

A Political Theology of Law

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MARK FATHI MASSOUD. *Shari'a, Inshallah: Finding God in Somali Legal Politics*. Cambridge: Cambridge University Press, 2021.

Mark Fathi Massoud's *Shari'a, Inshallah: Finding God in Somali Legal Politics* argues that Somali state-making projects demonstrate that shari'a inspires not only religious extremism but also resistance to authoritarianism and support for justice and order. This rather muted claim about the polysemic character of shari'a is nonetheless both amply demonstrated and radical and surprising to its ideal readership of policy makers, human rights workers, and diplomats in contemporary Europe and North America. Such actors, the book argues, should be attuned "not only to the salvific power" of law but to that of religion (30). The book makes a further, bolder claim addressed not only to policy makers but to scholars of law. Somalian legal politics, it argues, show that shari'a can represent hope for the rule of law (53–54). The claim rests on an argument about political theology (though Massoud does not refer to the intervention in these terms): all states and all legal systems have religion at their core, and this is as it should be. I argue here that this latter claim is provocative but underdeveloped.

LEGAL POLITICS IN SOMALIA

Over the course of an introduction and seven chapters, totaling just over three hundred pages, Mark Massoud demonstrates "how different actors across time and place understand the changing relationship between religion and the rule of law" (16). For those who know little about the colonial and postcolonial history of Somalia, the book gives a lucid account of efforts at state building with attention to the role of law and legal struggles to that process. The book's introduction and first chapter constitute an invitation into what follows, giving an overview of the purpose of the book as well as a crash course on "shari'a," the rule of law, and Somalia and Somaliland. These introductory chapters do an excellent job of initiating readers into the history of the region and setting up the terms and tropes that the book discusses. The chapters offer an important note about research, acknowledging that for political and other reasons, the author relied mainly on archives and interviews rather than ethnographic fieldwork, which would have been important to substantiate claims he makes about shari'a in practice.

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The rest of the book is divided into two historically delineated parts. The first covers 1884 to 1991, including discussions of colonialism, the early postcolonial period, and the rule of Siad Barre. The second covers the years 1991–2021 and looks at a variety of themes including Islamic courts and women’s activism. The final chapter, also included in Part Two, offers and elaborates three concluding propositions about religion and the rule of law, the most provocative of which is that “[t]he rule of law and theology bear striking conceptual, genealogical, and empirical commonalities” (304). More specifically, though no less provocatively, Massoud writes, “[l]ike a parallel God, law demands that citizens submit to its will” (304). It is this conclusion rather than the argument that shari’a is flexible that the book seeks to drive home.

GENDER, WOMEN’S RIGHTS AND SHARI’A

Shari’a, Inshallah convincingly argues that shari’a can be a platform for progress or regress, democracy or authoritarianism, patriarchy or women’s rights. Shari’a can be called upon to support various and conflicting objectives, Massoud argues, because it is flexible (290) and plural (52). In tracing the colonial and postcolonial history of Somalia and Somaliland, Massoud gives numerous examples of the uses to which shari’a, or appeals to it, have been put. The primary example he gives of co-optation of Islam and sharia is Siad Barre’s revolution, “written through law and justified with religion” (138). Important examples of turning to shari’a for progressive ends lie in discussions of grassroots shari’a courts established in the late 1990s and early 2000s and the short-lived Islamic Courts Union, as well as the work of women’s rights activists. These latter movements, Massoud writes, issued “a shared cry to rebuild society in the hope of achieving God’s will” (207). One strength of this book is the way that it seeks to show that Somalis make claims altogether compatible with, and sometimes influenced by, international human rights and other norms by appealing to shari’a. Shari’a is not an isolated or insular source but is articulated with other ideas, including those of women’s rights, which are both internal and external to Islam.

Massoud shows that women’s rights activists in the years since 1991 have had to walk a tightrope familiar in other postcolonial contexts: they must struggle for women’s rights in idioms that do not open them to criticisms of being “too Western.” Although it goes uncited here, there is an abundance of feminist literature that demonstrates how pervasive this conundrum is (for example, Badran 2009; Osanloo 2009; Dave 2012). In the Somali context, Massoud argues that activists’ primary obstacle is the association of women’s rights with the “state feminism” of the Siad Barre regime. Siad Barre’s authoritarian government was restrictive and violent in many ways; it also, Massoud tells us, pursued a socialist agenda that included protection of forest and grazing land, support for higher education, and efforts to undermine cronyism. The project was “designed to bring the regime closer to the people” (137). In 1975 the regime revised family law to guarantee sons and daughters equal inheritance shares, a change that many clerics protested as contrary to the letter of Islamic law. In a move decisive for feminist struggles in years to come, Siad Barre executed the protesting clerics, undermining his own popularity and linking women’s rights struggles to authoritarianism.

In the wake of this conflation of feminism and authoritarianism, Massoud argues that women activists “are not only turning to Islam out of piety to build notions of equality and dignity. They also do so out of strategy” (257). Although the chapter on women’s activism is limited by the type of research Massoud was able to do—carrying out fifty-four interviews, from which he quotes from only a handful—it nonetheless conveys that women draw on different sources in their quest for equality. Massoud’s interviews suggest that international aid organizations have financed women’s rights groups, even as these groups work with and through Islamic religious leaders (sheikhs) to legitimate their struggles, for example. The rights these activists seek (education for girls; guaranteed places for women in parliament; and the end of female genital mutilation, forced marriage, and sexual violence) are altogether compatible with those sought by international agencies and are justifiable by reference to the sources of shari’a. Women’s goals are thus supported by these international projects even as women’s rights activists must navigate between two mutually suspicious discourses, one anti-Western and one anti-shari’a. This predicament, rather than being unique, is a variation on a theme that scholars of women’s rights and Islam have long examined. Although Massoud has a footnote in which he cites some of the more important literature on Islamic feminism, by more fully engaging the literature on Islam and women’s rights he would have added an important layer of nuance to the chapter (for example, Abu-Lughod 2009; Mir-Hosseini 2006; Vatuk 2008; Osanloo 2009). I dwell in particular on the discussion of women’s activism because it is a salient example of one central question with which the book leaves the reader: What does *shari’a* have to do with it? It would be helpful to learn more about women activists’ hermeneutical practices and to understand in greater depth how they see the relationship between their normative commitments and their interpretive practices. To what extent is turning to shari’a primarily a strategy by means of which to advance goals they share with international human rights organizations?

THE POSSIBILITY OF AN ISLAMIC STATE?

Massoud offers abundant evidence for the many conflicting uses to which shari’a has been put, including his account of women’s rights activism mentioned above. The provocation of *Shari’a, Inshallah* lies however in Massoud’s further argument that shari’a can serve as the basis not only for rule of law but for a just state. In making this claim, Massoud is weighing into a vociferous debate in Islamic studies. Like other scholars, Massoud begins by clarifying that shari’a as a term is not equivalent to law. Instead, he writes, shari’a is “widely understood not as law but the constitution of Islamic theology, ethics, and spirituality. . . . 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). Leaving aside the important question of whether it is useful to parse who has a Western mind and who some other kind, the description suggests that for the purposes of this book, Massoud will engage this more capacious conception of shari’a rather than simply its legal aspects. It is shari’a, not Islamic law that the Somalis whom Massoud interviewed seek to secure as the basis of the state and its laws.

Massoud departs here from Islamic studies scholar Wael Hallaq's widely debated argument that "[t]he 'Islamic state,' judged by any standard definition of what the modern state represents, is both an impossibility and a contradiction in terms" (2014, ix). The crux of Hallaq's argument is that the form of the modern state, a European inheritance, is incompatible with Islamic ethics and politics, which are undone in and by the modern state form. Hallaq's argument has had a tremendous influence, and it is rare to read a book on Islam, politics, and the state that does not at least implicitly wrestle with its salvo. Although Massoud only cites Hallaq once, referring to his work on classical shari'a, his decision to simply refer to shari'a rather than Islamic law indicates that he does not see any incompatibility between its entailments and modern state projects. Massoud's disagreement with Hallaq stems in part from his normative assessment of the state, which the former sees as a promising and not only a repressive political form. Thus, the state form can be grounded in sharia and upheld by shari'a-derived laws even if this modern political form and the classical source texts of shari'a derive from distinct histories. In this way, Massoud shares with anthropologist Noah Salomon the view that the state form is not anathema to Islamic rule but that there is actually "something about its mechanisms" that has been useful and attractive to Islamic movements (Salomon 2016, 25). Although Salomon ultimately seems to agree with Hallaq that what Islamists produce through the state form does not qualify as shari'a, Massoud is committed to the possibility that grounded in the right interpretations of shari'a, the state can be just.

SHARI'A AS RELIGION

Shari'a, Inshallah's claim that shari'a and the modern state form are compatible rests, furthermore, on a conceptual equation between shari'a, Islam and religion. Here, Massoud stakes out a position in relation to a different literature. There is by now a long-standing consensus in the anthropology and history of religion that the category religion is not equivalent to various practices we associate with it (Christianity, Islam, Buddhism, and Hinduism, to name several). Instead religion was historically produced alongside the concept of secularism (see, for example, Asad 1993; Masuzawa 2005; Nongbri 2013). The invention of religion as a category had the effect of delineating certain practices as true religion and others as superstition or false religion. It also had the effect of imposing certain, primarily Protestant, views of what counts as religion onto traditions that do not share Protestant theological commitments, such as the primacy of belief over ritual practice or the interiority and privacy of religious commitment (see, for example, Fernando 2014; Ramberg 2014). Armando Salvatore has argued that this left Islam in an ambivalent position in sociological analyses: it was neither bounded (like Protestantism) nor nonmodern (2016).

Although the material Massoud presents in *Shari'a, Inshallah* could unsettle this ambivalence by showing the modernity of an Islamic state project that does not conform to European ideas about religion and what it can and ought to be vis-à-vis politics, religion becomes a primary conceptual term in the argument. This is because ultimately Massoud's point is not about the specificity of shari'a or Islam either as a political theology or as the source of legal politics but concerns the similarity of Islam and

Christianity, inasmuch as both are “religions” when it comes to the question of politics. There are several parts to this argument. The first is the historical claim that European law, like Somali law, is derived from religion. The second part to the argument about religion is Massoud’s substantive claim that the norms associated with modern, liberal democratic states—equality, social justice, living well together—are also found in the earliest and most important Islamic sources. In this way, there is nothing exceptional about Islam or Islamic ethics. The final, formal, claim is that all law is religious. In Somalia, there is a collective belief in shari’a—now not just as the basis of the state or of law but as a shared morality—that has held Somalia and Somalis together even in times of statelessness. As Noah Salomon has put it in the context of Sudan, “[t]he magnetism of Islamism was . . . due to the fact that the Islam on which it relied was not merely a bureaucratic logic, but a normative framework that far exceeded the state” (2016, 5). In Europe, there is a collective belief in secularized Christian norms of justice. In both cases, law turns out to be an alternative theology that works on the substrate of local norms, whether Islamic or Christian.

The Durkheimian ring to this claim is particularly well captured in the following formulation: “Law and religion are two different horizons of the human, created by the human, that also take us beyond the human” (306). Both law and religion are normative human projects misrecognized as emanating from nonhuman sources. As in Durkheim’s conception of religion, this is a deeply secular theology, if indeed theology it is. Either law is as holy as God or God is only as holy as any other alienated human creation. I would have welcomed more of an engagement with literature in political theology on this point, which would have allowed a more fine-grained account of what the differences might (or might not) be between a Christian- and an Islam-derived political theology (see, for example, Schmitt 2005; Sullivan et al. 2011).

More importantly, perhaps, the argument leaves open an important question: What makes the difference between the ascendance of better or worse, more or less egalitarian, and more or less progressive interpretations and implementations of any legal theology? Once again, what does shari’a have to do with it? In Somalia, Massoud shows, appeals to shari’a have a certain rhetorical force that makes them more likely to be persuasive than appeals to human rights or other sources. But, as he also demonstrates, appealing to shari’a is no guarantee of a just outcome. Is the ultimate point that once we accept that all law is derived from religion, we will also have to recognize that the worth of any religiously derived law has less to do with its religious source than with the machinations of power? This at once cuts against the book’s appeal for shari’a and seems an unavoidable consequence of its argument.

Shari’a, Ishallah is a timely book that contributes to the analysis of law in an understudied context. Scholars of legal pluralism and Islamic law and politics will benefit from its empirical contributions to the study of religion and law. These contributions are impressive, especially given the difficulties of access that attend research in Somalia. Its core argument that shari’a is not the problem is politically pressing and important. The questions it opens up, in particular the claim that legal and political arguments are actually religious, warrant further discussion and debate. The book’s invitation, and its provocation, is to embrace these difficult questions and to consider their consequences.

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