Western analysts have long denigrated Islamic states as antagonistic, even antithetical, to the rule of law. Mark Fathi Massoud tells a different story: for nearly 150 years, the Somali people have embraced shari‘a, commonly translated as Islamic law, in the struggle for national identity and human rights. Lawyers, community leaders, and activists throughout the Horn of Africa have invoked God to oppose colonialism, resist dictators, expel warlords, and to fight for gender equality – all critical steps on the path to the rule of law. Shari‘a, Inshallah traces the most dramatic moments of legal change, political collapse, and reconstruction in Somalia and Somaliland. Massoud upends the conventional account of secular legal progress and demonstrates instead how faith in a higher power guides people toward the rule of law.

Mark Fathi Massoud is Professor of Politics and Legal Studies at the University of California, Santa Cruz. He is the author of Law’s Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan. He has held Carnegie, Guggenheim, and Mellon Foundation Fellowships.
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SHARI‘A, INSHALLAH
Finding God in Somali Legal Politics

Mark Fathi Massoud
University of California, Santa Cruz
Colaad kasta nabadbaa ka danbeysa. (Every war gives way to peace.)

Somali proverb

Shari'a is more advanced than the [state] laws we are working with. It is not just an ideal. It is a revelation from God. It has specificity . . . [But] this is the problem: as soon as you apply shari'a, they say you are a fundamentalist, or an Islamist.

Lawyer and former militia leader in Hargeisa, Somaliland

1 Interview 100 with Hassan, legal aid attorney and former militia leader and police official in Hargeisa, Somaliland (June 2014). With the exception of historical figures and the most prominent public officials, all names in this book have been changed to preserve confidentiality.
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PREFACE

July 12, 2013. Hargeisa, Somaliland

Barely lucid, I stirred in an old and dusty hospital bed while connected to an intravenous drip. In the pale moonlight, I saw a man sitting at the foot of my bed and I heard his quiet voice. I had arrived in this city weeks earlier not to seek treatment for amoebic dysentery or cholera (doctors later suggested I had contracted both diseases), but to investigate people’s attitudes toward the law. I had learned that state laws were largely irrelevant to the Somali people – either long out of date or drafted by temporary aid workers – so I was less interested in what the law said than in the power of the ideal it presented, what drew people to that ideal, and law’s potential as an instrument for peace.

When I lifted my head, I saw that the man speaking quietly was my colleague, a local lawyer and law professor. He was holding his head down, reciting verses from the Qur’an in his hands. He was praying to God to sustain me. His faith and the traditions and rituals of Islam guided him in his personal and professional activities, as I would come to understand. A year later, he was appointed to Somaliland’s Supreme Court, where adherence to religious tradition with the hope of serving the will of God – in Arabic, inshallah – would inform his daily work, just as it motivated his prayers for my recovery.

This book, Shari’a, Inshallah, challenges the conventional wisdom in international law and policy that law is the main guiding hand of our societies and their politics, and that writing and enforcing laws is the most essential step toward building peace and stability in war-torn places. While it is true that some figures have invoked religion for their own reprehensible political goals, I show how this account obscures the ways in which religion is used for remarkably divergent ends. Instead, even where state power is weak and local customs are strong, people invoke religion to challenge colonialism, restrain dictators, expel warlords, write constitutions, plant democratic roots, and
campaign for gender equality. Their efforts shape a foundation for the rule of law, a way of governing without arbitrary power.

As someone from Sudan, from which my parents fled when I was a boy and to which I later returned to write a book on how law matters in the world’s most fragile states, I knew firsthand that differing kinds of people marshalled the law to serve their political or economic goals. Colonial administrators wrote regulations to criminalize aberrant behavior and shore up their foreign domination over diverse and divided groups. Postcolonial state leaders drafted constitutions and hired judges to delineate a path out of colonialism and civil war. Foreign aid workers and local activists invoked human rights to lift up themselves and the oppressed people they represented.

This process of using legal tools to achieve political, economic, and social ends is called legal politics. I had done research asking what law does for the rule of law and I found, disturbingly, that the activities of legal politics did little to realize the rule of law. I learned that law inspires us because we see its potential to do whatever we want it to do—at least so long as it meets our political ambitions and other goals.

But what of religion and religious law? What does religion do for colonial administrators, postcolonial governments, aid workers, and activists? Is there a legal politics of religion?

As a scholar in the United States, for the past twenty years I have read policy papers and academic studies in law and politics that portray religion as a problem that law solves. Only sometimes, and occasionally derisively, do these studies present piety as not so bad as it might at first seem. These assumptions about religion are clearest in Western foreign policy and policy-oriented writing on Islam and shari’a, which is commonly translated as Islamic law. But policy analysts’ accounts of religion’s role in politics are too thin. Like any religious or legal order, shari’a can be used in many ways, depending on the political proclivities of those who justify their activities as Islamic.

What follows is intended for an audience of legal scholars, social scientists who study law and religion, and policy practitioners. Scholars of Islamic law (fiqh) and Islamic legal theory (usul al-fiqh) may find the data and arguments presented helpful for understanding the ways that shari’a is conceived and used in politics and activism outside of courts. I have sought to understand efforts to establish national selfhood, and how religion shapes and is shaped by those efforts. Bringing law right down to the people who practice, shape, and use it, this book takes religion seriously as a force that informs those actors’ use of the law.
ACKNOWLEDGMENTS

No endeavor like this book, spanning many countries and years, is accomplished alone. First, I owe deep gratitude to the many Somalis who took an interest in this project and went out of their way to help me discover Somali legal history. In particular, I thank Professor (and Chief Justice) Adam Haji-Ali Ahmed, Hamse Khayre, and Nasir Ali of the University of Hargeisa Institute for Peace and Conflict Studies and Faculty of Law, where I affiliated and where I incubated this project. Abdirahman Aw Ali, Somaliland’s former Vice President, provided access to his personal papers. Dr. Abdi H. Gass, former President of the University of Hargeisa, supported foreign researchers in Somaliland. Dr. Abdiweli Ali, Somalia’s former Prime Minister, shared his experiences with the generosity that a teacher would show his pupil. Abdulahi (Dhere) Ibrahim Habane of Somaliland’s House of Elders and Mohammed Diriyi Farah helped me learn the importance of the oral transmission of knowledge in the region and in Islam. I also thank my students at the University of Hargeisa, who reminded me that seeking knowledge is a shared activity. I also acknowledge the critical participation of many dozens of lawyers, activists, religious leaders, and aid workers who must go unnamed. Without these people this book would not be possible. Ashkarukum wa mahadsanid.

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NOTE ON PLACES AND LANGUAGES

Shari’a, Inshallah offers a series of case studies from Somalia and Somaliland, in the Horn of Africa (so labeled for its resemblance on the map to a rhinoceros horn). I do not study law among those populations identifying as Somali in Djibouti, northern Kenya, and eastern Ethiopia’s Ogaden region, though some writers and policymakers have also labeled those places Somali territories. A contemporary map appears at the end of this section. Icons at the start of Chapters 2–6 denote the region and period of each chapter’s focus.

Somalia and Somaliland have been colonized, connected, and divorced. British Somaliland (in the northern Horn) and Italian Somalia (in the southern Horn) refer to the European colonial administrations. They were replaced by an independent Somaliland and Somalia in 1960. After five days, they unified. In 1991, Somaliland reasserted its sovereignty. Though still recognized as a region of Somalia by the United Nations, Somaliland has developed its own independent government. Its capital, Hargeisa, sits 850 kilometers north of Mogadishu. The semi-autonomous Puntland lies in between Somalia and Somaliland and has its own border disputes with both territories.

Arabic
All Arabic translations and transliterations are my own. A simple reverse apostrophe is used to represent the diacritical mark for the Arabic ‘ayn, as in shari’a. I render nisba endings -iyya, as in Islamiyya (Islamic), per the International Journal of Middle East Studies transliteration system. While standard transliterations exist, some Arabic words, such as names of persons, have several spellings when transliterated into English (inshallah/insha-Allah/enshalla, Mohamed/Mohammed/Muhammad, Omar/Umr, and so on).

Somali
The Somali language is based on the Cushitic branch of the large Afroasiatic language family, from which Hebrew, Amharic, and Hausa are also drawn. Somali was largely orally communicated until
1972, when Mohamed Siad Barre’s government created an official script based on Roman lettering. The Somali “c” denotes a sound similar to the Arabic ‘ayn. Thus, the Arabic shari’a is transliterated as sharica; the Arabic name ‘Abdul is Cabdul; the Somaliland town, Burao, is spelled Burco; and so on. The “x” (as in the name Maxamed or xeer, the Somali word for indigenous customs and laws) sounds similar to the guttural “h” in Arabic. Finally, some writers transliterate “q” and “k” interchangeably (for instance, aqil or akil for a community leader).

I have aimed for clarity, consistency, and accuracy in Arabic and Somali translation, Arabic transliteration, and Somali spelling. I provide English translations alongside Arabic and Somali words; terms that appear several times are italicized and translated in their first usage in each chapter.
Map 1 Contemporary Map of the Horn of Africa. This map shows inherited colonial borders that Somaliland uses but that Puntland contests. Somalia claims sovereignty over Puntland and Somaliland.

Source: Author, derived from Natural Earth base data.