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” (إلا أن يشاء الله), to define and limit human will. Inshallah recognizes God’s unlimited power alongside human beings’


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

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. In 2020, the Washington, DC-based Center for Security Policy warned that “shari’a-supremacism” was the world’s “other pandemic” to Covid-19. Former US Senator Rick Santorum, echoing other conservative policymakers, denounced shari’a as “evil” and

“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

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\(^11\) Refah Partisi and Others v. Turkey, Application No. 41340/98, judgment of February 13, 2003, paragraph 128, European Court of Human Rights; Kasymakhunov and Saybatalov 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.


discuss religious matters.”

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.”

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. 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. 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.

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.
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. 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

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

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. 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. Scholars of Islamic law and society have similarly been preoccupied with the work of courts, scouring records to show how jurists interpret Islamic norms. Anthropologists of religion


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.\textsuperscript{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.\textsuperscript{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
