divorce even if the husband doesn't agree, and even if there's no harm.

00:35:27 Speaker 1

However, now, I mean, now it sounds like that they have become

00:35:31 Speaker 1

like liberals, that's not the case.

00:35:33 Speaker 1

Moving away from the Maliki School does not always lead to more rights for women and children.

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And one example for this is custody law, which is officially not under the jurisdiction of the Cardi Courts, but the Cardi Courts nevertheless decide custody cases.

00:35:49 Speaker 1

So according to the Maliki School, a mother has custody for a boy until he reaches puberty.

00:35:56 Speaker 1

after puberty, the boy will go, the son will go, will go to the father, father will get custody.

00:36:04 Speaker 1

So, but the Garmin Cardis in this case move to the Hanafi opinion.

00:36:10 Speaker 1

which only grants women custody for their sons until the child turns 7.

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And the reason for this, as the Cardis explained, is that there is a long-standing custom among some Gambian tribes that men get custody for their sons relatively early.

00:36:26 Speaker 1

And the Cardi courts aim to accommodate this local tradition in order to pragmatically solve cases.

00:36:35 Speaker 1

And this is in the Arab world, and including Saudi Arabia, you basically can see different trends, so custody for women, for mothers is actually extended.

00:36:50 Speaker 1

So moving away to other schools is both encouraged by the leadership of the Qadi Court System, as I said, the head of the Qadi Court System

00:37:00 Speaker 1

is himself a Medina graduate, but it's also something the Cardys individually pursue.

00:37:06 Speaker 1

One principal Cardy, for instance, showed me a notebook that he's usually carrying with him in which he copies like extracts from thick books from the different schools and kind of creates his own basic ebook.

00:37:22 Speaker 1

So let me now turn to my second case study, which is Sri Lanka.

00:37:27 Speaker 1

So Sri Lanka is not usually what comes to mind when one thinks of Islamic law.

00:37:32 Speaker 1

Actually, I didn't know that there are Islamic courts before I started this project, but Islamic judges have been operating in the countries for centuries.

00:37:43 Speaker 1

So while Muslims are a minority of all in several regions of the island, they are actually

00:37:49 Speaker 1

the majority, particularly in the east.

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So Muslim villages are quite separated from other villages, so in some areas they are actually the majority.

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Sri Lanka is a multi-religious and multi-ethnic country, and Muslims have often been on the sidelines of the conflict between Sinhala majority and the Tamil, mostly in the north today.

00:38:14 Speaker 1

But they also have suffered

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expulsion and violence during the civil war.

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Today, many Muslims, they occupy a kind of interesting middle position between the Sinhala and the Tamil population, and they speak both Sinhala and Tamil, whereas many Sinhala cannot speak Tamil the other way around.

00:38:37 Speaker 1

So Islam only more recently became a more prominent public issue in the country, especially after Islamist

00:38:46 Speaker 1

militants bombed free churches and free luxury hotels on Easter Sunday in 2019, which killed 269 people and injured more than 500.

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So the attackers were connected to the Tawhidi movement, which is a local Salafi movement, which is not directly linked to Saudi Arabia, but to Tamil Nadu, to southern India, and to the autodidactic preacher,

00:39:13 Speaker 1

P.

00:39:14 Speaker 1

Janulub Deen, commonly known as PJ, which is quite famous in the country.

00:39:19 Speaker 1

And the Easter bombings led to rising violence towards Muslims and politicization of the relationship between Muslims and other groups in society, whereas the conflict between the Sinhala and the Tamil was more prominent in previous decades.

00:39:38 Speaker 1

Salafism in its various forms has played an important role in Sri Lanka since the early 2000s.

00:39:44 Speaker 1

Relative to its Muslim population, Sri Lanka has one of the highest numbers of graduates from the University of Medina, 538.

00:39:51 Speaker 1

So to put this in perspective, this is more than in Tanzania, which is a larger Muslim country, and almost as many as in Russia.

00:39:59 Speaker 1

However, although international creatures such as Saki Naik, which I mentioned earlier, while they're well known, they don't have the same influence as in West Africa, where they're really, really popular.

00:40:13 Speaker 1

And a scholar's place of education is very visible in the Sri Lankan context because the institution becomes part of the name.

00:40:21 Speaker 1

So for instance, someone who graduated from a Deobandi Dawul Uloom is called Deobandi.

00:40:26 Speaker 1

Someone who graduated from the Islamic University of Medina is called a Madani.

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And someone who studied at the Nalimiya Institute, which is the most famous local institution, is called a Nalimi.

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So here you can see

00:40:42 Speaker 1

see the logo of the arguably most famous Medina graduate Mubarak Madani.

00:40:48 Speaker 1

So let's turn to the Islamic courts, which are called the Qazi courts.

00:40:52 Speaker 1

So in contrast to the Gambia, graduates from Saudi institutions do not enter the judiciary, they don't become Qadis, despite their training in Islamic jurisprudence and

00:41:03 Speaker 1

also despite their generally strong reputation within the Muslim community.

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And the irony is that their good reputation is precisely what leads many Saudi graduates to avoid joining the Qazi courts.

00:41:18 Speaker 1

So it's quite unusual in Islamic context that becoming a Qadi is something to be embarrassed about.

00:41:23 Speaker 1

There are some debates whether you should actually join the judiciary, but this is because becoming, being a judge is something dangerous, a lot of responsibility.

00:41:34 Speaker 1

And it's also an obligation for those who are trained, it's fatkifaya.

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But among Muslims, the Sri Lankan court system has a terrible reputation.

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And the idea that the system is corrupt is shared across

00:41:51 Speaker 1

all across the spectrum.

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So it's Salafi saying that, modernists, Islamic feminists, and Islamists, everyone agrees that the Qadi court system, and even some Qadis themselves believe that the system doesn't work.

00:42:05 Speaker 1

And over the last years, several Qadis have been arrested due to allegations of briberies, and this is just some newspaper articles from the last two years alone.

00:42:16 Speaker 1

And there are 65 Qadis, and I think 3 have been

00:42:20 Speaker 1

arrested in the last two years.

00:42:24 Speaker 1

Especially from Muslim women, there's a strong opposition against the Kazi court system, something you cannot really see in the same way in the Gambia.

00:42:33 Speaker 1

But Muslims are obliged to turn to the Kazi courts when they face family law conflicts such as divorce.

00:42:41 Speaker 1

So instead of joining a system that can damage their reputation and offer little pay, Saudi graduates tend to become teachers at matrasas and often end up heading them.

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And there's another reason.

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So Islamic law is understood in a Sri Lankan context

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more as law in the European sense.

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So it is basically something that lawyers should handle, not Islamic jurists.

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So Islamic jurists are seen, or ulema are seen, as experts in religion.

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And there are two competing narratives.

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So the lawyers argue that you need legal training, like in basically former British law, to become a qadi, but then the ulema argue that

00:43:26 Speaker 1

the lawyers lack the knowledge of and training to deal with God's law.

00:43:33 Speaker 1

And in practice, because it's not only ulama and lawyers, but they're also retired school teachers, the government official, and even a local businessman, I think I showed you his office earlier, and all of them complain about the hardship of office, about the bad reputation on the poor pay.

00:43:56 Speaker 1

So for some lawyers, the Kazi office is also a way to promote private practice.

00:44:02 Speaker 1

Islamic scholars who then work, like Ulama, who work as Kadis, usually tend to be lower-ranking imams, many of whom do not speak English, which is a problem because English is a key language in the Sri Lankan legal system.

00:44:16 Speaker 1

Much of the legal debates are in English.

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And that's the third reason for why Saudi graduates do not enter the judiciary.

00:44:24 Speaker 1

and it is that the religious establishment is still dominated by the Tabliri Jamaat movement.

00:44:30 Speaker 1

So just to recap, the Tabliri Jamaat was founded in 1926 in northern India and today has its headquarters in the Zemuddin in Delhi.

00:44:40 Speaker 1

It's a lay movement aimed at promoting personal piety and ritual observance, and it's active across the world and has a strong following also in the Gambia and in West Africa more generally.

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And the tabliris are usually quietists.

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You can also see that in Sri Lanka, and they do not really openly involve themselves in political debates.

00:45:02 Speaker 1

The movement is closely connected to Deobandi Islam, a reform movement that was founded in the Deoband Madrasa in Deoband, Uttar Pradesh, 150 kilometers north of the Eli.

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And Deobandi scholars advocated for preserving and for renewing Islamic learning through

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through institutionalized matrica education and ethical disciplines in the context of British colonialism.

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So at first sight, the Tabliri movement resembles the Salafi movement.

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So both movements are reformist.

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They are also anti-Sufi.

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They put emphasis on following Islamic teachings in everyday life.

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So it's not surprising that people without training in Islam in Sri Lanka sometimes conflate the two movements.

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The Tabliris, however, they do not tend to engage in debates on questions of Islamic law, not in the way that the Salafis tend to do.

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So, where Salafism often centers on this fundamentalist re-evaluation of legal opinions, the Tabliris typically advocate following a single school, so they advocate for taqlid.

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And there's another important factor, the important difference.

00:46:23 Speaker 1

Arabic language training is not as central for the Tabliris as it is for the Salafis.

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Salafis emphasize knowledge of the revelation and of course of the Adila, the evidences, and this required advanced Arabic.

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So where Salafism foregrounds education, the Tabliri movement focuses more on piety and ritual.

00:46:46 Speaker 1

In this

00:46:47 Speaker 1

Emphasis is reflected in Tabliri education, where Fiqh plays a minor role compared to Salafism.

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So one influential Sri Lankan scholar I interviewed described his Tabliri education as a kind of preschool after which one then has to properly study Fiqh.

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So while in the Gambia, the Tabliris operate as a grassroots movement alongside the religious establishment which is dominated by the Arab graduates, in Sri Lanka it is the other way around.

00:47:16 Speaker 1

The highest religious body, the All Sailon Jamiat al-Ulama, ACJU, is known for its close connection with the movement, although in recent years non-Tabliri movements have also gained influence.

00:47:29 Speaker 1

Saudi graduates are also a member of the ACJU.

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So Mubarak Madani, who I just mentioned, he ran for presidency last year, but lost.

00:47:40 Speaker 1

So the Saudi graduates are influential in education and public discord, but they don't comment on the law.

00:47:45 Speaker 1

They're not central on debates on reforming the family law, Sri Lankan Muslim family law, the Muslim Marriage and Divorce Act, nor do they write books on the law.

00:48:04 Speaker 1

The intellectual dominance of the Tabliri Jama'at scholars and of lawyers has shaped how Islamic law is applied to in the country.

00:48:13 Speaker 1

So now I'm coming back to family law and divorce law.

00:48:16 Speaker 1

So over the last recent decades, numerous initiatives have sought to reform the MMDA, who has been in force for, I think, since the early 20th century.

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But none of these reform initiatives have succeeded.

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The MMDA is regularly criticized within Sri Lanka, as well as by international observers.

00:48:39 Speaker 1

It's restricting women's ability to obtain a divorce, and it also sets the minimum age of marriage at 12, which is very low, I mean, it's one of the lowest in

00:48:51 Speaker 1

in the Muslim world.

00:48:52 Speaker 1

So there are many reasons why these reforms have failed, but the most important is the unwillingness of the religious establishment to move away from the Shafi'i school.

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And this effectively blocks a turn to other schools or to minority opinions within the school, similar to these changes that I have discussed in Saudi Arabia and in the Gambia.

00:49:19 Speaker 1

So let me

00:49:22 Speaker 1

Let me turn to the example of women's right to divorce again.

00:49:29 Speaker 1

So the MMDA doesn't allow women to obtain a divorce against the husband's will.

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And women's rights groups have advocated for decades for reform, but there's like a strong resistance.

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And this resistance is most often articulated as a defense of Shafi'i school teachings.

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So in a statement on the MMDA reform from 2017, the ACJU wrote, the consent of both spouses is a necessary condition for the validity of khul, and if khul takes place under compulsion, the khul is not valid.

00:50:07 Speaker 1

Based on above, under no circumstances, a Kazi should force either party to establish a khul type of separation.

00:50:16 Speaker 1

That's copied from

00:50:17 Speaker 1

from the original statement.

00:50:19 Speaker 1

And I've met cardis that say, of course, I have to follow the Shafi school.

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There's no way, no way to move away from that.

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So the Salafis come to a very different conclusion.

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For instance, I interviewed one leading Tahiti scholar who at moments sounded closer to a women's rights activist than to the religious establishment.

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And some of these women rights activists actually were acknowledging that.

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So he rejected the authority of the schools as such.

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which is even, he went one step further than most of the Medina graduates.

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So reforming the MMDA was not a problem at all for him.

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The MMDA, as I said, is based on Shafi'i teachings.

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So although many in the Muslim community considered the Sheikh as an extremist, he was ready to grant women more rights when it comes to divorce.

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He had absolutely no problem with female judges.

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And he was also fine with raising the minimum age of marriage, which are

00:51:15 Speaker 1

the most controversial issues when it comes to MMDA reform in the country.

00:51:21 Speaker 1

Another important factor in the reform process is that many actors in the Sri Lankan debates on family law struggle to access erratic sources.

00:51:32 Speaker 1

So this is particularly true for lawyers involved in the reform process who often rely on translation of Shafi texts produced during British colonialism.

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And these translations usually only state the school's ruling on a given issue, but they don't include the wider discussion.

00:51:52 Speaker 1

So they don't really speak about like different, about the revelation, alternative opinions found.

00:52:00 Speaker 1

in other schools or minority opinions that can usually be found in more extensive Arabic works of fiqh.

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And even if some of these more extensive works are translated, if you have modern translations, these translations usually tend to focus on maqida, theology, and or on matters of individual practice such as prayer, but not on family, not on these technical questions.

00:52:29 Speaker 1

So in the Gambi, on the contrary, the Kadi's training allows them to examine the reasoning behind competing positions within the tradition.

00:52:37 Speaker 1

And in Sri Lanka, these underlying debates remain difficult to grasp.

00:52:42 Speaker 1

And this is also, it's also, you know, several actors involved in the reform process also told me that, they had trouble actually understanding what the FIRC debate is all about.

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So let me quickly conclude.

00:53:02 Speaker 1

Saudi influence doesn't mean that norms are simply copied.

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So this is hardly surprising because concepts and ideas are rarely just transplanted wholesale.

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But I've tried to show that Saudi influence lies more in the spread of a distinctive approach to Islamic normativity, which can then play out very differently across settings.

00:53:23 Speaker 1

So Saudi training foregrounds language training and the engagement with the Sunni textual tradition, and it also involves the fundamental critique of the schools of jurisprudence that I've mentioned.

00:53:36 Speaker 1

And this critique of locally established opinions can open up surprising possibilities for legal change and even for legal reform, and I think in a very interesting setting.

00:53:48 Speaker 1

And this is why I think that we really should take Salafism seriously as a reform movement when it comes to law and which has implications for the law as it's applied in court.

00:53:59 Speaker 1

And I think this is illustrated by the Sri Lankan case where the lack of language skills and the focus on focusing one school has led to a stagnation in legal development because the tabliri movement traditionalists are so strong.

00:54:16 Speaker 1

Second point,

00:54:17 Speaker 1

I tried to make is that Saudi training only affects legal reasoning, but also can enable the professionalization of an Islamic court system, as the Gambian case shows.

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So the Gambian effort is, of course, an Islamist project.

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It's aimed to show that an Islamic court system can, Islamic law can work in practice.

00:54:41 Speaker 1

But

00:54:41 Speaker 1

So the Saudi graduates are actually a way to fulfill this project because they're well trained in Islamic law and they have learned how to apply Islamic law in court.

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They know the law of evidences.

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So these graduates have become a resource that local elites can use or cannot use.

00:55:04 Speaker 1

But whether Saudi training actually influences the law, and that's my third point, doesn't really depend much on the number of graduates.

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So you say, okay, they're like 1,000 Medina graduates went to this small place, but it actually depends on whether they joined the judiciary.

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And this not only depends on the political will, it depends on the local elites, but also on the dynamics within the Muslim community.

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So in the Sri Lankan context, no one, like people would like the Saudi graduates to join the judiciary.

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That's absolutely not a problem, but they don't do it because of the system's bad reputation.

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The 4th point I've tried to make is that we have to make a sharp distinction between different transnational movements when it comes to law, even

00:55:52 Speaker 1

if they look similar.

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And I think that's particularly the case when we talk about the Salafi and the Tablighi movement, who concentrate on following an orthodox version of Islamic normativity in every life and therefore at first sight seem to be, don't seem to be very different.

00:56:09 Speaker 1

But when it comes to the law and the possibility of legal change, they are fundamentally different, as the debates in Sri Lanka illustrate.

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So thank you for your attention.

00:56:18 Speaker 1

I'm looking forward to your questions and comments.