

INTRODUCTION

Only in his twenties, Tayyib was already one of Somaliland's most promising lawyers. I met Tayyib early on a sunny morning, and we sat down on a couple of plastic chairs along the dirt path outside the Hargeisa courthouse. I asked him why he worked in legal aid programs designed to help poor people have free legal representation in court, what cases he was arguing that day, and what events had shaped his career and the broader development of law in Somalia and Somaliland. As we neared the end of our meeting, I invited him to share his professional goals. I wondered if he hoped to enter politics, private practice, or the United Nations system. These paths would provide more stability, renown, and salary than his current position did, and they were often taken by the most prominent professionals. He looked away, toward the dilapidated courthouse and one-story government buildings. Then he turned back to me and said he "would like to stop" being an attorney altogether.

Tayyib had just spent an hour discussing the promise of law, so I was confused about why he would give it all up. And then this: "I want to be a sheikh." Sheikhs are religious leaders. They preach obedience to God, who prescribes ethical and modest behavior. Throughout modern Somali history, sheikhs have used shari'a to resolve disputes like divorce, inheritance, injury, or theft, and to build peace among rival communities over their competing rights. "I want to learn more about the Islamic religion," he continued.¹ Tayyib's ambition was always to build the rule of law in his country. But he wanted to build an Islamic rule of law.

¹ Interview 92 with Tayyib, lawyer and paralegal in Hargeisa, Somaliland (June 2014).

The title of this book, *Shari'a, Inshallah*, reflects Tayyib's hope. In the pages that follow I show how state and nonstate actors appeal to shari'a. They imbue shari'a with their political ideals and attempt to do away with rival versions that do not match their interests. Some state officials and militants cite it to justify dictatorship and slaughter. But many others, including Tayyib, embrace shari'a in their struggles for peace, justice, national identity, or women's rights. To them, shari'a supports the rule of law, a style of government that limits the arbitrary exercise of power. Their behaviors demonstrate that the rule of law might not only be reconciled with religion but, counterintuitively, nourished by it.

Shari'a and inshallah must be understood in context. The concepts do not arise in social, legal, or political vacuums. In Islam, the term "shari'a" generally pertains to protecting one's worship of God. Literally, the word shari'a (شريعة) is derived from three Arabic root letters that signify both a beginning and a path to water – taken together, they suggest cleansing, clarity, and purity. In Islamic studies, shari'a sometimes refers to the entire religion of Islam, and sometimes it refers only to the legal or, even more narrowly, penal aspects of Islam. But shari'a is widely understood not as law but as the constitution of Islamic theology, ethics, and spirituality – how best to treat the self, others, and the environment with dignity by minimizing harms to them all. In this way, shari'a is a "living system" that encompasses all aspects of daily experience, not just what Western minds might see as law and order.²

To Arabic speakers, the term inshallah – like the term shari'a – has differing uses. It is not normally discussed in connection with shari'a. In common parlance, inshallah denotes uncertainty of the future and hope for God's intercession in it. But saying "inshallah" at the end of a sentence about the future is also not merely "dressing the routine of daily life with religious accessories."³ In the Qur'an (Islam's holy book), the phrase inshallah sets the limit on human will as the point at which God wills something. The Qur'an employs the active and conditional verb of "until God wills" (إِلَّا أَنْ يَشَاءَ اللَّهُ) to define and limit human will. Inshallah recognizes God's unlimited power alongside human beings'

² Lawrence Rosen, *Islam and the Rule of Justice: Image and Reality in Muslim Law and Culture* (Chicago, IL: University of Chicago Press, 2018), 3; Jonathan A. C. Brown, *Stoning and Hand Cutting: Understanding the Hudud and Shariah in Islam* (Irving, TX: Yaqeen Institute for Islamic Research, 2017), 4.

³ Michael Slackman, "With a Word, Egyptians Leave It All to Fate," *New York Times*, June 20, 2008, <https://nyti.ms/2WQuZCF> (accessed January 1, 2021).

unpredictability, fallibility, and lack of control, and that human will is conditional upon and restricted by a divine will that judges human actions. Accepting that human will serves God's will – that shari'a is inshallah – sets a limit to human authority that may help recover the rule of law.

Law and religion are unstable and incoherent categories. In this book, law refers to rules, systems, and orders derived from faith in human or state power. Religion refers to rules, systems, and orders derived from faith in higher, divine power. Law and religion take on new meanings as different actors combine the two in varying ways and present their visions to others. People use them to justify violence or propose solutions to that violence. When viewed in the light of people's prayers to God, demands on governments, and daily life experiences, law and religion feel multifaceted and overlapping. But law does not need to derive its power from the state. Nor does Islamic law need to derive its power from an Islamic state.⁴

Colonial administrators and those resisting occupation, dictators and those opposing tyranny, and activists and aid workers promoting human rights all squeeze law into their politics. They write, challenge, ignore, and bend legal codes and constitutional provisions to build nations and pursue their social, political, or economic objectives. But law is not enough. They also turn to God's will – endeavoring to subsume it, co-opt it, defeat it, reclaim it, and give it new meaning in political practice. They seek out God's bidding, promoting their own versions of shari'a to give themselves hope, attain their goals, and disempower their adversaries.

Consider the British colonial officials who roamed the Horn of Africa in the late nineteenth and early twentieth centuries. Though not Muslims, they presented a version of shari'a to the Somali people, with the support of religious leaders from Mecca and Sudan. Colonial officials hoped that their arguments that shari'a permitted European meddling would counteract another shari'a that prominent Somali activists were using in anticolonial struggles. In the twenty-first century, women activists I met embraced their shari'a too. They used piety and strategy to try to defeat a patriarchal version of shari'a promulgated by religious and cultural leaders. Across the Horn of Africa's various

⁴ Mark Fathi Massoud, "How an Islamic State Rejected Islamic Law," 66 *American Journal of Comparative Law* (2018a): 579–602.

political epochs – colonial, democratic, and authoritarian – people have appealed to shari'a to build the foundations of peace and the rule of law, or destroy them both.

Shari'a, Inshallah spotlights the many dimensions of law, the resemblances between colonial and postcolonial experiences of law, and the ways that religion seeps into the architecture of modern states. In analyzing the potentials and pitfalls of shari'a – including its practical meanings and the machineries of law incorporating it – I investigate the relationship between two overlapping forms of legal politics: building the rule of law and building an Islamic state. In the process I render visible the religious roots of the rule of law. My findings are based on archival research, ethnographic observations, and personal interviews with Somali lawyers, judges, activists, and religious and political leaders.

This book provides an antidote to those who see religion as an obstacle to peace and a domain to be restricted by law and detached from political life. The world seems to have closed its eyes to the possibility of an Islamic state that protects the rights of indigenous communities, minorities, and migrants, and an Islamic state that might be flexible enough to build the rule of law indigenously, organically, and meaningfully. While some political elites deploy shari'a for their own nefarious purposes, others see the values associated with shari'a and the rule of law as mutually reinforcing social goods.

FEARING SHARI'A

Shari'a has been denigrated. With few exceptions, policymakers, legal scholars, the media, and the public, particularly in the Western world, perceive it as a tool of dictatorial control, and a means for repressive governments to curtail human rights, oppress women, and persecute minorities. Nearly all fifty US states have introduced bills to ban shari'a.⁵ In 2020, the Washington, DC-based Center for Security Policy warned that “shari'a-supremacism” was the world’s “other pandemic” to Covid-19.⁶ Former US Senator Rick Santorum, echoing other conservative policymakers, denounced shari'a as “evil” and

⁵ Elsadig Elsheikh, Basima Sisemore, and Natalia Ramirez Lee, “Legalizing Othering: The United States of Islamophobia,” Report of the UC Berkeley Haas Institute for a Fair and Inclusive Society (2017), <https://bit.ly/3glNWpC> (accessed January 1, 2021).

⁶ Frank Gaffney Jr., “Beware the Other Pandemic – Sharia-supremacism,” *Center for Security Policy*, March 11, 2020, <https://bit.ly/3ITHeYU> (accessed January 1, 2021).

“incompatible” with American law.⁷ Associating shari‘a with danger, Donald Trump’s 2020 reelection campaign asked voters in 2018 if they were “concerned by the potential spread of Sharia law.”⁸ Earlier that year, a teacher in Ventura County, California, distributed instructional materials stating that shari‘a allows Muslim men to marry infants and demands that Muslims lie to non-Muslims to get their way. The school district said these statements did not discriminate against Muslims.⁹ The Southern Poverty Law Center, a civil rights advocacy group, has described the public anxiety over shari‘a in America as the “mainstream visibility [of] mass hysteria.”¹⁰

Anti-shari‘a attitudes also exist outside the United States. The European Court of Human Rights has twice ruled that shari‘a is incompatible with human rights.¹¹ Classifying Muslims and shari‘a as “inevitable” threats, Japan’s Supreme Court upheld the constitutionality of a government surveillance program that secretly targeted every Muslim and Islamic community group in the country.¹² Regimes in Saudi Arabia, Egypt, and other Muslim-majority countries have derided shari‘a in their own ways. They have labeled anti-regime activists as “stealth jihadis” seeking Islamic law, which has helped leaders of those countries arrest dissidents and build sympathy among Western governments under the guise that they are countering violent extremism.¹³ And then-President Doru Costea of the United Nations Human Rights Council silenced a heated debate over shari‘a by declaring that he would interrupt anyone making “judgments . . . of a particular religion,” concluding that the Human Rights Council is simply “not prepared to

⁷ Kendra Marr, “Santorum: Sharia ‘is evil,’” *Politico*, March 11, 2011, <https://politi.co/2WRX3oW> (accessed January 1, 2021).

⁸ David Smith, “‘Are You Concerned by Sharia Law?’: Trump Canvasses Supporters for 2020,” *Guardian*, March 3, 2018, <https://bit.ly/36Pb4JX> (accessed January 1, 2021).

⁹ Deepa Bharath, “Appeal Filed over ‘Appalling, Islamophobic’ Teaching Material Distributed in 7th-Grade Social Studies Class,” *The Press-Enterprise*, January 11, 2018, <https://bit.ly/3gtcP2H> (accessed January 1, 2021).

¹⁰ Swathi Shanmugasundaram, “Anti-Sharia Law Bills in the United States,” *Southern Poverty Law Center*, February 5, 2018, <https://bit.ly/3mTvK97> (accessed January 1, 2021).

¹¹ *Refah Partisi and Others v. Turkey*, Application No. 41340/98, judgment of February 13, 2003, paragraph 128, European Court of Human Rights; *Kasymakhunov and Saybatolov v. Russia*, Applications Nos. 26261/05 and 26377/06, judgment of March 13, 2013, paragraphs 99, 100 and 111 (reaffirming *Refah Partisi and Others v. Turkey*), European Court of Human Rights.

¹² Matt Payton, “Japan’s Top Court Has Approved the Blanket Surveillance of the Country’s Muslims,” *Independent*, June 29, 2016, <https://bit.ly/36PICaX> (accessed January 1, 2021).

¹³ Ola Salem and Hassan Hassan, “Arab Regimes Are the World’s Most Powerful Islamophobes,” *Foreign Policy*, March 29, 2019, <https://bit.ly/3lXeiis> (accessed January 1, 2021); see also Enes Bayraklı and Farid Hafez, *Islamophobia in Muslim Majority Societies* (New York: Routledge, 2019).

discuss religious matters.”¹⁴ Discussions in these global halls of power greet shari'a with either determined contempt or enforced silence.

Some legal scholars have echoed the global critiques of shari'a, arguing that religious fervor begets extremism and populist nationalism, and warning that “The rule of law and the rule of God [are] on a collision course [because] religion offers a credible threat to the liberal constitutional narrative.”¹⁵ International policy toward Muslim-majority states is likewise predicated on the notion that, if either dictatorships or shari'a were to be removed, the other would disappear too – paving the way to peace and the rule of law.¹⁶ These characterizations of religion as monolithic, extreme, or detrimental to the rule of law have led aid agencies and international lawyers to fear shari'a, correct it, or avoid it altogether. In short, religion is believed to increase violence, and law believed to reduce it.

But the relationship between shari'a and violence is not fixed, nor can it be presumed, even in Islamic states.¹⁷ Shari'a offers hope to political elites and grassroots activists alike. It also triggers their anxieties. It is contested, fought over, maneuvered around, and reshaped as political situations change. Differing political views are injected into it. In states suffering from legacies of war, law – and shari'a – create expectations and desires. But law and shari'a also induce fear when other actors use them for their own purposes, even among Muslims seeking the stability that legal and religious tools proffer. By positing religious activism as “against the law,” scholars and global policymakers miss the ways that law and religion are fundamentally interconnected in the minds of pious activists, lawyers, and officials.¹⁸

¹⁴ “UN Ruling: Islamic Sharia Taboo in Human Rights Council Debates,” *UN Watch*, July 1, 2008, <https://bit.ly/38lxRXXM> (accessed January 1, 2021).

¹⁵ Ran Hirschl and Ayelet Shachar, “Competing Orders? The Challenge of Religion to Modern Constitutionalism,” 85 *The University of Chicago Law Review* (2018): 425–455, pp. 425, 455.

¹⁶ The state is a governing apparatus of legislative, administrative, and judicial bodies that use, decide upon, and seek to monopolize violent and nonviolent dispute resolution mechanisms. An authoritarian state is one in which political leaders are “intolerant of people or groups perceived as threatening to the regime’s monopoly over the institutions of the state.” Lisa Wedeen, *Ambiguities of Domination: Politics, Rhetoric, and Symbols in Contemporary* (Chicago, IL: University of Chicago Press, 1996), 26; Rachel E. Stern, *Environmental Litigation in China: A Study in Political Ambivalence* (Cambridge: Cambridge University Press, 2013), 1. On the ambiguities of state institutions, see Akhil Gupta, *Red Tape: Bureaucracy, Structural Violence, and Poverty in India* (Durham, NC: Duke University Press, 2012).

¹⁷ I define an Islamic state as a political institution in which governing authorities intentionally infuse Islamic discourses, ideals, practices, and laws – however they define them – into their efforts to achieve economic, political, and social objectives. In practice, an Islamic state would likely be home to a Muslim-majority polity, but in theory it need not be. In these places political and legal authorities use shari'a instrumentally as a necessary, though insufficient, foundation for lawmaking and dispute resolution activities.

¹⁸ Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago, IL: University of Chicago Press, 1998).

BENDING SHARI'A

Shari'a, *Inshallah* rejects the one-dimensional view of shari'a as a repressive tool in politics. I expose the ways shari'a is contested and embrace the ways people invoke shari'a to sow the seedlings of peace and the rule of law. Colonial administrators, the local people who worked for and against them, postcolonial governments, and modern rights activists have all worked tirelessly to maintain their own versions of law and Islam – blending them to promote their own aspirations and authority. They have either made shari'a an overt part of the state's foundation, or they have subsumed shari'a like old trees consumed by fire, whose ashes are then incorporated into the state's new growth.

In Islamic legal theory (*usul al-fiqh*), shari'a is divine law interpreted by jurists. But the different meanings that people give it in practice matter also. These diverse interpretations of shari'a derive from each actor who uses shari'a or, at least, something that they label shari'a. In other words, the meaning of shari'a, when put into practice, comes through people's varied interpretations of the content of God's unknowable will. It does not just emerge from religious leaders' interpretations of the Qur'an and the Hadith (records of the Prophet Muhammad's statements, actions, and tacit approvals).

Scholars of law, politics, and religion have discussed shari'a as a form of daily ethics.¹⁹ In postcolonial environments rife with legal pluralism, shari'a is one of many layers of law drawn from an amalgam of European interference, religious proselytization, and indigenous custom, where people often may choose among a few forms of dispute resolution. As ethical guidance for moral behavior, shari'a shapes people's lives more deeply than Western state-based concepts of law do. A study of the depth of shari'a's reach into people's lives and practices is also a study in normative frameworks that function outside of state authority.

But shari'a represents more than God's moral framework for humans. It has become a political narrative, applied in different situations and

¹⁹ Shahab Ahmed, *What Is Islam? The Importance of Being Islamic* (Princeton, NJ: Princeton University Press, 2015); Robert Hefner, ed., *Shari'a Law and Modern Muslim Ethics* (Bloomington: Indiana University Press, 2016); Abdullahi An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge, MA: Harvard University Press, 2008); Andrew March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (Oxford: Oxford University Press, 2009).

constantly changing from its varied uses. “Shari’a discourse,” for instance, or diverse shari’a-focused “texts, conversations, and institutions,” can saturate political debate and law in Muslim-majority societies.²⁰ State leaders may present their own flattened and rigid system of shari’a to shore up their authority by making religious principles appear to be consistent with narrow state objectives.²¹ Activist groups, instead, breathe space into shari’a. They use Islamic discourse as an emancipatory language to create new forms of “lived” religion in daily life that counter state elites’ attempts to monopolize principles of faith.²² In practice, these many versions of shari’a exist. Not all of them are created equal; some versions of shari’a promote values associated with peacebuilding, human rights, and the rule of law more than other versions.²³

A *Pew Forum* international poll found that 99 percent of Muslims in Afghanistan, 89 percent of Muslims in Palestine, 74 percent of Muslims in Egypt, and 72 percent of Muslims in Indonesia wanted shari’a “to be the official law of the land.”²⁴ Muslims in Somalia and Somaliland, who account for more than 99 percent of the population, are no exception. In practice and politics in all these places, there is no single or pure form of shari’a. It is a consistently revived, transformed, and lived tradition in the daily life of political elites.²⁵

Each person – colonial administrator, postcolonial government official, judge, or activist – invokes their own version of shari’a and tries to

²⁰ Morgan Clarke, *Islam and Law in Lebanon: Sharia within and without the State* (Cambridge: Cambridge University Press, 2018); see also Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Oakland, CA: University of California Press, 1993).

²¹ Mark Fathi Massoud, “The Politics of Islamic Law and Human Rights: Sudan’s Rival Legal Systems,” in *The New Legal Realism, Volume 2: Studying Law Globally*, Heinz Klug and Sally Engle Merry, eds. (Cambridge: Cambridge University Press, 2016a), 96–112.

²² Mark Fathi Massoud and Kathleen M. Moore, “Shari’a Consciousness: Law and Lived Religion Among California Muslims,” 45(3) *Law & Social Inquiry* (2020): 787–817; see also Elizabeth Shakman Hurd, *Beyond Religious Freedom: The New Global Politics of Religion* (Princeton, NJ: Princeton University Press, 2015); Kristen Stilt, “Islam Is the Solution: Constitutional Visions of the Egyptian Muslim Brotherhood,” 46 *Texas International Law Journal* (2010): 74–108.

²³ For a first-person account of how lawyers balance religious and legal principles in shari’a courts, see Huawa Ibrahim, *Practicing Shariah Law: Seven Strategies for Achieving Justice in Shariah Courts* (Chicago, IL: American Bar Association Book Publishing, 2012).

²⁴ James Bell et al., *The World’s Muslims: Religion, Politics, and Society* (Washington, DC: The Pew Forum on Religion and Public Life, 2013), 9.

²⁵ On religion as a lived tradition in legal history, see H. Patrick Glenn, “Comparative Legal Families and Comparative Legal Traditions,” in *The Oxford Handbook of Comparative Law*, eds. Mathias Reimann and Reinhard Zimmerman (Oxford: Oxford University Press, 2006), 421–440.

get others to believe and practice it. They bend shari'a toward many contradictory ends: to facilitate or oppose colonialism; to further or neutralize socialism, clannism, or tribalism; to foster patriarchy or gender equality; and to be the foundation of liberalism or to argue that no such entity as a democratic Islamic state – the “impossible” state – could ever exist.²⁶ Through shari'a, these varied actors try to change the significance of Islam itself, using shari'a to make Islam into a political force. For some of them, shari'a is not only a transcendent path to the divine. It is also a practical foundation for building the rule of law.

SEPARATING SHARI'A FROM THE RULE OF LAW

Separating law from religion is a political act. When political leaders construct a state, they attempt to replace religion with law. Their effort to build a national legal system – with all its values, documents, institutions, and personnel – is an attempt to create a parallel faith in an authority that, like God, is transcendent and willed. Even in states where political leaders appear to separate them, law and religion remain entangled. Religious faith and knowledge of the power of faith shape the secular laws of state leaders and the legal consciousness of those subjected to those laws.

As shown in studies from Egypt, Iran, Malaysia, and Indonesia, among other places, government officials and citizens struggle to blend the ideals of political liberalism, human rights, and shari'a. These accounts largely focus on the arena of courts.²⁷ Scholars of Islamic law and society have similarly been preoccupied with the work of courts, scouring records to show how jurists interpret Islamic norms.²⁸ Anthropologists of religion

²⁶ Wael Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2012); but see Guy Burak, *The Second Formation of Islamic Law: The Hanafi School in the Early Modern Ottoman Empire* (Cambridge: Cambridge University Press, 2015) and Andrew March, “What Can the Islamic Past Teach Us About Secular Modernity?” *43 Political Theory* (2015): 838–849.

²⁷ Daniel Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (Oakland, CA: University of California Press, 1972); Tamir Moustafa, *Constituting Religion: Islam, Liberal Rights, and the Malaysian State* (Cambridge: Cambridge University Press, 2018); Arzoo Osanloo, *The Politics of Women's Rights in Iran* (Princeton, NJ: Princeton University Press, 2009); Michael G. Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* (Princeton, NJ: Princeton University Press, 2002); Michael G. Peletz, *Sharia Transformations: Cultural Politics and the Rebranding of an Islamic Judiciary* (Oakland, CA: University of California Press, 2020); Benjamin Schonthal, *Buddhism, Politics and the Limits of Law: The Pyrrhic Constitutionalism of Sri Lanka* (Cambridge: Cambridge University Press, 2016).

²⁸ Clark Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari'a into Egyptian Constitutional Law* (Leiden: Brill, 2006); Intisar A. Rabb, *Doubt in Islamic Law:*

have taken a broader view, looking beyond courts to question the notion that secularism is merely the separation of religion from the state. Secularism, they contend, involves the state's regulation of religious difference.²⁹ Surveilling and regulating religious activities can lead people to challenge the state. Under these conditions, secular state laws and institutions cause rather than resolve religious strife.

The very concept of the rule of law developed through a historical process that separated religion from the state. As European monarchies and state governments decoupled themselves from the authority of churches during the Enlightenment of the seventeenth through nineteenth centuries, law purportedly abandoned its religious roots and traditions. Secularization and political liberalization were processes by which state authorities created their own "autonomous set of orienting goals" in the law, rather than in religion.³⁰ By design, the law was kept at arm's length from religious and other nonstate leaders.

The state was designed so that rights and duties would come from a legal order that it could control, not a religious order beyond its control. This singular legal order often treated religion as a competing worldview – even as a threat – to political liberalism and its rule of law. Speaking in different registers about religion and law allowed state leaders to propound a new form of authority built on but not indentured to religious authority. Rhetorically freeing law from religion was purposeful. It caused, according to intellectual historian Rajbir Singh Judge, the "increased encroachment . . . by the sovereign state in this world, rather than one adjudicated by the Divine, [to encourage] faith

A History of Legal Maxims, Interpretation, and Islamic Criminal Law (Cambridge: Cambridge University Press, 2015); Kristen Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (Oxford: Oxford University Press, 2012).

²⁹ Hussein Ali Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Egypt* (Chicago, IL: University of Chicago Press, 2012); Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, CA: Stanford University Press, 2003); Mayanthi Fernando, *The Republic Unsettled: Muslim French and the Contradictions of Secularism* (Durham, NC: Duke University Press, 2014); Katherine Lemons, *Divorcing Traditions: Islamic Marriage Law and the Making of Indian Secularism* (Ithaca, NY: Cornell University Press, 2019); Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton, NJ: Princeton University Press, 1999); Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton, NJ: Princeton University Press, 2015); Noah Salomon, *For Love of the Prophet: An Ethnography of Sudan's Islamic State* (Princeton, NJ: Princeton University Press, 2016).

³⁰ Antônio Flávio Pierucci, "Secularization in Max Weber: On Current Usefulness of Re-Accessing that Old Meaning," Special Issue No. 1 *Brazilian Review of Social Sciences* (2000): 129–158 (trans. Roderick Steel), published originally in 13(37) *Revista Brasileira de Ciências Sociais* (1998): 43–73.

in the law itself.”³¹ Religion in the European imagination began to be seen as set apart from and, over time, antithetical to the rule of law.³²

The early modern European state’s organizing principles – seizing or separating local traditions and religion from the state and its law – made their way into colonial administrations in the nineteenth and twentieth centuries. European empires sought to expand their territories and “civilize” the Global South by constructing Western forms of governance beyond Europe’s geographic borders. The colonial approach to building the rule of law was designed to subsume the power of religion into the state or, where that was not possible, to excise it from the state entirely. To those who experienced colonialism, the rule of law seemed like just another inescapable imposition. European colonial administrators demanded their subjects see the state and its laws as the central elements of social structure.

In sub-Saharan Africa, colonial administrators dreamed up religion and law as recognizably different political objects. Separating religion from law and custom, they promoted each as a distinct source of authority and subsumed them all to state power. Post-independence political leaders likewise wielded these discursive weapons, and, particularly in times of trouble, some of them claimed the force of law or of God to rationalize their violent impulses.

State-building – the practice of constructing governments and civil societies – can separate law and religion in theory. But in culture and politics, these concepts remain entwined. Political and religious leaders, for instance, regularly cite religious principles, issue commands, and invite God’s blessing. For the purposes of state-building, shari’a in Muslim-majority societies is rooted in Islam. Similarly, the legal traditions that built up in the countries of North America and Europe derive from Judaism or Christianity. Put another way, when used as state law shari’a is no more Islamic than the US constitution is Christian. While the religious nature of authority may be important to some people, others care more about the stability, values, order, and ethical sensibilities that religion brings to the political table than about the religion itself. There is also public consensus that Western state legal systems, which regulate religion, are objective or value-neutral in the

³¹ Rajbir Singh Judge, “Mind the Gap: Islam, Secularism, and the Law,” 29(1) *Qui Parle* (2020): 179–202, p. 181.

³² Giorgi Areshidze, “Taking Religion Seriously? Habermas on Religious Translation and Cooperative Learning in Post-secular Society,” 111(4) *American Political Science Review* (2017): 724–737.

application of the law, and there is little reason to suggest that, given time, Islamic states would be any different.

In the long term, religion may not disappear from governance in strongly Islamic countries. Indeed, the state's power is often exerted through discourses of religion that pervade daily life – in radio commentary, television programs, architecture, street posters, and political advertisements – even in those places where the state's authority seems weak or illegitimate.³³ Just as it was in North America and Europe, the ideals of justice and dignity in the world's most unstable regions may be built upon long-held religious principles. Justice and dignity take their first steps not in democratic elections and representative governments but instead in law, courts, and religion – when religious leaders, judges, and activists use religious law to help people resolve disputes without resorting to weapons or physical violence.

SHARI'A IN THE HORN OF AFRICA

The making of the state is a process of consolidating a multiplicity of legal orders, systems, and hopes into a single state-controlled system. The state promotes its own authority through this seemingly singular legal system that the state also portrays as flexible enough to accommodate other traditions. This process of trying to build a distinct, unified, and internally coherent state out of the battle to overcome legal pluralism, and the endurance of Islam throughout this process, is exemplified in the Somali case.

In modern Somali history, colonial administrators, postcolonial democratic and authoritarian regimes, lawyers, and women's rights activists – and the people who resisted each of these actors – all seemed to turn toward shari'a, rather than away from it. They turned toward shari'a because, as with other forms of law, it provided a foundation for their political or social views. But shari'a is not simply a tool of law. It is an instrument of divinity. Justifying political activities by their accordance with God's will invests those activities with piety, morality, and restraint. It also gives state and nonstate actors hope that their activities might go unchallenged because God's will does not change and because pious persons would not disagree with what God wills.

As these diverse state and nonstate actors invest their hopes and fears in shari'a, they create new knowledge of Islam, law, and politics, and new

³³ Salomon (2016).

understandings of the relationship among them. To many Somalis, foreign aid workers' goals of drafting state laws to promote a more rational, predictable, and singular legal order seem out of place in a context where religious leaders render careful decisions based on each situation's unique facts. But aid workers have come to understand the orally delivered judgments of elders as another form of law because, as one Somali told me, "White people decide[d] to write [them] down."³⁴

To most Western observers, the Horn of Africa is not known for any order at all – much less an Islamic legal order. The region is best known to such people for terrorism, piracy, cycles of famine and drought, and *Black Hawk Down* – a bestselling book and Hollywood film about the disastrous October 1993 US military raid in which hundreds of Somalis and eighteen US soldiers were killed in a fifteen-hour battle in Mogadishu. By 2006, following fifteen years of rule by disparate warlords, Somalia was widely recognized as Africa's largest haven for Al Qaeda, the group responsible for regular attacks on civilians and governments, including on the United States on September 11, 2001. Political fragmentation, corruption, and suicide bombings have rocked major towns. Because of civil war, human rights abuses, human flight, and deep political divisions, Somalia has been ranked as the first or second most "fragile" or "failed" state in the world.³⁵ (Somalia is designated this way despite the relative calm of Somaliland.)

Because of its political disasters and the resultant human suffering, the Horn of Africa is not studied as a space where law might play an important social and political role, and especially not as a place where principles of peace and the rule of law might take root. But one need not dig far below the ruins of war to find shari'a not just surviving but even thriving as a foundation for social and legal order. In the context of a legally competitive environment – where an abundance of laws and regulations have come from colonial administrators, local authorities, foreign diplomats, aid workers, or religious leaders trained domestically or overseas – everyone seems to agree on the importance of shari'a, even if they disagree as to its substantive content or political implications. Shari'a's resilience is a result of its malleability, as people reinterpret God's will for their own circumstances. Shari'a has withstood the

³⁴ Interview 80 with Gul, aid worker in Nairobi, Kenya (August 2013).

³⁵ Rankings are 2008 through 2020, inclusively. *Fragile States Index*, The Fund for Peace, <http://fragilestatesindex.org> (accessed January 1, 2021). On the genealogy and critiques of "state failure," see Jutta Bakonyi, "Failing States and Statebuilding," in *Understanding Global Politics: Actors and Themes in International Affairs*, eds. Klaus Larres and Ruth Wittlinger (New York: Routledge, 2019), 313–328.

unpleasant and deadly politics of colonialism, authoritarianism, and civil war because people, despite their different interpretations of shari'a, agree on its importance and the hope it provides.

Who are these political elites building state power and the persons challenging them? They are a combination of state and nonstate actors, some of them working out of positions created by colonial officials and rededicated by postcolonial groups. Together, they form the key personnel who have made and remade law and religion, presenting their own ideas of right and wrong as objects of religious tradition or legal reform (Table I.1). The goals of these disparate groups are diverse but generally include resolving disputes

Table I.1 Political elites in Somalia and Somaliland

State actors	Nonstate actors
Colonial administrators (colonial officers and their local employees, including qadis working in state Islamic courts)	Sheikhs (religious leaders who use shari'a to resolve disputes like divorce, inheritance, injury, or theft and to build peace among rival communities; called qadis when acting as judges in state Islamic courts)
Postcolonial democratic state officials (politicians and judges working on behalf of government, including political leaders rebuilding after civil war)	Sultans (community leaders, sometimes also trained as sheikhs)
Postcolonial non-democratic state officials (the 1969–1991 authoritarian regime of Mohamed Siad Barre)	Aqils (community sub-leaders or managers, usually overseen by sultans, and sometimes paid by government to resolve people's disputes)
	Elders (ad hoc groups – <i>guurti</i> and <i>odayal</i> – who resolve disputes, including clashes between large communities)
	Lawyers and paralegals (persons with and without formal legal training who work with state law, typically in state courts, including for legal aid programs supported by United Nations rule-of-law projects)
	Civic groups (e.g., women's rights organizations, environmental protection groups, and youth/educational associations that use legal tools or religious ideals to foster social change)

Source: Author.

and building peace, stability, and order, as they variously define these ideals. In other words, their goals are tied to shaping the building blocks of the rule of law, even if they do not use the term, and even if it is difficult to imagine such diverse actors collectively building a foundation for the rule of law. Each of them – colonial and postcolonial officials, religious and community leaders, lawyers and civic groups – has sought the legitimacy of shari‘a, inscribing God’s will into their preferred vision of the state.

Colonial administrations learned the lessons of law and religion the hard way. They fought religious insurgencies rooted in an Islamic hope of achieving God’s will and in disagreements over whether non-Muslims could be trusted to resolve disputes among Muslims. Similarly, today’s foreign policy officials, particularly from Western nations, earmark billions of dollars to military intervention, aid delivery, and reconstruction efforts in the hope of dominating and subsuming religious fervor. And in between, authoritarian regimes and democratically elected governments have had to reckon with Islam, much like earlier colonial administrations and later international aid workers. Like rights, religion becomes a cloak under which varying groups can smuggle in their values and their political proclivities, clad in the authority of the state or the divine – or both. And, like those who invoke rights, activists who invoke religion increase the rhetorical stakes of their struggles against opponents.³⁶

Law and religion, woven together, have shaped Somali political history. State actors – colonial, authoritarian, democratic – and non-state actors like women’s rights activists have had to contend with shari‘a and present their own version of it at every turn in their work to build, destroy, or rebuild the Somali state and civil society. Many of them draw a causal link between shari‘a and the values associated with the rule of law, including limited government, political freedom, nonviolence, and gender equality. But others confront and promote more secular notions of law that regulate or subsume religion’s power while nominally decoupling it from the state. By examining this history of the Horn of Africa, the book also explores the potential of shari‘a to build peace and the rule of law in the most challenging environments.

³⁶ Kristen Stilt, “Constitutional Islam: Genealogies, Transmissions and Meanings,” in *On the Ground: New Directions in Middle East and North African Studies*, ed. Brian T. Edwards (Doha: Akkadia Press, 2014).

OVERVIEW OF THE BOOK

Those who use shari'a to achieve their political, economic, or social goals stretch the term in many directions. In Somalia and Somaliland, state and nonstate actors attempting to build legal order – from European administrators in the 1880s to community elders, religious leaders, state politicians, and the aid workers supporting them in the 2010s – have justified their legal activities as consistent with shari'a. They universally fear the threat of offending God's will, as they simultaneously test its boundaries by revising and using it to achieve their goals. They create a dynamic politics of shari'a by using it for diverse and often conflicting ends, including *contesting* its meaning to support and challenge colonialism, *constraining* it to claim postcolonial power, *restoring* it after civil war, *integrating* it into postwar governments and constitutions, and *reclaiming* it to achieve rights and equality.

The chapters that follow demonstrate how different actors across time and place understand the changing relationship between religion and the rule of law. My focus is on Somalia and Somaliland from colonial intervention in 1884 until 2021, thirty years after Somalia's 1991 collapse. In that 137-year period, Somalis were ruled by multiple European colonial masters, saw their governments unite and separate, and fought multiple civil and regional wars. Their famines and droughts have resulted in some of the most massive and rapid human migrations in history, and in some of the world's costliest humanitarian aid programs.³⁷ Some of the survivors who left have returned to help transform the state and civil society, resulting in tensions with those who never left. But everywhere one turns in modern Somali history, some leader or activist is trying to build the state by promoting or limiting the power of shari'a. This study traces the remarkable elasticity, resilience, and endurance of shari'a amidst considerable political disorder.

Chapter 1, "Embracing Shari'a and the Rule of Law," provides an overview of the concept of shari'a and its relationship with the ideal of the rule of law. It also explains why Somalia and Somaliland provide critical cases for understanding the relationship between shari'a and the rule of law. **Chapters 2** through **6** then each investigate a different case

³⁷ Paul D. Williams, *Fighting for Peace in Somalia: A History and Analysis of the African Union Mission (AMISOM), 2007–2017* (Oxford: Oxford University Press, 2018); Alex de Waal, *The Real Politics of the Horn of Africa: Money, War and the Business of Power* (Cambridge, UK: Polity Press, 2015).

of legal development – and whether and how shari‘a emerges – to provide a glimpse into the shifting meanings and uses of shari‘a across various time periods and locations. Together, the five case studies in [Chapters 2](#) through [6](#) illustrate how people use shari‘a as a tool of politics and, when they do this, how shari‘a becomes a source of hope during the chaos of epic political changes and strikes fear into the hearts of dictators and warlords (who also try to control or destroy shari‘a to meet their needs). In Part I, [Chapters 2](#) and [3](#) address the interplay between religion and the rule of law under colonialism (1884–1960) and in the first generation after independence (1960–1991). Part II examines key moments in the first thirty years following the state’s 1991 collapse in Somalia ([Chapter 4](#)) and in Somaliland ([Chapters 5](#) and [6](#)).

Contesting Shari‘a: Colonialism

In colonial British Somaliland in the late nineteenth and early twentieth centuries, British administrators sought to build a colonial outpost by signing treaties with Somali elders, writing new laws, building court-houses, and controlling how Somalis resolved their disputes. They hoped to create a unified legal system derived from what they saw as three distinct source codes: Islam, European law, and Somali custom. In the early 1900s Sheikh (Sayyid) Mohamed Abdullah Hassan – a poet, nationalist, arbitrator, and religious leader – used what he labeled as shari‘a to resolve people’s disputes over theft, inheritance, personal injury, and the like. The British were at first happy with the stability the sheikh provided among rival Somali groups, particularly those that had been raiding one another’s lands. But as the sheikh became more skilled at oratory, he cited shari‘a as his core rationale for what would become an anticolonial struggle that deployed both violent and non-violent tactics. British colonial officials and newspapers relabeled him the “Mad Mullah.”

The British, meanwhile, were busy designing their own competing Islamic courts – they called them “qadi courts” – that promoted another version of shari‘a to Somalis who supported British involvement more than Sheikh Hassan’s followers did. (The British-instituted qadi courts would later become northern Somalia’s district, or lower, courts.) Shari‘a offered hope both to the British and to those who fought them that civilization was thriving in the region. It was a source of mutual trust among adversaries. No one, not even British colonial officials, denied its authority. Islam mattered as much to non-Muslim

colonial authorities as it did to Muslims resisting colonialism. [Chapter 2](#), “Contesting Shari’a,” focuses on this story of British colonialism, and the two-decade war (1899–1920) between the British administration and the followers of Sheikh Hassan. The chapter is set in British Somaliland, located in the northern Horn of Africa, and also draws comparisons with Italian Somalia, located in the southern Horn.

Constraining Shari’a: Colonialism’s Aftermath

Later, after independence in 1960, postcolonial governments repeatedly sought to destroy or create Islamic states by writing Islam out of or into their constitutions and other laws. Their efforts in the postcolonial, united Somalia – which encompassed the former British Somaliland and Italian Somalia from 1960 to 1991, when Somaliland broke away – are the focus of [Chapter 3](#), “Constraining Shari’a.” During that thirty-one-year period, political leaders in Mogadishu painstakingly created laws designed to contain Islam rather than allow it to flourish, furthering the British experiment of creating a limited Islamic state. Those efforts, however, ultimately resulted in the state’s collapse in 1991.

The authoritarian regime of the 1970s and 1980s, while ostensibly socialist during most of its rule, could not escape Islam’s power. President Mohamed Siad Barre, a dictator who seized power over Somalia by military coup in 1969, went to great lengths to claim that socialism and Islam were compatible so that Somalis would put nation before tribe. But when a group of sheikhs disagreed with the government’s 1975 family law on the grounds that it violated shari’a principles, Siad Barre’s regime had those men quickly and publicly executed. To Siad Barre, the sheikhs – and Islam itself – were a threat to nationalism, even as the dictatorship attempted to paint its rule as compatible with Islam.

[Chapters 2](#) and [3](#), described above, compose Part I of the book and demonstrate how colonial, democratic, and authoritarian rulers fear God’s will even as they need it – interpreting and using shari’a publicly in their struggles for authority. Shari’a mattered to Somalia’s political leaders trying to build a functioning state and, though their efforts ended in failure in 1991, they all had invoked shari’a to justify their ideologies. Devotion to shari’a, and to Islamic faith more generally, simultaneously animated much of the resistance to colonial and authoritarian rule.

Restoring Shari’a

President Siad Barre fled the country in 1991 during a disastrous civil war, and the government collapsed. Somaliland in northern Somalia,

where many rebels had been based, quickly declared its sovereignty. The rest of the country fell to warlords and their militias. While some of these warlords had once been religious leaders, they focused not on promoting peace or Islamic faith, but on amassing weapons and wealth by installing roadblocks where their militiamen collected arbitrary fees from travelers. The years of violence and human suffering since 1991 have led observers to label Somalia the “world’s most dangerous place.”³⁸ Chapter 4, “Restoring Shari’a,” explains Somalia’s path into and out of the rule of warlords. The chapter is set in the area sometimes labeled “south-central Somalia” to denote its geographic separation from Somaliland.

The first stable peace in the country’s warlord-controlled regions would not arrive until 2006, fifteen years after the 1991 collapse. This peace did not come from foreign military intervention or from United Nations relief agencies but from a group of religious leaders who set up courts in and around Mogadishu to resolve business disputes and handle criminal matters. When these courts merged, they called themselves the Islamic Courts Union (ICU). With their own bailiffs and militias protecting them, the judges successfully removed the warlords from power. No longer did people have to travel impeded by the warlords’ many checkpoints, and no longer did they live with the fear of extrajudicial disappearance.

But as the ICU grew, so did its factions. Each faction promised to implement its own distinct version of shari’a. They split between extremists who, like the warlords, wanted weapons and war, and moderate judges who preferred peace and stability. This factionalism threatened the ICU’s solidarity and Somalia’s future. Despite the stability the courts provided to Somali people who accessed them or lived nearby, the idea that an Islamic state was emerging in Mogadishu seemed an affront to the US-led war on terror. A group of warlords joined their forces and then accepted American counterterrorism assistance to battle the Islamic courts. An American-backed invasion by the Ethiopian military then did away with the courts just six months after they had brought peace to Mogadishu. But anyone in Mogadishu will still tell you that the Islamic courts, although they had real problems, did give people hope that they could unlock their doors and go outside again, free from the threats and corruptions of local warlords.

³⁸ James Fergusson, *The World’s Most Dangerous Place: Inside the Outlaw State of Somalia* (Boston, MA: Da Capo Press, 2013).

Though short-lived, the ICU was the closest Mogadishu had come to a government since the fall of Somalia's Siad Barre military regime nearly two decades earlier.

The warlords and the judges of the Islamic courts were not the only people who tried to establish stability after the state's 1991 collapse. A fledgling and transitional government, working either in exile or out of a small compound in Baidoa, Somalia, also tried. They liaised with aid workers and international lawyers and drafted new constitutions that carried their hope that putting guiding principles in writing would change the country. Separately, Somaliland too wrote its own constitution. The framers of these postwar constitutions all adopted Islam as the foundation of their constitutional frameworks and declared Islam to be the only official religion – in other words, they created Islamic states. When I asked them why, the men who wrote these constitutions gave me the same answer: they wanted to ensure that extremists had nothing to fight for. If the constitution itself created an Islamic state and promoted shari'a, what could religious extremists rally around? They also told me that, in a climate of fear, religion was the only solution that most people could trust.

Integrating Shari'a

Somaliland's efforts to build an Islamic state after it broke away from Somalia in 1991 are the subject of [Chapter 5](#), "Integrating Shari'a." Somaliland declared independence by reasserting a sovereignty it had for five days (June 26–30, 1960) prior to unifying with then-Italian Somalia. The self-declared state of Somaliland is what much of the world sees as northern Somalia. Its government has made strides to reject authoritarianism by outlawing military courts and adopting a constitution rooted in Islamic human rights principles. Drafters of Somaliland's constitution told me that they gave primacy to shari'a to keep religious extremists at bay. They also told me that guaranteeing fundamental rights to life, liberty, equality, and property would draw international support. Despite being located – in the view of many outsiders – within a collapsed state, Somaliland provides strong evidence of grassroots peacebuilding and political progress in the Horn of Africa. But the strategic intentions behind Somaliland's Islamic legal arrangements are largely invisible to foreign aid officials, who remain focused on delivering aid, constructing court-houses, and training judges and lawyers to apply international law.

Reclaiming Shari‘a

Somalia’s and Somaliland’s judges and constitution writers were not the only ones who sought refuge in Islam. Women activists I met who struggled for gender equality in family life and in political rights and freedoms also turned to shari‘a for support. They used Islamic legal principles rhetorically to fight for gender equality, without adopting a strategy of filing lawsuits and seeking redress from state courts. Educated, multilingual, and sophisticated, these activists developed important relationships with government officials and aid workers. They fought for shari‘a as they simultaneously tried to minimize alternative views of it. Gender equality is a key principle of international human rights law, and Somali women have been using Islam’s foundational sources – the Qur’an and the Hadith – to promote it. But they have had trouble convincing sheikhs to publicly support the women’s understanding of Islamic principles. They have sought rights protections that they argue are rooted primarily in shari‘a – and secondarily in state law or international law – in order to promote values associated with the rule of law, not the rule of men. Shari‘a has been these women’s source of hope and frustration too. Their struggle to reclaim shari‘a is the subject of [Chapter 6](#), “Reclaiming Shari‘a.”

[Chapters 4](#) through [6](#) form Part II of the book and show how aid workers from 1991 to 2021 were preoccupied with building the rule of law while Somalis were preoccupied with building an Islamic rule of law. The chapters reveal how people’s experiences of shari‘a and the rule of law are shaped by the legacies of colonialism and postcolonial transitions between democratic and authoritarian rule. Somalia and Somaliland had divergent paths – one toward sustained collapse, the other toward a frail peace – but political elites in both places desired and used shari‘a as the basis of state law. These postcolonial religious and political legacies continue to shape the region’s constitutional development.

[Chapter 7](#), “The Rule of Law, Inshallah,” concludes the book by delving more deeply into the rule of law’s historical relationship with religion. Activists who invoke religious discourse to demand change provoke anxiety among incumbent officials whose positions such change may destabilize. When activists prioritize the will of God over the will of state officials, they set limits on the colonial or authoritarian inclinations of those officials. Understanding the resemblances between doing God’s will and building the rule of law is a step toward lasting peace in societies where people take religion seriously, including

Islamic states as volatile as Somalia. While historically the rule of law has offered itself as an alternative to theology, many people submit to faith to advance the values of the rule of law.

RESEARCH METHODS

How are values associated with the rule of law and shari'a formed, and how do they relate to one another in practice, particularly in war-torn societies? To what extent are these concepts shaped by colonial rule, authoritarianism, and interactions with international aid workers and activists? To answer these questions, I have employed three primary research methods: archival and documentary-based research, qualitative interviews with key informants, and ethnographic observations of dispute-resolution activities in courts, legal aid centers, and at workshops sponsored by international and local aid groups.

The purpose of combining these three methods is to trace developments across different historical and political contexts within a single setting. Such a comparative and inductive approach reveals continuities and changes in how key political actors use the discourse of shari'a to build up the rule of law or to destroy it. It also creates space for people's voices and their surviving historical records to speak first, before developing hypotheses about law or religion. This longitudinal and multi-method approach is best suited to tracking changes over time, and it is similar to the methodologies I adopted for my book on Sudan.³⁹ This intensive and grounded research process responds to Clifford Geertz's admonition to scholars to study not just the law but also the meanings, understandings, and symbols that people give to and produce from the law.⁴⁰

During an interview in Nairobi, Kenya, a government official from Mogadishu told me "Everything was destroyed" in Somalia's civil war and its aftermath. Reflecting on his own survival, he reminded himself, "Sadly, also, many in the legal establishment . . . were killed."⁴¹ Civil war and terrorism have cut lives short and burned buildings down. Survivors and their historical records have been scattered. I met key witnesses to these events and accessed important documents in seven

³⁹ Mark Fathi Massoud, *Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan* (Cambridge: Cambridge University Press, 2013a).

⁴⁰ Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983).

⁴¹ Interview 86 with Barkhado, retired senior government minister in Mogadishu, Somalia (conducted in Nairobi, Kenya) (August 2013).

cities in four countries: Hargeisa, Somaliland; Addis Ababa, Ethiopia; Nairobi, Kenya; and Cambridge, Durham, London, and Oxford, in the United Kingdom.

I conducted five months of research in the Horn of Africa over three separate trips in 2013, 2014, and 2019. During those periods I made my base primarily in Hargeisa, the hub for courts and legal aid activities in Somaliland. Research there provides insights not only about legal development in the context of state collapse, but also about law in a state that, to much of the rest of the world, does not exist. Lawyers, activists, government officials, and other key informants from Mogadishu sometimes passed through Hargeisa, and I was able to meet with them during their travels.

I also accessed materials and conducted interviews in Nairobi and Addis Ababa. Nairobi has been the nerve center for aid operations to Somalia since the state's 1991 collapse, and I met former Somali government officials who were living or working in Addis Ababa, the headquarters of the African Union. Throughout my research I adopted an ethnographic sensibility toward the documents and persons I encountered. Such an approach involves "listening, participating, witnessing, and reflecting" in order to understand people's lived experiences and how they generate meanings, relationships, and goals around law and religion in local context.⁴²

In 2019, I returned to Hargeisa to finalize my fieldwork and present my research in public lectures and in closed meetings with government officials, judges, lawyers, and activists. Sharing my book as I was writing it gave Somalis I met the first opportunity to hear the arguments, reflect, and provide me with feedback.

Historical Research

To evaluate the impact of colonial rule upon law and religion, I conducted research in the United Kingdom – at its national libraries, colonial archives, and university libraries in Cambridge, Durham, London, and Oxford. I supplemented these materials with documents I gathered in Hargeisa and Nairobi, on file with relief organizations

⁴² Carole McGranahan, "What Is Ethnography? Teaching Ethnographic Sensibilities without Fieldwork," 4 *Teaching Anthropology* (2014): 23–26, p. 24; see also Nick Cheesman, "Rule-of-Law Ethnography," 14 *Annual Review of Law and Social Science* (2018): 167–184; Laura Nader, *The Life of the Law: Anthropological Projects* (Oakland, CA: University of California Press, 2005).

based there or with the library of the British Institute for Eastern Africa, in Kenya.

The decades of violence and instability left few archival records in Somalia and Somaliland. Somalis told me how paper, including government documents, was used as kindling for fires to keep them warm on cold nights during the war. The records that survived are often incomplete or tell only one side of a story. Because I knew that historical knowledge was often passed down orally, I secured interviews with adult children of deceased sheikhs, aqils, and qadis who had worked in British Somaliland. I was also able to meet the last surviving aqil employed by the British colonial administration. Many of these materials appear in [Chapter 2](#), on the colonial period.

Personal Interviews

In addition to obtaining historical evidence in documentary and oral form, I recorded, translated, and transcribed 142 semi-structured interviews, mostly in Hargeisa, Somaliland. Eighteen of these were repeat interviews, and twenty-one were conducted outside Somaliland, during research trips to Nairobi, London, and Addis Ababa. I conducted eighty-seven of these 142 interviews in 2013, forty-six in 2014, three (by telephone) in 2015 and 2016, and six in 2019. Appendix B contains the interview list.

I conducted interviews with lawyers, religious authorities (sheikhs and sultans), community leaders (aqils and sultans), scholars, judges, university administrators, current and former government officials, foreign aid workers, and civil society activists. Collectively, these interviewees worked in Hargeisa, Burao, and Borama (in Somaliland); Mogadishu and Kismayo (in Somalia); and Garowe (in Puntland). Because of instability, many other Somali activists and aid workers remain based outside the region. These include consultants, aid workers, and former government officials whom I met in person or who spoke with me by telephone from their homes or offices in the United Kingdom, Kenya, Ethiopia, Tunisia, Canada, and the United States.

To gather information about the role of religion in legal work and constitutional development, I asked lawyers and officials to share with me why they chose their careers, what they understood to be the defining moments of legal development in Somalia and Somaliland, and whether and how shari'a came up during those periods of personal, national, or legal change. To gather information about the role of religion in civil society development and legal activism, I asked

representatives of civic groups to share with me their backgrounds and motivations, the key moments in the development of civil society, and whether and how law and religion came up in their work. I also asked foreign aid workers about the role of shari‘a and its relationship to their aid work, and the broader challenges of humanitarian efforts to promote the rule of law in the region. Sultans, sheikhs, aqils, and legal aid attorneys all discussed their experiences as dispute resolvers for their communities, both inside and outside local courtrooms. Interviews ranged from 45 minutes to two hours, with most lasting about 90 minutes.

Best efforts were made to convene a diverse group of interviewees. I decided early on not to ask people about their clan affiliations, if any, to avoid reifying these social categorizations that early European anthropologists and colonial administrators attached to the Somali people.⁴³ I obtained additional interviews through asking for referrals from current interviewees (snowball sampling) and through my prior work and diverse professional networks.

Despite best efforts to obtain gender balance, only forty-four (31 percent) of my 142 interviews were with women. Not only are government agencies, the legal profession, and civil society in the Horn of Africa dominated by men, but my use of snowball samples likely also propelled me into meetings with men. At the same time, my status as a Sudanese-born man made it inappropriate for me to meet privately with some women, shutting the door to many important women’s stories in legal development. Identifying as a man allowed me to enter new territories, but it also closed off other spaces. During my fieldwork, there were no women judges and only a few women lawyers in the entire region. This dearth of women in the legal profession led the United Nations Development Programme and local women’s nongovernmental organizations to fund scholarships for women to attend law school in Hargeisa and nearby towns. My interviews with women activists provide the foundation for documenting efforts to diversify the legal profession and to build respect for values associated with the rule of law, discussed in [Chapters 5 and 6](#).

I was able to conduct qualitative interviews in English and Arabic, two languages I have in common with most of the people I met, many of whom had lived overseas as refugees in Arabic-speaking countries prior

⁴³ On the limits of colonial British anthropology, see Cawo Mohamed Abdi, “Somalia,” in *Arab Family Studies: Critical Reviews*, ed. Suad Joseph (Syracuse, NY: Syracuse University Press, 2018), 96–110.

to returning to the Horn of Africa in the 1990s and 2000s. During one interview I conducted in Somali, a research assistant simultaneously translated into a combination of English and Arabic for me. I translated, transcribed, coded, and analyzed approximately 1,500 pages of data using qualitative analysis software. More information about this analysis process is in Appendix A.

Ethnographic Observations

Workshops and conferences with elders and religious and political leaders constitute part of international efforts to promote the rule of law in fragile states. Another strategy to build the rule of law is funding legal education and legal aid programs, to encourage people to access state courts to resolve their disputes. I met with and observed meetings between legal aid attorneys and their clients at local legal aid centers near state courthouses, and then shadowed them into courtrooms for their hearings. I also attended rule-of-law workshops organized by Somali organizations and UN agencies, sometimes writing summaries for the organizers in exchange for my attendance.

Practical Limits and Methodological Considerations

The conclusions of this book are based on specific observations, close readings of archival texts, and lengthy conversations with survivors in a fragmented, uneven, and war-torn context. Because the Horn of Africa presents an extreme case of such an environment, the desire to generalize my findings must be tempered with careful attention to context and to the limits of this study. Because of a variety of responsibilities in my life, the first limit to the study was that I was unable to devote more than a few months of sustained research overseas at a time. This problem was exacerbated by the number of places I needed to visit for this project. For these reasons, I relied more on documentary evidence and personal interviews with key informants, and less on deep and lengthy fieldwork, than I have done in the past.

The second practical limit of this study is personal security, which prevented me from conducting fieldwork in Mogadishu, Somalia's capital. Mogadishu's government buildings, hotels, and secure airport compound – used for meetings between foreign aid workers, researchers, Somali activists, and government officials – remain active targets. In 2014, while I was living in Hargeisa, Mogadishu's airport compound was bombed, leaving fifteen people dead and scores more injured. In 2019 while I was in Hargeisa, Mogadishu was rocked by daily suicide

bombings. The national courts there have also been targeted. Six years earlier in April 2013, as I was preparing for my first research trip to the region, a particularly destructive bomb attack killed about twenty people, including Somalia's top public interest lawyers and other legal professionals. I therefore conducted all personal interviews and ethnographic observations in Hargeisa, Nairobi, Addis Ababa, and London. Even these sites were not, however, entirely secure: weeks after finishing a round of interviews at Nairobi's upscale Westgate Mall in September 2013, the mall was destroyed in a terrorist attack that killed at least seventy-one people and injured hundreds more.

It is difficult in any interdisciplinary study such as this one to differentiate between fact and recollection, as these are both explained by way of one's memory. This difficulty is no less real when encountering written accounts than it is when listening to oral accounts of events. For this reason, I invited those whom I met to share with me not only their perceptions of shari'a and the rule of law but, more importantly, past behaviors around legal and religious politics. Asking about past behaviors helps to uncover how views change over time, and how accurate accounts of the past might be. Doing so captures the nuances of the ways people invoke shari'a. Where engaging with participants on these questions was impossible (e.g., with deceased authors of historical records), I told survivors about what I found in the archives, to ascertain what the records got right or missed entirely. Turning to an array of sources – though each was incomplete on its own – generated a richer comparative legal history, as did a commitment to an ethnographic sensibility about culture, context, and values.

Colonial legacies, political instability, public health, and the threat of violence have restricted research access to many areas of the Horn of Africa, inevitably making this book, like all writing on the region, feel fragmentary. I offer a series of case studies that collectively illustrate how shari'a and the rule of law fit together, in parallel or in contradictory ways. Asking questions of the documents I found and the people I met afforded me the best chance of peering deeply into the functions of shari'a and practices of the rule of law. Where possible in these chapters, I also provide detailed (or "thick") descriptions of my observations for other readers interested in the broader context of state legal development. No study like this one is ever complete, and I hope the challenges I experienced do not outweigh the stories I was able to gather about the relationship between shari'a and the rule of law in practice.

In a café in Hargeisa, a sultan born during the British colonial administration reflected on his life's work as it related to the region's political history. When I asked him about his hopes for the future, he steered the conversation to religion. "Shari'a was abused," he told me. "People misunderstand it. We should know what shari'a is. Shari'a and common sense and the rule of law," he continued, "if you just think in a proper way, they [all] go together."⁴⁴ In the context of the Horn of Africa's deep-rooted political and legal troubles, Somalis I met did not separate religion either from the rule of law or from common sense. From the colonial period to the present day, law, religion, and common sense have worked together to create space for peacebuilding and to foster a more comprehensive understanding of law and society.

AIMS AND MOTIVATIONS

Shari'a, Inshallah marks the first major attempt to study legal politics in Somalia and Somaliland from the nineteenth to twenty-first centuries. It forms part of a growing body of scholarship adopting an ethnographic approach to the rule of law that privileges people's lived experiences and the shifting meanings people give to ideals associated with legal order.⁴⁵ In reconstructing Somali legal history, this study uncovers the ways in which legal tools are not enough to build the foundation of a colonial or postcolonial state and not enough for activism within those states. State and nonstate actors also use religious tools – as seen through rival versions of shari'a deployed within and across overlapping legal systems – to build the states they seek. Thus, studying the politics

⁴⁴ Interview 37 with Sultan Mansoor, sultan in Hargeisa, Somaliland (June 2013).

⁴⁵ See, for example, Nick Cheesman, *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order* (Cambridge: Cambridge University Press, 2015); Lynette J. Chua, *Mobilizing Gay Singapore: Rights and Resistance in an Authoritarian State* (Philadelphia, PA: Temple University Press, 2014); Melissa Crouch, ed., *Islam and the State in Myanmar: Muslim-Buddhist Relations and the Politics of Belonging* (Oxford: Oxford University Press, 2016); Matthew Erie, *China and Islam: The Prophet, the Party, and Law* (Cambridge: Cambridge University Press, 2016); R. Michael Feener, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia* (Oxford: Oxford University Press, 2013); John Hagan, *Justice in the Balkans: Prosecuting War Crimes in the Hague Tribunal* (Chicago, IL: University of Chicago Press, 2003); Jinee Lokaneeta, *Transnational Torture: Law, Violence, and State Power in the United States and India* (New York: New York University Press, 2011); Massoud (2013a); Jens Meierhenrich, "The Practice of International Law: A Theoretical Analysis," 76(3–4) *Law and Contemporary Problems* (2014): 1–83; Victor Peskin, *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation* (Cambridge: Cambridge University Press, 2008); Jothie Rajah, *Authoritarian Rule of Law: Legislation, Discourse, and Legitimacy in Singapore* (Cambridge: Cambridge University Press, 2012); Jamie Rowen, *Searching for Truth in the Transitional Justice Movement* (Cambridge: Cambridge University Press, 2017); Stern (2013).

of state-building involves learning what elites enshrine in law as well as how their understandings of God's will shape their political decisions. Autocrats may use religious narratives to serve their own will, but religious narratives also can shape a foundation for the rule of law.

There are excellent general histories of Somalia and Somaliland, and many other works provide an overview of the conflicts, failed humanitarian interventions, and struggles for economic development.⁴⁶ Given the region's different countries, colonial legacies, and wars, I do not offer such a political or economic analysis. Instead, I focus on the law and how a competition between legal orders has shaped the region's political ills and its range of policy solutions.

If this book offers one public policy takeaway, it is that scholars and policymakers must not be blind to the power of religion in building, as well as constraining, the rule of law. Recalibrating the moral compass of rule-of-law promotion will require international lawyers, particularly those working in non-Western environments, to ask difficult questions about how faith might provide the moral accountability that law often does not and cannot provide in these places.

Modernizing international rule-of-law development initiatives also entails noticing that "fragile" states may not need more law to stabilize themselves. Rather than pushing religion away or artificially separating religion from the rule of law, aid programs must begin with a recognition of the potential of religious faith to build a foundation for the rule of law. Legal pluralism and religion work together to shape moral accountability, promote fundamental rights, and limit arbitrary powers. There is a dire need for policymakers, human rights lawyers,

⁴⁶ For general history and overview, see I. M. Lewis, *A Modern History of the Somali: Nation and State in the Horn of Africa* (London: Boydell and Brewer, 2003); Mark Bradbury, *Becoming Somaliland* (Bloomington: Indiana University Press, 2008); Said Samatar, *Oral Poetry and Somali Nationalism: The Case of Sayid Mahammad 'Abdille Hasan* (Cambridge: Cambridge University Press, 1982); David Laitin, *Politics, Language, and Thought: The Somali Experience* (Chicago, IL: University of Chicago Press, 1977a); Brock Millman, *British Somaliland: An Administrative History, 1920–1960* (London and New York: Routledge, 2014). On more recent conflicts, economic developments, and humanitarian interventions, see Mary Harper, *Getting Somalia Wrong? Faith, War, and Hope in a Shattered State* (London: Zed Books, 2012); Michael Woldemariam, *Insurgent Fragmentation in the Horn of Africa: Rebellion and Its Discontents* (Cambridge: Cambridge University Press, 2018); Laura Hammond, "Obligated to Give: Remittances and the Maintenance of Transnational Networks Between Somalis at Home and Abroad," *10 Bildhaan: An International Journal of Somali Studies* (2011): 125–151; Ken Menkhaus, *Somalia: State Collapse and the Threat of Terrorism* (Oxford: Oxford University Press, 2004); Markus V. Hoehne and Virginia Luling, *Peace and Milk, Drought and War: Somali Culture, Society, and Politics (Essays in Honour of I. M. Lewis)* (London: Hurst Publishers, 2010). On piracy and its relationship with Somali port cities, European insurance companies, and global trade, see Jatin Dua, *Captured at Sea: Piracy and Protection in the Indian Ocean* (Oakland, CA: University of California Press, 2019).

and diplomats to be attuned to the salvific power not only of the law but also of religion.

At root, religious faith and the rule of law matter, not only to faith leaders and lawyers, but also to those seeking to build peace, law, and order out of the most intractable conflicts. Promoting the rule of law in Islamic states involves engaging with religion openly and transparently, rather than avoiding it out of fear that discussing faith may offend deeply held notions of piety or human rights. That is, promoting peace and democracy necessarily involves creating a marketplace for ideas, including religious ones. Democracies daily run the risk of allowing untoward ideas to emerge, and we hope that the most reasonable ideas, rather than the most reprehensible ones, will win over people's hearts.

The rise of extremist, populist, or ultra-fundamentalist views – in politics, law, or religion – does not necessarily mean that such extremism will take hold of state officials, or that they will use extremism or populism to govern. Indeed, quite the opposite may happen when leaders use the threat of extremism to determine the limits their societies should not transgress. In this context, religion and the rule of law offer hope not just for the absence of extremism, but for the presence of justice. These dynamics hold true not just in places with pious Muslims but also in any place where faith is central to most people's lives. (I return to these comparative claims about religion and the rule of law in [Chapter 7](#).)

Tayyib, the talented young lawyer depicted at the start of this introduction – who wanted to abandon his successful legal career to become a sheikh – was not alone in seeing the importance of both law and religious faith in his life and in social well-being. The pages that follow document how, for nearly 140 years, state and nonstate leaders alike have also sought salvation and survival in law and religion.